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Cook County Recorder 91.50

PREPARED BY AND AFTER
RECORDING RETURN TO:

Jeffrey S. Arnold, Esq.
Piper Marbury Rudnick & Wolfe
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601



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RECORDER'S BOX 416



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CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT

THIS CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT (the Mortgage") is made as of the 22nd day of May, 2000, by GOODMAN/FRIEDMAN, LLC, a Delaware limited liability company ("Mortgagor), to LASALLE BANK NATIONAL ASSOCIATION, a national banking association doing business in Chicago, Illinois ("Mortgagee").

Recitals

A. Mortgagor is the owner of the leasehold estate to certain real estate (the "Real Estate") legally described in EXHIBIT A attached hereto and made a part hereof, created by and pursuant to the Ground Sublease (as hereinafter defined).

B. Mortgagor and Mortgagee have entered into a Loan Agreement of even date herewith (the "Loan Agreement") pursuant to which Mortgagee has agreed to lend Mortgagor up to the maximum principal amount of SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000) (the "Loan") for the purpose of funding a portion of the costs of the construction of the Development. Initially capitalized terms used in this Mortgage and not expressly defined herein have the meanings given them in the Loan Agreement.

C. As evidence of the indebtedness incurred under the Loan Agreement, Mortgagor has executed and delivered to Mortgagee a Mortgage Note of even date herewith (the "Note"), made payable to the order of and delivered to Mortgagee, in and by which Note Mortgagor promises to pay the principal sum of the Loan and interest at the rate and in installments as provided in the Note, with a final payment of all principal and interest due and payable on May 22, 2002, and subject to extension to no later than May 22, 2012, and subject to acceleration, all as provided in the Note.

SS
N 9902663 Cash Co., J.

All of such principal and interest are made payable at such place as the holder or holders of the Note (the "Holders") may from time to time in writing appoint, and in absence of such appointment, then at the offices of Mortgagee in Chicago, Illinois.

D. The Note is secured by this Mortgage, a Security Agreement, the Guaranties, an Assignment of Rents and Leases, a Collateral Assignment of Permits, Licenses, Approvals and Contracts, an Environmental Indemnity Agreement, Financing Statements on Illinois forms UCC-1 and UCC-2, and such other Additional Collateral as defined and described in the Loan Agreement (collectively, with all other documents and instruments executed and delivered in connection with the Loan, the "Loan Documents").

Agreements

NOW, THEREFORE, Mortgagor, in consideration of such debt and the Recitals set forth above and to secure the timely payment of both principal and interest thereof, in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this Mortgage, and to secure the performance of the covenants and agreements herein and in the Loan Agreement, the Note and the Loan Documents contained and to be performed by Mortgagor, does by these presents MORTGAGE, WARRANT, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto Mortgagee, its successors and assigns, the leasehold estate in the Real Estate and all of its estate, right, title and interest therein situate, lying and being in the City of Chicago, County of Cook and State of Illinois, created by that certain Sublease dated as of August 30, 1999, by and between Chicago Theatre Group, Inc., an Illinois not for profit corporation, as lessor (such lessor and its successors and assigns are hereinafter referred to as the "Sublessor"), and Mortgagor, as lessee (the "Ground Sublease"), a memorandum of which was recorded in the Office of the Recorder of Deeds of Cook County, Illinois on September 3, 1999 as Document No. 99845596;

TOGETHER with the Ground Sublease and the leasehold estate created thereby;

TOGETHER with all modifications, extensions and renewals of the Ground Sublease and all credits, deposits (including, without limitation, any deposit of cash or securities or any other property which may be held to secure Mortgagor's performance of its obligations under the Ground Sublease), options, privileges and rights of Mortgagor as lessee under the Ground Sublease, including, but not limited to, the right, if any, to renew or extend the Ground Sublease for a succeeding term or terms and including the Option (as defined in the Ground Sublease) to purchase the fee simple interest in and to the Real Estate;

TOGETHER with all the estate, title, claim or demand whatsoever of Mortgagor either at law or in equity, in possession or expectancy, of, in and to the Premises or any part thereof;

TOGETHER with all and singular the easements, rights-of-way, licenses, privileges, tenements, appendages, hereditaments, waters, water courses, riparian rights, appurtenances, other

rights, liberties and privileges thereunto belonging or in any wise appertaining, including without limitation any claim at law or in equity as well as any after acquired title, franchise or license and the reversions and remainders thereof, and also all the rents, issues, proceeds and profits now or hereafter accruing therefrom;

TOGETHER with all rents, issues, profits, revenues, royalties, bonuses, receipts, rights and benefits due, payable or accruing or to accrue (including without limitation all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof of, or under any contracts or options for the sale of all or any part of the Real Estate (including without limitation those accruing during any period allowed by law for the redemption of the Real Estate after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness secured hereby and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee;

TOGETHER with all the estate, right, title and interest, if any, of Mortgagor (including without limitation any after-acquired title, franchise or license and the reversions and remainders thereof), in and to the land lying within any alley, way, street, roadway, strips and gores, or beds adjoining the Real Estate;

TOGETHER with all property and rights, if any, which by the express provisions of this instrument are required to be subjected to the lien hereof and any additional property and rights that from time to time hereafter, by installation or writing of any kind, may be subjected to the lien hereof by Mortgagor or by anyone on the Mortgagor's behalf,

TOGETHER with all rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion with respect thereto;

TOGETHER with (subject to the Ground Sublease) all buildings, structures and improvements now or hereafter erected or placed on the Real Estate, and all materials intended for construction, reconstruction, alteration and repair thereof, all of which materials shall be included with the Real Estate and subjected to the lien hereof immediately upon the delivery thereof to the Real Estate, and, also, together with all machinery, equipment, apparatus, goods, systems, fixtures and items of personal property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Real Estate or the buildings or improvements located thereon and that are owned by Mortgagor, or any part thereof, and used or usable in connection with any present or future operation of the Real Estate, including without limitation all heating, lighting, incinerating, refrigerating, ventilating, air-conditioning, air-cooling, lifting, fire extinguishing, plumbing, cleaning, electrical, communication and power equipment, systems and apparatus; all gas, water and electrical equipment, systems, fixtures and apparatus; and all elevators, escalators, switchboards,

computers, engines, motors, tanks, pumps, screens, storm doors, storm windows, shades, blinds, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing (all such machinery, equipment, apparatus, goods, systems, fixtures, renewals, additions, accessories, replacements and substitutions are a part of the Real Estate and are declared to be a portion of the security for the indebtedness secured hereby whether in single units or centrally controlled, and whether physically attached to the Real Estate or the buildings or improvements thereon, or not; and the enumeration of any specific items of property shall in no wise exclude or be held to exclude any items of property not specifically enumerated); and all revenues, receivables, income and accounts now or hereafter acquired and arising from any or all of the foregoing; and the proceeds of any and all of the foregoing;

TOGETHER with all judgments, settlements, awards and other compensation heretofore made or hereafter to be made to the present and a subsequent owners of the leasehold interest in the Real Estate for any taking by eminent domain, either permanent or temporary, of all or any part of the Real Estate or any easement or appurtenance thereof, including without limitation for severance and consequential damage therefor or for change in grade of streets. All of the foregoing enumerated in this and the preceding six paragraphs, together with the Real Estate, are herein sometimes collectively referred to as the "Premises". All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby. As to any of the property aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as Secured Party (as such term is defined in the Uniform Commercial Code), securing such indebtedness and obligations. Mortgagor covenants that it is lawfully seized of a leasehold estate in the Premises and a fee simple estate in the buildings, structures and improvements on the Real Estate (subject to the Ground Sublease), that the same are unencumbered (except as herein provided in Section 1 below), and that it has good right, full power and lawful authority to convey and mortgage the same.

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

**REPRESENTATIONS, WARRANTIES, COVENANTS
AND AGREEMENTS OF MORTGAGOR**

The Mortgagor represents, warrants, covenants and agrees with the Mortgagee as follows:

1. Title. Mortgagor has good and marketable leasehold title to the Premises (including the Real Estate), created by and pursuant to the provisions of the Ground Sublease, and Mortgagor has good and marketable fee simple title (subject to the Ground Sublease) to all buildings, structures and improvements now or hereafter erected on the Real Estate, both subject only to those title exceptions appearing in Schedule B of the Title Policy, and is lawfully seized and possessed of the same, and has the full power, authority and right to convey the same and to execute and deliver this Mortgage; and the Premises are unencumbered except as may be herein expressly provided. In addition, Mortgagor represents and warrants that (a) the Ground Sublease is in full force and effect and has not been modified or amended in any manner whatsoever, (b) there are no defaults under the Ground Sublease and no event has occurred, which but for the passage of time, the delivery of notice, or both, would constitute a default under the Ground Sublease, (c) all rents, additional rents and other sums due and payable under the Ground Sublease have been paid in full, (d) neither Mortgagor nor the lessor under the Ground Sublease has commenced any action or given or received any notice for the purpose of terminating the Ground Sublease; and (e) the interest of the lessee under the Ground Sublease is vested in Mortgagor.

2. Maintenance, Repair and Restoration of Improvements, Payment and Contest of Prior Liens, Etc.

(a) Notwithstanding the provisions of the Ground Sublease, Mortgagor shall (i) promptly repair, restore or rebuild those portions of the Premises which may become damaged or be destroyed; (ii) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), subject, however, to the rights of Mortgagor set forth in Section 2(b) hereof, (iii) complete within a reasonable time any improvements now or at any time in the process of erection upon the Premises, in accordance with the terms of the Loan Agreement; (iv) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; (v) make no material alterations in the Premises except as permitted by and in accordance with the Loan Agreement; (vi) except as provided in the Loan Agreement, suffer or permit no change in the general nature of the occupancy of the Premises, without Mortgagee's written consent; (vii) initiate or acquiesce in no zoning variation or reclassification, except in accordance with the provisions of the Loan Agreement; and (viii) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note.

(b) Anything in Section 2(a)(ii) of this Mortgage to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Lien not expressly subordinated to the lien hereof, and defer payment and discharge thereof during the pending of such contest, provided (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) that, within ten days after Mortgagor has been notified of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's

intention to contest such Lien; and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, either (1) a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable (such sum may be funded from the Loan subject to the Budget); or (2) an endorsement to the Title Policy, in form and substance reasonably acceptable to Mortgagee, insuring Mortgagee against any loss or damage that may be incurred as a result of or in connection with such Lien. In case Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the Lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money on deposit. If the amount of money so deposited shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made.

3. **Payment of Taxes.**

(a) Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments provided: (i) that such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy the same; (ii) that Mortgagor has, before such taxes or assessments shall have been increased by any interest, penalties or costs, notified Mortgagee in writing of the intention of Mortgagor to contest the same; and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and, in the absence of such appointment, then at the place of payment designated in the Note, a sum of money which (when added to funds, if any, then on deposit for such taxes) shall be sufficient in the

judgment of Mortgagee to pay in full such contested taxes and assessments and all penalties and interest that might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional penalties and interest whenever, in the judgment of Mortgagee, such increase is necessary. Such deposit may be funded from the Contingency, subject to the provisions of the Loan Agreement. In case Mortgagor shall fail to prosecute such objections with reasonable diligence or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may at its option apply the money so deposited in payment of or on account of such taxes and assessments, or that part thereof then unpaid, together with all penalties and interest thereon. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money on deposit. If the amount of the money so deposited shall be insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Mortgagor shall forthwith upon demand either (i) deposit with Mortgagee a sum which when added to the funds then on deposit shall be sufficient to make such payment in full, or (ii) in case Mortgagee shall have applied funds on deposit on account of such taxes and assessments, restore said deposit to a sufficient amount. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such taxes and assessments or that part thereof then unpaid, together with all penalties and interest thereon (provided Mortgagor is not then in default) when so requested in writing by Mortgagor and furnished with any sufficient funds to make such payment in full and with an official bill for such taxes.

(b) Mortgagor shall deposit with Mortgagee, commencing on the date of this Mortgage and on the first day of each month thereafter until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth of one hundred five percent (105%) of the last total annual taxes and assessments for the last ascertainable year (general and special) on the Premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Such deposits are to be held without any allowance of interest and are to be used for the payment of taxes and assessments (general and special) on said Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) for any year when the same shall become due and payable, Mortgagor shall within ten days after receipt of demand therefor, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on a subsequent deposit or deposits.

4. Ground Sublease Provisions.

(a) The Ground Sublease. Mortgagor shall (i) pay all rents, additional rents and other sums required to be paid by Mortgagor, as lessee under and pursuant to the provisions of the Ground Sublease as and when such rent or other charge is payable, (ii) diligently perform and observe all of the terms, covenants and conditions of the Ground Sublease on the part of Mortgagor, as lessee thereunder, to be performed and observed prior to the expiration of any applicable grace period therein provided, and (iii) promptly notify Mortgagee of the giving of any notice by the lessor under the Ground Sublease to Mortgagor of any default by Mortgagor in the performance or observance of any of the terms, covenants or conditions of the Ground Sublease on the part of Mortgagor, as lessee thereunder, to be performed or observed and deliver to Mortgagee a true copy of each such notice. Mortgagor shall not, without the prior consent of Mortgagee, surrender the leasehold estate created by the Ground Sublease or terminate or cancel the Ground Sublease or modify, change, supplement, alter or amend the Ground Sublease, in any respect, either orally or in writing, and Mortgagor hereby assigns to Mortgagee, as further security for the payment of the Loan and for the performance and observance of the terms, covenants and conditions of this Mortgage, all of the rights, privileges and prerogatives of Mortgagor, as lessee under the Ground Sublease, to surrender the leasehold estate created by the Ground Sublease or to terminate, cancel, modify, change, supplement, alter or amend the Ground Sublease, and any such surrender of the leasehold estate created by the Ground Sublease or termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Sublease without the prior consent of Mortgagee shall be void and of no force and effect. If Mortgagor shall default in the performance or observance of any term, covenant or condition of the Ground Sublease on the part of Mortgagor, as lessee thereunder, to be performed or observed, then, without limiting the generality of the other provisions of this Mortgage, and without waiving or releasing Mortgagor from any of its obligations hereunder, Mortgagee shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of the Ground Sublease on the part of Mortgagor, as lessee thereunder, to be performed or observed or to be promptly performed or observed on behalf of Mortgagor, to the end that the rights of Mortgagor in, to and under the Ground Sublease shall be kept unimpaired and free from default, even though the existence of such event of default or the nature thereof be questioned or denied by Mortgagor or by any party on behalf of Mortgagor. If Mortgagee shall make any payment or perform any act or take action in accordance with the preceding sentence, Mortgagee will notify Mortgagor of the making of any such payment, the performance of any such act, or the taking of any such action. In any such event, subject to the rights of Space Tenants, sublessees and other occupants under the Space Leases, Mortgagee and any person designated by Mortgagee shall have, and are hereby granted, the right to enter upon the Premises at any time and from time to time for the purpose of taking any such action. Mortgagee may pay and expend such sums of money as Mortgagee deems necessary for any such purpose and upon so doing shall be subrogated to

any and all rights of the lessor under the Ground Sublease. Mortgagor hereby agrees to pay to Mortgagee immediately and without demand, all such sums so paid and expended by Mortgagee, together with interest thereon from the day of such payment at the Default Rate (as defined in the Note). All sums so paid and expended by Mortgagee and the interest thereon shall be secured by the legal operation and effect of this Mortgage. If the lessor under the Ground Sublease shall deliver to Mortgagee a copy of any notice of default sent by said lessor to Mortgagor, as lessee under the Ground Sublease, such notice shall constitute full protection to Mortgagee for any action taken or omitted to be taken by Mortgagee, in good faith, in reliance thereon. Mortgagor shall exercise each individual option, if any, to extend or renew the term of the Ground Sublease upon demand by Mortgagee made at any time within one (1) year of the last day upon which any such option may be exercised, and Mortgagor hereby expressly authorizes and appoints Mortgagee its attorney-in-fact to exercise any such option in the name of and upon behalf of Mortgagor, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest. Mortgagor will not subordinate or consent to the subordination of the Ground Sublease to any mortgage, security deed, lease or other interest on or in the lessor's interest in all or any part of the Premises, unless, in each such case, the written consent of Mortgagee shall have been first had and obtained.

(b) **Subleases.** Each Space Lease hereafter made and each renewal of any existing Space Lease shall provide that, (a) in the event of the termination of the Ground Sublease, the Space Lease shall not terminate or be terminable by the Space Tenant thereof; (b) in the event of any action for the foreclosure of this Mortgage, the Space Lease shall not terminate or be terminable by the Space Tenant by reason of the termination of the Ground Sublease unless such Space Tenant is specifically named and joined in any such action and unless a judgment is obtained therein against such Space Tenant; and (c) in the event that the Ground Sublease is terminated as aforesaid, the Space Tenant shall attorn to the lessor under the Ground Sublease or to the purchaser at the sale of the Premises on such foreclosure, as the case may be.

(c) **No Merger of Fee and Leasehold Estates; Release.** So long as any portion of the Loan shall remain unpaid, unless Mortgagee shall otherwise consent and if Mortgagor exercises the Option, the fee title to the Premises and the leasehold estate therein created pursuant to the provisions of the Ground Sublease shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Mortgagor, Mortgagee, or in any other person by purchase, operation of law or otherwise. Mortgagee reserves the right, at any time, to release portions of the Premises, including, but not limited to, the leasehold estate created by the Ground Sublease, with or without consideration, at Mortgagee's election, without waiving or affecting any of its rights hereunder or under the Note or the other Loan Documents and any such release shall not affect Mortgagee's rights in connection with the portion of the Premises not so released.

(d) **Mortgagor's Acquisition of Fee Estate.** In the event that Mortgagor, so long as any portion of the Loan remains unpaid, shall be the owner and holder of the fee title to the Premises, the lien of this Mortgage shall be spread to cover Mortgagor's fee title to the Premises and such fee title shall be deemed to be included in the Premises. Mortgagor agrees, at its sole cost and expense, including without limitation Mortgagee's reasonable attorneys' fees, to (i) execute any and all documents or instruments necessary to subject its fee title to the Premises to the lien of this Mortgage; and (ii) provide a title insurance policy which shall insure that the lien of this Mortgage is a first lien on Mortgagor's fee title to the Premises. Notwithstanding the foregoing, if the Ground Sublease is for any reason whatsoever terminated prior to the natural expiration of its term, and if, pursuant to any provisions of the Ground Sublease or otherwise, Mortgagee or its designee shall acquire from the lessor thereunder another lease of the Premises, Mortgagor shall have no right, title or interest in or to such other lease or the leasehold estate created thereby.

(e) **Rejection of the Ground Sublease.**

(i) If the Ground Sublease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Sublease pursuant to the United States Bankruptcy Code, 11 U.S.C. §101, et seq., as the same may be amended (the "Code") or any other law affecting creditors' rights, (i) Mortgagor, immediately after obtaining notice thereof, shall give notice thereof to Mortgagee, (ii) Mortgagor, without the prior written consent of Mortgagee, shall not elect to treat the Ground Sublease as terminated pursuant to Section 365(h) of the Code or any comparable federal or state statute or law, and any election by Mortgagor made without such consent shall be void and (iii) this Mortgage and all the liens, terms, covenants and conditions of this Mortgage shall extend to and cover Mortgagor's possessory rights under Section 365(h) of the Code and to any claim for damages due to the rejection of the Ground Sublease or other termination of the Ground Sublease. In addition, Mortgagor hereby assigns irrevocably to Mortgagee, Mortgagor's rights to treat the Ground Sublease as terminated pursuant to Section 365(h) of the Code and to offset rents under such Ground Sublease in the event any case, proceeding or other action is commenced by or against the Ground Sublessor under the Code or any comparable federal or state statute or law, provided that Mortgagee shall not exercise such rights and shall permit Mortgagor to exercise such rights with the prior written consent of Mortgagee, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred or an Incipient Event of Default shall have occurred and shall be continuing.

(ii) Mortgagor hereby assigns to Mortgagee Mortgagor's right to reject the Ground Sublease under Section 365 of the Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Mortgagor under the Code or comparable federal or state statute or law,

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provided Mortgagee shall not exercise such right, and shall permit Mortgagor to exercise such right with the prior written consent of Mortgagee, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred or an Incipient Event of Default shall have occurred and shall be continuing. Further, if Mortgagor shall desire to so reject the Ground Sublease, then at Mortgagee's request, Mortgagor shall assign its interest in the Ground Sublease to Mortgagee in lieu of rejecting such Ground Sublease as described above, upon receipt by Mortgagor of written notice from Mortgagee of such request together with Mortgagee's agreement to cure any existing defaults of Mortgagor under such Ground Sublease.

(iii) Mortgagor hereby assigns to Mortgagee, Mortgagor's right to seek an extension of the 60-day period within which Mortgagor must accept or reject the Ground Sublease under Section 365 of the Code or any comparable federal or state statute or law with respect to any case, proceeding or other action commenced by or against Mortgagor under the Code or comparable federal or state statute or law, provided Mortgagee shall not exercise such right, and shall permit Mortgagor to exercise such right with the prior written consent of Mortgagee, not to be unreasonably withheld or delayed, unless an Event of Default shall have occurred or an Incipient Event of Default shall have occurred and shall be continuing. Further, if Mortgagor shall desire to so reject the Ground Sublease, then at Mortgagee's request, Mortgagor shall assign its interest in the Ground Sublease to Mortgagee in lieu of rejecting such Ground Sublease as described above, upon receipt by Mortgagor of written notice from Mortgagee of such request together with Mortgagee's agreement to cure any existing defaults of Mortgagor under such Ground Sublease.

(iv) Mortgagor hereby agrees that if the Ground Sublease is terminated for any reason in the event of the rejection or disaffirmance of the Ground Sublease pursuant to the Code or any other law affecting creditors' rights, any property not removed by the Mortgagor as permitted or required by the Ground Sublease shall, at the option of Mortgagee, be deemed abandoned by Mortgagor, provided that Mortgagee may remove any such property required to be removed by Mortgagor pursuant to the Ground Sublease and all costs and expenses associated with such removal shall be paid by Mortgagor within twenty (20) days of receipt by Mortgagor of an invoice for such removal costs and expenses.

5. **Insurance Coverages.** Mortgagor will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, and in any event will continuously maintain at a minimum the following described policies of insurance in addition to any policies required by the Note, the Loan Agreement or the other Loan Documents (individually an "Insurance Policy" and collectively the "Insurance Policies"):

- (a) During all periods in which any construction is taking place on or about the Premises, All Risk Builder's Risk Insurance (non-reporting Form) for 100% of the completed value of the Improvements, insuring the Premises, including without limitation materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, "X," "C" and "U" coverage, vandalism and malicious mischief coverage, and bearing a replacement cost agreed upon endorsement;
- (b) Casualty insurance against loss and damage by all risks of physical loss or damage, including without limitation fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, flood (if all or any portion of the Premises is located in a flood plain), and other risks covered by so-called "all risk" policies and extended coverage endorsements, and against loss or damage by malicious mischief, vandalism and sprinkler leakage in amounts not less than the full insurable replacement value of all Improvements, fixtures and equipment from time to time on the Premises, but in any event in an amount sufficient to prevent Mortgagor from becoming a co-insurer of any partial loss under the applicable Insurance Policies, which shall be written on a replacement cost basis and any such Insurance Policies shall contain an "agreed amount endorsement" and Mortgagor shall have the appraisal on which this agreed amount is based not less than annually and a new "agreed amount endorsement" issued;
- (c) commercial general liability insurance (including contractual liability coverage) against death, bodily injury and property damage in a base amount not less than \$10,000,000 combined single limit;
- (d) Steam boiler, machinery and pressurized vessel insurance, if any;
- (e) If the Federal Insurance Administration or the Secretary of Housing and Urban Development has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available;
- (f) business interruption (rent loss) insurance in an amount equal to twelve (12) months' net operating income;
- (g) All other types and amounts of coverage as are customarily maintained by owners or operators of like properties;
- (h) Workers' compensation insurance covering all liability arising from claims of employees and other persons performing any work or services upon, in, about or with respect to the Premises, which insurance shall be maintained so as to comply with all applicable legal requirements; and

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- (i) All insurance required by the Sublease.

Mortgagee may, at Mortgagor's expense as additional indebtedness hereby secured, procure and substitute for any and all of the policies of insurance required above such other policies of insurance, in such amounts, and carried in such companies, as it may reasonably select, in such event, those policies of insurance shall be included within the definition of "Insurance Policies" set forth herein.

Mortgagor will procure, deliver to, and maintain for the benefit of Mortgagee such other insurance on the Premises and in such amounts as from time to time Mortgagee may require against other casualties which at the time are commonly insured against in the case of Premises similarly situated, due regard being given to the height and type of improvements, their construction, location, use and occupancy. Mortgagor will cause Mortgagee to be shown and carried as an additional insured under all such policies, and such policies shall also include a Mortgagee's loss payable clause naming Mortgagee as the mortgagee, modified as to be consistent with the provisions of Section 6 below. Mortgagor will deliver such policy or policies or certificates of same to Mortgagee at its principal office or at such other place as it may designate in writing; and likewise will deliver to Mortgagee renewals of such policy or policies 45 days in advance of the expiration of the same, stamped "Paid" by the agent or company issuing same. Premiums on policies so furnished shall not be financed in any manner whereby any lender, upon default or otherwise, shall have the right or privilege of surrendering the policies for cancellation. All insurance furnished hereunder shall be subject to the approval of Mortgagee as to insurance companies, amounts, contents, substance, forms of policies and expiration dates. All insurance required by this Section 5 shall provide by endorsement or other manner that same may not be canceled or amended without at least 30 days prior written notice to Mortgagee. If Mortgagor fails to procure and maintain any insurance required under this Mortgage, Mortgagee may (but shall not be obligated to) upon prior written notice to Mortgagor, procure and maintain such insurance, at Mortgagor's expense, in the amounts provided above or in such lesser amounts as Mortgagee may deem appropriate, in order to protect Mortgagee's interest in the Premises. Such insurance may, but need not, protect Mortgagor's interest in the Premises. Such insurance purchased by Mortgagee may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence acceptable to Mortgagee that Mortgagor has obtained and paid for such insurance as required under this Mortgage. If Mortgagee procures and maintains such insurance, Mortgagor shall be responsible for the costs of such insurance, including interest as described in Section 12 hereof and any other charges Mortgagee may impose in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. All such costs, interest and charges shall become immediately due and payable by Mortgagor and shall be secured by this Mortgage. Such costs may be more than the cost of insurance Mortgagee may be able to obtain on its own.

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6. Covenant to Rebuild.

(a) Upon any loss or damage, Mortgagor shall immediately notify Mortgagee in writing, and the loss, if any, under each Insurance Policy shall be adjusted with the insurance company reasonably and in good faith by Mortgagee and all insurance proceeds shall be paid directly and solely to Mortgagee, to be held and applied by Mortgagee as hereinafter set forth. Each insurance company is authorized and directed to make such adjustment with Mortgagee and payment directly and solely to Mortgagee, and the Insurance Policies shall so stipulate, subject to the provisions set forth below. Mortgagor and Mortgagee shall sign all receipts, vouchers and releases required by the insurance companies in respect of the foregoing. Mortgagee shall not incur any liability in connection with the adjustment or collection of insurance claims and proceeds (or the failure thereof) regardless of the cause of such failure. If any sum or sums of money are received by Mortgagee by reason of any such insurance as aforesaid (the "insurance proceeds"), Mortgagee at its sole option may elect to apply such monies in payment or reduction of the indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, then at the option of Mortgagee the indebtedness secured hereby shall be immediately due and payable.

Notwithstanding the foregoing, provided:

(i) no Event of Default (as hereinafter defined) or event which with the lapse of time or the giving of notice or both, would constitute an Event of Default, shall have occurred and shall be continuing;

(ii) the Premises are capable, in the judgment of Mortgagee, of being restored to an architectural and economic unit of the same character and not less valuable than the Premises were prior to the loss or damage and adequately securing the outstanding balance of the indebtedness secured hereby ("restoration");

(iii) no more than twenty-five (25%) of the rentable square footage of the Building has been damaged or destroyed;

(iv) no more than twenty-five (25%) of the rentable square footage of the Building is subject to Space Leases under which the Space Tenants have terminated or have the right to terminate their Space Leases as a result of such damage or destruction;

(v) the casualty has not occurred during the last year of the term of the Loan;

(vi) The time required to complete repairs to or replacement or restoration of the damaged or destroyed Premises shall not, in the reasonable estimation of Mortgagee, extend beyond six (6) months prior to the Loan Maturity Date; and

(vii) Mortgagor has deposited with Mortgagee the amount, if any, described in Section 6(b) below;

then the provisions of Section 6(d) hereof shall apply.

(b) As soon as reasonably possible after any loss, damage or destruction, Mortgagor shall furnish Mortgagee with an estimate of the cost of repairs, rebuilding and replacement (hereinafter called "restoration") prepared by the Borrower's Architect. If Mortgagee elects or is required to reimburse Mortgagor out of insurance proceeds, and the insurance proceeds in the hands of Mortgagee (after deducting all costs incurred by Mortgagee in collecting said insurance proceeds) are not sufficient to pay for the cost of restoration as so estimated, Mortgagor forthwith shall deposit with Mortgagee the amount estimated to be necessary to complete restoration, taking into account the amount of the insurance proceeds held by Mortgagee, and such amount deposited by Mortgagor shall be held in trust by Mortgagee and disbursed as hereinafter provided. If Mortgagor shall fail to deposit the estimated amount necessary to complete restoration as aforesaid within thirty (30) days after receipt of said insurance proceeds, Mortgagee at its option shall be relieved of its obligation or shall have the right immediately to rescind its election to fund the cost of restoration, and if the insurance proceeds are insufficient to pay the indebtedness secured hereby in full, then at the option of Mortgagee the indebtedness secured hereby shall be immediately due and payable.

(c) Mortgagor shall restore and rebuild the damaged Premises so as to be of at least equal value and quality and substantially the same character as the damaged Premises were prior to such damage or destruction (if the damaged Premises were completed prior to such damage or destruction) or as the damaged Premises would have been after completion of the damaged Premises. Mortgagor shall make emergency, permanent or temporary repairs or repair or restore the damaged Premises to reduce or prevent further loss or so as not to impede or interfere with the normal operation of the Premises. The repair or restoration shall be effected in accordance with the Plans pursuant to the terms of the Loan Agreement or such other plans prepared by Mortgagor and approved by Mortgagee. Mortgagor will repair and restore the Premises as provided in this Section 6 without regard to the availability or adequacy of insurance proceeds with respect to such damage, destruction or casualty. Nothing herein contained shall be deemed to excuse Mortgagor from restoring all damage or destruction to the Premises regardless of whether there are insurance or Loan proceeds adequate for such purposes.

(d) If Mortgagee elects or is required to reimburse Mortgagor out of insurance proceeds, and if the insurance proceeds held by Mortgagee are estimated to be sufficient to pay for the restoration or, if such proceeds are insufficient and Mortgagor has deposited with Mortgagee an additional amount sufficient to pay for the restoration, the insurance proceeds shall be held by Mortgagee and applied toward payment of the cost of restoration as if such sums were proceeds of the Loan, the application and disbursement of such sums to be made in accordance with the Loan Agreement. The insurance proceeds shall bear interest at Mortgagee's standard money market rate as in effect from time to time, and such interest shall constitute a part of such insurance proceeds. Upon completion of the restoration any amounts contributed by Mortgagor and not required to be applied to the restoration as aforesaid shall be refunded to Mortgagor.

(c) In case of loss after foreclosure proceedings have been instituted, the insurance proceeds, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, shall be applied in payment or reduction of the indebtedness secured hereby or in payment or reduction of the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if it shall then be entitled to the same or as the court may direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then, and in every such case, each successive redeemer may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

7. **Mortgagee's Interest In and Use of Deposits.** Upon the occurrence of an Event of Default hereunder, Mortgagee may at its option, without being required to do so, apply any monies at the time on deposit pursuant to any provision of this Mortgage against any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that neither Mortgagee nor said depository shall be liable for any failure to apply to the payment of

taxes and assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested said depository in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes and assessments or insurance premiums.

8. **Stamp Tax.** If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, or recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note, or recording of this Mortgage.

9. **Prepayment of Note.** Mortgagor shall at any time and from time to time have the right to prepay the Note (in addition to the required payments) in accordance with the terms and conditions set forth in the Note.

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

Any person or entity taking a junior mortgage or other lien upon the Premises or any interest therein, shall take said lien subject to the rights of Mortgagee herein to amend, modify, and supplement this Mortgage, the Note, the Loan Documents, or any other document or instrument evidencing, securing, or guaranteeing the indebtedness hereby secured and securing, or guaranteeing the indebtedness hereby secured and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of said indebtedness, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section 10 contained shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed, or encumbered.

11. **Effect of Changes in Laws Regarding Taxation.** In the event of the enactment after this date of any law of the State of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt

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secured hereby or the Holders, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a), it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable 60 days from the giving of such notice.

12. **Mortgagee's Performance of Defaulted Acts; Subrogation.** In case a default hereunder shall occur and not be cured on or before the expiration of any applicable grace or cure period, Mortgagee may, but need not make any payment or perform any act herein or in any Loan Documents evidencing or securing the indebtedness secured hereby or any indebtedness secured by a prior encumbrance, required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and make payments of any rents or other charges due or to become due or perform any act under the Sublease, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale of forfeiture affecting the Premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable upon demand and with interest thereon at the Default Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, the Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. **Mortgagee's Reliance on Tax Bills, Etc.** Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

14. **Acceleration of Indebtedness in Case of Default.** Each of the following shall constitute an Event of Default under this Mortgage: (a) the occurrence of an "Event of Default" as defined in any of the terms and provisions of any of the Loan Documents (other than this Mortgage)

securing the indebtedness secured hereby, including, but not limited to, the Assignment of Rents and Leases described in Section 18 hereof; or (b) if default be made, and continue following the expiration of applicable grace or cure periods, if any, in the due and punctual payment of the Note, or any installment due in accordance with the terms thereof, either of principal, interest or any other sum due thereunder; or (c) if the Premises shall be abandoned; or (d) if default shall be made in the due observance or performance of the covenants and agreements to be kept or observed by Mortgagor as contained in Section 5 hereof; or (e) if default shall be made in the due observance or performance of any other of the non-monetary covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor and such default shall continue for thirty (30) days after service of written notice thereof or, where Mortgagee's security is not impaired by such non-monetary default and if such non-monetary default cannot reasonably be cured within said 30-day period, the failure to commence curing said default within said 30-day period, to proceed with such cure thereafter in a reasonably diligent manner, and to complete such cure within sixty (60) days after expiration of such 30-day period; or (f) any event described in Section 37 hereof shall occur; or (g) if Mortgagor shall fail beyond any applicable cure period in the payment of any rent, additional rent or other charge mentioned in or made payable by the Ground Sublease as and when such rent or other charge is payable; or (h) if there shall occur any default by Mortgagor, as lessee under the Ground Sublease, in the observance or performance of any term, covenant or condition of the Ground Sublease on the part of Mortgagor, to be observed or performed, and said default is not cured prior to the expiration of any applicable grace period therein provided, or if any one or more of the events referred to in the Ground Sublease shall occur which would cause the Ground Sublease to terminate without notice or action by the lessor under the Ground Sublease or which would entitle the lessor under the Ground Sublease to terminate the Ground Sublease and the term thereof by giving notice to Mortgagor, as lessee thereunder, or if the leasehold estate created by the Ground Sublease shall be surrendered or the Ground Sublease shall be terminated or canceled for any reason or under any circumstances whatsoever, or if any of the terms, covenants or conditions of the Ground Sublease shall in any manner be modified, changed, supplemented, altered, or amended without the consent of Mortgagee; then and in every such case the whole of said principal sum hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, without notice to Mortgagor.

15. **Foreclosure, Expense of Litigation.** If an Event of Default has occurred hereunder, or when the indebtedness hereby secured, or any part thereof, shall become due, either (a) by lapse of time; (b) by acceleration under any of the provisions of the Note, of this Mortgage or of any other instrument evidencing or securing the Loan; or (c) otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and to exercise any one or more of the remedies provided in the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as in effect from time to time (the "Act"). It is further agreed that if default be made in the payment of any part of the secured indebtedness and such default shall not be cured on or before the expiration of any applicable grace or cure period, as an alternative to, the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right, to the extent permitted by law, to institute partial foreclosure proceedings with respect to the portion of said indebtedness so

in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the Premises pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

In connection with any foreclosure of the lien hereof (including any partial foreclosure) or to enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all reasonable expenditures and expenses which may be paid or incurred, whether by force or after the entry of any decree or judgment of foreclosure, by or on behalf of Mortgagee for reasonable attorneys' fees and expenses, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

16. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order:

First, on account of all reasonable costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Section hereof; Second, whether incurred before or after the entry of any decree or judgment of foreclosure, the reasonable expenses of securing possession before sale, holding, maintaining and preparing the real estate for sale including, without limitation, payment of taxes and other governmental charges, premiums on hazard and liability insurance, receiver's and management fees, reasonable attorneys' fees and other legal expenses incurred by Mortgagee, and all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; Third, all principal and interest remaining unpaid on the Note; Fourth, satisfaction of claims in order of priority adjudicated in the judgment of foreclosure or order confirming the sale; and Fifth, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

17. **Appointment of Receiver.** After the occurrence of an Event of Default, prior to, upon, or at any time after, the filing of a complaint to foreclose this Mortgage, whenever Mortgagee is entitled to possession of the Premises, at Mortgagee's request, the court in which such complaint is filed shall appoint a receiver of the Premises. Mortgagee shall be entitled to designate the receiver. Such appointment may be made either before or after sale, without notice to the extent permitted by law, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any Holders may be appointed as such receiver. Such receiver shall have possession of the Premises and other property subject to this Mortgage during the foreclosure, shall have the full power and authority to operate, manage and conserve such property, and shall have the usual powers of receivers in like cases. Without limiting the foregoing, such receiver shall have the power and authority: (a) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide, subject to court approval, for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage, indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (c) insure the Premises against loss by fire or other casualty; (d) employ counsel, custodian, janitors or other help; (e) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period; and (f) as specified in Section 5/15-1704 of the Act. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (x) the indebtedness secured hereby, or by any decree

foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (y) the deficiency in case of a sale and deficiency.

18. **Observance of Lease Assignment.** If an Event of Default shall occur under the provisions of the Assignment of Rents and Leases of even date herewith made by Mortgagor to Mortgagee as security for the Loan, then, and in any such event, such Event of Default shall constitute an Event of Default hereunder and at the option of Mortgagee, and without notice to Mortgagor, all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable as in the case of other Events of Default.

19. **Mortgagee's Right of Possession in Case of Default.** In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises or any part thereof personally, or by its agent or attorneys, as for condition broken. In such event Mortgagee, in its discretion, upon request may, with or without force and with or without process of law, to the extent permitted by law, enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the aforesaid rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof to the extent provided by any non-disturbance agreements; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may, subject to court approval, provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements,

alterations, additions, betterments and improvements to the Premises as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; (f) to receive all of such avails, rents, issues and profits; and (g) during the pendency of legal proceedings to foreclose the lien hereof to exercise the powers specified in Section 5/15-1703 of the Act; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, except any such liability, loss, damage, claim or demand arising from the gross negligence or willful misconduct of Mortgagee. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys fees and expenses, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

Notwithstanding any provisions of this Section to the contrary, during the pendency of legal proceedings to foreclosure the lien hereof, Mortgagee's right to possession shall be subject to the provisions of Section 5/15-1701 of the Act.

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

(a) to the payment of the operating expenses of the Premises, including cost of management, sales and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

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

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises, and of placing the Premises in

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such condition as will, in the reasonable judgment of Mortgagee, make it readily marketable; and

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

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

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

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

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

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

(e) Mortgagee's reasonable fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1503 of the Act;

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

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

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

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable with interest thereon from the date of the advance until paid at the Default Interest Rate.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(10) of Section 5/15-1302 of the Act.

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

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

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

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

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

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

22. **Condemnation.** If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration hereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this Mortgage, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee. Such award or monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking Mortgagee may declare the whole of the balance of the indebtedness hereby secured plus any Prepayment Premium to be due and payable.

23. **Release upon Payment and Discharge of Mortgagor's Obligations.** If Mortgagor shall fully pay all principal and interest on the Note, and all other indebtedness secured hereby and comply with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, then Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Mortgagee for the execution of such release.

24. **Giving of Notice.** All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a) if delivered by messenger, when delivered, (b) if mailed, on the third (3rd) business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, (c) if telexed, telegraphed or telecopied, six (6) hours after being dispatched by telex, telegram or telecopy, if such sixth (6th) hour falls on a business day within the hours of 9:00 a.m. through 5:00 p.m. of the time in effect at the place of receipt, or at 9:00 a.m. on the next business day thereafter if such sixth (6th) hour is later than 5:00 p.m., or (d) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier; in every case addressed to the party to be notified as follows:

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In the case of Mortgagor, to: Goodman/Friedman, LLC
c/o Albert M. Friedman
Friedman Properties Ltd.
500 North Dearborn Street
Suite 200
Chicago, Illinois 60610
Fax: (312) 644-2898

with copies (which shall not constitute required notices) to: Lawrence B. Swibel
Fox, Swibel & Levin
500 North Dearborn Street
Suite 200
Chicago, Illinois 60610
Fax: (312) 527-9606

In the case of Mortgagee, to: LaSalle Bank National Association
135 South LaSalle Street
12th Floor
Chicago, Illinois 60603
Attention: Mr. David M. Patchin
Fax: (312) 904-6467

with a copy (which shall not constitute a required notice) to: Jeffrey S. Arnold, Esq.
Piper Marbury Rudnick & Wolfe
203 N. LaSalle Street
Suite 1800
Chicago, Illinois 60601
Fax: (312) 630-5329

or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection or refusal to accept delivery or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

25. **Waiver of Defense, Remedies Not Exclusive.** No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now

or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given hereby to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. No waiver of any default of the Mortgagor hereunder shall be implied from any omission by the Mortgagee or Holders to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the penalty or Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee or Holders at any time thereafter to demand and collect payment of interest at such post maturity or penalty rate or of late charges, if any.

26. **Compliance With Illinois Mortgage Foreclosure Law.**

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

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

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Section 15 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

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

marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 5/15-1201 of the Act) or residential real estate (as defined in Section 5/15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 5/15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

28. **Furnishing of Financial Statements to Mortgagee.** Mortgagor shall deliver or cause to be delivered to Mortgagee financial statements as required by the provisions of the Loan Agreement.

29. **Binding on Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of the Holders from time to time and of the successors and assigns of the Mortgagee.

30. **Definitions of "Mortgagor" and "Mortgagee".** The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof, (b) said original Mortgagor's successors and assigns; and (c) all owners from time to time of the Premises, including, but not limited to, the leasehold estate created by the Ground Sublease. The words "Holders" and "Mortgagee" when used herein shall include all successors and assigns of the original Holders and Mortgagee identified in the preambles hereof.

31. **Captions.** The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

32. **Disbursement of Loan Proceeds for Construction of Improvements.** A portion of the indebtedness evidenced by the Note and secured hereby is to be used for the construction of certain improvements on the Premises comprising the Development in accordance with the terms of the Loan Agreement; and this Mortgage constitutes a construction mortgage as said term is defined in Section 9-313(1)(c) of the Uniform Commercial Code of Illinois. Mortgagor shall perform or cause to be performed all the agreements, obligations, terms, provisions and conditions of each and all of the Loan Documents to be kept and performed by Mortgagor. All advances and indebtedness arising and accruing from time to time, and all expenses incurred by Mortgagee in connection with the enforcement or performance of its rights and remedies under the Loan Documents, whether or not the total amount thereof may exceed the face amount of the Note secured hereby, shall be secured hereby to the same extent as if the Loan Documents were fully recited in this Mortgage.

It is understood and agreed, however, that with respect to subsequent purchasers and mortgagees without actual notice, none of the advances or indebtedness arising or accruing under the Loan Agreement, shall result in an increase of the indebtedness secured and to be secured hereby over the face amount of the Note beyond 200% of such face amount. In determining the amount of such increase there shall be excluded from any computation, all indebtedness which would constitute secured indebtedness under the terms of this Mortgage had this Section 32 been omitted herefrom.

Upon the occurrence of an Event of Default hereunder, in addition to any other remedies herein, at its election Mortgagee may enter upon the Premises and perform any and all work and labor necessary to complete the buildings, improvements and other structures. To implement the rights of the Mortgagee under this Section 32, in addition to any other remedies which Mortgagee may have hereunder Mortgagee may in its sole discretion do any one or more of the following:

(a) Enter upon the Premises and complete the Development and employ watchmen, all at the risk, cost and expense of Mortgagor.

(b) At any time discontinue any work commenced in respect of the Development and change any course of action undertaken by it and not be bound by any limitations or requirements of time whether set forth herein or otherwise.

(c) Assume any construction contract made by Mortgagor in any way relating to the construction of the Development and take over and use all or any part of the labor, materials, supplies and equipment contracted for by Mortgagor, whether or not previously incorporated into the Development.

(d) In connection with any construction of the Development undertaken by Mortgagee pursuant to the provisions of this Section 32, Mortgagee may perform any one or more of the following:

(1) Engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials, supplies and equipment in connection with any construction of the Development;

(2) Pay, settle or compromise all bills or claims which may become liens against the Development, or which have been or may be incurred in any manner in connection with completing the Development or for the discharge of liens, encumbrances or defects in the title of the Premises; and

(3) Take or refrain from taking such action hereunder as Mortgagee from time to time may determine.

Mortgagor shall be liable to Mortgagee for all sums paid or incurred to construct and equip the Development whether the same shall be paid or incurred pursuant to the provisions of this Section 32, and all payments made or liabilities incurred by Mortgagee hereunder of any kind whatsoever shall be paid by Mortgagor to Mortgagee upon demand with interest at the Default Rate from the date of payment by Mortgagee to the date of payment to Mortgagee and shall be secured by this Mortgage. For purposes of exercising the rights granted in this Section 32, Mortgagor hereby irrevocably constitutes and appoints Mortgagee its respective true and lawful attorney-in-fact with full power of substitution to execute, acknowledge and deliver any instruments and to do and perform any acts in the name of and on behalf of Mortgagor; this power of attorney shall be a power coupled with an interest and cannot be revoked.

33. **Business Loan Recital.** Mortgagor represents, warrants and agrees that the obligation secured hereby: (a) constitutes a business loan which comes within the purview of 815 ILCS 205/4 (1)(c); and (b) is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 et seq.

34. **Execution of Separate Security Agreement Financing Statements, Etc.** Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, a Security Agreement, Financing Statement or other similar security instruments, in form satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor, which in the sole opinion of Mortgagee is essential to the operation of the Premises and which constitutes goods within the meaning of the Uniform Commercial Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this Mortgage under the laws of the state in which the Premises are located, and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and refiling of any such document.

35. **Partial Invalidity; Maximum Allowable Rate of Interest.** Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage and the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein,

and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. All agreements herein and in the Note are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to the Holders for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the Holders shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

36. **Mortgagee's Lien for Service Charge and Expenses.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the loan to be secured hereby, all in accordance with the application and loan commitment issued in connection with this transaction; provided, however, that in no event shall the total amount of loan proceeds disbursed plus such additional amounts exceed 200% of the face amount of the Note.

37. **Maintenance of Mortgagor's Interests.** In the event that Mortgagor shall, without Mortgagee's prior written consent and except as provided in Section 4.1(a) of the Loan Agreement, transfer, convey, alien, pledge, hypothecate or mortgage (or permit the same by another person or entity) the Premises or any part thereof, such action or failure to act shall constitute an Event of Default under this Mortgage and the Mortgagee shall have the right, at its election under Section 14 hereof, to declare immediately due and payable the entire indebtedness secured hereby.

38. **Applicable Law.** This Mortgage, the Note and all other instruments evidencing and securing the Loan secured hereby shall be construed, interpreted and governed by the laws of the State of Illinois.

39. **Future Advances.** This Mortgage secures all future advances made under the provisions of the Loan Agreement, which future advances have the same priority as if all such future advances were made on the date of execution hereof. Nothing in this Section 39 or in any other provision of this Mortgage shall be deemed an obligation on the part of Mortgagee to make any future advances other than in accordance with the terms and provisions of this Mortgage.

40. **Jurisdiction and Venue.** MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING

DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE 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, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. MORTGAGOR WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR 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 SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY MORTGAGEE AGAINST MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY MORTGAGEE, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY MORTGAGEE, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

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IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed the day and year first above written.

MORTGAGOR:

**GOODMAN/FRIEDMAN, LLC, a
Delaware limited liability company**

By: 

Name: Albert M. Friedman

Title: Manager

Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Laurie A. Levin, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Albert M. Friedman, Manager of Goodman/Friedman, LLC, a Delaware limited liability company (the "Company"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as Manager, appeared before me this day in person and acknowledged that he signed and delivered the foregoing instrument as his own free and voluntary act and as the free and voluntary act of the Company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18th day of May, 2000.

Laurie A. Levin
Notary Public

My commission expires _____



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EXHIBIT A

00385366

LEGAL DESCRIPTION

THOSE PARTS OF LOTS 7 AND 8 IN BLOCK 35 IN THE ORIGINAL TOWN OF CHICAGO LYING SOUTH OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF LOT 8 IN BLOCK 35, WHICH POINT IS 79.40 FEET NORTH FROM THE SOUTHEAST CORNER OF SAID LOT, AS MEASURED ALONG SAID EAST LINE; THENCE WEST, PERPENDICULAR TO SAID EAST LINE, A DISTANCE OF 87.81 FEET; THENCE NORTH, PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 5.00 FEET; THENCE WEST, PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 73.17 FEET TO A POINT ON THE WEST LINE OF AFOREMENTIONED LOT 7 WHICH IS 82.25 FEET NORTH FROM THE SOUTHWEST CORNER OF SAID LOT, AS MEASURED ALONG SAID WEST LINE; ALL IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: Part of 17-09-437-006, 17-09-437-009-8001-~~XXXXXXXXXX~~

Address: Northeast Corner of North Dearborn Street and West Randolph Street, Chicago, Illinois