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THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING MAIL TO:
LORRAINE STRAKA
CALUMET FEDERAL SAVINGS AND LOAN
ASSOCIATION OF CHICAGO
Commercial Loan Department
1350 East Sibley Boulevard
Dalton, IL 60419

COOK COUNTY, ILLINOIS
FILED FOR RECORD

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT is given this 15TH day of DECEMBER 1994 by and between NBD BANK, and not personally, but solely as Trustee under Trust Agreement dated October 28, 1994 and known as Trust No. 53187-SK (hereinafter referred to as "Mortgagor") and CALUMET FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHICAGO (hereinafter referred to as "Mortgagee"):

RECITALS:

WITNESSETH: THAT FOR THE PURPOSE OF SECURING: (a) Payment of the principal, interest and other sums, if any, due under a Promissory Note (the "Note") of even date herewith made by Mortgagor in the principal sum of \$240,000.00 bearing interest at the rate specified therein, due in installments and in any event on January 1, 2000, payable to Mortgagee or order, (the "Note") and incorporated herein and made a part hereof by this reference with the same effect as is set forth at length, and all modifications, extensions or renewals thereof. (b) Payment of such additional sums with interest thereon (i) as may be hereafter borrowed from Mortgagee by the then record owner of the property hereinbelow described and evidenced by a promissory note or notes reciting it in or they are so secured, and all modifications, extensions, renewals and/or replacements thereof, and (ii) as may be incurred, paid out, or advanced by Mortgagee or may otherwise be due to Mortgagee under any provision of this Mortgage (hereinafter called "Security Instrument") and all modifications, extensions, renewals, and/or replacements thereof. (c) Performance of each agreement of Mortgagor contained herein or incorporated herein by reference or contained in any documents executed by Mortgagor or if Mortgagor is a trustee Mortgagor, Mortgagor or any beneficiary of Mortgagor, relating to the loan of money by Mortgagee to Mortgagor as evidenced by the Note and any future notes secured hereby (the "Loan"), including, without limitation, performance (if the Loan secured hereby or any part thereof is for the purpose of constructing improvements on the property hereinbelow described) of each provision or agreement of Mortgagor contained in any construction loan agreement or such other agreement between Mortgagor and Mortgagee relating to the property hereinbelow described, or performance of each agreement of any guarantor under any guaranty of the Note. All of such documents and agreements are herein called the "Loan Documents." (d) Payment by Mortgagor of each and every monetary provision to be performed by Mortgagor under any declaration of covenants, conditions, and restrictions pertaining to the property hereinbelow described and upon written request of Mortgagee, the enforcement by Mortgagor of any covenant to pay maintenance or other charges, which enforcement shall include, if the same have not been paid within 30 days after such written request is made, valid legal steps to enforce such payment. (e) Payment of all fees and charges to Mortgagee as provided whether or not herein set forth. (f) Payment of charges, as allowed by law when such charges are made, for any statement regarding the obligations secured hereby.

Mortgagor irrevocably GRANTS, RELEASES, REMISES, ALIENS, MORTGAGES AND CONVEYS UNTO Mortgagee, all of Mortgagor's right, title and interest in and to that property at 518-528 Davis Street, Evanston, IL 60201 which is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Land").

TOGETHER WITH all interests which Mortgagor now has or may hereafter acquire in or to the Land and in and to: (a) all tenements, hereditaments, licenses, easements, gores of land, streets, ways, alleys, passages, sewer rights, and rights of way appurtenant thereto; (b) all buildings, structures, improvements, fixtures, appliances, machinery, equipment, and other articles of real or personal property of every kind and nature (other than consumable goods), whether or not physically attached or affixed to the Land and now or hereafter installed or placed thereon, and used in connection with any future operation thereof (including, but not limited to, all apparatus and equipment used to provide or supply air-cooling, air-conditioning, heat, gas, water, light, power, laundry, garbage disposal, fire prevention and extinguishing equipment, elevators, antennas, pool equipment, window coverings, floor coverings, ranges, ovens, dishwashers, and water heaters), it being intended and agreed that such items be conclusively deemed to be affixed to and to be part of the Land that is conveyed hereby (all of the hereinabove described property called the "Improvements"); (c) all water, water courses and water rights (whether or not appurtenant) and shares of stock pertaining to such water or water rights, ownership of which affects the Land; (d) all shrubs, trees, crops, and plants; (e) all adjacent lands included in enclosures or occupied by buildings located partly on the Land; (f) all claims, demands and causes of action of every kind (including proceeds of settlements of any such claims, demand or cause of action of any kind) which Mortgagor now has or may hereafter acquire arising out of acquisition or ownership of the Land, including insurance proceeds and any award of damages or compensation for injury to or in connection with any condemnation for public use of the Land or any part thereof (whether or not eminent domain proceedings have been instituted), subject however to the right, power and authority given to and conferred upon Mortgagee by paragraph 9 below, incorporated herein by reference; and (g) all permits, licenses, management contracts, and other contracts and agreements in which Mortgagor now has or may hereafter have an interest arising out of acquisition or ownership of the Land, and all other general intangibles relating to the development or use of the Land, including all names by which the improvements or other property may at any time be known or operated and all rights to carry on business under such names or any variant thereof and all trademarks and goodwill in any way relating to the improvements or other property;

ALSO TOGETHER WITH all rents, issues, profits, royalties, tolls, earnings, incomes and other benefits, therefrom and installments of money payable pursuant to any agreement for sale of the Land or any part thereof, subject however to the right, power and authority given to and conferred upon Mortgagee and Mortgagor by paragraph 17 below, incorporated herein by this reference.

The foregoing provisions shall constitute an absolute and present assignment of the rents, issues, profits, royalties, tolls, earnings, income and other benefits therefrom, subject, however, to the conditional permission given to Mortgagor to collect and use such rents, issues, profits, royalties, tolls, earnings, income, and other benefits therefrom and to hold the rent security deposits to the extent provided in paragraph 17 hereof.

ALSO TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases, rental agreements, tenancy agreements and occupancy agreements now or hereafter on or affecting the Land together with all security therefor and all monies payable thereunder, and all books and records pertaining thereto, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rents, income and other benefits arising under any such lease.

(For the purpose of this instrument, including all provisions incorporated by reference herein, all of the foregoing described real property, property rights, and interests shall be referred to as "the Property" or "such Property.")

BOX 333-CTI

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Property of Cook County Clerk's Office

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MORTGAGOR COVENANTS AND AGREES WITH MORTGAGEE AS FOLLOWS:

1. **PERFORMANCE OF NOTE AND OTHER LOAN DOCUMENTS.** Mortgagor, or if Mortgagor is a trustee Mortgagor, Mortgagor and/or any beneficiary of Mortgagor, shall perform, observe and comply with all provisions hereof, of the Note, and of every other Loan Document and will promptly pay to Mortgagee, the principal with interest thereon and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Security Instrument and of every other Loan Document, when payment shall become due.
2. **GENERAL REPRESENTATIONS, COVENANTS AND WARRANTIES.** Mortgagor represents, covenants and warrants that as of the date hereof and at all times hereafter during the term hereof:
 - (a) Mortgagor is the lawful owner of good and marketable fee simple title to the Property and has good right and authority to grant, bargain, sell, convey, transfer, and assign the Property;
 - (b) Mortgagor will warrant and forever defend the title to the Property against the claims of all persons whomsoever claiming the same or any part thereof, and this warranty of title shall survive the foreclosure of the Security Instrument and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property pursuant to foreclosure;
 - (c) Mortgagor is now able to meet its debts as they mature, the fair market value of its assets exceed its liabilities; no bankruptcy or insolvency proceedings are pending or contemplated by or against Mortgagor; no assignment to creditors has been made by Mortgagor and no portion of Mortgagor's assets are presently subject to any attachment, execution or judicial seizure; and Mortgagor covenants to immediately provide notice to Mortgagee in the event that any change in any of the circumstances described in this sentence should occur;
 - (d) All reports, statements and other data furnished by or on behalf of Mortgagor, or any partner, officer, employee, agent or beneficiary of Mortgagor or any guarantor in connection with the Loan are true, correct and complete in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading;
 - (e) Mortgagor is duly organized, validly existing and in good standing under the laws of the state of its organization and is qualified and authorized to do business in the state where the Property is located, and has full power and authority to own its property, to carry on its business as presently being conducted and as contemplated to be conducted hereunder and to execute, deliver and perform its obligations under this Security Instrument, the Note and the other Loan Documents; the person(s) executing this Security Instrument, the Note and the other Loan Documents on behalf of Mortgagor have been duly authorized to execute and deliver this Security Instrument, the Note and the other Loan Documents on behalf of Mortgagor; this Security Instrument, the Note and the other Loan Documents constitute legally valid and binding obligations of Mortgagor enforceable in accordance with their terms; and the execution, delivery and performance of this Security Instrument, the Note and the other Loan Documents by Mortgagor will not conflict with, or constitute a breach of, or default under, Mortgagor's governing instruments or any indenture, mortgage, deed of trust, note, lease, commitment, agreement or other instrument or obligation to which Mortgagor is a party or by which Mortgagor or its properties is bound;
 - (f) There are no actions, suits or proceedings pending, or to the knowledge of Mortgagor threatened, against or affecting Mortgagor or the Property;
 - (g) To the best of its knowledge Mortgagor is not in default under the terms of any instrument evidencing or securing any indebtedness of Mortgagor and there has occurred no event which would, if uncured or uncorrected, constitute a default under any such instrument with the giving of notice, passage of time or both;
 - (h) Electric, gas, sewer, water facilities, and any other necessary utilities, are available (or, if this is a construction loan, will be available at such time during or after construction as Mortgagee deems necessary) and shall continue to be available in sufficient capacity to service the Property satisfactorily; and
 - (i) To the best of its knowledge the Property, including without limitation the improvements thereon, comply with (or if this is a construction loan, the improvements at such time during or after construction as Mortgagee deems necessary, will comply with) and will continue throughout the term hereof to comply with all applicable health and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations.
3. **SECURITY AGREEMENT AND FINANCING STATEMENTS.** Mortgagor (as Debtor) hereby grants to Mortgagee (as Creditor and Secured Party) a security interest in all personal property constituting the Property, including without limitation fixtures, machinery, appliances, equipment, furniture, claims, demands and causes of actions, licenses, permits, contracts and agreements and other general intangibles described hereinabove.

Mortgagor shall execute any and all such documents, including without limitation, financing statements pursuant to the Uniform Commercial Code of the state in which the Property is located, as Mortgagee may request, to preserve and maintain the priority of the lien created hereby on property which may be deemed personal property or fixtures, and shall pay to Mortgagee on demand any expenses incurred by Mortgagee in connection with the preparation, execution and filing of any such documents. Said financing statements shall be filed in the real estate records of the county in which the Property is located and such other offices as Mortgagee deems advisable. Mortgagor hereby authorizes and empowers Mortgagee to execute and file, on Mortgagor's behalf, all financing statements and refilings and continuations thereof as Mortgagee deems necessary or advisable to create, preserve and protect said lien. Pursuant to the Uniform Commercial Code of the state in which the Property is located, this Security Instrument shall be deemed a security agreement and financing statement as defined in the Uniform Commercial Code. The remedies available to Mortgagee for violations of the covenants, terms and conditions set forth in this security agreement shall be (i) as set forth in this Security Instrument and (ii) as permitted under the laws of the state where the Property is located, including the Uniform Commercial Code as adopted in said state. Each of these remedies shall be distinct and cumulative as to all other rights or other remedies and may be exercised concurrently, independently or successively, as Mortgagee may elect.

Mortgagor and Mortgagee agree that neither the filing of a financing statement in the public records normally having to do with personal property nor the taking of any other action described in the above paragraph shall be construed in any way as derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Security Instrument is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate encumbered by this Security Instrument irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment, items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Mortgagor's interest as lessor in any present or future lease rental agreement, tenancy agreement or occupancy agreement or right to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in anyway altering any of the rights of Mortgagee as determined by this Security Instrument or impugning the priority of Mortgagee's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to clauses (1), (2) or (3) of this paragraph 3 that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, must be filed in such public records.
4. **REPAIR AND MAINTENANCE OF PROPERTY.** To keep the Property in good condition and repair; not to substantially alter, remove or demolish any buildings or other improvements except when incident to the replacement of fixtures, machinery or appliances with items of like kind; to restore promptly and in a good and workmanlike manner to no less than the equivalent of its condition on origination of the Loan any buildings or other improvements which may be damaged or destroyed, including, without restricting the generality of the foregoing, damage from termites and earth movement, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair, to pay when due all claims for labor performed and materials furnished in connection with the Property and not to permit any mechanic's lien against the Property; to comply with all laws affecting the Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereon; not to commit, suffer, or permit any act upon the Property in violation of any law; to cultivate, irrigate, fertilize, fumigate and prune

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all landscaping on the Property; and to do all other acts that from the character or use of the Property may be reasonably necessary to keep the Property in the same condition (reasonable wear and tear excepted) as at the date of this Security Instrument; to perform and keep each of the covenants and agreements required to be kept and performed by Mortgagor pursuant to the terms of any and all instruments creating Mortgagor's interest in or defining Mortgagor's rights in respect to the Property.

5. **CONSTRUCTION OF IMPROVEMENTS.** If all or any part of the Loan secured hereby is used for land development and improvement or construction purposes, Mortgagor shall comply in all respects with any agreement between Mortgagor and Mortgagee relating thereto. No construction shall be commenced upon the Land unless the plans and specifications for such construction shall have been submitted to and approved in writing by Mortgagee to the end that such construction shall not, in the reasonable judgment of Mortgagee, entail prejudice to the Loan evidenced by the Note and secured by this Security Instrument.

6. **INSURANCE.** At all times, Mortgagor is to provide, and maintain in force, and pay the cost of property, public liability, and other types and forms of insurance with respect to such property or Loan as may be required by Mortgagee.

PROPERTY (FIRE/HAZARD) INSURANCE. Each policy of insurance shall be in an amount, for a term and in a form and content, and provided through such insurance companies, as may be satisfactory to Mortgagee, with loss payable to Mortgagee and shall, if required by Mortgagee, be delivered to and remain in the possession of Mortgagee as further security for the performance by Mortgagor under this Security Instrument. The amount of such insurance shall in no event be less than (i) the original amount of the Note and be in compliance with any co-insurance requirements of such insurance, or (ii) an amount equal to the highest insurable value of the Property, whichever is the lesser.

Mortgagor hereby assigns to Mortgagee all unearned premiums on any such policy, and agrees that any and all unexpired insurance shall inure to the benefit of, and pass to, Mortgagee upon acquisition by Mortgagee of the Property through foreclosure proceedings or any purchaser of the Property pursuant to such foreclosure proceedings. Pursuant to its rights granted hereunder in all proceeds from any insurance policies, Mortgagee is hereby authorized and empowered at its option to adjust or compromise any loss under any insurance policies on the Property and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for the losses directly to Mortgagee alone and not to Mortgagor and Mortgagee jointly. So long as Mortgagor is not in default under the Loan Documents, Mortgagor shall be entitled to participate in the adjustment or compromise of any insurance loss.

PUBLIC LIABILITY INSURANCE AND LOSS OF INCOME INSURANCE. Mortgagor shall, at its sole expense, purchase and maintain public liability insurance coverage for the ownership, maintenance and use of the Property. Mortgagee may require such policies to: (a) be no less than a certain minimum amount; (b) be provided through such insurance companies as may be satisfactory to Mortgagee; and (c) include Mortgagee and its successors and assigns, as additional insureds or additional loss payees.

Mortgagee may further require that Mortgagor provide, and maintain in force, loss of rental income insurance, loss of earnings insurance, business interruption insurance or other forms of coverage to protect the income or earnings of the Property.

FLOOD INSURANCE. If the Property is now or hereafter located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the Act), Mortgagor will continuously keep the Property covered by flood insurance up to the maximum limit of coverage available under the Act.

OTHER INSURANCE. Mortgagor shall, at its sole expense, obtain and maintain such additional insurance coverages as Mortgagee may from time to time require; provided that Mortgagee may only require coverage for risks not required by Mortgagee at origination of the Loan if such coverage is customarily obtained by owners of property in the area of the Property which is similar to the Property.

Mortgagor shall promptly pay all premiums when due on any such policies and renewals thereof and shall furnish Mortgagee with written evidence of such payment. At least 30 days prior to the expiration of any such policies required by Mortgagee, a policy form renewing or extending such expiring insurance shall be delivered to Mortgagee if Mortgagee requests delivery of such policies to it.

In the event Mortgagor fails to provide insurance complying with the provisions hereof, Mortgagee may, but without obligation so to do, without notice to Mortgagor, without demand upon Mortgagor and without releasing Mortgagor from any obligation hereof, obtain such insurance through or from any insurance agency or insurer or insurance underwriter acceptable to Mortgagee, and pay the premium therefor, and Mortgagee by doing so shall not be chargeable with obtaining or maintaining such insurance or for the collection of any insurance monies or for any insolvency of any insurer or insurance company.

Mortgagee, from time to time, may furnish to any insurance agency or company, or any other person, any information contained in or extracted from any insurance policy theretofore delivered to Mortgagee pursuant hereto and any information concerning the Loan.

7. **DISPOSITION OF THE PROCEEDS OF ANY INSURANCE POLICY, CONDEMNATION OR OTHER RECOVERY.** The amount received by Mortgagee pursuant to this Security Instrument under any insurance policy, or in connection with any condemnation for public use of the Property, or damage to the Property, or in connection with the transaction financed by the Loan secured hereby, at the option of Mortgagee may be (a) applied by Mortgagee upon any indebtedness secured hereby and in such order as Mortgagee may determine or (b) without reducing the indebtedness secured hereby, may be used by Mortgagee to replace, restore, or reconstruct the Property to a condition satisfactory to Mortgagee, or (c) may be released by Mortgagee to Mortgagor, or (d) Mortgagee may divide any such amount in any manner among any such application, use or release. No such application, use or release shall cure or waive any default or notice of default hereunder or invalidate any act pursuant to such notice (or alter the amount of any payment provided under the Note, this Security Instrument, or any other Loan Document or postpone or extend the due date of any payment due under the Note, this Security Instrument or any other Loan Document). Notwithstanding anything to the contrary herein, as long as there exists no default under the Note, the Security Instrument, or the Loan Documents, Mortgagee will allow Mortgagor to use said amount to replace, restore, or reconstruct the Property to a condition satisfactory to Mortgagee.

8. **TAXES, LIENS, AND OTHER SUMS DUE.** To pay, satisfy and discharge: (a) at least 10 days before delinquency, all general and special city and county taxes affecting the Property, (b) when due, all special assessments for public improvements on or benefiting the Property, (c) on demand of Mortgagee but in no event later than the date such amounts and/or performance become due (1) all encumbrances, charges and liens (including, without limitation, income tax liens, or liens of a similar character, to be imposed or levied by the United States Government, the state in which the Property is located, any municipality or county, or an agency of any of them), with interest, on such Property, or any part thereof which are, or appear to Mortgagee to be prior to or superior hereto, (2) all costs, fees and expenses under this Security Instrument whether or not described herein, (3) fees or charges for any statement regarding the obligation secured hereby in any amount demanded by Mortgagee not to exceed the maximum amount allowed by law therefor at the time when such request is made, (4) Mortgagee's fees, charges and expenses for any other statement, information or services furnished by Mortgagee in connection with the obligations secured hereby (said services may include, but shall not be limited to, the processing by Mortgagee of assumptions, substitutions, modifications, extensions, renewals, subordinations, rescissions, changes of owners, reordination of maps, plats or records of survey, grants of easements, and full and partial releases, and the obtaining by Mortgagee of any policies of insurance pursuant to any of the provisions contained in this Security Instrument), (5) all payments and monetary obligations required of the owner of the Property under any declaration of covenants, conditions and restrictions pertaining to the Property or any modification thereof, and (6) any sums advanced or paid by Mortgagee under any clause or provision of this Security Instrument. Should Mortgagor fail to make any such payment, Mortgagee, without contesting the validity or amount, may elect to make or advance such payment together with any costs, expenses, fees, or charges relating thereto, including employing counsel and paying attorney's fees. Any such sum, until so repaid, shall be secured hereby and bear interest from the date it was advanced or paid at the same rate as the Note and shall be secured by this Security Instrument. Mortgagor agrees to notify Mortgagee immediately upon receipt by Mortgagor of notice of any increase in assessment. Mortgagor will obtain the prior written consent of Mortgagee prior to permitting any improvement bond for unpaid special assessments to issue. Mortgagor agrees to notify Mortgagee and appropriate taxing authorities immediately upon the happening of any event which does or may affect the value of Property, the amount or basis of assessment of the Property, or the availability of any exemption to which Mortgagor is or may be entitled. If any state, federal, municipal or other governmental law, order, rule or regulation, passed subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes so as

to materially and adversely affect the rights of Mortgagee, the entire balance of the indebtedness and other sums secured by this Security Instrument and all interest accrued thereon shall, without notice, become due and payable forthwith at the option of Mortgagee.

Mortgagor will pay when due and payable, all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title policy fees, escrow fees, attorneys' fees, fees of inspecting architect(s) and engineer(s) and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Mortgagee in connection with the issuance of its commitment, the preparation and execution of the Loan Documents, the funding of the Loan, and the administration and enforcement of this Security Instrument, the Note and other Loan Documents; Mortgagee will, upon demand by Mortgagee, reimburse Mortgagee for all such expenses which have been incurred or which shall be incurred by it; and Mortgagor will indemnify and hold harmless Mortgagee from and against, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs, and expenses (including, without limitation, attorney's fees) which may be imposed upon, asserted against, or incurred or paid by Mortgagee by reason of, on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever or asserted against Mortgagee on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Property, or with this Security Instrument or any of the indebtedness evidenced by the Note.

9. **CLAIMS, DEMANDS AND ACTIONS.** (a) To give Mortgagee immediate notice of any action or proceeding purporting to affect the Property (including, without limitation, Loan funds, whether or not disbursed) or purporting to affect the security hereof (whether or not it affects the security hereof), or the condition and integrity of the improvements constructed thereon or purporting to affect the rights or powers of Mortgagee; (b) to defend any such action or proceeding; and (c) to file and prosecute all necessary claims and actions to prevent or recover for any damage to or destruction of the Property, and enforce against others each and every obligation to be performed by them under any declaration of covenants, conditions, and restrictions pertaining to the Property. Mortgagee is hereby authorized, without obligation so to do, to commence, appear in, and defend any action or proceeding, whether or not brought by or against Mortgagor, or to exercise or enforce any other right, remedy, or power available or conferred hereunder, whether or not judgment be entered in any action or proceeding. Mortgagee may appear or intervene in any action or proceeding, and retain counsel therein, and take such action therein as it may deem advisable, and may settle, compromise or pay the same or any other claims and, for any of said purposes, may expend and advance such sums of money as it may deem necessary. Mortgagor covenants that, in addition to the present assignment of actions, claims, damages and awards set forth herein, Mortgagor will execute and deliver to Mortgagee such assignments of actions, claims, damages, and awards as Mortgagee may, from time to time, request. Whether or not Mortgagor so appears or defends, Mortgagor shall pay on demand all costs and expenses of Mortgagee, including without limitation costs of evidence of title and attorney's fees, in any such action or proceeding in which Mortgagee may appear by virtue of being made a party defendant or otherwise and irrespective of whether the interest of Mortgagee in the Property is directly questioned by such action including, but not limited to, any action for the condemnation or partition of the Property and any suit brought by Mortgagee to foreclose this Security Instrument. Mortgagee may apply, use or release such monies so received by it in the same manner as in paragraph 7 provided for the proceeds of insurance.

10. **ACCUMULATION ACCOUNT.** To pay to Mortgagee, if Mortgagee shall require at any time or from time to time, in addition to and concurrently with any other payments required in any note secured by this Security Instrument, monthly advance installments, as estimated by Mortgagee from time to time for the purpose of establishing an account (the "Accumulation Account") for payment of any or all taxes, assessments, special assessments, fire, casualty, liability, loss of rental income, and other insurance premiums, encumbrances and leasehold payments, security deposits, or other obligations secured by this Security Instrument or required to be paid with respect to the Property (hereafter in this paragraph referred to as "such obligations") Mortgagor shall deliver promptly to Mortgagee all bills and notices of such obligations. If the amounts paid to Mortgagee under the provisions of this paragraph are not sufficient to pay such obligations as they become due, Mortgagor shall pay to Mortgagee promptly upon demand the amount of the deficiency. All monies paid to Mortgagee under this paragraph may be intermingled with other monies of Mortgagee and such amounts held by Mortgagee shall earn only such interest as prescribed by law, if any. Mortgagee may pay such obligations before or after they become due and payable, but before delinquency. In the event of a default in the payment of any note secured by this Security Instrument, default of any obligation secured hereby, or default in the performance of any of the covenants and obligations of this Security Instrument, then any balance remaining from monies paid Mortgagee under the provisions of this paragraph may, at the option of Mortgagee, be applied to the payment of principal, interest or obligations secured hereby in lieu of being applied to any of the purposes for which the Accumulation Account is established. At all times, any negative balance in the Accumulation Account shall constitute a secured advance made by Mortgagee to protect its security under this Security Instrument. Mortgagee will make such reports of the Accumulation Account as are required by law. Notwithstanding anything to the contrary herein there shall be no requirement of Mortgagor to make any such monthly advance installments for the payment of real estate taxes for that portion of the property occupied by a tenant(s) pursuant to a lease(s) dated prior to the date hereof and which lease(s) obligates the tenant to pay such real estate taxes. Mortgagor shall cause such tenant(s) to pay the real estate taxes in accordance with the terms of the respective lease(s) when the real estate taxes are due. In the event the tenant fails to pay the real estate taxes when same are due the Mortgagor shall immediately undertake to pay same. Nothing herein shall prevent Mortgagee from requiring Mortgagor to pay monthly installments for real estate taxes for any portion of the Property for which Mortgagor or a tenant of Mortgagor takes possession from this date forward.

11. **ACCELERATION CLAUSE.** Mortgagee shall have the right, at its option, to declare all sums secured hereby immediately due and payable, if any of the following shall occur: (a) failure to make any payment when due, and after the expiration of any applicable grace period, under the Note; (b) Mortgagor's breach of any representation, covenant or undertaking under either the Note or Mortgage after expiration of any applicable grace period; or (c) Restrictions on Transfer: (i) Subject to the provisions of subparagraph (ii), if, without the prior written consent of Mortgagee, any of the following shall occur, and in any event Mortgagee may condition its consent upon such increase in the rate of interest payable upon the indebtedness secured by this Security Instrument, change in the maturity thereof and/or the payment of a fee, charge, Mortgagee may in its sole discretion require: (A) if Mortgagor shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Property or any part thereof, or interest therein; (B) if Mortgagor is a trustee Mortgagor, then if any beneficiary of Mortgagor shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in Mortgagor; (C) if Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee Mortgagor, then if 25 percent or more of the shares of such corporation shall be sold, assigned, transferred, liened, pledged, mortgaged, or otherwise encumbered or alienated; (D) if Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee Mortgagor is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer; (E) if there shall be any change in control (by way of transfers of stock ownership, partnership interests or otherwise) in any general partner which directly or indirectly controls or is a general partner of a partnership or joint venture beneficiary as described in subparagraph (a)(i)(D) above; (F) if the Property is used or occupied by Mortgagor at the date of origination of the Loan and Mortgagor subsequently leases the Property or any part thereof; or (G) if the Property is rental property and Mortgagor enters into any lease, tenancy agreement, or occupancy agreement except in compliance with the terms and conditions of this Security Instrument and the other Loan Documents; (ii) The restrictions of subparagraph (i) above shall not apply to (A) liens securing the indebtedness secured by this Security Instrument; or (B) the lien of current real estate taxes and assessments not in default; or (b) if any of the following shall occur: (i) If Mortgagor suffers its title or any interest therein to be divested, whether voluntarily or involuntarily; (ii) If Mortgagor changes or permits to be changed the character or use of the Property from the character or use contemplated by Mortgagor and Mortgagee upon execution of this Security Instrument, as specified in Mortgagor's application to Mortgagee and other documents executed by Mortgagor in connection with the Loan, including, without limitation, drilling or extracting oil, gas, or other hydrocarbon substances, or any mineral of any kind or character; (iii) If suit be commenced to condemn the Property as being unfit for human use and occupancy or to abate as a nuisance activities or conditions found thereon (and Mortgagee reasonably believes that its security under this Security Instrument is impaired by such suit or the activities or conditions which are the subject of such suit) or for the partition or sale of the Property; or (iv) If Mortgagor, or if Mortgagor is a trustee Mortgagor, Mortgagor or any beneficiary of Mortgagor, has made any oral or written material misrepresentation or failed to disclose any material fact, in order to induce Mortgagee to enter into the transaction evidenced by the Note or agreements which this Security Instrument secures. Notwithstanding anything to the contrary herein there shall be no limitation on the transfer of any partnership interest which is the beneficiary of mortgagor by reason of

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device, decent or operation of law, upon the death of any individual general partner nor shall there be a limitation on the transfer of any such partnership interest upon the bankruptcy or dissolution of marriage of any individual general partner.

If any of the events enumerated in the preceding subparagraphs (a)(i)(A) through (G), inclusive, occur and if Mortgagee consents to the same or fails to exercise its right to declare all sums secured hereby due and payable, such consent or failure shall not be deemed or construed as a waiver, and the consent of Mortgagee shall be required on all successive occurrences.

12. **PREPAYMENT FEE.** Should the Note or any other obligation secured hereby provide any fee for prepayment of any of the indebtedness secured hereby, to pay promptly said fee notwithstanding that Mortgagor shall have defaulted in any obligation secured hereby and Mortgagee, by reason thereof, shall have declared all sums secured hereby immediately due and payable.
13. **WAIVERS AND CONSENTS PERTAINING TO NOTE.** Mortgagor waives presentment, demand, protest and notice of nonpayment of the Note, and consents to delays, changes in time of payment, and the amount of installments due under the Note, and to the reduction or increase of the interest rate thereof.
14. **WAIVER OF STATUTE OF LIMITATIONS.** Time is of the essence in all Mortgagor's obligations hereunder, and to the fullest extent permitted by law, Mortgagor waives the right to assert any present or future statute of limitation with respect to any debt, demand or obligation secured hereunder in any action or proceeding for the purpose of enforcing this Security Instrument, the Note or any other Loan Document or any rights or remedies hereunder.
15. **INSPECTION AND BUSINESS RECORDS.** Mortgagee or any authorized representative or agent of Mortgagee or any person or entity interested in acquiring all or any part of the Loan may enter upon and inspect the Property at any reasonable time during the term of this Security Instrument. If the Property is now or hereafter used for commercial or residential income purposes, Mortgagor will promptly deliver to Mortgagee such financial statements, gross income statements, and profit and loss statements of such types and at such intervals as may be required from time to time by Mortgagee which will be certified by Mortgagor and prepared according to generally accepted accounted principles or other principles and practices acceptable to Mortgagee, which statements shall cover the financial operations relating to the Property, and Mortgagor further agrees when requested by Mortgagee to promptly deliver in writing such further additional information as required by Mortgagee relating to any such financial statements. Mortgagor shall furnish to Mortgagee within 30 days after the end of each fiscal year and within 15 days of Mortgagee's written request, a rent schedule as of the end of such fiscal year or as of 30 days prior to the date of such request, certified by Mortgagor, showing the name of each tenant and the space occupied, the lease expiration date, the rent and additional rent due and payable, prepaid rent, if any, security deposit paid, the last date to which rent was paid and whether or not such tenant was then in default under any of the terms of the lease. In the event Mortgagor fails to comply with the provisions of this paragraph 15, Mortgagee shall have the right to have Mortgagor's books and records audited by an independent certified public accountant, and the cost of such audit shall be the obligation of Mortgagor and secured by this Security Instrument.
16. **ESTOPPEL CERTIFICATES.** Mortgagor, within 10 days after written request from Mortgagee, shall furnish a written statement, duly acknowledged to Mortgagee and any third party designated by Mortgagee, setting forth the unpaid principal and interest and any other sums and charges due under the Note, this Security Instrument and the other Loan Documents, and whether or not any offsets or defenses exist against such principal and interest or other sums or charges and stating that the Note, Security Instrument and other Loan Documents have not been modified or stating that the Note, Security Instrument and other Loan Documents have been modified and specifying such modifications, and that the Note, Security Instrument and other Loan Documents, as unmodified or modified, as applicable, remain in full force and effect. If Mortgagor fails to execute and deliver such estoppel certificate within such 10 day period, Mortgagor shall conclusively be deemed to have constituted and appointed Mortgagee as Mortgagor's special attorney in fact to execute and deliver any such estoppel certificate to any third party and shall be deemed to have certified that the Note, Security Instrument and other Loan Documents remain in full force and effect, either unmodified or modified in the manner specified by Mortgagee, whichever Mortgagee reasonably may represent. Mortgagor and Mortgagee expressly agree that any such certificate may be relied on by any prospective purchaser of the Loan or any portion thereof without independent investigation or examination.
17. **RIGHT TO COLLECT AND RECEIVE RENTS AND PROFITS.** The assignment of rents set forth hereinabove shall be fully operative without any further action on the part of either party. Notwithstanding any other provision hereof, Mortgagee hereby grants permission to Mortgagor to collect and retain the rents, income, issues, royalties, tolls, earnings, profits, and other benefits of the Property as they become due and payable and to hold the rent security deposits, but reserves the right to revoke such permission at any time by notice in writing to Mortgagor, mailed to Mortgagor at the last known address, upon default by Mortgagor in payment of any indebtedness secured hereby or in the performance of any agreement hereunder or under any other Loan Document. Upon, or at any time after, the filing of a complaint to foreclose this Security Instrument, the court in which the complaint is filed may appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to solvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Property or whether the same shall be then occupied as a homestead or not; and Mortgagee may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Property during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the whole or in part of: (i) the indebtedness hereby secured or the indebtedness secured by any decree foreclosing this Security Instrument, or any tax, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to the foreclosure sale; or (ii) the deficiency in case of a sale and deficiency. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Property by Mortgagee.
18. **LEASES AFFECTING THE PROPERTY.** The assignment of leases set forth hereinabove shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such lease (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any tenant shall have been barred and foreclosed under any sale under the power of sale contained herein of all right, title and interest in the Property or any part thereof), and Mortgagor shall comply with and observe its obligations as landlord under all leases affecting the Property or any part thereof.

Mortgagor shall not amend, modify, cancel, terminate or extend the term of any lease on the Property entered into by Mortgagor as landlord prior to the date hereof nor shall Mortgagor enter into any new lease on the Property after the date hereof without the prior written consent of Mortgagee. In addition, Mortgagor shall furnish promptly to Mortgagee original or certified copies of all such leases now existing or hereafter created. Mortgagor shall not accept payment of rent more than 1 month in advance without the prior written consent of Mortgagee. Mortgagee is authorized to foreclose this Security Instrument subject to the rights of any tenants of the Property or may elect which tenants Mortgagee desires to name as parties defendant to any such foreclosure proceedings and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

With respect to the assignment of leases hereinabove set forth, Mortgagor shall, from time to time upon request of Mortgagee, specifically assign to Mortgagee, by an instrument in writing in such form as may be approved by Mortgagee, all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the Property, together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rents under any such lease. Mortgagor shall also execute and deliver to Mortgagee any notification, financing statement or other document reasonably required by Mortgagee to perfect the foregoing assignment as to any such leases. Mortgagee shall have the right, at any time and from time to time, to notify any tenant of the rights of Mortgagee as provided in the assignment by Mortgagor to Mortgagee of all leases relating to the Property and to the rents, issues, profits, earnings, income and other benefits therefrom and from the Property.

- 19. FAILURE OF MORTGAGOR TO COMPLY WITH SECURITY INSTRUMENT.** Should Mortgagor, or if Mortgagor is a trustee Mortgagor, Mortgagor or any beneficiary of Mortgagor, fail to make any payment or to do any act or to perform any covenant as provided in this Security Instrument, the Note, or any other Loan Document or fail to perform any obligation secured by this Security Instrument or do any act Mortgagor, or if Mortgagor is a trustee Mortgagor, Mortgagor or any beneficiary of Mortgagor, agreed not to do, or should any of the representations and warranties made by Mortgagor, or if Mortgagor is a trustee Mortgagor, Mortgagor or any beneficiary of Mortgagor, be untrue in any material respect, or if (i) a petition is filed by Mortgagor, or any guarantor, co-maker or endorser of the Note seeking or acquiescing to any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency or an involuntary petition under such law is filed against Mortgagor, or if Mortgagor is a trustee Mortgagor, Mortgagor or any beneficiary of Mortgagor, and is still in effect 60 days from the date of such filing; or (ii) a receiver, trustee, master or liquidator is appointed with respect to the Property or the rents, issues, royalties, profits, income or other benefits therefrom; or (iii) Mortgagor, or any guarantor, co-maker or endorser of the Note becomes insolvent or generally fails to pay or admits in writing its inability to pay its debts as they become due; or (iv) Mortgagor, or if Mortgagor is a trustee Mortgagor, Mortgagor or any beneficiary of Mortgagor, makes an assignment for the benefit of Mortgagor's creditors; or (v) any significant portion of the assets of Mortgagor, or if Mortgagor is a trustee Mortgagor, Mortgagor or any beneficiary of Mortgagor, is attached, executed upon or judicially seized in any manner and such attachment, execution or seizure is not discharged within 30 days; Mortgagor shall be in default under this Security Instrument, and Mortgagee (but without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof, and without contesting the validity or amount of the same) shall have the right, at its option, to declare all sums secured hereby immediately due and payable, and may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purposes, and in exercising any such power, pay necessary expenses, employ counsel and pay attorney's fees. Upon default by Mortgagor, Mortgagee shall be entitled thereupon, after notice as required herein, to institute suit at law or in equity to enforce the rights of Mortgagee hereunder or under the Note. In the event of any such default or breach, Mortgagee shall have the continuing option to enforce payment of all sums secured hereby by action at law or by suit in equity, to foreclose this Security Instrument, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waive or Mortgagee's right to institute or maintain the other, provided Mortgagee shall have only one payment and satisfaction of said indebtedness. Mortgagor agrees to the full extent permitted by law, that in case of a default on its part hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any so-called "Moratorium Law" now or at any time hereafter in force or any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, or the absolute sale of the Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereof, including Mortgagee. Mortgagor also waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof and agrees that the Property may be sold as an entirety. Mortgagor and all persons dealing with the Property through or under Mortgagor and their successors and assigns, including, without limitation all subsequent purchasers of all or any portion of the Property and all persons holding or obtaining a mortgage lien or other lien on the Property which is junior and subordinate to this Security Instrument, by taking and accepting their respective conveyances, encumbrances, mortgages or liens do hereby acknowledge, covenant and agree with Mortgagee that (i) in the event of any default in the repayment of the indebtedness secured hereby, or in the event of any default under the terms of this Security Instrument, or under any other mortgage or security agreement securing the same indebtedness as is secured by this Security Instrument, whether directly or by virtue of a cross-collateralization agreement, or under any other Loan Document, Mortgagee may proceed to seek foreclosure or any other relief available at law or in equity in any order which Mortgagee may determine, in Mortgagee's sole discretion, and Mortgagee may proceed against any property or collateral securing said indebtedness in any order which Mortgagee elects without regard to any matters which could or might be raised by any subsequent purchaser or by any junior lienor or encumbrancer under those certain equitable doctrines known as the doctrine of "marshalling of assets" and the doctrine of "inverse order of alienation," (ii) they will not assert, and they do hereby waive any right to assert, the doctrine of marshalling of assets or any similar equitable doctrines, and (iii) they will not assert, and they do hereby waive any right to assert, the doctrine of inverse order of alienation or any similar equitable doctrines. Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of Mortgagor acquiring any interest or title to the Property or beneficial interest in a trustee Mortgagor subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law; and if Mortgagor is a trustee Mortgagor, Mortgagor represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above. The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings; Second, all other items which, under the terms hereof, constitute indebtedness secured by this Security Instrument additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and lastly, the remainder, if any, to Mortgagor, and its successors or assigns, as their rights may appear.
- 20. SUBROGATION.** To the extent that Mortgagee, on or after the date hereof, pays any sum due under any provision or law or any Instrument or document creating any lien prior or superior to the lien of this Security Instrument, or Mortgagor or any other person pays any such sum with the proceeds of the Loan secured hereby, Mortgagee shall have and be entitled to a lien on the Property equal in priority to the lien discharged, and the Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the indebtedness secured hereby. Mortgagee shall be subrogated, notwithstanding their release of record, to the lien of all mortgages, trust deeds, superior titles, vendors' liens, liens, charges, encumbrances, rights and equities on the Property, to the extent that any obligation under any thereof is directly or indirectly paid or discharged with proceeds of disbursements or advances under the Note or any Loan Document.
- 21. NO MERGER.** It being the desire and intention of Mortgagor and Mortgagee that this Security Instrument and the lien hereof do not merge in fee simple title to the Property, it is hereby understood and agreed that should Mortgagee acquire an additional or other interest in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee, as evidenced by an express statement to that effect in an appropriate document duly recorded, this Security Instrument and the lien hereof shall not merge in the fee simple title, toward the end that this Security Instrument may be foreclosed as if owned by a stranger to the fee simple title.
- 22. NO WAIVER OR MODIFICATION UNLESS IN WRITING.** No modification or waiver by Mortgagee of any right under this Security Instrument shall be effective unless in writing. Waiver by Mortgagee of any right granted to Mortgagee under this Security Instrument or under any provision of this Security Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date, or by making any payment or performing any act on behalf of Mortgagor that Mortgagor was obligated hereunder but failed to make or perform, or by adding any payment so made by Mortgagee to the indebtedness secured hereby, or by exercising Mortgagee's rights to receive and collect the income, rents, issues and profits therefrom, Mortgagee does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all acts required hereunder, or to declare a default for failure so to pay or perform.
- 23. REMEDIES.** No remedy herein provided shall be exclusive of any other remedy herein, or now or hereafter existing by law or in equity, but shall be cumulative. Every power or remedy hereby given to Mortgagee or to which Mortgagee may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by Mortgagee. Mortgagee may pursue separate remedies. If Mortgagee holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after a foreclosure is made hereunder, and on any default of Mortgagor, Mortgagee may, at its option, offset against any indebtedness owing by it to Mortgagor, the whole or any part of the indebtedness secured hereby, and Mortgagee is hereby authorized and empowered, at its option, without any obligation so to do, and without affecting the obligations hereof, to apply toward the payment of any indebtedness secured hereby and of Mortgagor to Mortgagee, any and all sums of money which Mortgagee may have in its possession or under its control, including, without limiting the generality of the foregoing, the indebtedness evidenced by an investment certificate or any escrow or trust funds. In order to assure the

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definiteness and certainty of the rights and obligations herein provided, Mortgagor waives any and all rights of offset of claims and no offset shall relieve Mortgagor from paying installments on the obligations secured hereby as they become due.

24. **GENERAL PROVISIONS.** (a) As and when used herein, the term "Mortgagor" shall mean and include Mortgagor above-named and its successors and permitted assigns and the term "Mortgagee" shall mean and include Mortgagee hereinabove named and its successors and assigns; (b) wherever the context so requires, the masculine gender includes the feminine and neuter, the singular number includes the plural and vice-versa; (c) captions and paragraph headings used herein are for convenience only, are not a part of this Security Instrument, and shall not be used in construing it; (d) Mortgagee shall have the right at any time and from time to time to provide any information it has in its possession relating to Mortgagor or the Property to any party interested in acquiring all or any part of the Loan; (e) in exercising any right or remedy or taking any action provided herein, Mortgagee may act through its employees, agents or independent contractors, as authorized by Mortgagee; and (f) if more than one person is named as Mortgagor, each obligation of Mortgagor hereunder shall be the joint and several obligation of each such person.
25. **FURTHER ASSURANCES.** At any time and from time to time, upon Mortgagee's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Mortgagee and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refilled at such time and in such offices and places as shall be deemed desirable by Mortgagee, any and all such further mortgages, instruments of further assurance, certificates and other documents as shall be deemed reasonably necessary by Mortgagee in order to effectuate, complete or perfect, or to continue and preserve the obligations of Mortgagor under the Note, this Security Instrument or any other Loan Document and the lien of this Security Instrument or the Note, whether now owned or hereafter acquired by Mortgagor, and unto all and every person or persons deriving any estate, right, title or interest under this Security Instrument. After written direction by Mortgagee to Mortgagor, and upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.
26. Notwithstanding anything to the contrary herein in the event of default herein Lender shall be obligated to first proceed with a suit to foreclose the Security Instrument before pursuing any other remedies at law or equity.
27. Notwithstanding anything to the contrary herein, Borrower shall not be considered to be in monetary default (i.e., default in the making of any payment under the Note or the Security Instrument or the Loan Documents) unless and until such monetary default is not cured within ten (10) days after written notice thereof, and Borrower shall not be considered to be in non-monetary default (i.e., default in the performance of any other covenant or agreement contained in the Note or the Security Instrument or the Loan Documents) unless and until such non-monetary default is not cured within thirty (30) days after written notice thereof.
28. **GOVERNING LAW; SEVERABILITY.** This Security Instrument shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument, the Note or other Loan Documents is construed by a court of competent jurisdiction to be void, invalid or unenforceable, such construction shall not affect other provisions of this Security Instrument or the Note or the other Loan Documents, which can be given effect without the void, invalid or unenforceable provision, and to this end the provisions of this Security Instrument, the Note and the other Loan Documents are declared to be severable.
29. **CAPTIONS.** The captions used herein are for convenience only and shall not be used in construction or interpretation of this Security Instrument.
30. **NOTICES.** All notices, demands and requests given hereunder by Mortgagor or Mortgagee shall be in writing and shall be by: (a) hand delivery to the address for notices; or (b) delivery by overnight courier service to the address for notices; or (c) by certified mail, return receipt requested addressed to the address for notices by United States mail, postage prepaid. All notices shall be deemed received upon the earliest to occur of (i) the hand delivery of such notice to the address for notices; or (ii) one day after the deposit of such notice with any overnight courier service addressed to the address for notices; or (iii) three days after depositing the notice in the United States mail as set forth in (c) above. All notices shall be sent to the address set forth in the initial paragraph hereof or to such other person or at such other place as any party hereto may by notice designate as a place for service of notice.
31. **LOST INSTRUMENTS.** In the event that following execution, the Note, this Security Instrument, or any other Loan Document should be lost, destroyed or mutilated, Mortgagor agrees to execute another original of such Note, Security Instrument or Loan Document.
32. **FUTURE ADVANCES.** Mortgagor acknowledges and agrees that this Security Instrument shall secure not only the original indebtedness referred to herein and evidenced by the Note, but also any and all future advances and loans made by Mortgagee to Mortgagor, or successors in title; provided, however, that the aggregate of the indebtedness secured by this Security Instrument shall at no time exceed \$240,000.00.
33. **WAIVER OF CERTAIN RIGHTS.** Mortgagor hereby expressly releases and waives all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois ~~together with all rights to retain possession of the Property after any default in any payment secured hereby, or the breach of any covenant or agreement herein contained, or upon the occurrence of any default in or for the Note, this Security Instrument or any other Loan Document.~~
34. **RELEASE.** Upon payment of all sums secured by this Security Instrument and performance of all other obligations of Mortgagor, or if Mortgagor is a trustee Mortgagor, Mortgagor and all of Mortgagor's beneficiaries, under the Note, this Security Instrument and all of the other Loan Documents, Mortgagee shall release this Security Instrument. Mortgagor shall pay Mortgagee's reasonable costs incurred in releasing this Security Instrument.
35. **JUNIOR LIENORS.** Borrower shall not directly or indirectly create, suffer or permit to be created or filed against the property or any portion thereof or against the rents, issues or profits therefrom any mortgage lien, security interest or other lien or encumbrance except the lien of current general taxes duly levied and assessed but not yet due and payable and the lien of this Mortgage.
36. **BUSINESS LOAN.** It is understood and agreed that the Loan evidenced by the Note and secured hereby is a business loan within the purview of Section 6404 of Chapter 17 of Illinois Revised Statutes (or any substitute, amended, or replacement statutes) transacted solely for the purpose of carrying on or acquiring the business of Mortgagor, or if Mortgagor is a trustee Mortgagor, for the purpose of carrying on or acquiring the business of the beneficiaries of Mortgagor as contemplated by said Section.
37. **INSURANCE UPON FORECLOSURE.** In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the Property, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct; and:
- (a) In the case of foreclosure of this Security Instrument, the court, in its decree, may provide that the mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached hereto, making the loss thereunder payable to such redeemer; and
- (b) in the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

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38. **MORTGAGEE NOT A JOINT VENTURER OR PARTNER.** Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Security Instrument or pursuant to any other instrument or document evidencing or securing any of the indebtedness secured hereby, or otherwise.

39. **ENVIRONMENTAL MATTERS.** To the best of its knowledge Mortgagor represents that it, and the holders of easements, licenses, occupancy agreements and any other rights relating to the use of all or any portion of the Property (herein jointly called "Persons Responsible"), are currently in compliance with, and covenants and agrees that it will manage and operate the Property and will use its best efforts and good faith to cause each Person Responsible to occupy and use its demised portion of the Property in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, and the use, generation, storage, treatment and removal, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, building components, supplies or wastes). Mortgagor further covenants and agrees that it shall not install or permit to be installed in the Property asbestos or any substance containing asbestos and deemed hazardous by or in violation of such federal, state or local laws, rules, regulations or orders respecting such material. Mortgagor shall send to Mortgagee, within five (5) days of receipt or completion thereof, any report, citation, notice or other writing including without limitation, hazardous waste disposal manifests, by, to or from any governmental or quasi-governmental authority empowered to regulate or oversee any of the activities discussed in this paragraph, whether demonstrating compliance with applicable law, noticing noncompliance, requesting or requiring notice or action, commencing investigation or requesting Mortgagor to show cause why action is not required. After reasonable inquiry and investigation, Mortgagor is not aware of any hazardous or toxic substances on or in the Property whether contained in tanks or other containers, in structures or equipment, or incorporated in buildings. In the event that, through whatever means, Mortgagor or a third party discovers hazardous substances on the Property, Mortgagor shall remedy, rectify, rehabilitate, correct and remove from the Property and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances. Mortgagor shall take any and all action necessary, including but not limited to, bringing legal suit against, those Persons Responsible for the presence of the substance on site, or otherwise obligated by law to bear the cost of such remedy. Mortgagee shall be subrogated to Mortgagor's rights against any and all Persons Responsible; provided, however, Mortgagee shall in no event be obligated to remedy, rectify, rehabilitate, correct or remove and dispose of any such substances, nor shall Mortgagee be obligated to take any action against Persons Responsible for the foregoing activities. Mortgagor agrees to indemnify, defend with counsel acceptable to Mortgagee (at Mortgagor's sole cost), and hold Mortgagee harmless against any claim, response or other costs, damages, liability or demand (including without limitation attorney fees and costs incurred by Mortgagor or Mortgagee, or both) arising out of any claimed violation by Mortgagor or any Person Responsible for any of the foregoing laws, regulations or ordinances or breach of any of the foregoing representations, covenants or agreements. Mortgagor specifically agrees that, notwithstanding any provision to the contrary in this Security Instrument this indemnification shall survive the reconveyance or release of this Security Instrument, whether pursuant to payment in full of the Note or foreclosure by Mortgagee under this Security Instrument and that, if requested by Mortgagee, Mortgagor at any time shall execute a separate writing setting forth such indemnification.

40. **AUTHORITY AND EXCULPATION OF TRUSTEE.** This mortgage is executed by NBD BANK, and not personally, but solely as Trustee under Trust Agreement dated October 28, 1994, and known as Trust No. 53187-SK as aforesaid ("Land Trustee"), in the exercise of the power and authority conferred upon and fixed in it as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Land Trustee as Trustee as aforesaid, or on said Land Trustee personally, to pay this Mortgage or any interest that may accrue hereon, or any other indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right hereunder, and that so far as Land Trustee as Trustee as aforesaid, and its successors, and Land Trustee, personally, are concerned, Lender and the Note Holder and the owner or owners of the indebtedness accruing hereunder shall look solely to any one or more of (a) the property subject to the Mortgage for the payment thereof, by the enforcement of the lien created by the Mortgage, in the manner herein and in the Mortgage provided, or (b) action to enforce the personal liability of any obligor, guarantor or co-maker hereof, or (c) enforcement of any other security or collateral securing the indebtedness evidenced by this Mortgage.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage and Security Agreement to be signed by its duly authorized officers and its corporate seal to be hereunto affixed as of the day in the year first above written.

EXONERATION PROVISION RESTRICTING ANY LIABILITY OF NBD BANK ATTACHED HERETO IS HEREBY EXPRESSLY MADE A PART HEREOF.

NBD BANK, AND NOT PERSONALLY, BUT SOLELY AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 28, 1994, AND KNOWN AS TRUST NO. 53187-SK

ATTEST:

David Rosenfeld
Name: DAVID ROSENFELD
Title: ASSISTANT VICE PRESIDENT

By: Joseph E. Sochacki
Name: JOSEPH E. SOCHACKI
Title: TRUST OFFICER

STATE OF ILLINOIS)
COUNTY OF Cook) ss.

The undersigned, a Notary Public, in and for said County in the State aforesaid does hereby certify that David Rosenfeld Ass't V.P. of NBD Bank ("Bank"), and Joseph E. Sochacki T.O. thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Ass't V.P. and Trust Officer, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary acts of Bank, for the uses and purposes therein set forth.

Given under my hand and official seal this 21st day of December, 1994.

My Commission Expires:

7/11/95

Diana Duebner
NOTARY PUBLIC

OFFICIAL SEAL
DIANA DUEBNER
Notary Public, State of Illinois
My Commission Expires 7/11/95

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It is expressly understood and agreed by every person, firm, or corporation claiming any interest under this document that NBD BANK, shall have no liability, contingent or otherwise, arising out of, or in any way related to, (i) the presence, disposal, release or threatened release of any hazardous materials on, over, under, from or affecting the property, soil, water, vegetation, building, personal property, persons or animals thereof; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (iii) any lawsuit brought or threatened, settlement reached or government order relating to such hazardous materials, and/or (iv) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Trustee which are based upon or in any way related to such hazardous materials including without limitations, attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses.

In the event of any conflict between the provisions of this exculpatory rider and the provisions of the document to which it is attached, the provisions of this rider shall govern.

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EXHIBIT A

Legal Description: 9 1

All the right, title and interest of Lessee in and to that certain lease dated April 21, 1950, recorded May 2, 1950, as Document No. 14791201, from NORTHWESTERN UNIVERSITY to WILLIAM A. MURRAY, demising for a term of 50 years from May 1, 1950, to April 30, 2000, the premises described as follows:

Sub-Lots 1 to 5, inclusive, in the Subdivision of Lots 11 and 12 in Block 26 in the Village (now City) of Evanston in the Southeast Fractional Quarter of Section 18, Township 41 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois;

P.T.N. 11-18-408-012

commonly known as 518-26 Davis Street, Evanston, Illinois 60201.

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