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Cook County Recorder

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0020224024

SANDRA PHELON

Borrower

TO

EASTERN SAVINGS BANK, FSB

Lender

**MORTGAGE,**  
**ASSIGNMENT OF LEASES AND RENTS**  
**AND SECURITY AGREEMENT**

Date: February 15, 2002

Amount: \$95,000.00

Maturity Date: March 1, 2007

Premises:

400-402 S. Kilbourn Avenue

a/k/a 4505-4509 West VanBuren Avenue

Chicago, Illinois 60644

Tax Number 16-15-126-020

Prepared by and Record and Return to:

KRISS & FEIT, P.C.

360 Lexington Avenue, Suite 1300

New York, New York 10017

Attention: Jerold C. Feuerstein, Esq.

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Property of Cook County Clerk's Office

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## MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT ("Mortgage"), made as of February 15, 2002 by SANDRA PHELON, an individual having an address at 511 West 123<sup>rd</sup> Street, Chicago, Illinois (the "Borrower") to EASTERN SAVINGS BANK, FSB, having an office at Executive Plaza 2, 11350 McCormick Road, Suite 200, Hunt Valley, MD 21031 ("Lender").

### WITNESSETH:


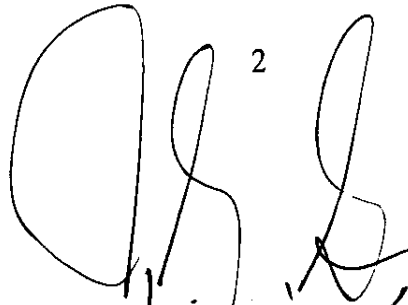
WHEREAS, this is a purchase money mortgage between the Lender Eastern Savings Bank, fsb, as mortgagee, the parent company of Fullerton Real Estate Co., the seller and Borrower Sandra Phelon, as buyer.

WHEREAS, Borrower is the owner and holder of fee title to the parcels of land located in the City of Chicago, County of Cook, State of Illinois, being more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Land"), together with the fee title to all buildings, structures and other improvements now or hereafter located on the Land.

NOW, THEREFORE, in consideration of the Mortgaged Property (as hereinafter defined) and of the covenants herein contained, and in order to secure when and as due and payable the payment of the principal of and interest on a certain promissory note, of even date herewith, made by Borrower to Lender in the original principal sum of NINETY FIVE THOUSAND DOLLARS and NO CENTS (\$95,000.00) (as the same may hereafter be modified, amended, extended, renewed or substituted for, the "Note") and the payment of all other indebtedness which this Mortgage by its terms secures and compliance with all of the terms hereof and of the Note, Borrower does hereby give, grant, bargain, sell, mortgage, lien, hypothecate, warrant, pledge, assign, transfer and convey unto Lender, and to its successors and assigns, the following property (collectively hereinafter referred to as the "Mortgaged Property"):

- (a) the Land;
- (b) all additional lands and estates that may, from time to time, by supplemental mortgage or additional mortgage, be made subject to the lien of this Mortgage;
- (c) Borrower's interest in any improvements, structures and buildings and any alterations thereto or replacements thereof, now or hereafter erected upon the Land, and its interest in all fixtures, fittings, appliances, apparatus, material and replacements thereof, other than those articles of personal property owned by tenants under the "Leases" (as defined in clause (d) below), now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the complete and comfortable use, enjoyment, occupancy or operation of the Land or such improvements, structures or buildings, including but not limited to, furnaces, boilers, oil burners, radiators and piping, coal stokers, plumbing and bathroom fixtures, refrigeration, air conditioning and sprinkler systems, water tanks, fire

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systems, wash-tubs, sinks, gas and electric fixtures, stoves, ranges, ovens, disposals, dishwashers, hood and fan combinations, awnings, screens, window shades, elevators, motors, dynamos, refrigerators, kitchen cabinets, incinerators, kitchen equipment, laundry equipment, plants and shrubbery and all other equipment and machinery, appliances, fittings and fixtures of every nature whatsoever, whether tangible or intangible, now or hereafter owned or acquired by Borrower or in which Borrower has or shall have an interest, and located in or on, or attached or appurtenant to, and used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned by Borrower, and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing, and all of the right, title and interest of Borrower in and to any such personal property or fixtures subject to any lien, security interest or claim which, to the fullest extent permitted by law, shall be conclusively deemed fixtures and a part of the real property encumbered hereby (collectively, the "Improvements");

(d) all leases, subleases and other occupancy agreements (written or oral), by concession, license or otherwise, of the Land and/or any improvements thereon, or any part thereof, now existing or hereafter entered into between Borrower (or any predecessor in title to the Mortgaged Property, or any part thereof) and tenants of Borrower or such predecessor in title, including any extensions, renewals, modifications or amendments thereof ("Leases"), and all right, title and interest of Borrower therein and thereunder, including cash or securities deposited thereunder to secure performance by such tenants of their obligations thereunder and the right to enforce, whether by action at law or in equity or by other means, all provisions, covenants and agreements thereof;

(e) Borrower's interest in all furniture, furnishings, equipment and other articles of personal property, together with all replacements and renewals thereof, other than those articles of trade fixtures and other personal property owned by tenants under the Leases, now or at any time hereafter placed upon, located in or used in any way in connection with the complete and comfortable use, enjoyment, occupancy and operation of the Mortgaged Property (hereinafter collectively referred to as the "Furniture, Furnishings and Equipment");

(f) Borrower's interest in all agreements, contracts, certificates, instruments and other documents, now or hereafter entered into, pertaining to the construction, operation or management of any structure or building now or hereafter erected on the Land or to the sale of any direct or indirect interest in the Mortgaged Property, including any purchase money mortgage or security agreement securing the payment of any portion of the purchase price due to Borrower for such interest, and all right, title and interest of Borrower therein and thereunder, including the right upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(g) Borrower's interest in the franchises, permits, licenses and rights therein and thereto respecting the use, occupation and operation of the Mortgaged Property, or any part thereof, and respecting any business or activity conducted on the Mortgaged Property, or any part thereof, and the goodwill associated therewith;

(h) Borrower's interest in all easements, rights-of-way, strips and/or gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers, air rights and development rights, all rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging or pertaining, described in the preceding clauses (a) through (g), or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower and all land lying in the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Mortgaged Property, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Mortgaged Property and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(i) All awards or payments, including interest thereon, that may heretofore and hereafter be made with respect to the Land and the Improvements, whether from the exercise of the right of eminent domain or condemnation (including, without limitation, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Land and Improvements;

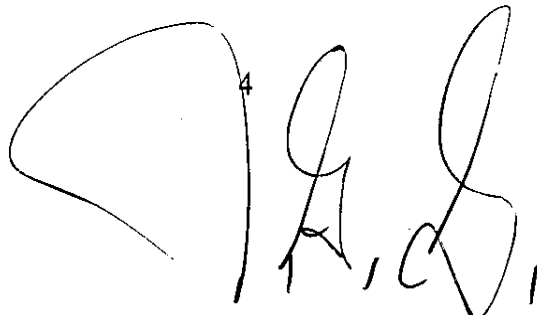
(j) All proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(k) The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Lender in the Mortgaged Property;

(l) Borrower's interest in all proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Mortgaged Property described in the preceding clauses (a) through (k); and

(m) all rents, rent equivalent incomes, moneys payable as damages, royalties, receivables, receipts, revenues, deposits, accounts, cash, issues, profits, charges, and other benefits of whatever form to which Borrower may now or hereafter be entitled from the Mortgaged Property described in the preceding clauses (a) through (l), to be applied against the indebtedness and other sums secured hereby as fully provided in Section 2.09.02 hereof;

AND, without limiting any of the other provisions of this Mortgage, Borrower expressly grants to Lender, as secured party, a security interest in all of those portions of the Mortgaged Property which are or may be subject to the provisions of the Uniform Commercial Code of the State or States where any of the Mortgaged Property is located (sometimes referred to herein as the "UCC" or the "Code"), applicable to secured transactions.



A handwritten signature consisting of a large, stylized initial 'A' followed by a smaller 'D' and the number '1'.

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give, grant, bargain, sell, alienate, convey, confirm, pledge, assign, and hypothecate the Mortgaged Property, to assign its right, title and interest as landlord under the Leases and to grant a security interest in the Mortgaged Property; and (c) this Mortgage has been duly executed and delivered by the duly authorized representatives of Borrower and constitutes the legal, valid and binding obligation of Borrower, enforceable in accordance with its terms. Borrower at its expense shall forever preserve, warrant and defend to Lender such title to the Mortgaged Property and the lien and security interest of Lender thereon and therein, against all claims and demands and will maintain and preserve such lien and security interest and will keep this Mortgage a lien upon and a priority perfected security interest in the Mortgaged Property, subject only to the Permitted Exceptions.

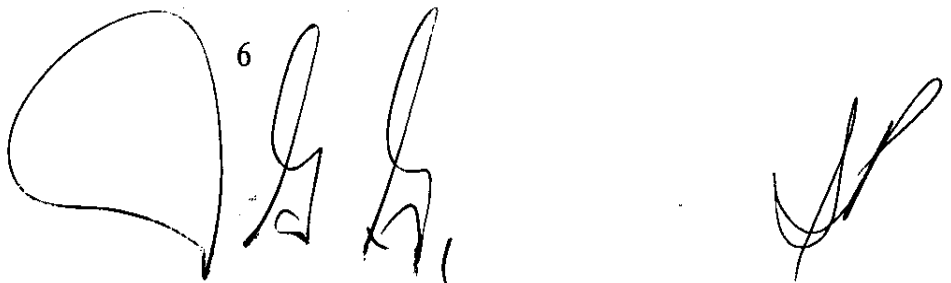
## 2.02 Title Insurance.

2.02.01 **Title Insurance Policy.** Prior to or concurrently with the execution and delivery of this Mortgage, Borrower, at its own cost and expense, will obtain and deliver to Lender a Lender's title insurance policy in the amount of this Mortgage, issued by a title insurance company satisfactory to Lender and in form and substance satisfactory to Lender and its counsel, naming Lender as the insured, insuring title to and priority of the lien of this Mortgage upon the Mortgaged Property, subject only to the Permitted Exceptions (the "Title Policy").

2.02.02 **Survey.** Borrower, at its expense, shall deliver to Lender a survey duly certified to Lender setting forth the Land and Improvements and otherwise in form and substance acceptable to Lender in its sole discretion.

2.02.03 **Title Insurance Proceeds.** All proceeds received by Lender for any loss under the title insurance policy or policies delivered to Lender under Section 2.02.01 or otherwise in connection with this Mortgage, or under any title insurance policy or policies delivered to Lender in substitution therefor or in replacement thereof, shall be the property of Lender and applied in the manner provided in Section 5.07 Second, Third and Fourth, after applying the same to Lender's costs and expenses, if any, incurred in collecting such proceeds.

2.03 **Recordation.** Borrower, at its expense, will at all times cause this Mortgage and any instruments amendatory hereof or supplemental hereto and any instruments of assignment hereof or thereof (and any appropriate financing statements or other instruments and continuations thereof with respect to any thereof) to be recorded, registered and filed and to be kept recorded, registered and filed, in such manner and in such places, and will pay all such recording, registration, filing fees and other charges, and will comply with all such statutes and regulations as may be required by law in order to establish, preserve, perfect and protect the lien of this Mortgage as a valid, direct mortgage lien and priority perfected security interest in the Mortgaged Property, subject only to the Permitted Exceptions. Borrower will pay or cause to be paid, and will indemnify Lender in respect of, all taxes (including interest and penalties) at any time payable in connection with the filing and recording of this Mortgage and any and all supplements and amendments thereto.

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**2.04 Payment of Impositions, etc.** Subject to Section 2.07 (relating to permitted contests), Borrower will pay or cause to be paid when due and payable all taxes, assessments (including, but not limited to, all assessments for public improvements or benefits), frontage and sewer rents, water meter charges, charges for public or private utilities, license or permit fees, vault charges, maintenance charges, inspection fees and other governmental levies or payments, of every kind and nature whatsoever, general and special, ordinary and extraordinary, unforeseen as well as foreseen, which at any time may be assessed, levied, confirmed, imposed or which may become a lien upon the Mortgaged Property, or any portion thereof, or which are payable with respect thereto, or upon the rents, issues, revenues, income or profits thereof, or on the occupancy, operation, use, possession or activities thereof, whether any or all of the same be levied directly or indirectly or as excise taxes or as income taxes, and, except for Lender's city, state and federal income tax obligations, all taxes, assessments or charges which may be levied on the Note or the interest thereon (collectively, the "Impositions"). Borrower will deliver to Lender official receipts or other satisfactory proof evidencing such payments prior to the date same shall become delinquent or on which interest and/or penalties would be due.

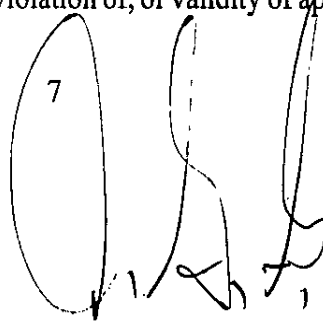

**2.05 Insurance and Legal Requirements.** Subject to Section 2.07 (relating to permitted contests), Borrower, at its expense, will comply or cause compliance with:

(a) all provisions of any insurance policy covering or applicable to the Mortgaged Property or any part thereof, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the Illinois Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Mortgaged Property or any part thereof or any use or condition of the Mortgaged Property; or any part thereof (collectively, the "Insurance Requirements"); and

(b) all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Mortgaged Property or any part thereof, or any of the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, or any use or condition of the Mortgaged Property or any part thereof (collectively, the "Legal Requirements"); whether or not compliance therewith shall require structural changes in or interference with the use and enjoyment of the Mortgaged Property or any part thereof.

**2.06 Liens, etc.** Borrower will not directly or indirectly create or permit or suffer to be created or to remain, and will promptly discharge or cause to be discharged, any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to the Mortgaged Property or any part thereof or the interest of Borrower or Lender therein or any rents or other sums arising therefrom, other than the Permitted Exceptions.

**2.07 Permitted Contests.** Borrower at its expense may, upon written notice to Lender, contest, or cause to be contested, by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, the amount, violation of, or validity of application, in whole or in part,

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of any Imposition, Legal Requirement or Insurance Requirement or of any lien, encumbrance or charge referred to in Section 2.06, provided that (a) no Event of Default (as hereinafter defined) has occurred and is continuing, (b) in the case of an unpaid Imposition, lien, encumbrance or charge, such proceedings shall suspend the collection thereof from Borrower, Lender, the Mortgaged Property and any rent or other income therefrom and shall not interfere with the payment of any such rent or income, or Borrower pays any such Imposition, (c) neither the Mortgaged Property nor any rent or other income therefrom nor any part thereof or interest therein would be in any danger of being sold, forfeited, lost or interfered with, (d) in the case of a Legal Requirement, neither Borrower nor Lender would be in danger of any civil or criminal liability for failure to comply therewith, (e) Borrower shall have furnished such security, if any, as may be required in the proceedings or as may be requested by Lender, (f) the nonpayment of the whole or any part of any tax, assessment or charge will not result in the delivery of any tax sale certificate or a tax deed to the Mortgaged Property or any part thereof because of such nonpayment, (g) the payment of any sums required to be paid under the Note or under this Mortgage (other than any unpaid Imposition, lien, encumbrance or charge at the time being contested in accordance with this Section 2.07) shall not be interfered with or otherwise affected, (h) in the case of any Insurance Requirement, the failure of Borrower to comply therewith shall not affect the validity of any insurance required to be maintained by Borrower under Section 3.01, and (i) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder.

**2.08 Escrow for Impositions and Insurance.**

At Lender's request, Borrower shall pay to Lender on the first day of each calendar month (a) one-twelfth of 105% of the Impositions that Lender estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Lender sufficient funds to pay all such Impositions at least thirty (30) days prior to their respective due dates, and (b) one-twelfth of the total amount of annual premiums for all insurance policies required to be obtained and maintained by Borrower pursuant to Section 3.01.01 (the "Insurance Premiums") in order to accumulate with Lender sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the such policies (said amounts in (a) and (b) above hereinafter called the "**Imposition and Insurance Escrow Fund**"). The Imposition and Insurance Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Borrower hereby pledges to Lender and grants to Lender a first priority security interest in any and all monies now or hereafter deposited in the Imposition and Insurance Escrow Fund as additional security for the payment of the debt due under the Note and this Mortgage. Lender will apply the Imposition and Insurance Escrow Fund to payments of Impositions and Insurance Premiums required to be made by Borrower pursuant to the terms of this Mortgage. In making any payment relating to the Imposition and Insurance Escrow Fund, Lender may do so according to any bill, in rem agreement, statement or estimate procured from the appropriate public office or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, in rem agreement, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Imposition and Insurance Escrow Fund shall exceed the amounts due for Impositions and Insurance Premiums pursuant to the terms of this Mortgage, Lender shall, in its sole discretion, return



any excess to Borrower or credit such excess against future payments to be made to the Imposition and Insurance Escrow Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Mortgaged Property. If at any time Lender determines that the Imposition and Insurance Escrow Fund is not or will not be sufficient to pay the items set forth in (a) and (b) above, Lender shall notify Borrower of such determination and Borrower shall increase its monthly payments to Lender by the amount that Lender estimates is sufficient to make up the deficiency at least thirty (30) days prior to delinquency of the Impositions and/or expiration of the policies, as the case may be. Upon the occurrence of an Event of Default, Lender may apply any sums then present in the Imposition and Insurance Escrow Fund to the payment of the debt due under the Note and this Mortgage.

2.09 Leases.

2.09.01 **Enforcement, etc.** Borrower will faithfully observe, keep and perform all of the obligations of the lessor under each of the Leases, if any, in accordance with their terms and shall not do or permit to be done anything to impair the value of the Leases. Borrower will maintain the Leases in full force and effect, and will not, without the prior written consent of Lender (a) enter into any Lease after the date hereof for any portion of the Mortgaged Property, (b) terminate or cancel any Lease or consent to or accept any termination, cancellation or surrender thereof, or permit any condition or event to exist or to occur that could, or would entitle the tenant thereunder to, terminate or cancel the same, (c) amend, modify or otherwise change the terms of any Lease except to increase the rent or other charges or assessments payable by tenants thereunder upon any renewal or extension of any such Lease, (d) waive any material default under or breach of any Lease, (e) consent to or permit any prepayment or discount of rent or payment of advance rent under any Lease (other than the usual prepayment of rent as would result from the acceptance on the first day of each month of the rent for the ensuing month and a reasonable and customary security deposit in accordance with the terms of any such Lease), (f) give any waiver, consent or approval under any Lease or take any other action in connection with any such Lease that would or might impair the value of Borrower's interest thereunder or of the Mortgaged Property subject thereto, or impair the interest of Lender therein, or (g) execute any other assignment of the lessor's interest in the Leases or the rents. Borrower shall promptly send copies to Lender of all notices of default which Borrower shall send or receive under the Leases.

2.09.02 **Assignment of Leases, etc.** Borrower hereby absolutely and unconditionally bargains, sells, transfers, assigns and sets over to Lender all of Borrower's right, title, and interest in all current and future Leases and rents, income, profits, proceeds, revenue, consideration and any and all cash collateral to be derived from the Mortgaged Property, or any part thereof, or from Borrower's use and occupancy thereof, including, without limitation, all rents, royalties, revenue, rights, deposits (including security deposits) and benefits accruing to Borrower under all Leases now or hereafter covering the Mortgaged Property, whether before or after foreclosure or during the full period of redemption, if any, and the right to receive the same and apply them against Borrower's obligations hereunder, together with all contracts, bonds, Leases and other documents evidencing the same now or hereafter in effect and all rights of Borrower thereunder or therein. Nothing contained in the preceding sentence shall be construed to bind Lender to the performance of any of the provisions of any such

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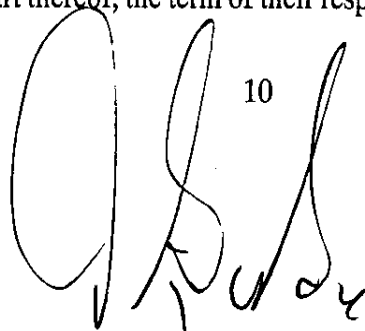
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contract, bond, Lease or other document or otherwise impose any obligation upon Lender (including any liability under a covenant of quiet enjoyment contained in any Lease or under applicable law in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been foreclosed of all right, title and interest and all equity of redemption in the Mortgaged Property), except that Lender shall be accountable for any money actually received pursuant hereto. This assignment is intended to be and is an absolute present assignment from Borrower to Lender and not merely the passing of a security interest. So long as there shall exist no Event of Default hereunder, and except as otherwise expressly provided herein, Borrower shall have the revocable right and license to collect, as the same shall accrue, said rents, income, profits, proceeds, revenue, consideration and cash collateral. Borrower agrees to hold the same in trust and to use the same in payment of Borrower's obligations hereunder and all other charges on or against the Mortgaged Property. In the event of any such Event of Default, without the need for notice or demand, the foregoing right and license shall automatically be revoked by Lender, and thereafter Lender shall have the right and authority to exercise any of the rights or remedies referred to or set forth in Article 5 hereof. In addition, upon any such Event of Default, Borrower shall promptly pay to Lender (i) all rent prepayments and security or other deposits paid to Borrower pursuant to any Lease assigned hereunder and (ii) all charges for services or facilities or for escalation which were paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default. If Borrower or any affiliate of Borrower occupies any portion of the Mortgaged Property and is not required to surrender possession thereof in the event of any such Event of Default, Borrower, and any affiliate of Borrower, will pay monthly in advance to the holder hereof, on its entry into possession pursuant to the Mortgage, or to any receiver appointed to collect said rents, income, profits or proceeds, revenue and consideration, the fair and reasonable rental value for the use and occupancy of the Mortgaged Property or such part thereof as may be in the possession of Borrower or any such affiliate. Upon a default in any such payment, Borrower will vacate and surrender such possession to Lender or such receiver, and, upon a default in vacating and surrendering the same, may be evicted by summary or any other available proceedings. Borrower will, as and when requested from time to time by Lender, execute, acknowledge and deliver to Lender, in form approved by Lender, one or more general or specific assignments of the lessor's interest under any Lease now or hereafter affecting the whole or any part of the Mortgaged Property to further evidence and confirm such assignment. Borrower will, on written demand, pay to Lender, or reimburse Lender for, the payment of any costs or expenses incurred in connection with the preparation or recording of any such assignment.

**2.09.03 Further Assignments.** Borrower shall assign to Lender, upon written request, as further security for the indebtedness secured hereby, Borrower's interests in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments in form satisfactory to Lender; but no such assignment shall be construed as a consent by Lender to any Mortgage, contract, license or permit so assigned, or to impose upon Lender any obligations with respect thereto.

**2.09.04 Rent Roll.** If at any time during the term of this Mortgage the Mortgaged Property shall be leased to one or more tenants, Borrower shall furnish to Lender, within five (5) days after a written request by Lender to do so, a statement containing the names of all tenants of the Mortgaged Property or any part thereof, the term of their respective leases, the space occupied, the rents

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payable and the securities deposited thereunder, together with true copies of each Lease and any amendments and supplements thereto not theretofore delivered to Lender.

**2.09.05 Trust Funds.** All rents and securities deposited by tenants of the Mortgaged Property which Borrower now or hereafter holds shall be treated as trust funds and Borrower shall, upon demand, furnish to Lender satisfactory evidence of compliance with this provision, together with a verified statement of all securities deposited by the tenants.

**2.09.06 Successor Not Bound.** To the extent not so provided by applicable law, each Lease of the Mortgaged Property, or of any part thereof, entered into after the date hereof, shall provide that, in the event of the enforcement by Lender of the remedies provided for by law or by this Mortgage, any person succeeding to the interest of Borrower as a result of such enforcement shall not be bound by any payment of rent or additional rent for more than one (1) month in advance.

**2.09.07** All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower at such commercial or savings bank or banks as may be satisfactory to Lender. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution satisfactory to Lender, shall, if permitted pursuant to any Legal Requirements, name Lender as payee or Lender thereunder (or at Lender's option, be fully assignable to Lender) and shall, in all respects, comply with any applicable legal requirements and otherwise be satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence satisfactory to Lender of Borrower's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Borrower shall, upon Lender's request, if permitted by any applicable Legal Requirements, turn over to Lender the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Mortgaged Property, to be held by Lender subject to the terms of the Leases.

**2.10 Use of Property, etc.** Borrower shall continue to operate the Mortgaged Property for the purposes for which used on the date hereof and for no other purpose, and shall not acquire any fixtures, equipment, furnishings or apparatus covered by this Mortgage subject to any security interest or other charge or lien taking precedence over the security interest and lien of this Mortgage. Borrower shall not make or suffer any improper or offensive use of the Mortgaged Property or any part thereof and will not use or permit to be used any part of the Mortgaged Property for any dangerous, noxious, offensive or unlawful trade or business or will cause the Mortgaged Property or any part thereof or interest therein to be subject to forfeiture. In the case of any action or omission of any party which may cause the Mortgaged Property or any part thereof or any interest therein to be subject to forfeiture under applicable laws, Borrower shall, within ten (10) days after Borrower shall have obtained knowledge thereof, (1) give notice thereof to Lender, and (2) take at its expense all action (including, without limitation, the commencement of all summary proceedings required to evict any party responsible for such act or omission) required to prevent such forfeiture. Borrower will not do or permit any act or thing which is contrary to any Legal Requirement or Insurance Requirement or any document of record affecting the

Mortgaged Property, or which might impair the value or usefulness of the Mortgaged Property or any part thereof, or commit or permit any waste of the Mortgaged Property or any part thereof, and will not cause or maintain any nuisance in, at or on the Mortgaged Property or any part thereof, or commit or permit any waste of the Mortgaged Property. Borrower at its expense will promptly comply with all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Mortgaged Property and all instruments relating or evidencing the same, in each case, to the extent compliance therewith is required of Borrower under the terms thereof. Borrower will not take any action which results in a forfeiture or termination of the rights afforded to Borrower under any such instruments and will not, without the prior written consent of Lender, which consent shall not unreasonably be withheld or delayed, amend in any material respect any of such instruments. Borrower shall at all times comply with any instruments of record at the time in force affecting the Mortgaged Property or any part thereof and shall procure, maintain and comply with all permits, licenses and other authorizations required for any use of the Mortgaged Property. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property shall become a non-conforming use, Borrower will not cause or permit such non-conforming use to be discontinued or abandoned without the express written consent of Lender.

**2.11 Utility Services.** Borrower will pay or cause to be paid all charges for all public and private utility services, all public or private communications services and all sprinkler systems and protective services at any time rendered to or in connection with the Mortgaged Property or any part thereof, will comply or cause compliance with all contracts relating to any such services, and will do all other things required for the maintenance and continuance of all such services.

**2.12 Maintenance and Repair, etc.** Borrower shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. Borrower will keep or cause to be kept all presently and subsequently erected or acquired improvements and the sidewalks, curbs, vaults, and vault space, if any, in good and substantial order and repair and in such a fashion that the value and utility of the Mortgaged Property will not be diminished, and, at its sole cost and expense, will promptly make or cause to be made all necessary and appropriate repairs, replacements and renewals thereof, whether interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen. All repairs, replacements and renewals shall be at least equal in quality and class to the original improvements. Borrower's obligations to repair shall include the obligation to rebuild in the event of destruction however caused, provided that damage by fire or other cause for which Borrower is obligated to maintain insurance by any of the provisions of Section 3.01 shall be governed by the provisions of Sections 3.01 and 3.02 and the damage by any taking shall be governed by the provisions of Section 3.02. Borrower at its expense will do or cause to be done all shoring of foundations and walls of any building or other improvements and (to the extent permitted by law) of the ground adjacent thereto, and every other act necessary or appropriate for the preservation and safety of the Mortgaged Property by reason of or in connection with any excavation or other building operation upon the Mortgaged Property and upon any adjoining property, whether or not Borrower shall, by any Legal Requirement, be required to take such action or be liable for failure to do so.

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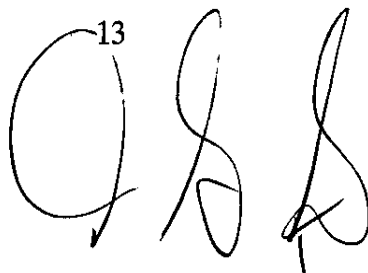
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**2.13 Alterations, Additions, etc.** Borrower shall have the right at any time and from time to time during the term of this Mortgage to make, at its own sole cost and expense, any and all repairs, replacements, renewals, alterations, changes, additions, betterments, improvements and/or restorations (herein, collectively or individually, an "Alteration") to all or any part of the Mortgaged Property, so long as no Event of Default and no event which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default shall have occurred and be continuing; provided, however, that any Alteration, the cost of which exceeds \$2,500.00, may be made only with the prior written consent of Lender and shall be performed only upon such bond or other security furnished to Lender as shall be satisfactory to Lender and by contractors and according to plans, specifications, construction budgets, construction and materials contracts previously submitted to and approved by Lender. Notwithstanding anything to this Section 2.13 to the contrary, no Alteration (regardless of the estimated cost thereof) shall be made without the prior written consent of Lender which consent may be granted or withheld by Lender in its sole discretion: if the proposed Alteration (a) would alter any of the Improvements, or any part thereof, in a manner which would upon completion of such Alteration, reduce the value or utility of such Improvement(s) below the value or utility of such Improvement(s) before the making of such Alteration (except such Alterations as may be required to comply with Legal Requirements); or (b) would structurally alter or involve the demolition (other than temporarily) of any of the Improvements or any portion thereof (except such Alterations as may be required to comply with Legal Requirements). Any Alteration shall be expeditiously completed in a good and workmanlike manner and in compliance with all Legal Requirements. Each Alteration shall be and remain a part of the Mortgaged Property and shall be subject to this Mortgage.

**2.14 Acquired Property Subject To Lien** All property at any time acquired by Borrower and required by this Mortgage to become subject to the lien and security interest hereof, including any property acquired as provided in Section 2.13, whether such property is acquired by exchange, purchase, construction or otherwise, shall forthwith become subject to the lien and security interest of this Mortgage without further action on the part of Borrower or Lender. Borrower, at its expense, will execute and deliver to Lender (and will record and file as provided in Section 2.03) an instrument supplemental to this Mortgage, satisfactory in substance and form to Lender, whenever such an instrument is necessary under applicable law to subject to the lien and security interest of this Mortgage all right, title and interest of Borrower in and to all property required by this Mortgage to be subject to the lien and security interest hereof and acquired by Borrower since the date of this Mortgage or the date of the most recent supplemental instrument so subjecting property to the lien hereof, whichever is later.

**2.15 No Claims Against Lender, etc.** Nothing contained in this Mortgage shall constitute any consent or request by Lender, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, or shall be construed to permit the making of any claim against Lender in respect of labor or services or the furnishing of any materials or other property or any claim that any lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien of this Mortgage.

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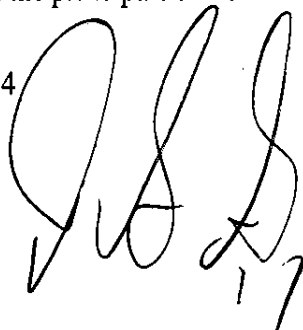
**2.16 Indemnification Against Liabilities.** Borrower will protect, indemnify, save harmless and defend Lender from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, judgments, costs and expenses (including attorneys' fees and expenses) imposed upon or incurred by or asserted against Lender by reason of (a) ownership of a Lender's interest in the Mortgaged Property, (b) any accident, injury to or death of persons or loss of or damage to or loss of the use of property occurring on or about the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (c) any use, non-use or condition of the Mortgaged Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault spaces, if any, streets, alleys or ways, (d) any failure on the part of Borrower to perform or comply with any of the terms of this Mortgage, (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof made or suffered to be made by or on behalf of Borrower, (f) any negligence or tortious act on the part of Borrower or any of its agents, contractors, lessees, licensees or invitees, or (g) any work in connection with any Alterations to the Mortgaged Property. Nothing contained herein shall be construed to require Borrower to indemnify Lender against any loss, liability or expense occasioned, in whole or in part, by Lender's own gross negligence or willful misconduct.

If any action or proceeding be commenced, including an action to foreclose this Mortgage or to collect the indebtedness secured hereby, to which action or proceeding Lender is made a party by reason of the execution of this Mortgage or the Note, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all sums paid by Lender for the expense of any litigation to prosecute or defend the rights and lien created hereby shall be paid by Borrower to Lender as hereinafter provided. Borrower will pay and save Lender harmless from and against any and all liability with respect to any intangible personal property tax or similar imposition of the State or States in which the Mortgaged Property is located or any subdivision or authority thereof now or hereafter in effect, to the extent that the same may be payable by Lender in respect of this Mortgage or the Note. In case any action, suit or proceeding is brought against Lender by reason of any such occurrence, Borrower, upon request of Lender, will, at Borrower's expense, resist and defend such action, suit or proceeding or cause the same to be resisted or defended, by counsel designated by Borrower and approved by Lender. The obligations of Borrower under this Section 2.16 shall survive any discharge of this Mortgage and payment in full of the Note.

**2.17 Lender's Exculpation.** Borrower is advised and agrees that this Mortgage is made on the express condition that any obligation hereunder of Lender shall be enforceable only against Lender's interest in this Mortgage, and that no trustee, officer, director, employee, beneficiary or shareholder (collectively, "Interested Person") of Lender or any partner of Lender or any Interested Person in any such partner, shall be personally liable for any matter in connection with, or arising out of, this Mortgage. The foregoing shall not be deemed in any way to impose any obligations on Lender except as expressly provided herein.

**2.18 Disposition or Encumbering of the Mortgaged Property.**

**2.18.01** Borrower acknowledges that Lender has examined and relied on the creditworthiness and experience of Borrower and/or the principals of Borrower in owning and operating



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properties such as the Mortgaged Property in agreeing to make the Loan, and that Lender will continue to rely on Borrower's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the obligations due hereunder and under the Loan Documents. Borrower shall not without the prior written consent of the Lender, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or permit the Mortgaged Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred (hereinafter referred to, collectively, as a "Restricted Transfer").

2.18.02 A Restricted Transfer shall be deemed to include (i) an installment sales agreement wherein Borrower agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Borrower leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sales, assignment or other transfer of, or the grant of a security interest in, Borrower's right, title and interest in and to any Leases or any rents; (iii) if Borrower, or any general partner of Borrower is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation; (iv) if Borrower, or any general partner of Borrower is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member.

2.18.03 Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Note and all other indebtedness secured hereby immediately due and payable upon a Restricted Transfer without Lender's consent. This provision shall apply to every Restricted Transfer regardless of whether voluntary or not, or whether or not Lender has consented to any previous Restricted Transfer.

## ARTICLE 3

### Insurance Damage, Destruction or Taking, etc.

#### 3.01 Insurance.

3.01.01 (a) Borrower shall at all times prior to payment in full of the indebtedness secured hereby, obtain in respect of Borrower and the Mortgaged Property the following policies of insurance issued by insurance companies and containing terms satisfactory to Lender in its sole discretion:

(i) comprehensive all risk insurance on the Improvements and the personal property of Borrower or any Affiliate of Borrower located on the Mortgaged Property, including contingent

liability from "Operation of Building Laws", "Demolition Costs" and "Increased Cost of Construction" endorsements, in each case (w) in an amount equal to 100% of the "Full Replacement Cost" (which for purposes hereof shall mean actual replacement value exclusive of costs of excavations, foundations, underground utilities and footings), as determined by an appraiser or contractor designated and paid by Borrower and approved by Lender, or by an engineer or appraiser in the regular employ of the insurer, with a waiver of depreciation, (x) containing an "Agreed Amount" endorsement with respect to the Improvements and personal property of Borrower or any Affiliate of Borrower located on the Mortgaged Property, waiving all co-insurance provisions, (y) providing for no deductible in excess of \$10,000.00 and (z) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the Improvements or the use of the Mortgaged Property shall constitute legal non-conforming structures or uses ("Property Insurance");

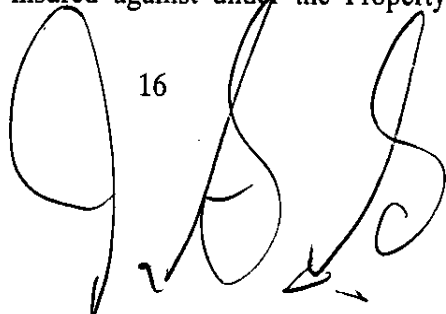
(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Mortgaged Property ("Liability Insurance"), which Liability Insurance shall (x) be on the so-called "occurrence" form with a combined single limit of not less than \$2,000,000.00, (y) continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate and (z) cover at least the following hazards: (1) premises and operations, (2) products and completed operations on an "if any" basis, (3) independent contractors, (4) blanket contractual liability for all written and oral contracts and (5) contractual liability covering the indemnities contained in the Loan Documents to the extent the same is available at commercially reasonable premium rates;

(iii) business income or interruption insurance ("Business Insurance") determined by Lender based on Lender's reasonable estimate of the gross income from the Mortgaged Property, (w) with loss payable to Lender, (x) covering all risks required to be covered by the Property Insurance, (y) containing an "Extended Period of Indemnity" endorsement which provides that after the physical loss to the Improvements and personal property of Borrower located on the Mortgaged Property has been repaired, the continued loss of income will be insured until such income either returns to the same level as it was prior to the loss, or the expiration of twelve (12) months from the date of the loss, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period and (z) in an amount equal to 100% of the projected gross income from the Mortgaged Property for a period of twelve (12) months;

(iv) flood hazard insurance ("Flood Insurance") if any portion of the Improvements is located in a federally designated "special flood hazard area" and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended or, in lieu thereof, evidence reasonably satisfactory to that such not be the case;

(v) at all times during which work or other structural construction, repairs or alterations are being made with respect to the Improvements, (y) owner's contingent or protective liability insurance covering claims not covered by or under the terms and provisions of the Liability Insurance and (z) Property Insurance, written in a so-called builder's risk completed value form (1) on a non-reporting basis, (2) against all risks insured against under the Property Insurance, (3) including

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permission to occupy the Mortgaged Property, and (4) with an "Agreed Amount" endorsement waiving co-insurance provisions;

(vi) if there are any employees of Borrower, worker's compensation, subject to the statutory limits of the State of Illinois, and employer's liability insurance with a limit of at least \$1,000,000.00 per accident and per disease per employee, and \$1,000,000.00 for disease aggregate in respect of any work or operations on or about the Mortgaged Property, or in connection with the Mortgaged Property or their operation ("Worker's Compensation Insurance");

(vii) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Lender ("Boiler Insurance"); and

(viii) such other insurance as Lender may reasonably require from time to time (together with the Property Insurance, the Liability Insurance, the Business Insurance, the Flood Insurance, the Builder's Risk Insurance, the Worker's Compensation Insurance and the Boiler Insurance, as applicable, the "Required Insurance").

3.02 Lender's security interest in the Mortgaged Property shall be identified in the Required Insurance as follows:

(i) The Property Insurance, the Flood Insurance, the Builder's Risk Insurance and the Boiler Insurance shall provide for at least thirty (30) days written notice to Lender in the event of policy cancellation and/or material change and shall identify Lender and Lender's address under the "Illinois Standard Lender Clause" (noncontributory) endorsement:

EASTERN SAVINGS BANK, FSB

its successors and/or assigns, as its interests may appear, as first Lender

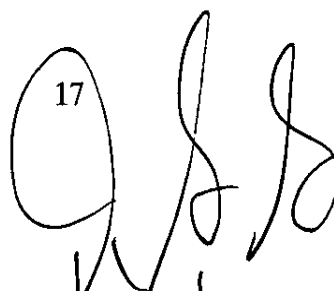
(ii) The Liability Insurance and the Worker's Compensation Insurance shall provide for at least thirty (30) days written notice to Lender in the event of policy cancellation and/or material change, and shall name Lender as an additional insured; and

(iii) The Business Insurance shall provide for at least thirty (30) days written notice to Lender in the event of policy cancellation and/or material change and shall contain a Loss Payable endorsement attached to the policy identifying Lender, as follows:

EASTERN SAVINGS BANK, FSB

its successors and/or assigns, as its interests may appear, as first Lender

3.03 The Required Insurance shall be carried by insurance companies authorized to do business in Illinois having a general policy rating of A or better and a financial class of VI or better by A.M. Best Company, Inc. and be acceptable to Lender.

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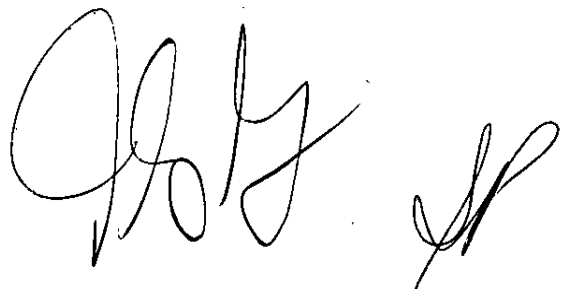


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3.04 The Required Insurance, as applicable, and all renewals thereof shall contain, in form and substance reasonably acceptable to Lender, a standard "Waiver of Subrogation" endorsement, and an endorsement providing in general that any claim or defense the insurance company may have against Borrower to deny payment of any claim by Borrower thereunder shall not be effective against Lender (and affirmatively providing that the insurance company will pay the proceeds of such Required Insurance to Lender notwithstanding any claim or defense of the insurance company against Lender). Borrower shall pay the premiums for the Required Insurance as the same become due and payable. Not later than thirty (30) days prior to the expiration date of each of the Required Insurance, Borrower will deliver to Lender a renewal policy or policies for each of the Required Insurance marked "premium paid" or accompanied by other evidence of payment of premium satisfactory to Lender. If at any time Lender is not in receipt of written evidence that all Required Insurance hereunder is in force and effect, Lender shall have the right to take such action as Lender deems necessary to protect its interest in the Mortgaged Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Borrower to Lender upon demand.

3.05 Borrower will not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Section 3.

3.06 In case of (i) any damage to or destruction of the Mortgaged Property or the Improvements or any part of either thereof or (ii) any taking (whether for permanent or temporary use) of all or any part of the Mortgaged Property or the Improvements or any interest therein or right accruing thereto, as the result of or in lieu or in anticipation of the exercise of the right of condemnation or eminent domain, or a change of grade affecting the Mortgaged Property or the Improvements or any part thereof (a "Taking"), or the commencement of any proceedings or negotiations which might result in any such Taking, Borrower will promptly give written notice thereof to Lender, generally describing the nature and extent of such damage or destruction or of such Taking, the nature of such proceedings or negotiations and the nature and extent of the Taking which might result therefrom, as the case may be. To the extent of Borrower's interest therein, Lender shall be entitled to all insurance proceeds payable on account of such damage or destruction and to all awards or payments allocable to the Mortgaged Property or the Improvements on account of such Taking, and Borrower hereby irrevocably assigns to Lender all rights of Borrower to any such proceeds, award or payment and irrevocably authorizes and empowers Lender, at its option, in the name of Borrower or otherwise, to file and prosecute what would otherwise be Borrower's claim for any such proceeds, award or payment and to collect and retain the same for disposition in accordance with the manner set forth herein; provided, however, that in the event of any single instance of damage or destruction on account of which the Net Proceeds (as hereinbelow defined) are \$10,000.00 or less, Borrower shall be entitled to receive and retain such proceeds, shall promptly commence and diligently prosecute to completion the repair and/or restoration of the affected portion of the Mortgaged Property (a "Restoration"), whether or not the Net Proceeds are sufficient therefor, and shall apply the Net Proceeds to such Restoration.

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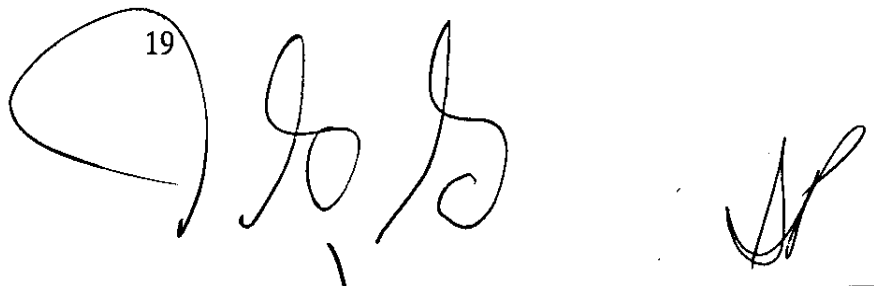
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3.07 Notwithstanding anything to the contrary in this Section 3 contained, in case of any single damage or destruction of or to the Mortgaged Property (a "Casualty") on account of which the insurance proceeds payable, net of all costs of collection and settlement (the "Net Proceeds"), are more than \$10,000.00 but less than \$50,000.00, the following shall apply:

(i) The Net Proceeds shall be paid to and held by Lender for disposition as herein more fully provided.

(ii) Borrower shall promptly commence and diligently prosecute to completion the Restoration, whether or not the Net Proceeds are sufficient therefor. Such Restoration shall be performed only by contractors and according to plans and specifications, construction budgets and construction and material contracts previously submitted to and approved by Lender, such approval not unreasonably to be withheld or delayed.

(iii) Provided that there shall not have occurred and be continuing an Event of Default and there shall not have occurred any event which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default, payment of the Net Proceeds shall be made to Borrower as the Restoration progresses as provided in this sub-section (iii). The Net Proceeds shall be advanced by Lender to Borrower not more than one (1) time in any calendar month as provided herein, upon at least ten (10) Business Days' written notice to Lender (a "Net Proceeds Notice"), for the payment of costs and expenses actually incurred by Borrower, and approved by Lender, such determination not unreasonably to be withheld or delayed, solely in connection with the construction of base building capital improvements to the Mortgaged Property (collectively, "Work"). Notwithstanding anything contained herein to the contrary, Borrower shall not be entitled to any disbursements of Net Proceeds unless and until Borrower shall have complied with the following: (a) the Net Proceeds Notice shall be accompanied by the Borrower certification that (x) there exists no Event of Default and that no event has occurred and no condition exists which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default, (y) the Work has theretofore been approved by Lender and (z) the provisions of subdivision (b) through (g) hereof have, as applicable, been fully complied with by Borrower, (b) all Work shall have been substantially completed in compliance with (y) Approved Plans and Specifications (as hereinafter defined), and (z) all applicable laws, rules and regulations of governmental authorities having jurisdiction over the Mortgaged Property, (c) all plans, specifications and working drawings in connection with such Work shall be submitted to Lender and shall be satisfactory to Lender in all respects (the "Approved Plans and Specifications"), (d) Borrower shall take out and maintain builder's all risk insurance, naming Lender as an additional insured thereunder, in form and substance reasonably acceptable to Lender, (e) there shall exist no mechanics', materialmen's or other liens or encumbrances on the Mortgaged Property arising out of the Work, (f) each disbursement of Net Proceeds must be for Work completed and performed in compliance with the Approved Plans and Specifications, if applicable, and any sum so disbursed shall justly be due to the contractors, subcontractors, materialmen, laborers, engineers, architects or other persons or entities rendering services or materials for the Work and (g) if applicable, Borrowers shall obtain lien waivers satisfactory to Lender covering that part of the Work previously paid for, if any, and, by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to Lender, shall deliver to Lender, upon Lender's request, evidence that there has

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not been filed in connection with the Work, any mechanics' lien or other lien or instrument for the retention of title in respect of any part of the Work.

3.08 In case of any Casualty on account of which the Net Proceeds are \$50,000.00 or more or in the case of any remaining balance of Net Proceeds after Restoration or upon any Casualty during the continuance of an Event of Default or an event which, with the giving of notice or the lapse of time, or both, would constitute an Event of Default, Lender may at its sole option apply all amounts recovered by Borrower under any Required Insurance hereunder and all net awards received by it on account of any Taking in any one or more of the following ways: (i) to the application to the indebtedness secured hereby, in such order and amounts as Lender shall determine, regardless of whether part or all of the indebtedness secured hereby shall then be matured or unmatured, (ii) to fulfill any of the covenants contained herein as Lender may determine, (iii) to Borrower, in one lump sum or in installments as Net Proceeds, for application to the cost of Restoration or (iv) to Borrower. If Lender shall receive and retain any insurance proceeds, the lien of the Loan Documents shall be reduced only by the amount thereof received and retained by Lender and actually applied by Lender in reduction of the indebtedness secured hereby. If Lender shall elect to disburse any award of \$50,000.00 or more as Net Proceeds, the provisions of subsection 3.06 immediately above shall apply.

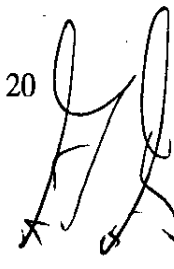
3.09 In case of (a) a Taking of all of the Mortgaged Property or (b) a Taking of less than all of the Mortgaged Property which, in the reasonable judgment of Lender, renders any of the Mortgaged Property remaining after such Taking unsuitable for restoration for use as collateral of substantially the same value, condition, character and general utility as the Mortgaged Property prior to such Taking (any such Taking being herein called a "Total Taking"), then the net awards received by Lender or Borrower on account of such Total Taking shall be applied by Lender in the manner specified in subsection 3.07, regardless of whether part or all of the indebtedness secured hereby shall then be matured or unmatured.

**ARTICLE 4**

**Miscellaneous Covenants of Borrower**

4.01 **Maintenance of Existence, etc.** If applicable, Borrower will at all times maintain, preserve and keep in full force and effect its existence, good standing, franchises, rights and privileges as an entity under the laws of the state of its organization and the State or States in which the Mortgaged Property is located and its right to own and operate the Mortgaged Property and to transact business in such states. Borrower further covenants that it will not amend, restate or otherwise modify its Articles of Organization without the prior written consent of Lender.

4.02 **Restrictions on Business Activities.** Borrower will not, so long as any amounts are payable under the Note or otherwise secured by this Mortgage, directly or indirectly, engage in any activity in a manner which would impair the security value to Lender of the Mortgaged Property or any part thereof or which would impair in any material respect the position or interest of Lender.

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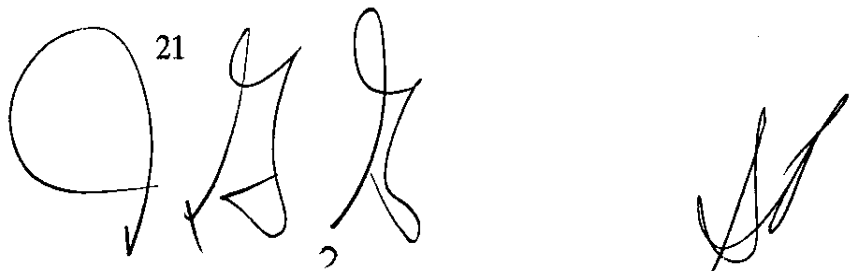


**4.03 Inspection, etc.** Borrower will permit Lender and any representatives designated by Lender to visit and inspect the Mortgaged Property or any part thereof (subject to the rights of the tenants under the Leases), to inspect the books of account of Borrower and all other property, books and records relating to the Mortgaged Property and to make copies thereof and extracts therefrom, and to discuss its affairs, finances and accounts with, and to be advised as to the same by, the officers, employees, agents and independent accountants of Borrower, all at such reasonable times and intervals as from time to time may be requested. Lender shall not have any duty to make any such inspection and shall not incur any liability or obligation for not making any such inspection or, once having undertaken any such inspection, for not making the same carefully or properly, or for not completing the same; nor shall the fact that such inspection may not have been made by Lender relieve Borrower of any obligations that it may otherwise have under this Mortgage.

**4.04 Notice by Borrower.** Borrower shall give prompt notice to Lender of (a) any default or Event of Default, (b) any notice given or any other action taken or, to Borrower's knowledge, intended to be taken by (i) the holder of any other mortgage encumbering the Mortgaged Property, whether prior, equal or subordinate to the lien hereof and whether or not such encumbrance is permitted hereunder, (ii) a tenant under any Lease, (iii) a holder of any other indebtedness of Borrower or (iv) any other persons, if such notice is given or such other action is taken with respect to (x) a claimed default under such Lease, (y) a default or Event of Default under this Mortgage, or (z) a claimed default involving a potential liability in excess of \$10,000 not covered by Borrower's insurance, under any other indenture, lease, assignment, mortgage or other instrument to which Borrower is a party or by which it or the Mortgaged Property may be bound or affected, and (c) any proceedings instituted by or against Borrower in any federal or state court or by any governmental department, agency or instrumentality, or any such proceedings threatened against Borrower in any federal or state court or by any governmental department, agency or instrumentality, affecting the Mortgaged Property or any portion thereof or which, if adversely determined, would have a material adverse effect upon Borrower's business, assets or condition, financial or other, or upon the lien of this Mortgage. Any notice so given shall specify the nature and period of existence of such event or condition and what action Borrower is taking or causing to be taken and proposes to take or cause to be taken with respect thereto and shall include a copy of any documents relevant thereto.

**4.05 No Credit for Payment of Taxes.** Borrower shall not be entitled to any credit against the principal of or interest on the Note or any other sum which may become payable under the terms thereof or hereof by reason of the payment of any tax on the Mortgaged Property or any part thereof or by reason of the payment of any other Imposition, and shall not apply for or claim any deduction from the taxable value of the Mortgaged Property or any part thereof by reason of this Mortgage.

**4.06 Books and Records; Financial Statements.** Borrower covenants to keep adequate records and books of account in which complete entries will be made in accordance with generally accepted accounting principles consistently applied reflecting all financial transactions of Borrower in respect of the Mortgaged Property. Borrower further covenants that it will, at any reasonable time and from time to time, permit Lender or any agents or representatives thereof to examine and make copies of and abstracts from such books and records of account and visit the Mortgaged Property to discuss the

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affairs, finances and account with respect thereto with Borrower and any of its officers, directors or agents in respect of the Mortgaged Property. Borrower shall deliver to Lender not later than ninety (90) days after the end of each fiscal year of Borrower (i) statements in detail reasonably satisfactory to Lender, certified by an officer of Borrower (or by Borrower personally if Borrower is a natural person) and prepared in accordance with generally accepted accounting principles consistently applied by a firm of certified public accountants acceptable to Lender, of annual income and expenses with respect to the ownership and operation of the Mortgaged Property for such fiscal year, setting forth in comparative form the figures for the previous fiscal year, and (ii) balance sheets in detail reasonably satisfactory to Lender, certified by Borrower, as at the end of such fiscal year, setting forth in comparative form the figures as at the end of the preceding fiscal year. Borrower shall also, promptly upon request therefor, deliver to Lender such other information and data with respect to the business, operations, affairs, prospects, condition, properties and assets of Borrower (as it relates to the Mortgaged Property) and the Mortgaged Property, including, without limitation, rent rolls, income and expense statements and other operating data, as Lender may from time to time request.

**4.07 Brundage Clause.** In the event of the enactment after the date hereof of any law in the State or States in which the Mortgaged Property are located or of any other governmental entity (by statutory enactment, judicial decision, regulation or otherwise) deducting from the value of the Mortgaged Property for the purposes of taxation any lien or security interest thereon, or changing in any way the laws for the taxation of mortgages, deeds of trust or other liens or debts secured thereby, or the manner of collection of such taxes, so as to affect the security under this Mortgage, then, and in such event, Borrower shall, on demand, pay to Lender, or reimburse Lender for payment of, all taxes, assessments, charges or liens for which Lender is or may be liable as a result thereof, provided that if any such payment or reimbursement shall be unlawful or would constitute usury or render Borrower's indebtedness under the Note wholly or partially usurious under applicable law, then Lender may, at its option, declare the Note immediately due and payable or require Borrower to pay or reimburse Lender for payment of the lawful and non-usurious portion thereof.

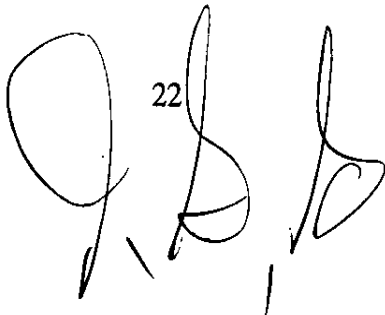
## ARTICLE 5

### Events of Default; Remedies, etc.

**5.01 Events of Default; Declaration of Note Due.** If any one or more of the following events ("Events of Default") shall occur:

(a) Borrower shall default in the due and punctual payment of any principal of or interest on the Note and/or all or any other portion of the indebtedness evidenced by the Note, this Mortgage and the other Loan Documents, for more than ten (10) days after the same shall become due and payable; or

(b) Borrower shall default in the due performance or observance of any of the terms of this Mortgage or under the Note, other than those referred to in this Section 5.01, and such failure shall continue for thirty (30) days after written notice to Borrower specifying such default; or

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(c) if the insurance policies required by Borrower to be obtained hereunder are not kept in full force and effect, or if such policies are not delivered to Lender within ten (10) days of Lender's written request therefor; or

(d) if the Mortgaged Property shall become subject to any mechanic's, materialman's or other lien, and such lien shall remain undischarged of record for a period of thirty (30) days; or

(e) any warranty, representation or other statement made by or on behalf of Borrower in or pursuant to this Mortgage (including, without limitation, any financial or operating statement delivered pursuant to Section 4.06) or under the Note is false, incorrect or misleading in any material respect; or

(f) Borrower shall make an assignment for the benefit of creditors, or shall be generally not paying his or her debts as they become due, or shall commence a case under the federal bankruptcy laws, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against either of them in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, custodian, receiver or liquidator thereof, or any material part of any of their properties or assets, or if Borrower shall take any action for the purpose of the foregoing; or

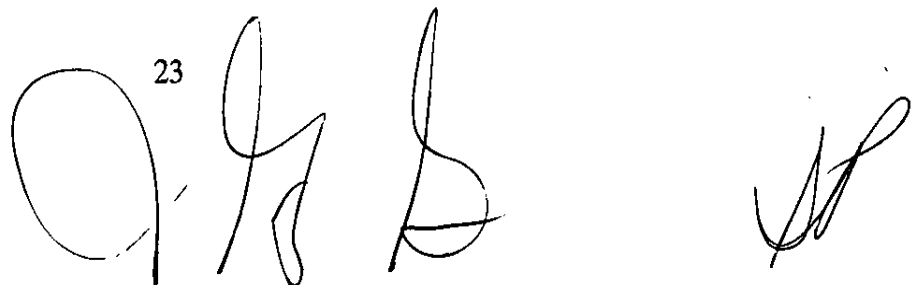
(g) within sixty (60) days after the commencement of an action against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such action shall not have been dismissed or all orders entered therein or proceedings thereunder affecting the business, operations and properties thereof stayed, or if the stay of any such order or proceeding shall hereafter be set aside, or if, within sixty (60) days after the appointment, without the consent or acquiescence of Borrower, of any trustee, custodian, receiver or liquidator thereof, or of any material part of any of their properties or assets, such appointment shall not have been vacated; or

(h) a final judgment shall be entered against Borrower, and if, within sixty (60) days after entry thereof, such judgment shall not have been discharged or execution thereof stayed pending appeal or otherwise bonded over to the satisfaction of Lender, or if, within sixty (60) days after the expiration of any such stay, such judgment shall not have been discharged; or

(i) except in accordance with the provisions of Section 2.18 hereof, Borrower, or any of its successors or assigns, shall make or agree to make any conveyance of all or part of the property described in clauses (a), (b), (c), (d), (e), (f), (h) and (i) of the granting clause of this Mortgage, or any interest therein, including, without limitation, any unused development rights or air rights; or

(j) except as permitted in this Mortgage, the actual or threatened alteration, improvement, demolition, or removal of any of the Improvements without the prior written consent of Lender;

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(k) there shall be any default, beyond applicable grace periods, under any mortgage, security agreement, collateral document or any note secured by any mortgage, which is subordinate or prior to the lien of this Mortgage, or the Lender under any subordinated or prior mortgage commences a foreclosure action or exercises an assignment of rents in connection with such mortgage or delivers any notice of default to the Borrower; or

(l) there shall be a default, beyond applicable grace periods, under any Other Security Document (as defined in the Note) or there shall be a default under any of the Leases; or

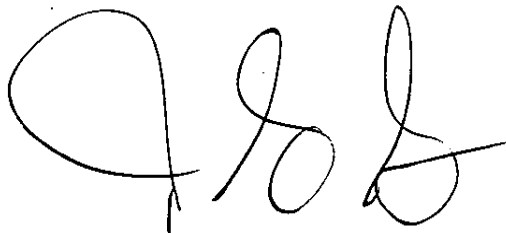
(m) there shall occur a Restricted Transfer hereunder; or

(n) there shall be a default, beyond applicable grace periods, under any other mortgage given by Borrower (or any of the individuals comprising the Borrower) to Lender as security for the Note; or

(o) Lender may, at any time thereafter declare, by written notice to Borrower, the Note, and all other indebtedness secured hereby to be due and payable upon the date specified in such notice and upon such date the same shall become due and payable, together with interest accrued thereon, all together with interest at the highest lawful rate (the "Default Rate") from such date, without presentment, demand, protest or notice, all of which Borrower hereby waives. Borrower will pay on demand all costs and expenses (including reasonable attorneys' fees and expenses) incurred by or on behalf of Lender in enforcing this Mortgage or the Note, or occasioned by any default or Event of Default under this Mortgage, or incurred in connection with any foreclosure proceeding or other action brought by Lender to enforce and protect its rights and interests under this Mortgage or the Note. Without limiting the foregoing, Lender shall have the right to recover all such costs and expenses, including reasonable attorneys' fees and expenses, in any judgment of foreclosure and sale.

**5.02 Legal Proceedings; Foreclosure, etc.** If an Event of Default shall have occurred, Lender at any time may, at its election, do one or more of the following: (i) proceed at law or in equity or otherwise to enforce the payment of the Note at the time outstanding in accordance with the terms hereof and thereof, (ii) foreclose the lien of this Mortgage as against all or any part of the Mortgaged Property and have the same sold under the judgment or decree of a court of competent jurisdiction, (iii) exercise any or all of the remedies of a secured party under the Code, with respect to any personal property covered hereby. In any action, service of process may be made upon Borrower by mailing a copy of the papers to be served to Borrower at the address set forth on the first page hereof, and such service shall be deemed complete upon the posting of such papers in any mail box regularly maintained by the United States Post Office.

Notwithstanding anything to the contrary, when the indebtedness shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclosure the lien hereof in accordance with the Illinois Mortgage Foreclosure Act, Ill. Rev. Stat. ch. 110, para. 15-1101 (1987), 735 ILCS 5/15-1101 (1992), et seq. (the "Act") and to exercise any other remedies of Lender provided in the Note, this Mortgage, the other loan documents, or which Lender may have at law, in equity or otherwise. In any



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suit to foreclosure the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searched and examinations, title insurance policies, and similar date and assurance with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Lender in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged Property, including probate and bankruptcy proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

5.02A Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, not take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in force to redeem the property or any part thereof, or relating to the marshalling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights to redemption and reinstatement under the Illinois Mortgage Foreclosure Act, Ill. Rev. Stat. ch. 110, para. 15-1101 (1987), 735 ILCS 5/15-1101 (1992), et seq. (the "Act"), on its own behalf, on behalf of all persons claiming or having an interest (direct and indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that, by invoking or utilizing any applicable law or laws or otherwise, it will not hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. If the Borrower is a trustee, Borrower represents that the provisions of this paragraph (including the waiver of redemption rights) were made at the express direction of Borrower's beneficiaries and the persons having the power of direction over Borrower and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well

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as all other persons named above. Borrower acknowledges that the Premises do not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

**5.03 Purchase of Mortgaged Property by Lender.** Lender may be a purchaser of the Mortgaged Property or of any part thereof or of any interest therein at any sale thereof, whether pursuant to foreclosure or otherwise, and may apply upon the purchase price thereof the indebtedness secured hereby owing to Lender. Lender shall, upon any such purchase, acquire good title to the properties so purchased, free of the lien of this Mortgage and free of all rights of redemption in Borrower. Upon the completion of any sale or sales pursuant hereto, Lender, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Lender is hereby irrevocably appointed the true and lawful attorney of Borrower, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Lender may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this paragraph, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Borrower.

**5.04 Waiver of Appraisal, Valuation, etc.** Borrower hereby waives, to the fullest extent it may lawfully do so, the benefit of all appraisal, valuation, stay, extension and redemption laws, if any, or otherwise, now or hereafter in force and all rights of marshaling in the event of any sale of the Mortgaged Property or any part thereof of any interest therein.

**5.05 Sale as Bar Against Borrower.** Any sale of the Mortgaged Property or any part thereof or any interest therein under or by virtue of this Mortgage, whether pursuant to foreclosure or otherwise, shall forever be a bar against Borrower.

**5.06 Sale in One or More Parcels.** If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may at Lender's discretion, be sold in one or more parcels or in several interests or portions, or in any order or manner intended and reasonably expected to maximize sale proceeds.

**5.07 Application of Proceeds of Sale and Other Moneys.** The proceeds of any sale of the Mortgaged Property or any part thereof or any interest therein under or by virtue of this Mortgage, whether pursuant to foreclosure or otherwise, and all other moneys at any time held by Lender as part of the Mortgaged Property, shall be applied as follows:

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First: to the payment of the costs and expenses of such sale (including, without limitation, attorneys' fees and expenses, the cost of evidence of title and the costs and expenses, if any, of taking possession of, retaining custody over, repairing, managing, operating, maintaining and preserving the Mortgaged Property or any part thereof prior to such sale), all costs and expenses of any receiver of the Mortgaged Property or any part thereof, and any taxes, assessments or charges prior to the lien of this Mortgage, which Lender reasonably determines are necessary or desirable to pay;

Second: to the payment of any indebtedness secured by this Mortgage, other than indebtedness with respect to the Note at the time outstanding, which Lender reasonably determines are necessary or desirable to pay;

Third: to the payment of all amounts of principal of, premium, if any, and interest at the time due and payable on the Note at the time outstanding (whether due by reason of maturity or as an installment of interest or by reason of any prepayment requirement or by declaration of acceleration or otherwise), including interest at the Default Rate on any overdue principal and premium, if any; and in case such moneys shall be insufficient to pay in full the amounts so due and unpaid upon the Note at the time outstanding, then, first, to the payment of all amounts of interest at the time due and payable on the Note, and second to the payment of all amounts of principal at the time due and payable on the Note; and

Fourth: the balance, if any, held by Lender after payment in full of all amounts referred to in subdivisions First, Second and Third above shall, unless a court of competent jurisdiction may otherwise direct by final order not subject to appeal, be paid to the party legally entitled thereto.

**5.08 Appointment of Receiver.** If an Event of Default shall have occurred, then for so long as, and until, the indebtedness secured hereby is repaid in full, Lender shall, as a matter of right and without regard to the adequacy of any security for the indebtedness secured hereby and without regard to whether Lender has commenced an action to foreclose the lien of this Mortgage, be entitled to the appointment of a receiver, without the necessity of notice to Borrower, for all or any part of the Mortgaged Property, whether such receivership be part of the Mortgaged Property or otherwise, and without regard to the nature of the action in which the appointment of a receiver is sought, and Borrower hereby consents to the appointment of such a receiver and will not oppose any such appointment. Lender may also seek a temporary restraining order or other injunctive relief with respect to any act or omission constituting an Event of Default. Such receiver may enter upon and take possession of the Mortgaged Property or any part thereof by force, summary proceeding, ejectment or otherwise and may remove Borrower and all other persons and any and all property therefrom and may hold, operate, maintain, repair, preserve and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto (including, without limitation, any management fee now or hereafter being paid) or any part thereof. Borrower, and any affiliate of Borrower, if then the occupant of the Mortgaged Property or any part thereof, shall immediately surrender possession of the space so occupied to Lender and if Borrower or such affiliate is permitted to remain in possession, the possession shall be as a month-to-month tenant, and, on demand, Borrower shall pay to such receiver monthly, in advance, a fair market rental for the space so occupied, and in default thereof Borrower may be dispossessed by the usual summary proceedings. Borrower, or any affiliate of Borrower which serves as managing agent of the Mortgaged



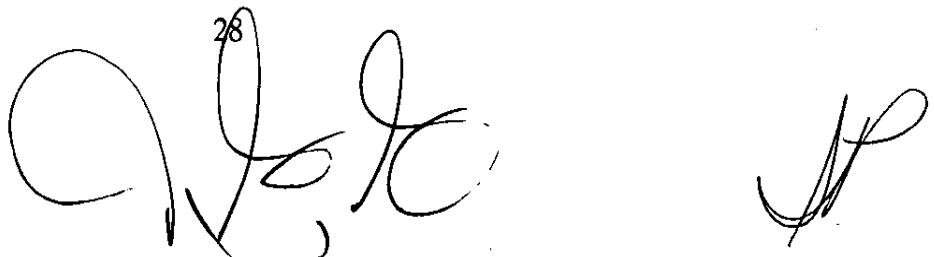
Property, or any part thereof, shall promptly provide to such receiver all lease files, books, records, bills, contracts and other management documents relating to the Mortgaged Property. Lender shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operating or management, except in the case of Lender's willful misconduct, gross negligence or actual fraud.

**5.09 Possession, Management and Income.** If an Event of Default shall have occurred and be continuing, Lender, without notice to Borrower, may enter upon and take possession of the Mortgaged Property or any part thereof by force, summary proceeding, ejectment or otherwise and may remove Borrower and all other persons and any and all property therefrom and may hold, operate, maintain, repair, preserve and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto and any part thereof. Borrower, and any affiliate of Borrower, if the occupant of the Mortgaged Property or any part thereof, shall immediately surrender the possession of the space so occupied to Lender and if Borrower or such affiliate is permitted to remain in possession, the possession shall be as month-to-month tenant of Lender, and, on demand, Borrower or such affiliate shall pay to Lender monthly, in advance, a fair market rental as determined by Lender, for the space so occupied, and in default thereof Borrower or such affiliate shall be dispossessed by the usual summary proceedings. Lender shall be under no liability for or by reason of any such taking of possession, entry, removal or holding, operation or management, except that any amounts so received by Lender shall be applied to pay all reasonable costs and expenses of so entering upon, taking possession of, holding, operating, maintaining, repairing, preserving, and managing the Mortgaged Property or any part thereof, and any taxes, assessments or other charges prior to the lien and security interest of this Mortgage which Lender shall reasonably determine are necessary or desirable to pay, and any balance of such amounts shall be applied as provided in Section 5.07. The covenants contained in this Section 5.09 may, at Lender's election, may be enforced by a receiver of the Mortgaged Property or any part thereof.

**5.10 Right of Lender to Perform Borrower's Covenants, etc.** If Borrower shall fail to make any payment or perform any act required to be made or performed hereunder, Lender, without notice to or demand upon Borrower, and in any case without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Borrower, and may enter upon the Mortgaged Property for such purpose (and is hereby authorized by Borrower to so enter the Mortgaged Property) and take all such action thereon as, in Lender's opinion, may be necessary or appropriate therefor. No such entry and no such action shall be deemed an eviction of any tenant of the Mortgaged Property or any part thereof. All sums so paid by Lender and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon at the Default Rate from the date of payment or incurring, shall constitute additional indebtedness secured by this Mortgage and shall be paid by Borrower to Lender on demand.

**5.11 Remedies, etc., Cumulative.** Each right, power and remedy of Lender provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Lender of any one or more of the rights, powers or remedies provided for

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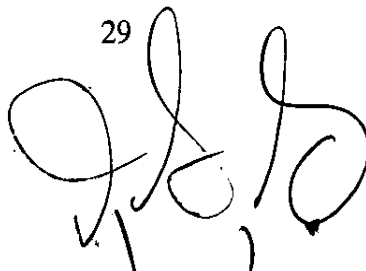
in this Mortgage or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lender of any or all such other rights, powers or remedies. Lender may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Section 5 at any time before the conclusion thereof as determined in Lender's sole discretion, without prejudice to Lender.

**5.12 Provisions Subject to Applicable Law.** All rights powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of such term shall not be affected thereby.

**5.13 Waiver, etc.** No failure by Lender or any holder of the Note to insist upon the strict performance of any term hereof or thereof, or to exercise any right, power or remedy consequent upon a breach hereof or thereof, shall constitute a waiver of any such term or of any such other or future breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach. By accepting payment of any amount secured hereby before or after its due date, neither Lender nor any holder of the Note shall be deemed to waive its right either to require prompt payment when due of all other amounts payable hereunder or to declare a default for failure to effect such prompt payment. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Lender, and no extension of time for the payment of the whole or any portion of the indebtedness secured hereby or any other indulgence given by Lender to Borrower, shall operate to release or in any manner affect the interest of Lender in the remaining Mortgaged Property or the liability of Borrower to pay the indebtedness secured hereby. No waiver by Lender shall be effective unless it is in writing and then only to the extent specifically stated.

**5.14 Compromise of Actions, etc.** Any action, suit or proceeding brought by Lender pursuant to any of the terms of this Mortgage or otherwise, and any claim made by Lender hereunder may be compromised, withdrawn or otherwise dealt with by Lender without any notice to or approval of Borrower, except as shall be required by law.

**5.15 Collateral; UCC Remedies.** This Mortgage constitutes a Security Agreement within the Meaning of the Code with respect to (a) all sums on deposit with Lender from time to time (the "Deposits"), (b) any property within the meaning of "Mortgaged Property" as set forth in the granting clause of this Mortgage including, without limitation, all fixtures, apparatus, interior improvements, appurtenances of every kind and nature whatsoever now or hereafter permanently attached the Mortgaged Property or the Improvements, or any part thereof, or used or procured for use in connection with the operation of the Mortgaged Property, (except for fixtures and personal property that are at any time the property of Space Tenants or independent contractors), all of the foregoing, except as aforesaid, hereinafter collectively called "Building Service Equipment" and (c) all replacements thereof, substitutions therefor and additions thereto, and proceeds of the conversion thereof (collectively, the



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"Collateral"). Borrower hereby grants a security interest in and to the Collateral to Lender and assigns the same to Lender to secure the payment of the indebtedness evidenced by the Note and Lender's performance of all of the terms and conditions hereof. Notwithstanding the foregoing, Borrower agrees that all property of every nature and description, whether real or personal, covered by this Mortgage, together with all Collateral, are encumbered as one unit, and that this Mortgage may at Lender's option, upon an Event of Default, be foreclosed or sold in the same proceeding, and that all property (both real property and the Collateral) may be sold as such in one unit as a going concern, subject to applicable law. If Lender should elect to foreclose the Collateral separate from the real property, ten (10) days notice by Lender to Borrower shall be deemed to be commercially reasonable notice under any provision of the Code. Lender shall, in all events, be entitled to receive the reasonable expenses of retaking, holding, preparing for sale, selling and the like, including, without limitation, reasonable attorneys' fees and disbursements. Borrower will not, without Lender's prior written consent, which consent shall not unreasonably be withheld or delayed, remove or permit to be removed any of the Collateral from the Mortgaged Property; provided, however, that for so long as there shall not occur an Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder, Borrower shall be entitled, if applicable, to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Mortgaged Property, but only to the extent replaced with the same or other Collateral at least equal in value and utility thereto. Borrower shall, from time to time, on request of Lender, deliver to Lender such further financing statements and security documents and grievances as Lender may require in order to maintain a perfected first lien security in and to the Collateral in accordance with the requirements of present or future law. This Mortgage, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the Code.

## ARTICLE C

### Representations and Warranties

Borrower represents and warrants that, as of the date of delivery of this Mortgage:

**6.01 Organization, Standing, etc. of Borrower.** Borrower is now able to meet his (its) debts as they mature, the fair market value of Borrower's assets exceeds Borrower's liabilities and no bankruptcy or insolvency proceedings are pending against or contemplated by Borrower. The execution of this Mortgage, the Note, and the documents executed and/or delivered in connection therewith will not defraud, hinder or delay any of the creditors of Borrower and Borrower will not be rendered insolvent by reason of the execution of this Mortgage, the Note or the documents executed in connection therewith. Borrower is not in default, nor has Borrower received any notice of any uncured default, under the terms of any instrument evidencing or securing any indebtedness of Borrower, and there has occurred no event, which, if uncured or uncorrected would constitute a default under any such instrument upon notice or lapse of time or both. All reports, statements and other data furnished by Borrower to Lender in connection with the loan evidenced by the Note are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. This Mortgage, the Note and other instruments securing the Note or otherwise executed in



connection therewith are valid and binding obligations enforceable in accordance with their respective terms.

**6.02 Compliance with Other Instruments, etc.** The execution, delivery, recordation and performance of this Mortgage and the consummation of the transaction contemplated hereby will not result in any violation of any term or condition of any contract, mortgage, lease, instrument, judgment, decree, order, statute, rule, regulation, ordinance, franchise, certificate, permit or the like applicable to Borrower or by which Borrower or its properties or assets are bound or affected.

**6.03 Governmental Consent.** No consent, approval or authorization of, or registration, declaration or filing with, any governmental or public authority, body or agency is required, in connection with the valid execution, delivery and performance by Borrower of this Mortgage except the recordation of this Mortgage in the appropriate recording office or offices and the filing of all necessary financing statements with respect thereto and except for such consents as Borrower has delivered to Lender.

**6.04 Litigation, etc.** There is no action, suit, proceeding or investigation pending or threatened, or, to the best of Borrower's knowledge, any basis therefor known to Borrower, which questions the validity of this Mortgage or the Note, or any action taken or threatened to be taken pursuant thereto. No notice has been given by any governmental authority of any proceeding to condemn, purchase or otherwise acquire the Mortgaged Property or any part thereof or interest therein and, to the best of Borrower's knowledge, no such proceeding is contemplated.

**6.05 No Violations, etc.** Borrower is in compliance in all material respects with all governmental laws, rules and regulations and other requirements which are applicable to the Mortgaged Property or any part thereof, or any use or condition of the Mortgaged Property or any part thereof. Borrower has no knowledge of any violation, nor is there any notice or other record of violation, of any zoning, health, safety, building, fire, labor, environment, or other statute, ordinance, rule, regulation or restriction applicable to the Mortgaged Property or any part or use thereof.

**6.06 Use of Proceeds.** Borrower has applied and will apply the proceeds of the Note for such purpose as does not and will not constitute a use of any part thereof, directly or indirectly, for the purpose of purchasing or carrying any "margin security" within the meaning of Regulation G, 12 C.F.R. 207, as amended, and no part of the proceeds of the Note was used or will be used for the purpose (whether immediate, incidental or ultimate) of "purchasing" or "carrying" any "margin security" within the meaning of such Regulation G or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose. Borrower does not own or have any present intention of acquiring any such margin security and will not otherwise knowingly take or permit any action which would involve a violation of such Regulation G or any other Regulation of the Board of Governors of the Federal Reserve System.

**6.07 Easements and Utility Services.** Borrower has all easements, including those for use, maintenance, repair and replacement of and access to structures, facilities or space for support, mechanical systems, utilities (including water and sewage disposal) and any other private or municipal

improvements, services and facilities, necessary to the proper operation, repair, maintenance, occupancy and use of the Improvements for their current use. Electric, gas, sewer and water facilities and all other necessary utilities are available in sufficient capacity to satisfactorily service the Mortgaged Property.

6.08 **Disclosure.** Neither this Mortgage nor any other document or certificate furnished to Lender or to counsel for Lender in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading.

**ARTICLE 7**

**Miscellaneous**

7.01 **Further Assurances.** Borrower, at its expense, will execute, acknowledge and deliver all such instruments and take all such actions as Lender from time to time may request (a) to better subject to the lien and security interest of this Mortgage all or any portion of the Mortgaged Property, (b) to perfect, publish notice or protect the validity of the lien and security interest of this Mortgage, (c) to preserve and defend the title to the Mortgaged Property and the rights of Lender therein against the claims of all persons and parties so long as this Mortgage shall remain undischarged, (d) to better subject to the lien and security interest of this Mortgage with respect to any replacement or substitution of any improvements or any other after-acquired property, or (e) in order to further effectuate the purpose of this Mortgage and to carry out the terms hereof and to better assure and confirm to the Lender its rights, powers and remedies hereunder.

7.02 **Certificates.** Within ten (10) business days after a request therefor by Lender, Borrower will furnish to Lender (i) a certificate of Borrower certifying the principal amount then outstanding hereon, or on the Note, the date to which interest has been paid, any offsets or defenses to the payment of the obligations due under the Note and this Mortgage, that the Note, this Mortgage and other Loan Documents are valid, legal and binding obligations and have not been modified and that no condition exists and no event has occurred under this Mortgage or the Note which constitutes an Event of Default hereunder, or which, with the passage of time or giving of notice or both, would constitute an Event of Default hereunder or, if any such condition exists or event has occurred, specifying the nature and period of existence thereof or the date of occurrence and what action Borrower is taking or proposes to take with respect thereto, (ii) a certificate reaffirming all representations and warranties of Borrower set forth herein and in the other Loan Documents as of the date requested by Lender or, to the extent of any changes to any such representations and warranties, so stating such changes and (iii) tenant estoppel certificates in form and substance satisfactory to Lender.

7.03 **Additional Security.** Without notice to or consent of Borrower, and without impairment of the lien and rights created by this Mortgage, Lender may accept from Borrower or from any other person additional security for the Note; neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent Lender from resorting, first, to the security created by this Mortgage, or concurrently to both, in any case without affecting Lender's lien and rights under this Mortgage.

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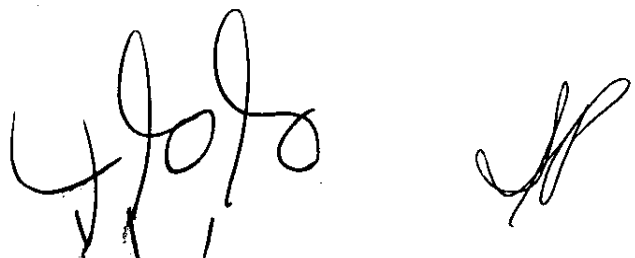
**7.04 Notices, etc.** All notices, demands, requests, consents, approval and other instruments under this Mortgage or the Note shall be in writing and shall be deemed to have been actually or properly given if and when sent by first-class registered or certified mail, return receipt requested, postage prepaid or by reputable overnight courier, or by facsimile transmission, in any case, addressed (a) if to Borrower, to its address set forth on the first page hereof, or at such other address as Borrower may have designated by notice to Lender, (b) if to the Lender originally named herein, to it at its address set forth on the first page hereof, with a copy to Kriss & Feit, P.C. 360 Lexington Avenue, Suite 1300, New York, New York 10017 Attention: Jerold C. Feuerstein, Esq. or at such other address as Lender may have designated by notice to Borrower, or (c) if to any other holder of the Note, at such address as such holder shall have designated by notice in writing to Borrower, or, until an address is so designated, to and at the address of the last holder so designating an address. The foregoing insertion of Borrower's mailing address shall be deemed to be a request by Borrower that a copy of any notice of default and of any notice of sale hereunder be mailed to Borrower at such address as provided by law. Notices sent as aforesaid shall be deemed given (i) two (2) business days after when mailed, in the case of certified mail, (ii) upon receipt, in the case of overnight courier and (iii) when sent, in the case of facsimile transmission.

**7.05 Amendments and Waivers.** This Mortgage, the Note, and any term hereof or thereof may be amended, discharged or terminated and the observance of any term of this Mortgage or the Note may be waived (either generally or in a particular instance and either retroactively or prospectively) only by an instrument in writing signed by the party to be charged.

**7.06 Expenses.** Borrower will pay or cause to be paid (a) the cost of filing and recording of this Mortgage, the Uniform Commercial Code financing statements and any other documents to be filed or recorded in connection with the execution and delivery hereof or thereof; (b) all taxes (including interest and penalties) at any time payable in connection with the execution and delivery of this Mortgage and any other instruments or agreements relating hereto and thereto, any amendment or waiver relating hereto or thereto, the issue and acquisition of the Note and, where applicable, such filing and recording (Borrower agreeing to indemnify Lender in respect of such taxes, interest and penalties); (c) the cost of Borrower's performance of and compliance with the terms and conditions of this Mortgage and of the other instruments mentioned herein; (d) the cost of title insurance, security interest searches and surveys required hereby or delivered in connection herewith; (e) the fees, expenses and disbursements of Lender's counsel in connection with the subject matter of this Mortgage and any amendments, releases or other actions or waivers hereunder or in respect hereof; and (f) all reasonable out-of-pocket expenses incurred by Lender in connection herewith. Borrower shall indemnify and hold Lender harmless from and against all claims in respect of all fees of brokers and finders payable in connection with this Mortgage.

**7.07 Intentionally Omitted.**

**7.08 Usury.** Under no circumstances shall Borrower be charged under the Note or this Mortgage, more than the highest rate of interest which lawfully may be charged by the holder of the Note and paid by Borrower on the indebtedness secured hereby. It is, therefore, agreed that if at any time interest on the indebtedness secured hereby would otherwise exceed the highest lawful rate, only such

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highest lawful rate shall be charged to or paid by Borrower. The terms and provisions of Section 7.2 of the Note are incorporated herein by this reference as if fully set forth herein.

**7.09 Miscellaneous.** All the terms of this Mortgage shall apply to and be binding upon the respective successors and assigns of Borrower, and all persons claiming under or through Borrower or any such successor or assign, and shall inure to the benefit of and be enforceable by Lender and its successors and assigns. The headings and table of contents in this Mortgage are for convenience of reference only and shall not limit or otherwise affect any of the terms hereof. This Mortgage may be executed in several counterparts, each of which shall constitute one and the same instrument. If any term, covenant or condition of the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note and the Mortgage shall be construed without such provision.

**7.10 Intentionally Omitted.**

**7.11 Joint and several.** If more than one party constitutes Borrower hereunder, each such party shall be jointly and severally liable hereunder.

**7.12 Environmental Regulations.**

(a) Borrower covenants (i) that the Mortgaged Property will not in violation of Environmental Laws (as hereinafter defined) contain (A) asbestos in a friable state, (B) urea formaldehyde foam insulation, (C) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of the applicable legal limit, or (D) any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous, controlled or toxic substances, or any pollutant or contaminant, or related materials defined in or controlled pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 9601, et seq.), and in the regulations promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation including, without limitation, (collectively, "Environmental Laws") (the substances described in subdivisions (A), (B), (C) or (D) above being hereinafter collectively referred to as "Hazardous Materials"); (ii) that the Mortgaged Property and any buildings and other improvements and additions now or hereafter located thereon, will never be used for any activities involving, directly or indirectly, the use, generation, treatment, transportation, storage or disposal of any Hazardous Materials whether by Borrower or any present tenant of the Mortgaged Property; and that the Mortgaged Property will not be used to refine, produce, store, handle, transfer, process or transport Hazardous Substances.

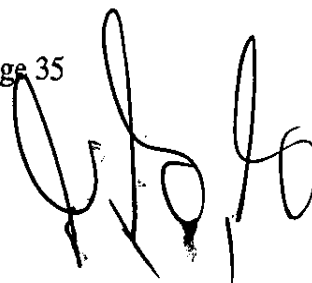
(b) Borrower covenants that with respect to the Mortgaged Property and any buildings and other improvements and additions thereon, except in connection with any Hazardous Materials and Hazardous Substances as may be demonstrated to have existed on the date hereof, Borrower (i) shall materially comply with and ensure material compliance by all tenants with the Environmental Laws, (ii) shall not store, utilize, generate, treat, transport or dispose (or permit or acquiesce in the storage,

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utilization, generation, transportation, treatment or disposal of) any Hazardous Materials on or from the Mortgaged Property in violation of Environmental Laws, (iii) shall ensure that all future tenant Leases of the Mortgaged Property contain agreements requiring tenant's compliance with the requirements of the foregoing subdivisions (i) and (ii), and (iv) shall use all reasonable efforts to cause any tenant or other person or entity using and/or occupying any part of the Mortgaged Property to comply with the covenants contained in this Section.

(c) In the event of any storage, presence, utilization, generation, transportation, treatment or disposal of Hazardous Materials (except to the extent demonstrated to have existed on the date hereof) on the Mortgaged Property in violation of Environmental Laws, or in the event of any Hazardous Materials Release (as hereinafter defined) in violation of Environmental Laws (except to the extent demonstrated to have existed on the date hereof), Borrower shall, to the extent required by Environmental Laws, at the direction of the applicable federal, state, or local governmental authority, but subject, however, to the right of Borrower or any tenant or other person or entity using and/or occupying any part of the Mortgaged Property to contest any alleged violation of Environmental Laws, remove or cause the removal of any such Hazardous Materials and remediate any such Hazardous Materials Release, and otherwise comply or cause compliance with the Environmental Laws, all at the expense of Borrower, including without limitation, the undertaking and completion of all investigations, studies, sampling and testing and all remedial, removal and other actions. Subject to the right of Borrower or any tenant or other person or entity using and/or occupying any part of the Mortgaged Property to contest any alleged violation of Environmental Laws, if Borrower shall fail to proceed with such removal or otherwise comply with Environmental Laws, within the cure period permitted under the applicable Environmental Laws, the same shall constitute an Event of Default under Article 5 hereof, and Lender shall have the right, at its sole option, to accelerate the maturity of the indebtedness secured hereby and declare such indebtedness due and payable, and either in addition to or in lieu of the foregoing, at Lender's sole option, Lender may, but shall not be obligated to, do whatever is necessary to bring the Mortgaged Property into compliance with such Environmental Laws, acting either in its own name or in the name of Borrower pursuant to this Section, and the reasonable cost thereof shall be part of the indebtedness secured hereby and shall become immediately due and payable without notice. In addition to and without limiting Lender's rights pursuant to this Mortgage, Borrower shall give to the Lender and its agents and employees access to the Mortgaged Property and all buildings and other improvements and additions thereon for such purposes and hereby specifically grants to Lender a license to remove the Hazardous Materials and otherwise comply with Environmental Laws, acting either in its own name or in the name of the Borrower pursuant to this Section.

(d) Borrower shall indemnify and save Lender and each of its shareholders, subsidiaries, affiliates, officers, directors and partners, and any receiver, trustee or other fiduciary appointed for the Mortgaged Property harmless from, against, for and in respect of, any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of actions, encumbrances, fines, penalties, and costs and expenses suffered, sustained, incurred or required to be paid by any such indemnified party (including, without limitation, reasonable fees and disbursements of attorneys, engineers, laboratories, contractors and consultants) because of, or arising out of or relating to any Environmental Liabilities (as hereinbelow defined) in connection with the Mortgaged Property, except to the extent such



Environmental Liabilities may be demonstrated to have existed, or resulted from conditions demonstrated to have existed, on the date hereof. For purposes of this indemnification clause, "Environmental Liabilities" shall include all reasonable costs and liabilities with respect to the future presence, removal, utilization, generation, storage, transportation, disposal or treatment of any Hazardous Materials in violation of Environmental Laws or any release, spill, leak, pumping, pouring, emitting, emptying, discharge, injection, escaping, leaching, dumping or disposing into the environment (air, land or water) of any Hazardous Materials in violation of Environmental Laws (each a "Hazardous Materials Release"), including without limitation, cleanups, remedial and response actions, remedial investigations and feasibility studies, permits and licenses required by, or undertaken in order to comply with the requirements of, any Environmental Laws, any damages for injury to person, property or natural resources, claims of governmental agencies or third parties for cleanup costs and costs of removal, discharge, and satisfaction of all liens, encumbrances and restrictions on the Mortgaged Property relating to the foregoing Hazardous Materials Release shall also include contamination in violation of Environmental Laws by means of any leaking, corrosion or rupture of or from underground or above ground storage tanks, pipes or pipelines.

(e) Borrower shall promptly notify Lender in writing of the occurrence of any Hazardous Materials Release in violation of Environmental Laws or any pending or threatened regulatory actions of any governmental authority in connection with Environmental Laws, or any claims made by any governmental authority or third party relating to any Hazardous Materials or Hazardous Materials Release on or from, the Mortgaged Property, or any buildings or other improvements or additions now or hereafter located thereon arising from any violation of Environmental Laws, and shall promptly furnish Lender with copies of any correspondence or legal pleadings or documents in connection therewith.

(f) The liability of Borrower to Lender pursuant to, by reason of or arising from the covenants and indemnities provided for this Section shall survive any foreclosure of this Mortgage, any transfer of the Mortgaged Property by deed in lieu of foreclosure, any transfer of the Mortgaged Property or interests therein or any change in ownership thereof.

(g) In the event this Mortgage is foreclosed, or Borrower tenders a deed in lieu of foreclosure, Borrower shall deliver the Mortgaged Property to Lender free of any material violations of Environmental Laws not demonstrated to have existed on the date hereof, so that the conditions of the Mortgaged Property shall conform with all Environmental Laws applicable to the Mortgaged Property.

(h) Intentionally Omitted.

(i) Borrower agrees that Lender shall have the right to conduct, or have conducted by its agents or contractors, such environmental inspections as Lender shall reasonably deem necessary or advisable from time to time which, upon any Event of Default hereunder, shall be at the sole cost and expense of Borrower. Borrower shall, and shall cause each tenant of the Mortgaged Property to, cooperate with such inspection efforts.

(j) Without limitation of the foregoing, in the event of the failure of Borrower to comply with any of the material requirements of any Environmental Laws in respect of any condition first shown to have existed after the date hereof, Lender shall have the right, subject to any applicable notice, grace and cure period, at the sole option of Lender, to comply with such Environmental Laws and the reasonable costs and expenses of such compliance shall be added to the indebtedness secured by the Mortgage and shall be due and payable upon demand with interest computed from the date(s) on which said costs and expenses were incurred by Lender at the Default Rate.

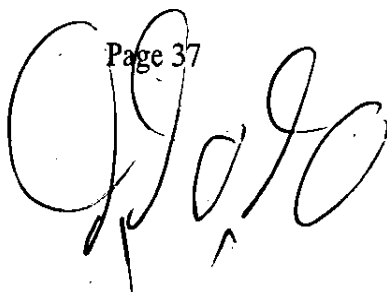
(k) Intentionally Omitted.

**7.13 Handicapped Access** Borrower agrees that the Mortgaged Property shall at all times comply in all material respects and to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws"). Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Mortgaged Property, Borrower shall not alter the Mortgaged Property in any manner which would increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Lender. Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

**7.14 Remedies of Borrower.** In the event that a claim or adjudication is made that Lender has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Mortgage or the other Loan Documents, it has an obligation to act reasonably or promptly, Lender shall not be liable for any monetary damages, and Borrower's remedies shall be limited to injunctive relief or declaratory judgment.

**7.15 Sole Discretion of Lender.** Wherever pursuant to this Mortgage, Lender exercises any right given to it to consent or not consent or approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to consent or not consent, to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall, except as otherwise provided herein or in the other Loan Documents, be in the sole discretion of Lender and shall be final and conclusive.

**7.16 WAIVER OF JURY TRIAL. BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM,**





COUNTERCLAIM (EXCEPT FOR MANDATORY OR COMPULSORY COUNTERCLAIMS) OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. Lender IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.

**7.17 Governing Law.**

7.17.01 THIS MORTGAGE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND (WITHOUT GIVING EFFECT TO ILLINOIS' PRINCIPLES OF CONFLICTS OF LAWS). BORROWER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY LENDER UNDER THIS MORTGAGE, ANY AND EVERY RIGHT BORROWER, MAY HAVE TO (a) INJUNCTIVE RELIEF, (b) A TRIAL BY JURY, (c) INTERPOSE ANY COUNTERCLAIM THEREIN (OTHER THAN LEGALLY COMPULSORY COUNTERCLAIMS) AND (d) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING.

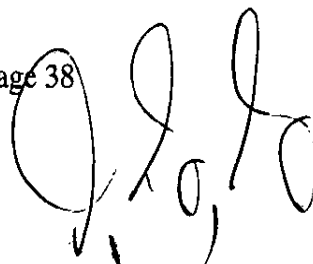
7.17.02 All actions or proceedings arising in connection with this Mortgage shall be tried and litigated in the state or Federal courts located in the State of Illinois, unless such actions or proceedings are required to be brought in another court to obtain subject matter jurisdiction over the matter in controversy. BORROWER WAIVES ANY RIGHT BORROWER MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS, TO ASSERT THAT BORROWER IS NOT SUBJECT TO THE JURISDICTION OF SUCH COURTS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION.

7.17.03 IN ANY ACTION AGAINST BORROWER, SERVICE OF PROCESS MAY BE MADE UPON BORROWER BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO BORROWER'S ADDRESS ABOVE SET FORTH, WHICH SERVICE SHALL BE DEEMED SUFFICIENT FOR PERSONAL JURISDICTION AND SHALL BE DEEMED EFFECTIVE THREE (3) DAYS AFTER MAILING.

**7.18 Intentionally Omitted.**

**7.19 Future Advances.**

At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the indebtedness the payment of all loan commissions, service charges, liquidated damages, attorney's fees, expenses, and advances due to or incurred by Borrower in connection with the indebtedness, all in accordance with the Note, this Mortgage, and the other Loan documents;





provide, however, that in no event shall the total amount of the indebtedness, including loan proceeds disbursed plus any additional charges, exceed an amount equal to \$2,400,000.00.

7.20 Miscellaneous

7.20.01 The Mortgaged Property is not "real property" as such term is defined under the Illinois Responsible Property Transfer Act of 1988, Ill. Rev. Stat., Ch. 30, Para. 903, et seq., as now or hereafter amended ("RPTA"). Neither the making of the Loan by Borrower nor the granting of a lien or security interest in the Mortgaged Property to Lender by Borrower are subject to RPTA.

7.20.02 The Loan, including interest rate, fees and charges as contemplated hereby, is a business loan within the purview of Ill. Rev. Stat., Ch. 17, Para. 6404 (1987); the Loan is an exempted transaction under the Truth In Lending Act, 12 U.S.C. Section 1601 et seq.; and the Loan does not, and when disbursed will not, violate the provisions of the Illinois usury laws, any consumer credit laws or the usury laws of any state which may have jurisdiction over this transaction, Borrower or any property securing the Loan.

7.20.03 Business Loan. The proceeds of the Note will be used for the purposes specified in Ill. Rev. Stat. ch. 17, para. 6404 (1987), 815 ILCS 205/4 (1992), and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

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

Witness:

BORROWER:

\_\_\_\_\_

*Sandra Phelon*  
SANDRA PHELON

*[Handwritten Signature]*  
Page 39

*[Handwritten Signature]*

UNOFFICIAL COPY

2022/02/16

STATE OF ILLINOIS )

) ss: ACKNOWLEDGMENT

COUNTY OF COOK )

Before me, a Notary Public in an for the said County and State, personally appeared, SANDRA PHELON, who acknowledged the execution of the foregoing MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT as her free and voluntary act, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and notarial seal this 16<sup>th</sup> day of February, 2002.

My commission expires:

2/13/05

Signature Rose M. Campbell

Printed Rose M. Campbell

Residing in Cook County, Illinois



Property of Cook County Clerk's Office

*[Handwritten Signature]*

*[Handwritten Signature]*

UNOFFICIAL COPY

20224024

EXHIBIT "A"

LOTS 1 AND 2 IN BLOCK 2 IN COUNSELMAN'S  
SUBDIVISION OF THE SOUTH ½ OF THE SOUTHEAST ¼  
OF THE NORTHWEST ¼ OF SECTION 15, TOWNSHIP 39  
NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL  
MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NO. 16-15-128-020

Commonly Known as;  
400-402 South Kilbourn Avenue, Chicago, IL and  
4505-4509 W. Van Buren, Chicago, IL 60644



