

UNOFFICIAL COPY



Doc#: 0325933284
Eugene "Gene" Moore Fee: \$74.00
Cook County Recorder of Deeds
Date: 09/16/2003 11:31 AM Pg: 1 of 26

(2)

0425/11/12 / 9102855545

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement made this 18 day of August, 2003 ("Date Hereof"), between **WESTERN SPRINGS NATIONAL BANK AND TRUST** a national banking association, not personally but as trustee under a trust agreement dated August 8, 2003, and known as trust number 4009, having an office at 4456 Wolf Road, Western Springs, Illinois 60558 (hereinafter referred to as "Mortgagor"), and **Donald J. Lehman, as Trustee under the Donald J. Lehman Declaration of Trust, dated November 9, 1994 and Antoinette Lehman as Trustee of the Antoinette Lehman Declaration of Trust, dated November 9, 1994**, having an office at 3643 Forest Avenue, Brookfield, Illinois 60513 (hereinafter collectively referred to as "Mortgagee");

z6

WITNESSETH:

WHEREAS, Mortgagor is justly indebted to Mortgagee in the principal sum of Seven Hundred Sixty Five Thousand and No/100 DOLLARS (\$765,000), as evidenced by a Mortgage Note of even date herewith executed by Mortgagor, and made payable to the order of and delivered to Mortgagee in the principal amount of Seven Hundred Sixty Five Thousand and No/100 DOLLARS (\$765,000) (hereinafter referred to as the "Note"), whereby Mortgagor promises to pay the said principal sum or so much thereof as may be advanced by the holder or holders of the Note from time to time, together with interest thereon, from the Date Hereof, at the rate set forth therein, in installments as set forth therein at the office of Mortgagee, or at such other place as may be designated in writing by the legal holders thereof until September 1, 2013 (the "Maturity Date") at which time the unpaid principal balance secured hereby and all accrued interest thereon shall immediately become due and payable;

NOW, THEREFORE, in order to secure the payment of the said principal sum and interest thereon and the performance of the covenants and agreements herein contained, Mortgagor does by these presents grant, bargain, sell, convey and mortgage unto Mortgagee, its successors and assigns forever, the real estate and all of its estate, right, title and interest therein situated in the Village of Brookfield, County of Cook, and State of Illinois, as more particularly described in Exhibit "A" attached hereto and made a part hereof (sometimes herein referred to as the "real estate"), which real estate, together with the following described property, is collectively referred to as the "premises;"

TOGETHER WITH:

- (1) all right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, vaults and alleys adjoining the premises,
- (2) all and singular the tenements, hereditament, easements, minerals, appurtenances, passages, waters, water courses, riparian irrigation, and drainage rights, and other rights, liberties, and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversion and reversions and remainder and remainders thereof,

BOX 333-CTI

UNOFFICIAL COPY

(3) all of Mortgagor's interest and rights as lessor in and to all leases now or hereafter affecting the real estate or any part thereof and all rents, issues, proceeds, and profits accruing and to accrue from the real estate, whether payable pursuant to any present or future lease or otherwise growing out of any occupancy or use of the premises or payable pursuant to any contract of sale or any condominium or town house unit comprising a part of the real estate (which are pledged primarily and on a parity with the real estate, and not secondarily),

(4) all proceeds or sums payable in lieu of or as compensation for the loss of or damage to the premises, all rights in and to all present and future fire and other hazard insurance policies pertaining to the premises, any and all sums at any time on deposit for the benefit of Mortgagee or held by Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage, and all awards paid or to be paid in connection with or in lieu of any condemnation, eminent domain, change of grade or similar proceeding for the taking or for the degradation in the value of all or any part of the premises, and

(5) all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the premises, and all fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the premises, including, but not limited to, all heating, air-conditioning, sprinklers, freezing, lighting, laundry, incinerating and dynamo and generating equipment; engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing and plumbing fixtures; lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus; boilers, ranges, furnaces, oil burners or units thereof; appliances, air cooling and air-conditioning apparatus; vacuum cleaning systems; elevators, escalators; shades; awnings, screens; storm doors and windows; stoves, wall beds, refrigerators, cooking apparatus and mechanical equipment, gas and electrical fixtures; partitions, mantels, built-in mirrors, window shades, blinds, furniture of public spaces, halls and lobbies; attached cabinets, ducts and compressors; rugs and carpets; draperies; furniture and furnishings used in the operation of the premises, and all additions thereto and renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed, intended, and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate, and covered by this Mortgage, and as to any of the property aforesaid which does not so form a part and parcel of the real estate, this Mortgage is hereby deemed to be, and is, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as Secured Party (as such term is defined in the Uniform Commercial Code), it being further understood and agreed that the provisions of this paragraph shall not apply or attach to any trade fixtures or personal property of any tenant of the premises;

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

PROVIDED, HOWEVER, that if the Mortgagor shall pay the principal and all interest as provided in the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect; and provided further that the maximum aggregate amount secured by this Mortgage including principal, interest, future advances, if any, and all other sums herein provided for (whether now owed or hereinafter owed) is \$850,000.

MORTGAGOR FURTHER COVENANTS and agrees as follows:

UNOFFICIAL COPY

1. Payment of Principal and Interest. Mortgagor shall pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner herein and in the Note provided.

2. Tax and Insurance Deposits. (a) Except as provided in Paragraphs 2(b) and (c), Mortgagor shall deposit with the Mortgagee ("Escrow Reserve"), or a depository designated by Mortgagee, in addition to the monthly installments of principal and interest due under the terms of the Note, and concurrently therewith, monthly until the principal indebtedness evidenced by the Note is paid, the following: (i) a sum equal to all real estate taxes and assessments ("taxes") next due on the premises (all as estimated by Mortgagee in its reasonable discretion), and (ii) a sum equal to the amount of the premium or premiums that will next become due and payable to replace or renew the insurance policies required to be maintained by Section 4 hereof (all as estimated by Mortgagee in its reasonable discretion) divided by the number of months to elapse before one month prior to the expiration date of the policy or policies to be replaced or renewed. All such payments described in this Section 2 shall be held by Mortgagee or a depository designated by Mortgagee in a separate reserve account in Mortgagee's name, with the interest, if any, accruing on such account to be the property of Mortgagor, but without any obligation on Mortgagee to pay interest thereon. If the funds so deposited are insufficient to pay, when due, all taxes and premiums as aforesaid, the Mortgagor shall, within ten (10) days after receipt of demand therefor from Mortgagee or its agent, deposit such additional funds as may be necessary to pay such taxes and premiums. If the funds so deposited exceed the amounts required to pay such items, the excess shall be applied on a subsequent deposit or deposits. Neither the Mortgagee nor depository shall be liable for any failure to make the payments of insurance premiums, or of taxes, unless Mortgagor, while not in default hereunder, shall have requested said Mortgagee or depository in writing to make application of such deposits to the payment of the particular insurance premium or taxes, accompanied by the bills for such insurance premiums or taxes, provided, however, Mortgagee may at its option make or cause the depository to make any such application of the aforesaid deposits without any direction or request to do same by Mortgagor. Mortgagee may suspend, in whole or in part, and later reinstate, the application of this Section as often as it may determine.

(b) Tax Reserve Deposits for Two Years. Notwithstanding anything in Paragraph 2(a) to the contrary, at the end of two (2) years from the date of the Date Hereof and provided Mortgagor has made all of the tax and insurance deposits required under this Mortgage and provided Mortgagor is not otherwise then in default under this Mortgage, then (1) Mortgagee agrees that it shall not require Mortgagor to continue to make the monthly deposits for real estate taxes, and (2) Mortgagee shall continue to hold any sums remaining in the Escrow Account and apply such sums to the payment of taxes and insurance as provide in this Mortgage until the Escrow Deposit is exhausted. If Mortgagor had defaulted under this Mortgage during the first two years after the Date Hereof, then Mortgagor shall be required to continue to make the monthly tax payments to Mortgagee for deposit in the Escrow Account until the Loan is paid in full. If Mortgagor shall have defaulted under this Mortgage after the first two years after the Date Hereof, then on Mortgagee giving notice to Mortgagor, Mortgagor shall immediately commence to make the monthly tax payments to Mortgagee for deposit in the Escrow Account until the Loan is paid in full, and shall in addition to any monthly payment immediately deposit with Mortgagee for deposit in the Escrow Account, sufficient funds to pay all real estate taxes which have accrued against the Premises not less than 30 days prior to the due date of such payment, as reasonably estimated by Mortgagee.

(c) Insurance Reserve Deposits. Notwithstanding anything in Paragraph 2(a) to the contrary, if Mortgagor shall fail to pay at least thirty (30) days in advance of each insurance policy renewal date the entire annual premiums on each insurance policy that Mortgagor is required to maintain under this Mortgage or shall fail to maintain each such policy in full force and effect as required under this Mortgage, then, on Mortgagee's sending notice to Mortgagor, Mortgagor shall commence making monthly payments to Mortgagee for deposit to the Escrow Reserve. Until the failure of Mortgagor to pay in advance each such insurance premium or to maintain each such policy in full force and effect as provided in this Mortgage, Mortgagee agrees not to require Mortgagor to make monthly deposits of insurance premiums under Paragraph 2(a).

UNOFFICIAL COPY

3. Taxes and Other Charges. Mortgagor shall immediately pay, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, association charges, and all other charges of whatever kind, ordinary or extraordinary, whether public or private, which may be levied or imposed against the premises, and to furnish to Mortgagee official receipts for the payment of real estate taxes within thirty (30) days after payment thereof, provided, however, if Mortgagee has not suspended the monthly deposits for taxes required by Section 2 hereof, Mortgagee, at its option, either may make such deposits available to Mortgagor for the payments required under this Section 3, or may make such payments on behalf of Mortgagor. Mortgagor shall pay when due all charges incurred for the benefit of the premises for utilities, such as, but not limited to, energy, fuel, gas, electricity, water, sewer, and garbage removal, whether or not such charges are liens against the premises.

4. Insurance.

(a) Casualty. Mortgagor shall keep the improvements now existing or hereafter erected on the premises constantly insured against loss or damage under such types and forms of insurance policies and in such amounts and for such periods as Mortgagee may from time to time require, and Mortgagor shall pay promptly, when due, any premiums on such insurance, provided, however, that if the Mortgagee has not suspended the monthly deposits for insurance required by Section 2 hereof, Mortgagee, at its option, either may make such deposits available to Mortgagor for the payments required under this Subsection 4(a), or may make such payments on behalf of Mortgagor. Unless Mortgagee otherwise agrees, all such insurance shall provide "all risk" agreed value replacement cost coverage (and during the process of constructing or reconstructing any improvements on the premises such coverage shall be pursuant to a builders risk, completed value, non-reporting form of policy) and such insurance shall be carried with companies acceptable to the Mortgagee and shall have attached thereto standard noncontributing mortgage clauses in favor of and entitling the Mortgagee alone to collect any and all of the proceeds payable under all such insurance, as well as standard waiver of subrogation endorsements. Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of a change in ownership of the premises (if approved in writing by Mortgagee), immediate notice thereof by mail shall be delivered to all insurers. In the event of any loss covered by such insurance, Mortgagor shall immediately notify Mortgagee in writing, and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to Mortgagee (who may, but need not, make proof of loss) and Mortgagee is hereby authorized to adjust, collect, and compromise in its discretion all claims under all policies, and Mortgagor shall sign, upon demand by Mortgagee, all receipts, vouchers, and releases required by such insurance companies. After deducting any costs of collection, Mortgagee may use or apply the proceeds, at its option (i) as a credit upon any portion of the indebtedness secured hereby, except that this option shall not be exercised if Mortgagor demonstrates to Mortgagee's reasonable satisfaction that said proceeds, together with such other funds as are available to Mortgagor for such purpose, are sufficient in amount to fully pay for the restoration of the damaged improvements or (ii) to repairing and restoring the improvements in which event the Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the indebtedness secured hereby, or (iii) to deliver same to the Mortgagor. In the event Mortgagee shall elect to apply such proceeds to restoring the improvements, such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, then Mortgagor shall furnish Mortgagee with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. Proceeds of insurance paid to and held by Mortgagee for purposes of paying for restoration shall be held in a money market (or then comparable) interest bearing account. In the event of foreclosure of this Mortgage, or other transfer of title to the premises in extinguishment of the indebtedness secured

UNOFFICIAL COPY

hereby, all right, title, and interest of Mortgagor, in and to any insurance policies then in force, and any claims or proceeds thereunder shall pass to Mortgagee or any purchaser or grantee. In the event Mortgagee, in its reasonable discretion, determines that any insurance provided by Mortgagor, does not comply with the insurance requirements set forth herein, then Mortgagee may, at any time and at its own discretion, procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in such amount and carried in such company as it may determine, the cost of which shall be repaid to Mortgagee by Mortgagor after notice by Mortgagee to Mortgagor of the exercise of such right. Mortgagor shall furnish to Mortgagee, upon its request, estimates or appraisals of insurable value, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building or buildings and improvements on the premises.

In addition to such insurance, Mortgagor shall also provide and keep in full force and effect rent insurance covering loss of the gross rental income at the time of the casualty loss from the Premises for a period of not less than eighteen months after a casualty loss with Mortgagee named as mortgagee on such policy. All payments by the insurance company shall be paid to Mortgagor and Mortgagee, and applied first to the monthly payments of principal and interest then owing from month to month on the Note, second to the payment of real estate taxes and insurance premiums for the Premises, and the balance as Mortgagor's and Mortgagee's interests may then appear.

(b) Liability. Mortgagor shall carry and maintain in force at all times comprehensive public liability insurance as may be required from time to time by Mortgagee in forms, amounts, and with companies satisfactory to Mortgagee, and Mortgagor will apply all insurance proceeds under such policies to the payment and discharge of the liabilities in respect of which such proceeds are collected. It is understood and agreed that the amounts of coverage shall not be less than Two Million (\$2,000,000) Dollars for any one person injured, including death, and not less than Five Million (\$5,000,000) Dollars per occurrence and that the policy shall name Mortgagee and its beneficiaries, and their agents and employees as an additional insured party thereunder.

(c) Flood Insurance. Mortgagor shall carry and maintain in force at all times flood insurance in accordance with the provisions of the Flood Disaster Protection Act of 1973, as amended, if the area in which the premises are situated is designated as "flood prone" or a "flood risk area", as defined in said Act, in an amount satisfactory to Mortgagee, and Mortgagor shall comply with such other requirements of said act as are appropriate. On the Date Hereof, the parties anticipate that Mortgagor will not be required to provide flood insurance.

(d) Policies. Unless Mortgagee otherwise agrees, all policies of insurance required hereunder to be maintained by Mortgagor, shall be deposited with Mortgagee and shall provide for, among other things, written notice to Mortgagee of their expiration or any anticipated cancellation at least ten (10) days prior to such event occurring. Not less than fourteen (14) days prior to the expiration of any such policy, Mortgagor shall deposit an appropriate renewal or replacement policy. Each insurance policy shall be with a company or companies with a rating in the A.M. Best Key Rating Guide ("Best Guide") of not less than A (i.e. A, A+ or A++) and be reasonably acceptable to Lender.

(e) Application of Casualty Insurance Proceeds. Notwithstanding any provisions of Paragraph 4(a) to the contrary, in case of casualty loss of or damage to the Premises after the Date Hereof, any insurance proceeds to which either or both of the parties hereto shall be entitled on account thereof, shall be used, at Lender's election, as follows: (i) in the event the insurance proceeds are sufficient to fully reconstruct or restore such improvements, either to pay for the restoration or reconstruction of such damaged or to apply the insurance proceeds to the unpaid balance of the Loan; or (ii) if the insurance proceeds are not sufficient to fully reconstruct such improvements, then the proceeds of insurance applied to the unpaid balance of the Loan.

5. Preservation, Restoration and Use of Premises. Mortgagor shall complete, within a reasonable time, any building or buildings or other improvements now or at any time in the process of being constructed upon the premises. No building or other improvement on the premises shall (except as required by law) be substantially altered, removed, or demolished nor shall any fixtures or appliances on,

UNOFFICIAL COPY

in or about said buildings or improvements be severed, removed, sold or mortgaged, without the prior written consent of Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels, or articles of personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto. Subject to the provisions of Section 4 hereof, Mortgagor shall promptly repair, restore, or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. Mortgagor shall not permit, commit, or suffer any waste, impairment, or deterioration of the premises or any part or improvement thereof, and shall keep and maintain the premise and every part thereof in good repair and condition and effect such repairs as Mortgagee may reasonably require, and, from time to time, make all needful and proper replacements and additions thereto so that said buildings, fixtures, machinery, and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Mortgagor shall not suffer or permit the premises to be abandoned or to be used for a purpose other than for residential rental apartment purposes. Mortgagor shall not subject the premises to any use covenants or restrictions and shall not initiate, join in or consent to any change in any existing private restrictive covenant, zoning ordinance, or other public or private restriction limiting or defining the uses which may be made of or the kind of improvements which can be constructed or placed on the premises or any part thereof, and shall promptly notify Mortgagee of, and appear in and defend, at its sole cost and expense, any such proceedings seeking to effect any of the foregoing. Mortgagor shall not subdivide the premises and shall not subject the premises to the provisions of the condominium laws of the state in which the premises are situated.

6. Compliance with Governmental Insurance and Other Requirements. Mortgagor shall comply with all statutes, ordinances, orders, requirements or decrees relating to the premises or the use thereof of any federal, state, or municipal authority, and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance required under Section 4 hereof and to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions, and nonconforming uses) privileges, franchises, and concessions which are applicable to the premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the premises. In the event that any building or other improvement on the premises must be altered or removed to enable Mortgagor to comply with the foregoing provisions of this Section 6, Mortgagor shall not commence any such alterations or removals without Mortgagee's prior approval of the need therefor and the plans and specifications pertaining thereto. After such approval, which shall not be unreasonably withheld or delayed, Mortgagor, at its sole cost and expense, shall effect the alterations or removal so required and approved by Mortgagee. Mortgagor shall not by act or omission permit any building or other improvement on and not subject to the lien of this Mortgage to rely on the premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the premises or any interest therein to be so used. Similarly, no building or other improvement on the premises shall rely on any land not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section shall be void. Mortgagor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the premises.

7. Liens, Encumbrances and Transfers of Ownership.

(a) Prohibition of Other Liens and Encumbrances. (1) Except as provided in Paragraph 7(a)(2), Mortgagor shall keep the premises free from liens of mechanics and materialmen and from all other liens, charges, and encumbrances of whatever nature, regardless of (i) whether the same arise voluntarily or involuntarily on the part of Mortgagor and (ii) whether the same are subordinate to,

UNOFFICIAL COPY

prior to, or on a parity with the lien of this Mortgage, and shall furnish to Mortgagee satisfactory evidence of the payment and discharge of any such liens, charges, and encumbrances, asserted or claimed to exist against the premises, and any other lien or encumbrance expressly consented to by Mortgagee with respect to any such second mortgage or other permitted encumbrance, Mortgagor shall pay, when due, the indebtedness secured thereby and upon Mortgagee's request, furnish to Mortgagee satisfactory evidence of such payment or payments. Without in any way limiting Mortgagee's right to withhold its consent to Mortgagor hereinafter granting or creating a lien against all or any part of the premises which is subordinate to the lien hereof, any lien for which such consent is given shall be subject and subordinate to all leases pertaining to the premises whether then in existence or thereafter arising, and further subject to any and all renewals, extensions, modifications, releases, increases, changes or exchanges pertaining to the indebtedness secured hereby, without the consent of such subordinate lien holder and without any obligation to give notice of any kind thereto regardless of whether or not expressed in such consent or in the document granting such subordinate lien.

(2) Mortgagee agrees that it will not unreasonable withhold its consent to Mortgagor's placing a second mortgage lien against the Premises, provided that each and all of the following terms and conditions are satisfied, as reasonably determined by Mortgagee:

- A. Loan-To-Value and Debt Coverage Restriction -- the total principal amount owing under the Note and any other debt encumbering the premises (including the face principal amount of such proposed second mortgage lien) shall not equal more than eighty percent (80%) of the then current value of the premises, which value shall be determined by an appraisal satisfactory to the Mortgagee performed at Mortgagor's expense by an MAI appraiser or other appraiser reasonably approved by Mortgagee and the debt service coverage factor (as determined by Mortgagee) including debt service required under such further encumbrance shall be equal to or greater than 1.20 to 1;
- B. No Default Under The Note and This Mortgage -- the Note and this Mortgage are then free of all defaults by Mortgagor and the Mortgagor is then in compliance with all of the terms and provisions of the Note and this Mortgage;
- C. Guaranty of Payment and Performance by SKS & Associates, Inc. and Michael J. Slinkman -- SKS & Associates, Inc. and Michael J. Slinkman shall guaranty the payment and performance of the second mortgage loan note, mortgage and other loan documents;
- D. Reports and Documents Required Under this Mortgage Delivered To Mortgagee and Reserves for Real Estate Taxes and Insurance Are Fully Funded -- the Mortgagor has delivered to Mortgagee all of the reports and other documents required under the Note and Mortgage, including but not limited to, copies of all then current leases and a then current rent roll, and the real estate tax reserve account and the insurance reserve account, if then required by the provisions of this Mortgage, are fully funded;
- E. Absence of Obligations Imposed on Mortgagee -- no obligation are imposed on Mortgagee under the second mortgage loan transaction;
- F. Certified Copy Of Second Mortgage Loan Documents -- Mortgagee is furnished with a certified copy of the Second Mortgage note, mortgage and other loan documents evidencing and security the loan;
- G. First Priority Rights In Insurance and Condemnation Proceeds -- The Second Mortgage loan documents shall recognize the Mortgagee has the first rights in and to all casualty, rent loss and condemnation and eminent domain proceeds as provided in the Note and this Mortgage and shall authorize and direct use of the insurance proceeds as provided in the Mortgage;
- H. Title Insurance -- the Mortgagee's ALTA loan policy insuring the validity, enforceability and first priority lien of the Mortgage is later dated to cover the date of the second mortgage loan transaction, and insures that the lien of the Mortgage remains valid, enforceable and a first priority mortgage lien, subject only to then current real estate taxes not then due and payable and Permitted Title Exceptions,

UNOFFICIAL COPY

and that the lien of the new mortgage is a second priority lien junior and subordinate to the lien of the Mortgage;

I. Guaranty of Payment and Performance by SKS & Associates, Inc. and Michael J. Slinkman Remain Full Force and Effect – SKS & Associates, Inc. and Michael J. Slinkman shall continue to guaranty the payment and performance of the Note, Mortgage and other loan documents and shall deliver to Mortgagee their respective reaffirmation of guaranty in form and substance acceptable to the Mortgagee showing each guaranty remains in full force and effect, without defenses, offsets or counterclaims; and,

J. Attorneys Fees and Other Costs – Mortgagor pays the Mortgagee for any and all reasonably and documented attorney fees (not to exceed \$750) and title and other fees incurred by or on behalf of Mortgagee in connection with reviewing, approving and documenting any such second mortgage loan.

(b) Ownership Transfers.

(1) Except as provided in Paragraph 7(b)(5), Mortgagor shall not, without the prior written consent of Mortgagee, sell, transfer, convey, encumber, or assign the title to all or any portion of the premises, or the rents, issues, or profits therefrom, whether by operation of law, voluntarily or otherwise, and shall not contract to do any of the foregoing (any such sale, transfer, conveyance, encumbrance, assignment or agreement to do any of the foregoing being herein referred to as an "Ownership Transfer").

(2) Any transfer or series of transfers of capital stock, or any issuance of additional capital stock or series of issues of additional capital stock, of a corporate Mortgagor, or any combination thereof, which has or have the effect of transferring voting control thereof from the controlling stockholder or stockholders at the time this Mortgage is made (except a transfer by reason of the death of an individual stockholder) shall be deemed to be an Ownership Transfer by the corporate Mortgagor, unless the prior written consent of the mortgagee is first had and obtained. No dissolution of a corporate Mortgagor shall be suffered or permitted without the prior written consent of Mortgagee having been obtained; and, any such dissolution without Mortgagee's prior written consent shall be deemed an Ownership Transfer.

(3) If the Mortgagor shall have obtained the prior written consent of the Mortgagee to sell, transfer, convey or assign the title to all or any portion of the premises and the person acquiring such interest in the premises is land trustee acting under an Illinois land trust agreement, Mortgagor acknowledges and agrees that ownership of the beneficial interest in the trust of which the successor Mortgagor is trustee by, and the power of direction thereunder being vested in, the person or persons then comprising the Beneficial Owner for as long as the indebtedness secured hereby remains unpaid has been a material consideration to Mortgagee in giving its consent to Mortgage. Accordingly, the successor Mortgagor, and the Beneficial Owner, each agree that the Beneficial Owner shall not, without the prior written consent of Mortgagee, transfer or assign all or any portion of such beneficial interest, or the rents, issues, or profits from the premises (including, without being limited to, a collateral assignment), whether by operation of law, voluntarily or otherwise, and shall not contract to do any of the foregoing, (any such change, transfer, assignment or agreement to do so also being herein referred to as an "Ownership Transfer"), provided, however, that (i) anything in Section 24(b)(iv) to the contrary notwithstanding, Mortgagee shall have no right to enjoin or otherwise prohibit any Ownership Transfer, whether by Mortgagor or the Beneficial Owner, to which Mortgagee does not so consent (which consent Mortgagee may withhold for any reason) and, (ii) Mortgagee's rights and remedy in the event of any default hereunder resulting from any such Ownership Transfer to which Mortgagee has not so consented in accordance with the terms hereof, shall be to declare the indebtedness evidenced hereby to be immediately due and payable, as specified in Section 24(b)(i), and in the absence of payment upon such acceleration to pursue such other remedies as are specified in Section 24 hereof.

(4) Mortgagor shall give Mortgagee prior written notice of any proposed Ownership Transfer which requires Mortgagee's consent, as aforesaid, and shall furnish to Mortgagee such information concerning the proposed transaction and proposed transferee as Mortgagee may

UNOFFICIAL COPY

reasonably request. Without in any way limiting Mortgagee's right to withhold its consent to any proposed Ownership Transfer, Mortgagor agrees that Mortgagee may require in connection with, and as a condition precedent, to granting its consent to any such proposed Ownership Transfer (i) that the rate of interest on the unpaid balance of the indebtedness secured hereby be increased (with a corresponding increase in the monthly installment of principal and interest due under the Note to maintain the same rate of principal amortization) to a rate not exceeding Mortgagee's then current market rate, as specified by Mortgagee, and/or that Mortgagee share in the proceeds of such Ownership Transfer by receiving a transfer fee in an amount specified by Mortgagee but not exceeding two percent (2%) of the then unpaid principal balance, and (ii) that in addition to any other reasons Mortgagee may have for withholding consent, such consent may be withheld if Mortgagee, in its sole discretion and judgment, decides on the basis of the general reputation, experience, and financial condition of the proposed transferee, or new Beneficial Owner if said proposed transfer is to a trustee (regardless of whether or not said transferee or Beneficial Owner will assume any personal liability) that it would not in the first instance make a loan to said proposed transferee or, if a trustee, on behalf of its proposed Beneficial Owner. Nothing herein shall restrict or modify Mortgagor's right of prepayment without penalty under the Note. Mortgagor further agrees that any such Ownership Transfer, if approved by Mortgagee, shall be at no cost to Mortgagee and that Mortgagor shall pay all costs incurred by Mortgagee in connection with such Ownership Transfer, including, but not limited to, Mortgagee's attorneys' fees. Any consent by Mortgagee to one Ownership Transfer shall not be deemed a consent to any other.

(5) Mortgagee agrees that it will not unreasonably withhold its consent to Mortgagor selling the Premises to another person, provided that each and all of the following terms and conditions are satisfied, as reasonably determined by Mortgagee:

A. Loan-To-Value Restriction -- the total principal amount owing under the Note and any other debt encumbering the premises (including the face principal amount of second mortgage lien, if any, which Mortgagee may have approved) shall not equal more than eighty percent (80%) of the then current value of the premises, which value shall be determined by an appraisal satisfactory to the Mortgagee performed at Mortgagor's expense by an MAI appraiser or other appraiser reasonably approved by Mortgagee and prior to the closing of the sale, certified copies of the executed sale contract, all signed closing documents, including the RESPA settlement statements and the purchaser's title insurance policy are delivered to Mortgagee;

B. No Default Under The Note and This Mortgage -- the Note and this Mortgage are then free of all defaults by Mortgagor and the Mortgagor is then in compliance with all of the terms and provisions of the Note and this Mortgage;

C. Guaranty of Payment and Performance by SKS & Associates, Inc. and Michael J. Slinkman -- SKS & Associates, Inc. and Michael J. Slinkman shall continue to guaranty the payment and performance of the Note, Mortgage and other loan documents and shall deliver to Mortgagee their respective reaffirmation of guaranty in form and substance acceptable to the Mortgagee showing each guaranty remains in full force and effect, without defenses, offsets or counterclaims;

D. Reports and Documents Required Under this Mortgage Delivered To Mortgagee and Reserves for Real Estate Taxes and Insurance Are Fully Funded -- the Mortgagor has delivered to Mortgagee all of the reports and other documents required under the Note and Mortgage, including but not limited to, copies of all then leases and a then current rent roll, and the real estate tax reserve account and the insurance reserve account, if then required by the provisions of this Mortgage, are fully funded;

E. Assumption of the Loan Documents -- the proposed purchaser of the Premises in reasonable assumption acceptable to Mortgagee and the purchaser assumes each and all of the obligation in the Note, Mortgage and other loan documents in a form reasonably acceptable to Mortgagee, which assumptions are to be recorded at purchaser's expense, with the original assumption documents delivered to Mortgagee;

F. Credit Acceptable To Mortgagee -- the purchaser, or individuals and/or other entity or entities which owns the purchaser provide to Mortgagee credit reports which are reasonable acceptable to

UNOFFICIAL COPY

Mortgagee and demonstrate reasonable experience in the operation and management of apartment real estate;

G. Title Insurance – the Mortgagee's ALTA loan policy insuring the validity, enforceability and first priority lien of the Mortgage is later dated to cover the date of the sale to and assumption by Purchaser, insuring that the lien of the Mortgage remains valid, enforceable and a first priority mortgage lien, subject only to then current real estate taxes not then due and payable and Permitted Title Exceptions;

H. Guaranty of Payment and Performance – the individuals and/or other entity or entities which owns the purchaser execute and deliver to Mortgagee guaranties of payment and performance of the Note, Mortgage and other loan documents which are reasonably acceptable to Mortgagee;

I. Attorneys Fees and Other Costs – Mortgagor pays the Mortgagee for any and all reasonably and documented attorney fees (not to exceed \$750) and title and other fees incurred by or on behalf of Mortgagee in connection with reviewing, approving and documenting any such transfer; and

J. Organizational Documentation – the Mortgagor receives any and all corporate and/or organizational documentation regarding such transfer that Lender deems necessary to review such transfer.

8. Stamp Tax. If at any time the United States government or any state, or municipal government shall require Internal Revenue or other documentary stamps hereon or on the Note secured hereby, or shall otherwise impose a tax or impose an assessment on this Mortgage or on the Note or shall require payment of an interest equalization tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of Mortgagee thirty (30) days after the mailing or notice of such election to Mortgagor, provided, however, said election shall be unavailing and this Mortgage and the Note shall be and remain in effect, if Mortgagor lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of Mortgagee and Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

9. Effect of Change in Laws Regarding Taxation. In the event of the enactment, after the date of this Mortgage, of any law of the state in which the premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if, in the opinion of counsel for Mortgagee, (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable within thirty (30) days from the giving of such notice. Notwithstanding the foregoing, Mortgagor shall not be obligated to pay any portion of Mortgagee's federal or state income tax.

10. Mortgagee's Performance of Defaulted Acts. In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. Mortgagee is hereby authorized to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, installments of assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry

UNOFFICIAL COPY

into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Section, and may do so whenever, in its judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and in connection with any such advance, in the event of a default under the Note or this Mortgage, Mortgagee, at its option, may and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable and documented attorney's fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the Default Interest Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

11. Eminent Domain. Mortgagee is hereby authorized to collect and receive from the condemnation authorities any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, hereby assigned by Mortgagor to Mortgagee, as aforesaid, and Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor in an amount not to exceed the unpaid indebtedness evidenced and secured by the Note, this Mortgage and the other loan documents. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of the said premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Mortgagee, at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning to Mortgagee all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. The proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all of its expenses in connection with such proceedings, including costs and attorneys' fees, to the reduction of the indebtedness secured hereby or to restoring the improvements, in which event the same shall be paid out in the same manner as is provided, with respect to insurance proceeds, in Section 4(a) hereof. Proceeds of any condemnation award paid to and held by Mortgagee for purposes of paying for restoration shall be held in a money market (or then comparable) interest bearing account.

12. Acknowledgment of Debt. Mortgagor shall furnish from time to time within seven (7) days after Mortgagee's request, a written statement, duly acknowledged, verifying the amount due upon this Mortgage (as reflected on the books and records of Mortgagee) and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

13. Rents and Leases.

(a) Mortgagee's Right of Prior Approval. Except as otherwise provided in this Paragraph 13(a), all leases of the premises are and shall be subject to the approval of Mortgagee as to form, content and tenants and without limiting the generality of the foregoing, neither Mortgagor nor any Beneficial Owner shall, without Mortgagee's prior written consent, (i) make any lease of all or any part of the premises, except for actual occupancy by the lessee thereunder, (ii) execute an assignment or pledge of any rents of the premises or of any lease of all or any part of the premises, except as security for the indebtedness secured hereby, (iii) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, or (iv) agree to any amendment to or change in the terms of any lease previously approved by Mortgagee, which substantially reduces the rent payable thereunder or increases any risk or liability of the lessor thereunder. Without the prior approval of

UNOFFICIAL COPY

Mortgagee, Mortgagee agrees that Mortgagor and its beneficiary may enter into written apartment leases of the apartments on the Premises using customary lease forms, for lease terms not exceeding two years, at then current market rents, with a prepaid security deposit of not less than one months rent paid to Mortgagor or its beneficiary.

(b) Mortgagor's Obligations. Mortgagor, without any cost and expense to Mortgagee, shall (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of all or any part of the premises, on the part of the landlord thereunder to be kept and performed, (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the lessees to be kept and performed, (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of landlord or of the lessees thereunder, (iv) transfer and assign to Mortgagee upon request of Mortgagee, any lease or leases of all or any part of the premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment, (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all lessees, terms of all leases, including the spaces occupied, and the rentals payable thereunder, and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the lessee under any lease of all or any part of the premises a certificate with respect to the status thereof. Mortgagee shall have the option to declare this Mortgage in default because of a default of landlord in any lease of all or any part of the premises, whether or not such default is cured by Mortgagee pursuant to the right granted herein. Any default under any separate Assignment of Lessor's interest in Lease or under any Assignment of Rents given as additional security for the indebtedness secured hereby shall constitute a default hereunder on account of which the whole of the indebtedness secured hereby shall at once, at the option of the Mortgagee, become immediately due and payable without notice to the Mortgagor.

(c) Mortgagee Exoneration. Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as landlord, tenant or assignor, under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord or landlord's assignee, each and all of which covenants and payments Mortgagor agrees to perform and pay.

(d) Lessee Attornment. In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each lease of all or any part of the premises made after the date of recording this Mortgage shall, at the option of the Mortgagee, attorn to any person succeeding to the interest of Mortgagor or Beneficial Owner, as the case may be, as a result of such enforcement and shall recognize such successor in interest as landlord under such lease without change in the terms or other provisions thereof, provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the prior consent of Mortgagee or said successor in interest, except as otherwise specified in Section 13(a)(iv) hereof. Each lessee, upon request by Mortgagee or any such successor in interest, shall execute and deliver an instrument or instruments confirming such attornment, and Mortgagor shall cause each such lease of all or any part of the premises to contain a covenant on the lessee's part evidencing its agreement to such attornment.

(e) Declaration of Subordination. At the option of Mortgagee, 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 award in condemnation) to any and all leases of all or any part of the premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the premises are situated, of a unilateral declaration to that effect.

14. Inspection of Premises. Mortgagor shall permit Mortgagee or its agents to inspect the premises at all reasonable times, upon reasonable prior notice if no emergency then exists and access

UNOFFICIAL COPY

thereto shall be permitted for such purpose. In the event of an emergency, no prior notice shall be required from Mortgagee.

15. Inspection of Books and Records. Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the premises. If no default exists under the Note, this Mortgage and the other loan documents, then once each calendar year, within ten (10) days after demand therefor, shall allow Mortgagee to examine and make copies of such books and records and all supporting vouchers and data at any time and from time to time on request at its offices, hereinbefore identified, or at such other location as may be mutually agreed upon. If a default exists under the Note, this Mortgage and the other loan documents, then not more often than once each month, within ten (10) days after demand therefor, shall allow Mortgagee to examine and make copies of such books and records and all supporting vouchers and data at any time and from time to time on request at its offices, hereinbefore identified, or at such other location as may be mutually agreed upon.

16. Future Advances. Mortgagee may, at its option upon request of Mortgagor, at any time before full payment of the indebtedness secured by this Mortgage, make further advances to Mortgagor, and the same, regardless of whether the amount thereof when added to the then principal balance due under the Note exceeds the face amount thereof, together with the interest thereon shall be on a parity with, and not subordinate to, the indebtedness evidenced by the Note and shall be secured hereby in accordance with all covenants and agreements herein contained. If Mortgagee shall make further advances as aforesaid, Mortgagor shall repay all such advances in accordance with the note or notes, or agreement or agreements, evidencing the same which Mortgagor shall have executed and delivered to Mortgagee, if any, and in the absence of any such agreement, the same shall be payable, together with interest thereon at the rate and at the intervals specified in the Note, in full on the Maturity Date.

17. Purpose of Loan. Mortgagor represents to Mortgagee that the entire proceeds of the loan evidenced by the Note (A) are a "loan to a corporation", as that phrase is used in 815 ILCS 205/4(1)(a), and both Mortgagor and its beneficiary are corporations as that term is defined in said 815 ILCS 205/4(1)(a), and (B) are a loan secured by a mortgage on real estate as provided in 815 ILCS 205/4(1)(L).

18. Partial Invalidity. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage or the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. If under the circumstances interest in excess of the limit allowable by law shall have been paid by Mortgagor in connection with the loan evidenced by the Note, such excess shall be applied by Mortgagee to the unpaid principal balance of the Note or refunded to Mortgagor in the manner to be determined by Mortgagee and if any such excess interest has accrued, Mortgagee shall eliminate such excess interest so that under no circumstances shall interest on the loan evidenced by the Note exceed the maximum rate allowed by the law.

19. Subrogation. In the event the proceeds of the loan made by Mortgagee to Mortgagor, or any part thereof, or any amount paid out or advanced by Mortgagee, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the premises or any part thereof, then Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

UNOFFICIAL COPY

20. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of said premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to said premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from said Mortgagor's covenants and undertakings hereunder, specifically including Section 7 hereof, and without Mortgagee waiving its rights to accelerate the Note as set forth in said Section 7.

21. Execution of Security Agreement and Financing Statement. Mortgagor, within ten (10) days after request by mail, shall execute, acknowledge, and deliver to Mortgagee a Security Agreement, Financing Statement, or other similar security instrument, in form satisfactory to Mortgagee, covering all property, of any kind whatsoever owned by Mortgagor, which, in the sole opinion of Mortgagee, is essential to the operation of the premises and concerning which there may be any doubt as to whether the title to same has been conveyed by or a security interest therein perfected by this Mortgage under the laws of the State of Illinois and shall further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement, or certificate or other documents as Mortgagee any request in order to perfect, preserve, maintain, continue, and extend the security instrument. Mortgagor further agrees to pay to Mortgagee, on demand, all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing, and refiling of any such document. To the extent that this instrument may operate as a security agreement under the Uniform Commercial Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a Secured Party (as said term is defined in the Uniform Commercial Code).

22. Releases. Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the premises or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note and this Mortgage or guaranty, if any, given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness herein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage.

23. Expenses Incurred by Mortgagee. Any costs, damages, expenses or fees, including reasonable and documented attorney's fees, incurred by Mortgagee in connection with (i) sustaining the lien of this Mortgage or its priority, (ii) after the occurrence of a default by Mortgagor, obtaining any commitment for title insurance or title insurance policy, (iii) protecting the premises, (iv) protecting or enforcing any of Mortgagee's rights hereunder, (v) recovering any indebtedness secured hereby, (vi) any litigation or proceedings (including, but not limited to, bankruptcy, probate and administrative law proceedings) affecting this Mortgage, the Note, or the premises, or (vii) preparing for the commencement, defense or participation in any threatened litigation or proceedings as aforesaid, or as otherwise enumerated in Section 24(c) hereof, shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Mortgagor, without notice, with interest thereon at the Default Interest Rate.

24. Remedies on Default.

(a) Events of Default. It shall constitute a default under this Mortgage when and (i) if any default occurs in the due and punctual payment of the entire principal sum secured hereby, or of any installment thereof, or of interest thereon, or of any installment of interest, or (ii) if any default occurs in the due and punctual performance of or compliance with any other term, covenant or condition in this Mortgage, or in the Note, or in any other instrument now or hereafter evidencing or securing said indebtedness, including, without limitation, any guaranty, assignment of rents or assignment of leases given to secure such indebtedness, or (iii) if Mortgagor, any new Beneficial Owner, or any guarantor of

UNOFFICIAL COPY

the indebtedness secured hereby (a) is voluntarily adjudicated a bankrupt or insolvent, or (b) seeks or consents to the appointment of a receiver or trustee or custodian for itself or for all or any part of its property or (c) files a petition seeking relief under or files an answer admitting the material allegations of a petition filed against it under any bankruptcy or similar laws of the United States or any state, or (d) makes a general assignment for the benefit of creditors, or (e) takes any action for the purpose of effecting any of the foregoing, or (iv) if any order, judgment or decree is entered upon an application of a creditor of Mortgagor, or any successor as trustee, if at the time Mortgagor is a trustee, or of any new Beneficial Owner, or guarantor of the indebtedness secured hereby, without the consent of the party against whom it is entered, by a court of competent jurisdiction (a) appointing a receiver or trustee or custodian of all or a substantial part of the assets of Mortgagor or any successor as trustee if at the time Mortgagor is a trustee or of such new Beneficial Owner or guarantor, as the case may be, or (b) approving any petition filed against Mortgagor, any new Beneficial Owner or any guarantor of the indebtedness secured hereby seeking relief under any bankruptcy or other similar laws of the United States or any state and remains in force, undischarged or unstayed for a period of sixty days, or (v) if Michael J. Slinkman shall die, or (vi) if SKS & Associates, Inc. is voluntarily or involuntarily dissolved.

(b) Remedies. In addition to any other remedy herein specified, if any default under this Mortgage shall occur, Mortgagee may, at its option, (i) declare the entire indebtedness secured hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by Mortgagor) whereupon the same shall become immediately due and payable, (ii) institute proceedings for the complete foreclosure of this Mortgage, (iii) institute proceedings to collect any delinquent installment or installments of the indebtedness secured hereby without accelerating the due date of the entire indebtedness by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of such indebtedness only and any sale of the premises under such a foreclosure proceeding shall be subject to and shall not affect the unmatured part of the indebtedness and this Mortgage shall be and continue as a lien on the premises securing the unmatured indebtedness, (iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect, or (v) enforce this Mortgage in any other manner permitted under the laws of the state in which the premises are situated.

(c) Expense of Litigation. In any suit to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under this Mortgage or the Note there shall be allowed and included, as additional indebtedness in the judgment or decree, all expenditures and expense which may be paid or incurred by or on behalf of Mortgagee for reasonable and documented attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the premises.

(d) Mortgagee's Right of Possession in Case of Default. In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises, or any part thereof, as a mortgagee-in-possession pursuant to the Illinois Mortgage Foreclosure Act, personally or by its agent or attorneys, as for condition broken and Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of said premises, together with copies of all documents, books, records, papers, and accounts of Mortgagor or the then manager of the premises relating thereto, and may exclude Mortgagor, its agents, or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted: (i) hold, operate,

UNOFFICIAL COPY

manage, and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor, (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, (iii) elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, (iv) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the premises as to Mortgagee may seem judicious, (vi) insure and reinsure the premises and all risks incidental to Mortgagee's possession, operation, and management thereof, and (vii) receive all avails, rents, issues and profits.

(e) Application of Rental Proceeds. Any avails, rents, issues and profits of the premises received by Mortgagee after having possession of the premises, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage or of any separate Assignment of Rents or Assignment of Leases, shall be applied in payment of or on account of the following, in such order as Mortgagee (or in case of a receivership, as the court may determine): (i) to the payment of the operating expenses of the premises, including reasonable compensation to Mortgagee or the receiver and its agent or agents, if management of the premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases and the payment of premiums on insurance hereinabove authorized, (ii) to the payment of taxes, special assessments, and water taxes now due or which may hereafter become due on the premises, or which may become a lien prior to the lien of this Mortgage, (iii) to the payment of all reasonable and necessary repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of said premises, including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the premises, and of placing said property in such condition as will, in the judgment of Mortgagee or receiver, make the premises readily rentable, (iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any overplus or remaining funds, to the Mortgagor, its successors, or assigns, as their rights may appear.

(f) Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose this Mortgage, Mortgagor consents upon application by Mortgagee to the appointment of a receiver of the premises. Such appointment may be made either before or after sale without notice and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver shall have the power to take possession, control, and care of the premises and to collect the rents, issues, and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by Mortgagor), as well as during any further times when Mortgagor, its heirs, administrators, executors, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the premises, during the whole of said period. To the extent permitted by law, said receiver may be authorized by the court to extend or modify any then existing leases and to

UNOFFICIAL COPY

make new leases, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder it being understood and agreed that any such leases and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

(g) Sale of Premises. Any premises or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to the Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by the laws of the state in which the premises are situated. At any such sale, Mortgagee may bid for and acquire, as Purchaser, the premises or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

(h) Application of Proceeds From Foreclosure Sale. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 24(c) hereof. (ii) all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon, at the Default Interest Rate, (iii) all principal and interest remaining unpaid on the Note, and (iv) any overplus to Mortgagor, its successors, or assigns, as their rights may appear.

(i) Application of Deposits Held by Mortgagee. With respect to any deposits made with or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage, in the event of a default in any of the provisions contained in this Mortgage or in the Note secured hereby, Mortgagee may, at its option, without being required to do so, apply any monies or securities which constitute such deposits on any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the premises. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

(j) Waiver of Statutory Rights. Mortgagor, for itself and on behalf of the trust estate, all persons beneficially interested therein, and each and every person acquiring any interest in or title to the premises subsequent to the date hereof, agrees not to apply for or avail itself of any appraisal, valuation, reinstatement, redemption, stay, extension, or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and hereby waives the benefits of such laws, including, but not limited to, those specified in subsections 15-1602 and 15-1603 of the Illinois Mortgage Foreclosure Law, and further waives any and all right to have the property and estates comprising the premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety. Mortgagor acknowledges and agrees that the land covered by this Mortgage at the time of execution hereof is neither "Agricultural Real Estate" nor "Residential Real Estate" (as those terms are defined in the Illinois Mortgage Foreclosure Law). Mortgagor warrants that it has been authorized, by the trust instrument pursuant to which Mortgagor acts as trustee or by the persons having a power of direction over Mortgagor, to waive Mortgagor's right of reinstatement and redemption, as aforesaid.

(k) Partial Payments. Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such

UNOFFICIAL COPY

option or such rights of Mortgagee without its express consent except and to the extent otherwise provided by law.

(l) Tender of Payment After Acceleration. In case, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire indebtedness due hereunder, Mortgagee shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be so much additional indebtedness secured by this Mortgage, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses, and charges shall have been paid in full.

(m) Delays and Omissions. No delay in the exercise of or failure to exercise any remedy or right accruing or any default under this Mortgage shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or of a different nature.

(n) Rescission of Election. Acceleration of maturity, once made by Mortgagee, may at the option of Mortgagee, be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed, whereupon, in either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and power of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

(o) Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in the Note, in this Mortgage and in the guaranty of any guarantor shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor, any guarantor or the premises, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by the laws of the state in which the premises are situated. If Mortgagee elects to proceed under one right or remedy under this Mortgage or the Note, Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Mortgage or the Note.

25. Default Interest Rate. The term "Default Interest Rate" is deemed to mean interest at the rate of Nine percent (9%) per annum.

26. Giving of Notice. All notices to Mortgagor that are either required or contemplated in connection with this Mortgage shall be in writing, and shall be deemed given upon the earlier of the actual receipt thereof by Mortgagor or on the first (1st) business day after mailing the same to Mortgagor at Mortgagor's address first above written with postage prepaid via certified first class mail, and shall be deemed received by Mortgagor on the third business days after such mailing. By notice complying with the foregoing provisions of this section, Mortgagor may from time to time change its address for notice purposes, except that any such notice shall not be deemed delivered until actually received by Mortgagee. Except as otherwise specifically required, notice of the exercise of any option granted to the Mortgagee herein, or in the Note secured hereby, is not required to be given. Copies of notices to Mortgagor shall also be sent to the following persons at the specified addresses:

H. James Slinkman, Esq.
17559 Allison Ln.
Orland Park, Illinois 60467, and,

SKS & Associates, Inc.
2 Merry Court
Countryside, Illinois 60525

Copies of notices to Mortgagee shall also be sent to the following persons at the specified addresses:

Gass and Lewis, Ltd.
29 South LaSalle Street, Suite 340

UNOFFICIAL COPY

Chicago, Illinois 60603
Attn: Stanford E. Gass, and,

Mr. David Lehman
332 North. Harvey Avenue
Oak Park, Illinois 60302

27. Time is of the Essence. It is specifically agreed that time is of the essence of this Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights.

28. Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses, and advances due to or incurred by the Mortgagee in connection with this transaction.

29. Modifications. This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

30. Covenants to Run with the Land. All the covenants hereof shall run with the land.

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

32. Construction. The place of contract and payment being located in Illinois, this Mortgage and the rights and indebtedness hereby secured shall be construed and enforced according to the laws of the State of Illinois. Mortgagee shall act reasonably in the exercise of any right of approval or consents and of any remedies provided hereunder to Mortgagee.

33. Binding on Successors and Assigns, Definitions. This Mortgage and all provisions hereof shall extend and be binding upon Mortgagor's successors and assigns and all persons claiming under or through Mortgagor. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. The word "person" as used herein means any natural person and any partnership, joint venture, corporation, association, or other legal entity. The phrase "Beneficial Owner", as used herein, means the person who owns, or if there be more than one, each of the persons who collectively own one hundred percent (100%) of the beneficial interest in and power or direction under the trust of which Mortgagee is trustee.

34. Further Assurances. Mortgagor shall execute, acknowledge and deliver to Mortgagee and to any subsequent holder from time to time upon demand (and pay the costs of preparation and recording thereof) any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to re-affirm, to correct and to perfect the evidence of the obligation hereby secured and the lien of Mortgagee to all or any part of the premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof, and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage.

35. Recording and Filing. Mortgagor, at its expense, will cause this Mortgage and all supplements thereto for which constructive notice must be given to protect Mortgagee, at all times to be recorded and filed, and re-recorded and re-filed, in such manner and in such places as Mortgagee shall

UNOFFICIAL COPY

reasonably request, and will pay all such recording, filing, re-recording, re-filing taxes, fees and other charges to the maximum extent permitted by the laws of the state in which the premises are situated.

36. Right to Contest Taxes and Mechanics' Liens. The obligations of Mortgagor under Sections 3 and 7 hereof, and the rights of Mortgagee under Section 10 hereof, are subject to the right Mortgagor shall have to contest in good faith the validity or amount of any tax or assessment or lien arising from any work performed at or materials furnished to the premises which right, however, is conditional upon (i) such contest having the effect of preventing the collection of the tax, assessment or lien so contested and the sale or forfeiture of the premises or any part thereof or interest therein to satisfy the same, (ii) Mortgagor giving Mortgagee written notice of its intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any such tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanic's lien claim, shall mean within ten (10) days after Mortgagor receives actual notice of the filing thereof, (iii) Mortgagor making and thereafter maintaining with Mortgagee or such other depository as Mortgagee may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in Mortgagee's sole discretion, be acceptable to Mortgagee, and in either case having a present value equal to the amount herein specified) in an amount not less than One Hundred Twenty-Five Percent (125%) of the amount which, in Mortgagee's reasonable opinion determined from time to time, shall be sufficient to pay in full such contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination thereof adverse to Mortgagor or in the event Mortgagor fails to prosecute such contest as herein required, and (iv) Mortgagor diligently prosecuting such contest by appropriate legal proceedings. In the event Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds, or other security as aforesaid, on deposit as hereinabove provided, Mortgagee may, at its option, liquidate the securities deposited with Mortgagee, and apply the proceeds thereof and other monies deposited with Mortgagee in payment of, or on account of, such taxes, assessments, or liens or any portion thereof then unpaid, including the payment of all penalties and interest thereon.

37. Grace Periods. Notwithstanding any provision herein or in the Note to the contrary and in the event of any default hereunder or under the terms of the Note secured hereby on the part of the Mortgagor, Mortgagee shall be entitled to enforce the remedies therefor provided only after such default shall have continued uncorrected for seven (7) days with respect to a default in the payment of any installment of principal and interest (or either of them) due under the Note or in the payment of any other monetary sum due hereunder (of which no notice shall be required) and for thirty (30) days after written notice from Mortgagee to Mortgagor with respect to any other defaults, provided, however, that if, in Mortgagee's sole discretion, such default constitutes a clear and present emergency or threat to the lien hereof, such notice shall not be required in order for Mortgagee to act pursuant to Section 10 hereof.

38. Authority to Execute Mortgage: Mortgagor represents and warrants to, and agrees with, Mortgagee that if Mortgagor or any party constituting Mortgagor is a corporation, the execution and delivery of this Mortgage has been duly authorized by the Board of Directors of such corporation and, if required by the Certificate of Incorporation of such corporation, the execution and delivery of this Mortgage has been duly consented to or approved by the stockholders of such corporation. If a corporation, Mortgagor agrees to do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges as a business or stock corporation under the laws of the state of its incorporation.

39. Waiver and Release of Homestead Exemption Laws. Mortgagor hereby releases and waives all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois.

40. Compliance with Illinois Mortgage Foreclosure Law.
 (a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (____ ILCS 5/15-1101 et seq. (herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not

UNOFFICIAL COPY

invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

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

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraphs 23 and 24(c) of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

41. Benefits of Act: Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

42. Insurance: Wherever provision is made in the Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until confirmation of sale.

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

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

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

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

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

UNOFFICIAL COPY

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection of Section 5/15-1508(b)(1) of the Act;

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

(g) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the mortgaged premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if Mortgagor's interest in the mortgaged premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums of casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged premises imposed by Section 5/15-1704(c)(1) of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments deemed by Mortgagee to be required for the benefit of the mortgaged premises or required to be made by the owner of the mortgaged premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the mortgaged premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged premises is a member in any way affecting the mortgaged premises; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (viii) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the mortgaged premises and (ix) if the Mortgage is insured, payments of FHA or private mortgage insurance required to keep such insurance in force.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note.

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

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

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

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

(c) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem, pursuant to Sections 5/15-1603(d)(2) and 5/15-1603(e) of the Act;

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

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

and

UNOFFICIAL COPY

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

44. **Mortgagee in Possession:** In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the mortgaged premises, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the mortgaged premises or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

45. **Waiver of Redemption:** Mortgagor acknowledges that the mortgaged premises does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601(b) of the Act, Mortgagor hereby waives any and all right of redemption.

46. **Approvals:** The validity, enforceability and priority of the lien of this Mortgage and the liability of the Mortgagor hereunder shall in no wise be affected or impaired by (and the Mortgagee is hereby authorized to make, from time to time, without notice to anyone), any sale, pledge, surrender, compromise, settlement, release, renewal, extension, indulgence, alteration, substitution, exchange, change in, modification or other disposition of any of the indebtedness secured by this Mortgage, either express or implied, or of any contract, contracts or other instruments evidencing any of the indebtedness secured by this Mortgage, or of any security, additional security or collateral therefor. The validity, enforceability and priority of the lien of this Mortgage and the liability of the Mortgagor hereunder shall in no wise be affected or impaired by any acceptance by the Mortgagee of any security or additional security for, or any guarantor or additional guarantors upon any of the indebtedness secured by this Mortgage, or by the invalidity, unenforceability, loss of, or change in the priority or a reduction in value in or loss of value of, any of the security or additional security, or by any failure, neglect or omission on the part of the Mortgagee to realize upon or protect any of the indebtedness secured by this Mortgage, or any collateral or security or additional security therefor, or to exercise any lien or security interest upon or right of appropriation of any money, credit or property of the Mortgagor possessed by the Mortgagee, towards the liquidation of the indebtedness secured by this Mortgage, or by any application of payments or credits thereon or by any failure, neglect or omission on the part of Mortgagee to enforce the obligations and indebtedness of any guarantors or additional guarantors, or by the surrender, compromise, settlement, release, change, modification or other disposition of the obligations and indebtedness of any guarantors or additional guarantors. In order to enforce the lien of this Mortgage and the liability of the Mortgagor hereunder, there shall be no obligation on the part of the Mortgagee, at any time, to resort for payment to the Mortgagor or to any guaranty, or to any other individual, partnership, corporation or other legal entity, their respective properties or estates, or to resort to any collateral, security, property, liens or other rights or remedies whatsoever, and the Mortgagee shall have the right to enforce this Mortgage irrespective of whether or not other proceedings or steps seeking resort to or realization upon or from any of the foregoing are pending. All Mortgagee's diligence in collection or protection, and all Mortgagee's presentment, demand, protest and notice, as to any and everyone, whether or not the Mortgagor or others, of dishonor and default and of non-payment and of the creation and existence of any and all of the indebtedness secured by this Mortgage, and of any security and collateral therefor, and of the acceptance of this Mortgage, and of any and all extensions of credit and indulgence hereunder, are waived. All other notices of every kind, nature and type by Mortgagee as to any and everyone, whether or not the Mortgagor or others, are waived. The Mortgagor waives any and all defenses, claims and discharges of the Mortgagor, or any other person, pertaining to the indebtedness secured by this Mortgage, except the defense of discharge by payment in full. If any payment applied by the Mortgagee to the indebtedness secured by this Mortgage is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of any obligor or Mortgagor), the indebtedness secured by this Mortgage to which such payment was applied shall for the purposes of this Mortgage be deemed to have continued in existence, notwithstanding such application,

UNOFFICIAL COPY

EXHIBIT "A"

Legal Description of The Premises

LOTS 40, 41, 42 AND 43 IN BLOCK 7 IN BROOKFIELD HOMESITES, A RESUBDIVISION OF BARTLETT AND ROACH ADDITION TO GROSSDALE, BEING A SUBDIVISION OF THE SOUTH WEST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 27, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING THEREFROM THE FOLLOWING LOTS WHICH ARE NOT INCLUDED AND ARE NOT A PART OF THIS RESUBDIVISION OF LOTS 25 TO 37 BOTH INCLUSIVE AND THE WEST 1/2 OF LOT 38 BLOCK 2, LOTS 26 AND 27 IN BLOCK 4, LOTS 9,10,37 38, 39, 40, 45, 47, 48, IN BLOCK 6) IN COOK COUNTY ILLINOIS.

Common Address: 9110 West 31st Street, Brookfield, Illinois 60513

P.I.N. 15-27-419-046-0000

Property of Cook County Clerk's Office

