



Eugene "Gene" Moore Fee: \$70.00
Cook County Recorder of Deeds
Date: 08/19/2003 01:29 PM Pg: 1 of 24

TCF NATIONAL BANK

**COMMERCIAL MORTGAGE,
ASSIGNMENT OF RENTS,
SECURITY AGREEMENT
AND
FINANCING STATEMENT**

PREPARED BY AND AFTER RECORDING MAIL TO:
TCF NATIONAL BANK
800 Burr Ridge Parkway
Burr Ridge, Illinois 60527
Attn: Commercial Loan Department

This Box For Recorder's Use Only

THIS COMMERCIAL MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") is dated effective as of May 12, 2003, and is between GEM PARTNERS, LLC, an Illinois limited liability company having an address at 11952 S. Harlem Avenue, Palos Heights, Illinois 60463 ("Mortgagor") (defined below) and TCF NATIONAL BANK, a national banking association, with an office located at 800 Burr Ridge Parkway, Burr Ridge, Illinois 60527 ("Mortgagee") (defined below).

WITNESSETH

Whereas, Mortgagor has executed a promissory note dated May 12, 2003 in the original principal amount of Three Hundred Thousand and no/100 Dollars (\$300,000.00), payable to Mortgagee and due on May 10, 2009 ("Maturity Date") together with any and all amendments or supplements thereto, extensions and renewals thereof and any other promissory note which may be taken in whole or partial renewal, substitution or extension thereof ("Note"). The Note initially shall bear interest on the principal balance from time to time outstanding from date of first disbursement until maturity, whether by acceleration or otherwise and thereafter. The lien of this Mortgage secures payment and performance of the Liabilities (as defined in the Note) including without limitation, any existing indebtedness and future advances, whether obligatory or non-obligatory, made pursuant to the Note, the terms and provisions of which Note are hereby incorporated, to the same extent as if such future advances were made on the date of execution of this Mortgage without regard to whether or not there is any advance made at the time this Mortgage is executed and without regard to whether or not there is any indebtedness outstanding at the time any advance is made.

1. **GRANT OF MORTGAGE.** To secure payment of the indebtedness evidenced by the Note, including any future advances, whether obligatory or non-obligatory, thereunder and any modifications, renewals, replacements, substitutions or extensions thereof, any other Liabilities and the performance of the representations, warranties, covenants and agreements of Mortgagor hereunder and under the other Financing Loan Documents as defined in this Mortgage, Mortgagor does by these presents convey, warrant and mortgage unto Mortgagee:

1.1 **Premises, Improvements and Goods.** All of Mortgagor's estates, rights, titles and interests in the real estate situated, lying and being in the County of Cook, and State of Illinois, legally described on **Exhibit A** attached hereto and made part hereof ("Premises"), including without limitation

TTI 5/14/27

TICOR TITLE INSURANCE

BOX 15

24/AE

UNOFFICIAL COPY

and as specifically owned by the Mortgagor, all existing and hereafter acquired or arising (i) improvements, buildings, tenements, hereditaments, appurtenances, strips and gores of land, water, gas, oil, minerals, and easements located in, on, over or under the Premises, and all types and kinds of building and furniture, fixtures, apparatus, machinery and equipment, including without limitation, all of the foregoing used in any construction on the Premises or to supply heat, gas, air conditioning, water, light, power, refrigeration or ventilation (whether single units or centrally controlled) and all screens, window shades, storm doors and windows, floor coverings, awnings, stoves, refrigerators, dishwashers and water heaters, whether now on or in the Premises or hereafter erected, installed or placed on or in the Premises, and whether or not physically attached to the Premises (collectively referred to as the "Improvements"); and (ii) all building materials, goods, carpeting, floor coverings, elevators, escalators, office equipment, growing plants, fire sprinklers and alarms, control devices, equipment (including motor vehicles) and all window cleaning, building cleaning, recreational, monitoring, garbage, air conditioning, pest control and other equipment, tools, furnishings, furniture, light fixtures, non-structural additions to the Premises and all other tangible property of any kind or character now or hereafter owned by Mortgagor and used or useful in connection with the Premises, any trade, business or other activity (whether or not engaged in for profit) for which the Premises is used, the maintenance of the Premises or the convenience of any guests, licensees or invitees of Mortgagor and regardless of whether located in or on the Premises or located elsewhere for purposes of fabrication, storage or otherwise and all renewals and replacements therefor or articles in substitution thereof, and all proceeds and products thereof, including without limitation all rights in and under the escrow accounts and reserves established pursuant to this Mortgage (all of the foregoing is herein referred to as "Goods"). The foregoing items are and shall be deemed a part of the Premises and a portion of the security for the Liabilities as between the parties hereto and all persons claiming by, through or under them. Notwithstanding the agreement that the Goods shall be deemed a part of the Premises, to the extent that the Goods may constitute "goods" as defined under the Uniform Commercial Code in the form or substantially in the form approved by the American Law Institute and the National Conference of Commissioners on Uniform State Law, as contained in the 2000 Official Text of the Uniform Commercial Code, including without limitation the revised Article 9 thereof, in effect in any jurisdiction at any time and from time to time, as may be amended from time to time, ("Code") this Mortgage shall in addition constitute a security agreement creating a security interest in the "goods", and "general intangibles" as collateral, with Mortgagee as a secured party and Mortgagor as debtor, all in accordance with the Code and this Mortgage.

1.2 Additional Collateral. As further security, Mortgagor does hereby grant a continuing security interest in, pledge, assign, transfer, deliver and grant to Mortgagee all of Mortgagor's rights, titles and interests in and to, whether now owned or existing and hereafter arising or acquired, all of Mortgagor's accounts (including health-care-insurance receivables), inventory, Goods (including inventory, equipment and any accessions thereto), equipment, instruments (including promissory notes), documents, deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, chattel paper (whether tangible or electronic), proceeds of insurance, books and records, fixtures, licenses, supporting obligations, tax refunds and general intangibles (including payment intangibles and software) relating to the development, use or operation of the Premises, including but not limited to all governmental permits relating to construction on the Premises, all names under or by which the Premises or any Improvements on the Premises may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Premises and in all accessions thereto and substitutions, products and proceeds thereof. If the Mortgagor shall at any time, whether or not revised Article 9 of the Code is in effect in any particular jurisdiction, acquire a commercial tort claim, as defined in revised Article 9 of the Code, the Mortgagor shall immediately notify the Mortgagee in a writing signed by the Mortgagor of the brief details thereof and grant to the Mortgagee in such writing a security interest therein and in the proceeds thereof, all upon the terms of the Mortgage, with such writing to be in form and substance satisfactory to the Mortgagee.

1.3 Insurance and Condemnation Awards. As further security, Mortgagor does hereby grant a continuing security interest in, pledge, assign, deliver and grant to Mortgagee all of Mortgagor's rights, titles and interests in and to all proceeds of the conversion, voluntarily or involuntarily, of the Premises or any part thereof into cash or liquidated claims, including without limitation, proceeds of

UNOFFICIAL COPY

insurance and condemnation awards (collectively referred to as the "Insurance and Condemnation Awards") and proceeds of all the foregoing collateral security.

1.4 Absolute Assignment of Leases and Rents. As further security, Mortgagor grants a continuing security interest in, pledges, assigns, transfers, delivers and grants to Mortgagee all now existing and hereafter arising leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whereby any person or entity agrees to pay money or other consideration for the use, possession or occupancy of, or any estate in, the Premises or any part thereof (collectively referred to as the "Leases") and all now existing and hereafter arising rents, issues, profits, royalties, avails, income and other benefits derived or owned by Mortgagor directly or indirectly from the Premises (collectively, the "Rents"), it being the intention hereby to establish an absolute transfer and assignment of all such Leases and Rents. Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Mortgagee) with or without taking possession of the Premises as provided in this Mortgage, to lease any portion of the Premises to any party on such terms as Mortgagee shall determine, and to collect all rents due with the same rights and powers and subject to the same immunities as Mortgagee would have upon taking possession pursuant to the terms of this Mortgage. Mortgagor represents that no rent has been or will be paid by any person or entity in possession of any portion of the Premises for more than one (1) installment in advance and that payment of none of the Rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Mortgagor. Mortgagor waives any right of set off against any person in possession of any portion of the Premises. Mortgagor agrees that Mortgagor will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing contained in this Mortgage shall be construed as constituting Mortgagee a mortgagee-in-possession in the absence of the taking of the actual possession of the Premises pursuant to this Mortgage. Mortgagor hereby expressly waives all liability of Mortgagee in the exercise of the powers granted to Mortgagee pursuant to this Mortgage. Mortgagor shall assign to Mortgagee all future leases on any part of the Premises and shall execute and deliver to Mortgagee, upon request by Mortgagee, all such further assurances and assignments as Mortgagee may require. Although the assignment herein is a present assignment, Mortgagee shall not exercise any of the rights or powers conferred upon Mortgagee pursuant to this **Section 1.4** until a Default (defined below) occurs or exists pursuant to the terms of this Mortgage. This Mortgage shall not obligate Mortgagee with any of the duties or obligations of a lessor of the Premises as set forth in any lease of any portion of the Premises. The Liabilities secured by this Mortgage shall not exceed 200% of the original face amount of the Note.

2. DEFINITIONS. The terms defined herein for all purposes of this Mortgage shall have the following meanings in this Mortgage, unless the context clearly requires otherwise. Any capitalized terms herein not otherwise defined in this Mortgage shall have the same meanings as defined in the Note.

- (a) "Additions or Alterations" means improvements, replacements, alterations, additions, enlargements or expansions in, on or to the Premises and any improvements on the Premises.
- (b) "Closing Date" means May 12, 2003.
- (c) "Collateral" means any and all present and future collateral security granted hereunder, under any of the other Financing Loan Documents or under any other instrument, document or agreement securing the Liabilities of the Mortgagor and any other obligor on the Note.
- (d) "Default" means the occurrence or existence of any one or more of the following events, conditions, acts or omissions:
 - (i) Mortgagor fails or neglects to make timely payment of any amount due on the Note or hereunder and continuance of such Default for a period of ten (10) calendar days;
 - (ii) Mortgagor or a Guarantor (defined hereunder) fails or neglects to make any timely payment of any amount due under any other note, instrument, document or agreement

UNOFFICIAL COPY

which, after notice or the lapse of any applicable grace or cure period, shall cause or permit the holder thereof to cause the obligations of Mortgagor or any Guarantor to become due prior to maturity;

(iii) Mortgagor or any Guarantor fails or neglects to comply with or to perform in accordance with any non-monetary representation, warranty, covenant, condition or other provision contained in this Mortgage, or under any of the other Financing Loan Documents and continuance of such Default for a period of thirty (30) calendar days after Mortgagee sends written notice of a Default under this Mortgage;

(iv) Mortgagor or any Guarantor fails to make any timely payment of any other Liabilities when due under this Mortgage or any other of the Financing Loan Documents and continuance of such Default for a period of ten (10) calendar days;

(v) any statement, application or agreement furnished at any time or from time to time to Mortgagee by Mortgagor or any Guarantor is false or incorrect in any material respect in light of the circumstances under which it was made;

(vi) Mortgagor or any Guarantor fails to furnish Mortgagee with additional or periodic financial statements or true and complete copies of filed federal and state income tax returns, and any amendments thereto, of the Mortgagor or any Guarantor, as Mortgagee may request from time to time;

(vii) the insolvency of Mortgagor or any Guarantor or the inability of Mortgagor or any Guarantor to pay their respective debts as they mature;

(viii) any admissions, either verbal or written, by Mortgagor or any Guarantor of the inability to pay their respective debts as they mature;

(ix) the execution of an assignment for the benefit of creditors by Mortgagor or any Guarantor or Mortgagor or any Guarantor files or commences any proceedings for relief under the Bankruptcy Code, as may be amended from time to time, or other insolvency laws or any laws relating to the relief of debtors, readjustment of any indebtedness, reorganization, composition, extension of debt, or a receivership or a trusteeship;

(x) there shall be any proceedings filed or commenced against Mortgagor or any Guarantor for relief under the Bankruptcy Code, as may be amended from time to time, or insolvency laws or any laws relating to the relief of debtors, readjustment of any indebtedness, reorganization, composition, extension of debt, or a receivership or a trusteeship is filed or commenced against Mortgagor or any Guarantor and the continuance of any such Default for more than sixty (60) calendar days thereafter;

(xi) any judgment, attachment, lien, execution, or levy against Mortgagor or any Guarantor, or against the Premises or any other property of Mortgagor or any Guarantor, including any of the Collateral, in any amount which is not promptly paid, discharged, released, bonded, stayed on appeal or otherwise fully satisfied and the continuance of such Default for a period of forty-five (45) calendar days thereafter;

(xii) any garnishment summons or a writ of attachment is issued against or served upon Mortgagee for the attachment of any property of Mortgagor in Mortgagee's possession or any indebtedness owing to Mortgagor or any Guarantor;

(xiii) the death or incompetency of Mortgagor or any Guarantor;

(xiv) the failure of Mortgagor or any Guarantor to pledge or grant or cause to be pledged or granted to Mortgagee a continuing security interest in the Collateral, or to furnish

UNOFFICIAL COPY

immediately additional and satisfactory Collateral upon request from Mortgagee when Mortgagee, in its sole discretion exercised in good faith, shall deem itself insecure for any reason whatsoever and continuance of such a Default for a period of thirty (30) calendar days after Bank sends such written request to the Mortgagor or Guarantor;

(xv) the cessation of business, dissolution or termination of Mortgagor or any Guarantor whether by voluntary or involuntary action;

(xvi) any and all other events or circumstances which cause Mortgagee, in its sole discretion exercised in good faith, to deem itself insecure for any reason whatsoever, including without limitation any adverse change in the financial condition or operations of Mortgagor, any Guarantor, the Premises or in any of the Collateral;

(xvii) the commencement of foreclosure proceedings or their judicial equivalent with respect to any lien or other mortgage encumbering the Premises regardless of whether or not that lien or mortgage is a Permitted Lien; or

(xviii) any default which continues after notice or lapse of any applicable grace or cure period, under any of the other Financing Loan Documents.

(e) "Environmental Laws" means any and all laws, statutes, ordinances, rules, regulations, orders, or determinations of any federal or state governmental authority or courts, pertaining to health or the environment, in effect at any time in any and all jurisdictions in which Mortgagor is or at any time may be doing business, or where the Premises and any other real property of Mortgagor are located.

(f) "Financing Loan Documents" means the Note, this Mortgage, any guaranties, Collateral Assignment(s) and financing statements including amendments and modifications thereof and extensions and renewals thereto.

(g) "good faith" means honesty in fact in the conduct or the transaction concerned as determined on a subjective basis.

(h) "Guarantor" means any endorser, guarantor, accommodation party, pledger of security for or surety and their respective estates, heirs, personal representatives, successors and assigns of any of the Liabilities.

(i) "Liabilities" means any and all liabilities, obligations and indebtedness including interest that, but for the provisions of the Federal Bankruptcy Code as may be amended from time to time, would have accrued on the Note and under the Mortgage and any other Financing Loan Documents, owing by Mortgagor or any Guarantor, or both, to Mortgagee for performance and payment of any and all amounts due under any of the Financing Loan Documents, all without relief from valuation and appraisal laws, and for any other liabilities, indebtedness and obligations of every kind and nature of Mortgagor or Guarantors, or both, owing to Mortgagee, whether heretofore, now or hereafter owing or arising, due or payable, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, whether existing or arising, through discount, overdraft, purchase, direct loan, by operation of law or otherwise, together with reasonable attorneys' and paralegals' fees and costs (including the costs to Mortgagee of using internal counsel, if applicable), experts', opinion witnesses' and other professionals' fees, costs and expenses relating to or arising out of protecting or enforcing or attempting to enforce Mortgagee's rights, remedies, liens, and security interests hereunder and under any other Financing Loan Documents from any lawsuits or actions at law or in equity, or administrative proceedings, appeals therefrom, or any matters arising from or relating to bankruptcy, reorganization, insolvency, compositions or assignment for the benefit of creditors, including without limitation advising Mortgagee, drafting and negotiating any of the Financing Loan Documents and extensions or renewals thereof and amendments or modifications thereto, and any other agreements and documents relating thereto at any time and from time to time in connection with the Liabilities. Liabilities includes all of the liabilities, obligations and indebtedness of any partnership owing to Mortgagee, created

UNOFFICIAL COPY

or arising by such partnership while Mortgagor may have been or may be a member of such partnership. Notwithstanding the foregoing, in no event shall the lien of this Mortgage secure outstanding Liabilities in excess of two hundred percent (200%) of the original stated principal indebtedness of the Note.

(j) "Manager" means Gem Partners, LLC and any other person or entity operating or managing the Premises from time to time.

(k) "Mortgagee" means TCF National Bank and all its successors and assigns of Mortgagee.

(l) "Mortgagor", whether individually or collectively, means Gem Partners, LLC and all other persons or entities liable for the payment of the indebtedness and other Liabilities secured hereby or any part thereof, whether or not such persons or entities shall have executed the Note or this Mortgage and shall also include all persons or entities which have executed this Mortgage for the purpose of joining in the representations, warranties, covenants and indemnifications hereunder and all of their respective estates, personal representatives, heirs, successors and assigns. Each Mortgagor shall be jointly and severally obligated hereunder.

(m) "Net Proceeds" means, when used with respect to any condemnation award or insurance proceeds, the gross proceeds from such condemnation award or insurance proceeds with respect to which that term is used remaining after payment of all expenses, including reasonable attorneys' and paralegals' fees and costs, and any expenses of Mortgagee incurred in the collection of such gross proceeds.

(n) "Permitted Liens" means as of any particular time, this Mortgage and liens for 2002 second installment real estate taxes not yet due and subsequent years not yet due.

(o) "Title Insurer" means Ticor Title Insurance Company and its successors and assigns.

3. MORTGAGOR REPRESENTATIONS, WARRANTIES AND COVENANTS. While any Liabilities remain owing to Mortgagee, Mortgagor represents, warrants and covenants the following:

3.1 PAYMENTS AND PERFORMANCE. Mortgagor shall duly and punctually pay the Liabilities in full when each becomes due and perform the obligations on or under the Note, this Mortgage and any other Financing Loan Documents.

3.2 TITLE. Mortgagor has good and marketable title to an indefeasible fee estate in the Premises, subject to no lien, charge or other encumbrance, except any Permitted Liens approved in writing by the Mortgagee, and that this Mortgage is and will remain a valid and enforceable first lien on the Premises.

3.3 ENVIRONMENTAL COMPLIANCE.

(a) The Premises are not subject to the disclosure requirements of the Illinois Responsible Property Transfer Act of 1988, as amended; and Mortgagor has complied with all requirements thereunder; the Premises and any other real property of Mortgagor and the respective operations conducted thereon do not violate any applicable federal, state or local law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any restrictive covenant or deed restriction (recorded or otherwise), including without limitation all applicable zoning ordinances, building codes, flood disaster laws and Environmental Laws; and Mortgagee has provided Mortgagee with a Certificate of Inspection prepared by an appropriate municipal authority or with other evidence satisfactory to Mortgagee that the Premises comply with all zoning ordinances, building codes and any requirements with respect to licenses or permits necessary for the lawful use and operation of the Premises, and with all instruments of record affecting the Premises;

(b) Without limitation of **Subsection 3.3(a)**, above, the Premises and any other real property of Mortgagor and the operations conducted thereon by Mortgagor or any current or prior

UNOFFICIAL COPY

owner or operator of the Premises or any other such real property or operation, are not in violation of or subject to any existing, pending or threatened action, suit, investigation, inquiry or proceeding by any federal, state or local governmental authority or to any remedial obligations under any Environmental Laws;

(c) All notices, permits, licenses or similar authorizations, if any, required to be obtained or filed in connection with the operation or use of the Premises and any other real property of Mortgagor, including without limitation past or present treatment, storage, disposal or release of a hazardous substance or solid waste into the environment, have been duly obtained or filed, and Mortgagor is and shall remain in compliance with all such notices, permits, licenses or similar authorizations;

(d) Any hazardous substance (defined below) or solid waste generated at the Premises and at any other real property of Mortgagor has in the past been and shall continue to be transported, treated and disposed of only by carriers maintaining valid permits under RCRA and any other Environmental Laws and only at treatment, storage and disposal facilities maintaining valid permits under RCRA and any other Environmental Laws, which carriers and facilities have been and are, to the best of Mortgagor's knowledge, operating in compliance with such permits;

(e) Mortgagor has taken and shall continue to take all steps necessary to determine and has determined and shall continue to determine that no hazardous substances or solid wastes have been disposed of or otherwise released and there has been no, nor shall Mortgagor permit any threatened release of hazardous substances in, on or under the Premises or in, on or under any other real property of Mortgagor except in compliance with Environmental Laws;

(f) Mortgagor has taken all steps necessary to determine and has determined that no, nor shall Mortgagor permit any hazardous substances, hazardous facilities, pollutants or contaminants are located in, on or under the Premises or in, on or under any other real property of Mortgagor;

(g) Mortgagor has and will have no material contingent liability in connection with any release or threatened release of any hazardous substance or solid waste into the environment; and

(h) The use which Mortgagor makes or intends to make of the Premises and any other real property of Mortgagor does not and will not result in the unlawful or unauthorized disposal or other release of any hazardous substance or solid waste in, on or under the Premises or in, on or under any other real property of Mortgagor.

The terms "hazardous substance", "release" and "threatened release" have the meanings specified in The Comprehensive Environmental, Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et. seq.*, ("CERCLA"), and the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in The Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 *et. seq.*, ("RCRA"); provided, however, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meanings shall apply subsequent to the effective date of such amendment, and provided further that, to the extent the laws of any state in which the Premises and any other real property of Mortgagor are located establish a meaning for "hazardous substance", "release", "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply with regard to the Premises and any other real property of Mortgagor located in such State. The terms "hazardous facilities", "pollutants" or "contaminants" shall have the meanings specified in any applicable local, state or federal statute, ordinance, code or regulation.

3.4 Power and Authority

UNOFFICIAL COPY

(a) The Mortgagor is a limited liability company duly organized and existing in good standing under the laws of the State of Illinois and has full power and authority to enter into the transactions contemplated by the Note, this Mortgage and the other Financing Loan Documents, to execute and deliver the Note, this Mortgage and the other Financing Loan Documents and to perform as required hereunder and thereunder;

(b) Except disclosed by Mortgagor in writing delivered to Mortgagee prior to the Closing Date, Mortgagor has not made any agreement or taken any action which may cause any individual, corporation or other entity ("Broker") to become entitled to a commission or a finder's fee as a result of Mortgagee's making the Loan ("Loan") as evidenced by the Note;

(c) All delinquent real estate taxes, levied special assessments and all special assessments levied for improvements on the Premises, which prior to the Closing Date have been authorized by any governmental unit or agency or commenced or for which a construction contract has been entered into prior to such date, have been paid or in case the amount of any such assessment is not known, an amount as required by the Title Insurer has been deposited with the Title Insurer insuring the lien of this Mortgage, in escrow in a savings account, pursuant to an escrow agreement in form and substance satisfactory to Mortgagee;

(d) No UCC financing statements have been filed against Mortgagor or the Premises except as will be terminated pursuant to the disbursement of the Loan, in connection with the Liabilities hereunder or as expressly permitted in writing by Mortgagee;

(e) Mortgagor does not own any margin security, and the Loan advanced under the Note will not be used for the purpose of purchasing or carrying any margin securities or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase any margin securities or for any other purpose not permitted by Regulation U of the Board of Governors of the Federal Reserve System; and

(f) There currently exists no management or other similar contract for the administration of the Premises ("Management Contract").

4. ADDITIONAL COVENANTS.

4.1 Repair, Maintenance, Payment and Performance, Maintain Premises. While any Liabilities remain owing to Mortgagee, Mortgagor shall:

(a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed;

(b) keep the Premises in good condition and repair, without waste, and, except for the Permitted Liens, free from any encumbrances, charges, security interests, liens, mechanics' liens or claims for lien;

(c) pay when due any indebtedness which may be secured by a lien or charge on the Premises, and upon request exhibit satisfactory evidence of the discharge of such lien or charge to Mortgagee;

(d) complete within a reasonable time any building or buildings now or at any time in process of construction upon the Premises;

(e) comply with all requirements of all federal, state and municipal laws, statutes, regulations and ordinances with respect to the Premises and the use of the Premises;

(f) refrain from impairing or diminishing the value of the Premises;

UNOFFICIAL COPY

(g) not sell, transfer (except for leases in the ordinary course of business) or otherwise dispose of or encumber, pledge, assign, grant a security interest in or mortgage the Premises or the improvements therein or thereon without the prior written consent of Mortgagee; and

(h) at Mortgagor's own cost and without expense to Mortgagee, preserve Mortgagor's title, and will defend the validity and priority of this Mortgage against the claims of all other persons and entities.

4.2 ADDITIONS AND ALTERATIONS. Mortgagor may, subject to obtaining the prior written consent of Mortgagee and at Mortgagor's own expense, make from time to time, any Additions or Alterations to the Premises Mortgagor may deem desirable for Mortgagor's business purposes that do not in any way materially increase the risk of fire or other hazard or otherwise adversely affect the structural integrity of the Premises or substantially reduce the value of the Premises; provided, however, all such Additions or Alterations to the Premises shall be located wholly within the boundary lines of the Premises and shall be in compliance with all applicable zoning and building ordinances. All such Additions or Alterations so made by Mortgagor shall become a part of the Premises and shall be subject to the lien of this Mortgage. Mortgagor will not permit, except as otherwise expressly permitted by the terms in this Mortgage, any mechanics' liens, security interests, charges or other encumbrances to remain against the Premises for labor or materials furnished in connection with any Additions or Alterations, unless payment for such labor or material is not yet due and payable; provided, however, Mortgagor may in good faith contest any mechanics' lien or other lien filed or established against the Premises, and in such event may permit the item so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, provided that nonpayment of any such item will not materially endanger the lien of this Mortgage as to any material part of the Premises or the revenues therefrom, and that neither the Premises nor any material part thereof will be subject to loss or forfeiture as a result of the nonpayment of any such item during such period. Prior to the commencement of any such contest, Mortgagor shall deposit with Mortgagee an amount of cash or letter of credit in form and substance acceptable to Mortgagee and equal to at least one hundred fifty percent (150%) of the contested amount or with the Title Insurer whatever amount of cash or other property the Title Insurer requires to insure over such liens. So long as no Default exists, Mortgagee will, at the expense of Mortgagor, cooperate with Mortgagor in any such contest. In the event that Mortgagor shall fail to pay any of the foregoing items required by this Subsection 4.2 to be paid by Mortgagor, Mortgagee may, but shall be under no obligation to, pay the same and any amounts so advanced therefor by Mortgagee shall become an additional obligation added to the Liabilities of Mortgagor, together with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note, secured by this Mortgage and payable on demand of Mortgagee. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto.

4.3 TITLE INSURANCE. Mortgagor shall furnish or shall cause to be furnished to Mortgagee an ALTA Mortgagee's Title Policy ("Title Policy") issued by the Title Insurer, acceptable by Mortgagee, showing Mortgagor as owner of the Premises in fee simple. The Title Policy shall insure this Mortgage (i) in the full amount of the Loan, with extended coverage and any endorsements required by Mortgagee, including without limitation, zoning, variable rate, usury, location, survey, access and comprehensive endorsements and any other endorsements as Mortgagee may require; and (ii) as a valid first lien on the Premises subject only to such exceptions, encumbrances, easements, defects and objections as are approved in writing by Mortgagee. At Mortgagee's request, the disbursement of the proceeds of the Loan shall be closed in escrow and disbursement of the proceeds withheld by Mortgagee pending the Title Insurer's issuance of the Title Policy with endorsements in form and substance acceptable to Mortgagee.

4.4 TAXES, ASSESSMENTS AND OTHER CHARGES.

(a) Mortgagor shall pay, when due and before any interest or penalty attaches, all general taxes, special taxes, special assessments, water taxes or charges, drainage taxes or charges, sewer service taxes or charges, and other taxes, assessments or charges against the Premises. Mortgagor shall, upon written request, furnish to Mortgagee duplicate paid receipts for such taxes, assessments and charges. To prevent a Default hereunder Mortgagor may pay in full, under protest, in the manner provided by statute, any tax, assessment or charge which Mortgagor may desire to contest prior to such tax, assessment or charge becoming delinquent.

UNOFFICIAL COPY

(b) Mortgagor may, at its sole expense and in its own name and behalf, in good faith, contest any such taxes, assessments and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided during such period enforcement of any such contested item shall be effectively stayed, and provided, further, nonpayment of any such item will not materially and adversely affect the lien or security interest afforded by this Mortgage as to any material part of the Premises or the revenues or receipts therefrom, and that neither the Premises nor any material part thereof will be subject to loss or forfeiture as a result of the nonpayment of any such item during such period. Upon the request of Mortgagee, Mortgagor shall deposit with Mortgagee an amount of cash or stand-by letter of credit acceptable in form and substance to Mortgagee and Title Insurer and equal to at least One hundred fifty percent (150%) of the contested amount or required by the Title Insurer in order for the Title Insurer to insure over such taxes, assessments or other charges. In the event that Mortgagor shall fail to pay any of the foregoing items required by this **Subsection 4.4(b)** to be paid by Mortgagor, Mortgagee may, but shall be under no obligation to, pay the same and any amounts so advanced therefor by Mortgagee shall become an additional obligation of Mortgagor added to the Liabilities of Mortgagor, together with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note secured by this Mortgage and payable upon demand by Mortgagee. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto.

4.5 INSURANCE.

(a) Mortgagor shall at all times keep the Premises continuously insured against such risks as are customarily insured against by businesses of like size and type, paying as the same become due all premiums in respect thereto, including, without limitation, all of the following:

(i) Mortgagor shall keep the Premises and all improvements thereon now existing or hereinafter erected insured against loss or damage resulting from fire, windstorm, lightning, vandalism, malicious damage and other hazards as may be designated by Mortgagee under a form of fire and extended coverage insurance policy for one hundred percent (100%) of the replacement cost without a co-insurance clause and without deduction for depreciation of the Premises and improvements on the Premises, which coverage shall at all times be in an amount at least equal to the outstanding principal balance of the Note. All such policies shall name Mortgagee as senior insured and loss payee, shall contain a standard mortgage clause in form and substance acceptable to Mortgagee, as provided in **Subsections 4.5(c)** and **(d)** below, and shall be assigned to Mortgagee as additional security for the Liabilities.

(ii) Mortgagor shall provide liability insurance in the amounts of \$1,000,000 per occurrence for Bodily Injury and \$1,000,000 per occurrence for property damage, and such policy shall name Mortgagee as an additional insured.

(iii) Mortgagor shall carry and maintain comprehensive worker's compensation insurance in such amounts as required by law.

(iv) If steam boilers or similar equipment for the generation of steam are located in, on or about the Premises, Mortgagor shall carry and maintain insurance against loss or damage by explosion, rupture or bursting of such equipment and appurtenances thereto, without a co-insurance clause, in an amount as Mortgagee may require, and such policies shall contain a standard mortgage clause in form and substance acceptable to Mortgagee.

(v) Mortgagor shall maintain business interruption/loss of rents insurance in the minimum amount of an amount equal to the total of twelve (12) monthly installment payments on the Note and tax reserve payments pursuant to the Note, and

UNOFFICIAL COPY

such policy shall contain a standard mortgage clause in form and substance acceptable to Mortgagee.

(vi) Mortgagor shall maintain builder's risk insurance including coverage under the Illinois Structural Work Act, as may be amended from time to time, upon any work done or materials furnished under construction contracts in the amount of one hundred percent (100%) of the insurable value of the contracts in the name of Mortgagee, Mortgagor and the contractors, as their respective interests may appear, and such policy shall contain a standard mortgage clause in form and substance acceptable to Mortgagee.

(vii) If the Premises are located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area, Mortgagor shall keep the Premises insured against loss by flood for which any Liabilities remaining outstanding and owing to Mortgagee in an amount equal to the lesser of the outstanding principal balance of the Note or the maximum limit of coverage available for the Premises and the buildings under the National Flood Insurance Act of 1968, and such policy shall contain a standard mortgage clause in form and substance acceptable to Mortgagee.

(viii) Mortgagor shall carry and maintain such other customary insurance, in such amounts and with such customary coverages, endorsements and payee designations as may be reasonably required by Mortgagee.

(b) All insurance policies shall be in form and substance acceptable to Mortgagee and shall be issued by insurance companies acceptable to Mortgagee.

(c) The standard mortgage clause shall name Mortgagee as "first mortgagee" as its interest may appear, without contribution, and shall provide, among other things, that Mortgagee shall have the right to receive loss payment from the insurer under any of the following circumstances:

i) The insured's claim is denied due to the insured's acts or the insured's failure to comply with the terms of the policy; or

ii) Mortgagee has brought a foreclosure action or other similar proceeding against the Premises.

(d) All insurance policies containing a standard mortgage clause shall also contain a waiver of the right of subrogation endorsement in favor of Mortgagee.

(e) All insurance policies shall provide that Mortgagee shall receive at least ten (10) business days' written notice prior to cancellation, termination or non-renewal for reason of nonpayment and at least thirty (30) days' written notice prior to cancellation, termination or non-renewal by any party for any other reason.

(f) Mortgagor hereby pledges, assigns and grants security interests in all the insurance policies required by Mortgagee hereunder and proceeds thereof and shall deliver all insurance policies, including additional and renewal policies, to Mortgagee. In case of insurance about to expire, Mortgagor shall deliver to Mortgagee all renewal policies at least thirty (30) days prior to the respective expiration date.

(g) Mortgagor shall have the right and responsibility to adjust any loss with the insurer involved and to conduct any negotiations in connection therewith; provided, that no settlement of claims in excess of \$5,000 shall be effected without the prior written consent of Mortgagee.

UNOFFICIAL COPY

(h) All Net Proceeds of insurance policies containing a standard mortgage clause shall be payable to Mortgagee, and Mortgagee may apply all Net Proceeds against the Liabilities in a manner as determined in its sole discretion.

(i) If prior to full payment and satisfaction of the Liabilities, the Premises are destroyed, in whole or in part, or are damaged by fire or other casualty, Mortgagor shall promptly give written notice thereof to Mortgagee.

(j) Mortgagor agrees to review the appraised value of the Premises annually with its insurance specialist and to increase the amount of insurance as is necessary, so that at all times, the respective amounts of any such insurance shall meet the requirements of this Section 4.5. Mortgagor shall provide Mortgagee with written evidence of such annual review, in form and substance acceptable to Mortgagee, within ten (10) calendar days thereafter.

4.6 DELIVERY OF DOCUMENTS. Upon the request of Mortgagee, Mortgagor shall deliver or cause to be delivered to Mortgagee originals or copies, as Mortgagee requests, of all leases of all or any portion of the Premises (with assignments of such leases in form and substance acceptable to Mortgagee). Mortgagor shall not, without Mortgagee's prior written consent, procure, permit or accept any prepayment, discharge or compromise of any rent or release any tenant from any obligation (except at the termination of such tenant's lease term as specified in the lease or upon a tenant default under the lease), at any time while the Liabilities remain owing to Mortgagee. Mortgagor shall enforce or shall cause to be enforced all leases while any of the Liabilities remain owing to Mortgagee, and all leases shall contain provisions of subordination and attornment by lessees in favor of Mortgagee in form and substance acceptable to Mortgagee.

4.7 CONDEMNATION. Any award of damages resulting from condemnation proceedings, exercise of the power of eminent domain, or the taking of the Premises for public use are hereby transferred, assigned and shall be paid to Mortgagee; and such awards or any part thereof may be applied by Mortgagee in the order Mortgagee in its sole discretion may elect, after the payment of all of Mortgagee's expenses, including reasonable attorneys' and paralegals' fees and costs, (including the cost to Mortgagee of using internal counsel, if applicable) to the reduction of the Liabilities secured hereby, and Mortgagee is hereby authorized, on behalf and in the name of Mortgagor, to execute and deliver valid acquittances and to appeal from any such award.

4.8 SALE, LEASE, ENCUMBRANCE PROHIBITED. Notwithstanding any other provisions of this Mortgage, no sale, lease (except in the ordinary course of the operation of the Premises), mortgage, trust deed, grant by Mortgagor of an encumbrance of any kind, conveyance, transfer of occupancy or possession, contract to sell, or transfer of the Premises, or any part thereof, or sale or transfer of ownership of any beneficial interest in or power of direction under a land trust or other trust which holds title to the Premises, may be made without the prior written consent of Mortgagee.

4.9 MORTGAGE PAYMENTS. If Mortgagee in its sole discretion makes any payment authorized by this Mortgage relating to taxes, assessments, charges, liens, security interests or encumbrances, Mortgagee may do so, but shall not be so obligated, according to any bill, statement or estimate received from the appropriate party claiming such funds without inquiry into the accuracy or validity of such bill, statement or estimate or into the validity of the lien, encumbrance, security interest, tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

4.10 TAX AND INSURANCE RESERVES.

(a) Unless otherwise agreed in writing by Mortgagee, Mortgagor agrees to deposit at the place as Mortgagee may, from time to time, in writing appoint and, in the absence of appointment then at the office of Mortgagee commencing on the Closing Date and monthly thereafter until the Liabilities secured by this Mortgage are fully paid and performed, tax reserve amounts which shall in the aggregate be equal to the sum of the amount of the accrued real estate taxes and assessments with respect to the Premises due and payable to the Cook County Collector when such real estate taxes and assessments are due. Notwithstanding the foregoing, if the taxes or

UNOFFICIAL COPY

assessments for the last ascertainable year exclude the buildings or improvements or any part thereof, now constructed or to be constructed on the Premises, then the amount of the deposits to be paid pursuant to this **Subsection 4.10(a)** shall be based upon the reasonable estimate of Mortgagee as to the amount of taxes and assessments which shall be levied or assessed. The deposits may be commingled with the general funds of Mortgagee and no interest and shall be payable thereon nor shall such sums be deemed held in trust for Mortgagor and so long as no Default occurs or exists hereunder such sums shall be applied by Mortgagee to pay such taxes and assessments when they become due. If the funds so deposited are insufficient to pay any of the taxes or assessments (general or special) for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of a notice and demand from Mortgagee, deposit the additional funds as may be necessary to pay such taxes and assessments (general and special). So long as no Default exists, any excess shall be applied to subsequent deposits for taxes and assessments or upon repayment of the Liabilities in full.

(b) Upon request by Mortgagee, concurrent with and in addition to the deposits for general and special taxes and assessments pursuant to the terms of **Subsection 4.10 (a)** hereof, Mortgagor shall deposit with Mortgagee a sum equal to the premiums that will next become due and payable on any insurance policies required hereunder, divided by the number of payments due annually under the Note so that such payments are sufficient to pay the insurance premiums when they become due and payable. All sums deposited hereunder may be commingled with the general funds of Mortgagee and no interest shall be payable thereon nor shall such sums be deemed held in trust for Mortgagor, so long as no Default occurs or exists hereunder, such sums shall be applied by Mortgagee, to pay the insurance premiums.

(c) Mortgagor shall keep and maintain all deposit accounts relating to the operation of the Premises and any other deposit accounts at Mortgagee while the Liabilities remain outstanding. While any Default, Mortgagee may set off any monies in the tax and insurance reserves without liability to Mortgagor.

(d) Notwithstanding anything contained in this Mortgage to the contrary, upon the occurrence or existence of a Default, Mortgagor agrees that Mortgagee, in its sole discretion and without any liability or notice to Mortgagor, may set off any monies in the Tax Reserve or Insurance Reserve, or both, of Mortgagor held in any of the deposit accounts pursuant to this **Section 4.10** or otherwise.

4.11 ACCURATE BOOKS, RECORDS AND FINANCIAL STATEMENTS. Mortgagor shall keep and maintain or shall cause to be kept and maintained, at all times, full, true and accurate books of accounts, in sufficient detail to adequately and correctly reflect the results of the operation of the Premises, which books and the records relating thereto, after Mortgagee sends Mortgagor five (5) calendar days prior notice, shall be open to inspection and copying by Mortgagee or its representatives during ordinary business hours, and Mortgagor shall furnish Mortgagee such other financial information as follows:

(a) Mortgagor shall submit or shall cause to be submitted to Mortgagee on an annual basis or more frequently as Mortgagee may request from time to time, annual financial statements, including statements of cash receipts and disbursements ("Financial Statements"), for the Premises in scope, form and substance acceptable to Mortgagee along with a Certificate of No Default signed by an individual or entity as required by Mortgagee. Mortgagor shall also furnish or cause to be furnished such other financial statements, financial reports and credit reports and information concerning Mortgagor, the Premises and the lessees occupying the Premises as Mortgagee may reasonably request from time to time, all in form, scope and substance acceptable to Mortgagee and with such acknowledgments as Mortgagee may specify.

(b) Mortgagor shall submit or cause to be submitted to Mortgagee on an annual basis and within one hundred twenty (120) calendar days after the end of Mortgagor's fiscal or calendar year-end, or more frequently as Mortgagee may request from time to time, its Financial Statements prepared by and in accordance with generally accepted accounting principles

UNOFFICIAL COPY

consistently applied and certified as true and accurate by an individual or entity required by Mortgagee.

(c) Mortgagor shall annually submit or cause to be submitted within twenty (20) calendar days after filing, if so requested by Mortgagee, copies of its federal income tax returns and any amendments thereto filed with respect to the immediately preceding fiscal or calendar year-end.

(d) Mortgagor shall annually submit or shall cause to be annually submitted within thirty (30) calendar days after the end of each calendar year, or more frequently as Mortgagee may request from time to time, a current rent roll for the Premises in form and substance acceptable to Mortgagee, certified as true and accurate by an individual or entity required by Mortgagee.

(e) Mortgagor shall cause each Guarantor to annually submit to Mortgagee within one hundred twenty (120) calendar days after the end of such Guarantor's calendar or fiscal year, as the case may be, or more frequently as Mortgagee may request from time to time, such (i) Guarantor's financial statements prepared by an individual or entity required by Mortgagee in accordance with generally accepted accounting principles consistently applied and signed by such Guarantor, and (ii) federal income tax returns and any amendments thereto filed for the immediately preceding fiscal or calendar year of such Guarantor.

4.12 MAINTENANCE OF EXISTENCE, FRANCHISES, LICENSES, LEASES, ETC. Mortgagor shall maintain in full force and effect its respective existing corporate, limited liability company or partnership existence, if any, as the case may be, and all licenses, franchises, leases, contracts and other rights necessary to the profitable conduct of Mortgagor's businesses, including, without limitation, all notices, permits or licenses, if any, filed or obtained with regard to compliance with Environmental Laws. Mortgagor shall continue in and limit its respective operations to the same general line or type of business as that presently conducted by Mortgagor and shall comply with all applicable laws and regulations or all federal, state or local governmental authorities, including without limitation, all Environmental Laws.

4.13 MORTGAGOR ENVIRONMENTAL LAW COMPLIANCE. Mortgagor shall, and shall require its lessees, mortgagees or operators of the Premises and any other real property of Mortgagor to, conduct their respective businesses so as to comply with all Environmental Laws; provided, however, nothing contained in this Section shall prevent Mortgagor from contesting, in good faith and by appropriate legal proceedings, any such laws, regulation or interpretation or application thereof; provided, further, Mortgagor shall comply with the order of any court or other governmental body of applicable jurisdiction relating to such Environmental Laws unless Mortgagor shall currently be prosecuting an appeal or proceedings for review and shall have secured a stay of enforcement or execution or other arrangement postponing enforcement or execution pending such appeal or proceedings for review.

4.14 REMOVAL OF HAZARDOUS SUBSTANCES. Mortgagor shall not permit the presence of any hazardous substances, hazardous facilities, pollutants or contaminants, including asbestos, in, on or under the surface of Premises. If Mortgagee determines at any time that asbestos exists in, on or under the Premises and may present a health hazard, or if removal of any hazardous substance pollutant or contaminant from the Premises is or may be required by any applicable governmental or regulatory authorities or pursuant to any applicable laws or regulations, Mortgagee may, in its sole discretion, require the removal or containment of such asbestos or any other hazardous substances at Mortgagor's sole expense.

4.15 LESSEE ENVIRONMENTAL LAW COMPLIANCE. Mortgagor shall, and shall use its best efforts to cause all lessees and any operators of the Premises or any other real property of Mortgagor to, dispose of any and all hazardous substances or solid waste generated or located at or on the Premises or such other real property only at facilities and by carriers maintaining compliance with the Environmental Laws. To the best of Mortgagor's knowledge, all such lessees are operating in compliance with valid permits under RCRA and any other applicable Environmental Laws, and Mortgagor shall use its best

UNOFFICIAL COPY

efforts to obtain certificates of disposal from all contractors employed in connection with the transport or disposal of such hazardous substances or solid waste.

4.16 ENVIRONMENTAL MONITORING SYSTEM. At Mortgagee's request from time to time, Mortgagor shall establish and maintain, and shall cause to be established and maintained, a system to assure and monitor continued compliance with the Environmental Laws by any and all lessees and operators of the Premises and any other real property of Mortgagor, which system shall include annual reviews of such compliance by employees or agents of Mortgagor who are familiar with the requirements of the Environmental Laws, and at the request of Mortgagee made no more than once each calendar year, Mortgagor shall at its sole expense obtain detailed review of such compliance (the "Environmental Report") from an environmental consulting firm acceptable to Mortgagee; provided, however, if any Environmental Report indicates any violation of Environmental Laws, such system shall provide that at the request of Mortgagee made within nine (9) months after the date of such Environmental Report, a detailed review of the status of such violation (a "Supplemental Report") by such environmental consultant. Mortgagor shall furnish or cause to be furnished an Environmental Report or such Supplemental Report to Mortgagee within forty-five (45) days after Mortgagee so requests, together with such additional information as Mortgagee may request.

4.17 NOTICE OF ENVIRONMENTAL LAW VIOLATION. If Mortgagor or any lessees or operators of the Premises shall receive (a) a notice that any alleged violation or violations of any Environmental Law may have been committed or is about to be committed by Mortgagor or any lessee; (b) a notice that any administrative or judicial complaint or order has been filed or is about to be filed against Mortgagor or any lessee alleging violation of any Environmental Law or requiring Mortgagor or any lessee to take any action in connection with the release or threatened release of hazardous substances or solid waste into the environment; or (c) a notice from a federal, state, or local governmental agency, court or private party alleging that Mortgagor or any lessee may be liable or responsible for costs associated with a response to or cleanup of a release or disposal of a hazardous substance or solid waste into the environment or any damages caused thereby, including without limitation any notice that Mortgagor or any lessee is a "potentially responsible party" as defined by CERCLA. Mortgagor shall provide Mortgagee with a copy of such notice within ten (10) calendar days after Mortgagor's or any lessee's receipt thereof. Mortgagor shall, or shall cause the lessee, as the case may be, to provide Mortgagee with notices of the enactment or promulgation of any Environmental Law which may result in a material adverse change in its business, financial condition, or operations of Mortgagor have a materially adverse effect on Premises or value of the Premises within fifteen (15) calendar days after Mortgagor obtains knowledge thereof.

4.18 INSPECTION OF PREMISES BY MORTGAGEE. Mortgagor shall permit, and shall cause any Manager to permit, Mortgagee or any person or persons designated by Mortgagee, from time to time hereafter, to call at Mortgagor's Premises or place or places of business or any other place where the Collateral or any information relating thereto is kept or located during reasonable business hours, without prior notice, hindrance or delay, to:

- (a) inspect, audit, check and make copies of and extracts from Mortgagor's or any Manager's books, records, journals, orders, receipts, correspondence and other data relating to Mortgagor's or any Manager's business, the Premises or to any transactions between the parties hereto and whether such items or data are maintained in accordance with Mortgagor's and any Manager's standard operating procedures or pursuant to this Mortgage;
- (b) verify such matters concerning the Premises as Mortgagee may consider reasonable under the circumstances;
- (c) discuss the affairs, finances and business of Mortgagor or any Manager; and
- (d) inspect the Premises, take soil borings and conduct any other tests or procedures at Mortgagor's sole expense and inspect any books, records, journals, orders, receipts, correspondence, notices, permits or licenses, with respect to compliance with Environmental Laws, and to determine, at Mortgagor's sole expense, whether any hazardous substances are present in, on or under the Premises or in, on or under any other real property of Mortgagor.

UNOFFICIAL COPY

Mortgagor shall deliver to Mortgagee, within ten (10) calendar days of Mortgagee's request therefor, any documents necessary to obtain records from any person maintaining such records. Mortgagor shall pay on demand or within ten (10) calendar days thereafter all costs and expenses incurred by Mortgagee in acquiring information pursuant to this **Section 4.18**, with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note. All expenditures incurred pursuant to the powers herein contained shall become a part of the Liabilities secured hereby. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto.

- 4.19 BROKERS.** Mortgagor shall pay all fees and commissions of any Broker and shall indemnify and hold Mortgagee harmless from any and all claims, suits, actions, losses, damages and expenses, including reasonable attorneys' and paralegals' fees and costs (including the cost to Mortgagee of using internal counsel, if applicable), relating to the Loan, by any Broker or other person or entity for a commission or finder's fee as a result of Mortgagee's making the Loan. This indemnity shall survive the consummation of the transactions contemplated by the Financing Loan Documents and payment and satisfaction in full of the Liabilities.
- 4.20 REGULATION U COMPLIANCE.** Mortgagor shall not directly or indirectly apply any part of the proceeds of the Loan to the purchasing or carrying of any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System, or any regulations, interpretations or rulings thereunder, as amended, added or changed from time to time.
- 4.21 NON-ASSUMPTION OF LIABILITIES.** Mortgagor agrees that the Loan shall not be assumed without the prior written consent of Mortgagee. If Mortgagee consents to any such assumption, the assuming party may be required to pay to Mortgagee, at the time of the assumption, a fee to be determined by Mortgagee. Further, unless otherwise agreed in writing signed by Mortgagee, a permitted assumption of the Mortgage shall not release Mortgagor from any liabilities hereunder or on the other Financing Loan Documents.
- 4.22 MANAGEMENT CONTRACTS.** Mortgagor agrees that any management contract entered into with any Manager or operator of the Premises after the Closing Date shall be in form and substance acceptable to Mortgagee and shall be assigned to Mortgagee as additional security for the Liabilities. Upon and after any Default by Mortgagor under any of the Financing Loan Documents, Mortgagee shall have the right to terminate any such management contract.
- 4.23 MORTGAGEE NON-LIABILITY.** Mortgagee shall not assume or be deemed to assume any responsibility, liability, or obligation for any filings, payments or taxes, premiums, assessments or any other charges or any other actions required to be made or taken (as the case may be) by Mortgagor which have been so made or taken or which have not been made or taken with respect to the compliance with the requirements of any Environmental Laws.
- 4.24 INDEMNIFICATION.** Mortgagor hereby indemnifies and holds harmless Mortgagee and its shareholders, directors, officers, employees, representatives and agents from and against any and all lawsuits, actions, claims, liabilities, obligations, losses, damages, including without limitation actual, consequential, special, indirect or punitive damages, penalties, judgments, costs, expenses, loss of profits or business, including without limitation reasonable attorneys' and paralegals' fees and costs (including the cost to Mortgagee of using internal counsel, if applicable) or disbursements of any kind or nature whatsoever, including without limitation title insurance premiums, escrow, recording, survey and appraisal fees, transfer taxes and stamp taxes and any diminution in the value of the Premises, which may be imposed on, incurred by or asserted against the Mortgagee or the Premises, or both, in any way relating to or arising under this Mortgage, under any

UNOFFICIAL COPY

of the other Financing Loan Documents or under applicable federal, state and local laws, regulations and ordinances. This Indemnification shall survive the termination, expiration and release of this Mortgage.

4.25 FEE PAYMENT. On or before the Closing Date, Mortgagor shall pay to Mortgagee a total fee of \$1,500.00 ("Fee"). The entire Fee is non-refundable.

5. MORTGAGE AS SECURITY AGREEMENT.

5.1 GRANT OF SECURITY INTEREST IN PERSONAL PROPERTY. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code, with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by Mortgagee pursuant to any of the provisions of the Note, this Mortgage or other Financing Loan Documents, and (ii) with respect to any instruments (including promissory notes), documents, deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software, supporting obligations, accounts (including health-care-insurance receivables), fixtures, goods (including inventory, equipment and any accessions thereto), equipment and inventory, chattel paper (whether tangible or electronic), returned goods and any and all products and proceeds thereof and other personal properties which may not be deemed to be affixed to the Premises owned by Mortgagor or in which Mortgagor has an interest within the meaning of the Code and all replacements of, substitutions for, additions to and proceeds thereof (collectively, the "Personal Property"). Mortgagor hereby grants Mortgagee a security interest in all now owned or existing and hereafter acquired or arising Personal Property of Mortgagor, to secure payment and performance of the Liabilities. If the Mortgagor shall at any time, whether or not revised Article 9 of the Code is in effect in any particular jurisdiction, acquire a commercial tort claim, as defined in revised Article 9 of the Code, the Mortgagor shall immediately notify the Mortgagee in a writing signed by the Mortgagor of the brief details thereof and grant to the Mortgagee in such writing a security interest therein and in the proceeds thereof, all upon the terms of the Mortgage, with such writing to be in form and substance satisfactory to the Mortgagee. The provisions of this Section **5.1** shall not limit the applicability of any other provision of this Mortgage but shall be in addition to the other provisions of this Mortgage.

5.2 MORTGAGOR SOLE OWNER OF PERSONAL PROPERTY. Mortgagor, or if Mortgagor is a Trustee, to the extent authorized by the Trust Agreement, is and will be the sole owner of the Personal Property, free and clear of all security interests, liens and encumbrances other than securities interests, liens and encumbrances in favor of Mortgagee. No financing statement (other than any financing statement in favor of Mortgagee) covering any of the Personal Property or any proceeds thereof is or will be on file at any public office. Mortgagor shall, at Mortgagor's sole expense, execute and deliver to Mortgagee such financing statements, information and other documents in form and substance satisfactory to Mortgagee and shall perform all such acts as Mortgagee shall request or require from time to time to establish and maintain a perfected security interest in the Personal Property.

5.3 DEFAULT, RIGHTS OF MORTGAGEE. Upon and after a Default Mortgagee may (a) in its sole discretion declare any or all of the Liabilities to be immediately due and payable without notice or demand to Mortgagor or any other person; (b) in connection with the collection, any amounts due under the Note and this Mortgage and in the enforcement or attempted enforcement of Mortgagee's rights and remedies under the Note, this Mortgage and the other Financing Loan Documents, Mortgagor shall pay all costs and expenses of Mortgagee, including all reasonable attorneys' and paralegals' fees, costs and expenses, replevin bonds, court costs, as well as all costs of retaking, holding, preparing for sale or lease, selling or leasing any of the Personal Property; (c) demand, sue for, collect, make any compromise, renewal, extension, settlement, release, exchange, or take any other action to protect Mortgagee's interests with respect to any of the Liabilities and the Collateral; (d) without demand or notice, demand and notice being specifically waived by Mortgagor enter any of the Premises of Mortgagor without the obligation to pay rent and remove the Personal Property and Mortgagee may require Mortgagor at the expense of Mortgagor, to assemble any of the Personal Property and make the Personal Property available at such times or places as Mortgagee shall determine; and (e) at any time dishonor any checks or drafts drawn by Mortgagor on Mortgagee. Upon and after a Default, Mortgagee shall have all the rights and remedies of a

UNOFFICIAL COPY

secured party under the Code this Mortgage, the Note, and any other instruments, documents and agreements relating to the Liabilities or the Personal Property or the Collateral, all of which rights and remedies shall be cumulative and none exclusive. Mortgagor agrees that, in order for Mortgagee to enter the Premises where the Personal Property is believed by Mortgagee to be located, Mortgagee, if permitted by law, is irrevocably authorized to disconnect or disable in any manner any security devices or other similar devices. Mortgagor agrees that Mortgagee, at any time and from time to time, and whether on or after a Default shall have the right to set-off, appropriate and apply without liability to Mortgagor toward the payment of any of the Liabilities, whether matured or unmatured, in such order of application as Mortgagee may from time to time elect, any cash, credits, deposits, accounts, instruments, reserves, securities, holdbacks, and any other properties whether matured or unmatured of Mortgagor or of any Guarantor, whether matured or unmatured, in the possession, custody or control of Mortgagee for any reason.

5.4 NOTICE OF DISPOSITION OF PERSONAL PROPERTY. If any notification of intended disposition of any of the Personal Property is required by law, such notification shall be deemed reasonable and properly given if mailed, postage prepaid, to Mortgagor at the address specified hereunder at least ten (10) calendar days before such intended disposition. Notification shall not be necessary if the Personal Property is perishable or threatens to decline speedily in value, or is of a type customarily sold in a recognized market. The sale, lease, or other disposition of any or all of the Personal Property after Default may be for cash, credit or any combination thereof, and Mortgagee may purchase any or all of the Personal Property at a public sale, or if permitted by law, at a private sale. Any sale of the Personal Property may involve only a part of it and may occur at different locations, at different times, and may be adjourned without notice to anyone at any time. Mortgagee shall have the right to conduct from time to time any sale or lease of any of the Personal Property on Mortgagor's Premises without any obligation to pay rent. Any net proceeds from the sale or other disposition of any of the Personal Property may be applied by Mortgagee, in its sole discretion, to the payment of all expenses and costs incurred by Mortgagee, including costs and reasonable attorneys' and paralegals' fees, relating in any manner to the disposition of the Personal Property. Any balance of such proceeds may be applied by Mortgagee to the payment of the Liabilities, in such order of application as Mortgagee may from time to time elect, and Mortgagor irrevocably waives the right to direct application of any payments received by Mortgagee from Mortgagor and Guarantor or other person or source, or in connection with the Personal Property. Mortgagor shall remain liable for any deficiency on the Liabilities. If there are more than one Mortgagor, Mortgagee shall pay any surplus proceeds to any one or more of Mortgagor as Mortgagee may determine. Mortgagor hereby agrees to indemnify, defend and hold Mortgagee harmless from any and all claims, lawsuits, causes of action, losses, damages and liabilities, including reasonable attorneys' and paralegal fees, costs and expenses relating to any act or failure to act by Mortgagee in any manner with respect to the Liabilities or the Personal Property and from any and all claims, lawsuits, causes of action, losses, damages and liabilities, including reasonable attorneys' and paralegal fees, costs and expenses by, against, between or among any of the Mortgagors arising out of or in connection with any of the Liabilities, or the Personal Property.

5.5 MORTGAGE AND FINANCING STATEMENT. This Mortgage is intended to be a financing statement within the provisions of revised Article 9 of the Code in effect at any time and from time to time with respect to the Personal Property which are or may become fixtures to the Premises. This Mortgage is to be filed for record with the Recorder of Deeds of the county where the Premises are located. The Mortgagor is the record owner of the Premises. The Mortgagor hereby irrevocably authorizes the Mortgagee at any time and from time to time to file any initial financing statements and amendments thereto, without the Mortgagor's signature or other authentication, that (a) indicate the Collateral (i) as all Personal Property of the Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Collateral can be perfected by filing a financing statement, and regardless of whether any particular asset is excluded from the definition of Collateral, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment. The Mortgagor hereby further irrevocably authorizes the Mortgagee at any time and from time to time to file any terminations of the financing statements of other secured parties which relate to any or all of the Collateral as long as such terminations are filed in good faith.

UNOFFICIAL COPY

6. MORTGAGE DEFAULT AND REMEDIES.

6.1 **DEFAULT.** Upon or after the occurrence of a Default, in the sole election of Mortgagee and without notice to Mortgagor, Mortgagee may declare all Liabilities to be immediately due and payable, and Mortgagor shall pay all costs and expenses of Mortgagee, including without limitation reasonable attorneys' and paralegals', surveyor, environmental engineer, appraiser, opinion witnesses and other professional fees and costs whatsoever (including the cost to Mortgagee of using internal counsel, if applicable) and expenses incurred in connection with this Mortgage and all expenses incurred in the enforcement or attempted enforcement of Mortgagee's rights in the Premises and other costs and expenses incurred in connection with the disposal of the Premises, with interest thereon at a per annum rate equivalent to the Default Rate set forth in the Note. All expenditures incurred pursuant to the powers herein shall become a part of the Liabilities secured hereby and payable on demand. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto.

6.2 **INJUNCTION.** Mortgagor agrees that damages may not be adequate to protect Mortgagee and therefore, upon or after the occurrence of a Default, Mortgagee may proceed to protect and enforce Mortgagee's rights hereunder by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.

6.3 **FORECLOSURE.** When the Liabilities shall become due, whether by acceleration or otherwise, Mortgagee also shall have the right to foreclose the lien of this Mortgage. Upon the bringing of any suit to foreclose this Mortgage, Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard to the solvency or insolvency of Mortgagor or the then value of the Premises, to the extent permitted by applicable law, be entitled to have itself appointed and become mortgagee in possession for all or any part of the Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of Mortgagee as such mortgagee in possession and shall not oppose any such appointment. Any such mortgagee in possession may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property with respect thereto or any part thereof during the pendency of any foreclosure.

6.4 **ADDITIONAL LIABILITIES.** In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional Liabilities in the judgment of foreclosure all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys', paralegals', opinion witnesses, receivers, professionals' fees and all other costs whatsoever (including the cost to Mortgagee of using internal counsel, if applicable), opinion witnesses', appraisers', environmental engineers; receivers' and other professionals' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all abstracts of title, title searches, environmental remediation, environmental studies, drilling reports and examinations, title insurance policies, tax and lien searches, and similar data and assurances with respect to title as Mortgagee may deem to be reasonable either to prosecute the foreclosure suit or to evidence to bidders at any foreclosure sale. All of the foregoing items, which may be expended after entry of the foreclosure judgment, may be estimated by Mortgagee. All expenditures and expenses mentioned in this Section 6.4, when incurred or paid by Mortgagee shall become additional Liabilities secured hereby and shall be immediately due and payable, with interest thereon at a rate equivalent to the Default Rate set forth in the Note. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto. This Section 6.4, shall also apply to any expenditures or expenses incurred or paid by Mortgagee or on behalf of Mortgagee in connection with (a) any suit, action or proceeding and any appeals therefrom, including without limitation, probate, bankruptcy and reorganization proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage, or any indebtedness and other Liabilities secured hereby; (b) any preparation for the commencement of any suit for the foreclosure of this Mortgage after accrual of the right to foreclose whether or not actually commenced or preparation for the commencement of any suit to collect upon or enforce the provisions of the Note or any agreement, instrument or document

UNOFFICIAL COPY

which secures the Note on and after Default, whether or not actually commenced; and (c) any preparation for the defense of any threatened suit or proceeding which might affect the Premises or Mortgagee's interests in or liens on the Premises or any other collateral security for the Liabilities the security hereof, whether or not actually commenced.

6.5 MARSHALING. Mortgagor for itself and for all who may claim through or under Mortgagor 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 foreclosure such lien may order the Premises sold as an entirety.

6.6 FORECLOSURE PROCEEDS APPLICATION. The proceeds of any foreclosure sale shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all the items that are mentioned in **Section 6.5**, above; Second, all other items which under the terms of this Mortgage constitute liabilities secured by this Mortgage in addition to the liabilities evidenced by the Note, with interest thereon as herein provided; Third, all principal and interest remaining unpaid on the Note and any other Liabilities (first to interest and then to principal); and Fourth, any surplus to Mortgagor or Mortgagor's legal representatives, successors or assigns, as their rights may appear.

6.7 RECEIVER APPOINTMENT. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such suit is filed may appoint a receiver of the Premises. The receiver's appointment may be made either before or after entry of judgment of foreclosure, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for the receiver and without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead or not. Mortgagee may be appointed as the receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of the foreclosure suit and, in case of an entry of judgment of foreclosure, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further time when Mortgagor, except for the intervention of the receiver, would be entitled to collect the rents, issues and profits. Such receiver shall also have all other legal and equitable powers which may be necessary or are usual for the protection, possession, control, management and operation of the Premises. The court in which the foreclosure suit is filed may from time to time authorize the receiver to apply the net income in the receiver's hands in payment in whole or in part of the Liabilities secured hereby, or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien or encumbrance which may be or become superior to the lien hereof or of the judgment, and the deficiency judgment against Mortgagor or any Guarantor in case of a forfeiture sale and deficiency.

7. WAIVER OF RIGHTS OF REDEMPTION AND REINSTATEMENT.

7.1 Mortgagor Hereby Waives Any And All Rights And Benefits Of The Homestead Exemption Laws In The Premises And Rights Of Redemption From Sale Under Any Order Or Judgement Of Foreclosure Of This Mortgage And Any Rights Of Reinstatement Pursuant To The Laws Of The State Of Illinois Regarding Foreclosure Of Mortgages, On Mortgagor's Own Behalf And On Behalf Of Each And Every Person, Except Judgement Creditors Of Mortgagor, Acquiring Any Interest In Or Title To The Premises As Of Or Subsequent To The Date Of This Mortgage.

7.2 In The Event The Premises Is Agricultural Property Or Mortgagor Is An Illinois Corporation, Limited Liability Company or Limited Partnership or A Foreign Corporation Licensed To Do Business In The State Of Illinois Or A Corporate Trustee Of An Express LAND Trust, Mortgagor Hereby Waives Any And All Rights Of Redemption From Sale Under Any Order Or Judgement Of Foreclosure Of This Mortgage. Mortgagor Waives Any Rights Of Reinstatement Pursuant To The Laws Of The State Of Illinois Regarding Foreclosure Of Mortgages, On Mortgagor's Own Behalf And On Behalf Of Each And Every Person, Except Judgement Creditors Of Mortgagor, Acquiring Any Interest In Or Title To The Premises, As Of Or Subsequent To The Date Of This Mortgage.

UNOFFICIAL COPY

7.3 In The Event The Premises Is Residential Property As Defined Under The Laws Of The State Of Illinois Regarding Foreclosure Of Mortgages, But Prior To The Filing Of A Complaint For Foreclosure, The Premises Ceases To Qualify As Residential Property, Mortgagor Hereby Waives Any And All Rights Of Redemption From Sale Under Any Order Or Judgement Of Foreclosure Of This Mortgage And Any Rights Of Reinstatement Pursuant To The Laws Of The State Of Illinois Regarding Foreclosure Of Mortgages, On Mortgagor's Own Behalf And On Behalf Of Each And Every Person, Except Judgement Creditors Of Mortgagor, Acquiring Any Interest In Or Title To The Premises As Of Or Subsequent To The Date Of This Mortgage.

8. MISCELLANEOUS.

8.1 SUCCESSORS AND ASSIGNS. Mortgage and all applicable provisions hereof shall be binding upon Mortgagor and upon Mortgagor's heirs, estates, legal representatives, successors and assigns and all persons or parties claiming by, under or through Mortgagor, and shall inure to the benefit of Mortgagee and its successors and assigns.

8.2 NOTICES. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be given by any of the following means: (i) personal delivery; facsimile, telex, telegram or telecopying (if confirmed in writing sent by first class mail, postage prepaid); or (ii) certified, first class mail, return receipt requested, postage prepaid. Such addresses may be changed by notice to the other parties hereto given in the same manner as provided above. Any notice, demand or request sent pursuant to either (i) or (ii) of this subsection shall be deemed received upon such personal service or upon dispatch by electronic means, and, if sent pursuant to (iii), shall be deemed received three (3) calendar days following deposit in the mail.

To Mortgagor: Gem Partners, LLC
11952 S. Harlem Avenue
Palos Heights, IL 60463

To Mortgagee: TCF National Bank
 800 Burr Ridge Parkway
 Burr Ridge, Illinois 60527
 Attn: Manager Commercial Loans

Failure to send a copy of any notice hereunder to any legal counsel designated above shall in no manner render such notice, if any, to Mortgagor or Mortgagee defective or ineffective. No change in address of Mortgagor shall be effective unless sent in writing to the other party at the above address.

8.3 RELEASE OF MORTGAGE. Mortgagee shall release this Mortgage by a proper release after payment and satisfaction in full of all the Liabilities.

8.4 SINGULAR AND PLURAL. The singular shall include plural, the plural shall mean the singular and use of any gender shall be applicable to all genders. If there is more than one Mortgagor, then all Mortgagors shall be jointly and severally under this Mortgage.

8.5 Time Is Of The Essence. Time is of the essence on the Note and this Mortgage.

8.6 PERSONAL SERVICE WAIVER. MORTGAGOR WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON MORTGAGOR, AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE BY U.S. MAIL OR MESSENGER OR REPUTABLE OVERNIGHT DELIVERY SERVICE DIRECTED TO MORTGAGOR AT THE ADDRESS SET FORTH HEREIN AND THAT SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT, DELIVERY OR THREE (3) DAYS AFTER THE SAME SHALL HAVE BEEN POSTED TO MORTGAGOR.

8.7 RIGHT TO JURY TRIAL WAIVED. MORTGAGOR AND MORTGAGEE VOLUNTARILY WAIVE ALL RIGHTS TO TRIAL BY JURY. MORTGAGOR AND

UNOFFICIAL COPY

MORTGAGEE ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THE FINANCING RELATIONSHIP, THE FINANCING LOAN DOCUMENTS AND ANY FUTURE TRANSACTIONS. MORTGAGOR AND MORTGAGEE ACKNOWLEDGE EACH HAS BEEN REPRESENTED BY THEIR RESPECTIVE LEGAL COUNSEL OR HAS HAD THE OPPORTUNITY TO DO SO IN MAKING THIS WAIVER AND EXECUTING THE FINANCING LOAN DOCUMENTS.

8.8 WAIVER AND AMENDMENT. This Mortgage and the provisions hereof may be amended, modified, waived, discharged or terminated only in writing signed by an authorized individual on behalf of Mortgagee and by any other party, if any, against which enforcement of the amendment, modification, waiver, discharge or termination is sought. Payment of insurance premiums or taxes or other liens or charges by Mortgagor shall not be deemed to be a waiver of any existing Default.

8.9 COSTS, EXPENSES AND ADDITIONAL LIABILITIES. Mortgagee may, but need not, make any payment or perform any act required of Mortgagor hereunder in any form and manner deemed expedient by Mortgagee, and Mortgagee may, but need not, make full or partial payments of principal or interest on any encumbrances, liens or security interests affecting the Premises, and Mortgagee may purchase, discharge, compromise or settle any tax lien or other lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' and paralegals' fees and costs, (including the cost to Mortgagee of using internal counsel, if applicable) and any other funds advanced by Mortgagee to protect the Premises or the lien hereof, plus reasonable compensation to Mortgagee for each matter concerning which action herein authorized may be taken, shall be so much additional Liabilities secured hereby and shall become immediately due and payable without notice and with interest thereon at a per annum rate equivalent to the post maturity rate set forth in the Note. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto.

8.10 DEFENSES. No action for the enforcement of the lien or of any provision of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

8.11 REMEDIES CUMULATIVE, NOT EXCLUSIVE, DELAY. No remedy or right of Mortgagee hereunder shall be exclusive. Each right or remedy of Mortgagee with respect to the Liabilities, this Mortgage or the Premises shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay or forbearance by Mortgagee in exercising, or omitting to exercise, any remedy or right accruing on Default shall impair any such remedy or right, or shall be construed to be a waiver of any such Default, or acquiescence therein, or shall affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to Mortgagee on account of any Default hereunder on the part of Mortgagor.

8.12 ENTIRE AGREEMENT. This Mortgage and the other Financing Loan Documents executed and delivered pursuant hereto or thereto constitute the entire agreement between the parties.

8.13 CONSTRUCTION, CHOICE OF LAW AND SEVERABILITY. MORTGAGOR ACKNOWLEDGES THAT THIS MORTGAGE IS BEING ACCEPTED BY MORTGAGEE IN PARTIAL CONSIDERATION OF MORTGAGEE'S RIGHT TO ENFORCE IN THE STATE OF ILLINOIS AND THE COUNTY OF COOK THE TERMS AND PROVISIONS HEREUNDER AND UNDER ANY OF THE OTHER FINANCING LOAN DOCUMENTS; MORTGAGOR CONSENTS TO JURISDICTION IN, AND CONSTRUCTION OF THIS MORTGAGE AND ANY OTHER FINANCING LOAN DOCUMENTS UNDER THE INTERNAL LAWS OF THE STATE OF ILLINOIS, EXCLUDING ITS CONFLICTS OF LAW PRINCIPLES, AND VENUE IN THE COUNTY OF COOK FOR SUCH PURPOSES; MORTGAGOR WAIVES ANY AND ALL RIGHTS TO CONTEST JURISDICTION AND VENUE OF THE STATE OF ILLINOIS AND COUNTY OF COOK OVER MORTGAGOR FOR THE PURPOSE OF ENFORCING THIS MORTGAGE AND ANY OF THE OTHER FINANCING LOAN

UNOFFICIAL COPY

DOCUMENTS; AND MORTGAGOR WAIVES ANY AND ALL RIGHTS TO COMMENCE ANY ACTION, WHETHER BY COMPLAINT, COUNTER COMPLAINT OR CROSS-COMPLAINT OR COUNTERCLAIM WITH RESPECT TO THE LIABILITIES, AGAINST MORTGAGEE IN ANY JURISDICTION OTHER THAN IN THE STATE OF ILLINOIS AND IN THE COUNTY OF COOK.

8.14 SEVERABILITY. If any provisions of this Mortgage are prohibited by or determined to be invalid under applicable law, such provisions shall be ineffective to the extent of such prohibitions or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Mortgage.

8.15 COUNTERPARTS. This Mortgage may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

8.16 EXCULPATION. In the event Mortgagor is a land trustee, then this Mortgage is executed by the Trustee, not personally, but as trustee in the exercise of the power and authority conferred upon and vested in it as the trustee, and insofar as the trustee is concerned, is payable only out of the trust which in part is securing the payment hereof, and through enforcement of the provisions of the Note, the other Financing Loan Documents and any other collateral or guaranty from time to time securing payment and performance of the Liabilities hereof; no personal liability shall be asserted or be enforceable against the trustee, because or in respect of this Mortgage or the making, issue or transfer thereof, all such personal liability of the trustee, if any, being expressly waived in any manner.

WITNESS THE HAND and seal of Mortgagor the day and year set forth above.

Address: 11952 S. Harlem Avenue, Palos Heights, Illinois 60463

GEM PARTNERS, LLC

By: _____

John T. Matthews
Its: Manager

By: _____

William Kanatas
Its: Manager

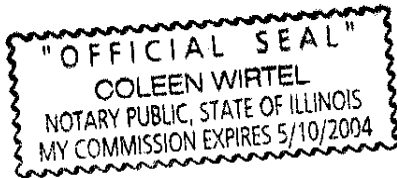
STATE OF ILLINOIS)

COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that John T. Matthews and William Kanatas, personally known to me to be the same persons whose names are as Managers of Gem Partners, LLC, an Illinois limited liability company subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that they, being thereunto duly authorized, signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 12th day of May, 2003.

Notary Public



UNOFFICIAL COPY

EXHIBIT A

To

COMMERCIAL MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT

AND

FINANCING STATEMENT

DATED AS OF MAY 12, 2003 BETWEEN

GEM PARTNERS, LLC

AND

TCF NATIONAL BANK

LEGAL DESCRIPTION

LOTS 20, 21 AND 22 IN BLOCK 4 IN SOUTH HARVEY, A SUBDIVISION OF THE SOUTH
¼ OF THE NORTHEAST ¼ OF SECTION 30, TOWNSHIP 36 NORTH, RANGE 14 EAST OF
THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 1722 W. 170TH STREET, EAST HAZEL CREST, IL 60429

PIN: 29-30-220-041, 29-30-220-042, 29-30-220-043

PREPARED BY AND AFTER RECORDING MAIL TO:

TCF NATIONAL BANK
800 Burr Ridge Parkway
Burr Ridge, Illinois 60527
Attn: Commercial Lending Department