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Eugene "Gene" Moore Fee: \$90.00
Cook County Recorder of Deeds
Date: 08/01/2003 02:54 PM Pg: 1 of 34

01-09708

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BRICKTOWN MALAN, LLC,
a Delaware limited liability company, as mortgagor

(Borrower)

to

UBS REAL ESTATE INVESTMENTS INC., as mortgagee

(Lender)

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

Dated: As of July 14, 2003
Location: 6560 West Fullerton Avenue, Chicago, Illinois
County: Cook

PREPARED BY ~~AND UPON~~
~~RECORDATION RETURN TO:~~

Brown Raysman Millstein Felder & Steiner, LLP
900 Third Avenue
New York, New York 10022
Attention: Scott A. Weinberg, Esq.
4194/102

WHEN RECORDED RETURN TO
LANDAMERICA
NCS Division
1050 Wilshire Dr., Ste. 910
Troy, MI 48064
Case No. 092238 MLL

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MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "**Mortgage**") is made as of this 14th day of July, 2003, by BRICKTOWN MALAN, LLC, a Delaware limited liability company, having its principal place of business c/o Malan Realty Investors, Inc., 30200 Telegraph Road, Suite 105, Bingham Farms, Michigan 48025-4503, as mortgagor ("**Borrower**"), for the benefit of UBS REAL ESTATE INVESTMENTS INC., having an address at 1285 Avenue of the Americas, 11th Floor, New York, New York 10019, as mortgagee ("**Lender**").

WITNESSETH:

A. This Mortgage is given to secure a loan (the "**Loan**") in the principal sum of Twenty Million Five Hundred Thousand and No/100 Dollars (\$20,500,000.00) or so much thereof as may be advanced pursuant to that certain Loan Agreement dated as of the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), and evidenced by that certain Promissory Note dated the date hereof made by Borrower to Lender (such Note, together with all extensions, renewals, replacements, restatements or modifications thereof, being hereinafter referred to as the "**Note**"). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.

B. Borrower desires to secure the payment of the outstanding principal amount of the Loan together with all interest accrued and unpaid thereon and all other sums (including the Prepayment Fee and the Exit Fee) due to Lender in respect of the Loan and the Loan Documents (the "**Debt**") and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents.

C. This Mortgage is given pursuant to the Loan Agreement, and payment, fulfillment and performance by Borrower of its obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Mortgage.

NOW THEREFORE, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Mortgage:

ARTICLE 1 GRANTS OF SECURITY

Section 1.1 Property Mortgaged. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender and its successors and assigns the following property, rights, interests and estates now owned or hereafter acquired by Borrower (collectively, the "**Property**"):

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(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the “**Land**”);

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Mortgage;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (collectively, the “**Improvements**”);

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Equipment. All “equipment,” as such term is defined in Article 9 of the Uniform Commercial Code (as hereinafter defined) now owned or hereafter acquired by Borrower, which is used at or in connection with the improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Borrower and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the “**Equipment**”). Notwithstanding the foregoing, Equipment shall not include any property belonging to Tenants under Leases except to the extent that Borrower shall have any right or interest therein;

(f) Fixtures. All Equipment now owned, or the ownership of which is hereafter acquired, by Borrower which is so related to the Land and Improvements forming part of the Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in or used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to, engines, devices for the operation of pumps, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, plumbing, laundry, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems,

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disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Borrower's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "**Fixtures**" shall not include any property which Tenants are entitled to remove pursuant to Leases except to the extent that Borrower shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits, and all other personal property of any kind or character whatsoever (as defined in and subject to the provisions of the Uniform Commercial Code), other than Fixtures, which are now or hereafter owned by Borrower and which are located within or about the Land and the Improvements, together with all accessories, replacements and substitutions thereto or therefor and the proceeds thereof (collectively, the "**Personal Property**"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (as amended from time to time, the "**Uniform Commercial Code**"), superior in lien to the lien of this Mortgage, and all proceeds and products of any of the above;

(h) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 *et seq.*, as the same may be amended from time to time (the "**Bankruptcy Code**") (collectively, the "**Leases**"), and all right, title and interest of Borrower, its successors and assigns, therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "**Rents**"), and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment and performance of the Obligations, including the payment of the Debt;

(i) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(j) Insurance Proceeds. All proceeds in respect of the Property under any insurance policies covering the Property, including, without limitation, the right to receive and

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apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with any reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari proceedings or any other applications or proceedings for reduction;

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

(m) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;

(n) Trademarks. All tradenames, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(o) Accounts. All reserves, escrows and deposit accounts maintained by Borrower with respect to the Property, including, without limitation, all accounts established or maintained pursuant to the Loan Agreement, the Cash Management Agreement or any other Loan Document, together with all deposits or wire transfers made to such accounts, and all cash, checks, drafts, certificates, securities, investment property, financial assets, instruments and other property held therein from time to time, and all proceeds, products, distributions, dividends and/or substitutions thereon and thereof;

(p) Uniform Commercial Code Property. All documents, instruments, chattel paper and intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and general intangibles relating to the Property;

(q) Proceeds. All proceeds of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, whether in cash or in liquidation or other claims, or otherwise; and

(r) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (q) above.

AND, without limiting any of the other provisions of this Mortgage, to the extent permitted by applicable law, Borrower expressly grants to Lender, as secured party, a security interest in the portion of the Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the

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Fixtures collectively referred to as the **“Real Property”**) appropriated to the use thereof and, whether affixed or annexed to the Land or not, shall for the purposes of this Mortgage be deemed conclusively to be real estate and mortgaged hereby.

Section 1.2 Assignment of Rents. Borrower hereby absolutely and unconditionally assigns to Lender all of Borrower’s right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of the Assignment of Leases and Section 7.1(h) of this Mortgage, Lender grants to Borrower a revocable license to collect, receive, use and enjoy the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 Security Agreement. This Mortgage is both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Mortgage, Borrower hereby grants to Lender, as security for the Obligations, a security interest in the Fixtures, the Equipment, the Personal Property and the other property constituting the Property to the full extent that the Fixtures, the Equipment, the Personal Property and such other property may be subject to the Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code being called the **“Collateral”**). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Borrower shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Borrower shall pay to Lender on demand any and all expenses, including reasonable attorneys’ fees and costs, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) Business Days prior to such action, shall, except as otherwise provided by applicable law, constitute reasonable notice to Borrower. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. The principal place of business of Borrower (Debtor) is as set forth on page one hereof and the address of Lender (Secured Party) is as set forth on page one hereof.

Section 1.4 Fixture Filing. Certain of the Property is or will become “fixtures” (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Mortgage, and this Mortgage, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement naming

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Borrower as the Debtor and Lender as the Secured Party filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures.

Section 1.5 Pledges of Monies Held. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender or on behalf of Lender in connection with the Loan, including, without limitation, any sums deposited in the Accounts (as defined in the Cash Management Agreement) and the Net Proceeds, as additional security for the Obligations until expended or applied as provided in this Mortgage.

CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay and perform the Obligations (including the payment of the Debt) at the time and in the manner provided in this Mortgage, the Note, the Loan Agreement and the other Loan Documents, and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note, the Loan Agreement and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void; provided, however, that Borrower's obligation to indemnify and hold harmless Lender pursuant to the provisions hereof shall survive any such payment or release.

ARTICLE 2 DEBT AND OBLIGATIONS SECURED

Section 2.1 Obligations. This Mortgage and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Obligations, including, but not limited to, the Debt.

Section 2.2 Other Obligations. This Mortgage and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "**Other Obligations**"):

- (a) the performance of all other obligations of Borrower contained herein;
- (b) the performance of each obligation of Borrower contained in the Loan Agreement and in each other Loan Document; and
- (c) the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement or any other Loan Document.

Section 2.3 Debt and Other Obligations. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations may sometimes be referred to collectively herein as the "Obligations."

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ARTICLE 3 BORROWER COVENANTS

Borrower covenants and agrees that throughout the term of the Loan:

Section 3.1 Payment of Debt. Borrower will pay the Debt at the time and in the manner provided in the Loan Agreement, the Note and this Mortgage.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note, and (c) all and any of the other Loan Documents, are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein.

Section 3.3 Insurance. Borrower shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.4 Maintenance of Property. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender, which shall not be unreasonably withheld, conditioned or delayed. Borrower shall repair, replace or rebuild any part of the Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated or which may be affected by any Condemnation within a reasonable time, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

Section 3.5 Waste. Borrower shall not commit or suffer any waste of the Property, or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Mortgage. Borrower will not, without the prior written consent of Lender, which shall not be unreasonably withheld, conditioned or delayed, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6 Payment for Labor and Materials.

(a) Subject to Section 3.6(b) hereof, Borrower (i) will promptly pay when due all bills and costs for labor, materials and specifically fabricated materials (“**Labor and Material Costs**”) incurred in connection with the Property, (ii) never permit to exist beyond the due date thereof in respect of the Property, or any part thereof, any Lien or security interest, even though inferior to the Liens and security interests created hereby and by the other Loan Documents, and (iii) never permit to be created or exist in respect of the Property or any part thereof any other or additional Lien or security interest other than the Liens or security interests created hereby and by the other Loan Documents, except for the Permitted Encumbrances.

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(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Labor and Material Costs, provided that: (i) no Event of Default has occurred and is continuing under the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents; (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property; (iii) such proceeding shall suspend the collection of the Labor and Material Costs from Borrower and from the Property or Borrower shall have paid all of the Labor and Material Costs under protest; (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder; (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, canceled or lost; and (vi) Borrower shall have furnished to Lender either (A) a cash deposit equal to 125% of the amount of such contested Labor and Material Costs, or (B) an indemnity bond reasonably satisfactory to Lender with a surety reasonably satisfactory to Lender, in the amount of such Labor and Material Costs, plus in either of the foregoing cases a reasonable additional sum to pay all costs, interest and penalties that are likely to be imposed or incurred in connection therewith.

(c) Notwithstanding the foregoing, it shall not be a default under the terms and conditions of this Section 3.6 if, in respect of a mechanic's or materialman's lien asserted against the Property for Labor and Material Costs (each, a "**Mechanic's Lien**"): (i) Borrower shall have provided Lender with written notice of such Mechanic's Lien within five (5) days of obtaining knowledge thereof; (ii) within five (5) days of obtaining knowledge of the filing of any Mechanic's Lien, Borrower shall have furnished to Lender either (A) a cash deposit equal to 125% of the amount of the Labor and Material Costs which are the subject of such Mechanic's Lien, or (B) an indemnity bond reasonably satisfactory to Lender with a surety reasonably satisfactory to Lender, in the amount of the Labor and Material Costs which are the subject of such Mechanic's Lien, plus in each instance a reasonable additional sum to pay all costs, interest and penalties that are likely to be imposed or incurred in connection therewith; (iii) no Event of Default shall have occurred and be continuing under the Loan Agreement, the Note, this Mortgage or any of the other Loan Documents; (iv) Borrower shall at all times diligently prosecute the discharge of such Mechanic's Lien; and (v) neither the Property nor any part thereof nor any interest therein shall be in danger of being sold, forfeited, terminated, canceled or lost.

Section 3.7 Performance of Other Agreements. Borrower shall observe and perform each and every term, covenant and provision to be observed or performed by Borrower pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Property, and any amendments, modifications or changes thereto.

ARTICLE 4 **OBLIGATIONS AND RELIANCES**

Section 4.1 Relationship of Borrower and Lender. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note,

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this Mortgage or the other Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 4.2 No Reliance on Lender. The general partners, members, principals and (if Borrower is a trust) beneficial owners of Borrower, as applicable, are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 4.3 No Lender Obligations.

a) Notwithstanding the provisions of Subsections 1.1(h) and (m) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases, or (ii) any obligations with respect to any other agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses or other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Mortgage, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 4.4 Reliance. Borrower recognizes and acknowledges that in accepting the Loan Agreement, the Note, this Mortgage and the other Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 3 of the Loan Agreement without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in making the Loan; and that Lender would not be willing to make the Loan and accept this Mortgage in the absence of the warranties and representations as set forth in Article 3 of the Loan Agreement.

ARTICLE 5 FURTHER ASSURANCES

Section 5.1 Recording of Mortgage, Etc. Borrower forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage and any of the other Loan Documents creating a Lien or security interest or evidencing the Lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the Lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Mortgage, the other Loan Documents, any note, deed of trust or mortgage

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supplemental hereto and any instrument of further assurance required by Section 5.2 hereof, and any modification or amendment of any of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust or mortgage supplemental hereto or any instrument of further assurance, and any modification or amendment of any of the foregoing documents, except where prohibited by law so to do.

Section 5.2 Further Acts, Etc. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, decided, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage, or for complying with all Legal Requirements. Borrower, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including, without limitation, such rights and remedies available to Lender pursuant to this Section 5.2.

Section 5.3 Changes in Tax, Debt, Credit and Documentary Stamp Laws.

(a) If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender reasonably concludes upon the advice of counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the legitimate basis for a defense of usury, then Lender shall have the option by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this

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Mortgage, or any of the other Loan Documents or shall impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 5.4 Splitting of Mortgage. This Mortgage and the Note may, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more mortgages, in such denominations as Lender shall determine in its sole discretion (subject to the following sentence), each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees, substitute notes and mortgages in such principal amounts, aggregating not more than the then unpaid principal amount of the Note, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender.

Section 5.5 Replacement Documents. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of the Note or such other Loan Document, Borrower will issue, in lieu thereof, a replacement Note or a replacement of such other Loan Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Loan Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE 6 DUE ON SALE/ENCUMBRANCE

Section 6.1 Lender Reliance. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for the payment and performance of the Obligations, including the repayment of the Debt. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the payment and/or performance of the Obligations, including the repayment of the Debt, Lender can recover the Debt by a sale of the Property.

Section 6.2 No Transfer. Borrower shall not permit or suffer any Transfer to occur.

ARTICLE 7 RIGHTS AND REMEDIES UPON DEFAULT

Section 7.1 Remedies. Upon the occurrence and during the continuance of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

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- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any applicable provision of law, in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Mortgage for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof, all as may be required or permitted by law; and, without limiting the foregoing:
- (i) In connection with any sale or sales hereunder, Lender shall be entitled to elect to treat any of the Property which consists of (x) a right in action, or (y) property that can be severed from the Real Property covered hereby, or (z) any improvements (without causing structural damage thereto), as if the same were personal property, and dispose of the same in accordance with applicable law separate and apart from the sale of the Real Property. Where the Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Lender shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;
- (ii) Lender shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Lender so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Lender and Lender is hereby authorized and empowered to conduct any such sale of any Real Property, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to Real Property;
- (iii) Should Lender elect to sell any portion of the Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Lender has elected under applicable law to sell together with Real Property in accordance with the laws governing a sale of the Real Property, Lender shall give such notice of the occurrence of an Event of Default, if any, and its election to sell such Property, each as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, subject to the terms hereof and of the other Loan Documents, and without the necessity of any demand on Borrower, Lender at the time

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and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Lender may from time to time postpone any sale hereunder by public announcement thereof at the time and place noticed for any such sale; and

(iv) If the Property consists of several lots, parcels or items of property, Lender shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Lender designates. Any Person, including Borrower or Lender, may purchase at any sale hereunder. Should Lender desire that more than one sale or other disposition of the Property be conducted, Lender shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Lender may designate, and no such sale shall terminate or otherwise affect the Lien of this Mortgage on any part of the Property not sold until all the Obligations have been satisfied in full. In the event Lender elects to dispose of the Property through more than one sale, except as otherwise provided by applicable law, Borrower agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, in the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any guarantor or indemnitor with respect to the Loan or any Person otherwise liable for the payment of the Debt or any part thereof;

(h) the license granted to Borrower under Section 12 hereof shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the

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Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment and performance of the Obligations (including, without limitation, the payment of the Debt), in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees and costs) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Fixtures, the Equipment and/or the Personal Property, or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment and the Personal Property, and (ii) request Borrower, at its sole cost and expense, to assemble the Fixtures, the Equipment and/or the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment and/or the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Mortgage or any other Loan Document to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) Interest on the unpaid principal balance of the Note;
- (iv) Amortization of the unpaid principal balance of the Note; and/or
- (v) All other sums payable pursuant to the Note, the Loan Agreement, this Mortgage and the other Loan Documents, including, without limitation, the Exit Fee, the Prepayment Fee, if applicable, and advances made by Lender pursuant to the terms of this Mortgage;

(k) pursue such other remedies as Lender may have under applicable law; and/or

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its sole discretion.

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In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Mortgage shall continue as a Lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 7.2 Application of Proceeds. The purchase money proceeds and avails of any disposition of the Property or any part thereof, or any other sums collected by Lender pursuant to the Note, this Mortgage or the other Loan Documents, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper, to the extent consistent with law.

Section 7.3 Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower, and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender reasonably deems necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or to collect the Debt, and the actual cost and expense thereof (including reasonable attorneys' fees and expenses, to the extent permitted by law), with interest as provided in this Section 7.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying any Default or Event of Default or in appearing in, defending or bringing any action or proceeding, as hereinabove provided, shall bear interest at the Default Rate, for the period beginning on the first day after notice from Lender that such cost or expense was incurred and continuing until the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and to be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 7.4 Actions and Proceedings. Lender shall have the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its sole discretion, decides should be brought to protect its interest in the Property.

Section 7.5 Recovery of Sums Required to be Paid. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for any Default or Event of Default by Borrower existing at the time such earlier action was commenced.

Section 7.6 Examination of Books and Records. At reasonable times and upon reasonable notice (which may be given verbally), Lender, its agents, accountants and attorneys, shall have the right to examine the records, books and management and other papers of Borrower which reflect upon its financial condition, either at the Property or at any office regularly maintained by Borrower where such books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In

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addition, at reasonable times and upon reasonable notice (which may be given verbally), Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower where the books and records are located. This Section 7.6 shall apply throughout the term of the Note and without regard to whether an Event of Default has occurred or is continuing.

Section 7.7 Other Rights, Etc.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for any decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment and performance of the Obligations (including, but not limited to, the payment of the Debt) to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce the Other Obligations or any covenant hereof, without prejudice to the right of Lender thereafter to foreclose this Mortgage. The rights of Lender under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 7.8 Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the Lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Debt shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and Lender may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Mortgage shall continue as a Lien and security interest in the remaining portion of the Property.

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Section 7.9 Violation of Laws. If the Property is not in full compliance with all Legal Requirements, Lender may impose additional requirements upon Borrower in connection herewith, including, without limitation, monetary reserves or financial equivalents.

Section 7.10 Recourse and Choice of Remedies. Notwithstanding any other provision of this Mortgage or the Loan Agreement, including, without limitation, Section 11.22 of the Loan Agreement, Lender and the other Indemnified Parties (as hereinafter defined) are entitled to enforce the obligations of Borrower contained in Sections 8.2 and 8.3 herein and Section 9.2 of the Loan Agreement without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Property, through foreclosure, exercise of a power of sale or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Property, or exercises the power of sale pursuant to this Mortgage, Lender shall be entitled to pursue a judgment with respect to such obligations against Borrower. The provisions of Sections 8.2 and 8.3 herein and Section 9.2 of the Loan Agreement are exceptions to any non-recourse or exculpation provisions in the Loan Agreement, the Note, this Mortgage and/or the other Loan Documents, and Borrower is fully and personally liable for the Obligations set forth in said Sections 8.2 and 8.3 herein and Section 9.2 of the Loan Agreement. The liability of Borrower and any guarantor or indemnitor with respect to the Obligations set forth in Sections 8.2 and 8.3 herein and Section 9.2 of the Loan Agreement is not limited to the original principal amount of the Note. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising a power of sale pursuant to this Mortgage or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Mortgage and/or the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Borrower with respect to the Obligations set forth in Sections 8.2 and 8.3 herein and Section 9.2 of the Loan Agreement, whether or not an action is brought against any other Person and whether or not any other Person is joined in such action or actions. In addition, Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any administrative or judicial proceedings or actions initiated in connection with any matter addressed in the Environmental Indemnity.

Section 7.11 Right of Entry. Upon reasonable notice (which may be given verbally) to Borrower, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

ARTICLE 8 INDEMNIFICATION

Section 8.1 Intentionally Omitted.

Section 8.2 Mortgage and/or Intangible Tax. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Mortgage, the Note or any of the other Loan Documents, but excluding any income, franchise or other similar taxes.

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Section 8.3 ERISA Indemnification. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses (including, without limitation, reasonable attorneys' fees and costs incurred in the investigation, defense and/or settlement of Losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Lender's sole discretion) that Lender may incur, directly or indirectly, as a result of a default under Section 4.2.11 of the Loan Agreement.

Section 8.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, if the defendants in any such claim or proceeding include both Borrower and any Indemnified Party and Borrower and such Indemnified Party shall have reasonably concluded that there are any legal defenses available to it and/or other Indemnified Parties that are different from or in addition to those available to Borrower, such Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on behalf of such Indemnified Party, provided that no compromise or settlement shall be entered without Borrower's consent, which consent shall not be unreasonably withheld or delayed. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of the reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

ARTICLE 9 WAIVERS

Section 9.1 Waiver of Counterclaim. To the extent permitted by applicable law, Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Mortgage, the Loan Agreement, the Note, any of the other Loan Documents or the Obligations.

Section 9.2 Marshalling and Other Matters. To the extent permitted by applicable law, Borrower hereby waives the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, to the extent permitted by applicable law, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Borrower, and on behalf of each and every Person acquiring any interest in or title to the Property subsequent to the date of this Mortgage.

Section 9.3 Waiver of Notice. To the extent permitted by applicable law, Borrower shall not be entitled to any notices of any nature whatsoever from Lender, except with respect to matters for which this Mortgage or the Loan Documents specifically and expressly provide for the giving of notice by Lender to Borrower, and except with respect to matters for which Lender

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is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 9.4 Waiver of Statute of Limitations. To the extent permitted by applicable law, Borrower hereby expressly waives and releases its right to plead any statute of limitations as a defense to the payment and performance of the Obligations (including, without limitation, the payment of the Debt).

Section 9.5 Waiver of Jury Trial. **BORROWER HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THE NOTE, THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY BORROWER AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY BORROWER.**

Section 9.6 Survival. The indemnifications made pursuant to Article 8 herein and the representations and warranties, covenants, and other obligations arising under the Environmental Indemnity, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by (a) any satisfaction, release or other termination of this Mortgage or any other Loan Document, (b) any assignment or other transfer of all or any portion of this Mortgage or any other Loan Document or Lender's interest in the Property (but, in such case, such indemnifications shall benefit both the Indemnified Parties and any such assignee or transferee), (c) any exercise of Lender's rights and remedies pursuant hereto, including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), (d) any amendment to this Mortgage, the Loan Agreement, the Note or any other Loan Document, and/or (e) any act or omission that might otherwise be construed as a release or discharge of Borrower from the Obligations or any portion thereof.

ARTICLE 10 **EXCULPATION**

The provisions of Section 11.22 of the Loan Agreement are hereby incorporated by reference into this Mortgage to the same extent and with the same force as if fully set forth herein.

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ARTICLE 11 NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 11.6 of the Loan Agreement.

ARTICLE 12 APPLICABLE LAW

Section 12.1 Governing Law; Jurisdiction; Service of Process.

(a) THIS MORTGAGE WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY BORROWER AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS MORTGAGE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY, AND CONSTRUED ACCORDING TO, THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS MORTGAGE AND/OR THE OTHER LOAN DOCUMENTS, AND THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS MORTGAGE MAY, AT LENDER'S OPTION, BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH

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SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. BORROWER DOES HEREBY DESIGNATE AND APPOINT

**Corporation Service Company
80 State Street
Albany (Albany Co.), NY 12207-2543**

AS ITS AUTHORIZED AGENT TO ACCEPT AND ACKNOWLEDGE ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO BORROWER IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON BORROWER IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. BORROWER (I) SHALL GIVE PROMPT NOTICE TO LENDER OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR. NOTHING CONTAINED HEREIN SHALL AFFECT THE RIGHT OF LENDER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST BORROWER IN ANY OTHER JURISDICTION.

Section 12.2 Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed to constitute interest, the interest contracted for, charged or received by Lender shall never exceed the Maximum Legal Rate, (b) in calculating whether any interest exceeds the Maximum Legal Rate, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Borrower to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the Maximum Legal Rate, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

Section 12.3 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Mortgage or

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any application thereof shall be invalid or unenforceable, the remainder of this Mortgage and any other application of the term shall not be affected thereby.

ARTICLE 13 **DEFINITIONS**

Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in the singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels, incurred or paid by Lender in protecting its interest in the Property, the Leases and/or the Rents and/or in enforcing its rights hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

ARTICLE 14 **MISCELLANEOUS PROVISIONS**

Section 14.1 No Oral Change. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party(ies) against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 14.2 Successors and Assigns. This Mortgage shall be binding upon, and shall inure to the benefit of, Borrower and Lender and their respective successors and permitted assigns, as set forth in the Loan Agreement.

Section 14.3 Inapplicable Provisions. If any provision of this Mortgage is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Mortgage, such provision shall be fully severable and this Mortgage shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Mortgage, and the remaining provisions of this Mortgage shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Mortgage, unless such continued effectiveness of this Mortgage, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

Section 14.4 Headings, Etc. The headings and captions of the various Sections of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 14.5 Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles

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and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles and interests, if any, are not waived, but rather are continued in full force and effect in favor of Lender and are merged with the Lien and security interest created herein as cumulative security for the payment, performance and discharge of the Obligations (including, but not limited to, the payment of the Debt).

Section 14.6 Entire Agreement. The Note, the Loan Agreement, this Mortgage and the other Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Mortgage and the other Loan Documents, there are not, and were not, and no Persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Mortgage and the other Loan Documents.

Section 14.7 Limitation on Lender's Responsibility. No provision of this Mortgage shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the Tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

Section 14.8 Recitals. The recitals hereof are a part hereof, form a basis for this Mortgage and shall be considered prima facie evidence of the facts and documents referred to therein.

Section 14.9 Variable Interest Rate. The Loan secured by this Mortgage is a variable interest rate loan, as more particularly set forth in the Loan Agreement.

ARTICLE 15 STATE-SPECIFIC PROVISIONS

Section 15.1 Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 15 and the other terms and conditions of this Mortgage, the terms and conditions of this Article 15 shall control and be binding.

(a) Borrower acknowledges that the Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law 735 ILCS 5/15-1101 *et seq.* as amended from time to time (the "Act") or residential real estate as defined in Section 15-1219 of the Act. Borrower hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Borrower and on behalf of each and every person acquiring any interest in or title to the Property of any nature whatsoever, subsequent to the date of this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of Section 15-1601(b) of the Act.

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(b) At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage secures (in addition to the amounts secured hereby) the payment of any and all Loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Lender in connection with the Loan; provided, however, that in no event shall the total amount secured hereby exceed two hundred (200%) of the face amount of the Note.

(c) At the option of Lender, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to Insurance Proceeds or any Awards), to any and all leases of all or any part of the Property upon the execution by Lender and recording thereof, at any time hereafter in the appropriate official records of the County wherein the Property is situated, of a unilateral declaration to that effect.

(d) The final payment under the Note is due on or before the date which is five (5) years following the date hereof.

(e) In the event that any provision of this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender any rights or remedies upon any Event of Default by Borrower which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under the Act, whether incurred before or after any decree or judgment of foreclosure, prior to sale and, where applicable, after sale and whether or not enumerated in this Mortgage, shall be paid by Borrower to Lender, including without limitation all reasonable attorneys' fees and other costs incurred in connection with the preparation, filing or prosecution of any foreclosure suit. Any such amounts not paid by Borrower shall be added to the Debt secured by this Mortgage or by the judgment of foreclosure and shall be a lien as to subsequent purchaser and judgment creditors from the time this Mortgage is recorded, pursuant to Section 15-1601(b) of the Act.


[NO FURTHER TEXT ON THIS PAGE]

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IN WITNESS WHEREOF, this Mortgage has been executed by Borrower as of the day and year first above written.

BRICKTOWN MALAN, LLC,
a Delaware limited liability company

By: Malan Realty Investors, Inc.
a Michigan corporation, its sole member

By: 
Name: ELLIOTT J. BRODERICK
Title: CHIEF FINANCIAL OFFICER

Property of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION

Property of Cook County Clerk's Office



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EXHIBIT A LEGAL DESCRIPTION

Chicago (Bricktown Square, Illinois)
Tax ID Numbers: 13-30-410-004-0000
13-30-410-005-0000, 13-30-410-006-0000
13-30-410-010-0000, 13-30-410-012-0000
13-30-410-013-0000

PARCEL 1:

THAT PART OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF NORTH NARRAGANSETT AVENUE (SAID WEST LINE BEING 33.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTH EAST 1/4) AND A LINE 690.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF WEST FULLERTON AVENUE (AS SAID NORTH LINE IS SHOWN IN INSTRUMENT RECORDED AS DOCUMENT NO. 10441963); THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID PARALLEL LINE 650.00 FEET; THENCE SOUTH 49 DEGREES 35 MINUTES 00 SECONDS WEST, 139.00 FEET; THENCE SOUTH 30 DEGREES 00 MINUTES 54 SECONDS WEST, 155.743 FEET TO A POINT WHICH IS 837.00 FEET (AS MEASURED ALONG A LINE DRAWN PARALLEL WITH THE NORTH LINE OF WEST FULLERTON AVENUE) WEST OF THE AFORESAID WEST LINE OF NORTH NARRAGANSETT AVENUE AND 465.00 FEET (AS MEASURED ALONG A LINE DRAWN PARALLEL WITH THE WEST LINE OF NORTH NARRAGANSETT AVENUE) NORTH OF THE AFORESAID NORTH LINE OF WEST FULLERTON AVENUE; THENCE NORTH 0 DEGREES 49 MINUTES 53 SECONDS WEST ALONG A LINE PARALLEL WITH THE WEST LINE OF NORTH NARRAGANSETT AVENUE, 78.012 FEET TO A POINT WHICH IS 837.00 FEET (AS MEASURED ALONG A LINE DRAWN PARALLEL WITH THE NORTH LINE OF WEST FULLERTON AVENUE) WEST OF THE AFORESAID WEST LINE OF NORTH NARRAGANSETT AVENUE AND 543.012 FEET (AS MEASURED ALONG A LINE DRAWN PARALLEL WITH THE WEST LINE OF NORTH NARRAGANSETT AVENUE) NORTH OF THE AFORESAID NORTH LINE OF WEST FULLERTON AVENUE; THENCE NORTH 25 DEGREES 33 MINUTES 56 SECONDS EAST, 243.581 FEET TO THE POINT OF INTERSECTION WITH A LINE DRAWN PERPENDICULARLY TO THE EAST RIGHT OF WAY LINE OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD AND PASSING THROUGH A POINT ON SAID EAST LINE WHICH IS 755.17 FEET (AS MEASURED ALONG SAID EAST LINE OF THE RAILROAD) NORTH OF THE AFORESAID NORTH LINE OF WEST FULLERTON AVENUE; THENCE NORTH 34 DEGREES 38 MINUTES 53 SECONDS WEST, 620.38 FEET TO A POINT WHICH IS 225.00 FEET (AS MEASURED PERPENDICULARLY) EAST OF THE EAST LINE OF SAID RAILROAD AND 1270.17 FEET (AS MEASURED ALONG A LINE DRAWN PARALLEL WITH SAID EAST LINE OF THE RAILROAD) NORTH OF THE AFORESAID NORTH LINE OF WEST FULLERTON AVENUE; THENCE NORTH 7 DEGREES 06 MINUTES 00 SECONDS WEST, 45.28 FEET TO A POINT 220.00 FEET (AS MEASURED PERPENDICULARLY) EAST OF THE EAST LINE OF SAID RAILROAD RIGHT OF WAY; THENCE NORTH 34 DEGREES 28 MINUTES 09 SECONDS WEST, 156.28 FEET TO A POINT 133.27 FEET (AS MEASURED PERPENDICULARLY) EAST OF THE EAST LINE OF SAID RAILROAD RIGHT OF WAY; THENCE SOUTH 89 DEGREES 14 MINUTES 20 SECONDS WEST, ALONG A LINE DRAWN PERPENDICULAR TO SAID RIGHT OF WAY LINE, 133.27 FEET TO THE EAST LINE OF SAID RIGHT OF WAY; THENCE SOUTH 0 DEGREES 45 MINUTES 40 SECONDS EAST 1445.178 FEET ALONG SAID EAST RIGHT OF WAY LINE TO THE AFORESAID NORTH LINE OF WEST FULLERTON AVENUE; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST

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EXHIBIT A LEGAL DESCRIPTION CONTINUED

ALONG THE NORTH LINE OF WEST FULLERTON AVENUE AFORESAID 1300.572 FEET TO THE WEST LINE OF NORTH NARRAGANSETT AVENUE AFORESAID; THENCE NORTH 0 DEGREES 49 MINUTES 53 SECONDS WEST ALONG SAID WEST LINE 690.00 FEET TO THE HEREINABOVE DESIGNATED PLACE OF BEGINNING, (EXCEPTING FROM SAID TRACT A STRIP OF LAND IN THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SAID NORTH LINE OF WEST FULLERTON AVENUE WITH THE EAST LINE OF AN EASEMENT AS DESCRIBED IN EXHIBIT III IN THE INSTRUMENT RECORDED AS DOCUMENT NUMBER 20988969, SAID LINE BEING 50.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION AND SAID LINE BEING ALSO THE EAST LINE OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD RIGHT OF WAY; THENCE ALONG THE FOLLOWING THREE COURSES, BEING THE EAST LINE OF THE AFORESAID EASEMENT AS DESCRIBED IN SAID EXHIBIT III: NORTH 0 DEGREES 45 MINUTES 40 SECONDS WEST, 180.00 FEET; THENCE WEST, 11.00 FEET; THENCE NORTH 0 DEGREES 45 MINUTES 40 SECONDS WEST, 159.272 FEET; THENCE SOUTHEASTERLY 203.85 FEET ALONG THE ARC OF A CIRCLE, 565.00 FEET RADIUS, CONVEX SOUTHWESTERLY AND WHOSE CHORD BEARS SOUTH 11 DEGREES 21 MINUTES 02.5 SECONDS EAST; THENCE SOUTH 21 DEGREES 56 MINUTES 25 SECONDS EAST, ALONG A LINE TANGENT TO SAID ARC, 146.23 FEET TO THE POINT OF INTERSECTION WITH THE AFORESAID NORTH LINE OF WEST FULLERTON AVENUE; THENCE WEST ALONG SAID NORTH LINE, 80.00 FEET TO THE POINT OF BEGINNING OF THIS EXCEPTED TRACT OF LAND; AND

NOTE FOR INFORMATIONAL PURPOSES ONLY: Title to "Excepted Tract of Land" is vested in W9/MLM REAL ESTATE LIMITED PARTNERSHIP, a Delaware limited partnership by Document No. 98394461. Said excepted tract is identified as Tax Number 13-30-410-011-0000. Taxes are paid current.

ALSO EXCEPTING FROM SAID TRACT THAT PART OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF WEST FULLERTON AVENUE (BEING A LINE 50 FEET NORTH OF THE SOUTH LINE OF SAID SOUTH EAST 1/4) WITH THE WESTERLY LINE OF NORTH NARRAGANSETT AVENUE (BEING A LINE 33 FEET WEST OF THE EAST LINE OF SAID SOUTH EAST 1/4); THENCE WEST 170.00 FEET ALONG THE NORTH LINE OF SAID WEST FULLERTON AVENUE; THENCE NORTH 00 DEGREES 49 MINUTES 53 SECONDS WEST ALONG A LINE PARALLEL WITH THE WEST LINE OF NORTH NARRAGANSETT AVENUE A DISTANCE OF 150.00 FEET; THENCE EAST ALONG A LINE PARALLEL WITH THE NORTH LINE OF WEST FULLERTON AVENUE A DISTANCE OF 170.00 FEET; THENCE SOUTH 0 DEGREES 49 MINUTES 53 SECONDS EAST ALONG THE WEST LINE OF NORTH NARRAGANSETT AVENUE A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING OF THIS EXCEPTED TRACT OF LAND), ALL IN COOK COUNTY, ILLINOIS.

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EXHIBIT A LEGAL DESCRIPTION CONTINUED

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT FROM CHICAGO TITLE AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 2, 1976 AND KNOWN AS TRUST NUMBER 10-68300, TO NATIONAL BANK OF AUSTIN, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1969 AND KNOWN AS TRUST NUMBER 4729, DATED JUNE 16, 1977 AND RECORDED JUNE 17, 1977 AS DOCUMENT 23973440, FOR INGRESS AND EGRESS TO AND FROM WEST FULLERTON AVENUE AND THE RIGHT TO USE ROADS AND STREETS OVER, ON AND THROUGH THE FOLLOWING DESCRIBED PROPERTY:

A STRIP OF LAND IN THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF WEST FULLERTON AVENUE, AS SAID NORTH LINE IS SHOWN ON INSTRUMENT RECORDED AS DOCUMENT NO. 10441963, WITH THE EAST LINE OF AN EASEMENT DESCRIBED IN EXHIBIT III IN THE INSTRUMENT RECORDED AS DOCUMENT NUMBER 20988969, SAID LINE BEING 50.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION AND SAID LINE BEING ALSO THE EAST LINE OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD RIGHT OF WAY, THENCE ALONG THE FOLLOWING THREE COURSES, BEING THE EAST LINE OF THE AFORESAID EASEMENT AS DESCRIBED IN SAID EXHIBIT III: NORTH 0 DEGREES 45 MINUTES 40 SECONDS WEST, 180.00 FEET; THENCE WEST, 11.00 FEET; THENCE NORTH 0 DEGREES 45 MINUTES 40 SECONDS WEST, 159.272 FEET; THENCE SOUTHEASTERLY 208.85 FEET ALONG THE ARC OF A CIRCLE, 565.00 FEET RADIUS, CONVEX SOUTHWESTERLY AND WHOSE CHORD BEARS SOUTH 11 DEGREES 21 MINUTES 02.5 SECONDS EAST; THENCE SOUTH 21 DEGREES 56 MINUTES 25 SECONDS EAST, ALONG A LINE TANGENT TO SAID ARC, 146.23 FEET TO THE POINT OF INTERSECTION WITH THE AFORESAID NORTH LINE OF WEST FULLERTON AVENUE; THENCE WEST ALONG SAID NORTH LINE, 80.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT FROM THE NATIONAL BANK OF AUSTIN, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1969 AND KNOWN AS TRUST NUMBER 4729, TO CHICAGO TITLE AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 1, 1974 AND KNOWN AS TRUST NUMBER 65000, DATED DECEMBER 8, 1975 AND RECORDED DECEMBER 29, 1975 AS DOCUMENT 23337090 FOR INGRESS AND EGRESS OVER, UNDER, ON AND THROUGH THE FOLLOWING DESCRIBED PREMISES:

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EXHIBIT A LEGAL DESCRIPTION CONTINUED

A PART OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

39 FEET IN WIDTH IN AN EASTERLY AND WESTERLY DIRECTION EXTENDING DUE NORTH FROM THE NORTHERLY BOUNDARY OF EASEMENT "A-3" ACROSS THE WESTERLY PORTION OF PARCEL 2 TO THE SOUTH LINE OF DIVERSEY AVENUE (AS SAID EASEMENT "A-3" AND PARCEL 2 ARE DESCRIBED AND DEFINED IN SAID GRANT RECORDED AS DOCUMENT 23337090), IN COOK COUNTY, ILLINOIS.

PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT FROM THE NATIONAL BANK OF AUSTIN, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1969 AND KNOWN AS TRUST NUMBER 4729, TO CHICAGO TITLE AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 1, 1974 AND KNOWN AS TRUST NUMBER 65000, DATED DECEMBER 8, 1975 AND RECORDED DECEMBER 29, 1975 AS DOCUMENT 23337090 FOR INGRESS AND EGRESS OVER, UNDER, ON AND THROUGH THE FOLLOWING DESCRIBED PREMISES:

A STRIP OF LAND IN THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE WEST LINE OF NORTH NARRAGANSETT AVENUE, BEING A LINE 33.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTH EAST 1/4 OF SAID SECTION, WITH A LINE DRAWN 690.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF WEST FULLERTON AVENUE, AS SAID NORTH LINE IS SHOWN IN INSTRUMENT RECORDED AS DOCUMENT NUMBER 10441963; THENCE WEST ALONG THE LAST DESCRIBED PARALLEL LINE, 275.00 FEET; THENCE NORTH, ALONG A LINE DRAWN PERPENDICULARLY TO THE LAST DESCRIBED COURSE, 35.00 FEET; THENCE SOUTH 86 DEGREES 24 MINUTES 52 SECONDS EAST. 159.95 FEET TO A LINE DRAWN 715.00 FEET NORTH OF AND PARALLEL WITH THE AFORESAID NORTH LINE OF WEST FULLERTON AVENUE; THENCE EAST, ALONG SAID PARALLEL LINE, 115.00 FEET TO THE AFORESAID WEST LINE OF NORTH NARRAGANSETT AVENUE; THENCE SOUTH 0 DEGREES 49 MINUTES 53 SECONDS EAST, ALONG SAID WEST LINE, 25.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

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EXHIBIT A LEGAL DESCRIPTION CONTINUED

PARCEL 5:

PERPETUAL, NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS (BUT NOT FOR PARKING), FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT EXECUTED BY THE NATIONAL BANK OF AUSTIN, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 20, 1969 AND KNOWN AS TRUST NUMBER 4729, THE NATIONAL BANK OF AUSTIN, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 29, 1964 AND KNOWN AS TRUST NUMBER 3760, CERTAIN OTHER PARTIES, AND CHICAGO TITLE AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 1, 1974 AND KNOWN AS TRUST NUMBER 65000, AND ALSO AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 2, 1976 AND KNOWN AS TRUST NUMBER 1068300, DATED DECEMBER 31, 1976 AND RECORDED JUNE 3, 1977 AS DOCUMENT 23953919, OVER, ON AND THROUGH THE FOLLOWING DESCRIBED PREMISES:

A STRIP OF LAND IN THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE WEST LINE OF NORTH NARRAGANSETT AVENUE, BEING A LINE 33.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID SOUTH EAST 1/4, WITH A LINE DRAWN 690.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF WEST FULLERTON AVENUE AS SAID NORTH LINE IS SHOWN IN INSTRUMENT RECORDED AS DOCUMENT NUMBER 10441963; THENCE WEST, ALONG THE LAST DESCRIBED PARALLEL LINE, 650.00 FEET; THENCE SOUTH 49 DEGREES 35 MINUTES 00 SECONDS WEST, ALONG A LINE FORMING AN ANGLE OF 40 DEGREES 25 MINUTES 00 SECONDS WITH THE PROLONGATION OF THE LAST DESCRIBED LINE (AS MEASURED FROM WEST TO SOUTHWEST) A DISTANCE OF 139.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED STRIP OF LAND; THENCE NORTH 9 DEGREES 05 MINUTES 44 SECONDS EAST, 164.953 FEET TO A POINT 570.89 FEET EAST (AS MEASURED AT RIGHT ANGLES THROUGH A POINT ON THE EAST LINE OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD AT A POINT 755.17 FEET NORTHERLY OF THE AFORESAID NORTH LINE OF WEST FULLERTON AVENUE) OF THE EAST LINE OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILROAD; THENCE SOUTH 25 DEGREES 33 MINUTES 56 SECONDS WEST, 243.581 FEET TO A POINT WHICH IS 837.00 FEET (AS MEASURED ALONG A LINE DRAWN PARALLEL WITH THE AFORESAID NORTH LINE OF WEST FULLERTON AVENUE) WEST OF THE AFORESAID WEST LINE OF NORTH NARRAGANSETT AVENUE AND 543.012 FEET (AS MEASURED ALONG A LINE DRAWN PARALLEL WITH THE AFORESAID WEST LINE OF NORTH NARRAGANSETT AVENUE) NORTH OF THE AFORESAID NORTH LINE OF WEST FULLERTON AVENUE, THENCE SOUTH 0 DEGREES 49 MINUTES 53 SECONDS EAST, ALONG

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EXHIBIT A LEGAL DESCRIPTION CONTINUED

A LINE DRAWN PARALLEL WITH SAID WEST LINE OF NORTH NARRAGANSETT AVENUE, 78.012 FEET; THENCE NORTH 30 DEGREES 00 MINUTES 54 SECONDS EAST, 155.743 FEET TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 6:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 CREATED BY DECLARATION OF EASEMENTS DATED FEBRUARY 15, 1989 AND RECORDED FEBRUARY 28, 1989 AS DOCUMENT NUMBER 89088690, TO USE THE DRIVEWAYS AND ROADWAYS EXISTING FROM TIME TO TIME FOR THE PURPOSE OF ACCESS, INGRESS AND EGRESS, FOR THE INSTALLATION, MAINTENANCE, REPAIR AND REPLACEMENT OF UTILITY FACILITIES, AND TO USE THE PARKING AREAS LOCATED FROM TIME TO TIME ON THE FOLLOWING DESCRIBED PREMISES:

THAT PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF WEST FULLERTON AVENUE (BEING 50 FEET NORTH OF THE SOUTH LINE OF SAID SOUTHEAST 1/4) WITH THE WEST LINE OF NORTH NARRAGANSETT AVENUE (BEING 33 FEET WEST OF THE EAST LINE OF SAID SOUTHEAST 1/4): THENCE WEST 170.00 FEET ALONG SAID NORTH LINE; THENCE NORTH 00 DEGREES 49 MINUTES 53 SECONDS WEST ALONG A LINE PARALLEL WITH THE WEST LINE OF NORTH NARRAGANSETT AVENUE A DISTANCE OF 150.00 FEET; THENCE EAST ALONG A LINE PARALLEL WITH THE NORTH LINE OF WEST FULLERTON AVENUE A DISTANCE OF 170.00 FEET; THENCE SOUTH 00 DEGREES 49 MINUTES 53 SECONDS EAST ALONG THE WEST LINE OF NORTH NARRAGANSETT AVENUE A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.