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Cook County Recorder 79.50

This instrument was  
prepared by and  
should be mailed to:

Francis L. Keldermans  
McBride Baker & Coles  
500 West Madison Street  
40th Floor  
Chicago, Illinois 60661



JUNIOR  
MORTGAGE AND ASSIGNMENT OF LEASES AND  
RENTS AND SECURITY AGREEMENT AND FIXTURE FILING

This Junior Mortgage and Assignment of Leases and Rents and Security Agreement and Fixture Filing (this "Mortgage") is made as of the 15<sup>th</sup> day of February, 2002, between **Chicago Title Land Trust Company**, no. individually, but as Trustee under Trust Agreement dated September 9, 1998 and known as Trust Number 1106328 ("Trustee" or "Mortgagor") whose address is set forth below in favor of **CIB Bank**, an Illinois banking corporation ("Mortgagee") whose address is set forth below.

This Mortgage is subject and subordinate to that certain Construction Mortgage, Security Agreement and Assignment of Leases and Rents dated June 28, 2001 from Trustee to Mortgagee and recorded with the Recorder of Deeds in Cook County, Illinois on July 6, 2001, as Document No. 0010596036 (the "Senior Mortgage").

Article 1

DEFINITIONS

1.1 Definitions

As used herein, the following terms shall have the following meanings:

Assignment: The assignment, contained in Article 3 of this Mortgage, from Mortgagor to Mortgagee, of all of Mortgagor's right, title and interest in and to the Leases and the Rents.

Awards: All awards and payments made or hereafter to be made by any municipal, township, county, state, Federal or other governmental agencies, authorities or boards or any other entity having the power of eminent domain to Mortgagor, including, but not limited to, any awards and payments for any taking of all or a portion of the Mortgaged Property, as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain, or for any change or changes of grade of streets affecting the Mortgaged Property.

Borrower. The Townhomes on Wabash at 14th Place, L.L.C. an Illinois limited liability company ("Townhomes") and GreatBanc Trust Company, as successor Trustee to Marine Trust and Investment Company, not individually, but as Trustee under Trust Agreement dated May 17, 1998 and known as Trust Number 80-5000 (the "Trustee") (hereinafter Townhomes and the Trustee are jointly referred to as the "Borrower").

Building or Buildings: All buildings, improvements, alterations or appurtenances now, or at any time hereafter, constructed or located upon the Land or any part thereof.

Defaulted Interest Rate: The lesser of (i) the interest rate of Default Rate, as defined in the Notes secured by this Mortgage or (ii) the highest contract rate allowed by law.

Event(s) of Default: The happenings and occurrences described in Article 5 of this Mortgage.

Fixtures: All fixtures, systems, or Building equipment located upon or within the Land or Buildings or now or hereafter attached to, or installed in, or used in connection with, any of the Land or Buildings whether or not permanently affixed to the Mortgaged Property.

Guarantor: The person identified in the Loan Agreement as the Guarantor.

Guaranty: The guaranty dated as of November 27, 1999 executed by the Guarantor.

Hazardous Materials. All hazardous, toxic or dangerous substances, wastes and materials and other pollutants and contaminants as defined or described in any or all applicable federal, state or local statutes, laws, ordinances, codes, rules, regulations, orders or decrees now or hereafter regulating, relating to or imposing liability or standards of conduct with respect to environmental matters, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund amendments and Reauthorization Act of 1986 (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Solid and Hazardous Waste Amendments of 1984 (42 U.S.C. §6901 et seq.), the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (33 U.S.C. §1251 et seq.), the Toxic Substances Control Act of 1976 (15 U.S.C. §2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. §11001 et seq.), the Clear Air Act of 1966, as amended (42 U.S.C. §7401 et seq.), the National Environmental Policy Act of 1970 (42 U.S.C. §4321 et seq.), the Rivers and Harbors Act of 1899 (33 U.S.C. §401 et seq.), the Endangered Species Act of 1973, as amended (16 U.S.C. §1531 et seq.), the Safe Drinking Water Act of 1974, as amended (42 U.S.C. §300(f) et seq.), the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.) and all rules and regulations promulgated or published thereunder, all as amended or hereinafter amended. Without intending to limit the scope or breadth of the foregoing definition, the term Hazardous Materials shall include asbestos, urea formaldehyde, polychlorinated biphenyls, crude oil, radioactive materials

and underground storage tanks. Hazardous Materials shall not include those materials that are used or stored at the property in the ordinary course of business operations in compliance with Environmental Laws.

Impositions: All (i) real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Mortgaged Property which at any time prior to or after the execution of the other Loan Documents may be assessed, levied, or imposed upon the Mortgaged Property or the rent or income received therefrom or any use or occupancy thereof, and (ii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against the Mortgaged Property.

Indebtedness: The principal of and all interest on the Notes and any and all other amounts, payments, sums or premiums due under the Notes or any of the other Loan Documents and all other indebtedness of Borrower or Guarantor to Mortgagee under and/or secured by this Mortgage and by any of the other Loan Documents, or any amendments, modifications, renewals and extensions of any of the foregoing.

Land: The real estate described in Exhibit A attached hereto.

Leases: Any and all leases, subleases, licenses, concessions or grants of other possessory interests now or hereafter in force, oral or written, covering or affecting the Mortgaged Property, or any part thereof, together with all rights, powers, privileges, options and other benefits of Mortgagor thereunder.

Loan Agreement: The Construction Loan Agreement dated as of November 27, 1999 by and between The Townhomes on Wabash at 14th Place, L.L.C. an Illinois limited liability company, ("Beneficiary") and GreatBanc Trust Company, as successor Trustee to Marine Trust and Investment Company, not individually, but as Trustee under Trust Agreement dated May 17, 1998 and known as Trust Number 80-5000 (the "Trustee" or "Trust") (the Beneficiary and the Trustee are jointly referred to as the "Borrower"), Guy G. Gardner ("Guarantor") and CIB Bank, an Illinois banking corporation, its successors and assigns ("Mortgagee").

Loan Documents: The Loan Agreement, the Notes, the Guaranty, the Security Agreement, the Combined Security Agreement and Collateral Assignment of Beneficial Interest, the Assignment of Plans and Specifications, and any and all other documents executed by the Borrower, or others, including, but not limited to the Guarantor, now or hereafter securing the payment of the Indebtedness or the observance or performance of the Obligations.

Mortgaged Property: The Land, the Buildings, the Fixtures, the Leases, the Personalty and the Rents together with:

- (i) all rights, privileges, permits, licenses, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of the Buildings belonging or in

any way appertaining thereto and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;

(ii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Land, the Buildings, the Fixtures, the Leases and the Rents; and

(iii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Awards, or payments with respect to casualties.

Mortgagee: CIB Bank, and its successors and assigns, and the holders, from time to time, of the Notes.

Mortgagee's Address: 161 N. Clark Street, Suite 165, Chicago, Illinois 60601.

Mortgagor: The entity named as such in the preamble of this Mortgage, and its successors and assigns and its successors in interest in and to the Mortgaged Property.

Mortgagor's Address: 171 N. Clark Street, Chicago, Illinois 60601..

Notes: (a) that certain Mortgage Note dated as of November 27, 1999, in the principal amount of SIX MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$6,300,000.00) made by Borrower to the order of Mortgagee ("Note") and all extensions, modifications, renewals, and restatements of the Note and (b) that certain Mortgage Note dated as of December 28, 2001 in the principal amount of ONE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,200,000.00) made by Guy G. Gardner to the order of Mortgagee.

Obligations: Any and all of the covenants, promises, agreements, warranties and other obligations (other than the Indebtedness) made or owing by Borrower to or due to Mortgagee under and/or as set forth in this Mortgage or any of the other Loan Documents, and any and all extensions, renewals, modifications and amendments of any of the foregoing.

Permitted Encumbrances: The encumbrances described, with particularity, in Exhibit B attached hereto.

Personalty: All furniture, furnishings, equipment, machinery, trade fixtures and all other personal property (other than the Fixtures) owned by Borrower or any Mortgagor now or hereafter located in, upon or about the Land, the Building, together with all accessions, replacements and substitutions thereto or therefor and the proceeds and products thereof.

Rents: All of the rents, revenues, income, profits, deposits, tenders and other benefits payable under the Leases and/or arising in any manner from the use and enjoyment of all or any portion of the Mortgaged Property.

1000 Loan Agreement: That certain Construction Loan Agreement dated as of June 28, 2001 by and among 1000 South Michigan Avenue, L.L.C., an Illinois limited liability company ("1000 LLC") and Trustee (hereinafter 1000 LLC and Trustee are jointly referred to as the "1000 Borrower") and Mortgagee.

All capitalized terms used in this Mortgage that are not specifically defined herein shall have the meaning specified in the Loan Agreement.

## Article 2

### GRANT

2.1 Grant. To secure the payment of the Indebtedness and the performance and discharge of the Obligations, Mortgagor by these presents hereby hypothecates, grants, bargains, sells, assigns, mortgages, conveys and warrants unto Mortgagee to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever.

2.2 Condition of Grant. Provided always, that if Borrower promptly shall pay the entire Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations, then the other Loan Documents and the estate and rights hereby granted shall cease, terminate and become void, and shall be released by Mortgagee, at the cost and expense of Borrower, and, in case of failure of the Mortgagee to so release this Mortgage, all claims for statutory penalties are hereby waived.

2.3 Doctrine of Merger. Upon the foreclosure of this Mortgage, no assigned Lease shall be destroyed or terminated by application of the doctrine of merger or as a matter of law unless Mortgagee or any purchaser at such foreclosure sale so elects. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any assigned Lease unless Mortgagee or such purchaser gives written notice thereof to the applicable tenant or subtenant.

## Article 3

### SECURITY INTEREST AND ASSIGNMENT OF LEASES AND RENTS

3.1 Security Agreement. This Mortgage shall be construed as a mortgage of a fee simple interest in real property and it shall also constitute a "Security Agreement" within the meaning of, and shall create a security interest under, the Uniform Commercial Code as adopted in the state in which the Mortgaged Property is located (the "UCC"), in the Fixtures.

3.2 Security Interest. Mortgagor hereby grants to Mortgagee a security interest under the UCC in the Fixtures and Mortgagee shall have all rights with respect thereto afforded to it by the UCC, in addition to, but not in limitation of, the other rights afforded to Mortgagee by the other Loan Documents.

3.3 Financing Statements. Mortgagor agrees to and shall execute and deliver to Mortgagee, in form satisfactory to Mortgagee, such "Financing Statements", if any, and such further assurances as Mortgagee may, from time to time, consider reasonably necessary to create, perfect and preserve Mortgagee's liens upon the Fixtures, and Mortgagee, at the expense of Mortgagor, may or shall cause such statements and assurances to be recorded and re-recorded, filed and re-filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such liens.

3.4 Assignment of Leases and Rents. In order to further secure payment of the Indebtedness and the observance, performance and discharge of the Obligations, Mortgagor hereby absolutely and irrevocably assigns and transfers to Mortgagee, all of Mortgagor's right, title and interest in and to the Leases and the Rents, subject only to the Permitted Encumbrances. Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact, with the right, at Mortgagee's option at any time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in Mortgagor's or Mortgagee's name, for all Rents. Notwithstanding the foregoing assignment of Leases and Rents, so long as no Event of Default has occurred which remains uncured, Mortgagor shall have a license (such license to be deemed revoked upon the occurrence of an Event of Default) to collect Rents, provided that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any subsequent assignment by Mortgagor shall be subject to the rights of the Mortgagee hereunder. This Assignment shall not be deemed or construed to constitute Mortgagee as a mortgagee in possession nor obligate Mortgagee to take any action or to incur expenses or perform or discharge any obligation, duty or liability. Exercise of any rights under this Section 3.4 and the application of the Rents to the Indebtedness or the Obligations shall not cure or waive any Event of Default.

#### Article 4

### COVENANTS

#### 4. Covenants

Until the entire Indebtedness shall have been paid in full, Mortgagor hereby covenants and agrees as follows:

4.1 Compliance with Laws. Mortgagor shall promptly and faithfully comply with, conform to and obey all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency and of every Board of Fire Underwriters having jurisdiction, or similar body exercising similar functions, which may be applicable to it or to the Mortgaged Property, or any part thereof, or to the use or manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Mortgaged Property, or any part thereof, whether or not such law, ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

4.2 Payment of Impositions. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions, such Impositions or installments thereof to be paid prior to the day before any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof; provided, however, that if, by law, any Imposition may be paid in installments, Mortgagor may pay the same in such installments.

4.3 Repair. Mortgagor will keep the Mortgaged Property in good order and condition and make all necessary or appropriate repairs, replacements and renewals thereof and will use its best efforts to prevent any act or thing which might impair the value or usefulness of the Mortgaged Property, and Mortgagor will and Mortgagor will cause each of the other Mortgagors to obtain the written consent of Mortgagee prior to (i) making any alterations or additions to the Mortgaged Property or (ii) removing any of the Buildings or Fixtures (except as contemplated by the Loan Agreement).

4.4 Insurance. Mortgagor will maintain insurance upon the Mortgaged Property against loss by fire and such other hazards, casualties and contingencies as are normally and usually covered by extended coverage policies in effect in the locality where the Mortgaged Property is situated and such other risks as may be specified by Mortgagee, from time to time, in amounts and with insurers acceptable to Mortgagee but not less than the lesser of (a) the amount of the Indebtedness, or (b) one hundred percent (100%) of the replacement value of the Buildings, Fixtures and Personalty. Mortgagor shall cause each insurance policy issued in connection therewith to provide (and the insurer issuing such policy to certify to Mortgagee) that (i) loss payments will be payable to Mortgagee as its interests may appear, such payments to be applied to the restoration, repair or replacement of the Mortgaged Property; provided, however, that if an Event of Default has occurred and is continuing or an event has occurred and is continuing which with the passage of time or the giving of notice would constitute an Event of Default, then such payments shall be applied to the payment of the Indebtedness; (ii) the interest of Mortgagee shall be insured regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy; (iii) if any such insurance policy be subject to cancellation or be endorsed or sought to be endorsed to effect a change in coverage for any reason whatsoever, such insurer will promptly notify Mortgagee and such cancellation or change shall not be effective as to Mortgagee until thirty (30) days after receipt by Mortgagee of such notice; and (iv) Mortgagor may, but shall not be obligated to, make premium payments to prevent such cancellation, and that such payments shall be accepted by the insurer. For purposes of this Section, replacement value of the Buildings, Fixtures and Personalty shall be equal to the cost of replacing the Buildings, Fixtures and Personalty, exclusive of the cost of excavation, foundations and footings below the lowest basement floor and shall be determined from time to time during the terms of the Notes (but no more frequently than once in any twelve 12 calendar months) at the written request of Mortgagee by an engineer, appraiser, architect or contractor designated by Mortgagee, approved in writing by Mortgagor, and paid by Mortgagor. In addition, Mortgagor shall furnish to Mortgagee duplicate executed copies of each such policy at the time of execution hereof, and copies of each renewal policy not less than thirty (30) days prior to the expiration of the original policy or the preceding renewal policy (as the case may be), together with receipts or other evidence that the premiums thereon have been paid; and furnish to Mortgagee on or before fifteen (15) days after the close of each fiscal year of Mortgagor a statement of Mortgagor of the amounts of insurance maintained in

compliance with this Subsection, of the risks covered by such insurance and of the insurance company or companies which carry such insurance.

4.5 Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Mortgaged Property, where the damage or destruction is valued in excess of \$25,000.00, whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, which approval will not unreasonably be withheld.

(b) Prior to each payment or application of any insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Mortgaged Property to the extent permitted herein (which payment or application may be made, at Mortgagee's option, through a construction escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be entitled to be satisfied as to the following:

(i) An Event of Default has not occurred;

(ii) Either (A) such improvements have been fully restored, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Mortgaged Property, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore and rebuild the Mortgaged Property, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Mortgaged Property; and

(iii) Prior to each disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 4.5 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of an architect selected by Mortgagee (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Mortgaged Property; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Mortgaged Property, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Mortgaged



Property to the extent permitted herein, there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer with respect to Mortgagor or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substances, as are required by Mortgagee.

(d) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Mortgaged Property within a time deemed satisfactory by Mortgagee, then Mortgagee, at its option, may commence and perform all necessary acts to restore, repair or rebuild the said improvements for or on behalf of Mortgagor. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Mortgaged Property, such excess shall be applied on account of the unpaid principal balance of the Loan irrespective of whether such balance is then due and payable, and no Prepayment fee shall be applicable thereto.

(e) In the event Mortgagor commences the repair or rebuilding of any improvements located on the Mortgaged Property, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 4.5 or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Mortgaged Property within a time deemed satisfactory by Mortgagee, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above, then such failure shall constitute an Event of Default.

4.6 Performance of Leases and Other Agreements. Mortgagor will duly and punctually perform all material covenants and agreements expressed as binding upon it under the Lease or Leases and other agreements to which it is a party with respect to the Mortgaged Property or any part thereof, and will use its best efforts to enforce or secure the performance of each and every obligation and undertaking of the respective lessees under the Lease, and will appear and defend, at its cost and expense, any action or proceeding arising under or in any manner connected with the Lease or the obligations and undertakings of the lessor thereunder. Mortgagor will immediately notify Mortgagee in writing of any notice of default received by Mortgagor from the Lessee thereunder.

4.7 Inspection. Mortgagor will permit and will cause the other Mortgagors to permit Mortgagee, at all reasonable times, to inspect the Mortgaged Property. Mortgagee shall have the right to enter onto the Mortgaged Property, at all times, upon reasonable notice, to inspect the Mortgaged Property for the existence of Hazardous Materials on the Mortgaged Property and to determine the compliance of the Mortgaged Property and its use with any law, rule or regulation relating to industrial hygiene or environmental conditions, including soil and ground water

conditions and the compliance of the Mortgagor and the Mortgaged Property with the conditions and covenants set forth herein with respect to Hazardous Materials.

4.8 Hold Harmless. Mortgagor will employ legal counsel acceptable to the Mortgagee and who is not also representing the Mortgagee in any other matter, and will defend and hold Mortgagee harmless from any action, proceeding or claim affecting the Mortgaged Property, or the validity of the Notes or the other Loan Documents. Mortgagor shall appear in and defend (or pay the reasonable expenses of Mortgagee to defend, if Mortgagor elects to allow Mortgagee to handle such defense) any action or proceeding purporting to affect the security of this Mortgage and/or the rights and/or powers of Mortgagee hereunder, and Mortgagor shall pay all costs and expenses (including costs of evidence of title and reasonable attorneys' fees) in any action or proceeding (which is brought within any applicable statute of limitations) in which Mortgagee may so appear and/or any suit brought by Mortgagee to foreclose this Mortgage, to enforce any obligations secured by this Mortgage, and/or to prevent the breach hereof. Mortgagor's obligations under this Section 4.8 shall survive payment of the Indebtedness for a period of five (5) years.

4.9 Books and Records. Mortgagor will maintain full and complete books of account and other records reflecting the results of its operations (in conjunction with its other operations as well as its operations of the Mortgaged Property), in accordance with generally accepted accounting principles or on a cash basis, and furnish or cause to be furnished to Mortgagee such financial data and other information, including, without limitation, copies of all Leases, as Mortgagee shall, from time to time, reasonably request with respect to Mortgagor, Guarantor, and the ownership and operation of the Mortgaged Property, and Mortgagee shall have the right, at reasonable times and upon reasonable notice, to audit Mortgagor's books of account and records.

4.10 Awards. Mortgagor will file and prosecute its claim or claims for any Awards in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, if it so desires, to file such claim and collect any Awards and agrees that the proceeds of any Awards will be applied by Mortgagee in reduction of any portion of the Indebtedness as Mortgagee may determine in accordance with Article 7 hereof.

4.11 Licenses. Mortgagor shall keep in full force and effect all licenses, permits and other governmental approvals which are necessary for the operation of the Mortgaged Property and related facilities, and furnish evidence satisfactory to Mortgagee that the Mortgaged Property and the use thereof comply with all applicable zoning and building laws, regulations, ordinances and other applicable laws.

4.12 Junior Financing. Mortgagor shall not, without the prior written consent of Mortgagee, which, if no Event of Default has occurred, consent will not unreasonably be withheld, incur any additional indebtedness or create or permit to be created or to remain, any mortgage, pledge, lien, lease, encumbrance or charge on, or conditional sale or other title retention agreement, with respect to the Mortgaged Property or any part thereof or income therefrom, other than the other Loan Documents and the Permitted Encumbrances.

4.13 Representations and Covenants of Mortgagor. Mortgagor hereby represents and covenants to Mortgagee that:

(a) Mortgagor is qualified to do business in the State of Illinois and Mortgagor is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to Mortgagor or the Mortgaged Property.

(b) This Mortgage and each of the other Loan Documents, will not violate any provision of existing law (including, but not limited to, any law relating to usury), any order of any court or other agency or government, or any indenture, agreement or other instrument to which Mortgagor is a party or by which Mortgagor or any of their property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or violate the organizational documents or operating agreement of the Mortgagor or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Mortgagor, except as contemplated by this Mortgage and the other Loan Documents, and no action with respect thereto by Mortgagor is required.

(c) No consent or approval of any regulatory body to the execution, delivery and performance of this Mortgage and the other Loan Documents or the transactions contemplated thereby is required by law.

(d) There are no suits, proceedings or investigations pending or to their knowledge, threatened against or affecting, at law or in equity, or before or by any governmental or administrative agency or instrumentality which, if adversely determined, would have a material adverse effect on the business or condition of Mortgagor.

(e) No judgment, decree or order of any court or governmental or administrative agency or instrumentality has been issued against Mortgagor that has or may have any material adverse effect on the business or financial condition of Mortgagor.

(f) All information, reports, papers and data given to Mortgagee with respect to Mortgagor and the Guarantor or others obligated under the terms of the other Loan Documents are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Mortgagee a true and accurate knowledge of the subject matter thereof.

(g) Mortgagor owns good and marketable title in fee simple to the Mortgaged Property and good and marketable title to the Fixtures, free and clear of any prior assignment, liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances.

(h) Mortgagor has not executed any prior collateral assignment of the Leases or of its right, title, interest therein other than as set forth in the Permitted Encumbrances, Mortgagor has delivered to Mortgagee a true and complete copy of all Leases assigned

hereunder, together with all amendments, supplements and other modifications, and to the best of Mortgagor's knowledge, no material default by Mortgagor or Lessee under the Lease remains uncured.

(i) The Permitted Encumbrances have not materially interfered with the operation of the Mortgaged Property, nor does Mortgagor reasonably foresee any material interference arising from the Permitted Encumbrances during the terms of the Notes.

(j) Mortgagor has filed all Federal, state, county and municipal income tax returns required to have been filed by them and have paid all taxes which have become due pursuant to any assessments received by it, and Mortgagor does not know of any basis for additional assessment in respect to such taxes.

(k) To the best of Mortgagor's knowledge no release (a "Release") of Hazardous Material has occurred on the Mortgaged Property. Mortgagor has not received any notice from any governmental agency or from any tenant under a Lease or from any other party with respect to any such Release.

Breach of such representations and warranties shall constitute an Event of Default under Section 5.5 hereof. Mortgagor shall promptly give written notice to Mortgagee of any breach under this Section 4.13.

4.14 Mechanics' Lien. Mortgagor shall not permit or suffer any mechanics' lien claims to be filed or otherwise asserted against the Mortgaged Property and Mortgagor shall promptly, and in any event within thirty (30) days after filing, discharge or cause to be discharged the same in case of the filing of any claims for lien or proceedings for the enforcement thereof; provided, however, that in connection with any such lien or claim which Mortgagor may in good faith desire to contest, Mortgagor may contest the same pursuant to Paragraph 6.4 of the 1000 Loan Agreement.

4.15 Hazardous Materials. (a) Without limiting the generality of Section 4.1 hereof, Mortgagor shall not cause or permit the violation of any law relating to industrial hygiene or environmental conditions in connection with the Mortgaged Property, including soil and ground water conditions, or use, generate, manufacture, store or dispose of any Hazardous Materials on, under or about the Mortgaged Property.

(b) In addition to the Environmental Indemnity Agreement dated of even date with the 1000 Loan Agreement made by the Mortgagor and Guarantor in favor of Mortgagee, Mortgagor shall indemnify and hold Mortgagee harmless from any loss, liability, reasonable cost, reasonable expense and/or claim (including without limitation the cost of any fines, remedial action, damage to the environment and cleanup and the reasonable fees of attorneys and other experts) arising from the use, Release or disposal any Hazardous Materials on, under or about the Mortgaged Property or the transport of any Hazardous Materials to or from the Mortgaged Property; and the violation of any law relating to industrial hygiene or environmental conditions in connection with the Mortgaged Property, including soil and ground water conditions; and the breach of any of the representations, warranties and covenants of Mortgagor with respect to

Hazardous Materials set forth in this Section 4.15 and Section 4.13 hereof. Provided, however, the foregoing indemnification is not applicable to Hazardous Materials placed on the Mortgaged Property (by parties other than Mortgagor or any agents of Mortgagor) after Mortgagee or any affiliate or nominee of Mortgagee has been awarded possession of the Mortgaged Property by a court of competent jurisdiction.

## Article 5

### EVENTS OF DEFAULT

#### 5. Events of Default

The term "Event(s) of Default", as used in the other Loan Documents and in the Notes shall mean the occurrence or happening, from time to time, of any one or more of the following:

5.1 Payment of Indebtedness. If either the Borrower or Guy G. Gardner shall default in the due and punctual payment of all or any portion of the Indebtedness or the Mortgagor defaults in the due and punctual payment of any sums due to Mortgagee under this Junior Mortgage as and when the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or by acceleration or otherwise, and such default shall continue for a period of five (5) days after the due date.

5.2 Performance of Obligations. If Mortgagor shall default in the due observance or performance of any of the Obligations other than payment of money and such default shall not be curable, or if curable shall continue for a period of thirty (30) days after written notice thereof from Mortgagee to Mortgagor (unless such default, if curable, requires work to be performed, acts to be done or conditions to be remedied which by their nature cannot be performed, done or remedied, as the case may be, within such thirty (30) day period and Mortgagor shall commence to cure such default within such thirty (30) day period and shall thereafter diligently and continuously process the same to completion but in no event shall the period for cure one hundred twenty (120) days unless otherwise agreed by Mortgagee).

5.3 Bankruptcy, Receivership, Insolvency, Etc. If voluntary or involuntary proceedings under the Federal Bankruptcy Code, as amended, shall be commenced by or against the Borrower, the Mortgagor, or the Guarantor or bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings shall be instituted by or against the Borrower, the Mortgagor, or the Guarantor with respect to all or any part of the Borrower's, the Mortgagor's, or the Guarantor's property under the Federal Bankruptcy Code, as amended, or other law of the United States or of any state or other competent jurisdiction, and if such proceedings are instituted against the Borrower, the Mortgagor, or the Guarantor, if any one of them consents thereto, or if they fail to cause the same to be discharged within ninety (90) days of filing.

5.4 Laws Affecting Obligations and Indebtedness. If subsequent to the date of this Mortgage, any governmental entity in which the Mortgaged Property is located passes any law (i) which renders payment of the Indebtedness and/or performance of the Obligations by Mortgagor

unlawful, or (ii) which prohibits Mortgagee from exercising any of its material rights and remedies under this Mortgage, any of the Loan Documents, or the 1000 Loan Agreement.

5.5 False Representation. If any material representation or warranty made by Borrower, the Mortgagor, or Guarantor, under or pursuant to this Mortgage, the other Loan Documents, or the 1000 Loan Agreement shall prove to have been false or misleading in any material respect as of the date on which such representation or warranty was made.

5.6 Destruction of Improvements. If any of the Buildings other improvements are demolished or removed by Mortgagee without Mortgagee's written consent.

5.7 Default Under Other Mortgage. If the holder of any junior mortgage or any other lien on the Mortgaged Property (without hereby implying Mortgagee's consent to any such junior mortgage or lien) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder, or if a default is declared to exist under any other mortgage or lien on the Mortgaged Property, and such default shall continue uncontested for a period of twenty (20) days, notwithstanding any other provision in the other Loan Documents or in any other document to the contrary with respect to notice and right to cure being provided to Mortgagee.

5.8 Loan Documents. If an Event of Default occurs under any of the other Loan Documents, including, but not limited to, the Loan Agreement, or under the 1000 Loan Agreement or the Senior Mortgage.

5.9 Due On Sale. If, without the prior written consent of Mortgagee, there is (i) sale, transfer, agreement for deed, conveyance, assignment, hypothecation or encumbrance, whether voluntary or involuntary, of all or part of the Mortgaged Property or any interest therein, or (ii) any sale, assignment, pledge, encumbrance or transfer to a third party of all or any part of the member interests or units in the Mortgagor other than as expressly permitted by the 1000 Loan Agreement, or (iii) the seizure of the Mortgaged Property, or Fixtures or attachment of any lien thereon, whether voluntary or involuntary, which has not been removed or bonded off to Mortgagee's satisfaction within thirty (30) days of such attachment.

5.10 Judgment. If a final judgment for the payment of money in excess of \$100,000.00 shall be rendered against the Borrower, the Mortgagor, or the Guarantor and the same shall remain unpaid or stayed for a period of thirty (30) consecutive days during which period execution shall not be effectively stayed.

## Article 6

### DEFAULT AND FORECLOSURE

6.1 Remedies. If an Event of Default shall occur Mortgagee may, at its option, exercise one or more or all of the following remedies:

6.1.1 Acceleration. Declare the unpaid portion of the Indebtedness to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

6.1.2 Entry on Mortgaged Property. To the extent permitted by applicable law, Enter upon the Mortgaged Property and take possession thereof and of all books, records, and accounts relating thereto.

6.1.3 Operation of Mortgaged Property. Hold, lease, operate or otherwise use or permit the use of the Mortgaged Property, or any portion thereof, in such manner, for such time and upon such terms as Mortgagee may deem to be in its best interest (making such repairs, alterations, additions and improvements thereto, from time to time, as Mortgagee shall deem necessary or desirable) and collect and retain all earnings, rents, profits or other amounts payable in connection therewith.

6.1.4 Enforcement of Mortgage. Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable and permitted by applicable law may: (a) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, to the extent permitted by and pursuant to the procedures provided by law, at one or more sales, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; (b) institute proceedings for the complete or partial foreclosure of this Mortgage; or (c) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Notes or in this Mortgage, (without being required to foreclose this Mortgage) or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

6.1.5 Foreclosure and Private Sale. Sell the Mortgaged Property, in whole or in part, (a) under the judgment or decree of a court of competent jurisdiction, or (b) at public auction (if permitted by the laws of the jurisdiction in which the Mortgaged Property is situated) in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law; and/or sell the Personalty and/or the Fixtures, in whole or in part, at one or more public or private sales, in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law.

6.1.6 Receiver. Mortgagee shall be entitled, as a matter of strict right, and without regard to the value or occupancy of the security, or the solvency of the Mortgagor or of Guarantor, or the adequacy of the Mortgaged Property as security for the Notes to have a receiver appointed to enter upon and take possession of the Mortgaged Property, collect the Rents and profits therefrom and apply the same as the court may direct such receiver to have all the rights and powers permitted under the laws of the State where the Mortgaged Property is located. Mortgagor hereby waives any requirements on the receiver or Mortgagee to post any surety or other bond. Mortgagee or the receiver may also take

possession of, and for these purposes use, any and all Personalty which is a part of the Mortgaged Property and used by Mortgagor in the rental or leasing thereof or any part thereof. The expense (including the reasonable receiver's fees, attorneys fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured by this Mortgage. Mortgagee shall (after payment of all costs and expenses incurred) apply such Rents, issues and profits received by it on the Indebtedness in the order set forth in Section 6.8 hereof. The right to enter and take possession of the Mortgaged Property, to manage and operate the same, and to collect the Rents, issues and profits thereof, whether by receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such Rents, issues and profits actually received by Mortgagee.

6.1.7 Additional Rights and Remedies. With or without notice, and without releasing Mortgagor from any Indebtedness or Obligations, and without becoming a mortgagee in possession, Mortgagee shall have the right to cure any breach or default of Mortgagor and, in connection therewith, to enter upon the Mortgaged Property and to do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof including, but without limitation to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of Mortgagee, is prior or superior hereto, the judgment of Mortgagee being conclusive as between the parties hereto; to obtain insurance to pay any premiums or charges with respect to insurance required to be carried hereunder; and to employ counsel, accountants, contractors and other appropriate persons to assist them.

6.1.8 Other. Exercise any other remedy specifically granted under the other Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise, including the rights described below.

6.2 Separate Sales. Any real estate or any interest or estate therein sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Notes, this Mortgage or the other Loan Documents, or pursuant to any other judicial proceedings under this Mortgage or the other Loan Documents, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect.

6.3 Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in the Notes, this Mortgage and in the other Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or Guarantor or against other obligors or against the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof, nor shall the choice of one remedy be deemed an election of remedies to the exclusion of other remedies.



6.4 No Cure or Waiver. Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Mortgaged Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Indebtedness and Obligations, nor the exercise of any other right or remedy by Mortgagee or any receiver shall impair the status of the security, or cure or waive any default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of this Mortgage.

6.5 Payment of Costs, Expenses and Attorneys' Fees. Mortgagor agrees to pay to Mortgagee immediately and without demand all reasonable costs and expenses incurred by Mortgagee in exercising the remedies under the Notes, this Mortgage and each of the other Loan Documents (including but without limit, court costs and reasonable attorneys' fees, whether incurred in litigation or not) with interest at the greater of Defaulted Interest Rate or the highest rate payable under applicable law from the date of expenditure until said sums have been paid. Mortgagee shall be entitled to bid, at the sale of the Mortgaged Property held pursuant to the power of sale granted herein or pursuant to any judicial foreclosure of this instrument, the amount of said costs, expenses, attorneys fees and interest in addition to the amount of the other Indebtedness and Obligations as a credit bid, the equivalent of cash.

6.6 Waiver of Redemption, Notice and Marshaling. Mortgagor hereby waives and releases (a) any and all statutory or equitable rights of redemption whether arising before or after the entry of a judgment for foreclosure and sale, (b) all benefit that might accrue to Mortgagor and each Guarantor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process, moratorium, redemption or extension of time for payment; (c) unless specifically required herein, all notices of Mortgagor's default or of Mortgagee's election to exercise, or Mortgagee's actual exercise, of any option or remedy under the Notes, this Mortgage, or the other Loan Documents; (d) any right to have the liens against Mortgaged Property marshaled; and (e) the right to plead or assert any statute of limitations as a defense or bar to the enforcement of the Notes or the other Loan Documents.

6.7 Power of Sale. Mortgagee acknowledges that a power of sale provision is not currently enforceable under the Illinois Mortgage Foreclosure Act (the "Foreclosure Act"). Mortgagor acknowledges that in the event the Foreclosure Act is hereafter amended to permit the enforcement of a power of sale provision (the "Amendment"), such Amendment, to the extent permitted by law, will be enforceable against the Mortgagor and allow Mortgagee to proceed under the Amendment, so long as the Event of Default under which Mortgagee is proceeding occurs on or after the effective date of the Amendment. Whereupon, Mortgagee may elect to sell the Mortgaged Property by power of sale and, upon such election, such notice of Event of Default and election to sell shall be given as shall be required by the Amendment. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, at the time and place specified in the notice of sale, Mortgagee, or such selling officer as required or allowed by the Amendment, shall sell such property, or any portion thereof specified by Mortgagee, at public



subordinate lien. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any Indebtedness secured hereby or for performance of any Obligations contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after maturity of the Notes, and without notice or consent: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any Obligations; (b) make any agreement extending the time or otherwise altering terms of payment of all or any part of the Indebtedness, or modifying or waiving any Obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right Mortgagee may have; (d) accept additional security of any kind; (e) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Mortgaged Property.

6.12 Other Collateral. For payment of the Indebtedness, Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

6.13 Discontinuance of Proceedings. In the event Mortgagee shall have proceeded to enforce any rights under this Mortgage or the other Loan Documents and such proceedings shall have been discontinued or abandoned for any reason, then in every such case Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been taken.

#### Article 7

#### CONDEMNATION

7.1 Condemnation. To the extent of the outstanding Indebtedness, Mortgagor hereby assigns, transfers and sets over to Mortgagee all rights of Mortgagor to any award or payment in respect of (a) any taking of all or a portion of the Mortgaged Property as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain; (b) any such taking of any appurtenances to the Mortgaged Property or of vaults, areas or projections outside the boundaries of the Mortgaged Property, or rights in, under or above the alleys, streets or avenues adjoining the Mortgaged Property, or rights and benefits of light, air, view or access to said alleys, streets, or avenues or for the taking of space or rights therein, below the level of, or above the Mortgaged Property; and (c) any damage to the Mortgaged Property or any part thereof due to governmental action, but not resulting in, a taking of any portion of the Mortgaged Property, such as, without limitation, the changing of the grade of any street adjacent to the Mortgaged Property. Mortgagor hereby agrees to file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Mortgagor or otherwise, to collect and receipt for any such award or payment and, in the event Mortgagor fails to act, or in the event that an Event of Default has occurred and is continuing, to file and prosecute such claim or claims.

7.2 Application of Proceeds. All proceeds received by Mortgagee with respect to a taking of all or any part of the Mortgaged Property from governmental action resulting in a taking of the Mortgaged Property shall be applied to the restoration of the Mortgaged Property if such proceeds are sufficient to restore the economic viability of the Mortgaged Property taken as a whole, otherwise such proceeds shall be applied as follows, in the order of priority indicated:

- (a) To reimburse Mortgagee for all reasonable costs and expenses, including reasonable attorneys' fees incurred in connection with collecting the said proceeds;
  - (b) To the payment of accrued and unpaid interest on the Notes;
  - (c) To the prepayment of the unpaid principal of the Notes, without premium;
- and
- (d) To the payment of the balance of the Indebtedness. The balance, if any, will be paid to Mortgagor.

#### Article 8

#### MISCELLANEOUS

8.1 Further Assurances. Mortgagor shall, upon the reasonable request of Mortgagee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of this Mortgage, to facilitate the assignment or transfer of the Notes and the other Loan Documents, and to subject to the liens of the other Loan Documents, any property intended by the terms thereof to be covered thereby, and any renewals, additions, substitutions, replacements or betterments thereto. Upon any failure by Mortgagor to execute and deliver such instruments, certificates and other documents on or before ten (10) days after a written request therefor is given to Mortgagor, Mortgagee may make, execute and record any and all such instruments, certificates and Mortgagor irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

8.2 Recording and Filing. Mortgagor, at its expense, will cause the other Loan Documents, all supplements thereto and any financing statements at all times to be recorded and filed and re-recorded and re-filed in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

8.3 Notice. Notices. All notices, demands, requests and other communications made hereunder shall be in writing and shall be properly given and deemed delivered on the date of delivery if sent by personal delivery or nationally recognized overnight courier and on the third business day following mailing if sent by certified or registered mail, postage prepaid, return receipt requested, as follows:

To Mortgagee: CIB Bank  
161 N. Clark, Suite 165  
Chicago, Illinois 60601  
Attn: David E. Nick, Vice President  
(312) 580-0313 (fax)

With copy to: Francis L. Keldermans  
McBride Baker & Coles  
500 West Madison Street  
40<sup>th</sup> Floor  
(312) 715-0839 (fax)

Borrower and Mortgagor: Guy G. Gardner  
9830 S. Vanderpoel  
Chicago, Illinois 60643

With copy to: Helen Toal  
Foley & Lardner  
One IBM Plaza Suite 3300  
Chicago, Illinois 60611-3608

or to such other addresses as any party hereto may request by notice served as required hereunder.

8.4 Mortgagee's Right to Perform the Obligations. If Mortgagor shall fail to make any payment or materially perform any act required by this Mortgage or the other Loan Documents, then, at any time thereafter, upon reasonable prior notice to or demand upon Mortgagor and without waiving or releasing any obligation or default, Mortgagee may make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Mortgaged Property for such purpose and to take all such action thereon and with respect to the Mortgaged Property as may be necessary or appropriate for such purpose. All sums so paid by Mortgagee, and all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and expenses so incurred together with interest thereon at the Defaulted Interest Rate, from the date of payment or incurring, shall constitute additions to the Indebtedness secured by the other Loan Documents, and shall be paid by Mortgagor to Mortgagee, on demand. If Mortgagee shall elect to pay any Imposition, Mortgagee may do so in reliance on any bill, statement or assessment procured from the appropriate public office, without inquiring into the accuracy thereof or into the validity of such Imposition. Mortgagor shall indemnify Mortgagee for all losses and reasonable expenses, including reasonable attorneys' fees, incurred by reason of any acts performed by Mortgagee pursuant to the provisions of this Subsection 8.4 or by reason of the other Loan Documents, and any funds expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the Defaulted Interest Rate from the date of such expenditures, shall constitute additions to the Indebtedness and shall be secured by the other Loan Documents and shall be paid promptly by Mortgagor to Mortgagee upon demand.

8.5 Covenants Running with the Land. All covenants contained in this Mortgage and in the other Loan Documents shall run with the Mortgaged Property.

8.6 Severability. In case any one or more of the Obligations shall be invalid, illegal or unenforceable in any respect, the validity of the Notes, this Mortgage, and the other Loan Documents and remaining Obligations shall be in no way affected, prejudiced or disturbed thereby.

8.7 Modification. This Mortgage and the other Loan Documents and the terms of each of them may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

8.8 Assumption. The loans evidenced by the Notes and secured by this Mortgage may not be assumed by without Mortgagee's prior written consent. This Section 8.8 does not limit the effect and generality of Section 5.9 hereof. Mortgagor shall notify Mortgagee promptly in writing of any transaction or event described in Section 5.9 hereof.

8.9 Tax on Indebtedness or Mortgage. In the event of the passage, after the date of this Mortgage, of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon Mortgagee the obligation to pay the whole, or any part, of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts as to affect the Mortgage or the Indebtedness, the entire unpaid balance of the Indebtedness shall, at the option of Mortgagee, after thirty (30) days written notice to Mortgagor, become due and payable; provided, however, that if, in the opinion of Mortgagee's counsel, it shall be lawful for Mortgagor to pay such taxes, assessments, or charges, or to reimburse Mortgagee therefor, then there shall be no such acceleration of the time for payment of the unpaid balance of the Indebtedness if a mutually satisfactory agreement for reimbursement, in writing, is executed by Mortgagor and delivered to Mortgagee within the aforesaid period.

8.10 Maximum Rate of Interest. Notwithstanding any provision in this Mortgage, or in any instrument now or hereafter relating to or securing the Indebtedness evidenced by the Notes this Mortgage or the other Loan Documents the total liability for payments of interest and payments in the nature of interest, including, without limitation, all charges, fees, exactions, or other sums which may at any time be deemed to be interest, shall not exceed the limit imposed by applicable usury laws. In the event the total liability for payments of interest and payments in the nature of interest, including without limitation, all charges, fees, exactions or other sums which may at any time be deemed to be interest, shall, for any reason whatsoever, result in an effective rate of interest, which for any month or other interest payment period exceeds the limit imposed by the applicable usury laws, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice by, between, or to any party hereto, be applied to the reduction of the Indebtedness immediately upon receipt of such sums by Mortgagee, with the same force and effect as though Mortgagor had specifically designated such excess sums to be so applied to the reduction of the Indebtedness and Mortgagee had agreed to accept such sums as a premium-free payment of the Indebtedness, provided, however, that Mortgagee may, at any time and from time to time, elect, by notice in writing to Mortgagor to waive, reduce, or limit the collection of any sums

(or refund to Mortgagor any sums collected) in excess of those lawfully collectible as interest rather than accept such sums as a prepayment of the Indebtedness.

8.11 Survival of Warranties and Covenants. The warranties, representations, covenants and agreements set forth in this Mortgage and the Loan Agreement shall survive the execution and delivery of the Notes, and shall continue in full force and effect until the Indebtedness shall have been paid in full, except such obligations as specified in Section 4.10 hereof which shall survive.

8.12 Applicable Law. This Mortgage and the other Loan Documents shall be governed by and construed according to the laws of the State of Illinois.

8.13 Loan Expenses. Mortgagor shall pay all reasonable costs and expenses in connection with the preparation, execution, delivery and performance of this Mortgage and the other Loan Documents, including, but not limited to, fees and disbursements of its and Mortgagee's counsel, recording costs and expenses, conveyance fee, documentary stamp, intangible and other taxes, surveys, appraisals and policies of title insurance, physical damage insurance, and liability insurance.

8.14 No Representations by Mortgagee. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee, pursuant to this Mortgage or the other Loan Documents, including (but not limited to) any officer's certificate, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

8.15 Headings. The article headings and the section and subsection captions are inserted for convenience or reference only and shall in no way alter or modify the text of such articles, sections and subsections.

8.16 Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

Unless the Mortgagor provides the Mortgagee with evidence of the insurance coverage required by this Mortgage, the Loan Agreement or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Mortgaged Property or any other collateral for the Indebtedness or Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage the Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the Indebtedness or Obligations. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage, the Loan Agreement or any of the other Loan Documents. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the indebtedness or obligations, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose

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in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total outstanding indebtedness. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

8.17 Additional Advances. This Mortgage is given, to secure not only presently existing Indebtedness under the Loan Agreement, but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness secured hereby outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of the county in which the Mortgaged Property is located. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that the Mortgagee, may, but shall not be obligated to, make under this Mortgage, the Loan Documents, or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed TWELVE MILLION AND NO/100 DOLLARS (\$12,000,000.00), plus interest thereon, and any disbursements made for payment of taxes, special assessments, or insurance on the Mortgaged Property and interest on such disbursements, and all disbursements by Mortgagee pursuant to 735 ILCS 5/15-1302(b)(5) (all such Indebtedness being hereinafter referred to as the maximum amount secured hereby). This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by applicable law.

8.19 Jurisdiction and Venue. Mortgagor hereby agrees that all actions or proceedings initiated by Mortgagor and arising directly or indirectly of this Mortgage or the other loan documents shall be litigated in the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois or, if Mortgagee initiates such action, any court in which Mortgagee shall initiate such action and which has jurisdiction. Mortgagor hereby expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced by Mortgagee in any of such courts. Mortgagor waives any claim that Cook County Illinois, or the Federal District Court for the Northern District of Illinois is an inconvenient forum or an improper forum based on lack of venue. Should Mortgagor after being so served, fail to appear or answer to any summons, complaint, process or papers served within the number of days prescribed by law after the service thereof, Mortgagor shall be deemed in default and an order and/or judgment may be entered by the court against Mortgagor as demanded or prayed for in such summons, complaint, process or papers. Mortgagor hereby waives the right, if any, to collaterally attack any such judgment or action.

8.20 Release of Junior Mortgage. Mortgagee agrees that it shall issue its release of this Junior Mortgage at such time as each of the following conditions precedent have been fully satisfied: The outstanding balance of the Notes plus the unfunded hard and soft construction



costs attributable to the completion of the remaining unsold townhomes in Phase II of The Townhomes on Wabash at 14<sup>th</sup> Place project ("Project") shall be less than 75% of the then fair market value of the unsold townhomes in Phase II of the Project plus 70% of the then fair market value of the vacant land located in Phase I of the Project ("Combined Fair Market Value"). For purposes of determining the Combined Fair Market Value, Mortgagee shall be entitled to rely upon an appraisal which is prepared by a commercial real estate appraiser acceptable to and engaged by Mortgagee (at Borrower's expense) in conformance with the requirements of the Financial Institution Reform, Recovery & Enforcement Act of 1989 ("FIRREA").

In the event the Borrower provides Substitute Collateral (as hereinafter defined), Mortgagee agrees that it shall issue its release of the Junior Mortgage with respect to the real property commonly known as 1000 South Michigan Avenue, Chicago, Illinois ("Junior Mortgage"). "Substitute Collateral" shall mean such collateral in lieu of the Junior Mortgage that in Mortgagee's sole reasonable judgment is (a) acceptable to Mortgagee, (b) is duly perfected, and (c) results in a loan to value ratio (when taking into account the fair market value of the Project plus the fair market value of the new collateral) such that the outstanding balance of the Notes plus the unfunded hard and soft construction costs attributable to the completion of the remaining unsold townhomes in Phase II of the Project shall be less than 75% of the then fair market value of the unsold townhomes in Phase II of the Project plus 70% of the then fair market value of the vacant land located in Phase I of the Project.

8.21 Exculpation. It is expressly understood and agreed that nothing in this Mortgage shall be construed as creating any personal liability on the Trustee personally to perform any express or implied covenant, condition or obligation under this Mortgage all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Mortgage. Notwithstanding the foregoing, the Mortgagee shall not be precluded from: (a) recovering any condemnation awards or insurance proceeds attributable to Mortgaged Property; (b) recovering any tenant security deposits, advance or prepaid rents, if any; or (c) enforcing the personal liability of the Guarantor, of the payment of the Notes, the Indebtedness and performance of all Obligations under the Loan Documents.

[Signature Page Follows]

IN WITNESS WHEREOF, Mortgagor has executed this Junior Mortgage as of the date first above written.

MORTGAGOR:

CHICAGO TITLE LAND TRUST COMPANY, as Trustee aforesaid

By: *Lynnda S. Barkie*  
Name: LYNDA S. BARKIE  
Title: ASST VICE PRESIDENT

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against the undersigned land trustee, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

# UNOFFICIAL COPY

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UNITED STATES  
DEPARTMENT OF JUSTICE

It is hereby certified that the foregoing is a true and correct copy of the original as the same appears in the records of the Copyright Clerk's Office. Witness my hand and the seal of the Copyright Clerk's Office at Washington, D.C., this 1st day of January, 1911.

Copyright Clerk's Office

# UNOFFICIAL COPY

## ACKNOWLEDGMENTS

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Cook )

On February 27, 2002, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared LYNDA S. BARRIE and \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the foregoing Mortgage as the ABST VICE PRESIDENT and \_\_\_\_\_ of the Trustee and acknowledged to me that the execution thereof was their free and voluntary act and deed as for the uses and purpose mentioned in the Mortgage.

WITNESS my hand and official seal.

(SEAL)



*Lidia Marinca*  
\_\_\_\_\_  
Notary Public in and for the State of Illinois

My commission expires:

EXHIBIT A

Legal Description

Parcel 1:

THE NORTH 2/3 OF BLOCK 20 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, (EXCEPTING THEREFROM: LOT 1, LOT 4 EXCEPT THE SOUTH 1/3 THEREOF, THE EAST 60 FEET OF LOT 2, THE EAST 60 FEET OF LOT 3 EXCEPT THE SOUTH 1/3 THEREOF, AND EXCEPTING THEREFROM A STRIP OF LAND 1.33 FEET WIDE NORTH OF AND ADJOINING LOT 10 IN C.L. HARMON'S SUBDIVISION OF THE SOUTH 1/3 OF SAID BLOCK 20) IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel 2:

AIR RIGHTS OVER THE FOLLOWING PARCEL:

LOTS 6 AND 7 IN C.L. HARMON'S SUBDIVISION OF LOTS 10 TO 14 OF C.L. HARMON'S SUBDIVISION OF THE SOUTH 1/3 OF BLOCK 20 AND ALSO THE 1.33 FEET NORTH AND ADJOINING AFORESAID LOT 10 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, LYING ABOVE A HORIZONTAL PLANE 14.50 FEET ABOVE THE EXISTING GRADE OF THE CONCRETE WALK ALONG SOUTH WABASH AVENUE, IN COOK COUNTY, ILLINOIS.

Commonly known as: 1000 S. Michigan Avenue  
Chicago, Illinois

Permanent Index Numbers: 17-15-307-001  
17-15-307-002  
17-15-307-011  
17-15-307-017  
17-15-307-018  
17-15-307-023  
17-15-307-024  
17-15-307-005  
17-15-307-006

## EXHIBIT B

Permitted Encumbrances

1. General real estate taxes for the year 2001 and subsequent years that are not delinquent.
2. Construction Mortgage, Security Agreement, and Assignment of Leases and Rents dated June 28, 2001 from Trustee to Mortgagee and recorded with the Recorder of Deeds in Cook County, Illinois on July 6, 2001, as Document No. 0010596036.
3. PERPETUAL EASEMENT FOR INGRESS AND EGRESS, BY VEHICLES AND OTHERWISE, AND FOR LOADING AND UNLOADING OVER THE SOUTH 36 FEET OF THE EAST 204 FEET OF LOTS 1 AND 5 (EXCEPT THE EAST 117.82 FEET THEREOF) IN ASSESSORS DIVISION OF PART OF THE NORTH 1/2 OF THE SOUTH 2/3 OF BLOCK 20 IN FRACTIONAL SECTION 15 AFORESAID AND AS THEREIN DEFINED, AS CREATED BY AGREEMENT DATED SEPTEMBER 15, 1945 AND RECORDED SEPTEMBER 27, 1945 AS DOCUMENT 13610003, BETWEEN LEHMANN ESTATE, INC. AND CHICAGO TITLE AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST NUMBER 4730.

TERMS AND CONDITIONS CONTAINED IN THE AMENDMENT OF EASEMENT DATED NOVEMBER 30, 2000 AND RECORDED FEBRUARY 13, 2001 AS DOCUMENT 0010116948 BETWEEN CHICAGO LAND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 9, 1998 AND KNOWN AS TRUST NUMBER 1106328, 1000 SOUTH MICHIGAN AVENUE, LLC, AND LIGHTNER ENTERPRISES, INC., AN ILLINOIS CORPORATION

4. AGREEMENT RECORDED MAY 11, 1882 AS DOCUMENT 394457 FOR A PARTY WALL BETWEEN LOT 1 AND LOT 2 AS MADE BY AGREEMENT RECORDED NOVEMBER 9, 1909 AS DOCUMENT 4467943, AND AS AMENDED BY AGREEMENT RECORDED FEBRUARY 29, 1912 AS DOCUMENT 4920364.
5. EASEMENT DATED JULY 7, 1953 FOR AIR SPACE SUPPLY, TO STANDARD OIL COMPANY, FOR AIR CONDITIONING, AS CONTAINED IN THE DEED FROM JOE WEINER AND BERNARDINE WEINER, HIS WIFE, TO STANDARD OIL COMPANY, DATED FEBRUARY 23, 1954 AND RECORDED FEBRUARY 23, 1954 AS DOCUMENT 15841402.

(AFFECTS LOT 1 AND OTHER PROPERTY IN ASSESSORS DIVISION OF PART OF THE NORTH 1/2 OF THE SOUTH 2/3 OF BLOCK 20 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO AFORESAID)

6. DECLARATION AND GRANT OF EASEMENT DATED JANUARY 13, 1989 AND RECORDED JANUARY 13, 1989 AS DOCUMENT 89021479, MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 2, 1987 AND KNOWN AS TRUST NUMBER 103496-3, AND AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 1, 1988 AND KNOWN AS TRUST NUMBER 106978-03, TO AND FOR THE BENEFIT OF LOT 1 AND LOT 4 (EXCEPT THE SOUTH 1/3 THEREOF) THE EAST 60 FEET OF LOT 2 AND THE EAST 60 FEET OF LOT 3 (EXCEPT THE SOUTH 1/3 THEREOF) ALL IN BLOCK 20 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, IN THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD

PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND FOR THE BENEFIT AND COMMON USE OF ALL PRESENT AND FUTURE OWNERS, PURCHASER, MORTGAGEES, TENANTS, OCCUPANTS, ANY PERSONS ACQUIRING ANY INTEREST IN THE LAND HEREINAFTER DESCRIBED OR ANY PART OF PORTION THEREOF), GRANTING A NON-EXCLUSIVE, PERMANENT AND PERPETUAL EASEMENT FOR DRIVEWAY INGRESS AND EGRESS BY PEDESTRIAN AND VEHICULAR TRAFFIC OF ANY KIND TO AND FROM LAND AND THE PROJECT LOCATED THEREON FROM TIME TO TIME OVER, UNDER, ABOVE, ALONG AND ACROSS THE WEST 30 FEET OF THE EAST 90 FEET OF LOT 2 AND THE WEST 30 FEET OF THE EAST 90 FEET OF LOT 3 (EXCEPT THE SOUTH 1/3 THEREOF).

7. MEMORANDUM OF PARKING AGREEMENT RECORDED JANUARY 29, 1988 AS DOCUMENT 88044136, AS AMENDED BY ASSIGNMENT AND AMENDMENT NO. 1 DATED JANUARY 13, 1989 AND RECORDED JANUARY 13, 1989 AS DOCUMENT 89021480, BY AFFIDAVIT RECORDED MAY 9, 1989 AS DOCUMENT 89207058, AND BY AFFIDAVIT RECORDED MAY 9, 1989 AS DOCUMENT 89237551, MADE BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 2, 1987 AND KNOWN AS TRUST NUMBER 103496-03, AND AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 7, 1977 AND KNOWN AS TRUST NUMBER 32501, AND THE TERMS, PROVISIONS AND CONDITIONS CONTAINED THEREIN.
8. PARKING AGREEMENT CONTAINED IN THE OPTION AND FIRST REFUSAL TO PURCHASE DATED NOVEMBER 30, 2000, A MEMORANDUM OF WHICH WAS RECORDED MARCH 26, 2001 AS DOCUMENT 0010238620.