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Eugene "Gene" Moore Fee: \$88.50
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Date: 03/12/2004 02:02 PM Pg: 1 of 33

LAWYERS TITLE INSURANCE CORPORATION
10 SOUTH LASALLE STREET 25th FLOOR
CHICAGO, ILLINOIS 60603
CASE NO. 04-00100
KR

MORTGAGE (Fee)

THIS MORTGAGE made as of the 1st day of March, 2004, between E 3939 L.L.C., an Illinois limited liability company, having an address at 39 South LaSalle Street, Suite 1010, Chicago, Illinois 60603 ("Mortgagor"), and **ALPINE CAPITAL BANK**, a New York banking corporation ("Mortgagee"), having an office at 680 Fifth Avenue, New York, New York 10019,

WITNESSETH:

To secure the payment of an indebtedness of Mortgagor in the principal sum of One Million Five Hundred Thousand and 00/100ths U.S. Dollars (\$1,500,000.00), to be paid with interest (said indebtedness, interest and all other sums which may or shall become due hereunder being hereinafter collectively referred to as the "Debt") according to a certain note, dated the date hereof, given by Mortgagor to Mortgagee (the "Note"), Mortgagor has mortgaged, granted, sold, conveyed and assigned, and does hereby mortgage, grant, sell, convey and assign, unto Mortgagee all right, title and interest of the respective Mortgagor now owned, or hereafter acquired, in and to the property described in **Exhibit A** attached hereto (the "Premises"), the buildings and improvements now or hereafter located thereon (collectively, the "Improvements") and the following property, rights and interests (the Premises, Improvements and such property, rights and interests being hereinafter referred to as the "Mortgaged Property"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Mortgaged Property and the reversion and reversions, remainder and

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remainders, together with all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises to the center line thereof;

(b) all machinery, equipment, fixtures and other property now or hereafter located upon the Mortgaged Property (collectively, the "Equipment"), including Equipment which may be subject to any security agreements (as defined in the Uniform Commercial Code of the State of Illinois (the "UCC")) superior in lien to the lien of this Mortgage, together with all other tangible and intangible personal property, rights and interest referred to in this Mortgage;

(c) all awards or payments, including interest, and the right to receive the same, which may be made with respect to the Mortgaged Property, whether from the exercise of the right of eminent domain (including any transfer made in lieu thereof), or for any other injury to or decrease in the value of the Mortgaged Property;

(d) all leases and other agreements affecting the use or occupancy of the Mortgaged Property now or hereafter entered into and the right to receive and apply the rents, fees, other charges due for the use or occupancy of the Mortgaged Property and all other issues and profits of the Mortgaged Property (the "Rents") to the payment of the Debt;

(e) all right, title and interest of Mortgagor in and to (i) all contracts from time to time executed by Mortgagor or any manager or agent on its behalf relating to the ownership, construction, maintenance, repair, operation, occupancy, sale or financing of the Mortgaged Property or any part thereof and all agreements relating to the purchase or lease of any portion of the Mortgaged Property or any property which is adjacent or peripheral to the Mortgaged Property, together with the right to exercise such options and all leases of Equipment, (ii) all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Mortgaged Property or any part thereof, and (iii) all drawings, plans, specifications and similar or related items relating to the Mortgaged Property;

(f) all trade names, trade marks, logos, copyrights, good will and books and records relating to or used in connection with the operation of the Mortgaged Property or any part thereof; all general intangibles related to the operation of the Mortgaged Property, now existing or hereafter arising;

(g) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including the right to receive and apply the proceeds of any insurance and judgments (or settlements made in lieu thereof) for damage to the Mortgaged Property, together with all rights to obtain and receive a refund or abatement of taxes or other municipal charges against the Mortgaged Property; and

(f) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence or join in any action or proceeding to protect Mortgagee's interest in the Mortgaged Property, including, without limitation, the right to sue for and collect any and all of the awards, payments, rents, fees, charges, proceeds of insurance and tax refunds or abatements and any other sums due

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with respect to the Mortgaged Property referred to above and to give acquittance therefor and to apply the same to the Debt whether then due and payable.

TO HAVE AND TO HOLD the Mortgaged Property unto and to the proper use and benefit of Mortgagee, its successors and assigns, forever.

PROVIDED, ALWAYS, and these presents are upon this express condition, if Mortgagor shall (a) pay the Debt at the time and in the manner provided in the Note and this Mortgage and (b) comply with all covenants and conditions set forth herein and in the Note, these presents and the estate hereby granted shall terminate.

AND Mortgagor covenants with and represents and warrants to Mortgagee as follows:

1. **Payment of Debt.** Mortgagor will pay the Debt at the time and in the manner provided for in the Note, this Mortgage and any other mortgages, instruments or documents evidencing, securing or guaranteeing, in whole or in part, payment of the Debt (the "Other Security Documents").
2. **Late Payment Charge.** If any portion of the Debt is not paid on the date on which it is due, Mortgagor shall pay to Mortgagee upon demand a late payment charge of two percent (2%) of such unpaid portion of the Debt to defray the expenses incurred by Mortgagee in handling and processing such delinquent payments, which amount Mortgagor agrees is reasonable. Such amount shall be secured by this Mortgage.
3. **Authority.** Mortgagor has full power, authority and legal right to execute this Mortgage and to mortgage, grant, sell, convey and assign the Mortgaged Property pursuant to the terms hereof and to perform all the terms of this Mortgage.
4. **Warranty of Title.** Mortgagor warrants the title to the Premises, the Improvements and the Equipment. Mortgagor covenants to preserve such title, and will throughout the term of this Mortgage warrant and defend such title to Mortgagee and the validity and priority of the lien hereof against the claims of all persons and shall not do or permit anything to be done which may impair the lien of this Mortgage or the value of the Mortgaged Property.
5. **Insurance.**
 - (a) Mortgagor (i) will keep the Improvements and the Equipment insured with all-risk coverage against loss or damage by fire, vandalism, malicious mischief and such other hazards as Mortgagee shall from time to time reasonably require, in amounts approved by Mortgagee, which amounts shall in no event be less than 100% of the replacement cost of the Improvements and the Equipment and shall be sufficient to meet all applicable co-insurance requirements, (ii) will maintain such other forms of insurance coverage with respect to the Mortgaged Property as Mortgagee shall from time to time reasonably require in amounts approved by Mortgagee and (iii) will designate Mortgagee as an additional insured on a commercial general liability insurance policy in an amount not less than \$1,000,000 covering the

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Mortgaged Property and Mortgagor's operations. If the Premises are improved, and any portion thereof is located in a Federally designated "special flood hazard area," in addition to the other policies of insurance required under this paragraph (the "Policies"), a flood insurance policy shall be delivered by Mortgagor to Mortgagee. If no portion of the Premises is located in a Federally designated "special flood hazard area" such fact shall be substantiated by a certificate in form satisfactory to Mortgagee from a licensed surveyor, appraiser or professional engineer or other qualified person satisfactory to Mortgagee in accordance with applicable regulations. In lieu of an original policy, only an Acord form 27 properly completed (and providing for not less than thirty days advance notice to Mortgagee of cancellation) will be acceptable as evidence of Property Insurance.

(b) Mortgagor shall at all times comply with and shall cause the Improvements and Equipment and the use, occupancy, operation, maintenance, alteration, repair and restoration thereof to comply with the terms, conditions, stipulations and requirements of the Policies. All Policies shall be issued by insurers having a minimum policy holders rating of "A" per the latest rating publication of Property and Casualty Insurers by A.M. Best Company and who are lawfully doing business in Illinois and are otherwise reasonably acceptable in all respects to Mortgagee. All Policies shall, with respect to the Premises and the Improvements, contain the standard New York mortgagee non-contribution clause endorsement or an equivalent endorsement and, with respect to the Equipment, contain a lender's loss payable clause endorsement or an equivalent endorsement, all naming Mortgagee (at such address as may be specified by Mortgagee from time to time) as the person to which all payments made by the insurer thereunder shall be paid and otherwise in form and substance satisfactory in all respects to Mortgagee. Blanket insurance policies shall not be acceptable for the purposes of this paragraph unless otherwise approved to the contrary by Mortgagee. Mortgagor shall pay the premiums for the Policies as the same become due and payable. At the request of the Mortgagee, Mortgagor will deliver the Policies, or certificates of insurance, to Mortgagee (other than the Board's Policies). Not later than thirty (30) days prior to the expiration date of each of the Policies, Mortgagor will deliver to Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment of premium satisfactory to Mortgagee, or certificates of insurance. If at any time Mortgagee is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Mortgagee shall have the right, without notice to Mortgagor, to take such action as Mortgagee deems necessary to protect its interest in the Mortgaged Property, including, without limitation, the obtaining of such insurance coverage as Mortgagee in its sole discretion deems appropriate, and all expenses incurred by Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Mortgagor to Mortgagee upon demand and until paid shall be secured by this Mortgage.

(c) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice thereof to Mortgagee. Mortgagor hereby authorizes and empowers Mortgagee, at Mortgagee's option and at Mortgagee's sole discretion, as attorney-in-fact for Mortgagor, to make proof of loss, to adjust and compromise any claim under any insurance policy, to appear in and prosecute any action arising from any policy, to collect and receive insurance proceeds and to deduct therefrom Mortgagee's expenses incurred in the collection process, to endorse any checks, drafts or other instruments representing any proceeds of such insurance, whether payable by reason of loss thereunder or otherwise, and

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to make any election required or permitted under any insurance policy relating to repair or restoration. Mortgagee shall make the net amount of all insurance proceeds received by Mortgagee pursuant to the provisions of this Mortgage as a result of such damage or destruction, after deduction of its reasonable costs and expenses, if any, in collecting the same (the "Net Proceeds"), available for the repair and restoration of the Improvements, provided that (i) no Event of Default (hereinafter defined) shall exist, (ii) Mortgagor shall proceed with the repair and restoration of the Improvements as nearly as reasonably possible to the condition the Improvements were in immediately prior to such fire or other casualty promptly after the insurance claims are settled, (iii) no Lease shall be terminated as a result of such fire, and (iv) Mortgagee shall be reasonably satisfied that upon the completion of such repair and restoration the gross cash flow and the net cash flow of the Mortgaged Property will be restored to a level at least equal to the level the same were at prior to the date of such fire or other casualty. Upon satisfaction of the provisions of the preceding sentence, the Net Proceeds will be disbursed by Mortgagee to Mortgagor to pay for the costs of repair and restoration of the Improvements. The Net Proceeds shall be held by Mortgagee in escrow until expended in connection with the repair and restoration of the Improvements, it being agreed that any Net Proceeds so held by Mortgagee may be commingled with the general funds of Mortgagee, shall bear interest at such rate as reasonably determined by Mortgagee, and shall constitute additional security for the payment of the Debt. The Net Proceeds shall be paid by Mortgagee to, or as directed by, Mortgagor from time to time during the course of the repair and restoration upon receipt of evidence reasonably satisfactory to Mortgagee that (i) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested payment) in connection with the repair and restoration have been paid for in full, (ii) there exists no notices of intention, mechanics or other liens and encumbrances on the Mortgaged Property arising out of the repair and restoration, and (iii) the balance of the Net Proceeds plus the balance of any deficiency deposits made by Mortgagor pursuant to the provisions of this paragraph hereinafter set forth shall be sufficient to pay in full the balance of the cost of the repair and restoration. The repair and restoration shall be done and completed by Mortgagor in an expeditious and diligent fashion and in compliance with all applicable laws, rules and regulations, and all plans and specifications required in connection with the repair and restoration shall be subject to the prior review and approval in all respects by an independent inspecting engineer selected by Mortgagor and reasonably acceptable to Mortgagee (the "Inspecting Engineer"). All actual out-of-pocket costs and expenses incurred by Mortgagee in connection with making the Net Proceeds available for the repair and restoration, including, without limitation, reasonable counsel fees and disbursements and the Inspecting Engineer's fees incurred by Mortgagee, shall be paid by Mortgagor. In no event shall Mortgagee be obligated to make disbursements of the Net Proceeds in excess of an amount equal to the costs actually incurred for work in place as part of the repair and restoration, as certified by the Inspecting Engineer, minus 10% of such costs (such 10% being hereinafter referred to as the "Retainage"). Mortgagee shall not be obligated to make disbursements of the Net Proceeds more than once every thirty (30) days. The Retainage shall not be released until the Inspecting Engineer certifies that the repair and restoration have been completed in accordance with the provisions of this paragraph, and Mortgagee receives evidence satisfactory to Mortgagee that the costs of the repair and restoration have been paid in full or will be paid in full out of the Retainage. If the Net Proceeds shall be less than \$75,000.00, only one disbursement of the Net Proceeds shall be made by Mortgagee, which disbursement shall be made upon certification by the Inspecting Engineer that the repair and restoration have been

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completed in accordance with the provisions of this paragraph, and upon receipt by Mortgagee of evidence satisfactory to Mortgagee that the costs of the repair and restoration have been paid in full or will be paid in full out of such disbursement. The excess, if any, of the Net Proceeds after the repair and restoration of the Improvements as nearly as possible to their former condition and the payment in full of all costs incurred in connection therewith shall be applied by Mortgagee in reduction of the Debt in such priority and proportions as Mortgagee in its commercially reasonable discretion shall deem proper. If at any time the Net Proceeds, or the undisbursed balance thereof, shall not, in the commercially reasonable opinion of Mortgagee, be sufficient to pay in full the balance of the costs which will be incurred in connection with the completion of the repair and restoration, Mortgagor shall deposit the deficiency with Mortgagee before any further disbursement of the Net Proceeds shall be made, which deficiency deposit may be commingled with the general funds of Mortgagee, shall bear interest at such rate as reasonably determined by Mortgagee and shall be disbursed for costs actually incurred in connection with the repair and restoration on the same conditions applicable to the Net Proceeds. Any such deficiency deposit, until disbursed pursuant to this paragraph, shall constitute additional security for the payment of the Debt. The balance, if any, of any such deficiency deposit remaining after the Inspecting Engineer certifies that the repair and restoration have been completed in accordance with the provisions of this paragraph and the receipt by Mortgagee of evidence satisfactory to Mortgagee that all costs incurred in connection with the repair and restoration have been paid in full shall be promptly returned by Mortgagee to Mortgagor. All costs of the repair and restoration in excess of the Net Proceeds shall be paid for by Mortgagor. If Mortgagee shall receive and retain such insurance proceeds, the lien of this Mortgage shall be reduced only by the amount thereof received and retained by Mortgagee and actually applied by Mortgagee in reduction of the Debt. Mortgagee shall not be obligated to see to the proper application of insurance money paid over to Mortgagor, and if Mortgagee receives and retains any insurance proceeds, the lien of this Mortgage shall be affected only by a reduction of the amount of said lien by the amount of such insurance money so received and retained by Mortgagee. Nevertheless, if prior to the receipt by Mortgagee of any insurance proceeds, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, as between Mortgagor and Mortgagee, Mortgagee shall have the right to receive said insurance proceeds, and Mortgagor shall pay over to Mortgagee said insurance proceeds as, if and when Mortgagor receives same, to the extent of (i) any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered, and (ii) of the attorneys' fees, costs and disbursements incurred by Mortgagee in connection with the collection of such insurance proceeds. Mortgagor will not permit any condition to exist on the Mortgaged Property that would wholly or partially invalidate the Policies. All remaining right, title and interest of Mortgagor in and to all policies of insurance required by this Paragraph 5 shall inure to the benefit of and pass to the successor-in-interest to Mortgagor or the purchaser or grantee of the Mortgaged Property.

(d) Notwithstanding anything contained herein to the contrary, unless Mortgagor provides Mortgagee with evidence of the insurance coverage required hereunder, Mortgagee, following advance notice to Mortgagor, may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claims that is made against Mortgagor in connection with the

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Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required hereunder. If Mortgagee purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of that insurance, including interest and any other costs that Mortgagee may incur in connection with the placement of the insurance in accordance with the terms and provisions hereof, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to Mortgagor's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on Mortgagor's own.

6. Payment of Taxes, etc. Mortgagor shall pay all taxes, assessments, water rates, sewer rents and other charges, or payments in lieu thereof, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed against the Mortgaged Property (collectively, "Taxes") prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for the nonpayment thereof. Mortgagor shall deliver to Mortgagee receipted bills, canceled checks and other evidence reasonably satisfactory to Mortgagee evidencing the payment of the Taxes prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for nonpayment thereof. The foregoing obligation shall be considered satisfied by the payment by Mortgagor of the payments of the Tax Escrow Fund described in the next section. Mortgagor shall deliver to Mortgagee receipted bills, canceled checks and other evidence reasonably satisfactory to Mortgagee evidencing the payment of any Taxes that Mortgagor is required to pay directly to a taxing authority, prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by law for nonpayment thereof. In addition, if Mortgagor receives evidence of payment of Taxes by Mortgagee or any other party, Mortgagor shall promptly deliver same to Mortgagee.

7. Escrow Fund.

(a) Upon an Event of Default (hereinafter defined) and if Mortgagee so elects in its sole discretion, Mortgagor will pay to Mortgagee on the first day of each calendar month one-twelfth of an amount (the "Tax Escrow Fund") which would be sufficient to pay Taxes estimated by Mortgagee to be payable during the ensuing twelve (12) months. Mortgagee will apply the Tax Escrow Fund to the payment of Taxes which are required to be paid by Mortgagor pursuant to this Mortgage. If the Tax Escrow Fund exceeds the amount of the Taxes payable by Mortgagor pursuant to this Mortgage, Mortgagee shall, in its discretion, either return the excess to Mortgagor or credit the excess against future payments to be made to the Tax Escrow Fund. If the Tax Escrow Fund is not sufficient to pay the Taxes as the same become payable, Mortgagor shall pay to Mortgagee, upon demand, an amount which Mortgagee shall estimate in its reasonable opinion as sufficient to make up the deficiency so that, at least thirty (30) days prior to the date such Taxes are due, there will be sufficient funds in the Tax Escrow Fund to pay such Taxes. Until expended or applied as above provided, any amounts in the Tax Escrow Fund may be commingled with the general funds of Mortgagee and shall constitute additional security for the Debt and shall not bear interest unless and then only to the extent required by law. Notwithstanding anything herein to the contrary, if a tenant in possession on a rent-paying basis is, pursuant to the provisions of its lease, directly paying the Taxes allocable to its portion of the

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Mortgaged Premises, the Tax Escrow Fund shall not be required with respect thereto but Mortgagee shall provide Mortgagee with evidence, reasonably satisfactory in form and substance to Mortgagee, of the payment of such Taxes. If such evidence is not delivered to Mortgagee on or before the relevant due date of such Taxes, Mortgagee shall have the right to elect to terminate its waiver of the requirement of the Tax Escrow Fund for that portion of the Mortgaged Premises. In any event, upon an Event of Default under and as defined in this Mortgage, the foregoing waiver shall be automatically extinguished. Mortgagor shall be required at all times to maintain in the Tax Escrow Fund an amount equal to not less than two (2) months' payment of Taxes.

(b) Upon an Event of Default and if Mortgagee so elects in its sole discretion, Mortgagor will pay to Mortgagee on the first day of each calendar month one-twelfth of an amount (the "Insurance Escrow Fund") which would be sufficient to pay the premiums on the Policies payable, or estimated by Mortgagee to be payable, during the ensuing twelve (12) months. Mortgagee will apply the Insurance Escrow Fund to the payment of the premiums on the Policies which are required to be paid by Mortgagor pursuant to the provisions of the Mortgage. If the amount of the Insurance Escrow Fund shall exceed the amount of the premiums on the Policies payable by Mortgagor pursuant to the provisions of the Mortgage, Mortgagee shall in its discretion, either return any excess to Mortgagor or credit such excess against future payments to be made to the Insurance Escrow Fund. If the Insurance Escrow Fund is not sufficient to pay the premium on the Policies as the same become payable, Mortgagor shall pay the Mortgagee, upon demand, an amount which Mortgagee shall estimate in its reasonable opinion as sufficient to make up the deficiency so that, at least thirty (30) days prior to the date such premiums are due, there will be sufficient funds in the Insurance Escrow Fund to pay such premiums. Until expended or applied as above provided, any amounts in the Insurance Escrow Fund may be commingled with the general funds of Mortgagee and shall constitute additional security for the Debt and shall not bear interest unless and then only to the extent required by law.

(c) If the Premises or any part thereof are in an area currently designated or hereinafter designated as a special flood hazard area pursuant to the Flood Disaster Protection Act of 1973 or other applicable law, and if so requested by Mortgagee, Mortgagor will pay to Mortgagee on the first day of each calendar month one-twelfth of an amount (the "Flood Hazard Insurance Escrow Fund") which would be sufficient to pay the premiums on a flood hazard insurance policy (the "Flood Hazard Insurance Policy") payable, or estimated by Mortgagee to be payable, during the ensuing twelve (12) months. Mortgagee will apply the Flood Hazard Insurance Escrow Fund to the payment of the premiums on the Flood Hazard Insurance Policy which are required to be paid by Mortgagor pursuant to the provisions of this Mortgage. If the amount of the Flood Hazard Insurance Escrow Fund shall exceed the amount of the premiums on the Flood Hazard Insurance Policy payable by Mortgagor pursuant to the provisions of this Mortgage, Mortgagee shall in its discretion, either return any excess to Mortgagor or credit such excess against future payments to be made to the Flood Hazard Insurance Escrow Fund. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If the Flood Hazard Insurance Escrow Fund is not sufficient to pay the premium on the Flood Hazard Insurance Policy as the same become payable, Mortgagor shall pay the Mortgagee, upon request, an amount which Mortgagee shall

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estimate in its reasonable opinion as sufficient to make up the deficiency. Until expended or applied as above provided, any amounts in the Flood Hazard Insurance Escrow Fund may be commingled with the general funds of Mortgagee and shall constitute additional security for the Debt and shall not bear interest unless and then only to the extent required by law.

(d) If the same are required to be maintained as above set forth, Mortgagor shall be obligated at all times to maintain in the Tax Escrow Fund and in the Insurance Escrow Fund an amount equal to at least two months' payments for the Taxes and the Premiums on the Policies, as the case may be.

8. **Condemnation**. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise, Mortgagor shall continue to pay the Debt at the time and in the manner provided in the Note and this Mortgage and the Debt shall not be reduced or discharged until any award or payment (the "Award") therefor shall have been actually received and applied by Mortgagee to the reduction or discharge of the Debt. Mortgagee may apply the Award to the reduction or discharge of the Debt whether or not then due and payable in such priority and proportions as Mortgagee in its discretion deems proper. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of the Award, Mortgagee shall have the right, whether or not a deficiency judgment on the Note or the Other Security Documents shall have been sought, recovered or denied, to receive the Award, or a portion thereof sufficient to pay the full amount of the Debt, whichever is less. Mortgagor shall file and prosecute its claims for the Award in good faith and with due diligence and cause the same to be collected and paid to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Mortgagor or otherwise, to collect and receive the Award and to file and prosecute such claims, and although it is hereby expressly agreed that the same shall not be necessary in any event, Mortgagor shall, upon demand of Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning the Award to Mortgagee, free and clear of any prior claims, liens or encumbrances.

9. **Leases and Rents**. Subject to the terms of this paragraph, Mortgagee waives the right to enter the Mortgaged Property to collect the Rents and grants Mortgagor the right to collect the Rents, operate the Property and otherwise act as landlord. Mortgagor shall hold the Rents, or an amount sufficient to discharge all current sums due on the Debt, in trust for use in payment of the Debt. Mortgagor's right to collect the Rents may be revoked by Mortgagee upon the occurrence of an event of default under the Note, or this Mortgage by Mortgagee giving notice of such revocation to Mortgagor. Following such notice, Mortgagee may retain and apply the Rents, in its sole discretion, toward payment of the Debt in such priority and proportions as Mortgagee deems proper or to the operation, maintenance and repair of the Mortgaged Property. Mortgagor shall not, without the prior express written consent of Mortgagee, make, or suffer to be made, any Leases or cancel or modify any Leases or accept prepayments of installments of the Rents for a period more than one (1) month in advance or further assign the whole or any part of the Rents. Mortgagor shall (i) perform each and every provision of the Leases on the part of Mortgagor to be performed, (ii) promptly send to Mortgagee copies of all notices of default which Mortgagor shall send or receive under the Leases, and (iii) enforce, short of termination of the Leases, the performance of the provisions thereof by the tenants thereunder. In addition, upon the occurrence of a default under the Note or this Mortgage, Mortgagee, at its option, may

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require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in Mortgagor's possession. Upon default in any such payment, Mortgagor will vacate and surrender possession of the Mortgaged Property to Mortgagee, or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise. Nothing in this paragraph shall be construed as imposing on Mortgagee any of the obligations of the lessor under the Leases or any obligation to take any action to collect or enforce payment of any Rents, or to relet any vacant space.

10. **Maintenance of the Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be maintained in good condition and repair and will not commit or suffer to be committed any waste of the Mortgaged Property. All repairs made by Mortgagor shall be at least equal in quality and class to the original work. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the prior express written consent of Mortgagee. Mortgagor shall promptly comply with all existing and future governmental laws, orders, ordinances, rules and regulations affecting the Mortgaged Property, or the use thereof, and shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be damaged or destroyed by any casualty (including any casualty for which insurance was not obtained or obtainable) or which may be affected by any taking by any public or quasi-public authority through eminent domain or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. If such casualty shall be covered by the Policies, Mortgagor's obligation to repair, replace or rebuild such portion of the Mortgaged Property shall be contingent upon Mortgagee's promptly paying Mortgagor the proceeds of the Policies, or such portion thereof as shall be sufficient to complete such repair, replacement or rebuilding, whichever is less. Mortgagor will not, without obtaining Mortgagee's prior express written consent, initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof.

11. **Environmental Matters.**

(a) Mortgagor represents and warrants to Mortgagee that to the best of Mortgagor's actual knowledge, other than as disclosed in the Environmental Reports, (i) no "Hazardous Material" as defined in or regulated under any statute, law, rule, regulation, ordinance or directive of any municipal, state or federal governmental or judicial authority addressing environmental, health or safety issues ("Environmental Requirements") is currently located at or about the Mortgaged Property, (ii) no Hazardous Material has been located at, under or about the Mortgaged Property in a manner which violates any Environmental Requirement or requires cleanup or corrective action under any Environmental Requirement, (iii) no releasing, emitting, discharging, leaching, dumping or disposing of any Hazardous Material from the Mortgaged Property to any other property or from any other property to the Mortgaged Property has occurred in violation of any Environmental Requirement, and (iv) no notice of violation, lien, complaint, suit, order or other notice with respect to the environmental condition of the Mortgaged Property is outstanding, nor has any such notice been issued which has not been fully complied with in a timely fashion. Supplementing the definition of "Hazardous Material" in the

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first sentence of this paragraph, the term "Hazardous Material" as used herein shall include, without limitation, gasoline, petroleum products, explosives, radioactive material, polychlorinated biphenyls, lead paint or related or similar materials.

(b) Mortgagor shall comply, and shall cause all tenants or other occupants of the Mortgaged Property to comply, in all respects with all present and future Environmental Requirements, and will not permit any tenant or other occupant of the Mortgaged Property to, generate, store, handle, process, dispose of or otherwise use, Hazardous Materials at, under or about the Mortgaged Property in a manner that might lead to the imposition on Mortgagor, Mortgagee or the Mortgaged Property of any liability or lien under any Environmental Requirement. If at any time it is determined that the operation or use of the Mortgaged Property violates any Environmental Requirement or that there are Hazardous Materials located at, under or about the Mortgaged Property which, under any Environmental Requirement, require special handling in collection, storage, treatment or disposal, or any other form of cleanup or corrective action, Mortgagor shall, within thirty (30) days after receipt of written notice thereof from any governmental authority (or such lesser period of time as is mandated in the written notice from the governmental authority) or from Mortgagee, take, at its sole cost and expense, such actions as may be necessary to fully comply with all Environmental Requirements, provided, however, that if such compliance cannot reasonably be completed within such thirty (30) day period, Mortgagor shall commence such necessary action within such thirty (30) day period and shall thereafter diligently and expeditiously proceed to fully comply with all Environmental Requirements.

(c) Mortgagor shall notify Mortgagee promptly in the event of any spill or other release of any Hazardous Material which is required to be reported to a governmental or judicial authority under any Environmental Requirement, will promptly forward to Mortgagee copies of any notices received by Mortgagor relating to alleged violations of any Environmental Requirement and will promptly pay when due any fine or assessment against Mortgagee, Mortgagor or the Mortgaged Property relating to any Environmental Requirement.

(d) If a lien is filed against the Mortgaged Property by any governmental authority resulting from an actual or anticipated expenditure of monies arising from an action or omission, whether intentional or unintentional, of Mortgagor or for which Mortgagor is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Material into the waters or onto land located within or without the State of Illinois, then Mortgagor will, within thirty (30) days from the date that Mortgagor is first given notice that such lien has been placed against the Mortgaged Property (or within such shorter period of time as may be specified by Mortgagee if such governmental authority has commenced steps to cause the Mortgaged Property to be sold pursuant to such lien) either pay the claim and remove the lien or furnish a cash deposit, bond, or such other security reasonably satisfactory to Mortgagee and sufficient to effect a complete discharge of such lien on the Mortgaged Property.

(e) If Mortgagee reasonably believes that a Hazardous Material or other environmental condition affecting the Mortgaged Property violates or threatens to violate any Environmental Requirement or if there has been an Event of Default, it may cause an

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environmental audit of the Mortgaged Property or a portion thereof to be conducted to confirm Mortgagor's compliance with the provisions of this paragraph, and Mortgagor shall cooperate in all reasonable ways with Mortgagee in connection with any such audit and shall pay all costs and expenses incurred in connection therewith.

(f) Mortgagor will defend, indemnify, and hold harmless Mortgagee, its employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to, (g) any breach by Mortgagor of any of the provisions of this paragraph, (h) the disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Materials at, under or affecting the Mortgaged Property, including any damage or injury resulting from any such Hazardous Material to or affecting the Mortgaged Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Mortgaged Property, (i) any lawsuit brought or threatened, settlement reached, or order or directive of or by any governmental or judicial authority relating to such Hazardous Material, or (j) any violation of any Environmental Requirement or any policy or requirement of Mortgagee hereunder. This indemnification shall, notwithstanding any exculpatory or other provision to the contrary set forth in the Note, this Mortgage or any Other Security Document constitute the personal recourse liability of Mortgagor.

(g) The obligations and liabilities of Mortgagor under this paragraph shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Debt has been paid in full and irrespective of any foreclosure of this Mortgage or acceptance by Mortgagee, its nominee or wholly owned subsidiary of a deed or assignment in lieu of foreclosure and irrespective of any other fact or circumstance.

12. **Estoppel Certificates.** Mortgagor, within ten (10) days after request by Mortgagee and at its expense, will furnish Mortgagee with a statement, duly acknowledged and certified, setting forth the amount of the Debt and the offsets or defenses thereto, if any.

13. **Transfer or Encumbrance of the Mortgaged Property.** No part of the Mortgaged Property, including, without limitation, any air rights, and no shares of stock, limited liability company, partnership or other interests in Mortgagor, or operating control or management thereof, directly or indirectly, shall in any manner be further encumbered, sold, transferred or conveyed, or permitted to be further encumbered, sold, transferred or conveyed, without the prior express written consent of Mortgagee. Mortgagor will not pledge, transfer, convey or otherwise encumber any of its assets, real, personal or otherwise, without the express prior written consent of Mortgagee, which consent may be granted or withheld by Mortgagee in its sole discretion. This paragraph shall apply to each and every such further encumbrance, sale, transfer or conveyance, regardless of whether Mortgagee has consented to, or waived by its action or inaction its rights hereunder with respect to, any such previous further encumbrance, sale, transfer or conveyance. Notwithstanding anything herein to the contrary, transfers of equitable interests in Mortgagor between or among the members of Mortgagor, their immediate

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family members, heirs, estates, trusts and other entities controlled by members of Mortgagor, or their legal successors-in-interest, shall be permitted.

14. **Sale of Mortgaged Property.** If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the discretion of Mortgagee, be sold in one or more parcels or in several interests or portions and in any order or manner.

15. **Right of Entry.** Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times during normal business hours, upon reasonable notice.

16. **Books and Records.** Mortgagor will keep and maintain or will cause to be kept and maintained on a fiscal year basis in accordance with accounting practices consistently applied proper and accurate books, records and accounts reflecting all of the financial affairs of Mortgagor and all items of income and expense in connection with the operation of the Mortgaged Property or in connection with any services, equipment or furnishings provided in connection with the operation of the Mortgaged Property, whether such income or expenses are realized by Mortgagor or by any other person except lessees unrelated to and unaffiliated with Mortgagor. Mortgagee shall have the right from time to time at all times during normal business hours upon reasonable notice to examine such books, records and accounts at the office of Mortgagor or other person maintaining such books, records and accounts and to make copies or extracts thereof as Mortgagee desires.

17. **Financial Statements.** During the term of the Loan, Mortgagor will furnish Mortgagee: (a) within ninety (90) days after the end of each fiscal year, a complete executed copy of an annual compiled financial statement of the Borrower, prepared by an independent certified public accountant reasonably acceptable by Mortgagee, and certified as true and correct by an authorized signatory of Mortgagor, (b) within five (5) days after filing, the federal and state income tax returns of Mortgagor, but in no event later than October 15 of each year, (c) notice of the commencement of any lawsuits initiated against Mortgagor where the amount of the potential exposure is \$25,000.00 or more, whether the same is, or is believed to be, covered by insurance, (d) notice of the commencement of any proceedings, sanctions or warnings instituted against the Mortgagor, or issued to Mortgagor by any regulatory agency or governmental authority, and (e) notice of any application for an extension of time to file the federal, state or local income tax returns of Mortgagor and notice of any such extension received. Mortgagor will also furnish to Mortgagee such further detailed information covering compliance with the terms, covenants and conditions of this Mortgage, the operation of the Mortgaged Property and the financial affairs of Mortgagor, or any affiliate of Mortgagor, as may be reasonably requested by Mortgagee.

18. **[Intentionally Omitted.]**

19. **Compliance with Other Agreements.** Mortgagor shall comply with the terms of the Note, this Mortgage, the Other Security Documents and any agreement or recorded instrument affecting or pertaining to the Mortgaged Property entered into by Mortgagor or another person who then held title to the Mortgaged Property.

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20. Defaults. The Debt shall become due at the option of Mortgagee upon the occurrence of any one of the following events (each, an "Event of Default"):

- (a) if any portion of the Debt is not paid when due;
- (b) if Mortgagor fails to pay within ten (10) days of written notice and demand by Mortgagee any installment of any assessment against the Mortgaged Property for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic installments and is or may become a lien on the Mortgaged Property, notwithstanding the fact that such installment may not be due and payable at the time of such notice and demand;
- (c) if any Federal tax lien is filed against Mortgagor or the Mortgaged Property and is not discharged of record within thirty (30) days;
- (d) subject to the terms hereof, if without Mortgagee's consent any part of the Mortgaged Property, or any interest therein or in Mortgagor, directly or indirectly, is in any manner further encumbered, sold, transferred or conveyed, or if any Improvement or the Equipment (except for normal replacement of the Equipment) is removed, demolished or materially altered, or if the Mortgaged Property is not kept in good condition and repair;
- (e) if the Policies are not kept in full force and effect or assigned and delivered to Mortgagee within five (5) days after request therefor;
- (f) if without Mortgagee's consent which consent shall not be unreasonably withheld, conditioned or delayed, any Leases are made, canceled or modified or if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned;
- (g) if Mortgagor (hereinafter defined) shall be in default under the Note, this Mortgage, or the Other Security Documents and such default continues after the expiration of any applicable grace periods;
- (h) if any representation or warranty of Mortgagor, or of any person or entity (a "Guarantor") guaranteeing payment of the Debt or any portion thereof or performance by Mortgagor of any of the terms of this Mortgage made herein or in any such guaranty, or in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note, this Mortgage, or any such guaranty, is false or misleading in any material respect;
- (i) if Mortgagor makes an assignment for the benefit of creditors;
- (j) if a court of competent jurisdiction enters a decree or order for relief with respect to Mortgagor or any Guarantor under Title 11 of the United States Code as now constituted or hereafter amended or under any other applicable Federal or state bankruptcy law or other similar law, or if such court enters a decree or order appointing a receiver, liquidator, assignee, trustee,

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sequestrator (or similar official) of Mortgagor or any Guarantor, or of any substantial part of their respective properties, or if such court decrees or orders the winding up or liquidation of the affairs of Mortgagor or any Guarantor;

(k) if Mortgagor files a petition or answer or consent seeking relief under Title 11 of the United States Code as now constituted or hereafter amended, or under any other applicable Federal or state bankruptcy law or other similar law, or if Mortgagor or any Guarantor consents to the institution of proceedings thereunder or to the filing of any such petition or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of Mortgagor or any Guarantor, or of any substantial part of their respective properties, or if Mortgagor or any Guarantor fails generally to pay their respective debts as such debts become due, or if Mortgagor or any Guarantor takes any action in furtherance of any action described in this subparagraph;

(l) if Mortgagor continues in default under any of the other terms, covenants or conditions of this Mortgage for five (5) days after notice from Mortgagee in the case of any default which can be cured by the payment of a sum of money or for ten (10) days after notice from Mortgagee in the case of any other default, provided that if such default cannot reasonably be cured within such ten (10) day period and Mortgagor shall have commenced to cure such default within such ten (10) day period and thereafter diligently and expeditiously proceeds to cure the same, such ten (10) day period shall be extended for so long as it shall require Mortgagor in the exercise of due diligence to cure such default but not for a period in excess of thirty (30) days;

(m) if Mortgagor shall default under any mortgage covering any part of the Mortgaged Property, whether superior or inferior in lien to this Mortgage;

(n) if the Mortgaged Property becomes subject (i) to any tax lien, other than a lien for local real estate taxes and assessments not due and payable, or (ii) to any lis pendens, notice of pendency, stop order, judgment, notice of intention to file mechanic's or materialman's lien, mechanic's, materialman's or other lien, and the same shall remain undischarged or unbonded for thirty (30) days;

(o) if, after cancellation or termination by an existing insurer, or notice thereof, on the application of Mortgagee, two (2) or more fire insurance companies lawfully doing business in the State of Illinois refuse to issue policies insuring the Mortgaged Property;

(p) if Mortgagor, either directly or indirectly, incurs, renews, extends or permits to exist indebtedness from any source or guaranties at any time, but excluding from the foregoing prohibition (i) trade payables and similar obligations incurred in the normal course of business, and (ii) the continuation (but not the renewal or increase) of existing indebtedness and guaranties disclosed to and accepted by Mortgagee;

(q) if Mortgagor shall make any payment or distribution of cash or property to or for the benefit of any shareholder, partner, member or officer or any family member, heir, estate, trust or other entity of any of the foregoing, including, without limitation, debt payments,

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purchases of debt or equity or other assets of the payees, or advances, whether paid directly or reimbursed, without the prior written consent of Mortgagee if there is then an Event of Default or if an Event of Default would be caused thereby; or

(r) if Mortgagor shall default in the payment of any indebtedness for borrowed money or shall default in the performance of any term, covenant, condition or agreement of any such indebtedness if the effect of such default would be to permit the holder of such indebtedness to accelerate the maturity thereof.

Upon the occurrence of any Event of Default, (a) Mortgagor will pay, from the date of that Event of Default, interest on the unpaid principal balance of the Note at (i) the rate equal to eighteen percent (18%) per annum, or (ii) the maximum interest rate which Mortgagor may by law pay, whichever is lower (the "Default Rate") and (b) Mortgagee shall have the right to exercise any and all rights and remedies available at law or in equity. It is further expressly agreed and acknowledged by Mortgagor that the Default Rate shall apply to any such judgment or decree until the final and indefeasible payment in full of all amounts due under such judgment or decree is received by Mortgagee. As such, the Default Rate shall survive the entry of any such judgment or decree and any merger, or claim of merger of the Note, or this Mortgage into any such judgment or decree.

In addition to any other remedy herein specified, if an Event of Default occurs, Mortgagee may proceed to protect and enforce the rights of the Mortgagee hereunder (i) by the foreclosure of this Mortgage pursuant to the Illinois Mortgage Foreclosure Act, (735 ILCS 5/15-1101 *et seq.*), as from time to time amended (the "Act") or as otherwise permitted by law, with respect to either (and at Mortgagee's option) the entire amount of the Debt, or any delinquent installment or installments of the Debt without accelerating the due date of the entire Debt, in which case any sale of the Mortgaged Property under such a foreclosure proceeding shall be subject to and shall not affect the unmatured part of the Debt secured hereby and this Mortgage shall be and continue as a lien on the Mortgaged Property securing such unmatured Debt, or (ii) by any action at law, suit in equity or other appropriate proceedings, whether of the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law.

If an Event of Default occurs, Mortgagee shall, as a matter of right, with notice and without giving bond to Mortgagor or anyone claiming by, under or through Mortgagor, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to Section 15-1702 of the Act of all or any part of the Mortgaged Property and the Rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, with notice, enter upon and take possession of the Mortgaged Property or any part thereof and may remove Mortgagor or other persons as provided by law and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, Rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

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If an Event of Default occurs, upon demand by Mortgagee, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in Section 15-1701 of the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in Section 15-1701 of the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all Leases, documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted: (i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the Rents, issues, deposits, profits, and avails of the Mortgaged Property, including, without limitation, actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor; (ii) cancel or terminate any Lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Mortgagor to cancel the same; (iii) to the extent permitted by law, elect to disaffirm any Lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage without Mortgagee's prior written consent (to the extent Mortgagee's consent shall have been required hereunder); (iv) extend or modify any then existing Leases and make new Leases of all or any part of the Mortgaged Property, which extensions, modifications, and new Leases may provide for terms to expire or for options to tenants to extend or renew terms to expire, beyond the Maturity Date and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser; (v) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Property and all risk incidental to Mortgagee's possession, operation and management thereof, and to receive all Rents, issues, deposits, profits, and avails therefrom; and (vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of taxes, premiums and other charges applicable to the Mortgaged Property, or in reduction of the indebtedness hereby secured in such order and manner as Mortgagee shall select. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate, conserve and improve the Mortgaged Property, and to collect the Rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall not

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be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any Rents actually received by Mortgagee. Without taking possession of the Mortgaged Property in the event the Mortgaged Property becomes vacant or are abandoned, Mortgagee may take such steps as it deems appropriate to protect and secure the Mortgaged Property, including hiring watchmen therefor, and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Rate.

Mortgagor shall not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and hereby waives the benefit of such laws. To the fullest extent permitted by law, Mortgagor hereby voluntarily, and knowingly waives any and all rights of redemption as allowed under Section 15-1601(b) of the Act, and to the fullest extent permitted by law, the benefits of all present and future valuation, appraisalment, homestead, exemption and moratorium laws under any state or federal law, all on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons. Mortgagor acknowledges and agrees that the land covered by this Mortgage at the time of execution hereof is neither "Agricultural Real Estate" nor "Residential Real Estate" (as those terms are defined in the Act).

If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

21. Right to Cure Defaults. If default beyond any applicable grace or cure period in the performance of any of Mortgagor's covenants herein occurs, Mortgagee may, at its discretion (but without any obligation), remedy the same and for such purpose shall have the right to enter upon the Mortgaged Property or any portion thereof without thereby becoming liable to Mortgagor or any person in possession thereof holding under Mortgagor. If Mortgagee shall remedy such default or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property, to foreclose this Mortgage or collect the Debt, the costs and expenses thereof (including attorneys' fees to the extent permitted by law), with interest as provided in this paragraph, shall be paid by Mortgagor to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such default or in appearing in, defending, or bringing any such action or proceeding shall be paid by Mortgagor to Mortgagee upon demand, with interest at the Default Rate for the period after notice from Mortgagee that such costs or expenses were incurred to the date of payment to Mortgagee, and shall be secured by this Mortgage.

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22. **Security Agreement.** This Mortgage constitutes both a real property mortgage and a "security agreement", within the meaning of the UCC, and the Mortgaged Property includes both real and personal property and all other rights and interest, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor has granted to Mortgagee, as security for the Debt, a security interest in the Equipment and in all of the other Mortgaged Property (both tangible and intangible property) which is not real property (the "Other Personal Property"). If Mortgagor defaults under the Note or this Mortgage, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including the right to take possession of the Equipment or Other Personal Property or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Equipment or Other Personal Property. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Equipment and Other Personal Property and make it available to Mortgagee at a convenient place and time acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including legal expenses and attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting its interest in the Equipment and Other Personal Property and in enforcing its rights hereunder with respect to the Equipment and Other Personal Property. Mortgagor agrees that notice of any sale, disposition or other intended action by Mortgagee with respect to the Equipment or Other Personal Property sent to Mortgagor in accordance with the provisions of this Mortgage at least seven (7) days prior to the date of any such sale, disposition or other action shall constitute reasonable notice to Mortgagor and that the method of sale or disposition or other intended action specified in such notice shall conclusively be deemed to be commercially reasonable within the meaning of the UCC unless objected to in writing by Mortgagor within five (5) days after receipt by Mortgagor of such notice. The proceeds of any sale or disposition of the Equipment or Other Personal Property, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such order, priority and proportions as Mortgagee in its discretion shall deem proper.

23. **Appointment of Receiver.** Mortgagee, in any action to foreclose this Mortgage or upon any actual or threatened waste to any part of the Mortgaged Property or upon the occurrence of any default hereunder, may, without notice, apply for the appointment of a receiver of the Rents, and shall be entitled to the appointment of such receiver as a matter of right, without regard to the value of the Mortgaged Property as security for the Debt, or the solvency or insolvency of any person then liable for the payment of all or part of the Debt.

24. **Marshaling.** Mortgagor waives and releases any right to have the Mortgaged Property marshaled.

25. **Waiver of Statutory Rights.** Mortgagor shall not and will not apply for or avail itself of any present or future appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws to the full extent that Mortgagor may do so under applicable law. Mortgagor hereby waives for itself and all who may claim through or under it, and to the full extent Mortgagor may do so under applicable law, any and all rights of

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redemption from sale under any order or decree of foreclosure of this Mortgage or granted under any present or future statute.

26. **Actions and Proceedings.** Mortgagee shall have the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, determines should be brought to protect its interest in the Mortgaged Property or to foreclose upon or otherwise realize upon the security for the Debt afforded by this Mortgage or by any of the Other Security Documents. Mortgagee may take such action by attorneys selected by Mortgagee. Mortgagor shall pay all expenses in connection therewith on demand, including reasonable attorneys' fees and disbursements.

27. **Recovery of Sums Required to be Paid.** Mortgagee shall have the right from time to time to take action to recover any sums which constitute a part of the Debt as the same may become due, without regard to whether or not the balance of the Debt shall then be due, and without prejudice to Mortgagee's right thereafter to bring an action of foreclosure, or any other action, for any default by Mortgagor existing at the time such earlier action was commenced.

28. **Filing of Mortgage, etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or evidencing the lien hereof upon the Mortgaged 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 to publish notice of and fully to protect the lien hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplement hereto, any security instrument or financing statement with respect to the Mortgaged Property and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance. Mortgagor shall hold harmless, defend and indemnify Mortgagee, its successors and assigns against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

29. **Further Acts, etc.** Mortgagor will, at Mortgagor's cost, and without expense to Mortgagee, do, execute, acknowledge and deliver all such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time and at any time, reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby mortgaged or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage and, on demand, will execute and deliver and hereby authorizes Mortgagee as Mortgagor's attorney-in-fact to execute in the name of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Property. However, before

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Mortgagee executes any such document in the name of Mortgagor, it shall request, in writing, that Mortgagor execute same within a reasonable time, but in any event not less than five business days, and Mortgagee may execute same only if Mortgagor fails or refuses to do so. Mortgagee shall promptly furnish to Mortgagor a true copy of any document executed by Mortgagee as attorney-in-fact for Mortgagor.

30. Changes in Laws Regarding Taxation. If after the date of this Mortgage there is enacted any law of the State of Illinois deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage, the Note or the Debt, Mortgagor shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within fifteen (15) days after demand by Mortgagee, whichever is less, provided, however, that if, in the opinion of the attorneys for Mortgagee, Mortgagor is not permitted by law to pay such taxes, Mortgagee shall have the right, at its option, to declare the Debt due and payable on a date specified in a notice given to Mortgagee not less than thirty (30) days prior to such specified date.

31. Documentary Stamps. If the United States of America, any state thereof or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Note, this Mortgage or the Other Security Documents, Mortgagor will pay for the same, plus any interest and penalties thereon.

32. Absolute and Unconditional Obligation. Mortgagor acknowledges that Mortgagor's obligation to pay the Debt in accordance with the provision of the Note and this Mortgage is and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances which may otherwise constitute a defense to the Note and this Mortgage or the obligation of Mortgagor thereunder to pay the Debt or the obligations of any other person relating to the Note or this Mortgage or the obligation of Mortgagor under the Note, this Mortgage or otherwise with respect to the loan secured hereby, and Mortgagor absolutely, unconditionally and irrevocably waives any right to assert any defense, setoff, counterclaim or crossclaim with respect to the obligation of Mortgagor to pay the Debt in accordance with the provisions of the Note, this Mortgage or the obligations of any other person relating to the Note, this Mortgage or obligations of Mortgagor under the Note, this Mortgage or otherwise with respect to the loan secured hereby in any action or proceeding brought by Mortgagee to collect the Debt, or any portion thereof, or to enforce, foreclose and realize upon the lien and security interest created by this Mortgage or any other document or instrument securing repayment of the Debt, in whole or in part.

33. No Credits on Account of the Debt. Mortgagor will not claim or demand or be entitled to any credit on account of the Debt for any part of the Taxes assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage, the Note, the Guaranty or the Debt.

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34. **Offsets, Counterclaims and Defenses.** Any assignee of this Mortgage, the Note and the Other Security Documents shall take the same free and clear of all offsets, counterclaims or defenses (collectively, "Offsets") which Mortgagor may have against any assignor of this Mortgage, the Note and the Other Security Documents and no Offsets shall be interposed or asserted by Mortgagor in any action or proceeding brought by any such assignee upon this Mortgage, the Note or the Other Security Documents and any such right to interpose or assert any Offsets in any such action or proceeding is expressly waived by Mortgagor.

35. **Waiver of Notice.** Mortgagor shall not be entitled to any notices of any nature whatsoever from Mortgagee except with respect to matters for which this Mortgage expressly provides for the giving of notice by Mortgagee to Mortgagor and Mortgagor hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Mortgage does not expressly provide for the giving of notice by Mortgagee to Mortgagor.

36. **Discretion of Mortgagee.** Unless otherwise specified herein, wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, such decision of Mortgagee shall be in the sole discretion of Mortgagee and shall be final and conclusive.

37. **Reasonableness.** If at any time Mortgagor believes that Mortgagee has not acted reasonably in granting or withholding any approval or consent under the Note, this Mortgage or any Other Security Document, as to which approval or consent either Mortgagee has expressly agreed to act reasonably, or absent such agreement, a court of law having jurisdiction over the subject matter would require Mortgagee to act reasonably, Mortgagor's sole remedy shall be to seek injunctive relief or specific performance and no action for monetary damages or punitive damages shall in any event be maintained by Mortgagor against Mortgagee.

38. **[Intentionally Omitted.]**

39. **Usury Laws.** This Mortgage and the Note are subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the principal balance due under the Note 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 Mortgagor is permitted by law to contract or agree to pay. If by the terms of this Mortgage or the Note, Mortgagor is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of such maximum rate, the rate of interest under the Note shall be deemed to be immediately reduced to such maximum rate and the interest payable shall be computed at 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.

40. **[Intentionally Omitted.]**

41. **Construction.** This Mortgage shall be construed in accordance with the laws of the State of Illinois without regard to its principles of conflicts or choice of law rules.

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42. **Non-Waiver.** Mortgagee's failure to insist upon strict performance of any term of this Mortgage shall not be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligation to pay the Debt at the time and in the manner provided for its payment in the Note, this Mortgage and the Other Security Documents by reason of Mortgagee's failure to comply with any request of Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof, the Note, this Mortgage or the Other Security Documents, the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Debt, or any agreement or stipulation between Mortgagee and any subsequent owner or owners of the Mortgaged Property or other person, regardless of consideration, extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or the Other Security Documents, without first having obtained the consent of Mortgagor, and in the latter event, Mortgagor shall continue to be obligated to pay the Debt at the time and in the manner provided in the Note, this Mortgage and the Other Security Documents, as so extended, modified and supplemented, unless expressly released and discharged by Mortgagee in writing. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose the Mortgage. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

43. **Inapplicable Provisions.** If any term, covenant or condition of this Mortgage shall be held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

44. **Certain Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage shall be used interchangeably in singular or plural form and the word "Mortgagor" shall mean each Mortgagor and, subject to the provisions hereof, any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein, the word "Mortgagee" shall mean Mortgagee or any subsequent holder of the Note, the word "Note" shall mean the Note or any other evidence of indebtedness secured by this Mortgage, the word "Guarantor" shall mean each person guaranteeing payment of the Debt or any portion thereof or performance by Mortgagor of any of the terms of this Mortgage and their respective heirs, executors, administrators, legal representatives, successors and assigns, the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, or other entity, the words "Mortgaged Property" shall include any portion of the Mortgaged Property or interest therein and the word "Debt" shall mean all sums secured by the Mortgage. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms. Unless the context otherwise requires, the word "including" shall be deemed to be followed by the words "without limitation" or "but shall not be limited to" or words of like import.

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45. **No Oral Change.** This Mortgage may only be modified or amended by an agreement in writing signed by Mortgagor and Mortgagee, and may only be released, discharged or satisfied of record by an agreement in writing signed by Mortgagee.

46. **Notices.** Any notice, request, demand, statement or consent made hereunder shall be in writing and shall be deemed to have been duly given upon receipt if delivered by hand or two days after the same is mailed, by certified mail, postage prepaid, or one day after the same is sent by a express mail or other nationally recognized courier service that regularly maintains records of items picked up and delivered, as follows:

If to Mortgagor:

E 3939 L.L.C.
39 South LaSalle Street
Suite 1010
Chicago, Illinois 60603
Attention: Barbara D. Fedor

with a copy to:

Rosenberg & Estis, F.C.
733 Third Avenue
New York, New York 10017
Attention: Dennis I. Hellman, Esq.

If to Mortgagee:

Alpine Capital Bank
680 Fifth Avenue
New York, New York 10019
Attention: Mr. David Aboodi

Each party may designate a change of address by notice to the other party, given at least fifteen (15) days before such change of address is to become effective. Notices do not have to be accepted to be deemed valid.

47. **Headings, etc.** The headings and captions of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting in any way the scope or intent of the provisions hereof.

48. **Relationship.** The relationship of Mortgagee to Mortgagor hereunder is strictly that of lender and borrower and nothing contained in the Note, this Mortgage or the Other Security Documents now or hereafter executed in connection with the loan secured hereby is intended to create, or shall in any event or under any circumstances be construed as creating, a partnership, joint venture, tenancy-in-common, joint tenancy, any fiduciary relationship or other relationship between Mortgagee and Mortgagor other than lender and borrower. Mortgagor

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acknowledges that: Mortgagor has complete control over the Mortgaged Property, Mortgagor has the sole responsibility for the control and management of the Mortgaged Property, and Mortgagee performs no function with respect to the Mortgaged Property in terms of management and control.

49. Liability. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

50. Notice of Litigation and Other Reports. Mortgagor hereby covenants to advise Mortgagee in writing every time Mortgagor is made a party to any litigation, proceeding or other event that may result in liability to Mortgagor in which the amount of potential exposure to Mortgagor is \$25,000.00 or more, whether or not the same is or may be covered by insurance.

51. Indemnification. Mortgagor shall protect, indemnify and save harmless Mortgagee, its agents, representatives, successors and assigns from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses, whether incurred within or outside the judicial process), imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Mortgaged Property or any part thereof or on the adjoining streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Material on, from, or affecting the Mortgaged Property; (g) any personal injury (including, without limitation, wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Material on, from or affecting the Mortgaged Property; (h) any lawsuit brought or threatened, settlement reached, or governmental order relating to such Hazardous Material on, from or affecting the Mortgaged Property; or (i) any violation of laws, orders, regulations, requirements, or demands of government authorities, which are based upon or in any way related to such Hazardous Material on, from or affecting the Mortgaged Property, including, without limitation, the costs and expenses of any remedial action, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses; except to the extent any of the foregoing (1) occurs after the Mortgagee has taken possession of the Mortgaged Property to the exclusion of Mortgagor and (2) results solely from the gross negligence or willful misconduct of the Mortgagee. Any amounts payable to Mortgagee by reason of the application of this Section shall be secured by the Mortgage and shall become immediately due and payable and shall bear interest in accordance with the terms of the Mortgage from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this Section shall survive any termination, satisfaction, assignment, entry of a judgment of foreclosure or delivery of a deed in lieu of foreclosure of the Mortgage.

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52. Compliance with Anti-Terrorism, Embargo, Sanctions and Anti-Money Laundering Laws. (a) Mortgagor shall comply with all Requirements of Law (herein defined) relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Upon Mortgagee's request from time to time during the term of this Mortgage, Mortgagor shall certify in writing to Mortgagee that its representations, warranties and obligations under this Section remain true and correct and have not been breached. Mortgagor shall immediately notify Mortgagee in writing if any of such representations, warranties or covenants are no longer true or have been breached or if Mortgagor has a reasonable basis to believe that they may no longer be true or have been breached. In connection with such an event, Mortgagor shall comply with all Requirements of Law and directives of Governmental Authorities (herein defined) and, at Mortgagee's request, provide to Mortgagee copies of all notices, reports and other communications exchanged with, or received from, Governmental Authorities relating to such an event. Mortgagor shall also reimburse Mortgagee any expense incurred by Mortgagee in evaluating the effect of such an event on the loan and Mortgagee's interest in the collateral for the loan, in obtaining any necessary license from Governmental Authorities as may be necessary for Mortgagee to enforce its rights under the Note, this Mortgage and the Other Security Documents, and in complying with all Requirements of Law applicable to Mortgagee as a result of the existence of such an event and for any penalties or fines imposed upon Mortgagee as a result hereof. In connection herewith, "Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any person or entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government. In connection herewith, "Requirements of Law" means (i) the organizational documents of any entity, and (ii) any law, regulation, ordinance, code, decree, treaty, ruling or determination of an arbitrator, court or other Governmental Authority, or any Executive Order issued by the President of the United States, in each case applicable to or binding upon such person or entity or to which such person or entity, any of its property or the conduct of its business is subject, including, without limitation, laws, ordinances and regulations pertaining to the zoning, occupancy and subdivision of real property.

(b) Mortgagor, and to the best of Mortgagor's knowledge, after having made diligent inquiry, (A) each person or entity owning an interest of 20% or more in Mortgagor, (B) each Guarantor, (C) the property manager, if any, and (D) each tenant at the Mortgaged Property: (i) is not currently identified on the OFAC List, and (ii) is not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction or other prohibition of United States law, regulation or Executive Order of the President of the United States. Mortgagor has implemented procedures, and will consistently apply those procedures throughout the term of this Mortgage, to ensure the foregoing representations and warranties remain true and correct during the term of this Mortgage. "OFAC List" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any Requirements of Law, including, without limitation, trade embargo, economic sanctions or other prohibitions imposed by Executive Order of the President of the United States. The OFAC List currently is accessible through the interest website www.treas.gov/ofac/t11sdn.pdf.

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53. Business Loan. Mortgagor represents that Mortgagor owns and operates a “business”, as that term is defined in Paragraph (c) of subsection 4(1) of the Illinois Interest Act (815 ILCS 205/4(1)), as amended, and that the Debt secured hereby constitutes a “business loan” within the purview of that subsection.

54. Management of Mortgaged Property. In the event that the Mortgaged Property is managed by a property management company, Mortgagor shall not permit the existing or any subsequent leasing/management agreement to be terminated (except as provided therein after notice to Mortgagee), modified or amended in any material respect, or extended, without Mortgagee’s prior written consent which will not be unreasonably withheld, delayed or conditioned, provided, however, that it shall not be deemed unreasonable if Mortgagee requires as a condition to giving such consent that the proposed property manager fully subordinate to the lien of this Mortgage, any lien for past, present or prospective services to which said property manager might otherwise be entitled by reason of Section 1 of the Illinois Mechanics Lien Act (770 ILCS 60/0.01 *et seq.*). Each leasing/management agreement shall be subject in all respects to the lien of this Mortgage and the rights of Mortgagee hereunder. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation proceeds), to any and all leases of all or a part of the Mortgaged Property upon the execution by Mortgagee and recording thereof, at any time hereafter in the appropriate official records of the County wherein the Mortgaged Property is situated, of a unilateral declaration to that effect.

55. Future Advances; Protective Advances. This Mortgage is given to secure not only existing indebtedness, but also all future advances (whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise) as are made by Mortgagee within twenty (20) years of the date of this Mortgage, to the same extent as if such future advances were made on the date of the execution of this Mortgage, even though there may be no indebtedness outstanding at the time any such advance is made. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all indebtedness secured hereby shall in no event, exceed the amount equal to two (2) times the original principal sum of One Million Five Hundred Thousand and 00/100ths U.S. Dollars (\$1,500,000.00) as specified in the preamble paragraph of this Mortgage. All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the purposes authorized by this Mortgage or by the Act, shall have the benefit of all applicable provisions of the Act.

56. WAIVER OF TRIAL BY JURY. MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, AND MORTGAGEE BY ITS ACCEPTANCE OF THE NOTE AND THIS MORTGAGE IRREVOCABLY AND UNCONDITIONALLY WAIVES, ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THE NOTE, THIS MORTGAGE OR ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION THEREWITH OR THE LOAN SECURED BY THIS MORTGAGE.

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

E 3939 L.L.C.,
an Illinois limited liability company

By: *Barbara D. Fedor*
Name: Barbara D. Fedor
Title: Manager

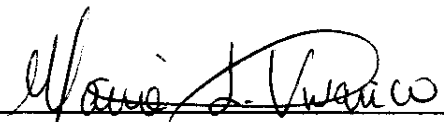
Property of Cook County Clerk's Office

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STATE OF ILLINOIS)
 SS.:
COUNTY OF COOK)

I, a notary public, in and for and residing in the aforesaid County, in the aforesaid State, do hereby certify that Barbara D. Fedor, the manager of E 3939 L.L.C., an Illinois limited liability company, personally known to me to be the same person whose name is subscribed in the foregoing instrument as such manager of such company, appeared before me this day in person and being first duly sworn by me, acknowledged that she signed and delivered the said instrument as her free and voluntary act, and as the free and voluntary act of said company, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 26 day of February, 2004.



Notary Public



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EXHIBIT A LEGAL DESCRIPTION

PARCEL 1:

THE PART OF LOT "B" IN THE SUBDIVISION OF THE CIRCUIT COURT COMMISSIONERS IN PARTITION OF THAT PART OF THE NORTHEAST QUARTER LYING SOUTH OF THE ILLINOIS AND MICHIGAN CANAL RESERVE OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS ACCORDING TO THE PLAT OF SAID SUBDIVISION RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS ON SEPTEMBER 5, 1893 IN BOOK 59 OF PLATS, PAGE 32, AS DOCUMENT 1924571, BOUNDED AND DESCRIBED AS FOLLOWS:

FROM THE POINT OF INTERSECTION OF THE NORTH RIGHT OF WAY MARGIN OF WEST 40TH STREET (PRIVATE STREET BEING 66 FEET IN WIDTH AS DEFINED IN TRUSTEE'S DEED DATED APRIL 6, 1965, AND RECORDED AS DOCUMENT NUMBER 19429737) WITH THE WEST RIGHT OF WAY MARGIN OF SOUTH PULASKI ROAD (SAID RIGHT OF WAY BEING 100 FEET IN WIDTH), RUNNING THENCE NORTH ALONG SAID WEST RIGHT OF WAY MARGIN OF SOUTH PULASKI ROAD A DISTANCE OF 655.63 FEET TO A POINT MARKED BY AN IRON PIPE PLACED AND THE POINT OF BEGINNING; THENCE SOUTHWESTERLY ALONG THE ARC OF A CURVE LYING NORTHWEST OF ITS CHORD HAVING A RADIUS OF 666.69 FEET AND CENTRAL ANGLE OF 7 DEGREES, 47 MINUTES, 38 SECONDS A DISTANCE OF 90.69 FEET TO A POINT MARKED BY AN IRON PIPE PLACED, WHICH POINT IS 468.24 FEET EAST FROM THE EAST RIGHT OF WAY MARGIN OF SOUTH KARLOV AVENUE (A PRIVATE STREET BEING 66 FEET IN WIDTH AS DEFINED IN TRUSTEE'S DEED DATED APRIL 6, 1965, AND RECORDED AS DOCUMENT NUMBER 19429737) AND 616.65 FEET NORTH FROM SAID NORTH RIGHT OF WAY MARGIN OF WEST 40TH STREET; THENCE CONTINUING SOUTHWESTERLY ALONG THE ARC OF A CURVE LYING NORTHWEST OF ITS CHORD HAVING A RADIUS OF 366.02 FEET AND A CENTRAL ANGLE OF 12 DEGREES, 28 MINUTES, 00 SECONDS A DISTANCE OF 79.64 FEET TO A POINT MARKED BY AN IRON PIPE PLACED WHICH IS 403.68 FEET EAST FROM SAID EAST RIGHT OF WAY MARGIN OF SOUTH KARLOV AVENUE AND 570.37 FEET NORTH FROM SAID NORTH RIGHT OF WAY MARGIN OF WEST 40TH STREET; THENCE CONTINUING SOUTHWESTERLY ALONG THE ARC OF A CURVE LYING NORTHWEST OF ITS CHORD HAVING A RADIUS OF 391.56 FEET AND A CENTRAL ANGLE OF 9 DEGREES, 24 MINUTES, 02 SECONDS A DISTANCE OF 64.24 FEET TO A POINT MARKED BY AN IRON PIPE PLACED, LOCATED ON A LINE 523.79 FEET NORTH FROM AND PARALLEL WITH THE NORTH LINE OF WEST 40TH STREET, WHICH IS 190.40 FEET WEST FROM SAID WEST LINE OF SOUTH PULASKI ROAD; THENCE WEST ALONG THE LAST ABOVE MENTIONED PARALLEL LINE A DISTANCE OF 359.60 FEET TO A POINT LOCATED AT THE INTERSECTION OF THE LAST ABOVE MENTIONED PARALLEL LINE AND THE EAST RIGHT OF WAY MARGIN OF SOUTH KARLOV AVENUE; THENCE NORTH ALONG THE EASTERN RIGHT OF WAY MARGIN OF SOUTH KARLOV AVENUE A DISTANCE OF 267.91 FEET TO A POINT MARKED BY AN IRON PIPE PLACED; THENCE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG THE ARC OF A CURVE LYING NORTH OF ITS CHORD HAVING A RADIUS OF 600.00 FEET AND A CENTRAL ANGLE OF 34 DEGREES, 40 MINUTES, 18 SECONDS A DISTANCE OF 363.08 FEET TO A POINT MARKED BY AN IRON PIPE PLACED, WHICH POINT IS 2,354.67 FEET NORTH OF THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 3; TOWNSHIP 38 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN; AFORESAID

(Continued)

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LEGAL DESCRIPTION CONTINUED

COUNTY AND STATE, AND IS HEREINAFTER REFERRED TO AS POINT A; THENCE SOUTHEASTERLY 59.64 FEET TO A POINT MARKED BY AN IRON PIPE FOUND LOCATED ON LINE A, LINE A BEING DEFINED AS A STRAIGHT LINE RUNNING SOUTHEASTERLY FROM POINT A 199.61 FEET TO A POINT LOCATED ON THE WESTERN RIGHT OF WAY MARGIN OF SOUTH PULASKI ROAD; THENCE SOUTHEASTERLY 68.74 FEET TO A POINT MARKED BY AN IRON PIPE FOUND AND LOCATED ON A LINE PARALLEL TO AND 18.04 FEET NORTHEAST OF LINE A; THENCE SOUTHEASTERLY AND ALONG A LINE PARALLEL TO LINE A 68.74 FEET TO A POINT LOCATED ON THE WEST RIGHT OF WAY MARGIN OF SOUTH PULASKI ROAD AND MARKED BY AN IRON PIPE PLACED; THENCE SOUTHERLY ALONG THE WEST MARGIN OF THE RIGHT TO WAY OF SOUTH PULASKI ROAD 114.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY ILLINOIS.

(THE FOREGOING DESCRIPTION IS BASED UPON THE FOLLOWING DEFINITIONS)

SOUTH KARLOV AVENUE (A PRIVATE STREET) IS DEFINED AS A STRIP OF LAND 66 FEET IN WIDTH, LYING IN LOT "B" OF THE SUBDIVISION RECORDED IN BOOK 59 OF PLATS, PAGE 32 AS DOCUMENT 1924571, BEING 33 FEET ON EAST SIDE OF THE CENTER LINE, THEREOF, WHICH LINE IS PARALLEL TO AND 583 FEET WEST OF THE WEST LINE OF SOUTH PULASKI ROAD AND EXTENDS FROM THE NORTH LINE OF WEST 40TH STREET TO THE NORTHERLY LINE OF THE LAND CONVEYED BY THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY TO THE CRAWFORD REAL ESTATE DEVELOPMENT COMPANY BY DEED RECORDED IN THE RECORDER'S OFFICE OF COOK COUNTY, ILLINOIS AS DOCUMENT 17307420

WEST 40TH STREET (A PRIVATE STREET) IS DEFINED AS A STRIP OF LAND 66 FEET IN WIDTH LYING IN LOT "A" AND IN LOT "B" OF THE SUBDIVISION RECORDED IN BOOK 59 OF PLATS, PAGE 32 AS DOCUMENT 1924571 EXTENDING EASTERLY FROM A LINE PARALLEL TO AND 655.93 FEET EAST OF AND PARALLEL TO THE NORTH AND SOUTH CENTER LINE OF SECTION 3, SAID PARALLEL LINE BEING THE EAST LINE OF SOUTH KILDARE BOULEVARD, TO ITS INTERSECTION WITH THE WEST LINE OF SOUTH PULASKI ROAD, THE NORTH LINE OF SAID STRIP IS A LINE PARALLEL TO AND 1,086 FEET NORTH OF THE NORTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD, THE SOUTH LINE OF SAID STRIP OF LAND IS A LINE PARALLEL TO AND 66 FEET SOUTH OF THE NORTH LINE OF SAID STRIP OF LAND, THE NORTH AND SOUTH CENTER LINE OF SAID SECTION 3 IS HEREIN DEFINED AS A STRAIGHT LINE DRAWN FROM A POINT ON THE NORTH LINE OF SAID SECTION 3, MEASURED 2,648.14 FEET WEST FROM THE NORTHEAST CORNER OF SAID SECTION 3, AND MEASURED 2,642.84

(Continued)

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LEGAL DESCRIPTION CONTINUED

FEET EAST FROM THE NORTHWEST CORNER OF SAID SECTION 3, TO A POINT ON THE SOUTH LINE OF SAID SECTION 3, MEASURED 2,669.37 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 3, AND MEASURED 2,668.04 FEET EAST FROM THE SOUTHWEST CORNER OF SAID SECTION 3, THE EAST AND WEST CENTER LINE OF SAID SECTION 3, IS DEFINED AS A STRAIGHT LINE DRAWN FROM A POINT ON THE EAST LINE OF SAID SECTION 3 MEASURED 2,597.19 FEET SOUTH FROM THE NORTHEAST CORNER OF SAID SECTION 3, AND MEASURED 2,669.84 FEET NORTH FROM THE SOUTHEAST CORNER OF SAID SECTION 3, TO A POINT ON THE WEST LINE OF SAID SECTION 3, MEASURED 2,598.77 FEET SOUTH FROM THE NORTHWEST CORNER OF SAID SECTION 3 AND MEASURED 2,661.19 FEET NORTH FROM THE SOUTHWEST CORNER OF SAID SECTION 3, THE NORTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD (A PRIVATE STREET) AND SAID NORTH LINE EXTENDED, IS DEFINED AS A STRAIGHT LINE DRAWN FROM A POINT ON THE EAST LINE OF SAID SECTION 3, MEASURED 465.16 FEET NORTH OF THE EAST AND WEST CENTER LINE OF SAID SECTION 3, TO A POINT ON THE NORTH AND SOUTH CENTER LINE OF SAID SECTION 3, MEASURED 464.08 FEET NORTH OF SAID EAST AND WEST CENTER LINE. THE SOUTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD IS 80 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF RE-ESTABLISHED DISTRICT BOULEVARD.

CONTAINING 140,096 SQUARE FEET (3.2162 ACRES) OF LAND, MORE OR LESS.

PARCEL 2:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AFORESAID, FOR INGRESS AND EGRESS OVER, UPON AND ACROSS THE PRIVATE STREETS KNOWN AS SOUTH KARLOV AVENUE AND WEST 40TH STREET, FOR PURPOSES OF PASSAGE TO A PUBLIC HIGHWAY, AS DEFINED IN TRUSTEE'S DEED TO STANDARD BRANDS INCORPORATED, A CORPORATION OF DELAWARE, DATED APRIL 6, 1965 AND RECORDED APRIL 8, 1965 AS DOCUMENT 19429737, IN COOK COUNTY, ILLINOIS.