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Cook County Recorder of Deeds
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If This Document Prepared by
and after Recording Return to:

Dennis W. Winkler
Dennis W. Winkler, Ltd.
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Downers Grove, Illinois 60515

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JUNIOR MORTGAGE THIS MORTGAGE SECURES FUTURE ADVANCES

34

THIS MORTGAGE is made March 17, 2004 between 1647 Addison LLC, an Illinois limited liability company (Mortgagor [as defined hereafter] as to Parcel 1) and Addison/Paulina Development LLC, an Illinois limited liability company (Mortgagor as to Parcel 2), 1940 North Clark Street, Chicago, Illinois 60614 (collectively referred to as "**Mortgagor**") and Builders Capital, LLC, an Illinois limited liability company ("**Mortgagee**").

1. Recitals:

1.1 Mortgagor and Mortgagee have executed a Loan Agreement of even date herewith (the "**Loan Agreement**") whereby including Mortgagee has agreed to loan to Mortgagor the sum of Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00) (the "**Loan Amount**") upon the terms and conditions set forth therein.

1.2 Pursuant to the Loan Agreement, Mortgagor has executed and delivered to Mortgagee a Promissory Note, wherein Mortgagor promises to pay to Mortgagee the Loan Amount, together with interest and other charges as therein stated, of even date herewith (the "**Note**") evidencing the indebtedness owed by Mortgagor to Mortgagee pursuant to the Loan Agreement, an Assignment of Leases and Rents (the "**Assignment of Rents**") and a Security Agreement (the "**Security Agreement**"), which together with this Mortgage secures the obligations of Mortgagor pursuant to the Note (the Note, the Assignment of Rents, the Security Agreement, the Loan Agreement, together with any and all documents or instruments executed in connection therewith, including any modifications, extensions or renewals thereof, are hereinafter referred to as the "**Loan Documents**"), all of which are incorporated herein by reference.

1.3 As further security for any and all obligations owing from Mortgagor to Mortgagee under the Loan Documents (the "**Obligations**"), Mortgagor has agreed to give Mortgagee a subordinate mortgage lien on the Mortgaged Property (as defined below) according to the terms of this Mortgage.

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2. Grant. In consideration of the indebtedness of Mortgagor to Mortgagee which Mortgagor acknowledges and confirms is valuable and of benefit to Mortgagor, and as security for payment to Mortgagee of the Obligations, and for performance of the agreements, conditions, covenants, provisions and stipulations contained herein and therein, Mortgagor has granted, conveyed, aliened, enfeoffed, released, confirmed and mortgaged, and by these presents does hereby grant, convey, alien, enfeoff, release, confirm, mortgage and warrant unto Mortgagee, all that certain tract or parcel of land located at and more particularly described in **Exhibit A** attached hereto and made a part hereof (the "**Real Estate**") to secure payment of the Obligations and performance of all matters described herein and in the Loan Documents.

TOGETHER WITH all of Mortgagor's right, title and interest now owned or hereafter acquired in:

all easements, rights-of-way, gores of land, streets, ways, alleys, passages, rights, waters, water courses, water rights and powers, riparian rights, mineral rights, privileges, tenements, hereditaments and appurtenances whatsoever in any way belonging, relating or appertaining to any of the Real Estate or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversions and remainders; and

all rents, issues and profits thereof; and

all buildings and other improvements erected or hereafter erected upon the Real Estate and all building materials, fixtures, building machinery and building equipment delivered on site to the Real Estate during the course of, or in connection with, the construction of, or reconstruction of, or remodeling of any buildings and improvements from time to time during the term hereof; and

all fixtures, appliances, machinery, furniture and equipment of any nature whatsoever, and other articles of personal property now or at any time hereafter installed in, attached to or situated in or upon the Real Estate or any buildings and improvements now or hereafter erected on, upon, under or forming a part of the Real Estate, or used or intended to be used in connection with the Real Estate, or in the operation of any buildings and improvements now or hereafter erected thereon, or in the operation or maintenance of any such building or improvement, plant or business situate thereon, whether or not the personal property is or shall be affixed thereto; and

all licenses (including but not limited to operating licenses or similar matters), contracts, management contracts or agreements, franchise agreements, permits, bonds, authorities or certificates required or used in connection with the ownership of, or the operation or maintenance of the real property or improvements or personal property, provided that no such contract, agreement, license or the like shall be binding upon Mortgagee except with Mortgagee's prior consent; and

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

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all refunds, payments, deposits and monies received or to be received from or relating to the ownership of the Mortgaged Property, irrespective of the time period to which such refunds, payments, deposits and monies relate, including, but not limited to, property or other tax refunds and utility refunds, rebates or deposits.

All of the Real Estate, buildings and improvements, fixtures, machinery, furniture, equipment, tenements, hereditaments and appurtenances, proceeds and other property interests above described and hereby mortgaged are sometimes collectively referred to herein as the "***Mortgaged Property***".

TO HAVE AND TO HOLD the Mortgaged Property hereby conveyed or mentioned and intended so to be unto Mortgagee, in fee simple, forever.

PROVIDED ALWAYS, and this instrument is upon the express condition that, if Mortgagor pays to Mortgagee the principal sum mentioned in the Note, the interest thereon and all other sums payable by Mortgagor to Mortgagee as are secured hereby, in accordance with the provisions of the Loan Documents and this Mortgage, at the times and in the manner specified, without deduction, fraud or delay, and Mortgagor performs and complies with all the agreements, conditions, covenants, provisions and stipulations contained herein and in the Loan Documents then this Mortgage and the estate hereby granted shall cease and become void.

3. Mortgagor's Representations. Mortgagor warrants and represents that it possesses a good and marketable title to an indefeasible fee simple estate in the Mortgaged Property, subject to the permitted exceptions allowed by the Loan documents; that Mortgagor has full power and lawful authority to subject the Mortgaged Property to the lien of this Mortgage in the manner and form herein provided; that it shall be lawful for Mortgagee at all times to enter upon, hold, occupy and enjoy the Mortgaged Property and every part thereof; that the Mortgaged Property is free from all liens and encumbrances subject only to those title exceptions listed in the mortgagee title insurance policy approved by and issued to Mortgagee, insuring the priority of the lien of this Mortgage; that all information, reports, papers and data given to Mortgagee with respect to the Mortgaged Property or Mortgagor are accurate in all material respects; that no notice of taking by eminent domain or condemnation of any part of the Mortgaged Property has been received, and Mortgagor has no knowledge that any of such is contemplated; that the Mortgaged Property and the present use and occupancy thereof are in compliance with all applicable laws, rules, ordinances, statutes and regulations; and that no part of the Mortgaged Property is located in an area designated by any federal, state or local governmental entity as having a special flood hazard.

4. Payment and Performance. Mortgagor shall pay to Mortgagee, in accordance with the terms of the Loan Documents and this Mortgage, the principal and interest, and other sums therein set forth; shall perform and comply with all the agreements, conditions, covenants, provisions and stipulations of the Loan Documents and this Mortgage; and shall timely perform all of its material obligations and duties as landlord under any lease of all or any portion of the Mortgaged Property now or hereafter in effect.

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5. Maintenance of Mortgaged Property. Mortgagor shall keep and maintain or cause to be kept and maintained all buildings and improvements now or at any time hereafter erected on the Mortgaged Property and the sidewalks and curbs abutting them, in good order and condition and in a rentable and tenantable state of repair, and will make or cause to be made, as and when necessary for such purpose, all repairs, renewals and replacements, structural and nonstructural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen. Mortgagor shall abstain from and shall not permit the commission of waste in or about the Mortgaged Property, except for normal tenant improvements reasonably required to make the Mortgaged Property ready for tenant occupancy; Mortgagor shall not remove or demolish, or alter the structural character of, any building erected at any time on or constituting a part of the Mortgaged Property or alter the exterior of the building, without the prior written consent of Mortgagee; and shall not permit the Mortgaged Property to become vacant, deserted or abandoned. Mortgagor further covenants and agrees to maintain in good condition on the Mortgaged Property all items of inventory, equipment and any other personal property necessary for or used in the maintenance and operation of the Mortgaged Property, free of any security interest (except a security interest in favor of Mortgagee), and, upon request, to furnish to Mortgagee financing statements, continuation certificates and such other documents necessary to perfect and maintain in favor of Mortgagee a security interest in such personal property.

6. Insurance.

6.1 Mortgagor shall keep the Mortgaged Property continuously insured, to the extent of its full insurable value, against loss or damage by fire, with extended coverage and business interruption coverage and against such other hazards (including, without limitation, coverage against loss or damage by vandalism, malicious mischief, sprinkler leakage and flood) as Mortgagee may reasonably require, and shall maintain comprehensive general public liability property damage and workmen's compensation insurance, in an insurance company or companies qualified to insure property located in the state in which the Mortgaged Property is located and satisfactory in all respects to Mortgagee, and in such total amounts as Mortgagee may reasonably require from time to time. Such insurance shall contain agreed amount endorsements, inflation guard endorsements and replacement cost endorsements reasonably satisfactory to Mortgagee. During the course of any construction or repair or improvements on the Mortgaged Property for which builder's risk insurance may be obtained, Mortgagor shall acquire and maintain builder's completed value risk insurance against all risks of physical loss, including collapse and transit coverage, during construction of such improvements, with deductibles not to exceed \$1,000.00 in non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished. Mortgagor shall also obtain insurance affording protection against rental loss in an amount of not less than the rent payable during the then current twelve (12) month period and business interruption insurance in the event of any damage caused by the perils referred to above. All policies of insurance, including policies for any amounts carried in excess of the required minimum and policies not specifically required by Mortgagee, shall be in form reasonably satisfactory to Mortgagee, shall name Mortgagee as the insured, shall be maintained in full force and effect, shall be assigned and delivered to Mortgagee, with premiums prepaid, as collateral security for payment of the Obligations, shall be contain a Lender-Secured Party Loss Payable Endorsement, not subject to contribution. All policies shall be endorsed to provide Mortgagee at least ten (10) days written notice of any material change,

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cancellation or non-renewal. Each insurance policy procured by Mortgagor shall contain, if obtainable, (i) a waiver by the insurer of the right of subrogation against Mortgagor, and (ii) a statement that the insurance shall not be invalidated if any insured waives in writing, prior to a loss, all or any right of recovery against any party for loss accruing to the property described in the insurance policy. All renewal policies, with premiums paid, shall be delivered to Mortgagee at least ten (10) days before expiration of the old policies. If the insurance, or any part thereof, shall expire, or be withdrawn, or become void or unsafe by Mortgagor's breach of any condition thereof, or become void or unsafe by reason of the failure or impairment of the capital of any company in which the insurance may then be carried, or if for any reason in the reasonable opinion of Mortgagee the insurance shall be unsatisfactory to Mortgagee, Mortgagor shall place new insurance on the Mortgaged Property satisfactory to Mortgagee.

6.2 If Mortgagor shall fail or refuse to maintain insurance as required by this Paragraph 6, Mortgagee may do so at the cost of Mortgagor, which shall be added to and become a part of the Obligations.

6.3 Each insurance company concerned is hereby authorized and directed to make payment under such insurance, including return of unearned premiums, directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and Mortgagor appoints Mortgagee, irrevocably, as Mortgagor's attorney-in-fact to endorse any draft therefor. Any such insurance proceeds or payments so received by Mortgagee shall may, at the option of Mortgagee, be: (i) applied in reduction of the Obligations, whether due or not, and in any order selected by Mortgagee; or (ii) held by Mortgagee and applied to pay for the cost of repair, rebuilding or restoration of the Mortgaged Property.

- A. If Mortgagee elects to make said proceeds available to reimburse Mortgagor for the cost of repair, rebuilding or restoration of the Mortgaged Property, such proceeds shall be made available in the manner and under such conditions as Mortgagee, in its sole discretion, may require. Mortgagor shall on demand deposit with Mortgagee any sums necessary, as determined by a Mortgagee in its sole discretion, to make up any deficits between the actual cost of the work and the available insurance proceeds and provide such lien waivers and completion bonds as Mortgagee may require. In any event, the Mortgaged Property shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such loss. Any surplus which may remain after payment of all costs of restoration or repair may at the option of Mortgagee be applied on account of the Obligations then most remotely to be paid, whether due or not, without application of any prepayment premium or shall be returned to Mortgagor, the choice of application to be solely at the discretion of Mortgagee.
- B. If Mortgagee elects to retain and apply such proceeds to the reduction of the indebtedness secured hereby, Mortgagee shall have the right in its sole and absolute discretion to apply any such proceeds, in such order and in such amounts as Mortgagee may elect, against: (i) any amounts payable by

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Mortgagor hereunder or under the Loan Documents, (ii) or accrued and unpaid interest under the Note, (iii) or the outstanding principal balance of the Note.

6.4 No application of insurance proceeds to the payment of the Obligations shall postpone any of the current installments of principal or interest becoming due under the Loan Documents until all sums due and payable pursuant to the Loan Documents and all interest and other sums due hereunder and thereunder have been paid in full.

6.5 Subject to the rights of the mortgagee under the Senior Mortgage (as hereinafter defined), such policies of insurance and all renewals thereof are hereby assigned to Mortgagee as additional security for payment of the indebtedness hereby secured and Mortgagor hereby agrees that any values available thereunder upon cancellation or termination of any of said policies or renewals, whether in the form of return of premiums or otherwise, shall be payable to Mortgagee as assignee thereof. If Mortgagee becomes the owner of the Mortgaged Property or any part thereof by foreclosure or otherwise, such policies, including all right, title and interest of Mortgagor thereunder, shall become the absolute property of Mortgagee. In addition, Mortgagor will deliver the originals or certified copies of all such policies to Mortgagee, and, not less than ten (10) days prior to the expiration date of each such policy, will deliver to Mortgagee a renewal policy or policies (or certified copies of such policies) marked "*premium paid*" or accompanied by other evidence of payment satisfactory to Mortgagee. Mortgagor shall not change the present use of any portion of the Mortgaged Property in any manner or permit any condition to exist on the Mortgaged Property which would permit an insurer to cancel or increase the premium for any insurance policy or invalidate such policy in whole or in part. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Paragraph 6 unless Mortgagee is included thereon as a named insured with loss payable to Mortgagee under a non-contributory mortgagee clause satisfactory to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out, specifying the insurer thereunder and full particulars as to the policies evidencing the same.

6.6 Subject to the rights of the mortgagee under the Senior Mortgage, if Mortgagor shall fail to make proof of loss as required hereby, Mortgagor shall be in default hereunder, and Mortgagee may, but shall not be obligated to, make such proof of loss on behalf of Mortgagor and, in such event, each insurance company is directed to deal exclusively with Mortgagee in connection with the compromise or settlement of the loss, and Mortgagor shall be bound conclusively thereby. Each insurance company is entitled to rely conclusively on a written statement from Mortgagee as to the existence of an Event of Default or a Default hereunder.

7. Taxes and Other Charges. Mortgagor shall pay at least fifteen (15) days before they are due and payable and before any interest, charge or penalty is due thereon, without any deduction, defalcation or abatement, all taxes, assessments, levies, liabilities, obligations, encumbrances, water and sewer rents and all other charges or claims of every nature and kind which may be imposed, suffered, placed, assessed, levied, or filed at any time against Mortgagor, the Mortgaged Property or any part thereof or against the interest of Mortgagee therein, or with respect to the Loan Documents or Mortgage and/or the ownership of either thereof by Mortgagee, or which by any

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present or future law may have priority over the indebtedness secured hereby either in lien or in distribution out of the proceeds of any judicial sale, without regard to any law heretofore or hereafter to be enacted imposing payment of the whole or of any part upon Mortgagee; and insofar as any such tax, assessment, levy, liability, obligation or encumbrance is of record, the same shall be promptly satisfied and discharged of record and the original official document (such as, for instance, the tax receipt or the satisfaction paper officially endorsed or certified) shall be placed in the hands of Mortgagee not later than five (5) days prior to the due date thereof. Mortgagor will not apply for or claim any deduction, by reason of this Mortgage, from the taxable value of all or any part of the Mortgaged Property. It is expressly agreed that no credit shall be claimed or allowed on the interest payable on the Note because of any taxes or other charges paid. The provisions of this paragraph shall apply regardless of any changes in the tax law subsequent to the execution of this Mortgage.

8. **Installments for Insurance, Taxes and Other Charges.** Without limiting the effect of Paragraphs 6 and 7 hereof, subject to the rights of the mortgagee under the Senior Mortgage, Mortgagee may require Mortgagor to pay to Mortgagee (or to such other entity as Mortgagee shall designate), monthly with the monthly installments of interest (or the monthly installments of principal and interest when applicable), an amount equal to one-twelfth (1/12) of the annual premiums for the insurance policies referred to hereinabove and the annual real estate taxes, water and sewer rents, any special assessments, charges or claims and any other item which at any time may be or become a lien upon the Mortgaged Property prior to the lien of this Mortgage; and on demand from time to time Mortgagor shall pay to Mortgagee any additional sums necessary to pay the premiums and other items, all as estimated by Mortgagee. The amounts so paid shall be security for the premiums and other items and shall be used in payment thereof if Mortgagor is not otherwise in Default hereunder. No amount so paid shall be deemed to be trust funds but may be commingled with general funds of Mortgagee and no interest shall be payable thereon. If, pursuant to any provision of this Mortgage or the Note, the whole amount of the unpaid principal debt becomes due and payable, Mortgagee shall have the right, in its sole and absolute discretion, to apply any amount so held, in such order and in such amounts as Mortgagee may elect, against: (a) any amounts payable by Mortgagor hereunder or under the Loan Documents, and/or (b) accrued and unpaid interest under the Note, and/or (c) the outstanding principal balance of the Note. At Mortgagee's sole option, Mortgagee from time to time may waive, and after any such waiver may reinstate, the provisions of this paragraph requiring the monthly payments. Mortgagor will furnish to Mortgagee bills and other requests for payment in sufficient time to enable Mortgagee to pay such taxes, assessments, levies, charges and fees as provided above, and provided that no Default or Event of Default then exists and sufficient funds are then on deposit with Mortgagee, Mortgagee shall pay such taxes, assessments, levies, charges and fees according to the bills theretofore delivered to Mortgagee by Mortgagor. Mortgagee, in making any payment hereby authorized relating to such amounts, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

Upon the occurrence of a Default or an Event of Default, Mortgagee may, at its sole option, apply any monies at the time on deposit pursuant to this Paragraph 8 to cure an Event of Default or to pay any of the Obligations in such order and manner as Mortgagee may elect. If such deposits are used to cure such Default or Event of Default or pay any of the Obligations, Mortgagor shall

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immediately, upon demand by Mortgagee, deposit with Mortgagee an amount equal to the amount expended by Mortgagor from the deposits, plus interest thereon at the Default Interest Rate (as defined in the Note). When the Obligations have been fully paid, any remaining deposits shall be returned to Mortgagor. Such deposits are hereby pledged as additional security for the Obligations and shall not be subject to the direction or control of Mortgagor. Mortgagee shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless Mortgagor, prior to an Event of Default, shall have requested Mortgagee in writing to make application of such funds to the payment of such amounts, accompanied by the official statements or bills for such Taxes. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any official issuing such statements or bills or responsible for the collection thereof.

9. **Corporate Existence and Taxes.** If Mortgagor or any successor or grantee of Mortgagor is a corporation or other legally separate legal entity, it shall keep in effect its existence and rights under the laws of the state of its organization and its right to own property and transact business in the state in which the Mortgaged Property is situated during the entire time that it has any ownership interest in the Mortgaged Property. Mortgagor shall file returns for such taxes with the proper authorities, bureaus or departments and it shall pay, when due and payable and before interest or penalties are due thereon, all taxes owing by Mortgagor to the United States, to such state of organization and to the state in which the Mortgaged Property is situated and any political subdivision thereof, and shall produce to Mortgagee receipts showing payment of any and all such taxes, charges or assessments prior to the last dates upon which such taxes, charges or assessments are payable without interest or penalty charges, and within ten (10) days of receipt thereof all settlements, notices of deficiency or overassessment and any other notices pertaining to Mortgagor's tax liability which may be issued by the United States, such state of incorporation, the state in which the Mortgaged Property is situated and any political subdivision thereof.

10. **Documentary and Other Stamps.** If at any time the United States, the state in which the Mortgaged Property is located or any political subdivision thereof, or any department or bureau of any of the foregoing, shall require documentary, revenue or other stamps on the Loan Documents secured hereby or this Mortgage, Mortgagor on demand shall pay for them with any interest or penalties payable thereon.

11. **Future Taxes.** If hereafter any law or ordinance shall be adopted imposing a tax directly or indirectly on Mortgagee with respect to the Mortgaged Property, the value of Mortgagor's equity therein, or the indebtedness evidenced by the Loan Documents and secured by this Mortgage, Mortgagee, at its election, shall have the right at any time after the tax has been imposed to give Mortgagor written notice declaring that the Obligations shall be due on a specified date not less than sixty (60) days thereafter which notice shall specify the nature of the tax which is the basis for acceleration; provided, however, that such election shall be ineffective if, prior to the specified date, Mortgagor lawfully pays the tax (in addition to all other payments required hereunder) and agrees to pay the tax whenever it becomes due and payable thereafter, which agreement shall then constitute a part of this Mortgage.

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12. Security Agreement.

12.1 This Mortgage constitutes a security agreement within the meaning of the Uniform Commercial Code as enacted this date in the State in which the Mortgaged Property is located (the "**Uniform Commercial Code**"). Mortgagor hereby grants to Mortgagee a security interest in all that property included in the Mortgaged Property which might otherwise be deemed "**personal property**", including, but not limited to, all furniture, furnishings, fixtures, equipment, machinery, leases, rents, issues, profits, contract rights, accounts, general intangibles and all other property used or useable in connection with the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor, and all substitutions, accretions and component parts, replacements thereof, and additions thereto and all cash and non-cash proceeds thereof. This Mortgage may also serve as a fixture filing pursuant to the Uniform Commercial Code.

12.2 Mortgagor shall execute, deliver, file and refile any financing statements, continuation statements, or other security agreements Mortgagee may require from time to time to confirm the lien of this Mortgage with respect to such property. Without limiting the foregoing, Mortgagor hereby irrevocably appoints Mortgagee attorney-in-fact for Mortgagor to execute, deliver and file such instruments for and on behalf of Mortgagor. Mortgagor shall pay, or at Mortgagee's election shall reimburse Mortgagee for, all filing fees in connection therewith. Mortgagor shall not change its principal place of business without giving Mortgagee at least ten (10) days prior written notice thereof, which notice shall be accompanied by new financing statements executed by Mortgagor in the same form as the financing statements delivered to Mortgagee on the date hereof except for the change of address.

12.3 Upon the occurrence of any Default or Event of Default hereunder or under the Loan Documents, subject to the rights of the mortgagee under the Senior Mortgage, Mortgagee shall have, in addition to any other rights and remedies hereunder or under the Loan Documents, all of the rights and remedies granted to a secured party under the Uniform Commercial Code with respect to such personal property. To the extent permitted by law, Mortgagor and Mortgagee agree that the items set forth on the financing statements shall be treated as part of the real estate and improvements regardless of the fact that such items are set forth in the financing statements. Such items are contained in the financing statements to create a security interest in favor of Mortgagee in the event such items are determined to be personal property under the law. Notwithstanding any release of any or all of that property included in the Mortgaged Property which is deemed "**real property**", any proceedings to foreclose this Mortgage or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interest created hereby and referred to above until the repayment or satisfaction in full of the Obligations. Mortgagor agrees that ten (10) days prior written notice shall be commercially reasonable notice.

12.4 To the extent permitted under the Uniform Commercial Code, Mortgagor waives all rights of redemption and all other rights and remedies of a debtor thereunder and all formalities prescribed by law relative to the sale or disposition of the personal property after the occurrence of an Event of Default hereunder and to all other rights and remedies of Mortgagor with respect thereto. In exercising its right to take possession of the personal property upon the occurrence of

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an Event of Default hereunder, Mortgagee may enter upon the Mortgaged Property without being guilty of trespass or any other wrong-doing, and without liability for damage thereby occasioned.

12.5 Mortgagee shall reimburse Mortgagee, on demand, for all reasonable expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the personal property which are incurred or paid by Mortgagee, including, without limitation, all attorneys' fees, legal expenses and costs, and all such expenses shall be added to Mortgagee's obligations to Mortgagee and shall be secured hereby.

13. Compliance with Laws and Regulations. Mortgagor shall comply with all laws, ordinances, regulations and orders of all federal, state, municipal and other governmental authorities relating to the Mortgaged Property. Mortgagor will pay all license fees and similar municipal charges for the use of the Mortgaged Property and any other areas now or hereafter comprising part thereof or used in connection therewith and will not, unless so required by a governmental agency having jurisdiction, discontinue use or occupancy of any portion of the Mortgaged Property without the prior written consent of Mortgagee. The Mortgagor shall not take or permit any action with respect to the Mortgaged Property which will in any manner impair the security of this Mortgage.

14. Inspection. Mortgagee and any persons authorized by Mortgagee shall have the right at any time, to enter the Mortgaged Property at a reasonable hour to inspect and photograph its condition and state of repair and/or for the purpose of appraising the same.

15. Financial Statements. Borrower shall deliver to Lender:

- A. Within fifteen (15) days after filing, but in no event later than August 15 of each year (unless the time for filing hereof shall be extended as allowed by law, and then on or before the extended filing date) until satisfaction in full of all of Borrower's Liabilities, federal income tax returns, including all supporting schedules and exhibits, for Borrower.
- B. As soon as available but not later than thirty (30) days after the end of each calendar quarter hereafter, internally generated financial statements, which shall include, but not be limited to, balance sheets, income statements, statements of cash flow of Borrower, certified by a member, manager, or principal of Borrower;
- C. Such other data and information (financial and otherwise) as Lender, from time to time, may reasonably request.

Mortgagor agrees to make the books and accounts relating to the Mortgaged Property and Mortgagor's operations available for inspection by Mortgagee, or its representatives, upon written request at any reasonable time.

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16. Required Notices. Mortgagor shall notify Mortgagee promptly of the occurrence of any of the following:

16.1 A fire or other casualty causing damage to the Mortgaged Property;

16.2 Receipt of notice:

A. Of eminent domain proceedings or condemnation of all or any part of the Mortgaged Property;

B. From any governmental authority relating to the Improvements or the use or occupancy of the Mortgaged Property;

C. From any tenant of all or any portion of the Mortgaged Property;

D. From the holder or claimant of any lien or security interest in the Mortgaged Property or any part thereof.

16.3 Substantial change in the occupancy of the Mortgaged Property;

16.4 Commencement of any litigation affecting, or which may potentially materially effect, the Mortgaged Property, other than accident claims fully covered by insurance and for which the insurance carrier has acknowledged liability; or

16.5 The occurrence of any Default or Event of Default under any of the Loan Documents.

17. Condemnation.

17.1 In the event of any condemnation or taking of any part of the Mortgaged Property by eminent domain, alteration of the grade of any street, or other injury to or decrease in the value of the Mortgaged Property by any public or quasi-public authority or corporation, subject to the rights of the mortgagee under the Senior Mortgage, all proceeds (that is, the award or agreed compensation for the damages sustained) allocable to Mortgagor are hereby assigned by Mortgagor to Mortgagee to further secure the payment of the indebtedness secured hereby. No settlement for damages sustained shall be made by Mortgagor without Mortgagee's prior written approval. Mortgagee is authorized and empowered (but not required) to collect and receive any such condemnation award and all condemnation proceeds which then shall be applied in the order and in the amounts that Mortgagee, in Mortgagee's sole discretion, may elect, to the reduction of the indebtedness secured hereby, or toward payment to Mortgagor, on such terms as Mortgagee may specify, to be used for the sole purpose of altering, restoring or rebuilding any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of the taking, alteration of grade or other injury to the Mortgaged Property. Mortgagor shall execute such further assignments of any such awards as Mortgagee may require. If Mortgagee elects to apply such proceeds to reduction of the indebtedness secured hereby, Mortgagee shall have the right in its sole and absolute

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discretion to apply any such proceeds, in such order and in such amounts as Mortgagee may elect, against any amounts payable by Mortgagor hereunder or under the Loan Documents.

17.2 If prior to the receipt of the proceeds by Mortgagee the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive the proceeds to the extent of:

- A. Any deficiency found to be due to Mortgagee in connection with the foreclosure sale, with legal interest thereon, and
- B. Reasonable counsel fees, costs and disbursements incurred by Mortgagee in connection with collection of the proceeds and the proceedings to establish the deficiency.

17.3 If the amount of the initial award of damages for the condemnation is insufficient to pay in full the indebtedness secured hereby with interest and other appropriate charges, Mortgagee shall have the right to prosecute to final determination or settlement an appeal or other appropriate proceedings in the name of Mortgagee or Mortgagor, for which Mortgagee is hereby appointed irrevocably as attorney-in-fact for Mortgagor, which appointment, being for security, is irrevocable. In that event, the expenses of the proceedings, including counsel fees, shall be paid first out of the proceeds and only the excess, if any, paid to Mortgagee shall be credited against the amounts due under this Mortgage.

17.4 Nothing herein shall limit the rights otherwise available to Mortgagee, at law or in equity, including the right to intervene as a party to any condemnation proceeding.

17.5 No application of condemnation proceeds to the payment of the Obligations shall postpone any of the current installments of principal or interest becoming due under the Loan Documents until the Loan Documents and all interest and other sums due thereunder and hereunder are paid in full.

18. Leases.

18.1 Mortgagor hereby assigns to Mortgagee all existing and future leases (the "**Leases**") and all rents and profits of the Mortgaged Property as further security for the payment of the indebtedness hereby secured and Mortgagor grants to Mortgagee the right to enter upon the Mortgaged Property for the purposes of collecting the same and to let the Mortgaged Property or any part thereof. This assignment and grant is absolute and irrevocable and shall continue in effect until the indebtedness secured by this Mortgage is paid. Mortgagee hereby waives the right to collect said rents and profits, and Mortgagor shall be entitled to collect and receive the same until Default in this Mortgage or the Loan Documents, and Mortgagor agrees to use such rents and profits in payment of principal and interest becoming due on this Mortgage and in payment of taxes, assessments, sewer rents, water rents and charges becoming due as aforesaid, but such privilege of Mortgagor may be revoked by Mortgagee upon Default without notice. Mortgagor shall not, without the written consent of Mortgagee, receive or collect rent or other charge for a period of more

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than one month in advance. Mortgagee shall not be deemed to have accepted the assignment except as a pledge or be obligated as lessor by virtue of this assignment except by a separate and express written agreement of Mortgagee.

18.2 Following the occurrence of a Default, subject to the rights of the mortgagee under the Senior Mortgage, Mortgagor hereby authorizes and instructs each and every present and future tenant of any of the Mortgaged Property to pay all rents directly to Mortgagee and to perform all other obligations of that tenant for the direct benefit of Mortgagee, as if Mortgagee were the landlord under the lease with that tenant, immediately upon receipt of a demand by Mortgagee to make such payment or perform such obligations. No tenant shall have any responsibility to ascertain whether such demands are permitted hereunder or whether a Default shall have occurred. Mortgagor hereby waives any right, claim or demand it may now or hereafter have against any such tenant by reason of such payment of rents or performance of obligations to Mortgagee; and any such payment or performance to Mortgagee shall discharge the obligations of the tenant to make such payment or performance to Mortgagor. Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from any and all liability under any lease and for any and all claims and demands which may be asserted against Mortgagee by reason of any alleged obligations to perform any provision of any lease, except as to Mortgagee's own gross negligence or willful misconduct.

18.3 Within ten (10) days after receipt of a demand therefor from Mortgagee, Mortgagor will deliver to Mortgagee a statement under oath setting forth the names of each tenant occupying space in the Mortgaged Property, a brief description of the space occupied, the rental payable and the date of expiration of the respective leases, and the status of the rental payments due thereunder, and whether there exists a default by any party thereto. If requested Mortgagee's demand, a true copy of each Lease shall be attached to such statement.

18.4 Mortgagor shall promptly (i) perform all of the provisions of the Leases on the part of the landlord thereunder to be performed; (ii) enforce all of the provisions of the Leases on the part of the tenants thereunder to be performed; and (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations of Mortgagor as landlord or of the tenants thereunder.

18.5 Mortgagor shall not enter into any lease or agreement to lease all or any part of the Mortgaged Property (i) without obtaining Mortgagee's prior written approval of the tenant and form and substance of the lease; and (ii) unless, at Mortgagee's option, landlord's interest in any such lease is assigned to Mortgagee, on such form of assignment as Mortgagee shall specify, as additional collateral security for the Obligations.

18.6 To the extent that anything contained in this paragraph 18 is expressly inconsistent with the terms of that certain Assignment of Rents, Leases and Profits of even date herewith between the parties, the terms of such Assignment of Rents, Leases and Profits shall control.

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19. No Other Financing or Liens. Except for the Senior Mortgage, without the prior written consent of Mortgagee, which Mortgagee can grant or withhold in its sole and absolute discretion, Mortgagor shall not create or cause or permit to exist any lien on, or security interest in the Mortgaged Property or any part thereof (whether or not such lien or security interest is subordinate to the lien of this Mortgage), including any furniture, fixtures, appliances, machinery, equipment, or other items of personal property which are intended to be or become part of the Mortgaged Property, or securing repayment of monies paid to or for the benefit of Mortgagor or Mortgagee.

20. Restrictions on Transfer.

20.1 Without the prior written consent of Mortgagee, which Mortgagee can grant or withhold in its sole and absolute discretion, Mortgagor shall not effect, suffer or permit any Prohibited Transfer (defined below). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "**Prohibited Transfer**":

- A. The Mortgaged Property or any part thereof or interest therein, excepting only sales or other dispositions of Collateral ("**Obsolete Collateral**") no longer useful in connection with the operation of the Mortgaged Property, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;
- B. Any shares of capital stock of a corporate Mortgagor, a corporation which is a general partner or managing member/manager in a partnership or limited liability company Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate Mortgagor or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System which does not result in a change of actual control);
- C. All or any part of the managing member or manager interest, as the case may be, in a limited liability company Mortgagor or a limited liability company which is a general partner of a partnership Mortgagor;
- D. All or any part of the general partner or joint venture interest, as the case may be, of a partnership Mortgagor or a partnership which is a manager of a limited liability company Mortgagor or the conversion of a partnership Mortgagor to a corporation or limited liability company; or
- E. If there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable, which directly or indirectly controls

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the day to day operations and management of Mortgagor and/or owns a controlling interest in Mortgagor; in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise.

Provided, however, that the foregoing provisions of this Paragraph 20 shall not apply (i) to liens securing the Obligations, (2) to the lien of current taxes and assessments not in default, i) to any transfers of the Mortgaged Property, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, or 21. to leases permitted by the terms of the Loan Documents, if any.

20.2 In determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Mortgagor and its members, or principals in owning and operating property such as the Mortgaged Property, found such background and experience acceptable and relied and continues to rely upon the same as the means of maintaining the value of the Mortgaged Property which is Mortgagee's security for payment of the Obligations. Mortgagor and its members, or principals are well experienced in borrowing money and owning and operating property such as the Mortgaged Property. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary junior financing placed upon the Mortgaged Property (a) may divert funds which would otherwise be used to pay the Obligations; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Mortgaged Property should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Mortgaged Property. In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment of the Obligations and of value of the Mortgaged Property; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and collect assumption fees; and (iv) keeping the Mortgaged Property free of subordinate financing liens, Mortgagor agree that should this Paragraph 20 be deemed a restraint on alienation, that it is a reasonable one.

21. Right to Remedy Defaults. If Mortgagor should fail to pay corporate taxes, real estate or other taxes, assessments, water and sewer rents, charges and claims on or before the date on which any penalty may be imposed with respect thereto, or fail to pay insurance premiums, or fail to make necessary repairs, or permit waste, or fail to comply with any other provision of this Mortgage or the Loan Documents, Mortgagee, at its election and without notice to Mortgagor, shall have the right to make any payment or expenditure and to take any action which Mortgagor should have made or taken, or which Mortgagee deems reasonably necessary to protect the security of this Mortgage or

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the Mortgaged Property, without prejudice to any of Mortgagee's rights or remedies available hereunder or otherwise, at law or in equity. All such sums, as well as costs, advanced by Mortgagee pursuant to this Mortgage shall be due immediately from Mortgagor to Mortgagee, shall be secured hereby, and shall bear interest at the Default Interest Rate (as defined in the Note) from the date of payment by Mortgagee until the date of repayment. Notwithstanding the foregoing, Mortgagee shall not exercise its right to pay overdue corporate taxes, real estate or other taxes, assessments, water and sewer rents, charges and claims, provided that Mortgagor has a good faith dispute regarding the same and is diligently disputing any such corporate tax, real estate or other tax, assessment, water and sewer rent, charge or claim. However, Mortgagee may require Mortgagor to post a bond or other security in an amount sufficient to satisfy such disputed taxes, assessments, rents, charges or claims.

22. Notices to Mortgagee. Mortgagor agrees that any notice given by Mortgagor to Mortgagee shall be given by registered or certified mail, return receipt requested, to the address for Mortgagee set forth herein and only to that address, and such notice shall be deemed to have been received no earlier than the date actually and physically received at the address for Mortgagor set forth herein.

23. Actions of Mortgagee. Without affecting the lien and/or priority of this Mortgage upon the Mortgaged Property or any part thereof or affecting the liability of Mortgagor or any other person liable for payment of all or any part of the indebtedness secured by this Mortgage or for performance of any obligation contained herein Mortgagee may, at any time and from time to time without notice to or the consent of any other person or entity (except for Mortgagor in the case of a modification of the terms of the Loan Documents or this Mortgage), extend the time of payment of the indebtedness secured hereby, agree to modify the terms of the Loan Documents or this Mortgage, release any person liable for payment of any indebtedness secured hereby or for performance of any obligation, release all or any part of the security held for the indebtedness secured hereby or exercise or refrain from exercising or waive any right Mortgagee may have.

24. Additional Advances; Future Indebtedness. Without limiting any other provisions of this Mortgage, Mortgagee may, but by this Mortgage shall not be obligated to, make future advances, up to a total amount (which shall include the Loan Amount) of Seven Hundred Thousand and 00/100 Dollars (\$700,000.00) and this Mortgage shall secure repayment of such advances and the interest thereon, for the payment of taxes, assessments, maintenance charges, insurance premiums, or costs similar or dissimilar incurred for the protection of the Mortgaged Property or for the lien of this Mortgage, expenses incurred by Mortgagee by reason of Default by Mortgagor, or advances made under a construction loan to enable the completion of the improvements for which the construction loan was originally made. This Mortgage shall further constitute security for any and all present and future loans and advances that may be made by Mortgagee to Mortgagor or to Mortgagor under the Note at any time or times hereafter whether or not any reference is made to this Mortgage at the time that such loans or advances are made. Notwithstanding the preceding language, Mortgagor acknowledges that Mortgagee has no obligation to make any such additional advances other than as set forth in the Loan Documents.

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25. Notice to Prior Lienholders. Mortgagor hereby authorizes Mortgagee, without liability and at Mortgagee's sole discretion, to give notice in form and substance satisfactory to Mortgagee of the lien and security interest created by this Mortgage to a holder of a previously recorded mortgage which is a lien on the Mortgaged Property in order, among other things, to subordinate further advances by such mortgage holder.

26. Events of Default. Each of the following shall constitute an event of default (hereinafter called "*Event of Default*" or "*Default*") hereunder:

26.1 The failure of Mortgagor to:

- A. Pay any sum secured by this Mortgage, or
- B. Comply with or perform any other term, covenant or condition contained in this Mortgage,

following the expiration of all applicable notice and grace periods, if any.

26.2 Material breach by Mortgagor of any warranty or material untruth of any representation contained in this Mortgage or the Loan Documents.

26.3 Material breach by Mortgagor of any landlord's covenant under any of the Leases.

26.4 Default or failure to perform by Mortgagor under any mortgage or other lien against all or any portion of the Mortgaged Property or any document executed or delivered in connection therewith.

26.5 If Mortgagor shall cause or permit any transfer of title to, beneficial interest in, or any estate or other interest in the Mortgaged Property or any part thereof, or any interest in Mortgagor, voluntarily or by operation of law (other than by execution on the Loan Documents or foreclosure under this Mortgage), whether by sale, exchange, conveyance, merger, division, consolidation or otherwise, if such will result in the transfer of control of all or any portion of the Mortgaged Property to other than Mortgagor, or in a change in the ownership and/or control of Mortgagor, except as otherwise permitted in Paragraph 20 herein.

26.6 If any inferior lien encumbers the Mortgaged Property or any part thereof without the express written consent of the Mortgagee which can be granted or withheld in Mortgagee's sole discretion.

26.7 If any of the following occurs with respect to Mortgagor, Mortgagor, any guarantor or surety of Mortgagor's or Mortgagor's obligations, or any general partner or member of Mortgagor or of any such guarantor or surety: (i) insolvency, assignment for the benefit of creditors, the entry of an order for relief under The Bankruptcy Code of 1978, as amended, 11 U.S.C. §101 et seq. (the "*Bankruptcy Code*"), or the filing of a bill in equity or the initiation of other proceedings for the appointment of a receiver of assets; (ii) the voluntary filing of a petition or initiation of other

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proceedings in any court for a composition with creditors for relief in any manner from the payment of debts when due under any state or federal law; or (iii) the institution of any proceedings in bankruptcy or for the appointment of a receiver, liquidator, trustee or other such officer under any state or federal law by any creditor which is not dismissed within sixty (60) days.

26.8 Should any federal or state tax lien or any claim or lien for labor or materials be filed of record against Mortgagor or the Mortgaged Property or any part thereof; however, after prior notice to Mortgagee, in the case of any material item, Mortgagor, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the taxes, provided that (i) no Default or Event of Default exists under the Loan Documents or the Mortgage, (ii) such proceeding shall suspend the collection of the taxes from Mortgagor and from the Mortgaged Property, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Mortgagor or the Mortgaged Property is subject and shall not constitute a default thereunder, (iv) neither the Mortgaged Property nor any part thereof or interest therein will, in the reasonable opinion of Mortgagee, be in danger of being sold, forfeited, terminated, cancelled or lost, (v) Mortgagor shall have set aside adequate reserves for payment of such lien or taxes, together with all interest and penalties thereon, and (vi) Mortgagor shall have furnished such security as may be required in the proceeding, or as may be reasonably requested by Mortgagee to insure the payment thereof, together with all interest and penalties thereon.

26.9 The entry of final judgment against Mortgagor greater than one percent (1%) of the then outstanding amount of the Obligations, if such judgment is not satisfied, set aside or superseded by bond or appeal within fifteen (15) days after entry.

26.10 The receipt by Mortgagee of written notice from Mortgagor, any guarantor or surety of Mortgagor's obligations or any other party, purportedly sent to terminate, limit or restrict future advances.

26.11 The occurrence of any Default or Event of Default under the Loan Documents by any party.

27. Remedies.

27.1 Upon the happening of any Event of Default, the entire unpaid balance of the principal, the accrued interest and all other sums secured by this Mortgage shall, at the election of Mortgagee, become immediately due and payable, without notice or demand.

27.2 When the entire indebtedness shall become due and payable, either because of maturity or because of the occurrence of any Event of Default, or otherwise, then forthwith, subject to the rights of the mortgagee under the Senior Mortgage:

- A. Mortgagee may institute an action of mortgage foreclosure against the Mortgaged Property, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security or any

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other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the principal debt, with interest at the rate stipulated in the Loan Documents to the date of Default, and thereafter at the Default Interest Rate (as defined in the Note), together with all other sums due by Mortgagee in accordance with the provisions of the Loan Documents and this Mortgage, including all sums which may have been loaned by Mortgagee to Mortgagor after the date of this Mortgage, and all sums which may have been advanced by Mortgagee for taxes, water or sewer rents, charges or claims, payments on prior liens, insurance or repairs to the Mortgaged Property, all costs of suit, reasonable attorneys' fees and other expenses in connection therewith, together with interest at such rate on any judgment obtained by Mortgagee from and after the date of any Sheriff's sale until actual payment is made by the Sheriff of the full amount due Mortgagee; or

- B. To the extent allowed by law, in the event of the occurrence of an Event of Default, irrespective of whether the right to foreclose this Mortgage has accrued to Mortgagee and in addition to all other remedies of Mortgagee provided by law or this Mortgage, whether payment of the Obligations has then been accelerated or whether foreclosure proceedings have been commenced, subject to the rights of the mortgagee under the Senior Mortgage, Mortgagee may, without notice to or demand upon Mortgagor, take possession of the Mortgaged Property in a manner which is consistent with the laws of the State in which the Mortgaged Property is located. While in possession of the Mortgaged Property, Mortgagee shall have all powers granted to a mortgagee in possession by the statutes of such State, including, without limitation the power to:
- (1) To collect rents (which Mortgagee hereby assigns to Mortgagee for such purpose) and manage, lease, alter and repair and restore the Mortgaged Property or portions thereof, cancel or modify existing leases, obtain insurance and in general have and exercise all powers and rights customarily incident to absolute ownership; and
 - (2) To pay out of any rents so collected for the management and repair charges, taxes, insurance commissions, fees and all other expenses, including a reasonable management fee to Mortgagee or an agent or affiliate of Mortgagee, and, after creating reasonable reserves, apply the balance (if any) on account of the Obligations.
- C. Mortgagee may remain in possession of the Mortgaged Property, in the event of foreclosure, until the foreclosure sale and thereafter during the entire period of redemption, if a deficiency exists. Mortgagee shall incur no liability for, nor shall Mortgagor assert any claim or setoff as a result of, any action taken while Mortgagee is in possession of the Mortgaged Property,

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except only for Mortgagee's own gross negligence. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession as long as there exists an Event of Default; or

- D. Mortgagee may, upon any proper action or proceeding being commenced for the foreclosure of this Mortgage, apply for, and, subject to the rights of the mortgagee under the Senior Mortgage, Mortgagee as a matter of right, without consideration of the value of the Mortgaged Property as security for the amount due Mortgagee, or of the solvency of any person, firm or corporation obligated for the payment of such amount, shall be entitled to, the appointment by any competent court or tribunal, without prior demand or notice to any party, of a receiver of rents and profits and rental value of the Mortgaged Property, with power to take possession of the Mortgaged Property, including possession from Mortgagor if in possession and occupying any portion of the Mortgaged Property, and in the latter case to require Mortgagor, as a condition of remaining in possession and occupation, to pay the reasonable rental value for the use and occupation thereof, with further power to lease and repair the Mortgaged Property and to renovate same to suit new tenants and with such other powers as may be deemed necessary, and such receiver after deducting all proper charges and expenses attending the execution of the said trust as receiver, shall each month pay over to Mortgagee the residue of the said rents and profits and rental value, to be applied by Mortgagee to the payment of the amount remaining secured hereby, or to any deficiency (whether or not any judgment therefor may be entered and irrespective of the market value of the Mortgaged Property) which may exist in the event of foreclosure by sale after applying the proceeds of the sale of the Mortgaged Property to the payment of the amount due, including interest, costs and expenses of such foreclosure and sale, or in the event of strict foreclosure to the payment of any deficiency existing thereunder. Mortgagor hereby consents to such appointment of a receiver. A receiver, while in possession of the Mortgaged Property, shall have the right to make repairs and to make improvements necessary or advisable in its or his opinion to preserve the Mortgaged Property, or to make and keep them rentable to the best advantage, and Mortgagee may advance moneys to a receiver for such purposes. Any moneys so expended or advanced by Mortgagee or by a receiver shall be repaid so far as possible out of the rents collected after payment of other expenses properly chargeable against said rents, and any unpaid balance of moneys so advanced or expended shall be added to and become a part of the debt secured by this Mortgage.
- E. Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not the principal indebtedness or any other sums secured by the Loan Documents and this Mortgage shall be due, and without prejudice to any remedy of

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Mortgagee provided by law or the Loan Documents, including, without limitation, the right of Mortgagee thereafter to bring an action of Mortgage Foreclosure, or any other action, for any Default by Mortgagor existing at the time the earlier action was commenced.

- F. Any real estate sold pursuant to any writ or order of execution issued on a judgment obtained by virtue of the Loan Documents or this Mortgage, or pursuant to any other judicial proceedings under the Mortgage, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect.

28. **Cumulative Rights.** The rights and remedies of Mortgagee as provided in this Mortgage and the Loan Documents, shall be cumulative and concurrent; may be pursued separately, successively or together against Mortgagor or against the Mortgaged Property, or both, at the sole discretion of Mortgagee; and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

29. **No Waiver Implied.** Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of this Mortgage or the Loan Documents shall not be deemed to be a waiver of any of the terms or provisions of the Mortgage or the Loan Documents, and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of them. Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of the Mortgage or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the Mortgage or the Loan Documents without first having obtained the consent of Mortgagor or such other person; and in the latter event Mortgagor and all such other persons shall continue to be liable to make payments according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

30. **Waiver of Jury Trial.** Mortgagor irrevocably waives jury trial and the right thereto in any and all disputes involving Mortgagor or Mortgagor's parent, affiliates or related entities or any officer, director, shareholder, attorney or partner of any of them, whether hereunder or under any other agreements, notes, papers, instruments or documents heretofore or hereafter executed or any other contract whether similar or dissimilar. This shall be deemed a covenant enforceable independently of all other provisions of this Mortgage.

31. **Other Waivers.** Mortgagor irrevocably waives:

31.1 All errors, defects and imperfections in any proceeding instituted by Mortgagee under the Loan Documents or this Mortgage, or both;

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31.2 All benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for payment, and hereby waives the benefit of and will agree that it not apply for or avail itself such laws.

31.3 Unless specifically required herein, all notices of Mortgagor's Default or of Mortgagee's election to exercise, or Mortgagee's actual exercise of any option under the Loan Documents or this Mortgage;

31.4 After sale or sales of the Mortgaged Property any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof; and

31.5 Any right to have the Mortgaged Property marshaled upon any foreclosure hereunder. The right is hereby given by Mortgagor and reserved by Mortgagee to make partial release or releases of security hereunder, agreeable to Mortgagee without notice to, or the consent, approval or agreement of other parties in interest, which partial release or releases shall not impair in any manner the validity of or priority of this Mortgage on the security remaining, nor release the personal liability of Mortgagor for the debt hereby secured.

31.6 Mortgagor hereby expressly waives all benefit or advantage of any such law or laws to the extent that it lawfully may, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

32. Waiver of Statutory Rights; Time of the Essence. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, redemption, stay, extension, or exception 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. Mortgagor, for Mortgagor and all who may claim through or under Mortgagor, waives any and all right to have the collateral for this Mortgage marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage pursuant to rights herein granted, 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 to the extent permitted by the provisions of applicable statutes. Time is of the essence of this Mortgage.

33. Compliance with Illinois Mortgage Foreclosure Law.

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

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33.2 If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee in possession) or a receiver appointed pursuant to the provisions of Paragraph of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of a Default or an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

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

34. Environmental Representations and Covenants.

34.1 For purposes of this paragraph:

- A. **“Hazardous Substances”** means those elements and compounds which are designated as such in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601(14) or 40 C.F.R. § 302, any substance containing petroleum as that term is used in Section 9001 of the Resource Conservative and Recovery Act, 42 U.S.C. § 6991, 40 C.F.R. § 280.1, or any **“Pollutant”** or **“Contaminant”** as defined in Section 104(a)(2) of CERCLA, and any other hazardous substances as that term may be further defined in applicable state or local laws.; and
- B. **“Mold”** means surficial or airborne microbial constituents, regardless of genus, species, or whether commonly referred to as mildew, mold, mold spores, fungi, bacteria or similar description.
- C. **“Mold Condition”** means the growth or existence of Mold, in such condition, location or quantity as would, individually, or in the aggregate, in the reasonable judgment of Lender have any material adverse effect on (i) human health or the environment, (ii) the value or condition of the Property, or (iii) the business or financial condition of Borrower or Guarantor.
- D. **“Wastes”** means any hazardous waste, residual waste, solid waste or other waste as those terms are defined in applicable federal, state or local laws.

34.2 Mortgagor represents and warrants that to the best of its knowledge, no Hazardous Substances, no Mold Condition and no Wastes are present on the Mortgaged Property including, without limitation, asbestos or urea-formaldehyde, and there has been no use of the Mortgaged Property that may, under any federal, state, or local environmental statute, ordinance or regulation, require, at any time, any closure or cessation of the use of the Mortgaged Property and/or impose,

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at any time, upon Mortgagor or its successors any response costs or other monetary obligations. Mortgagor further represents and warrants that to the best of its knowledge, it has not been identified in any litigation, administrative proceeding or investigation as a responsible party or potentially responsible party for any liability for response costs, natural resource damages or other damages or liability for prior disposal or releases of Hazardous Substances, Wastes or other environmental pollutants or contaminants; and that no lien or superlien has been recorded, filed or otherwise asserted against any real or personal property of Mortgagor for any cleanup costs or other response costs incurred in connection with any environmental contamination that is attributable, in whole or in part, to Mortgagor.

34.3 Mortgagor covenants to and agrees with Mortgagee that Mortgagor will not, nor will it permit any tenant or other occupant of the Mortgaged Property to:

- A. Store, use or generate any Hazardous Substance in or on the Mortgaged Property, except as may be permitted by applicable law;
- B. Treat or dispose of any Wastes in or on the Mortgaged Property, nor will Mortgagor, for more than the maximum period of time allowed by the applicable federal, state or local law without being required to obtain a permit or approval therefor, store any Wastes in or on the Mortgaged Property; or
- C. Permit a Mold Condition to persist on the Mortgaged Property.

34.4 Mortgagee agrees not to unreasonably withhold its approval to the actions described in Paragraphs 34.3A and 34.3B, but reserves its right, as a condition thereto, to require written confirmation in the form acceptable to Mortgagee and its counsel that:

- A. Mortgagor has obtained all necessary permits and approvals to perform such activities;
- B. Mortgagor will perform such activities in compliance with all applicable laws in a safe and effective manner that will not endanger persons or property and will not diminish the value of any collateral or other security provided by Mortgagor to Mortgagee to secure any and all advances hereunder; and
- C. If Mortgagee so requires, Mortgagor will obtain adequate insurance or posted adequate surety to insure that Mortgagor will have sufficient resources to contain, control, abate and remedy any and all contamination of collateral and the environment that might foreseeably result, in the case of any Hazardous Substances, from any release of any such Substances or materials containing any such Substances that would be generated, stored or used by Mortgagor in or about the Mortgaged Property; or, in the case of any Wastes,

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from any release of contamination from any such Wastes that would be treated, disposed of or stored by Mortgagor in or on the Mortgaged Property.

34.5 Mortgagor shall indemnify and hold Mortgagee harmless from any and all liability, loss or damage suffered or incurred as a result of damage to the Mortgaged Premises or a claim, demand, cost or judgment in favor of a third party (which obligations shall survive payment of the Loan Documents and satisfaction of this Mortgage), including without limitation a governmental authority, arising from (i) the deposit, storage, disposal, burial, dumping, injecting, spilling, leaking or other placement or release in or on the Mortgaged Property of Hazardous Substances or Wastes, (ii) the existence of any Mold Condition in, under or affecting any portion of the Mortgaged Property, regardless of whether caused by or under the control of Mortgagor, including but not limited to:

- A. The deposit, storage, disposal, burial, dumping, injecting, spilling, leaking or other placement or release in or on the Mortgaged Property of Hazardous Substances or Wastes proven to have occurred subsequent to the date hereof, including but not limited to:
- (1) Liability for costs of removal or remedial action incurred by the United States Government or the State in which the Mortgaged Property is located, or response costs incurred by any other person, or damages from injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9607;
 - (2) Liability for cost and expenses of abatement, correction or cleanup, fines, damages, response costs or penalties which arise from the provisions of any other statute, state or federal; and
 - (3) Liability for personal injury or property damage caused by any such deposit, storage, disposal, burial, dumping, injecting, spilling, leaking, placement or release and arising under any statutory or common-law tort theory, including damages assessed for the maintenance of the public or private nuisance, response costs or for the carrying on of an abnormally dangerous activity.
- B. The existence now, or hereafter, of any Mold Condition on the Mortgaged Property.

35. Further Assurances. Mortgagor will execute and deliver such further instruments and perform such further acts as may be requested by Mortgagee from time to time to confirm the provisions of this Mortgage or the Loan Documents, to carry out more effectively the purposes of this Mortgage or the Loan Documents, or to confirm the priority of the lien created by this Mortgage

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on any property, rights or interest encumbered or intended to be encumbered by the lien of this Mortgage or the Loan Documents.

36. **Administrative Charge.** If any of the payments of principal and interest or other sums due under the Loan Documents or this Mortgage shall become overdue for a period of ten (10) days, Mortgagor shall pay to Mortgagee an “*administrative charge*” equal to five percent (5%) of the outstanding amount of principal or interest or other charges overdue, in order to defray part of the cost of collection and handling of such charge, provided, however, that no such fee shall be payable in respect of the final balloon payment due under the Note if such payment shall be made within thirty (30) days following its due date. Mortgagor agrees that the additional administrative costs which will be incurred by Mortgagee as result of and in connection with any late payment are extremely difficult and impractical to ascertain, and that the amount of five percent (5%) of the amount overdue is a reasonable estimate of such additional administrative costs, does not constitute interest, and is not a penalty.

37. **Indemnification.** Mortgagor hereby irrevocably agrees to indemnify and save harmless Mortgagee from and against any and all loss or damage of whatsoever kind and from any suits, claims or demands, including, without limitation, Mortgagee's reasonable legal fees and expenses, on account of any matter or thing arising out of this Mortgage or in connection herewith excepting obligations which arise solely as a result of the Mortgagee's gross negligence or willful misconduct.

38. **Attorneys' Fees.** If Mortgagee becomes a party to any suit or proceeding affecting the Mortgaged Property or title thereto, the lien created by this Mortgage or Mortgagee's interest therein, or if Mortgagee engages counsel to advise Mortgagee concerning any matter relating to this Mortgage or the Loan Documents or to collect any of the Obligations or to enforce performance of the agreements, conditions, covenants, provisions or stipulations of this Mortgage or the Loan Documents, Mortgagee's costs, expenses, reasonable attorneys' fees through appeal, including, but not limited to, all costs relating to support staff, environmental testing, and expert witnesses, whether or not suit is instituted, shall be paid to Mortgagee by Mortgagor, on demand, with interest at the then effective rate set forth in the Note, and until paid they shall be deemed to be part of the Obligations.

39. **Communications.** All notices, disclosures, or other communications which are required or permitted hereunder shall be in writing and shall be delivered in person, or by facsimile or sent by U.S. registered or certified mail, postage prepaid, to the parties at the addresses set forth above. Notice may be sent by e-mail to the e-mail address of a party if set forth herein. Notice delivered personally shall be deemed received upon delivery. Notice delivered by facsimile shall be deemed received upon delivery, provided that the original copy of such notice, properly executed by the sender (if required) shall be sent by U.S. Mail, postage prepaid, and received by the addressee within three (3) business days after delivery of the facsimile copy. Notice delivered by registered or certified mail shall be deemed received on the third (3rd) business day after posting. Notice by e-mail shall be deemed received on the day upon which such notice is sent. Any party may change the address to which notices for such party may be sent by written notice to the other party.

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40. Contests. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Mortgaged Property or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Mortgaged Property ("**Contested Liens**"), and no Contested Liens shall constitute a Default or an Event of Default hereunder, if, but only if:

40.1 Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;

40.2 Mortgagor shall either pay under protest or deposit with Mortgagee the full amount ("**Lien Amount**") of such Contested Lien, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;

40.3 Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Mortgaged Property, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee, in so doing, including fees and expenses of Mortgagee's attorneys (all of which shall constitute a part of the Obligations, bearing interest at the Default Interest Rate until paid, and payable upon demand);

40.4 Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be a part of the Obligations, bearing interest at the Default Interest Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply monies deposited as provided in subsection 40.2 above and may demand payment upon any bond or title indemnity furnished as aforesaid.

41. Statement of Indebtedness. Mortgagor, within seven (7) days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the Obligations secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

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42. **Subordination of Property Manager's Lien.** Any property management agreement for the Mortgaged Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Mortgaged Property shall be subject and subordinate to the lien of this Mortgage and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of a Default or an Event of Default hereunder which shall not be cured within the applicable period of grace, if any. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the Recorder of Deeds of the county where the Mortgaged Property is located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage, and shall deliver a fully executed copy thereof to Mortgagee.

43. **Effect of Extensions of Time and Other Changes.** If the payment of the Obligations or any part thereof shall be extended or varied, if any part of any security for the payment of the Obligations shall be released, if the rate of interest charged under the Note is changed or if the time for payment thereof shall be extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property or having an interest in Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation, release or change.

44. **Communications.** All communications required under this Mortgage or the Loan Documents shall be in writing, and shall be sent by registered or certified mail, postage prepaid, addressed to the Mortgagor or Mortgagee at the addresses as either party may designate from time to time by notice to the other in the manner set forth herein.

45. **Covenant Running with the Real Estate.** Any act or agreement to be done or performed by Mortgagor shall be construed as a covenant running with the Real Estate and shall be binding upon Mortgagor and its successors and assigns as if they had personally made such agreement.

46. **Amendment.** This Mortgage cannot be changed or amended except by agreement in writing signed by the party against whom enforcement of the change is sought.

47. **Applicable Law.** This Mortgage shall be governed by and construed according to the laws, without regard to its conflict of law rules, of the State in which the Mortgaged Property is located, without regard to its laws regarding conflict of law.

48. **Construction and Interpretation.** Whenever used in this Mortgage, unless the context clearly indicates a contrary intent:

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48.1 The word "**Mortgagor**" shall mean the entity which executes this Mortgage and any subsequent owner of the Mortgaged Property and his respective heirs, executors, administrators, successors and assigns;

48.2 The word "**Mortgagee**" shall mean the person or entity specifically named herein as "**Mortgagee**" or any subsequent holder of this Mortgage;

48.3 The word "**entity**" shall mean individual, corporation, partnership or unincorporated association;

48.4 The use of any gender shall include all genders;

48.5 The singular number shall include the plural and the plural the singular as the context may require.

48.6 Mortgagor expressly represents and warrants to, and agrees with, Mortgagee that:

- A. Prior to executing this Mortgage, Mortgagor has fully informed itself of the terms, contents, conditions and effects of this Mortgage and the Loan Documents.
- B. Mortgagor has:
 - (1) Relied solely and completely upon its own judgment in executing this Mortgage and the Loan Documents;
 - (2) Had the opportunity to seek and has obtained the advice of counsel before executing this Mortgage and the Loan Documents;
 - (3) Acted voluntarily and of its own free will in executing this Mortgage and the Loan Documents, and is not acting under duress, whether economic or physical, in executing this Mortgage and the Loan Documents.
- C. This Mortgage and the Loan Documents are the result of arm's length negotiations conducted by and among the parties and their respective counsel. Mortgagor and Mortgagor's legal counsel have reviewed this Mortgage and the Loan Documents and have had an opportunity to revise (or request revision of) this Mortgage and the Loan Documents and, therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Mortgage and the Loan Documents.

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49. Captions. The captions preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction or effect.

50. Taxpayer Federal I.D. Number. In accordance with the requirements of Section 6050J of the Internal Revenue Code, as amended (the "**Code**"), Mortgagor's Tax I.D. Numbers for federal tax reporting purposes are _____ and _____, and Mortgagor agrees to cooperate with Mortgagee in supplying such information and executing such documentation as Mortgagee reasonably requires to comply with the provisions of Section 6050J of the Code.

51. Non-Merger. Mortgagor intends and agrees that this Mortgage shall NOT merge into any judgment entered or recovered by Mortgagee against Mortgagor under the Loan Documents or under or pursuant to any other note, document or instrument. Notwithstanding the recovery or entry of any such judgment against Mortgagor, all of the terms, provisions, covenants, undertakings and agreement of Mortgagor whether hereunder or under the Loan Documents or any other note, document or undertaking of Mortgagor, whether relating thereto or not, shall remain in full force and effect and shall be enforceable strictly in accordance with their terms as fully as though no such judgment had been entered or recovered against Mortgagor.

52. Inconsistent Terms. In the event of any inconsistency between this Mortgage and the Loan Documents, the terms of the Loan Documents shall govern.

53. Counterparts. This Mortgage may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

54. Incorporation of Recitals; Terms. The Recitals to this Mortgage are incorporated herein. Capitalized terms not otherwise defined herein shall have the meaning accorded to them in the Loan Documents.

55. Other Default. Any Default or Event of Default by Mortgagor under any of the Loan Documents shall be considered a Default under this Mortgage, and any Default under this Mortgage shall be considered a Default or Event of Default under the Loan Documents, and in any such event, Mortgagee shall be entitled to exercise all or some or any of its remedies under the Loan Documents, or as may otherwise be available to Mortgagee at law or in equity, in such order as Assignee may elect.

56. Subordinate Mortgage. Contrary provisions of this Assignment notwithstanding, this Assignment and all of the rights of Lender hereunder are subject and subordinate to the rights of the lender under: Mortgage to 1647 Addison LLC in the original principal amount of Three Million Seven Hundred Thousand and 00/100 Dollars (\$3,700,000.00), dated March 17, 2004 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on _____, 2004 as document number _____ and Mortgage to Addison/Paulina Development LLC in the original principal amount of Two Million Six Hundred Seventy Thousand and 00/100

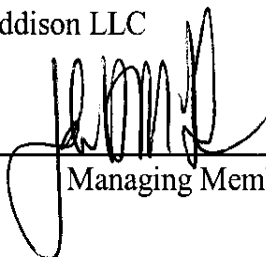
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Dollars (\$2,670,000.00), dated March 17, 2004 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on _____, 2004 as document number _____ (collectively referred to as the "*Senior Mortgage*") and all other documentation related to the loan evidenced thereby.

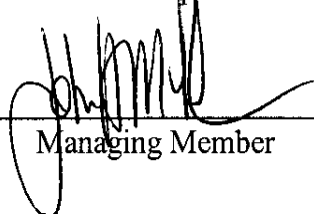
This Agreement has been duly executed as of the day and year specified at the beginning hereof.

BORROWER:

1647 Addison LLC

By:  _____
Managing Member

Addison/Paulina Development LLC

By:  _____
Managing Member

Property of Cook County Clerk's Office

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ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

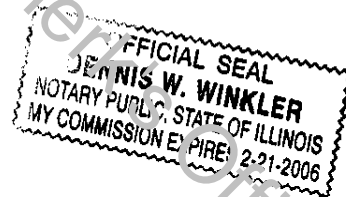
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that John McLinden of 1647 Addison LLC, an Illinois limited liability company, known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, after being duly sworn, acknowledged that:

1. The execution and implementation of this Agreement was duly authorized by the Managing Member of said Company.
2. He signed and delivered this Agreement as his own free and voluntary act for the uses and purposes therein set forth and for the uses and purposes of said Company.

Given under my hand and Notarial Seal this 17 day of March, 2004.

Dennis W. Winkler
 NOTARY PUBLIC

My Commission Expires: 2-21, 2006



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ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
 COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____ of Addison/Paulina LLC, an Illinois limited liability company, known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, after being duly sworn, acknowledged that:

1. The execution and implementation of this Agreement was duly authorized by the Managing Member of said Company.
2. He signed and delivered this Agreement as his own free and voluntary act for the uses and purposes therein set forth and for the uses and purposes of said Company.

Given under my hand and Notarial Seal this 17 day of March, 2004.



 NOTARY PUBLIC

My Commission Expires: 2-21-, 2006



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EXHIBIT A

Legal Description

Parcel 1

Lot 10 and the West 22 feet of Lot 9 in Block 2 in L. Turner's Resubdivision of Blocks 1 to 6, inclusive, in L. Turner's Subdivision of the Northeast 1/4 of the East 1/2 of the South East 1/4 of Section 19, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois

Parcel 2

Lots 6, 7 and 8 in the East 3 feet of Lot 9 in Block 2 in L. Turner's Resubdivision of Blocks 1 to 6, inclusive, in L. Turner's Subdivision of the Northeast 1/4 of the East 1/2 of the South East 1/4 of Section 19, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Street Address: 1647-59 West Addison, Chicago, Illinois

Real Estate Tax Index Nos.: 14-19-407-001.0000

14-19-407-002.0000