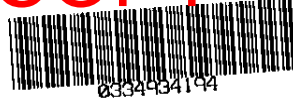


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Last revised 07/11/03 JLM
Illinois Construction Mortgage

Doc#: 0334934194
Eugene "Gene" Moore Fee: \$74.50
Cook County Recorder of Deeds
Date: 12/15/2003 04:06 PM Pg: 1 of 26

**This Document Prepared by
and after Recording Return to:**

Ohio Savings Bank
1801 East Ninth Street
Suite 200
Cleveland, Ohio 44114
Attn: Debra A. Semanco
Mail Code: OH99-0205

This space reserved for Recorder's use only

**CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

(Construction Loan)

GIT 4328432725 1/3

This CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") dated as of October 3, 2003 is made by Southport Properties, L.L.C., a Delaware limited liability company (the "Borrower"), whose mailing address and whose chief executive office is located at 2315 North Southport Avenue, Chicago, Illinois 60614, to and for the benefit of OHIO SAVINGS BANK, a federal savings bank (the "Lender"), whose mailing address is 200 Ohio Savings Plaza, 1801 East Ninth Street, Cleveland, Ohio 44114, Attention: Frank J. Bologna, Mail Code: OH99-0204.

RECITALS:

A. In consideration for a loan in the amount of One Million Four Hundred Ninety Three Hundred Eighty Three and 00/100 Dollars (\$1,490,383.00) (the "Loan") made by Lender to Borrower, Borrower has executed and delivered to Lender a certain Mortgage Note of even date herewith in the principal amount of the Loan as aforesaid, payable in full as to principal and accrued interest on October 2, 2006 (the "Note"), which Note accrues interest at a variable rate as provided therein, the terms of which are incorporated herein by this reference;

B. This Mortgage secures the payment of the unpaid principal balance of the Note, together with interest as therein provided and any other obligations of the Borrower pursuant to said Note, this Mortgage, the Construction Loan Agreement of even date herewith between Borrower and Lender (the "Agreement") and any other documents or instruments evidencing or securing the Loan

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or otherwise executed in connection with the Loan and any partial or total extensions, renewals, modifications, amendments, restatements, replacements or substitutions thereof or therefore (collectively referred to herein as the "Loan Documents");

C. It is intended that this Mortgage may secure unpaid balances of advances made after this Mortgage is recorded in the applicable real property records; and

D. A condition precedent to Lender's extension of the Loan to Borrower is the execution and delivery by Borrower of this Mortgage.

NOW, THEREFORE, in consideration of the Loan made by Lender to Borrower, as evidenced by the Note, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

Borrower hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Lender, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as the "Property"), all of which Property, rights and interests are hereby pledged primarily and on a parity with the Land (as defined below) and not secondarily:

THE LAND located in Cook County in the State of Illinois, which has a current address of 1438 West Belmont, Cook County, Chicago, Illinois and is legally described in Exhibit "A" attached hereto (the "Land"), which shall be developed into an apartment building site upon which an apartment building containing five (5) residential apartment dwelling units and one (1) commercial retail unit therein, and six tandem on-site surface parking spaces (collectively, the "Improvements") together with all buildings, structures, additions, improvements, facilities, parking spaces, units and fixtures and other property, now or hereafter located in, upon or under or based at, such land (the "Premises");

TOGETHER WITH, all easements, rights of way or use, licenses, privileges, franchises, servitudes, tenements, hereditaments and appurtenances now or hereafter belonging or in anyway appertaining thereto, including, without limitation, all right, title and interest of Borrower in any street, alley, sidewalk, open or proposed, and in front of, adjoining or adjacent or contiguous thereto, and all rights and estates in reversion or remainder;

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TOGETHER WITH, subject to the rights of Borrower under Section 14 hereof, all leases, rentals, revenues, payments, repayments, income, charges, moneys, issues and profits thereof;

TOGETHER WITH, the proceeds from any insurance or condemnation award pertaining thereto, or compensation in lieu thereof, including but not limited to any award or compensation for the alteration of the grade of any street or any other injury to or decrease in the value of the Property;

TOGETHER WITH, all of Borrower's right, title, interest, estate, claim or demand, either at law or in equity, in and to all architectural, engineering and similar plans, specifications, drawings, renderings, profiles, studies, shop drawings, reports, plats, permits, surveys and the like, and all sewer taps, permits and allocations, agreements for utilities, bonds, sureties and the like, relating to the Premises or appurtenant facilities erected or to be erected upon or about the Land;

TOGETHER WITH, all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, the proceeds of insurance;

TOGETHER WITH, all contracts and other agreements for the sale of any of the Property or any part thereof or interest therein now or hereafter entered into by Borrower, and all right, title and interest of Borrower thereunder, including, without limitation, all right, title and interest of Borrower in cash or securities deposited thereunder to secure performance by the contract purchasers of their obligations thereunder, and including, without limitation, the right to receive and collect the proceeds thereof;

TOGETHER WITH, all of Borrower's rights, powers and privileges (but not the burdens and obligations) under any construction contract or architect's (or engineer's) agreement now or hereafter entered into by Borrower relating to the Property, and all bonds and surety agreements related thereto;

TOGETHER WITH, all contracts and other agreements, if any, relating to the sale, lease, brokerage, development, management, maintenance and/or operation of the Property (or of any part thereof or interest therein) or otherwise pertaining thereto, including without limitation franchise agreements;

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TOGETHER WITH, all rights of Borrower under any commitment for any other loan secured by the Property or any part thereof or interest of Borrower therein;

TOGETHER WITH, all right, title and interest of Borrower in all tradenames, trademarks and/or servicemarks hereinafter used in connection with the Property and all contract rights and contracts, franchise agreements, deposit accounts, general intangibles, actions and rights of action, deposits, prepaid expenses, permits, licenses owned by Borrower and used in connection with or related to the Property;

TOGETHER WITH, all machinery, apparatus, equipment, fittings, fixtures, inventory, appliances, furniture and articles of personal property of every kind and nature whatsoever, other than consumable goods now or hereafter located in or upon said Premises or any part thereof owned by Borrower and used or useable in connection with any present or future operation of said Premises (herein collectively called "Equipment"), including, but without limiting the generality of the foregoing, all heating, lighting, laundry, incinerating, plumbing, lifting, cleaning, fire-prevention, fire-extinguishing, refrigerating, ventilating, communications, air-conditioning and air-cooling equipment or apparatus, engines, pipes, pumps, tanks, motors, conduits, switchboards, elevators, escalators, shades, awnings, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ducts and compressors, and all of the right, title and interest of Borrower in and to any Equipment which may be subject to any conditional bill of sale, chattel mortgage or security interest superior to the lien or security interest established by this Mortgage; and

TOGETHER WITH, all proceeds, additions, replacements and substitutions of and to any of the foregoing.

TO HAVE AND TO HOLD the Property, unto Lender, its successors and assigns forever, for the purposes and upon the uses herein set forth together with all right to possession of the Property after the occurrence of any Event of Default (hereinafter defined); Borrower hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

FOR THE PURPOSE OF SECURING: (i) all payments to be made by the Borrower pursuant to the Note, the Mortgage and/or any other Loan Document, (ii) any future or additional advances made at the option of Lender as contemplated herein, (iii) any amounts advanced or costs incurred by Lender for the protection of the Property or the enforcement of this Mortgage, the Note, the

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Agreement and/or any other Loan Document, (iv) any other cost or expense which, by the terms of this Mortgage, the Note, the Agreement and/or any other Loan Document, may be the subject of reimbursement to Lender by Borrower, and (v) the performance and observance of each covenant and agreement of the Borrower contained in this Mortgage, the Note, the Agreement and/or any other Loan Document (the foregoing subparagraphs (i) through (v) are collectively herein referred to as the "Indebtedness").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Representations and Warranties.** Borrower represents and warrants that: (a) Borrower is lawfully seized with good and marketable title in fee simple absolute to the Property free and clear of all liens and encumbrances whatsoever, except taxes and assessments general and special not delinquent, zoning ordinances and except for those matters set forth in Exhibit "B" attached hereto (hereinafter "Permitted Prior Encumbrances"), and has good and marketable title to all personal property included in the Property, subject only to the Permitted Prior Encumbrances; (b) it has full right, power and authority to bargain, sell, mortgage and convey the Property as herein provided; and (c) except as expressly provided above, it will warrant and defend to Lender such title to the Property and the lien and interest of Lender therein and thereon against all claims and demands whatsoever and will maintain the priority of the lien of, and the security interest granted by, this Mortgage upon the Property until Borrower shall be entitled to defeasance as provided herein.

2. **After-Acquired Property.** All property of every kind acquired by Borrower after the date hereof, and located at, on or under the Premises, shall, without further mortgage, conveyance or assignment, become subject to the lien of this Mortgage as fully as though now owned by Borrower and specifically described herein. Nevertheless, Borrower shall take such actions and execute and deliver such additional instruments as Lender shall reasonably require to further evidence or confirm the subjection to the lien of this Mortgage of any such property.

3. **Payment of Indebtedness.** Borrower will pay the Indebtedness secured hereby in the manner and at the times provided herein and/or in the Note or any other Loan Document, and, until the Indebtedness secured hereby is fully paid, will comply with all the covenants, terms and provisions contained herein, in the Agreement and in any other Loan Documents.

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4. **Loan Advances.** This Mortgage secures the unpaid balances of any advances made under the Note, this Mortgage, the Agreement or any other Loan Document after this Mortgage has been delivered to the appropriate County Officer for recordation. It is also expressly provided for and agreed that this Mortgage secures said future advances, whether such advances are obligatory or to be made at the option of Lender or otherwise, to the same extent as if such future advances were made on the date of the execution of this Mortgage although there may be no advance made at the time of execution of this Mortgage or no Indebtedness outstanding at the time any advance is made. All provisions of this Mortgage shall apply to any future advances made pursuant to the provisions of this Section. Nothing herein contained shall limit the amount secured by this Mortgage.

5. **Hazardous Substances.**

(a) Borrower hereby warrants and represents that to the best of Borrower's knowledge, after due inquiry, the Premises has always been used for residential dwelling purposes.

(b) Borrower hereby warrants and represents that neither Borrower nor, to the best of Borrower's knowledge, after due inquiry, any other person or entity has ever generated, used or disposed of any Hazardous Substance (as defined below) from or in connection with the Property or used the Property as a storage facility for any Hazardous Substance.

(c) Borrower hereby agrees to indemnify Lender and hold Lender harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' and paralegals' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, Lender by any person or entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence, usage, storage, generation or disposal on or under or in connection with the Property, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Property, of any Hazardous Substance (including, without limitation, any losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' and paralegals' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, under any so called Federal, state or local "superfund" or "superlien" law, or under any statute, law, ordinance, code, rule, regulation, order or decree regulating,

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relating to or imposing liability, including strict liability, or standards of conduct concerning any Hazardous Substance), regardless of whether within the control of Lender.

(d) For purposes of this Section 5, "Hazardous Substance" shall mean and include those elements or compounds which are from time to time contained in the list of hazardous substances adopted by the United States Environmental Protection Agency ("EPA") and the list of toxic pollutants designated by Congress or the EPA or defined by any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material as now or at any time hereafter in effect.

(e) Any breach of any warranty, representation or agreement contained in this Section 5 shall be an Event of Default under this Mortgage and shall entitle Lender to exercise any and all remedies provided in this Mortgage, the Agreement or any other Loan Document or otherwise permitted by law. The provisions of this Section 5 shall survive satisfaction, release or foreclosure of this Mortgage and shall inure to the benefit of any transferee of title to the Property through foreclosure of the Mortgage or any Loan Document, through any trustee's sale of the Property or through deed in lieu thereof (but only to the extent such transferee is Lender, its successor, an assignee of the Note, a participant of any of the foregoing or an affiliate or entity related to any of the foregoing).

6. Security Agreement.

(a) Borrower and Lender agree that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code in effect in the State of Illinois (the "Code") for any of the Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash and non-cash proceeds thereof (collectively, "UCC Collateral"), and Borrower hereby grants to Lender a security interest in the UCC Collateral. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest and Borrower agrees, if Lender so requests, to execute and deliver to Lender such financing statements, continuation statements and amendments. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that

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Lender may require. Without the prior written consent of Lender, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the Code, in addition to all remedies provided by this Mortgage or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies. This Mortgage constitutes a financing statement with respect to (i) all sums at any time on deposit for the benefit of Borrower or held by the Lender (whether deposited by or on behalf of Borrower or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents, and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Property or may not constitute a "fixture" (within the meaning of the Code), and (iii) any part of the Property, which is or may become a "fixture," and (iv) all replacements of, substitutions for, additions to, and the proceeds of all of the forgoing, and the "supporting obligations" (as defined in the Code). The addresses of Borrower (Debtor) and Lender (Secured Party) are as set forth in the first paragraph of this Mortgage. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Property is located. With respect to satisfying the requirements of a financing statement, the Lender is the secured party and its address is as set forth in the first paragraph of the this Mortgage, and Borrower represents and warrants that: (i) Borrower is the debtor; (ii) Borrower is the record owner of the Property; (iii) Borrower's chief executive office is located in the State of Illinois; (iv) Borrower's state of formation is the State of Delaware; (v) Borrower is a limited liability company; (vi) Borrower's exact legal name and address is as set forth in the first paragraph of this Mortgage; and (vii) Borrower's organizational identification number is _____.

(b) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all leases between Borrower or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said leases, together with all of the right, title and interest of Borrower, as lessor thereunder.

7. **Maintenance and Use of Property.** Borrower at its expense, shall keep the Property in good order and in a clean and safe condition (ordinary wear and tear excepted) and shall make all necessary or appropriate repairs, replacements, restorations and renewals thereof, interior,

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exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen. Borrower will not do, or permit to be done, any act or thing which might impair the value or usefulness of the Property or any part thereof, will not commit or permit any waste of the Property or any part thereof, and will not permit any unlawful occupation, business or trade to be conducted on the Property or any part thereof. Borrower shall also, at its expense, promptly comply with all rights of way, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments, restrictions of record and appurtenances being a part of, or burdening, the Property. No building or improvement or any part thereof may be removed or demolished without the prior written consent of the Lender.

8. **Substitutions and Removals.** If any item of personal property constituting a part of the Property becomes inadequate, obsolete, worn-out, unsuitable, undesirable or unnecessary or should be replaced, Borrower may remove such item provided that Borrower shall either:

(a) Prior to or simultaneously with such removal, substitute and install as part of the Property having equal or greater value (but not necessarily the same function) in the operation of the Property, which such substituted property shall be free from all liens and encumbrances (other than the Permitted Prior Encumbrances) and shall become part of the Property; or

(b) In the case of removal of property without substitution, promptly pay to Lender an amount equal to (i) the proceeds of such sale or the scrap value thereof, if the removed property is sold or scrapped, or (ii) if the removed property is used as a trade-in for property not to be installed as part of the Property, the trade-in credit received by Borrower, or (iii) in the case of the retention of such removed property by Borrower for other purposes, the fair market value of such property, as determined by a licensed engineer satisfactory to Lender.

9. **Payment of Taxes and Other Governmental Charges.** Borrower shall pay and discharge, as the same may or shall become due and payable, mortgage insurance premiums, if any, and all taxes, assessments and other governmental charges whatsoever, now or hereafter levied, assessed or imposed upon the Property or any part thereof, or upon Lender's interest therein, without regard to any law heretofore or hereafter enacted imposing payment of the whole or any part thereof upon Lender.

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10. **Required Insurance Coverage.** Borrower shall maintain fire, extended coverage, flood hazard and such other insurance as may from time to time be required by the Lender upon all insurable property now or hereafter forming part of said Property; such insurance shall be written in amounts and in form acceptable to the Lender by insurance companies satisfactory to the Lender, shall protect the interest of Lender in the Property, shall contain appropriate mortgagee's loss payable clause in favor of Lender, list the Lender as an additional insured, and the policies of such insurance shall, if requested, be deposited with and remain in the custody and control of said Lender. In event of foreclosure of this Mortgage, all right, title and interest of the Borrower in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. That, regardless of the types or amounts of insurance required and approved by Lender, Borrower hereby assigns to Lender all such policies of insurance as collateral and further security for payment of the money secured by this Mortgage, with loss payable to the Lender pursuant to the mortgagee clause contained in said policies, which clause shall be in form satisfactory to Lender; and that if Lender, by reason of such insurance receives any money for loss or damage to the Premises, such monies may, at the option of Lender, be retained and applied toward payment of the Indebtedness secured by this Mortgage, or be paid over wholly or in part for the repair of the Property or for the erection of new buildings thereon or for any other purposes satisfactory to Lender.

UNLESS BORROWER PROVIDES LENDER EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, LENDER MAY PURCHASE INSURANCE AT BORROWER'S EXPENSE TO PROTECT LENDER'S INTEREST IN THE PROPERTY. THE INSURANCE MAY, BUT NEED NOT, PROTECT BORROWER'S INTERESTS IN THE PROPERTY. THE COVERAGE THAT LENDER PURCHASES MAY NOT PAY ANY CLAIMS THAT BORROWER MAKES OR ANY CLAIM THAT IS MADE AGAINST BORROWER IN CONNECTION WITH THE PROPERTY. BORROWER MAY LATER CANCEL ANY SUCH INSURANCE PURCHASED BY LENDER, BUT ONLY AFTER PROVIDING LENDER WITH EVIDENCE THAT BORROWER HAS OBTAINED INSURANCE AS REQUIRED BY THIS MORTGAGE. IF LENDER PURCHASES INSURANCE FOR THE PROPERTY, BORROWER WILL BE RESPONSIBLE FOR THE COST OF SUCH INSURANCE, INCLUDING, WITHOUT LIMITATION, INTEREST AND ANY OTHER CHARGES THAT LENDER MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE INDEBTEDNESS SECURED BY THIS MORTGAGE. THE COST OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE BORROWER MAY BE ABLE TO OBTAIN ON ITS OWN.

[THIS IS AN ILLINOIS STATUTORY REQUIREMENT]

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11. **Disposition of Property; Liens and Encumbrances.** Except as expressly permitted by Sections 8 and 13 of this Mortgage, Borrower shall not sell, convey, assign, transfer, lease, or dispose of all or any part of the Property, or any interest therein, or enter into any agreement for any of the foregoing, in each case without the prior written consent of Lender. Borrower shall not directly or indirectly create or permit to remain, and will promptly discharge, any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to all or any part of the Property, or any interest therein, or any revenues, income or profit or other sums arising from the Property or any part thereof (including, without limitation, any lien, encumbrance or charge as a result of operation of law) other than: (i) the lien and security interest of this Mortgage; (ii) liens for taxes, assessments and other governmental charges which are not at the time required to be paid pursuant to Section 9 hereof; (iii) liens of mechanics', materialmen, suppliers or vendors or rights thereto to the extent permitted by Section 12 hereof; and (iv) the Permitted Prior Encumbrances specified in Section 1 hereof, if any.

12. **Construction and Other Liens.** Borrower shall not permit any construction, mechanics' or other liens to be filed or to exist against the Property or any part thereof, and Borrower shall, within sixty (60) days after the date of the filing of any such lien, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

13. **Damage, Destruction, Eminent Domain.** Borrower hereby assigns to Lender all of Borrower's right, title and interest in and to any and all such proceeds and/or eminent domain awards (including any amount paid for a conveyance under threat of condemnation), and Lender, may at its election require that all such proceeds shall be paid to Lender for application to Lender's costs of collection, any amounts then due pursuant to the Note, the Agreement or this Mortgage, and then to the prepayment without premium of principal or the repair or restoration of the Property. If any proceeding in condemnation is filed, Borrower shall promptly notify Lender in writing, and Borrower shall promptly take such steps as may be necessary to defend the action and obtain the award. Borrower may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Borrower will deliver or cause to be delivered to Lender such instruments as may be requested by it from time to time to permit such participation.

14. **Leases; Assignment of Rents and Leases.** Borrower hereby absolutely transfers and assigns to Lender all right, title and interest of Borrower in and to (a) all existing and future leases,

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subleases, licenses and other agreements for the use and occupancy of all or any part of the Property, whether written or oral and whether for a definite term or month to month, together with all guarantees of the lessee's obligations thereunder and together with all extensions, modifications and renewals thereof (hereinafter called the "Leases"), and (b) all income, receipts, revenues, rents, issues and profits now or hereafter arising from or out of the Leases or from or out of the Property or any part thereof, including without limitation room rents, minimum rents, additional rents, percentage rents, occupancy and user fees and charges, license fees, parking and maintenance charges and fees, tax and insurance contributions, proceeds of the sale of utilities and services, cancellation premiums, claims for damages arising from any breach of the Leases, proceeds from any sale or other disposition of all or any portion of the Property, and all other benefits arising from the use or enjoyment of, or the lease, sale or other disposition of, all or any portion of the Property, together with the immediate and continuing right to receive all of the foregoing (hereinafter called the "Rents"). The assignment of Rents and Leases contained herein shall be subject only to the conditional right of Borrower to collect such rentals, income and revenues (pursuant to and in accordance with the terms of the Assignment (as herein defined) during such times as no Event of Default shall have occurred hereunder. Borrower shall not enter into any Lease except with the prior written consent of Lender and pursuant to lease terms in form and substance satisfactory to Lender. Unless otherwise provided by written instrument signed by Lender, any and all Leases (other than Permitted Prior Encumbrances, if any) shall be subordinated to this Mortgage. Concurrently with the execution and delivery hereof, and not in lieu of the provisions hereof, Borrower has executed and delivered to Lender, as additional security for the repayment of the Loan, an Assignment of Rents and Leases and Agreements Affecting Real Estate ("Assignment") pursuant to which Borrower has assigned to Lender interests in the leases of the Property and the rents and income from the Property. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Borrower agrees to abide by all of the provisions of the Assignment. In the event any of the provisions of this Section 14 conflicts with the provisions of the Assignment, the provisions of the Assignment shall control.

Borrower will perform, fulfill, comply with and observe each and every covenant, agreement and condition to be performed, fulfilled, complied with and observed by Borrower as lessor under the Leases, and will not suffer or permit any default of Borrower as lessor thereunder to occur (except defaults which are duly cured within the time provided in the Leases for the curing thereof).

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Borrower shall not, and shall not have the right or power to, as against Lender without its consent, cancel, terminate, abridge or modify any Lease, accept a surrender thereof or accept prepayments of installments of rent or other sums due or to become due thereunder.

15. **Inspection.** Lender, its agents and employees shall have the right to enter upon and inspect the Property at any and all reasonable times for the protection of its interest in the Property and for such other purposes as may in Lender's sole discretion be necessary or desirable in connection with the exercise of its rights hereunder or under the Agreement.

16. **Indemnification.** Borrower hereby protects, indemnifies and saves harmless Lender, its officers, directors, agents, employees and attorneys, from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation, reasonable attorneys' fees and expenses whether or not litigation has been commenced and in all trial, bankruptcy and appellate proceedings) imposed upon, incurred by or asserted against Lender or any of such persons by reason of (a) ownership of any interest in the Property or any part thereof, (b) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Property or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, streets or ways, (c) any use, disuse or condition of the Property or any part thereof, or the adjoining sidewalks, curbs, vaults and vault space, if any, or any streets or ways, (d) any failure on the part of Borrower to perform or comply with any of the terms hereof or of the Agreement, or any inaccuracy in any representation or warranty made by Borrower herein or in the Agreement, (e) any defense of the right, title or interest conveyed by this Mortgage, (f) the performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof, (g) any subsidence or erosion of any part of the surface of the Property, including any shoreline or any bank of any river, stream, creek, canal, lake, ocean or other water source, or (h) the location or existence of asbestos or any toxic or hazardous waste, chemicals, materials or substance on, at, in or under the Property or any part thereof. If any action, suit or proceeding is brought against Lender, or any of its officers, directors, agents or employees, for any such reason, Borrower, upon the request of such party, will at Borrower's expense, cause such action, suit or proceeding to be resisted and defended by counsel satisfactory to Lender or such person. Any amounts payable to an indemnified party under this Section which are not paid within ten (10) days after written demand therefore shall bear interest at the Default Rate (as defined in the Note) from the date of such demand, and such amounts, together with such interest, shall be Indebtedness secured by this Mortgage. The obligations of Borrower under this Section shall survive any defeasance of the Mortgage.

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17. **Events of Default.** It shall be an "Event of Default" under this Mortgage if (a) Borrower fails to pay any installment of principal, interest or premium under the Note within ten (10) calendar days after the same are due and payable or any other Indebtedness secured hereby as and when the same becomes due and payable or the entire Indebtedness secured hereby upon the maturity of the Note, or (b) Borrower fails to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien, within the time required by this Mortgage, or (c) Borrower fails to perform any one or more of the covenants contained herein, in the Note, in the Agreement or any other Loan Documents and such failure is not cured within any applicable grace period, or (d) an event of default occurs under the Note, the Agreement, or any other Loan Document.

18. **Remedies.** If an Event of Default shall have occurred, Lender may, at its election, (a) declare the entire Indebtedness hereby secured to be immediately due and payable, without notice to Borrower, which notice Borrower hereby expressly waives, and (b) exercise any or all or any combination of the remedies conferred upon or reserved to it under this Mortgage, the Note, the Agreement or any other Loan Document, or now or hereafter existing at law or in equity or by statute.

19. **Foreclosure; Expense of Litigation.**

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and

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costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Borrower's obligations hereunder, the protection of said Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Note, or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

20. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Property shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Lender may determine in its sole and absolute discretion.

21. **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Lender, appoint a receiver for the Property in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the value of the Property or whether the same shall be then occupied as a homestead or not and Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Property (a) during the pendency of such foreclosure suit, (b) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (c) during any further times when Borrower, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Property for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver

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

22. **Lender's Right of Possession in Case of Default.** At any time after an Event of Default has occurred, Borrower shall, upon demand of Lender, surrender to Lender possession of the Property. Lender, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts relating thereto, and may exclude Borrower and its employees, agents or servants therefrom, and Lender may then hold, operate, manage and control the Property, either personally or by its agents. Lender shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Lender shall have full power to:

(a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same;

(b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

(c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

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(d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Property as Lender deems are necessary;

(e) insure and reinsure the Property and all risks incidental to Lender's possession, operation and management thereof; and

(f) receive all of such avails, rents, issues and profits.

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

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

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

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

24. **Compliance with Illinois Mortgage Foreclosure Law.**

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

(b) If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of

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Section 21 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

25. **Rights Cumulative.** Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy and no delay or omission of Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

26. **Waiver of Appraisal, Valuation.** Borrower hereby waives, to the full extent that it may lawfully do so, the benefit of all appraisal, valuation, stay and extension laws now or hereafter in force and all rights of marshalling of assets in the event of any sale of the Property, any part thereof or any interest therein, and any court having jurisdiction to foreclose the lien hereof may sell the Property (real or personal, or both) as an entirety or in such parcels, lots, manner or order as Lender in its sole discretion may elect.

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

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28. **Notices.** All notices required or permitted by any provisions of this Mortgage shall be effective if given in accordance with the notice provision contained in the Agreement.

29. **Reimbursement of Attorneys' Fees and Expenses.** If Lender becomes a party to any action wherein Lender must establish or defend the validity or priority of this Mortgage, or if Lender should incur expenses in connection with the collection or enforcement of this Mortgage, the Note, the Agreement or any other instrument or document collateral thereto, or if Lender should incur expenses for the protection of the Property and/or to protect Lender's interest in the Property, then Borrower shall reimburse Lender on demand for any and all such costs or expenses incurred by Lender, including, without limitation, attorneys' fees in all trial, bankruptcy and appellate proceedings, and whether or not litigation has been commenced, together with interest thereon at the Default Rate from the date such costs and expenses are incurred, and all of said amounts, including interest, shall constitute Indebtedness secured by this Mortgage to the extent permitted by law. In the event of any court proceedings, court costs and attorneys' fees shall be set by the court and not by jury and shall be included in any judgment obtained by Lender.

30. **Discharge of Mortgage.** Upon payment of the Indebtedness in full, Lender shall release this Mortgage. Borrower shall pay Lender's reasonable costs incurred in releasing this Mortgage.

31. **Recordation.** Borrower, at its expense, shall cause this Mortgage, any instruments supplemental hereto, and financing statements, including all necessary amendments, supplements and appropriate continuation statements, to be recorded, registered and filed, and to be kept recorded, registered and filed, in such manner and in such places as may be required in order to establish, preserve and protect the lien of this Mortgage as a valid lien on all real property and fixtures included in the Property and a valid, perfected first priority security interest in all fixtures included in the Property (including in each such case, without limitation, any such properties acquired after the execution hereof).

32. **Further Assurances.** Borrower will properly execute and deliver, or cause to be executed and delivered from time to time, at the request of Lender, all such further deeds, conveyances, Mortgages, security agreements, financing statements, assignments of leases now existing or hereafter entered into, transfers and such other assurances as Lender shall require for

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better assuring, mortgaging, pledging, assigning and confirming unto Lender all and singular the Property and the title thereto.

33. **Amendments, Changes and Modifications.** Except as otherwise provided in this Mortgage, this Mortgage may not be effectively amended, changed, modified, altered or terminated without the prior written consent of Lender.

34. **Governing Law.** This Mortgage shall be deemed to be made under the laws of the State of Illinois and for all purposes shall be governed by and construed in accordance with the laws of the State of Illinois.

35. **Binding Effect.** This Mortgage shall inure to the benefit of and be binding upon Borrower, its successors and assigns, and Lender, its successors and assigns, provided that Borrower may not assign (a) any of Borrower's rights and benefits under this Mortgage; or (b) any of the Property, without the prior written consent of Lender.

36. **Severability.** If any term or provision of this Mortgage, or the operation thereof, shall be held to be invalid, illegal or unenforceable, the validity of the remaining provisions hereof, and the operation thereof, shall in no way be affected thereby, each of which shall be deemed to be effective to the full extent permitted by law.

37. **Captions.** The captions or headings herein shall be solely for convenience of reference and in no way define, limit or describe the scope or intent of any provisions or sections of this Mortgage.

38. **No Setoffs.** Borrower acknowledges that the indebtedness secured hereby was incurred in good faith for full value received, and Borrower has no defenses, setoffs or counterclaims thereto.

39. **Definitions.** Whenever in this instrument the context so admits or requires, the terms "Borrower" and "Lender" shall be construed as including their respective heirs, legal representatives, successors and assigns, as the case may be (provided, however, that nothing herein shall be construed to permit the assignment of this Mortgage by Borrower); and the pronoun as used herein to refer to either Borrower or Lender in the third person, singular number and masculine gender, shall

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be construed as meaning the person, number and gender appropriate to the first designation to the respective parties hereto.

40 (Reserved)

41. **Waiver of Rights.** The Borrower hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) The Borrower hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Borrower and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15 - 1601 or other applicable law or replacement statutes;

(b) The Borrower will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(c) If the Borrower is a trustee, Borrower represents that the provisions of this paragraph (including the waiver of reinstatement and redemption rights) were made at the express direction of Borrower's beneficiaries and the persons having the power of direction over Borrower, and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well as all other persons mentioned above.

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42. **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Property by Lender pursuant to this Mortgage.

43. **Maximum Indebtedness.** Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed three hundred percent (300%) of the original principal amount of the Note set forth in Recital "A" on the first page of this Mortgage; provided, however, in no event shall Lender be obligated to advance funds in excess of the face amount of the Note.

44. **Consent to Jurisdiction.** TO INDUCE LENDER TO ACCEPT THE NOTE, BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON BORROWER, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

45. **Waiver of Jury Trial.** BORROWER AND LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

46. **Construction Loan.**

(a) The Note evidences a debt created by one or more disbursements made by Lender to Borrower to finance the cost of the construction of the Improvements upon the

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Land in accordance with the provisions of the Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the Code. The terms and conditions recited and set forth in the Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the Indebtedness immediately due and payable, or complete the construction of said Improvements and enter into the necessary contracts therefore, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate. In the event of a conflict between the terms of the Agreement and this Mortgage, the provisions of the Agreement shall apply and take precedence over this Mortgage.

(b) Borrower, at its expense, shall procure, maintain and comply with all permits, licenses and other authorizations required for the construction and installation of the Improvements and for the operation, maintenance and use of the Property. Borrower shall promptly comply with all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governmental entities, departments, commissions, boards, courts, authorities, agencies, officials and officers, which now or at any time hereafter may be applicable to the Improvements and/or the Property or any part thereof, or any use or condition of the Improvements and/or the Property or any part thereof.

IN WITNESS WHEREOF, Borrower has executed and delivered this Mortgage the day and year first above written.

BORROWER:

Southport Properties, L.L.C.,
a Delaware limited liability company

By: 

Name: Adam Winick


Title: Vice President of CM Properties, Inc.
173 Manager

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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

I, MARK CHENG a Notary Public in and for said County, in the State aforesaid, do hereby certify that ADAM WINCK, the VP of SOUTHWEST PROPERTIES, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such VP, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 22 day of October, 2003.



NOTARY PUBLIC

(SEAL)



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EXHIBIT "A"

(Legal Description)

THE EAST 1/2 OF LOT 78 AND ALL OF LOT 79 IN ALBERT WISNER'S SUBDIVISION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

TAX NO. 14-20-329-029-0000, VOL. 484

ADDRESS: 1438 WEST BELMONT AVE. CHICAGO, ILLINOIS

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EXHIBIT "B"

(Permitted Prior Encumbrances)

That matter set forth as Item 6 of Schedule B, Part II of Commitment No. 004328432 for an A.L.T.A. Loan Policy of Title Insurance to be issued in favor of Ohio Savings Bank, as proposed insured, dated August 18, 2003.

Property of Cook County Clerk's Office