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Recording Requested By and  
When Recorded, Mail To:

Fremont Investment & Loan  
303 W. Madison Street  
Suite 900  
Chicago, Illinois 60606  
Attn: Todd Finnely  
Loan No.: 950114588

Doc#: 0423310187  
Eugene "Gene" Moore Fee: \$66.50  
Cook County Recorder of Deeds  
Date: 08/20/2004 03:38 PM Pg: 1 of 22

03-29525  
475

## MORTGAGE AND FIXTURE FILING

### THE PROMISSORY NOTE SECURED HEREBY PROVIDES FOR A VARIABLE INTEREST RATE

**THIS MORTGAGE AND FIXTURE FILING** (this "**Security Instrument**"), dated as of April 14, 2004, is made by **9-25 W. HUBBARD, L.L.C.**, an Illinois limited liability company ("**Borrower**"), whose mailing address is 1010 Hillside Road, Northbrook, Illinois 60062, Attn: Khaldoun Fakhoury, to **FREMONT INVESTMENT & LOAN**, a California industrial bank ("**Lender**"), whose mailing address is 175 N. Riverview Drive, Anaheim, California 92808, Attn: Commercial Real Estate Asset Management, Loan No. 950114588.

This Security Instrument is given, inter alia, for the purpose of securing a Loan (as hereinafter defined) from Lender, as lender, to Borrower, as borrower, the proceeds of which are to be used to finance the real property having a street address of 9-25 West Hubbard Street, located in the City of Chicago, County of Cook, State of Illinois, more particularly described in Exhibit A attached hereto and by this reference incorporated herein (the "**Property**"). (All initially-capitalized terms used herein without definition shall have the meanings given such terms in the Loan Agreement (as hereinafter defined).)

The information required in connection with the Fixture Filing is as follows:

- Name and Address of Lender: Fremont Investment & Loan  
175 N. Riverview Drive  
Anaheim, California 92808  
Attention: Commercial Real Estate Asset  
Management  
Loan No. 950114588
- Name and Address of Debtor: 9-25 W. Hubbard, L.L.C.  
1010 Hillside Road  
Northbrook, Illinois 60062  
Attention: Khaldoun Fakhoury
- Debtor's Tax Payer Identification Number: 20-0852081
- Debtor's Organizational Identification Number: 01121367

**FOR GOOD AND VALUABLE CONSIDERATION**, including the indebtedness herein recited and the mortgage herein created, the receipt of which is hereby acknowledged, Borrower hereby irrevocably grants, mortgages, transfers, conveys, warrants and assigns to Lender, and its successors and assigns forever, under and subject to the terms and conditions hereinafter set forth, and in doing so hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the State of Illinois, all of Borrower's right, title and interest now or hereafter arising in and to the Property;

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## TOGETHER WITH:

- (a) All buildings and improvements now or hereafter erected on the Property, including, without limitation, fixtures, tenements, attachments, appliances, equipment, building systems, machinery, and other articles now or hereafter attached to such buildings and improvements (collectively, the "**Improvements**"), all of which shall be deemed to be part of the Property; and
- (b) All rents, additional rent, termination payments, escalations, issues, profits, revenue, royalties, income, proceeds, security deposits, letters of credit, letter of credit proceeds, escrow deposits, insurance proceeds, earnings and other benefits and payments, including, without limitation, prepaid rents (all of the foregoing collectively, the "**Rents**"), derived from any lease, sublease, license, franchise, occupancy or other agreement now existing or hereafter created affecting all or any portion of the Project (as hereinafter defined) or the use or occupancy thereof (collectively, the "**Leases**"), including, without limitation, all guaranties, modifications, amendments, extensions and renewals thereof and all rights and privileges incident thereto; and
- (c) All estate, right, title and interest of Borrower in, to and under all of the Leases; and
- (d) All easements, tenements, hereditaments, appurtenances, rights-of-way and rights now owned or hereafter acquired by Borrower and used or useful in connection with the Project or as a means of access thereto, including, without limitation, all rights to the use of common drive entries, all oil, gas and other hydrocarbons, all other minerals and all water and water rights and shares of stock evidencing the same; and
- (e) All right, title and interest of Borrower now owned or hereafter acquired in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Project and any and all sidewalks, vaults, alleys and strips and gores of land adjacent to or used in connection with the Project; and
- (f) All proceeds from and rights to (including, without limitation, payments, judgments, awards, settlements, contract rights, profits, general intangibles, rebates and benefits and rights at law and in equity) any insurance policies now or hereafter in effect with respect to the Project, including, without limitation, casualty insurance, rental loss or business interruption insurance and flood and earthquake insurance, whether or not such policies contain a Mortgage Clause/Lender's loss payable endorsement in favor of Lender and whether or not such policies are required to be maintained by Borrower pursuant to the Loan Documents, and all Insurance/Condemnation Proceeds; and
- (g) All estate, interest, right, title, other claim or demand, both at law and in equity which Borrower now has or may hereafter acquire in any and all awards made for any Condemnation Event (as hereinafter defined) of the Project or any portion thereof or interest therein, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages; and
- (h) All refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, subsidy payments, credits, waivers and payments, whether in cash or in kind, due from or payable by any federal, state, municipal or other governmental or quasi-governmental court, agency, authority or district (each, a "**Governmental Agency**") relating to any or all of the Project or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development, ownership, occupancy, use or operation of the Project; and
- (i) All refunds, rebates, reimbursements, credits and payments of any kind due from or payable by any Governmental Agency for any taxes, special taxes, assessments, or similar governmental or quasi-governmental charges or levies imposed upon Borrower with respect to the Project or upon any or all of the Project itself or arising out of the satisfaction of any conditions imposed upon or the obtaining of any approvals for the development, ownership, occupancy, use or operation of the Project; and

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(j) All rights, title, interests, estates or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Project or any portion thereof, including, without limitation, any greater estate in the Project or any portion thereof.

The entire estate, property and interest hereby mortgaged, conveyed and assigned to Lender is collectively referred to herein as the "Project."

**FOR THE PURPOSE OF SECURING** (collectively, the "**Secured Obligations**):

**A.** Payment of indebtedness in the total principal amount of Eight Million Two Hundred Fifty Thousand Dollars (\$8,250,000) (the "**Loan**") or so much thereof as may have been advanced from time to time by Lender, with interest thereon, evidenced by that certain Secured Promissory Note of even date herewith, and all supplements, amendments, modifications, extensions, renewals and replacements thereof (collectively, the "**Note**"), executed by Borrower pursuant to that certain Loan and Security Agreement of even date herewith between Borrower and Lender (collectively with all supplements, amendments and modifications thereto and all extensions and renewals thereof, the "**Loan Agreement**");

**B.** Payment of all sums advanced by Lender to protect the Project and all other amounts owing by Borrower to Lender under the Loan Documents (including, without limitation, attorneys' fees and costs), with interest thereon at the rate set forth in the Note;

**C.** Performance of every obligation, covenant and agreement of Borrower contained herein or in the Loan Agreement, the Note or the other Loan Documents; and

**D.** Performance of every obligation, covenant and agreement of Borrower contained in any document, instrument or agreement now or hereafter executed by Borrower which recites that the obligations thereunder are secured by this Security Instrument.

Notwithstanding anything to the contrary contained herein or in the other Loan Documents, this Security Instrument does not secure any obligations or liabilities arising out of the Environmental Indemnity or any Post-Foreclosure Transfer Environmental Losses (as defined therein). It is the express intention of Borrower and Lender that such obligations and liabilities be unsecured.

All references to the Uniform Commercial Code shall refer to such code as in effect in the State of Illinois. This Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County in which the Property is located under the Illinois Uniform Commercial Code with respect to any Property which now or hereafter may become fixtures.

**DEFINITIONS:**

When used herein, the following initially-capitalized terms shall have the following meanings:

"**Attorneys' Fees**," "**Attorneys' Fees and Costs**," "**attorneys' fees**" and "**attorneys' fees and costs**" are defined in the Loan Agreement.

"**Casualty Event**" means any damage or destruction to all or any portion of the Project or the Property, whether or not covered by insurance.

"**Casualty Threshold**" means, with respect to any Casualty Event, the lesser of (a) Two Hundred Fifty Thousand Dollars (\$250,000), or (b) ten percent (10%) of the outstanding principal balance of the Loan at the time of such Casualty Event.

"**Condemnation Event**" means any proceeding or action commenced for the taking of the Property or the Project, or any part thereof or interest therein, for public or quasi-public use under the

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power of eminent domain, by reason of any public improvement or condemnation proceeding or in any other manner.

**"Control"** means (with correlative meanings as to the terms "controlling" and "under common control with") the ability to affect the management and policies of the Person in question, whether by voting control, contract or otherwise, including, without limitation, the power to elect or appoint a majority of the directors of a corporation or the trustees of a trust.

**"Event of Default"** means any of the events specified in Section 2.1.

**"Environmental Provisions"** is defined in Section 2.9.

**"Impositions"** means all real estate and personal property taxes and other taxes and assessments, water, sewer, electrical and other utility charges, and all other governmental charges relating to all or any portion of the Project, including, without limitation, any interest, costs or penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Project, all of any kind and nature whatsoever that at any time may be assessed, imposed or become a Lien upon the Project or any portion thereof, whether general or special, ordinary, extraordinary or supplemental, foreseen or unforeseen; any and all other charges, expenses, payments or assessments of any nature, if any, which are or may become a Lien upon the Project or any portion thereof (excluding the Loan Documents); and any license fee, tax or assessment (other than Lender's income taxes) imposed on Lender and measured by or based in whole or in part upon the amount of the outstanding Secured Obligations.

**"Impounds"** is defined in Section 1.1.

**"Major Casualty"** means any Casualty Event involving damage to the Project which is equal to or greater than the Casualty Threshold.

**"Minor Casualty"** means any Casualty Event involving damage to the Project which is less than the Casualty Threshold.

**"Section 736"** is defined in Section 2.9.

**"Transfer"** means (a) the direct or indirect, voluntary or involuntary, sale, transfer, conveyance, assignment, encumbrance, hypothecation or other alienation of (i) all or any portion of the Project (excluding the encumbrance of the Project by nondelinquent real estate tax liens related to the Project, normal and customary utility easements and liens with respect to the operation of the Project entered into in accordance with the Loan Documents, and mechanics' and materialmen's liens and encumbrances which are discharged or contested in good faith in accordance with Section 1.12), (ii) any direct or indirect ownership interest (other than stock, limited partnership interests or non-managing member interests in any Member Managed LLC) in any member of the Control Group, (iii) stock in any member of the Control Group, limited partnership interests in any member of the Control Group, or non-managing member interests in any Member Managed LLC which is a member of the Control Group, in each case which results (or could result) in a change in control of any member of the Control Group, or (iv) whether or not Lender consents thereto, any direct or indirect equitable, legal or beneficial interest in Borrower to any Person which is the subject of any of the Terrorism Laws, or (b) for any member of the Control Group which is a Managed LLC, a change in the manager of such Control Group member, or for any member of the Control Group which is a Member Managed LLC, a change in any of the managing members of such Control Group member. "Transfer" shall not include (x) the leasing of individual office, commercial, retail or residential space, as applicable, in the Project in the ordinary course of Borrower's business in bona fide arms' length transactions, or (y) transfers of title or interests, including membership interest in a limited liability company, under will or testament or applicable law of descent to a Person which is not the subject of any of the Terrorism Laws.

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TO PROTECT THE SECURITY OF THIS SECURITY INSTRUMENT, BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS:

## ARTICLE 1

### BORROWER'S COVENANTS

#### 1.1 Title.

Borrower represents, warrants and covenants that (a) it is the lawful owner of good and marketable fee title to the Project, subject only to the title exceptions set forth in the Title Policy, (b) it will maintain and preserve the lien of this Security Instrument until all of the Secured Obligations have been paid and satisfied in full, (c) it has full power and authority to grant the Project as provided in this Security Instrument, and (d) it will forever warrant and defend its grant made herein against any and all claims and demands whatsoever, except as specifically provided in this Security Instrument.

#### 1.2 Payment of Secured Obligations.

Borrower shall pay when due the principal of and the interest on the Loan, all charges, fees and other sums as provided in the Loan Documents, the principal of and interest on any future advances secured by this Security Instrument, and the principal of and interest on any other indebtedness secured by this Security Instrument.

#### 1.3 Maintenance, Repair and Alterations.

Borrower (a) shall keep the Project in good condition and repair, reasonable wear and tear excepted, (b) shall pay or cause to be paid when due all utility charges with respect to all or any portion of the Project and all other assessments or charges of a similar nature, (c) except as expressly provided herein or, with respect to the Repairs, in the Loan Agreement, shall not remove, demolish or substantially alter any of the Improvements without Lender's prior written consent, which shall not be unreasonably withheld, (d) shall complete promptly and in a good and workmanlike manner any Improvement which may be now or hereafter constructed on the Project and all repairs or improvements which Lender requires Borrower to complete in order to keep the Project in good condition and repair, reasonable wear and tear excepted, (e) shall promptly restore in like manner any portion of the Improvements which may be damaged or destroyed from any cause whatsoever, reasonable wear and tear excepted, (f) subject to the provisions of Section 1.12, shall pay when due all claims for labor performed and materials furnished for any improvements, repairs or restoration to the Project or any portion thereof, (g) shall comply with all Laws now or hereafter affecting the Project or any part thereof, including, without limitation, all Laws requiring any alterations or improvements, (h) shall not commit or permit any waste or deterioration of the Project, and (i) shall not change the current use of the Project without Lender's prior written consent, which may be withheld in Lender's good faith sole discretion. Notwithstanding the foregoing, Lender's prior written consent shall not be required for nonstructural improvements or alterations which (x) are required by any Law or the terms of any Lease entered into by Borrower in accordance with the terms of the Loan Documents, or (y) do not exceed One Hundred Thousand Dollars (\$100,000.00) in cost in the aggregate.

#### 1.4 Impositions; Impounds.

A. Borrower shall pay all Impositions prior to delinquency. At Lender's written request, Borrower shall provide Lender with reasonable evidence of the payment of such Impositions. Without limiting Borrower's obligation to pay all Impositions prior to delinquency, Borrower shall have the right to contest any Imposition assessed against the Project as provided in Section 1.12.

B. At Lender's written request at any time after the occurrence of an Event of Default under any of the Loan Documents, Borrower shall pay to Lender, each time a payment is due under the Note, a

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cash reserve in the amount reasonably estimated by Lender to be equal to the total of the amount next due for all Impositions and insurance premiums for the insurance required by the Loan Agreement, divided by, in each instance, the number of payments required under the Note before such Impositions and insurance premiums will become due, less two (funds deposited for this purpose are referred to herein as "Impounds"). In such event Borrower agrees to cause all bills, statements or other documents relating to Impositions or insurance to be sent directly to Lender. Upon receipt of such bills, statements or other documents, and providing that Borrower has deposited sufficient Impounds with Lender pursuant to this Section 1.4(B), Lender shall timely pay such amount as may be due thereunder out of the Impounds so deposited with Lender. If at any time and for any reason the Impounds deposited with Lender are insufficient to pay such amounts, Lender may notify Borrower in writing, and Borrower shall, within ten (10) days after such written notice, deposit an amount equal to such deficiency with Lender. If at the end of any calendar year there is an excess amount held by Lender, Lender, at its option, may elect to apply such excess against the subsequent payments to be made by Borrower under this Section 1.4(B) or to any other payment required to be made by Borrower under the Loan Documents or to refund such amounts to Borrower. Borrower's obligations under this Section 1.4(B) shall be in addition to all other payments required to be made by Borrower under the Loan Documents. The Impounds shall be held in an account with Lender bearing interest at the rate customarily paid by Lender from time to time on similar impound accounts, but not less than the rate required by law, and all interest earned thereon will be added to the Impounds annually on December 31st, and Lender may commingle the Impounds with its own funds. Borrower hereby grants Lender a security interest in the account in which the Impounds are deposited to secure the payment and performance of the Secured Obligations.

C. From and after the occurrence of an Event of Default under any of the Loan Documents (other than the Event of Default which caused Lender to require Impounds as provided in this Section 1.4), Lender may apply the balance of the Impounds to any amounts owing to Lender under the Loan Documents in such order as Lender may determine in its sole discretion, notwithstanding that such amounts may not yet be due according to the terms thereof. Should Borrower fail to deposit with Lender (exclusive of any amounts which have been applied by Lender to any of the Secured Obligations) sums sufficient to fully pay such Impositions and insurance premiums at least ten (10) days before delinquency thereof, Lender may, at Lender's election, but without any obligation to do so, advance any amounts required to make up the deficiency, which advances, if any, shall (i) bear interest at the Default Interest Rate, (ii) be subject to loan fees as provided in Section 2.4 of the Note, (iii) be secured hereby, and (iv) be payable within ten (10) days after written demand by Lender. Lender shall not be a trustee, special depository or any other fiduciary acting for the benefit of Borrower with respect to the Impounds and Lender shall have no obligations with respect to the Impounds, any Impositions or any insurance coverage except as expressly provided in this Section 1.4.

## 1.5 Insurance.

Borrower shall at all times maintain and keep in force or caused to be maintained and kept in force, at no expense to Lender, policies of insurance in accordance with the terms of the Loan Agreement.

## 1.6 Casualty Events; Condemnation Events.

A. Borrower shall promptly notify Lender of any Casualty Event, any actual Condemnation Event and/or any Condemnation Event which has been threatened in writing. Borrower hereby assigns to Lender all Insurance/Condemnation Proceeds. Except to the extent expressly provided in Section 1.6(B) with respect to Insurance/Condemnation Proceeds from a Minor Casualty, Lender is entitled to collect and receive all Insurance/Condemnation Proceeds, and all Insurance/Condemnation Proceeds shall be paid to Lender by the payor thereof or, if the same are nonetheless paid to Borrower, by Borrower immediately upon Borrower's receipt thereof, and Borrower hereby authorizes and directs any applicable insurance company, Governmental Agency and/or other payor to make all payments of Insurance/Condemnation Proceeds directly to Lender. Except to the extent expressly provided in Section 1.6(B) with respect to a Minor Casualty, Lender may, at its option without regard to the adequacy of its security, commence, appear in and prosecute, in its own name or Borrower's name, any action or

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proceeding, or make any compromises or settlements, in connection with any Casualty Event or Condemnation Event; provided that, in such event, so long as no Event of Default has occurred under the Loan Documents and no uncured Potential Default exists under the Loan Documents, Borrower shall be entitled to reasonably participate in such action, proceeding, compromise or settlement. In no event shall Lender have any liability with respect to any such action, proceeding, compromise or settlement, or any failure to reach any terms thereof, and Lender shall be under no obligation to question the amount of any Insurance/Condemnation Proceeds payable with respect to any Casualty Event or Condemnation Event. Borrower shall execute and deliver to Lender, within ten (10) days after Lender's written request, such further assignments of any Insurance/Condemnation Proceeds as Lender may reasonably require.

**B.** Without limiting Lender's security interest in all Insurance/Condemnation Proceeds relating to a Minor Casualty, so long as no Event of Default has occurred under the Loan Documents and no uncured Potential Default exists under the Loan Documents, Borrower shall be authorized to collect and receive, commence and prosecute any action or proceeding with respect to, and make any compromises or settlements regarding, all Insurance/Condemnation Proceeds relating to a Minor Casualty; provided that all such Insurance/Condemnation Proceeds shall be promptly used by Borrower to repair and restore all damage to the Project in connection therewith, all of which repairs and restoration shall be performed in accordance with the terms of the Loan Documents. Borrower shall provide Lender with prompt written notice upon completion of such repairs and restoration. Lender may inspect, and/or cause its third-party consultant to inspect, such repairs and restoration at any time during the performance thereof and/or upon the completion thereof, and in connection with each such inspection Borrower shall pay (i) the reasonable costs and expenses of such third-party consultant, and (ii) an inspection fee to Lender of Two Hundred Dollars (\$200) if Lender has required a third-party consultant's inspection, or Five Hundred Dollars (\$500) if Lender has not required a third-party consultant's inspection.

**C.** Nothing contained in this Section 1.6 or in Section 1.7 shall excuse, or be deemed or construed to excuse, Borrower from repairing or maintaining the Project as required by the Loan Documents, including, without limitation, in Section 1.3, or restoring all damage or destruction to the Project, regardless of whether or not there are Insurance/Condemnation Proceeds available to Borrower or whether any such Insurance/Condemnation Proceeds are sufficient in amount. The application or release by Lender of any Insurance/Condemnation Proceeds shall not cure or waive any default, Event of Default, or Potential Default, under the Loan Documents, or any notice of default under this Security Instrument, or invalidate any act done pursuant to such notice.

## **1.7 Insurance/Condemnation Proceeds.**

**A.** Lender shall apply all Insurance/Condemnation Proceeds received by Lender and remaining after the deduction of all reasonable expenses of collection and settlement thereof incurred by Lender, including, without limitation, reasonable attorneys' and adjustors' fees and costs, to the restoration of the Project after a Casualty Event and, if Lender reasonably determines that restoration of the Project is necessary and possible after a Condemnation Event, to the restoration of the Project to the maximum extent possible after a Condemnation Event; provided that and so long as all of the following conditions are, and continue to be, satisfied in each such case: (i) no Event of Default shall have occurred under any of the Loan Documents and no uncured Potential Default shall exist under any of the Loan Documents; (ii) Lender in its reasonable judgment, and all applicable Governmental Agencies, shall have approved the final plans and specifications for the restoration of the Project; (iii) Lender shall have approved in its reasonable judgment a construction schedule for such restoration, which schedule shall reasonably show the completion of such restoration no later than the date which is thirty (30) days prior to the then effective maturity date of the Note, and Lender shall have reasonably determined that at least three (3) years shall remain in the term of each Major Lease following such completion; (iv) Lender shall have approved in its reasonable judgment a budget of all costs of restoration of the Project, all construction contracts and subcontracts for such restoration and such other documents relating to such restoration as Lender shall reasonably require; (v) Borrower shall have delivered to Lender completion and/or performance bonds and Builder's All Risk insurance reasonably acceptable to Lender; (vi) Lender shall have determined that after the restoration is completed, the value of the Project, as determined by Lender in its good faith sole discretion in the same manner as Lender's original appraisal of the Project,

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shall be not less than the value of the Project immediately prior to such Casualty Event or Condemnation Event, as applicable; (vii) Borrower shall have deposited with Lender in cash, from time to time including, without limitation, as the budgeted restoration costs as reasonably approved by Lender change, the deficiency, if any, between the costs of the restoration of the Project and such net Insurance/Condemnation Proceeds then held by Lender; (viii) with respect to any Condemnation Event, Lender shall have reasonably determined that such taking will not materially and adversely affect the use and operation of the Project from the use and occupancy thereof immediately prior to such taking; and (ix) Lender shall have reasonably determined that after the restoration is completed, the Net Cash Flow from the Project shall be not less than the Net Cash Flow immediately prior to such Casualty Event or Condemnation Event, as applicable. All Insurance/Condemnation Proceeds so applied to the restoration of the Project shall be disbursed under such conditions as Lender may reasonably require, shall be disbursed only as repairs or replacements are effected and as continuing expenses become due and payable and shall be used by Borrower only for the payment of the costs of such restoration as reasonably approved by Lender. Lender may inspect and/or cause its third-party consultant to inspect, such restoration at any time during the performance thereof and/or upon the completion thereof, and in connection with each such inspection Borrower shall pay (x) the reasonable costs and expenses of such third-party consultant, and (y) an inspection fee to Lender of Two Hundred Dollars (\$200) if Lender has required a third-party consultant's inspection, or Five Hundred Dollars (\$500) if Lender has not required a third-party consultant's inspection. Any surplus which may remain out of such Insurance/Condemnation Proceeds after payment of all costs of the restoration shall, at the option of Lender, be applied to the outstanding principal balance of the Note or the other amounts owing by Borrower to Lender under the Loan Documents or be delivered to Borrower.

**B.** If any one or more of the conditions set forth in Section 1.7(A) are not satisfied at any time: (i) Lender shall not be obligated to disburse any, or any further, Insurance/Condemnation Proceeds and Lender shall be entitled to apply all Insurance/Condemnation Proceeds then held by Lender to the prepayment of the outstanding balance of the Note, together with accrued interest, and the other amounts owed to Lender under the Loan Documents in such order as Lender may elect, notwithstanding that such amounts may not be due and payable; (ii) if the Insurance/Condemnation Proceeds are not sufficient to repay the Note in full, Borrower shall immediately pay to Lender the remaining balance, together with interest accrued thereon, and all other amounts owing to Lender under the Loan Documents; and (iii) if there are Insurance/Condemnation Proceeds remaining after the repayment of the foregoing amounts, such remaining proceeds shall be paid over to the persons legally entitled thereto.

**C.** If there are no Insurance/Condemnation Proceeds available after any Casualty Event (other than a Minor Casualty as to which Borrower is entitled to receive such Insurance/Condemnation Proceeds pursuant to Section 1.6(B)), for any reason whatsoever, then upon written notice to Borrower, the outstanding balance of the Note, together with accrued interest, shall become immediately due and payable unless all of the conditions set forth in Section 1.7(A) are satisfied, including, without limitation, that Borrower deposits with Lender, in cash, such funds as Lender deems necessary for the repair and restoration of all damage to the Project in connection with such Casualty Event.

**D.** In the event of a Condemnation Event as to which Lender reasonably determines that repair or restoration of the Project is not necessary or is not possible: (i) Lender shall not be obligated to disburse any Insurance/Condemnation Proceeds and Lender shall be entitled to apply all Insurance/Condemnation Proceeds to the prepayment of the outstanding principal balance of the Note, together with accrued interest, and the other amounts owed to Lender under the Loan Documents in such order as Lender may elect, notwithstanding that such amounts may not be due and payable, and if there are Insurance/Condemnation Proceeds remaining after the repayment of the foregoing amounts, such remaining proceeds shall be paid over to the persons legally entitled thereto; and (ii) if Lender determines, in its good faith sole discretion in the same manner as Lender's original appraisal of the Project, that the sum of (x) the Insurance/Condemnation Proceeds received by Lender with respect to such Condemnation Event, plus (y) the value of the Project after such Condemnation Event, is less than the value of the Project immediately prior to such Condemnation Event, and if such Insurance/Condemnation Proceeds are not sufficient to repay the Note in full, Borrower shall immediately

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pay to Lender the remaining balance, together with interest accrued thereon, and all other amounts owing to Lender under the Loan Documents.

## **1.8 Liens and Encumbrances.**

Borrower shall pay and promptly discharge, at Borrower's cost and expense, all Liens against the Project or the Collateral or any portion thereof or interest therein, except Liens expressly permitted under the Loan Documents. Without limiting Borrower's obligation to pay and discharge any such Lien, Borrower shall have the right to contest Liens as provided in Section 1.12. If Borrower fails to discharge any Lien or to contest the same as provided in the immediately preceding sentence, Lender may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by bonding, and all amounts expended by Lender in connection therewith shall (a) bear interest at the Default Interest Rate, (b) be subject to loan fees as provided in Section 2.4 of the Note, (c) be secured hereby, and (d) be payable within ten (10) days after written demand by Lender. Lender shall have no obligation to make any further disbursements of Loan proceeds from the Holdbacks pursuant to the Note until all such Liens are released, discharged or bonded against to Lender's reasonable satisfaction.

## **1.9 Actions Affecting Project.**

Borrower shall promptly give Lender written notice of, and shall appear in and contest, any action or proceeding purporting to affect the Project, the Personal Property, any other Collateral or the security of this Security Instrument or any of the other Loan Documents or the rights or powers of Lender. Borrower shall pay all costs and expenses, including, without limitation, title costs and reasonable attorneys' fees and costs, in any such action or proceeding in which Lender may appear.

## **1.10 Transfer of Project.**

**A.** Borrower acknowledges that the financial stability and managerial and operational ability of Borrower and the Control Group are a substantial and material inducement for Lender's agreement to make the Loan to Borrower. In order to induce Lender to make the Loan, Borrower agrees that, in the event of any Transfer without the prior written consent of Lender (which may be withheld in Lender's good faith sole discretion except as expressly provided in Section 1.10(F)), such Transfer shall constitute an Event of Default hereunder and under the other Loan Documents without the need for notice or an opportunity to cure and Lender shall have the absolute right, at its option, without notice, except for the notice contemplated by Section 8.1 of the Loan Agreement, and without demand, to declare all of the Secured Obligations immediately due and payable. Lender may grant or deny such consent in its good faith sole discretion except as expressly provided in Section 1.10(B) and, if Lender shall give such consent, any such Transfer shall be subject to this Security Instrument and the other Loan Documents. No Transfer shall release Borrower or any other party from any liability under the Loan Documents or the Environmental Indemnity without Lender's prior written consent, which may be withheld in Lender's good faith sole discretion. Consent to one such Transfer shall not be deemed to be a waiver of the right to require consent to future or successive Transfers.

**B.** Notwithstanding the foregoing, Lender agrees that it will not unreasonably withhold its consent to a transfer of direct or indirect interests in Borrower for estate planning purposes, nor will Lender unreasonably withhold its consent to a transfer of direct or indirect interests in Borrower to an intervivos trust so long as (i) the transferor remains as the trustee of the trust, (ii) Lender receives evidence reasonably satisfactory to Lender that such transfer complies with this Section 1.10(B), and that consent to such transfer has been given under any applicable ground lease or other financing affecting Borrower, any of the Principal Parties or the Project, if required, (iii) the transferee is not the subject of any of the Terrorism Laws, (iv) there is no change in control of the interests of the transferor in such trust, (v) if required by Lender, a third party manager(s) approved by Lender in Lender's reasonable discretion shall conduct the management and leasing of the Project, and (vi) to the extent that the transferor executed any guaranty, indemnity or other agreement in connection with the Loan (including, without limitation, the Guaranty or the Environmental Indemnity), at Lender's election in its sole discretion, the trustees of such trust shall execute a similar guaranty, indemnity or other agreement; provided that in no

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event shall such transferor be released from any of its obligations under any such guaranty, indemnity or other agreement (including, without limitation, the Guaranty or the Environmental Indemnity) in connection with such transfer.

C. Without limiting the generality of this Section 1.10, in the event ownership to the Project, or any part thereof, becomes vested in a Person or Persons other than Borrower, without the prior written consent of Lender as provided herein, Lender may, in its sole discretion and without obligation to do so, and without notice to Borrower or Guarantors, waive such Event of Default and/or deal with such successor(s) in interest with respect to the Loan Documents and the Environmental Indemnity, without in any way releasing, discharging or otherwise affecting the liability of Borrower, Guarantors or any other party under the Loan Documents or the Environmental Indemnity or for any of the Secured Obligations.

## **1.11 Assumption.**

The Loan is not assumable.

## **1.12 Contesting Impositions and Liens.**

Without limiting Borrower's obligation to pay all Impositions as provided in Section 1.4 or to pay and discharge all Liens as provided in Section 1.8, Borrower shall have the right, at Borrower's expense and in Borrower's name, to contest in good faith any Imposition or Lien against the Project by appropriate legal or administrative proceedings which are not prejudicial to Lender's rights if (a) Borrower shall have demonstrated to Lender's reasonable satisfaction that such proceedings shall conclusively operate to prevent enforcement prior to final determination of any such proceedings, and (b) Borrower shall have furnished to Lender such bond, surety or other security in connection therewith as is reasonably satisfactory to Lender. In the event that, by any such contest, the security of this Security Instrument or any of the other Loan Documents is endangered or the Project or any portion thereof is subject to imminent loss or forfeiture, such Impositions or Liens, as applicable, shall be immediately paid by Borrower. Borrower hereby indemnifies and agrees to defend and hold the Indemnitees harmless for, from and against all expenses, loss, claims, damage or liability imposed or resulting from any such contest or resulting loss.

## **ARTICLE 2**

### **EVENTS OF DEFAULT; REMEDIES**

#### **2.1 Events of Default.**

Borrower's failure to pay any principal, interest or other monies due under the Note, this Security Instrument or any other Loan Document within ten (10) days after such amount is due shall constitute an Event of Default under this Security Instrument upon written notice by Lender to Borrower given at any time on or after the occurrence of such event; provided that upon such notice from Lender, such Event of Default shall be deemed to have occurred as of the occurrence of such event, irrespective of the date of such notice; and provided further that Lender's giving of or failure to give such notice shall not affect, in any manner whatsoever, the imposition of any late charge or interest at the Default Interest Rate pursuant to the provisions of the Note or other Loan Documents; and an Event of Default under any of the other Loan Documents (as "Event of Default" is defined in such other Loan Documents) shall constitute an Event of Default under this Security Instrument automatically and with no notice from Lender required.

#### **2.2 Acceleration and Other Remedies.**

From and after the occurrence of an Event of Default under the Loan Documents, Lender may, at its option, declare all of the Secured Obligations to be immediately due and payable without any presentment, demand, protest or notice of any kind. Thereafter Lender may:

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**A.** To the extent permitted by applicable law, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, the Project, the Personal Property, or any other Collateral or any part thereof, in its own name or in the name of a receiver appointed by a court, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, the Project, the Personal Property, or any other Collateral including, without limitation (i) taking possession of Borrower's books and records with respect to the Property, the Project, the Personal Property or any other Collateral, (ii) completing the construction of the Improvements, (iii) maintaining or repairing the Improvements, the Property, the Personal Property, or any other Collateral (iv) increasing the income from the Property, the Project, the Personal Property, or any other Collateral with or without taking possession of the Property, the Project, the Personal Property, or any other Collateral, (v) entering into, modifying, enforcing or terminating Leases, (vi) suing for or otherwise collecting the Rents or other amounts owing to Borrower, including, without limitation, Rents past due and unpaid damages for breach of Leases, and (vii) applying the same, less costs and expenses of operation and collection including, without limitation, reasonable attorneys' fees and compensation for the services of Lender or any receiver, to any of the Secured Obligations, all in such order as Lender may determine in its sole discretion. Pursuant to the provisions of 765 ILCS 5/31.5, the mere recordation of the Assignment of Leases and Rents entitles Lender immediately to collect and receive Rents upon the occurrence of an Event of Default, without first taking any acts of enforcement under applicable law, including providing notice to Grantor, filing foreclosure proceedings, or seeking the appointment of a receiver. Further, Lender's right to the Rents does not depend on whether or not Lender takes possession of the Property. The entering upon and taking possession of the Property, the Project, the taking possession of any Personal Property or any other Collateral, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default, Event of Default, or Potential Default, under any of the Loan Documents or notice of default hereunder or thereunder. The powers of a receiver listed in 735 ILCS 5/15-1704 shall be added to all the powers of a receiver listed in the Mortgage subject to any express limitations on such powers in the Mortgage.

**B.** Commence an action to foreclose this Security Instrument and its security interests under the other Loan Documents as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof and thereof, and/or

**C.** Exercise all other rights and remedies provided herein, in any Loan Document or other document or agreement now or hereafter securing all or any portion of the Secured Obligations, or by law or equity.

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

(i) If any provision of this Mortgage is inconsistent with any applicable provision of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, et seq. (the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

(ii) Without in any way limiting any of Lender's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, the Lender shall also have all rights, remedies, powers and authorities permitted to the holder of a mortgage under the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to Lender any rights, remedies, powers or authorities upon default of the Grantor which are more limited than what would be vested in Lender under the Act in the absence of said provision, Lender shall have what would be vested under the Act.

(iii) Without limitation, all expenses (including attorneys' fees and expenses) incurred by Lender, to the extent reimbursable under 735 ILCS 5/15-1510, 5/15-1512, or any other provision of the Act, whether incurred before or after any judgment of foreclosure, shall be added to the indebtedness secured by this Mortgage and included in the judgment of foreclosure.

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## 2.3 [Intentionally Omitted.]

## 2.4 Personal Property.

A. Concurrently herewith, Borrower has executed and delivered to Lender the Loan Agreement which grants Lender a security interest in certain Personal Property described therein. From and after the occurrence of an Event of Default, Lender may proceed at its election, in any sequence: (i) to dispose of any Personal Property separately from the sale of real property in accordance with Division 9 of the Governing State Uniform Commercial Code or other applicable law; (ii) to dispose of some or all of the Project and the Personal Property in any combination consisting of both real and personal property together in one or more sales to be held in accordance with the provisions of Section 9604(a)(1) of the Governing State Uniform Commercial Code; and (iii) to exercise any remedies of a secured party under the Governing State Uniform Commercial Code or any other applicable law. Expenses of retaking, holding, preparing for sale, selling or the like shall include Lender's reasonable attorneys' fees and costs.

B. From and after the occurrence of an Event of Default, in addition to Lender's rights under the Governing State Uniform Commercial Code, Lender may, but shall not be obligated to, at any time and at the expense of Borrower: (i) give notice to any person of Lender's rights hereunder and enforce such rights; (ii) insure, protect, defend and preserve the Personal Property and any rights or interests of Lender therein; (iii) inspect the Personal Property; and (iv) endorse, collect and receive any right to payment of money owing to Borrower under or from the Personal Property. Lender shall have no duty or obligation to make or give any presentments, demands for performance, notices of non-performance, notices of protest or notices of dishonor in connection with any of the Personal Property.

C. Any disposal of the Personal Property may, at Lender's election, be at public disposition or private disposition, without having the Personal Property at the place of sale or other disposition, and upon terms and in such manner as Lender may determine in its sole discretion. Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Borrower at least ten (10) days prior written notice of the time and place of any public disposition of the Personal Property or of the time after which any other disposition is to be made. Such notice may be mailed to Borrower as provided in Section 3.15. Lender may be a purchaser at any such public sale of the Personal Property.

D. In connection with any exercise of Lender's remedies under this Section 2.4, Lender may take immediate and exclusive possession of the Personal Property, or any part thereof, and with or without judicial process, enter upon any property on which the Personal Property or any part thereof, may be situated and remove the same without any liability therefor or, at Lender's option, Borrower shall assemble the Personal Property and make it available to Lender at the time and place designated by Lender and reasonably convenient to Borrower and Lender. Lender shall be entitled to operate, hold, maintain, repair, preserve and prepare the Personal Property for sale or Lender may, without removal, render the Personal Property unusable and dispose of the Personal Property on Borrower's property. Lender may exercise all rights and powers of Borrower with respect to the Personal Property or any portion thereof and Borrower hereby irrevocably constitutes and appoints Lender as Borrower's true and lawful attorney-in-fact (which power is coupled with an interest and is deemed to be non-cancelable, with full power of substitution), to enforce, in the name of Borrower or Lender, all rights and powers of Borrower with respect to such Personal Property. Lender and its agents and representatives shall have the right to enter upon any or all of Borrower's property to exercise Lender's rights hereunder.

## 2.5 Appointment of Receiver.

From and after the occurrence of an Event of Default, Lender, as a matter of right and without notice to Borrower or anyone claiming under Borrower, and without regard to the then value of the Project or the adequacy of any security for the Secured Obligations, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers for the Project, and Borrower hereby irrevocably

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consents to such appointment, waives notice of any application therefor and agrees that the appointment of such receiver or receivers may be continued during the pendency of any nonjudicial foreclosure under power of sale of the Property, the Project, the Personal Property, or any other Collateral notwithstanding entry of judgment in any action. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry as provided herein. Borrower agrees to promptly deliver to any such receiver all Leases, Rents, documents, financial data and other information requested by such receiver in connection with the Property, the Project, the Personal Property, or any other Collateral and, without limiting the foregoing, Borrower hereby authorizes Lender to deliver to any such receiver any or all of the Leases, Rents, documents, data and information in Lender's possession relating to the Property, the Project, the Personal Property, or any other Collateral.

## **2.6 Remedies Not Exclusive.**

Lender shall be entitled to enforce payment and performance of any of the Secured Obligations and to exercise all rights and powers under this Security Instrument or under any Loan Document or other agreement or any Laws now or hereafter in force, notwithstanding that some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, security instrument, pledge, lien, assignment or otherwise. Neither the acceptance of this Security Instrument nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Security Instrument and any other security now or hereafter held by Lender in such order and manner as Lender may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it may be otherwise entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender and it may pursue inconsistent remedies.

## **2.7 Request for Notice.**

Borrower hereby requests a copy of any notice of default and that any notice of sale hereunder be mailed to it at the address set forth above in this Security Instrument.

## **2.8 Forbearance by Lender Not a Waiver.**

Any forbearance by Lender in exercising any right or remedy hereunder or under any of the other Loan Documents, or otherwise afforded by applicable Law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of any of the Secured Obligations nor shall Lender's receipt of any awards, proceeds or damages under this Security Instrument or any other Loan Document operate to cure or waive Borrower's default in payment of any of the Secured Obligations.

## **2.9 [Intentionally omitted].**

## **2.10 No Mortgagee in Possession.**

In no event shall Lender, in the exercise of the rights and remedies provided in this Security Instrument (including, without limitation, in connection with the appointment of a receiver and the entry of such receiver onto all or any part of the Project) or the other Loan Documents (including, without limitation, the Assignment of Rents), be deemed a "mortgagee in possession," and Lender shall not in any way be made liable for any act or omission in connection with the exercise of such rights and remedies.

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## ARTICLE 3

### MISCELLANEOUS PROVISIONS

3.1 [Intentionally Omitted.]

3.2 [Intentionally Omitted.]

3.3 [Intentionally Omitted.]

3.4 Inspections.

Subject to the rights of tenants at the Project, during normal business hours and upon reasonable advance notice (except in the event of an emergency or from and after the occurrence of an Event of Default under the Loan Documents, in which event entry shall not be limited to normal business hours and no advance notice shall be necessary) Lender, or its agents, employees or representatives, are authorized to enter upon or in any part of the Project for the purpose of inspecting the same and performing any of the acts Lender is authorized to perform hereunder or under the terms of any of the Loan Documents.

3.5 Borrower Waiver of Rights.

A. Borrower waives, to the extent permitted by law, (a) the benefit of all Laws now existing or that may hereafter be enacted providing for any appraisal before sale of any portion of the Project, (b) all rights of redemption, valuation, appraisal, stay of execution, notice of intent to accelerate, notice of acceleration, notice of election to mature or declare due the whole of the Secured Obligations in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Borrower may have or be able to assert by reason of the Laws of the Governing State pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce the Note or any other Secured Obligation, and (e) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in a particular order. Lender shall have the right to determine the order in which any or all of the Project shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the Secured Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein.

B. THE BORROWER, ON BEHALF OF ITSELF AND ALL PERSONS NOW OR HEREAFTER INTERESTED IN THE PROPERTY, VOLUNTARILY AND KNOWINGLY HEREBY ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A TRANSACTION WHICH DOES NOT INCLUDE EITHER AGRICULTURAL REAL ESTATE (AS DEFINED IN THE ILLINOIS MORTGAGE FORECLOSURE ACT (THE "ACT")), OR RESIDENTIAL REAL ESTATE (AS DEFINED IN THE ACT). THE BORROWER, ON ITS OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS MORTGAGE, HEREBY IRREVOCABLY WAIVES PURSUANT TO 735 ILCS 5/15-1601 OF THE ACT ANY AND ALL RIGHTS OF REINSTATEMENT (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REINSTATEMENT PROVIDED FOR IN 735 ILCS 5/15-1602) OR REDEMPTION FROM SALE OR FROM OR UNDER ANY ORDER, JUDGMENT OR DECREE OF FORECLOSURE OF THIS MORTGAGE (INCLUDING, WITHOUT LIMITATION, ALL RIGHTS OF REDEMPTION PROVIDED FOR IN 735 ILCS 5/15-1603) OR UNDER ANY POWER CONTAINED HEREIN OR UNDER ANY SALE PURSUANT TO ANY STATUTE, ORDER, DECREE OR JUDGMENT OF ANY COURT.

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## 3.6 Lender's Powers.

Without affecting the liability of any other Person for the payment or performance of any of the Secured Obligations, and without affecting the lien or priority hereof or of any of the other Loan Documents upon any property not released, Lender may, without notice, release any Person so liable, extend the maturity or modify the terms of any Secured Obligation, or grant other indulgences, release or reconvey or cause to be released or reconveyed at any time all or any part of the Project and/or the Personal Property, and/or take or release any other security or make compositions or other arrangements with debtors. Lender may also accept additional security, either concurrently herewith or hereafter, and sell the same or otherwise realize thereon either before, concurrently with, or after sale hereunder.

## 3.7 Non-Waiver.

By accepting late payment or performance of any of the Secured Obligations, Lender shall not waive its rights against any Person obligated directly or indirectly hereunder or on any of the Secured Obligations, either to require prompt payment when due of all other sums so secured or to declare a Potential Default, or Event of Default, under the Loan Documents for failure to make such prompt payment. No exercise of any right or remedy by Lender hereunder shall constitute a waiver of any other right or remedy herein contained or provided by Law. No delay or omission of Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

## 3.8 Protection of Security.

From and after the occurrence of an Event of Default under any of the Loan Documents, Lender may, without obligation, and without notice to or demand upon Borrower and without releasing Borrower from any of the Secured Obligations, (a) take such actions as Lender may deem necessary to protect the security hereof or of any of the other Loan Documents; (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or of any of the other Loan Documents, the value thereof or the rights or powers of Lender; or (c) pay, purchase, contest, or compromise any Lien which, in the judgment of Lender, is prior or superior hereto or Lender's security interest under any of the other Loan Documents. In exercising any such power, Lender is authorized to enter upon the Project or any other property on which the Personal Property or other Collateral is located and to incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title and reasonable attorneys' fees and costs and consultants' fees and costs. Any expenditures made by Lender under this Section 3.8 shall (w) bear interest at the Default Interest Rate, (x) be subject to loan fees as provided in Section 2.4 of the Note, (y) be secured hereby, and (z) be payable within ten (10) days after written demand by Lender.

## 3.9 No Merger of Lease.

If both the lessor's and lessee's estate under any Lease or any portion thereof which constitutes a part of the Project or other security under the Loan Documents shall at any time become vested in one owner, this Security Instrument and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless Lender so elects, in its sole discretion, as evidenced by recording a written declaration so stating, and, unless and until Lender so elects, Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. In addition, upon the foreclosure of the lien created by this Security Instrument on the Project pursuant to the provisions hereof, any Leases then existing and affecting all or any portion of the Project shall not be destroyed or terminated by application of the law of merger, unless Lender or any purchaser at such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any Lease unless Lender or such purchaser shall give written notice thereof to the applicable tenant or subtenant.

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## 3.10 Subordination.

At the option of Lender, this Security Instrument shall become subject and subordinate in whole or in part (but not with respect to priority of entitlement to any Insurance/Condemnation Proceeds or other compensation resulting from any Casualty Event or any Condemnation Event) to any or all contracts of sale and/or any or all Leases upon the execution by Lender of a unilateral declaration to that effect and the recordation thereof in the Recording Location.

## 3.11 Release.

Upon written request of Lender stating that all sums secured hereby have been paid, Lender shall release the lien of this Mortgage. Borrower shall pay Lender a reasonable fee and Lender's costs incurred in connection with such release.

## 3.12 Rules of Construction.

When the identity of the parties hereto or the circumstances make it appropriate, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. Article and Section headings in this Security Instrument are included herein for convenience of reference only and shall not constitute a part of this Security Instrument for any other purpose or be given any substantive effect.

## 3.13 Severability.

If any term of the Security Instrument or the application thereof to any Person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Security Instrument, or the application of such term to Persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Security Instrument shall be valid and enforceable to the fullest extent.

## 3.14 Successors and Assigns.

This Security Instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. If applicable, any married person signing this Security Instrument as Borrower or, if applicable, its general partner, agrees that recourse may be had against his or her community assets and against his or her separate property for the satisfaction of the Secured Obligations. As used herein, "Lender" shall include all holders of the Note, including, without limitation, pledgees of the Note, whether or not named as Lender herein. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors authorized by Lender.

## 3.15 Notices.

Any notice, or other document or demand, required or permitted under this Security Instrument shall be in writing addressed to the appropriate address set forth above and shall be deemed delivered upon the earliest of (a) actual receipt, (b) the next Business Day after the date when sent by recognized overnight courier for next Business Day delivery, or (c) the second Business Day after the date when sent by certified mail, postage prepaid. Any party may, from time to time, change the address at which such written notice or other documents or demands are to be sent, by giving the other parties written notice of such change in the manner hereinabove provided.

## 3.16 Governing Law.

This Security Instrument shall be governed by, and construed and enforced in accordance with, the laws of the Governing State.

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## 3.17 Amendments and Waivers.

This Security Instrument may only be modified in writing signed by Borrower and Lender or their respective successors and assigns. No waiver of any provision of this Security Instrument, or consent to any departure by Borrower therefrom, shall in any event be effective without the written agreement of Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. Except as expressly required by the terms of the Loan Documents, no notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances.

## 3.18 Subrogation.

To the extent that proceeds of the Note are used to pay any outstanding Lien against the Project, such proceeds have been or will be advanced by Lender at Borrower's request and Lender shall be subrogated to any and all rights and Liens held by any owner or holder of such outstanding Liens, irrespective of whether such Liens are released.

## 3.19 Fixture Filing.

This Security Instrument constitutes a financing statement recorded as a fixture filing in the Recording Location with respect to any and all fixtures included within the term "Project" as used herein, and with respect to any goods or other personal property that may now be or hereafter become such fixtures. Borrower grants to Lender a security interest in all existing and future goods which are now or in the future become fixtures relating to the Project and the proceeds thereof. Borrower covenants and agrees that the recording of this Security Instrument in the Recording Location shall also operate from the date of such recording as a fixture filing in accordance with Sections 9501(a)(1) and 9502(b) and (c) of the Governing State Uniform Commercial Code.

## 3.20 WAIVER OF JURY TRIAL.

~~BORROWER AND LENDER EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CONTROVERSY OR CLAIM, WHETHER ARISING IN TORT OR CONTRACT OR BY STATUTE OR LAW, BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THIS SECURITY INSTRUMENT (INCLUDING, WITHOUT LIMITATION, THE VALIDITY, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF) OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION HERewith. EACH PARTY ACKNOWLEDGES AND AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR BORROWER'S AND LENDER'S ENTERING INTO THE LOAN DOCUMENTS AND THE PARTIES WOULD NOT HAVE ENTERED INTO THE LOAN DOCUMENTS WITHOUT THIS WAIVER. LENDER AND BORROWER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION 3.20 IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL.~~

## 3.21 Counterparts.

This Security Instrument may be executed in any number of 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. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this Security Instrument to physically form one document, which may be recorded.

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## 3.22 Statement of Condition.

Lender shall furnish any statement required by law regarding the obligations secured hereby or regarding the amounts held in any trust, escrow or reserve fund hereunder. For any such statement, Lender may charge a reasonable fee, not to exceed the maximum amount permitted by law at the time of the request therefor.

3.23 Business Purpose of Loan: This loan is a business loan made for business purposes under 815 ILCS 205/4 (c) and is a loan secured by a mortgage on real estate under 815 ILCS 205/4 (1).

3.24 Future Advances. This Mortgage is granted to secure future advances made by Lender to Grantor. Lender hereby binds itself to make advances subject to and in accordance with the terms of the Note, this Mortgage and the Loan Agreement, and the parties acknowledge and agree that all future advances shall be a lien from the time this Mortgage is recorded, as provided in 735 ILCS 5/15-1302 (b)(1).

3.25 Subordination of Management Agreement. Any property management agreement for or relating to all or any part of the Premises, whether now in effect or entered into hereafter by Borrower or any agent of the Borrower, with a property manager shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Mortgage and the Loan Documents any and all mechanics' lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law (including, without limitation, 770 ILCS 60/0.01). Such property management agreement or a short form thereof including such subordination shall, at Lender's request, be recorded with the Office of the Recorder of Deeds for the county in which the Premises are located. Borrower's failure to cause any of the foregoing to occur shall constitute a default under this Mortgage.

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IN WITNESS WHEREOF, Borrower has executed and delivered this Security Instrument.

9-25 W. HUBBARD, L.L.C.,  
an Illinois limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

Property of Cook County Clerk's Office

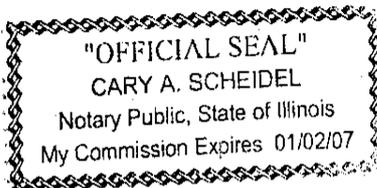
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STATE OF Illinois )  
COUNTY OF Cook ) SS.

On April 8 2004, before me, Cary A Scheidel, a Notary Public, personally appeared Ronald Farkhoush, and \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Cary A Scheidel  
Notary Public



Property of Cook County Clerk's Office

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EXHIBIT A

Legal Description

That certain real property located in the City of Chicago, County of Cook, State of Illinois, having a street address of 9 - 25 West Hubbard Street, more particularly described as follows:

See attached.

Property of Cook County Clerk's Office

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Property Address: 9-15 & 17-19 W. HUBBARD STREET  
CHICAGO, IL.

PIN #:	17-09-262-005	17-09-262-006
	17-09-262-007	17-09-262-003
	17-09-262-004	

Parcel 1:

Lots 14 and 15 in Block 1 in Wolcott's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2:

The East 1/2 of Lot 12 and all of Lot 13 in Block 1 in Wolcott's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 3:

Lot 11 (except the East 1 foot) in Block 1 in Wolcott's Addition to Chicago in the East 1/2 of the Northeast 1/4 of Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 4:

The West 1/2 of Lot 12 and the East 1 foot of Lot 11 in Block 1 in Wolcott's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.