



Doc#: 0403018120
Eugene "Gene" Moore Fee: \$134.50
Cook County Recorder of Deeds
Date: 01/30/2004 02:55 PM Pg: 1 of 56

Prepared by and after
recording return to:

Albert, Whitehead, P.C.
10 North Dearborn Street, Suite 600
Chicago, Illinois 60602

**MORTGAGE (FEE AND LEASEHOLD), SECURITY AGREEMENT, ASSIGNMENT
OF LEASES AND RENTS AND FIXTURE FILING**

THIS MORTGAGE (FEE AND LEASEHOLD), SECURITY AGREEMENT,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (the "Security
Instrument") is made as of the 27th day of January, 2004, by **600 S. WABASH L.P.**, a Delaware
limited partnership, having its principal place of business at 123 South Green Street, Chicago,
Illinois 60607 as mortgagor ("Borrower"), to **CITIBANK, F.S.B.**, having an address at 500
West Madison Street, 5th Floor, REG/CDFE, Chicago, Illinois 60661 as mortgagee ("Lender").

RECITALS:

Pursuant to the terms and conditions of a Construction Loan Agreement dated December
31, 2003 (as amended, restated or replaced from time to time "Loan Agreement") between
Borrower and Lender, Lender has agreed to loan to Borrower, the sum of One Million Four
Hundred Seventy Three Thousand Eight Hundred Nineteen and No/100 Dollars (\$1,473,819.00)
(the "Loan"). The Loan is evidenced by a certain Promissory Note dated December 31, 2003,
(the note together with all extensions, renewals, modifications, substitutions and amendments
thereof shall collectively be referred to as the "Note"), with interest from the date thereof, at the
rates set forth in the Note, principal and interest to be payable in accordance with the terms and
conditions provided in the Note and the Maturity Date as set forth in the Note.

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the
performance of all of its obligations under the Note and the Other Obligations (as defined in
Article 2).

ARTICLE 1 - - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably
mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender, and grant a
security interest to Lender in, the following property, rights, interests and estates now owned, or
hereafter acquired by Borrower (collectively, the "Property"): (a) all of Borrower's interests in
the Fee Simple Estate described in Exhibit A attached hereto and made a part hereof (the "Fee
Simple Estate") and all of Borrower's leasehold interest (the "Leasehold Estate") created by
that certain Ground Lease between the Chicago Transit Authority and Borrower dated January 9,

81 74 25 2 6 3 7

56

UNOFFICIAL COPY

2004 (“the CTA Ground Lease”) and further described in Exhibit A (collectively the Fee Simple Estate and the Leasehold Estate shall be referred to herein as the “Land”); (b) all additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by amendment, supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument; (c) the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the “Improvements”); (d) all easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto; (e) all machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the “Personal Property”), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the “Uniform Commercial Code”), superior in lien to the lien of this Security Instrument and all proceeds and products of the above; (f) all leases and other agreements affecting the use, enjoyment or occupancy of the Land and the Improvements heretofore or hereafter entered into, including a guaranty of any such lease (a “Lease” or “Leases”) and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (the “Rents”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt; (g) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property; (h) all proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property; (i) all refunds,

UNOFFICIAL COPY

rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction; (j) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims; (k) the right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property; (l) all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder; (m) all tradenames, trademarks, servicemarks, logos and copyrights (if any), goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property in which Borrower has an interest; (n) all of Borrower's interests and rights in and to the CTA Ground Lease and all other leases, subleases and agreements, written or oral, now or hereafter entered into, affecting the Property, the Improvements, the Equipment or any part thereof and (o) any and all other rights of Borrower in and to the items set forth in Subsections (a) through (n) above.

Section 1.2 ASSIGNMENT OF RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 3.7, Lender grants to Borrower a license to collect and receive the Rents which is revocable upon a Default. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (defined in Section 2.1), a security interest in the Property to the full extent that the Property may be subject to the Uniform Commercial Code. This Security Instrument also shall be deemed a "financing statement" pursuant to the Uniform Commercial Code.

UNOFFICIAL COPY

Section 1.4 PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including, without limitation, any sums deposited in the Escrow Fund (as defined in Section 3.5), Net Proceeds (as defined in Section __) and condemnation awards or payments described in Section 3.6, as additional security for the Obligations until expended or applied as provided in this Security Instrument.

Section 1.5 DISBURSEMENT OF LOAN PROCEEDS FOR CONSTRUCTION. This is a construction mortgage, as said term is defined in Section 9-313(1)(c) of the Uniform Commercial Code. The Debt represents a business loan within the meaning of Section 205/4 of Chapter 815 of the Illinois Compiled Statutes. Borrower further covenants and agrees that the Debt secured hereby is a construction loan and that the proceeds of the loan secured hereby are to be disbursed by Lender to Borrower in accordance with the provisions contained in the Loan Agreement. All advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the resulting indebtedness secured hereby may exceed the face amount of the Note, shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Security Instrument, and the occurrence of any Default under said Loan Agreement shall constitute a default under this Security Instrument entitling Lender to all of the rights and remedies conferred upon Lender by the terms of this Security Instrument. In the event of any conflict or inconsistency between the terms of this Security Instrument and the Loan Agreement, the terms and provisions of the Loan Agreement shall in each instance govern and control.

Section 1.6 FUTURE ADVANCES. Without limiting the generality of any other provision hereof, the indebtedness of Borrower hereunder shall include (a) all existing indebtedness of Borrower to Lender evidenced by the Note and all renewals, extensions, modifications and replacements thereof, and (b) all future advances that may be subsequently made by Lender and all renewals, extensions, modifications and replacements thereof. Borrower hereby agrees to execute any and all supplemental notes, agreements or other documents as Lender may reasonably request to evidence such future advances, which such supplemental notes, agreements or other documents shall be similar in form and substance to the existing notes, agreements and other documents from Borrower in favor of Lender.

CONDITIONS TO GRANT

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

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall perform the Other Obligations as set forth in this Security Instrument and shall abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void.

UNOFFICIAL COPY

ARTICLE 2 - PAYMENTS

Section 2.1 DEBT AND OBLIGATIONS SECURED. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"): (a) the payment of the indebtedness evidenced by the Note, in lawful money of the United States of America; (b) the payment of interest, prepayment premiums, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the Other Security Documents (defined below); (c) the payment of all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument or the Other Security Documents; (d) the payment of all sums advanced pursuant to this Security Instrument or Other Security Documents to protect and preserve the Property and the lien and the security interest created hereby; and (e) the payment of all sums advanced and costs and expenses incurred by Lender in connection with the Debt or any part thereof, any renewal, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of all other obligations of Borrower contained herein and the performance of each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of this Security Instrument, the Note or the Other Security Documents (collectively, the "Other Obligations"). Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "Obligations."

Section 2.2 PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a Default (defined below).

ARTICLE 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor

UNOFFICIAL COPY

of Lender, which wholly or partially secure or guaranty payment of the Note (the "Other Security Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 INSURANCE. Subject to the provisions of Section 3.15:

(a) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall obtain and maintain during the entire term of this Security Instrument policies of insurance against loss or damage by fire and against loss or damage by other risks and hazards covered by a standard extended coverage insurance policy including, without limitation, riot and civil commotion, vandalism, malicious mischief, burglary and theft. Such insurance shall be in an amount equal to the greatest of (i) the then full replacement cost of the Improvements and Personal Property, without deduction for physical depreciation, (ii) the outstanding principal balance of the Note and (iii) such amount that the insurer would not deem Borrower a co-insurer under said policies. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation.

(b) Borrower, at its sole cost and expense, for the mutual benefit of Borrower and Lender, shall also obtain and maintain during the entire term of this Security Instrument the following policies of insurance:

(i) Flood insurance if any part of the Property is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any amendment or successor act thereto) in an amount at least equal to the outstanding principal amount of the loan evidenced by the Note or the maximum limit of coverage available with respect to the Improvements and Personal Property under said Act, whichever is less.

(ii) Comprehensive public liability insurance, including broad form property damage, blanket contractual and personal injuries (including death resulting therefrom) coverages and containing minimum limits per occurrence of \$1,000,000 for the Property.

(iii) Rental loss and/or business interruption insurance (including rental value if any of the Property is leased in whole or in part) in an annual aggregate amount equal to all rents or estimated gross revenues from the operations of the Property, as may be applicable, and covering rental losses or business interruption, as may be applicable, for a period of at least one (1) year after the date of the fire or casualty in question. The amount of such insurance shall be increased from time to time during the term of this Security Instrument as and when new Leases and renewal Leases are entered into and the rents payable increase or the annual estimate of (or the actual) gross revenue, as may be applicable, increases to reflect such increases. The proceeds of such insurance shall be and are hereby assigned to Lender, to be applied to the payment of principal and interest on the Note, "Taxes" (defined below), "Other Charges" (defined below), and "Insurance Premiums" (defined below), in any order of preference determined by Lender, until such

UNOFFICIAL COPY

time as the damaged Improvements shall have been restored and placed in full operation, at which time, provided Borrower is not then in default under this Security Instrument, the balance of such insurance proceeds, if any, held by Lender shall be returned to Borrower.

(iv) Insurance against loss or damage from (y) leakage of sprinkler systems and (z) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements.

(v) Worker's compensation insurance with respect to any employees of Borrower, as required by any governmental authority or legal requirement.

(vi) During any period of repair or restoration, builder's "all risk" insurance in an amount equal to not less than the full insurable value of the Property against such risks (including, without limitation, fire and extended coverage and collapse of the Improvements to agreed limits) as Lender may request, in form and substance acceptable to Lender.

(vii) Such other insurance as may from time to time be reasonably required by Lender in order to protect its interests.

(c) All policies of insurance (the "Policies") required to be maintained by Borrower pursuant to this Security Instrument: (i) shall be issued by companies approved by Lender and licensed to do business in the state where the Property is located, with a claims paying ability rating of "A" or better by Standard & Poor's Corporation or a rating of "A:VII" or better in the current Best's Insurance Reports; (ii) shall name Lender as an additional insured; (iii) shall contain a Non-Contributory Standard Mortgagee Clause and a Lender's Loss Payable Endorsement (Form 438 BFU NS), or their equivalents, naming Lender as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Lender; (v) shall be maintained throughout the term of this Security Instrument without cost to Lender; (vi) shall be assigned and certificates of insurance delivered to Lender; (vii) shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under said Policies and that Lender shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation; and (viii) shall be satisfactory in form and substance to Lender and shall be approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds. Borrower shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable and shall furnish to Lender evidence of the renewal of each of the new Policies with receipts for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Lender (provided that such Insurance Premiums have not been paid to Lender or Lender's servicing agent pursuant to Section 3.5 hereof). If Borrower does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any apparently expiring Policy, then Lender may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Borrower agrees to reimburse Lender

UNOFFICIAL COPY

for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Lender, Borrower shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Lender, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like. All Policies maintained by Tenant shall contain such provisions as Lender deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Borrower, Lender nor any other party shall be a co-insurer under said Policies and that Lender shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation and shall be satisfactory in form and substance to Lender and shall be approved by Lender as to amounts, form, risk coverage, deductibles, loss payees and insureds.

(d) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Borrower shall give prompt notice of such damage to Lender and shall promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be approved by Lender (the "Restoration") and otherwise in accordance with Section 4.4 of this Security Instrument. Borrower shall pay all costs of such Restoration whether or not such costs are covered by insurance. In case of loss covered by Policies, Lender may either (1) settle and adjust any claim without the consent of Borrower, or (2) allow Borrower to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that (A) Borrower may adjust losses aggregating not in excess of \$100,000 if such adjustment is carried out in a competent and timely manner and (B) if no Default shall have occurred, Lender shall not settle or adjust any such claim without the consent of Borrower, which consent shall not be unreasonably withheld or delayed. In any case Lender shall and is hereby authorized to collect and receipt for any such insurance proceeds; and the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Borrower to Lender upon demand.

Section 3.4 PAYMENT OF TAXES, ETC.

(a) Borrower shall pay all applicable taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, including without limitation vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property prior to the same becoming delinquent. Borrower will deliver or cause Tenant to deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower shall furnish, or cause

UNOFFICIAL COPY

Tenant to furnish, to Lender paid receipts for the payment of the Taxes and Other Charges prior to the date the same shall become delinquent.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Default has occurred under the Note, this Security Instrument or any of the Other Security Documents, (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property, (iii) such proceeding shall suspend the collection of the Taxes from Borrower and from the Property or Borrower shall have paid all of the Taxes under protest, (iv) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (v) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, (vi) Borrower shall have deposited with Lender adequate reserves for the payment of the Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes under protest, and (vii) Borrower shall have furnished the security as may be required in the proceeding, or as may be requested by Lender to insure the payment of any contested Taxes, together with all interest and penalties thereon.

Section 3.5 ESCROW FUND. In addition to the initial deposits with respect to Taxes and Insurance Premiums made by Borrower to Lender on the date hereof to be held by Lender in escrow, if any, Borrower shall pay to Lender on the first day of each calendar month one-twelfth of an amount which would be sufficient to pay the Insurance Premiums due for the renewal of the coverage afforded by the Policies upon the expiration thereof (the above amount shall be called the "Escrow Fund"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes and Insurance Premiums of which it has obtained knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate taxing authority. The Escrow Fund and the payments of interest or principal or both, payable pursuant to the Note shall be added together and shall be paid as an aggregate sum by Borrower to Lender. Lender will apply the Escrow Fund to payments of Taxes and Insurance Premiums required to be made by Borrower pursuant to Sections 3.3 and 3.4 hereof. If the amount of the Escrow Fund shall exceed the amounts due for Taxes and Insurance Premiums pursuant to Sections 3.3 and 3.4 hereof, Lender shall, return any excess to Borrower. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Escrow Fund is not sufficient to pay the items set forth above, Borrower shall promptly pay to Lender, upon demand, an amount which Lender shall estimate as sufficient to make up the deficiency. The Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Lender. No earnings or interest on the Escrow Fund shall be payable to Borrower.

UNOFFICIAL COPY

Section 3.6 CONDEMNATION. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Lender is hereby irrevocably appointed as Borrower's attorney-in-fact coupled with an interest, with exclusive powers to collect, receive and retain any award or payment for any taking accomplished through a condemnation or eminent domain proceeding and to make any compromise or settlement in connection therewith. All condemnation awards or proceeds shall be either (a) paid to Lender for application against the Debt or (b) applied to Restoration of the Property as set forth in this Security Agreement. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. Any award or payment to be applied to the reduction or discharge of the Debt or any portion thereof may be so applied whether or not the Debt or such portion thereof is then due and payable. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note shall have been or may be sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt.

Section 3.7 LEASES AND RENTS.

(a) Borrower does hereby absolutely and unconditionally assign to Lender, Borrower's right, title and interest in all current and future Leases and Rents, it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Lender shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Lender. Borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter be requested by Lender to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section 3.7, Lender grants to Borrower a license, revocable upon a Default, to operate and manage the Property and to collect the Rents. Borrower shall hold the Rents, or a portion thereof sufficient to discharge all current sums due on the Debt, in trust for the benefit of Lender for use in the payment of such sums. Upon a Default, without the need for notice or demand, the license granted to Borrower herein shall automatically be revoked, and Lender shall immediately be entitled to possession of all Rents, whether or not Lender enters upon or takes control of the Property. Lender is hereby granted and assigned by Borrower the right, at its option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward payment of the Debt in such priority and proportions as Lender in its sole discretion shall deem proper.

UNOFFICIAL COPY

(b) Borrower (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall promptly send copies to Lender of all notices of default which Borrower shall receive thereunder; (iii) shall not collect any of the Rents more than one (1) month in advance; and (iv) other than to secure Subordinate Financing (as defined in the Loan Agreement) shall not execute any other assignment of the lessor's interest in the Leases or the Rents. Borrower shall promptly send copies to Lender of all notices of default which Borrower shall send under any Lease and, (A) shall enforce all of the terms, covenants and conditions contained in the Lease upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (B) shall not convey or transfer or suffer or permit a conveyance or transfer of the Property or of any interest therein so as to effect a merger of the estates and rights, or a termination or diminution of the obligations of, tenants under the Leases.

(c) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Borrower and, if cash, shall be deposited by Borrower with Lender. Any bond or other instrument which Borrower is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Lender, shall, if permitted pursuant to any legal requirements, name Lender as payee or lender thereunder (or at Lender's option, be fully assignable to Lender) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Lender. Borrower shall, upon request, provide Lender with evidence reasonably satisfactory to Lender of Borrower's compliance with the foregoing. Following the occurrence and during the continuance of any Default, Borrower shall, upon Lender's request, if permitted by any applicable legal requirements, turn over to Lender the security deposits (and any interest therefor earned thereon) with respect to all or any portion of the Property, to be held by Lender subject to the terms of the Leases.

Section 3.8 CONSTRUCTION AND MAINTENANCE OF PROPERTY. Borrower shall construct the improvements upon the Land as described in the Loan Agreement and shall maintain the Property in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered without the consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.6 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof which may have a material adverse affect on the use, operation or value of the Property.

Section 3.9 WASTE. Borrower shall not permit, commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of

UNOFFICIAL COPY

this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.10 COMPLIANCE WITH LAWS. Borrower shall promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting or which may be interpreted to affect the Property, or the use thereof ("Applicable Laws"). Borrower shall from time to time, upon Lender's request, provide Lender with evidence satisfactory to Lender that the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws. Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

Section 3.11 BOOKS AND RECORDS.

Borrower shall keep adequate books and records of account in accordance with methods acceptable to Lender in its sole discretion, consistently applied.

Borrower and its affiliates shall furnish Lender with such other additional financial or management information as may, from time to time, be reasonably required by Lender in form and substance satisfactory to Lender.

Section 3.12 PAYMENT FOR LABOR AND MATERIALS. Borrower shall promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Exceptions (defined below). Nothing contained herein shall affect or impair Borrower's ability to diligently and in good faith contest any lien or bill for labor or materials, provided that any lien placed upon the Property must be fully and irrevocably discharged (by bond or otherwise) within 60 days after the date the same is first placed upon the Property.

Section 3.13 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property or given by Borrower to Lender for the purpose of further securing any obligation secured hereby and any amendments, modifications or changes thereto.

ARTICLE 4 - SPECIAL COVENANTS

Borrower covenants and agrees that:

UNOFFICIAL COPY

Section 4.1 PROPERTY USE. The Property shall be used only for construction and operation of the Project and necessary infrastructure as described in the Loan Agreement and for no other use without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion.

Section 4.2 CASUALTY/CONDEMNATION. In the event of a casualty or a taking by eminent domain, the following provisions shall apply in connection with the restoration of the Property:

(a) Adjustment of Losses With Insurer and Application of Proceeds of Insurance. In case of loss or damage by fire or other casualty, Lender is authorized (a) to settle and adjust any claim under insurance policies which insure against such risks, or (b) to allow Borrower to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Lender is authorized to collect and issue a receipt for any such insurance money. Such insurance proceeds shall be applied either to reduce the Debt or, and only if Borrower is not then in Default under any Loan Document, to pay directly or reimburse Borrower for the cost of rebuilding and restoration of the affected portion of the Land. In the event that such insurance proceeds are made available to pay or to reimburse Borrower for the cost of said rebuilding or restoration, then, irrespective of whether such insurance proceeds are or are not adequate for such purpose, the Land 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, and pursuant to the same Plans and Specifications approved by Lender pursuant to the Loan Agreement. In any case, where the insurance proceeds are used for rebuilding and restoration, such proceeds shall be disbursed in the manner and under the conditions that Lender and Borrower have established for construction disbursements as set forth in the Loan Agreement, including without limitation, the furnishing of Lender with satisfactory evidence of the estimated cost of completion thereof and with architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Lender can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics' lien claims. If the estimated cost of completion exceeds the amount of the insurance proceeds available, Borrower immediately shall, within ten (10) days after written demand of Lender, deposit with Lender in cash the amount of such estimated excess cost. 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 such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. Any surplus which may remain out of said insurance proceeds after payment of such cost of building or restoration shall, at the option of the Lender, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto without interest.

(b) Condemnation. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the Property taken or damaged under the power of eminent domain or by condemnation. Such condemnation proceeds shall be applied either to reduce the Debt or, and only if Borrower is not then in Default under any Loan Document, to pay directly or reimburse Borrower for the cost of rebuilding and restoration of the affected Dwellings. In the event that such condemnation proceeds are made

UNOFFICIAL COPY

available to pay or to reimburse Borrower for the cost of said rebuilding or restoration, then, irrespective of whether such condemnation proceeds are or are not adequate for such purpose, the Land 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, and pursuant to the same Plans and Specifications approved by Lender pursuant to the Loan Agreement. In any case, where the condemnation proceeds are used for rebuilding and restoration, such proceeds shall be disbursed in the manner and under the conditions that Lender and Borrower have established for construction disbursements as set forth in the Loan Agreement, including without limitation, the furnishing of Lender with satisfactory evidence of the estimated cost of completion thereof and with architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Lender can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics' lien claims; . If the estimated cost of completion exceeds the amount of the condemnation proceeds available, Borrower immediately shall, within ten (10) days after written demand of Lender, deposit with Lender in cash the amount of such estimated excess cost. 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 such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. Any surplus which may remain out of said condemnation proceeds after payment of such cost of building or restoration shall, at the option of the Lender, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto without interest.

ARTICLE 5 - REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1 WARRANTY OF TITLE. Borrower has good title to the Fee Simple Estate and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Fee Simple Estate and the Improvements and that it owns the Fee Simple Estate free and clear of all liens, encumbrances and charges whatsoever except for those exceptions set forth on **Exhibit B** to this Security Instrument (the "Permitted Exceptions"). Borrower has good and valid leasehold interests in the Leasehold Estate free and clear of all liens, encumbrances and charges whatsoever except for the Permitted Exceptions. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

Section 5.2 AUTHORITY. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

Section 5.3 LEGAL STATUS AND AUTHORITY. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization; (b) is duly

UNOFFICIAL COPY

qualified to transact business and is in good standing in the State where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and shall continue to have the full right, power and authority to acquire, operate and sell the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the Other Security Documents.

Section 5.4 VALIDITY OF DOCUMENTS. (a) The execution, delivery and agreement to perform the Note, this Security Instrument and the Other Security Documents and the borrowing evidenced by the Note (i) are within the partnership power of Borrower; (ii) have been authorized by all requisite partnership action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, Borrower's Partnership Agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby and the Subordinate Liens; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby); and (b) the Note, this Security Instrument and the Other Security Documents constitute the legal, valid and binding obligations of Borrower.

Section 5.5 LITIGATION. There is no action, suit or proceeding, or any governmental investigation or any arbitration, in each case pending or, to the knowledge of Borrower, threatened against Borrower or the Property before any governmental or administrative body, agency or official which (i) challenges the validity of this Security Instrument, the Note or any of the Other Security Documents or the authority of Borrower to enter into this Security Instrument, the Note or any of the Other Security Documents or to perform the transactions contemplated hereby or thereby or (ii) if adversely determined would have a material adverse effect on the occupancy of the Property or the business, financial condition or results of operations of Borrower or the Property.

Section 5.6 STATUS OF PROPERTY.

(a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof.

(b) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its

UNOFFICIAL COPY

business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are in compliance in all material respects with all applicable zoning ordinances, building codes, land use and environmental laws and other similar laws.

(d) The Property is served by all utilities required for the current or contemplated use thereof, or to the extent not so served, will be served upon completion of the work described in the Loan Agreement. All utility service is provided by public utilities and the Property has accepted, or is equipped or will be equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems, or to the extent not so served, will be served upon completion of the work described in the Loan Agreement.

(g) The Property is free from damage caused by fire or other casualty.

(h) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment used in connection with the Project, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created and to be created hereby, the Subordinate Liens and other liens and security interests consented to in writing by Lender.

(j) To Borrower's best knowledge, all liquid and solid waste disposal, septic and sewer systems located on the Property are in a good and safe condition and repair and in compliance with all Applicable Laws.

Section 5.7 NO FOREIGN PERSON. Borrower is not a "foreign person" within the meaning of Sections 1445(f)(3) of the Code and the related Treasury Department regulations, including temporary regulations.

Section 5.8 SEPARATE TAX LOT. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with the Property or any portion thereof.

Section 5.9 INTENTIONALLY OMITTED

Section 5.10 LEASES. To the extent Borrower, with Lender's permission, enters into any Leases, the following shall be true: (a) Borrower shall be the sole owner of the entire lessor's interest in the Leases with the exception of the CTA Ground Lease; (b) the Leases shall be valid and enforceable; (c) the terms of all alterations, modifications and amendments to the Leases shall be reflected in a certified occupancy statement delivered to and approved by Lender;

UNOFFICIAL COPY

(d) none of the Rents reserved in the Leases shall be assigned or otherwise pledged or hypothecated; (e) none of the Rents shall be collected for more than one (1) month in advance; (f) the premises demised under the Leases shall be completed and the tenants under the Leases shall have accepted the same and have taken possession of the same on a rent-paying basis; and (g) there shall exist no offsets or defenses to the payment of any portion of the Rents.

Section 5.11 FINANCIAL CONDITION. (a) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to Borrower has been initiated, and (b) Borrower has received reasonably equivalent value for the granting of this Security Instrument.

Section 5.12 BUSINESS PURPOSES. The loan evidenced by the Note is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.13 TAXES. Borrower has filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by it and has paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by it. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.14 MAILING ADDRESSES. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with the provisions hereof, is true and correct.

Section 5.15 NO CHANGE IN FACTS OR CIRCUMSTANCES. All information submitted to Lender in connection with any request by Borrower for the loan evidenced by the Note and/or any letter of application, preliminary commitment letter, final commitment letter or other application or letter of intent (including, but not limited to, all financial statements, rent rolls, reports and certificates) are accurate, complete and correct in all respects. There has been no adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

Section 5.16 DISCLOSURE. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

ARTICLE 6 - OBLIGATIONS AND RELIANCES

Section 6.1 RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2 NO RELIANCE ON LENDER. The General Partners, limited partners or other beneficial owners of Borrower are experienced in the ownership and operation of

UNOFFICIAL COPY

properties similar to the Property, and Borrower and Lender are relying solely upon such expertise in connection with the ownership of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.3 NO LENDER OBLIGATIONS.

(a) Notwithstanding any of the provisions of this Security Instrument (including, but not limited to, the provisions of Subsections 1.1(f) and (l), Section 1.2 or Section 3.7), Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

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

Section 6.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument and the Other Security Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 5 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument and the Other Security Documents; and that Lender would not be willing to make the loan evidenced by the Note, this Security Instrument and the Other Security Documents and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 5.

ARTICLE 7 - FURTHER ASSURANCES

Section 7.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument, and thereafter, from time to time, will cause this Security Instrument, any Amendment, and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Other Security Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the

UNOFFICIAL COPY

execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 7.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender to execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity upon a Default including without limitation such rights and remedies available to Lender pursuant to this Section 7.2.

Section 7.3 CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option by written notice of not less than ninety (90) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

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

UNOFFICIAL COPY

Instrument, or any of the Other Security Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 7.4 INTENTIONALLY OMITTED

Section 7.5 FLOOD INSURANCE. After Lender's request, Borrower shall deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area."

Section 7.6 SPLITTING OF SECURITY INSTRUMENT. This Security Instrument and the Note shall, at any time until the same shall be fully paid and satisfied, at the sole election of Lender, be split or divided into two or more notes and two or more security instruments, each of which shall cover all or a portion of the Property to be more particularly described therein. To that end, Borrower, upon written request of Lender and at Lender's sole cost and expense, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered by the then owner of the Property, to Lender and/or its designee or designees substitute notes and security instruments in such principal amounts, aggregating not more than the then unpaid principal amount of this Security Instrument, and containing terms, provisions and clauses similar to those contained herein and in the Note, and such other documents and instruments as may be required by Lender.

Section 7.7 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of the Note or any Other Security Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or Other Security Document, Borrower will issue, in lieu thereof, a replacement Note or Other Security Document, dated the date of such lost, stolen, destroyed or mutilated Note or Other Security Document in the same principal amount thereof and otherwise of like tenor.

ARTICLE 8 - DUE ON SALE/ENCUMBRANCE

Section 8.1 LENDER RELIANCE. Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partner and the officers of its general partner in owning and operating properties such as the Property in agreeing to make the loan secured hereby, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Lender can recover the Debt by a sale of the Property.

Section 8.2 NO SALE/ENCUMBRANCE. Borrower agrees that Borrower shall not, without the prior written consent of Lender, sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, except as otherwise permitted in the Loan Documents. Any

UNOFFICIAL COPY

violation of this covenant shall allow Lender to declare the entire outstanding principal balance of the Note and all accrued interest, immediately due and payable.

ARTICLE 9 - PREPAYMENT

Section 9.1 PREPAYMENT BEFORE DEFAULT. The Debt may be prepaid at any time in whole or in part, with such prepayment premium as set forth in the Loan Agreement, upon two (2) days advance notice to Lender.

ARTICLE 10 - DEFAULT

Section 10.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute a "Default": (a) if any portion of the Debt is not paid within ten (10) days following the date the same is due or if the entire Debt is not paid on the applicable maturity date as set forth in the Loan Agreement; (b) if any of the Taxes or Other Charges is not paid within five (5) days following the date the same is due and payable except to the extent sums sufficient to pay such Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument; (c) if the Policies are not kept in full force and effect, or if the copies of Policies or certificates evidencing same are not delivered to Lender within ten (10) business days of Lender's request; (d) if the Property is subject to actual waste; (e) if Borrower violates or does not comply with any of the provisions of Section 3.7 and Articles 8, 12 and 13, (f) if any representation or warranty of Borrower or any person guaranteeing payment of the Debt or any portion thereof or performance by Borrower of any of the terms of this Security Instrument or any managing member, principal or beneficial owner of any of the foregoing, made herein or any guaranty or indemnity, or in any certificate, report, financial statement or other instrument or document furnished to Lender shall have been false or misleading in any material respect when made; (g) if (i) Borrower or any managing member of Borrower shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts; or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower, or any managing member of Borrower, shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Borrower, or any managing member of Borrower, any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against the Borrower, or any managing member of Borrower, any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv)

UNOFFICIAL COPY

the Borrower, or any managing member of Borrower, shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower, or any managing member of Borrower, shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; (h) if after expiration of applicable notice and cure provisions Borrower shall be in default under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property whether it be superior or junior in lien to this Security Instrument; (i) if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of sixty (60) days after Borrower has written notice thereof; (j) if any federal tax lien is filed against Borrower any managing member of Borrower, or the Property and same is not discharged of record within sixty (60) days after same is filed; (k) if Borrower fails to cure any violations of Applicable Laws within sixty (60) days of first having received notice thereof; (l) if Borrower shall fail to reimburse Lender on demand, with interest calculated at the Default Interest Rate (defined below), for all Insurance Premiums or Taxes, together with interest and penalties imposed thereon, paid by Lender pursuant to this Security Instrument; (m) if any default occurs in the performance of any guarantor's or indemnitor's obligations under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods set forth in such guaranty or indemnity, or if any representation or warranty of any guarantor or indemnitor thereunder shall be false or misleading in any material respect when made; (n) if for more than thirty (30) days after notice from Lender, Borrower shall continue to be in default under any other term, covenant or condition of the Note, this Security Instrument or the Other Security Documents after expiration of applicable notice and cure provisions; (o) Subject to applicable notice and cure periods, if there is an event of default under the CTA Ground Lease or if the Leasehold Estate shall be surrendered in whole or in part or if any of the terms, covenants or conditions of the CTA Ground Lease shall in any manner be modified, changed, supplemented, altered or amended without the prior written consent of Lender; or (p) a default beyond applicable notice or cure periods (if any) shall occur under any Other Security Documents.

Section 10.2 LATE PAYMENT CHARGES. If any sum payable under this Security Instrument or any of the Other Security Documents is not paid prior to the tenth (10th) day after the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to five percent (5%) of such unpaid sum or \$25.00, whichever is greater, up to the maximum amount of \$1,500.00, to defray the expenses incurred by Lender in handling and processing such delinquent payment and to compensate Lender for the loss of the use of such delinquent payment, and such amount shall be secured by this Security Instrument and the Other Security Documents.

Section 10.3 DEFAULT INTEREST. Borrower will pay, from the date of a Default through the earlier of the date upon which the Default is cured or the date upon which the Debt is paid in full, interest on the unpaid principal balance of the Note at the "Default Interest Rate" as described in the Note.

UNOFFICIAL COPY

ARTICLE 11 - RIGHTS AND REMEDIES

Section 11.1 REMEDIES. Upon the occurrence of any Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender: (a) declare the entire unpaid Debt to be immediately due and payable; (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner; (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority; (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law; (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the Other Security Documents; (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents; (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Debt; (h) make demand on or present for payment or performance any bonds (including without limitation, payment and performance bonds) or letters of credit posted by Borrower or Borrower's contractors in connection with the Debt (i) subject to any applicable law, the license granted to Borrower under Section 1.2 shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property

UNOFFICIAL COPY

to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees; (i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code (Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower); (j) apply any sums then deposited in the Escrow Fund and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Security Document to the payment of the following items in any order in its discretion: (i) Taxes and Other Charges; (ii) Insurance Premiums; (iii) Interest on the unpaid principal balance of the Note; (iv) Amortization of the unpaid principal balance of the Note; (v) All other sums payable pursuant to the Note, this Security Instrument and the Other Security Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument; (k) surrender any Policies maintained by Borrower pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums; or (l) pursue such other remedies as Lender may have under applicable law; or (m) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion.

In the event of a sale, by whatever means, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. In the event of a sale, by foreclosure, power of sale, or otherwise, Lender may bid for and acquire the Property and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale, the cost of any enforcement proceeding hereunder and any other sums which Lender is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Default as described in clause (i) or (ii) of Subsection 10.1(g) shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 11.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the Other Security Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper. Upon any foreclosure sale or sales of all or any portion of the

UNOFFICIAL COPY

Property under the power of sale herein granted (if any), Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Section 11.3 RIGHT TO CURE DEFAULTS. Upon the occurrence of any Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Interest Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Interest Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 11.4 ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 11.6 EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right to examine the records, books, management and other papers of Borrower and its affiliates which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower or its affiliates or where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys shall have the right to examine and audit the books and records of Borrower and its affiliates pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower and its affiliates where the books and records are located.

UNOFFICIAL COPY

Section 11.7 OTHER RIGHTS, ETC.

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

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

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

Section 11.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 11.9 VIOLATION OF LAWS. If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

UNOFFICIAL COPY

Section 11.10 RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times subject to the terms of the Tenant's Lease.

ARTICLE 12 - ENVIRONMENTAL HAZARDS

Section 12.1 ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants, based upon an environmental assessment of the Property and information of which Borrower has actual knowledge, that, except as disclosed in the Environmental Reports provided to Lender: (a) there are no Hazardous Substances (defined below) or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with Environmental Laws (defined below) and with permits issued pursuant thereto and (ii) fully disclosed to Lender in writing pursuant to the written reports resulting from the environmental assessments of the Property delivered to Lender (the "Environmental Reports"); (b) there are no past, present or threatened Releases (defined below) of Hazardous Substances in, on, under or from the Property except as described in the Environmental Reports; (c) there is no threat of any Release of Hazardous Substances migrating to the Property except as described in the Environmental Reports; (d) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the Environmental Reports; (e) Borrower does not know of, and has not received, any written or oral notice or other communication from any person or entity (including but not limited to a governmental entity) relating to Hazardous Substances or Remediation (defined below) thereof, of possible liability of any person or entity pursuant to any Environmental Law with respect to the Property, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with any of the foregoing; and (f) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to conditions in, on, under or from the Property that is known to Borrower and that is contained in Borrower's files and records, including but not limited to any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property.

"Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. "Environmental Law" also includes, but is not limited to, any present and

UNOFFICIAL COPY

future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law; conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Property. "Hazardous Substances" include but are not limited to any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives provided, however, that "Hazardous Substances" shall not include cleaning materials customarily used at properties similar to the Property, to the extent such materials are used, stored and disposed of in accordance with Environmental Laws.

"Release" of any Hazardous Substance includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances.

"Remediation" includes but is not limited to any response, remedial, removal, or corrective action, any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance, any actions to prevent, cure or mitigate any Release of any Hazardous Substance, any action to comply with any Environmental Laws or with any permits issued pursuant thereto, any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in Article 12.

Section 12.2 ENVIRONMENTAL COVENANTS. Borrower covenants and agrees that so long as the Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property Borrower will enforce the environmental covenants in the Leases and cause Tenant to comply with the following: (a) all uses and operations on or of the Property, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Substances by Borrower, its agents or employees in, on, under or from the Property; (c) there shall be no Hazardous Substances in, on, or under the Property, except those that are in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required; (d) the Property shall be kept free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other person or entity (the "Environmental Liens"); (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.3 below, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental

UNOFFICIAL COPY

conditions in connection with the Property, pursuant to any written request of Lender (including but not limited to sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties (as defined herein) shall be entitled to rely on such reports and other results thereof provided, however, that no such request shall be made by Lender unless Lender has reasonable grounds to believe that a Release of Hazardous Substances or a violation of Environmental Law has occurred at the Property; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate Remediation of any condition (including but not limited to a Release of a Hazardous Substance) in, on, under or from the Property; (ii) comply with any Environmental Law; (iii) comply with any directive from any governmental authority; and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (h) Borrower shall not do or allow any tenant or other user of the Property to do any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (i) Borrower shall immediately notify Lender in writing of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien; (D) any required or proposed Remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Substances or Remediation thereof at the Property, possible liability of any person or entity pursuant to any Environmental Law with respect to the Property, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with anything referred to in this Article 12. Any failure of Borrower to perform its obligations pursuant to this Section 12.2 shall constitute bad faith waste with respect to the Property.

Section 12.3 LENDER'S RIGHTS. Lender and any other person or entity designated by Lender, including but not limited to any receiver, any representative of a governmental entity, and any environmental consultant, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole and absolute discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender. The costs and expenses of such assessments shall be borne by Lender except in instances where such report or assessment is performed due to Borrower's failure to comply with its obligations under Section 12.2(f) or following a Default, in which cases the costs and expenses of such assessments shall be paid for by Borrower.

ARTICLE 13 - INDEMNIFICATION

UNOFFICIAL COPY

Section 13.1 GENERAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, punitive damages, of whatever kind or nature (including but not limited to attorneys' fees and other costs of defense) (the "Losses") imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following, except to the extent any of the following are attributable to the gross negligence or willful misconduct of an Indemnified Party: (a) ownership of this Security Instrument, the Property or any interest therein or receipt of any Rents; (b) any amendment to, or restructuring of, the Debt, and the Note, this Security Instrument, or any Other Security Documents; (c) any and all lawful action that may be taken by Lender in connection with the enforcement of the provisions of this Security Instrument or the Note or any of the Other Security Documents, whether or not suit is filed in connection with same, or in connection with Borrower and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding; (d) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (e) any use, nonuse or conflict on in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (f) any failure on the part of Borrower to perform or be in compliance with any of the terms of this Security Instrument; (g) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (h) the failure of any person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; (i) any failure of the Property to be in compliance with any Applicable Laws; (j) the enforcement by any Indemnified Party of the provisions of this Article 13; (k) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; (l) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the loan evidenced by the Note and secured by this Security Instrument; or (m) any misrepresentation of material fact made by Borrower in this Security Instrument or any Other Security Document. Any amounts payable to Lender by reason of the application of this Section 13.1 shall become immediately due and payable and shall bear interest at the Default Interest Rate from the date loss or damage is sustained by Lender until paid. For purposes of this Article 13, the term "Indemnified Parties" means Lender and any person or entity who is or will have been involved in the origination of the loan evidenced by the Note, any person or entity who is or will have been involved in the servicing of the loan evidenced by the Note, any person or entity in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the loan evidenced by the Note (including, but not limited to, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the loan evidenced by the Note) as well as the

UNOFFICIAL COPY

respective directors, officers, shareholders, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the loan evidenced by the Note or the Property, whether during the term of the loan evidenced by the Note or as a part of or following a foreclosure of the loan evidenced by the Note and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business).

Section 13.2 MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the Other Security Document, except for net income taxes and franchise taxes (imposed in lieu of net income taxes) imposed upon an Indemnified Party as a result of a present or former connection between the jurisdiction of the government or taxing authority imposing such tax and the Indemnified Party (excluding a connection arising solely from the Indemnified Party having executed, delivered, or performed its obligations or received a payment under, or enforced, this Security Instrument, the Note and the Other Security Documents) or any political subdivision or taxing authority thereof or therein.

Section 13.3 INTENTIONALLY OMITTED.

Section 13.4 ENVIRONMENTAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses and costs of Remediation (whether or not performed voluntarily), engineers' fees, environmental consultants' fees, and costs of investigation (including but not limited to sampling, testing, and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas) imposed upon or incurred by or asserted against any Indemnified Parties, and directly or indirectly arising out of or in any way relating to any one or more of the following (except to the extent the same relate solely to Hazardous Substances first introduced to the Property or violations of Environmental Laws committed at the Property by anyone other than Borrower, its agents or employees following the foreclosure of this Security Instrument (or the delivery and acceptance of a deed in lieu of such foreclosure), the expiration of any right of redemption with respect thereto and the obtaining by the purchaser at such foreclosure sale or grantee under such deed of possession of the Property): (a) any presence of any Hazardous Substances in, on, above, or under the Property; (b) any past, present or threatened Release of Hazardous Substances in, on, above, under or from the Property; (c) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other Release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Hazardous Substances at any time located in, under, on or above the Property; (d) any activity by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property in connection with any actual or proposed

UNOFFICIAL COPY

Remediation of any Hazardous Substances at any time located in, under, on or above the Property, whether or not such Remediation is voluntary or pursuant to court or administrative order, including but not limited to any removal, remedial or corrective action; (e) any past, present or threatened non-compliance or violations of any Environmental Laws (or permits issued pursuant to any Environmental Law) in connection with the Property or operations thereon, including but not limited to any failure by Borrower, any person or entity affiliated with Borrower or any tenant or other user of the Property to comply with any order of any governmental authority in connection with any Environmental Laws; (f) the imposition, recording or filing or the threatened imposition, recording or filing of any Environmental Lien encumbering the Property; (g) any administrative processes or proceedings or judicial proceedings in any way connected with any matter addressed in Article 12 and this Section 13.4; (h) any past, present or threatened injury to, destruction of or loss of natural resources in any way connected with the Property, including but not limited to costs to investigate and assess such injury, destruction or loss; (i) any acts of Borrower or other users of the Property in arranging for disposal or treatment, or arranging with a transporter for transport for disposal or treatment, of Hazardous Substances owned or possessed by such Borrower or other users, at any facility or incineration vessel owned or operated by another person or entity and containing such or similar Hazardous Materials; (j) any acts of Borrower or other users of the Property, in accepting any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites selected by Borrower or such other users, from which there is a Release, or a threatened Release of any Hazardous Substance which causes the incurrence of costs for Remediation; (k) any personal injury, wrongful death, or property damage arising under any statutory or common law or tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance or for the conducting of an abnormally dangerous activity on or near the Property; and (l) any material misrepresentation or material inaccuracy in any representation or warranty or material breach or failure to perform any covenants or other obligations pursuant to Article 12.

Section 13.5 DUTY TO DEFEND; ATTORNEYS' FEES AND OTHER FEES AND EXPENSES. Upon written request by any Indemnified Party, Borrower shall defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys shall control the resolution of claim or proceeding. Upon demand, Borrower shall pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

ARTICLE 14 - WAIVERS

Section 14.1 WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the Other Security Documents, or the Obligations.

UNOFFICIAL COPY

Section 14.2 MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

Section 14.3 WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by applicable law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 14.4 SOLE DISCRETION OF LENDER. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

UNOFFICIAL COPY

Section 14.5 SURVIVAL. The indemnifications made pursuant to Sections 13.3 and 13.4 and the representations and warranties, covenants, and other obligations arising under Article 12, shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including but not limited to foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Note or any of the Other Security Documents, any transfer of all or any portion of the Property (whether by Borrower or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Note or the Other Security Documents, and any act or omission that might otherwise be construed as a release or discharge of Borrower from the obligations pursuant hereto.

Section 14.6 WAIVER OF TRIAL BY JURY. **BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

ARTICLE 15 - NOTICES

Section 15.1 NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower: 600 S. Wabash L.P.
 c/o Chicago Christian Industrial League
 123 South Green Street
 Chicago, Illinois 60607
 Attention: Joseph O'Connor

UNOFFICIAL COPY

With copies to: Appelgate & Thorne-Thomsen P.C.
322 South Green Street
Chicago, Illinois 60607
Attention: Bennett P. Applegate

National Equity Fund, Inc.
120 South Riverside Plaza, 15th Floor
Chicago, Illinois 60606

If to Lender: Citibank, F.S.B.
500 West Madison Street
5th Floor – REG/CCDE
Chicago, Illinois 60661

With a copy to: Albert, Whitehead, P.C.
10 North Dearborn Street
Suite 600
Chicago, Illinois 60602
Attention: Gregory C. Whitehead

or addressed as such party may from time to time designate by written notice to the other parties.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

For purposes of this Security Instrument, "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are authorized or required to close in New York, New York.

ARTICLE 16 - APPLICABLE LAW

Section 16.1 **CHOICE OF LAW.** THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS.

Section 16.2 **USURY LAWS.** This Security Instrument and the Note are subject to the express condition that at no time shall Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at

UNOFFICIAL COPY

such maximum rate and all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 16.3 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the remainder of this Security Instrument and any other application of the term shall not be affected thereby.

ARTICLE 17 - SECONDARY MARKET

Section 17.1 TRANSFER OF LOAN. Lender may, at any time, sell, transfer or assign the Note, this Security Instrument and the Other Security Documents, and any or all servicing rights with respect thereto, or grant participations therein or issue mortgage passthrough certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement (the "Securities"). Lender may forward to each purchaser, transferee, assignee, servicer, participant or investor in such Securities or any Rating Agency rating such Securities (collectively, the "Investor") and each prospective Investor, all documents and information which Lender now has or may hereafter acquire relating to the Debt and to Borrower, and the Property, whether furnished by Borrower, or otherwise, as Lender determines necessary or desirable. Borrower agrees to cooperate with Lender in connection with any transfer made or any Securities created pursuant to this Security Instrument, including, without limitation, the delivery of an estoppel certificate in accordance therewith, and such other documents as may be reasonably requested by Lender. Borrower shall also furnish and Borrower consents to Lender furnishing to such Investors or such prospective Investors or Rating Agency any and all information concerning the Property, the Leases, the financial condition of Borrower as may be requested by Lender, any Investor or any prospective Investor or Rating Agency in connection with any sale, transfer or participation interest. Lender may retain or assign responsibility for servicing the Note, this Security Instrument, and the Other Security Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer. Lender may make such assignment or delegation on behalf of the Investors if the Note is sold or this Security Instrument or the Other Security Documents are assigned. All references to Lender herein shall refer to and include any such servicer to the extent applicable.

Section 17.2 CONVERSION TO REGISTERED FORM. At the request and the expense of Lender, Borrower shall appoint, as its agent, a registrar and transfer agent (the "Registrar") acceptable to Lender which shall maintain, subject to such reasonable regulations as

UNOFFICIAL COPY

it shall provide, such books and records as are necessary for the registration and transfer of the Note in a manner that shall cause the Note to be considered to be in registered form for purposes of Section 163(f) of the Code. The option to convert the Note into registered form once exercised may not be revoked. Any agreement setting out the rights and obligation of the Registrar shall be subject to the reasonable approval of Lender. Borrower may revoke the appointment of any particular person as Registrar, effective upon the effectiveness of the appointment of a replacement Registrar. The Registrar shall not be entitled to any fee from Lender or any other lender in respect of transfers of the Note and Security Instrument (other than Taxes and governmental charges and fees).

Section 17.3 COOPERATION. Borrower acknowledges that Lender and its successors and assigns may (a) sell this Security Instrument, the Note and Other Security Documents to one or more investors as a whole loan, (b) participate the Loan secured by this Security Instrument to one or more investors, (c) deposit, through one or a series of transactions, this Security Instrument, the Note and Other Security Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (a) through (d) are hereinafter referred to as "Secondary Market Transactions"). Borrower shall cooperate in good faith with Lender in effecting any such Secondary Market Transaction and shall cooperate in good faith to implement all requirements imposed by any rating agency involved in any Secondary Market Transaction including, without limitation, all structural or other changes to the Loan, modifications to any documents evidencing or securing the Loan, delivery of opinions of counsel acceptable to the rating agency and addressing such matters as the rating agency may require; provided, however, that Borrower shall not be required to modify any documents evidencing or securing the Loan which would modify (i) the interest rate payable under the Note, (ii) the stated maturity of the Note, (iii) the amortization of principal of the Note or (iv) any other material economic term of the Loan. Borrower shall provide such information and documents relating to Borrower, Indemnitor, if any, the Property and any tenants of the Improvements as Lender may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Borrower, the Indemnitor, if any, the Property and any tenant of the Improvements. Borrower acknowledges that certain information regarding the Loan and the parties thereto and the Property may be included in a private placement memorandum, prospectus or other disclosure documents.

UNOFFICIAL COPY

ARTICLE 18 - COSTS

Section 18.1 PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Lender shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of its loans, (b) the release or substitution of collateral therefor, or (c) obtaining certain consents, waivers and approvals with respect to the Property, (the occurrence of any of the above shall be called an "Event"). Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof required by law, regulation, any governmental or quasi-governmental authority or, following a Default, Lender. Borrower hereby acknowledges and agrees to pay, immediately, with or without demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event or otherwise. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all reasonable legal fees and disbursements of Lender, whether retained firms, the reimbursement for the expenses of in-house staff or otherwise. Lender confirms that Borrower has paid all legal fees in connection with the initial funding of the Loan.

Section 18.2 ATTORNEY'S FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with (i) the preparation of the Note, this Security Instrument and the Other Security Documents and (ii) the items set forth in Section 20.1 above, and (b) Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Property or Personal Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or Personal Property, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Default shall have occurred, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

ARTICLE 19 - DEFINITIONS

Section 19.1 GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower, each party comprising Borrower (if Borrower consists of more than one person or entity) and any subsequent owner or owners of the Property or any part thereof or any interest therein"; the word "Lender" shall mean "Lender and any subsequent holder of the Note"; the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument"; the word "person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by

UNOFFICIAL COPY

Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

ARTICLE 20 - MISCELLANEOUS PROVISIONS

Section 20.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 20.2 LIABILITY. If Borrower consists of more than one borrowing entity, the obligations and liabilities of each entity shall be joint and several. The foregoing is not intended to impose recourse liability on the constituent shareholders, partners or members of Borrower.

Section 20.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument shall be construed without such provision.

Section 20.4 HEADINGS, ETC. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 20.5 DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 20.6 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 20.7 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note and the Other Security Documents and the performance and discharge of the Other Obligations.

UNOFFICIAL COPY

Section 20.8 BUSINESS PROPERTY. Borrower hereby represents and warrants that the Property does not constitute "agricultural real estate" or "residential real estate" pursuant to the Illinois Mortgage Foreclosure Law.

Section 20.9 MAXIMUM PRINCIPAL AMOUNT. The maximum principal amount that is secured hereby shall be Two Million Two Hundred Ten Thousand Seven Hundred Twenty Nine (\$2,210,729.00) and No Dollars.

[THE BALANCE OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the day and year first above written.

600 S. WABASH L.P.,

a Delaware limited partnership

By: 600 S. Wabash, LLC, an Illinois limited liability company, its general partner

By: Chicago Christian Industrial League,

An Illinois not for profit corporation, its sole member



Joseph O'Connor, its Executive Director

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ACKNOWLEDGMENT OF SIGNATURE

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

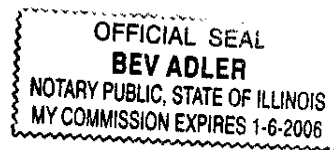
I, Bev Adler, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Joseph O'Connor, personally known to me and known by me to be the Executive Director of Chicago Christian Industrial League, in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his 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 27th day of December, 2003.

Bev Adler
 Notary Public

My Commission Expires:

1-6-06



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A RESIDENTIAL SITE

PARCEL 1:

A TRACT OF LAND CONTAINING ALL THAT CERTAIN PARCEL OR PARCELS OF LAND LOCATED IN THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

SUBLOT 1 AND THE NORTH 32.00 FEET OF SUBLOT 2 OF ORIGINAL LOT 1 IN BLOCK 14 IN CANAL TRUSTEES SUBDIVISION OF FRACTIONAL SECTION 15 ADDITION TO CHICAGO (EXCEPTING THEREFROM THOSE PARTS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SUBLOT 1, AFORESAID; THENCE EAST 41.07 FEET; THENCE SOUTHWESTERLY TO A POINT IN THE SOUTH LINE OF THE NORTH 8.00 FEET OF SUBLOT 2, AFORESAID, 6.00 FEET EAST OF THE WEST LINE THEREOF; THENCE SOUTH ON A LINE PARALLEL WITH SAID WEST LINE 24.00 FEET; THENCE WEST 6.00 FEET TO THE WEST LINE OF SUBLOT 2; THENCE NORTH ALONG THE WEST LINE OF SUBLOTS 2 AND 1, AFORESAID, TO A POINT OF BEGINNING), ALL IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1848 AS DOCUMENT NUMBER 20751, AND RERECORDED SEPTEMBER 24, 1877 AS DOCUMENT NUMBER 151610, IN COOK COUNTY, ILLINOIS.

ALSO

SUBLOT 1 OF LOT 4 IN THE SOUTH 8.00 FEET OF SUBLOT 2 (EXCEPT THE WEST 6.00 FEET THEREOF) OF LOT 1 IN BLOCK 14 IN CANAL TRUSTEES SUBDIVISION OF LOTS IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1848 AS DOCUMENT NUMBER 20751, AND RERECORDED SEPTEMBER 24, 1877 AS DOCUMENT NUMBER 151610, IN COOK COUNTY, ILLINOIS.

ALSO

PARCEL 1: SUBLOT 2 IN LOT 4 IN BLOCK 14 IN CANAL TRUSTEES SUBDIVISION OF LOTS IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1848 AS DOCUMENT NUMBER 20751, AND RERECORDED SEPTEMBER 24, 1877 AS DOCUMENT NUMBER 151610, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY

PARCEL 2: SUBLLOT 1 OF LOT 5 IN BLOCK 14 IN CANAL TRUSTEES SUBDIVISION OF LOTS IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1848, AS DOCUMENT NUMBER 20751, AND RERECORDED SEPTEMBER 24, 1877 AS DOCUMENT NUMBER 151610, IN COOK COUNTY, ILLINOIS.

EXCEPTING THEREFROM THOSE PARTS DESCRIBED AS FOLLOWS:

THAT PART OF SUB-LOTS 1 AND 2 OF LOT 1, SUBLOTS 1 AND 2 OF LOT 4, SUBLLOT 1 OF LOT 5 IN BLOCK 14 IN THE SUBDIVISION BY THE TRUSTEE'S OF THE ILLINOIS AND MICHIGAN CANAL OF LOTS AND BLOCKS IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE 3RD PRINCIPAL MERIDIAN, TAKEN AS A TRACT BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID TRACT: THENCE NORTH 89 DEGREES 07 MINUTES 45 SECONDS EAST ALONG THE NORTH LINE OF SAID TRACT, A DISTANCE OF 41.07 FEET; THENCE SOUTH 35 DEGREES 32 MINUTES 03 SECONDS WEST ALONG A LINE THAT RUNS TO A POINT 6.0 FEET EAST OF THE WEST LINE OF SAID TRACT ON A LINE DRAWN 8.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SUB-LOT 2 OF LOT 1, AFORESAID, A DISTANCE OF 26.04 FEET FOR A PLACE OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED; SAID POINT BEING 25.84 FEET EAST AND 20.68 FEET SOUTH OF THE NORTHWEST CORNER OF SAID TRACT AS MEASURED ALONG THE WEST LINE THEREOF AND AT RIGHT ANGLES THERETO; THENCE CONTINUING SOUTH 35 DEGREES 32 MINUTES 03 SECONDS WEST ALONG SAID LINE, A DISTANCE 33.93 FEET TO SAID POINT ON THE SOUTH LINE OF THE NORTH 8.00 FEET OF SUB-LOT 2 OF LOT 1, AFORESAID; THENCE SOUTH 00 DEGREES 15 MINUTES 15 SECONDS EAST ALONG A LINE 6.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID TRACT, A DISTANCE OF 24.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 32.00 FEET OF SUB-LOT 2 OF LOT 1, AFORESAID; THENCE SOUTH 89 DEGREES 07 MINUTES 24 SECONDS WEST ALONG THE SOUTH LINE OF THE NORTH 32.00 FEET OF SUB-LOT 2 OF LOT 1, AFORESAID, A DISTANCE OF 6.00 FEET TO THE WEST LINE OF SAID TRACT; THENCE SOUTH 00 DEGREES 15 MINUTES 15 SECONDS EAST ALONG SAID WEST LINE, A DISTANCE OF 129.06 FEET TO THE SOUTHWEST CORNER OF SAID TRACT; THENCE NORTH 89 DEGREES 06 MINUTES 02 SECONDS EAST ALONG THE SOUTH LINE OF SAID TRACT, A DISTANCE OF 1.28 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 44 SECONDS EAST, A DISTANCE OF 20.55 FEET TO A POINT OF CURVE, SAID POINT BEING 137.00 FEET EAST AND 20.51 FEET NORTH OF THE SOUTHWEST CORNER OF SAID TRACT, AS MEASURED ALONG THE WEST LINE THEREOF AND A

UNOFFICIAL COPY

RIGHT ANGLES THERETO; THENCE NORTHERLY ALONG A CURVED LINE, TANGENT WITH THE LAST DESCRIBED COURSE, CONVEX TO THE WEST AND HAVING A RADIUS OF 662.44 FEET, A DISTANCE OF 14.00 FEET, ARC MEASURE, TO A POINT; THENCE NORTH 89 DEGREES 41 MINUTES 16 SECONDS EAST, A DISTANCE OF 5.21 FEET; THENCE NORTH 00 DEGREES 32 MINUTES 16 SECONDS WEST, A DISTANCE OF 12.00 FEET; THENCE SOUTH 89 DEGREES 41 MINUTES 16 SECONDS WEST, A DISTANCE OF 4.78 FEET TO A POINT ON THE AFOREDESCRIBED CURVED LINE, CONVEX TO THE WEST AND HAVING A RADIUS OF 662.44 FEET; THENCE CONTINUING NORTHERLY ALONG SAID CURVED LINE, A DISTANCE OF 13.37 FEET, ARC MEASURE, TO A POINT OF COMPOUND CURVE, SAID POINT BEING 2.72 FEET EAST AND 59.91 FEET NORTH OF THE SOUTHWEST CORNER OF SAID TRACT, AS MEASURED ALONG THE WEST LINE THEREOF AND AT RIGHT ANGLES THERETO; THENCE CONTINUING NORTHERLY ALONG A CURVED LINE, CONVEX TO THE WEST AND HAVING A RADIUS OF 492.60 FEET, A DISTANCE OF 40.06 FEET, ARC MEASURE, TO A POINT; THENCE NORTH 89 DEGREES 27 MINUTES 44 SECONDS EAST, A DISTANCE OF 6.01 FEET; THENCE NORTH 00 DEGREES 32 MINUTES 16 SECONDS WEST, A DISTANCE OF 12.00 FEET; THENCE SOUTH 89 DEGREES 27 MINUTES 44 SECONDS WEST, A DISTANCE OF 4.04 FEET TO A POINT ON SAID CURVED LINE, CONVEX TO THE WEST AND HAVING A RADIUS OF 492.60 FEET; THENCE CONTINUING NORTHERLY ALONG SAID CURVED LINE, A DISTANCE OF 37.36 FEET, ARC MEASURE, TO A POINT; THENCE SOUTH 89 DEGREES 59 MINUTES 20 SECONDS EAST, A DISTANCE OF 6.68 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 40 SECONDS EAST, A DISTANCE OF 12.00 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 20 SECONDS WEST, A DISTANCE OF 3.57 FEET TO A POINT ON SAID CURVED LINE, CONVEX TO THE WEST AND HAVING A RADIUS OF 492.60 FEET; THENCE CONTINUING NORTHERLY ALONG SAID CURVED LINE, A DISTANCE OF 21.27 FEET, ARC MEASURE, TO THE PLACE OF BEGINNING IN COOK COUNTY, ILLINOIS (CTA EASEMENT)

AND:

THAT AIR SPACE COMMENCING 14.00 FEET ABOVE GROUND LEVEL (AS IT EXISTED ON SEPTEMBER 27, 2001) LOCATED ABOVE THE FOLLOWING DESCRIBED PARCEL:

THE SOUTH 12.00 FEET OF SUBLOT 1 OF LOT 5 IN BLOCK 14 IN CANAL TRUSTEES SUBDIVISION OF LOTS IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, IN SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 1, 1848 AS DOCUMENT NUMBER 20751 AND RERECORDED SEPTEMBER 24, 1877 AS DOCUMENT NUMBER 151610, IN COOK COUNTY, ILLINOIS (AIR RIGHTS).

UNOFFICIAL COPY

EXCEPTING FROM SAID TRACT THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 15.00 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 24.50 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF A TRACT OF LAND (SAID TRACT TO BE MORE FULLY DESCRIBED AFTERWARDS) IN BLOCK 14 IN CANAL TRUSTEES SUBDIVISION OF FRACTIONAL SECTION 15 ADDITION TO CHICAGO DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SUBLOT 1 OF LOT 5 IN SAID CANAL TRUSTEES SUBDIVISION; THENCE NORTH ALONG THE EAST LINE OF SAID SUBLOT 1 OF LOT 5, BEING ALSO THE WEST LINE OF SOUTH WABASH AVENUE, A DISTANCE OF 27.71 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 3.91 FEET TO THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED;

THENCE CONTINUING WEST ALONG THE LAST DESCRIBED COURSE EXTENDED, A DISTANCE OF 23.23 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.23 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.75 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.23 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 12.37 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 4.75 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 10.47 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 6.79 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 27.46 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 21.12 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 6.55 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 5.97 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.14 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.38 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.14 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 7.37 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.14 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 0.48 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 4.86 FEET; THENCE NORTH AT

UNOFFICIAL COPY

RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 12.51 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 5.44 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 61.01 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 0.64 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 0.48 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 9.40 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 8.48 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 9.89 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 16.61 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 3.95 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 0.48 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.14 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 23.29 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.14 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 2.02 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 16.52 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 16.90 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.19 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.29 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.19 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 3.97 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 40.54 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.51 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 0.30 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 8.79 FEET; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 6.01 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 11.42 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 22.08 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 2.71 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.76 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 12.07 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.48 FEET; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.55 FEET; THENCE

UNOFFICIAL COPY

EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 5.92 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.37 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 19.14 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 10.53 FEET; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.60 FEET; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 149.11 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN THE DECLARATION OF COVENANTS, CONDITIONS RESTRICTIONS AND EASMENTS DATED JANUARY 27, 2004 AS DOCUMENT NO: 0403018117, MADE BY 600 S. WABASH L.P., A DELAWARE LIMITED PARTNERSHIP, AND CREATED BY THE DEED RECORDED JANUARY 15, 2004 AS DOCUMENT NO: 0403018118 FOR THE PURPOSE OF SUPPORT, INGRESS AND EGRESS, ACCESS AND USE OF STAIRWAYS OVER THOSE PORTIONS OF THE LAND AS DESCRIBED THEREIN.

Common Address: 600 S. Wabash, Chicago, Illinois

PINS: 17-15-300-013-0000
 17-15-300-014-0000
 17-15-300-015-0000
 17-15-300-016-0000
 17-15-300-017-0000
 17-15-300-018-0000
 17-15-500-001-0000
 17-15-500-002-0000

chicago-#43720-v1-FINAL1/23

UNOFFICIAL COPY

LEASEHOLD PROPERTY:

PARCEL 1:

THAT PART OF SUB-LOTS 1 AND 2 OF LOT 1 IN BLOCK 14 IN FRACTIONAL SECTION 15 ADDITION TO CHICAGO, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF HARRISON STREET 41.07 FEET EAST OF THE NORTHWEST CORNER OF SUB LOT 1; THENCE WEST ALONG SAID SOUTH LINE OF HARRISON STREET 41.07 FEET TO THE WEST LINE OF SUB-LOT 1; THENCE SOUTH ALONG THE WEST LINE OF SUB-LOTS 1 AND 2 A DISTANCE OF 48.00 FEET TO THE SOUTH LINE OF THE NORTH 8.00 FEET OF SUB-LOT 2; THENCE EAST ALONG THE SOUTH LINE OF NORTH 8.00 FEET OF SUB-LOT 2, 6.00 FEET; THENCE NORTHEASTERLY IN A STRAIGHT LINE OF THE PLACE OF BEGINNING.

ALSO THE WEST 6.00 FEET OF THE SOUTH 34.00 FEET OF THE NORTH 32.00 FEET OF SAID SUB-LOT 2.

PARCEL 2:

ALSO THAT PART OF SUB-LOTS 1 AND 2 OF LOT 1, SUBLOTS 1 AND 2 OF LOT 4, SUBLOT 1 OF LOT 5 IN BLOCK 14 IN THE SUBDIVISION BY THE TRUSTEE'S OF THE ILLINOIS AND MICHIGAN CANAL OF LOTS AND BLOCKS IN FRACTIONAL SECTION 15, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE 3RD PRINCIPAL MERIDIAN, TAKEN AS A TRACT BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID TRACT: THENCE NORTH 89 DEGREES 07 MINUTES 45 SECONDS EAST ALONG THE NORTH LINE OF SAID TRACT, A DISTANCE OF 41.07 FEET;

THENCE SOUTH 35 DEGREES 32 MINUTES 03 SECONDS WEST ALONG A LINE THAT RUNS TO A POINT 6.0 FEET EAST OF THE WEST LINE OF SAID TRACT ON A LINE DRAWN 8.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SUB-LOT 2 OF LOT 1, AFORESAID, A DISTANCE OF 26.04 FEET FOR A PLACE OF BEGINNING OF THE PARCEL OF LAND TO BE DESCRIBED: SAID POINT BEING 25.84 FEET EAST AND 20.68 FEET SOUTH OF THE NORTHWEST CORNER OF SAID TRACT AS MEASURED ALONG THE WEST LINE THEREOF AND AT RIGHT ANGLES THERETO:

THENCE CONTINUING SOUTH 35 DEGREES 32 MINUTES 03 SECONDS WEST ALONG SAID LINE, A DISTANCE 33.93 FEET TO SAID POINT ON THE SOUTH LINE OF THE NORTH 8.00 FEET OF SUB-LOT 2 OF LOT 1, AFORESAID;

UNOFFICIAL COPY

THENCE SOUTH 00 DEGREES 15 MINUTES 15 SECONDS EAST ALONG A LINE 6.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID TRACT, A DISTANCE OF 24.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 32.00 FEET OF SUB-LOT 2 OF LOT 1, AFORESAID.

THENCE SOUTH 89 DEGREES 07 MINUTES 24 SECONDS WEST ALONG THE SOUTH LINE OF THE NORTH 32.00 FEET OF SUB-LOT 2 OF LOT 1, AFORESAID, A DISTANCE OF 6.00 FEET TO THE WEST LINE OF SAID TRACT;

THENCE SOUTH 00 DEGREES 15 MINUTES 15 SECONDS EAST ALONG SAID WEST LINE, A DISTANCE OF 129.06 FEET TO THE SOUTHWEST CORNER OF SAID TRACT;

THENCE NORTH 89 DEGREES 06 MINUTES 02 SECONDS EAST ALONG THE SOUTH LINE OF SAID TRACT, A DISTANCE OF 1.28 FEET;

THENCE NORTH 00 DEGREES 00 MINUTES 44 SECONDS EAST, A DISTANCE OF 20.55 FEET TO A POINT OF CURVE, SAID POINT BEING 137.00 FEET EAST AND 20.51 FEET NORTH OF THE SOUTHWEST CORNER OF SAID TRACT, AS MEASURED ALONG THE WEST LINE THEREOF AND A RIGHT ANGLES THERETO;

THENCE NORTHERLY ALONG A CURVED LINE, TANGENT WITH THE LAST DESCRIBED COURSE, CONVEX TO THE WEST AND HAVING A RADIUS OF 662.44 FEET, A DISTANCE OF 14.00 FEET, ARC MEASURE, TO A POINT;

THENCE NORTH 89 DEGREES 41 MINUTES 16 SECONDS EAST, A DISTANCE OF 5.21 FEET; THENCE NORTH 00 DEGREES 32 MINUTES 16 SECONDS WEST, A DISTANCE OF 12.00 FEET;

THENCE SOUTH 89 DEGREES 41 MINUTES 16 SECONDS WEST, A DISTANCE OF 4.78 FEET TO A POINT ON THE AFOREDESCRIBED CURVED LINE, CONVEX TO THE WEST AND HAVING A RADIUS OF 662.44 FEET;

THENCE CONTINUING NORTHERLY ALONG SAID CURVED LINE, A DISTANCE OF 13.37 FEET, ARC MEASURE, TO A POINT OF COMPOUND CURVE, SAID POINT BEING 2.72 FEET EAST AND 59.91 FEET NORTH OF THE SOUTHWEST CORNER OF SAID TRACT, AS MEASURED ALONG THE WEST LINE THEREOF AND AT RIGHT ANGLES THERETO;

THENCE CONTINUING NORTHERLY ALONG A CURVED LINE, CONVEX TO THE WEST AND HAVING A RADIUS OF 492.60 FEET, A DISTANCE OF 40.06 FEET, ARC MEASURE, TO A POINT;

UNOFFICIAL COPY

THENCE NORTH 89 DEGREES 27 MINUTES 44 SECONDS EAST, A DISTANCE OF 6.01 FEET; THENCE NORTH 00 DEGREES 32 MINUTES 16 SECONDS WEST, A DISTANCE OF 12.00 FEET;

THENCE SOUTH 89 DEGREES 27 MINUTES 44 SECONDS WEST, A DISTANCE OF 4.04 FEET TO A POINT ON SAID CURVED LINE, CONVEX TO THE WEST AND HAVING A RADIUS OF 492.60 FEET;

THENCE CONTINUING NORTHERLY ALONG SAID CURVED LINE, A DISTANCE OF 37.36 FEET, ARC MEASURE, TO A POINT;

THENCE SOUTH 89 DEGREES 59 MINUTES 20 SECONDS EAST, A DISTANCE OF 6.68 FEET;

THENCE NORTH 00 DEGREES 00 MINUTES 40 SECONDS EAST, A DISTANCE OF 12.00 FEET;

THENCE NORTH 89 DEGREES 59 MINUTES 20 SECONDS WEST, A DISTANCE OF 3.57 FEET TO A POINT ON SAID CURVED LINE, CONVEX TO THE WEST AND HAVING A RADIUS OF 492.60 FEET;

THENCE CONTINUING NORTHERLY ALONG SAID CURVED LINE, A DISTANCE OF 21.27 FEET, ARC MEASURE, TO THE PLACE OF BEGINNING IN COOK COUNTY, ILLINOIS

Common Address: 600 S. Wabash, Chicago, Illinois

- PINS: 17-15-300-013-0000
- 17-15-300-014-0000
- 17-15-300-015-0000
- 17-15-300-016-0000
- 17-15-300-017-0000
- 17-15-300-018-0000
- 17-15-500-001-0000
- 17-15-500-002-0000

UNOFFICIAL COPY

EXHIBIT B (Permitted Exceptions)

1. GENERAL REAL ESTATE TAXES FOR THE YEAR 2003 AND EACH YEAR THEREAFTER NOT YET DUE AND PAYABLE;
2. ASSIGNMENT OF RENTS RECORDED January 30, 2004 AS DOCUMENT NO. 0403018121 MADE BY 600 S. WABASH L.P., A DELAWARE LIMITED PARTNERSHIP TO CITIBANK F.S.B.
3. SUBORDINATION AGREEMENT MADE BY AND BETWEEN ILLINOIS HOUSING DEVELOPMENT AUTHORITY AND CHICAGO CHRISTIAN INDUSTRIAL LEAGUE RECORDED January 30, 2004 AS DOCUMENT NO. 0403018135.
4. SUBORDINATION AGREEMENT MADE BY AND BETWEEN ILLINOIS HOUSING DEVELOPMENT AUTHORITY AND 600 S. WABASH, LLC RECORDED January 30, 2004 AS DOCUMENT NO. 0403018136.
5. TERMS AND PROVISIONS CONTAINED IN THE REGULATORY AND LAND USE RESTRICTION AGREEMENT MADE BY AND BETWEEN 600 S. WABASH, L.P., A DELAWARE LIMITED PARTNERSHIP AND ILLINOIS HOUSING DEVELOPMENT AUTHORITY RECORDED January 30, 2004 AS DOCUMENT NO. 0403018126.
6. TERMS AND PROVISIONS CONTAINED IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED January 30, 2004 AS DOCUMENT 0403018119 MADE BY 600 S. WABASH, L.P., A DELAWARE LIMITED PARTNERSHIP, WHICH DOES NOT CONTAIN A REVERSIONARY OR FORFEITURE CLAUSE.
7. TERMS, PROVISIONS, COVENANTS AND RESTRICTIONS CONTAINED IN THE REGULATORY AGREEMENT MADE BY AND BETWEEN THE CITY OF CHICAGO BY AND THROUGH ITS DEPARTMENT OF HOUSING AND 600 S. WABASH L.P., A DELAWARE LIMITED PARTNERSHIP, RELATING TO RESTRICTIONS ON USE, OCCUPANCY AND TRANSFER CONTAINED IN THE DOCUMENT RECORDED January 30, 2004 AS DOCUMENT NO. 0403018119.
8. TERMS, PROVISIONS, COVENANTS AND RESTRICTIONS CONTAINED IN THE DEED RECORDED January 30, 2004 AS DOCUMENT NO. 0403018115, WHICH DOES NOT CONTAIN A REVERSIONARY OR FORFEITURE CLAUSE.

UNOFFICIAL COPY

9. TERMS AND PROVISIONS CONTAINED IN THE AGREEMENT FOR SALE AND REDEVELOPMENT OF LAND AGREEMENT MADE BY AND BETWEEN THE CITY OF CHICAGO AND 600 S. WABASH, LLC RECORDED FEBRUARY 5, 2002 AS DOCUMENT NO. 0020145489, WHICH DOES CONTAIN A REVERSIONARY OR FORFEITURE CLAUSE.
10. COVENANTS AND RESTRICTIONS (BUT OMITTING ANY SUCH COVENANT OR RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN UNLESS AND ONLY TO THE EXTENT THAT SAID COVENANT (A) IS EXEMPT UNDER CHAPTER 42, SECTION 3607 OF THE UNITED STATES CODE OR (B) RELATES TO HANDICAP BUT DOES NOT DISCRIMINATE AGAINST HANDICAPPED PERSONS), CONTAINED IN THE DEED RECORDED FEBRUARY 5, 2002 AS DOCUMENT NO. 0020145489, WHICH DOES CONTAIN A REVERSIONARY OR FORFEITURE CLAUSE.
11. PARTY WALL AGREEMENT, AND THE TERMS AND CONDITIONS CONTAINED THEREIN, DATED MAY 12, 1897 AND RECORDED MAY 14, 1897 AS DOCUMENT 829095 MADE BY WIRT DEXTER WITH BYRON L. SMITH RELATING TO A PARTY WALL ON THE SOUTH LINE OF PARCEL 4.
12. RIGHTS OF THE PUBLIC & QUASI PUBLIC UTILITIES IN AND TO THE PUBLIC TELEPHONES, MANHOLE AND CATCH BASINS LOCATED ON THE LAND AS DISCLOSED BY SURVEY NO. 02-60410 PREPARED BY PROFESSIONALS ASSOCIATED SURVEY, INC. DATED DECEMBER 6, 2003 AND LAST REVISED DECEMBER 18, 2003.
13. RIGHTS OF THE CHICAGO TRANSIT AUTHORITY, A MUNICIPAL CORPORATION AND THE PUBLIC TO THE ELEVATED RAILROAD AS DISCLOSED BY SURVEY NO. 02-60410 PREPARED BY PROFESSIONALS ASSOCIATED SURVEY, INC. DATED DECEMBER 6, 2003 AND LAST REVISED DECEMBER 18, 2003.
15. RIGHTS OF CHICAGO TRANSIT AUTHORITY, A MUNICIPAL CORPORATION OF THE IMPROVEMENTS AT THE END OF THE TERM OF THE LEASE DESCRIBED IN SCHEDULE A, AS SET FORTH IN THE INSTRUMENT RECORDED AS DOCUMENT 0403018116, WHICH RIGHTS, TOGETHER WITH THOSE OF 600 S. WABASH, L.P., A DELAWARE LIMITED PARTNERSHIP COMPRISE FEE SIMPLE TITLE TO SAID IMPROVEMENTS.
16. (A) TERMS, PROVISIONS, AND CONDITIONS RELATING TO THE EASEMENT DESCRIBED AS PARCEL 2 OF ESTATE AS CONTAINED IN THE INSTRUMENT CREATING SAID EASEMENT.

UNOFFICIAL COPY

(B) RIGHTS OF THE ADJOINING OWNER OR OWNERS TO THE CONCURRENT USE OF SAID EASEMENT.

17. PROVISIONS CONTAINED IN THE INSTRUMENT CREATING THE EASEMENT DESCRIBED IN SCHEDULE A AS PARCEL 2 OF ESTATE A PROVIDING THAT SAID EASEMENT WILL TERMINATE 50 YEARS FROM THE DATE OF THE DECLARATION BUT NOT LATER THAN DECEMBER 31, 2053, UNLESS REVOKED, CHANGED OR AMENDED BY A RECORDED INSTRUMENT EXECUTED BY THE PARTIES.

Property of Cook County Clerk's Office