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RECORDING REQUESTED  
BY AND WHEN RECORDED  
MAIL TO:

Horwood Marcus & Berk Chtd.  
180 N. LaSalle Street, Suite 3700  
Chicago, Illinois 60601  
Attn: Kenneth W. Bosworth, Esq.



Doc#: 0425227134  
Eugene "Gene" Moore Fee: \$76.50  
Cook County Recorder of Deeds  
Date: 09/08/2004 03:34 PM Pg: 1 of 27

## MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS

Made By:

Peoria Sangamon Loftominium, LLC  
(Borrower)

In Favor of:

HORWOOD MARCUS & BERK CHTD., as Agent  
(Lender)

Dated as of August 30, 2004

Property Address: 17 N. Peoria  
Chicago, Illinois 60607

P.I.N Nos.: 17-08-448-006-1046

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## MORTGAGE, SECURITY AGREEMENT, AND ASSIGNMENT OF LEASES AND RENTS

**THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS** (this "**Mortgage**") is made as of the 30<sup>th</sup> day of August, 2004, by and among **PEORIA SANGAMON LOFTOMINIUM, LLC**, an Illinois limited liability company, having offices at 1212 North LaSalle Street, Suite 110, Chicago, Illinois 60610 ("**Borrower**" or "**Mortgagor**"), to **HORWOOD MARCUS & BERK CHTD.**, not individually but as agent for those certain Noteholder (as hereinafter defined), having offices at 180 N. LaSalle Street, Suite 3700, Chicago, Illinois 60601, and its successors and assigns ("**Mortgagee**").

### Background:

- A.** Pursuant to a confidential Private Placement Memorandum ("PPM") dated February 10, 2000, A.P. Members, LLC, an Illinois limited liability company issued Subordinate Secured Notes ("Notes") in the aggregate amount of \$2,899,666.00 to various investors ("Noteholders"). Pursuant to the PPM and documents executed in connection therewith, the Noteholders appointed Horwood Marcus & Berk Chtd. as agent for the Noteholders. A.P. Members, LLC owns 98% of the membership interest of A.P. Holdings, LLC, which in turn owns 100% interest of the Mortgagor (All capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Notes).
- B.** The Mortgagor owns a parcel of real estate located in Chicago, Illinois legally described on Exhibit A attached to and made a part of this Mortgage, together with all of the improvements located thereon. This Mortgage together with all other documents evidencing or securing the Notes are sometimes referred to as the "Loan Documents".
- C.** Mortgagor has agreed to enter into this Mortgage and grant to Mortgagee a lien and security interest in and to the Property and other collateral now or hereafter owned by Mortgagor, subject only to the Permitted Exceptions, to secure all of the following (all of which may be referred to collectively as the "**Obligations**"): (i) payment of the Notes and any amendments, restatements, modifications and supplements thereof, together with the interest thereon at the rate specified in the Notes, and all fees, charges, and prepayment fees, if any, as provided in the Notes, (ii) payment of all other monies or sums provided to be paid by Mortgagor pursuant to the terms, provisions and conditions of the Notes and this Mortgage, and (iii) performance of each every obligation, agreement, promise, covenant, warranty, and representation now or hereafter due and owing, made or undertaken by Mortgagor as set forth in the Notes, this Mortgage, and all other documents or instruments given or made by Mortgagor to evidence or to secure the Notes, and in any renewal, modification, restatement or extension of any of the foregoing.

### Statement of Agreement:

**NOW, THEREFORE**, Mortgagor agrees with Mortgagee as follows:

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1. **Definitions:** As used in this Mortgage, the following terms shall have the meanings indicated below:

**“Accounts and Intangibles”** shall mean all of Mortgagor’s right, title and interest in and to all accounts, accounts receivable, deposits, deposit accounts, payments, bank accounts, working capital accounts and time deposits relating to any of the same, and revenues now or hereafter accruing to the benefit of Mortgagor, all the records and books of account now or hereafter maintained by Mortgagor in connection with the operation of the Property or otherwise; all contract rights, rights to the payment of money including tax refund claims, insurance proceeds and tort claims, chattel paper, documents, instruments, general intangibles, securities, together with all income therefrom, increases thereunder and proceeds thereof; and all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the Land, the Improvements or the Fixtures or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to any of the Property and proceeds of any sale, option or contract to sell the Property or any portion thereof.

**“Agreements”** shall mean all of Mortgagor’s right, title and interest in and to all contracts, agreements, warranties, representations, service agreements, maintenance contracts and agreements relating to the Property and the use, occupancy, operation, management, repair and service of the Property, whether presently existing or entered into after the date hereof, including, without limitation, all sales and brokerage agreements and any agreement with respect to the sale of the Property.

**“Collateral”** shall mean all of Mortgagor’s right, title and interest in and to any part of such of the Mortgaged Property which constitutes personal property under the Laws of the State of Illinois, together with any and all proceeds of any and all of the foregoing, including, without limitation, any and all cash and non-cash consideration received from the sale, exchange, lease, collection or other disposition of any and all of the foregoing, any value received as a consequence of the possession of any of the foregoing, any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any of the foregoing, and all equipment, machinery, furniture, inventory, other goods, fixtures, general intangibles, instruments, chattel paper, documents, accounts and all other property of any kind or nature which are acquired with any proceeds of any of the foregoing.

**“Fixtures”** shall mean all of Mortgagor’s right, title and interest in and to all furniture, furnishings, fixtures, appliances, machinery or equipment which are now or at anytime hereafter may be attached to or situated upon or affixed to the Land or the Improvements, including, but not limited to, all signs, artwork, office furnishings and equipment, all partitions, screens, awnings, shades, blinds, floor coverings, hall and lobby equipment, heating, lighting, plumbing, ventilating, refrigerating, incinerating, elevator, escalator, air conditioning and communication plants or systems with appurtenant fixtures, vacuum cleaning systems, call systems, security systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials; all equipment, manual, mechanical or motorized, for the construction, maintenance, repair and cleaning of, any parking areas, walks, underground ways, truck ways, driveways, common areas, roadways, highways and streets; and all other items of personal property now or hereafter owned by Mortgagor located in

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or on the Land or the Improvements and used or useful in the present or future occupancy, operation and maintenance thereof.

**“Improvements”** means all improvements located on the Property.

**“Land”** shall mean all of Mortgagor’s right, title and interest in and to the land legally described in Exhibit A hereto, together with all easements, servitudes, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to such land, and the reversions, remainders, rents, issues and profits thereof.

**“Mortgaged Property”** shall mean all of the Collateral, the Real Estate, the Fixtures, the Agreements, the Permits, the Rents, the Accounts and Intangibles, together with any and all proceeds of any and all of the foregoing, including, without limitation, any and all cash and non-cash consideration received from the sale, exchange, lease, collection or other disposition of any and all of the foregoing, any value received as a consequence of the possession of any of the foregoing, any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any of the foregoing, and all equipment, machinery, furniture, inventory, other goods, fixtures, general intangibles, instruments, chattel paper, documents, accounts and all other property of any kind or nature which are acquired with any proceeds of any of the foregoing.

**“Permits”** shall mean all building permits, certificates of occupancy and other assignable governmental permits, licenses and authorizations, including, without limitation, all state, county and local occupancy certificates, and other licenses, in any way applicable to the Operation of the Property or any part thereof or to the development, construction, ownership, use, occupancy, operation, maintenance, marketing and sale of the Property.

**“Real Estate”** shall mean the Land and the Improvements and such other of the Mortgaged Property as constitutes real property under the Laws of the State of Illinois, together with any and all proceeds of any and all of the foregoing, including, without limitation, any and all cash and non-cash consideration received from the sale, exchange, lease, collection or other disposition of any and all of the foregoing, any value received as a consequence of the possession of any of the foregoing, (including, without limiting the generality of the foregoing, any and all real estate tax abatements now or in the future accruing to the Real Estate), any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any of the foregoing, and all equipment, machinery, furniture, inventory, other goods, fixtures, general intangibles, instruments, chattel paper, documents, accounts and all other property of any kind or nature which are acquired with any proceeds of any of the foregoing.

**“Rents”** shall mean absolutely and presently all avails, rents, issues, cash collateral and profits arising from or accruing at any time hereafter by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Land or the

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Improvements or any portion thereof (collectively, the “Leases”), including, all revenues now or hereafter accruing to the benefit of Mortgagor.

2. **Granting Clause; Condition of Grant:** In order to secure the prompt payment and performance of the Obligations, Mortgagor by these presents does hereby: (a) give, grant, bargain and sell, alienate, set-off, release, convey, confirm, mortgage, assign, transfer and set-over unto Mortgagee, its successors and assigns, forever, the Real Estate; (b) grants Mortgagee a lien on, and security interest in, the Collateral; and (c) unconditionally and absolutely assigns the Leases and Rents to Mortgagee (but subject to the license for collection of Rents described in Section 18).

TO HAVE AND TO HOLD the Mortgaged Property hereby conveyed or assigned, or intended to be conveyed or assigned, unto Mortgagee forever for the uses and purposes set forth herein.

**PROVIDED, HOWEVER,** that if Mortgagor shall promptly pay and shall timely perform all of the Obligations, then, upon such full payment and performance, this Mortgage and the estate granted hereby shall become null and void.

**THIS MORTGAGE SECURES FUTURE ADVANCES UP TO A MAXIMUM PRINCIPAL AMOUNT OF FIVE MILLION EIGHT HUNDRED THOUSAND AND 00/100 Dollars (\$5,800,000.00).**

3. **Payment and Performance of Obligations.** Mortgagor shall pay when due, and shall duly and punctually perform and observe, all of the Obligations, including without limitation, all terms, provisions, conditions, covenants and agreements on Mortgagor’s part to be performed or observed as provided in the Loan Documents; and this Mortgage shall secure such payment, performance and observance.

4. **Title to Mortgaged Property and the Lien of this Mortgage.** Mortgagor covenants and represents that Mortgagor has, in Mortgagor’s own right, and Mortgagor covenants to maintain, lawful, good and indefeasible title to the Mortgaged Property, free and clear of all liens, charges, claims, security interests, adverse claims, and encumbrances except for (i) the matters, if any, set forth under the heading “Permitted Exceptions” on Exhibit B attached to this Mortgage, which are Permitted Exceptions only to the extent the same are valid and subsisting and affect the Mortgaged Property, (ii) the liens and security interests evidenced by this Mortgage, (iii) statutory liens for ad valorem taxes and standby fees on the Mortgaged Property which are not yet delinquent, and (iv) other liens and security interests (if any) in favor of Mortgagee (the matters described in the foregoing clauses (i), (ii), (iii) and (iv) being herein called the “**Permitted Exceptions**”). Mortgagor, and Mortgagor’s successors and assigns, will warrant and forever defend title to the Mortgaged Property, to Mortgagee and its successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. No part of the Mortgaged Property constitutes all or any part of the homestead of Mortgagor. If any right or interest of Mortgagor in the Mortgaged Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Mortgagee and Mortgagee, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of

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such right or interest of Mortgagor, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims.

All expenditures so made of every kind and character shall be a demand obligation (which obligation Mortgagor hereby promises to pay within ten (10) business days of written demand) owing by Mortgagor to Mortgagee or Mortgagee (as the case may be), and the party (Mortgagee or Mortgagee, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment.

**5. Use Violations or Alterations.** Except as may be expressly permitted by the terms of the Notes or this Mortgage, Mortgagor shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Mortgaged Property in any manner which (a) violates any Laws; (b) may be dangerous unless safeguarded as required by Laws; (c) constitutes a public or private nuisance; (d) will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof, or will wholly or partially invalidate any insurance coverage required to be carried hereunder or under the terms of the Notes or this Mortgage. Mortgagor shall not commit or permit any waste of the Mortgaged Property or any part thereof, whether commissive or permissive, and, except as expressly permitted by the terms of the Notes or this Mortgage, will not make or permit to be made any alterations or additions to the Mortgaged Property or as required by applicable law. Mortgagor shall not abandon the Mortgaged Property or leave the Mortgaged Property unprotected, unguarded or deserted, and shall not allow any of the Mortgaged Property to be misused, abused or wasted, or to deteriorate.

**6. Maintenance, Repair and Restoration.** Mortgagor shall thereafter keep the Mortgaged Property in good condition, order, repair and operating condition appropriate for a building of similar construction and as may be necessary to protect and preserve the value of the Mortgaged Property, causing all necessary repairs, alterations, renewals, replacement, additions, betterments and improvements to be made promptly thereto. Subject to the terms of this Mortgage, Mortgagor shall promptly repair, restore or rebuild (or cause the same to be done) any of the Mortgaged Property which may become damaged or be destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefore.

**7. Platting, Replatting, Subdivision and Resubdivision.** Mortgagor shall not, without the consent of Mortgagee, (which consent shall not be unreasonably withheld), impose any restrictions, agreements or covenants which run with the land upon the Land or the Improvements or any part thereof, nor plat, replat, subdivide or resubdivide the Land or any part thereof.

**8. Permitted Exceptions; Compliance.** With respect to the Permitted Exceptions, Mortgagor shall (i) timely observe and perform all covenants and obligations contained therein; (ii) not take any action or fail to take any action if the taking of such action or failure to take such action would cause a default thereunder, and (iii) not exercise any rights or remedies under any Permitted Exception which might be adverse to Mortgagee's interests, without the prior written consent of Mortgagee.

**9. Taxes.** Mortgagor shall pay, before any penalty, fine, interest or other cost for non-payment attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, impositions, charges and assessments of every kind and nature whatsoever

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(collectively, “**Taxes**”), whether or not assessed against Mortgagor, if applicable to the Mortgaged Property or any part thereof or any interest therein, or the Obligations secured hereby; and Mortgagor in all events shall furnish to Mortgagee duplicate official receipts therefore. The certificate, advice or bill of the appropriate official designated by Law to make or issue the same or to receive payment of any Taxes, or non-payment of such Taxes shall be prima facie evidence that such imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill. Mortgagor shall pay in full under protest in the manner provided by statute, any Taxes which Mortgagor may desire to contest; provided, however, that if deferment of payment of any such Taxes is required to conduct any contest or review, Mortgagor shall deposit with Mortgagee the full amount thereof, together with an amount equal to the estimated interest and penalties thereon during the period of contest, and in any event, shall pay such Taxes, notwithstanding such contest, if in the reasonable opinion of Mortgagee the Mortgaged Property or any part thereof shall be in jeopardy or in danger of being forfeited or foreclosed.

10. **Insurance Coverage.** Mortgagor, at its sole cost and expense, will insure and keep insured the Property and each and every part thereof, against such perils and hazards, and in such form and amounts, as requested by Mortgagee.

11. **Proceeds of Insurance.** (a) Mortgagor will give Mortgagee prompt notice of any damage to or destruction of the Mortgaged Property. Mortgagee is authorized and empowered, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact (such appointment is coupled with an interest), at its option, to make or file proofs of loss or damage and to settle and adjust any claim under insurance policies which insure against such risks, or to direct Mortgagor, in writing, to agree with the insurance carrier(s) on the amount to be paid in regard to such loss.

(b) Provided no Event of Default then exists and Mortgagor certifies as to same, the net insurance proceeds (after deduction of Mortgagee’s reasonable costs and expenses, if any, in collecting the same) shall be made available for the restoration or repair of the Real Estate, provided that Mortgagor deposits with Mortgagee from time to time an amount, in cash, which Mortgagee, in its reasonable discretion, determines is necessary, in addition to the net insurance proceeds to pay in full the cost of the restoration or repair (Mortgagor’s deposit shall be disbursed prior to any disbursement of insurance proceeds held by Mortgagee). Any excess proceeds remaining after completion of such repair shall be distributed first to Mortgagor to the extent Mortgagor has deposited funds with Mortgagee for such repair with the balance applied against the Indebtedness. Notwithstanding the foregoing, it shall be a condition precedent to any disbursement of insurance proceeds held by Mortgagee hereunder that Mortgagee shall have approved (x) all plans and specification for any proposed repair or restoration, (y) the construction schedule and (z) the architect’s and general contractor’s contract for all restoration that exceeds \$10,000 in the aggregate. Mortgagee may establish other conditions it deems reasonably necessary to assure the work is fully completed in a good and workmanlike manner free of all liens or claims by reason thereof, and in compliance with all applicable laws, rules and regulations. At Mortgagee’s option, the net insurance proceeds shall be disbursed pursuant to a construction escrow acceptable to Mortgagee. If an Event of Default then exists, or any of the conditions set forth in this Section 11(b) have not been met or satisfied, the net insurance proceeds shall be applied to the Indebtedness in such order and manner as Mortgagee may elect, whether or not due and payable, with any excess paid to Mortgagor.

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**12. Condemnation.** (a) Mortgagor will give Mortgagee prompt notice of any pending or threatened condemnation proceedings or exercise of eminent domain by any governmental authority. Mortgagor shall, after consultation with and subject to Mortgagee's approval, appear in and prosecute any such action or proceeding. Upon Mortgagor's failure to act in accordance with Mortgagee's prior approval, Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor (such appointment as attorney-in-fact is coupled with an interest), to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any condemnation or other taking of the Real Estate, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Real Estate, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Mortgagee and in accordance with the provisions of Section 12(b) below. Mortgagee is authorized (but is under no obligation) to collect any such proceeds.

(b) Mortgagee shall apply the condemnation award (after deduction of Mortgagee's reasonable costs and expenses, if any, in collecting the same) to the restoration or repair of the Real Estate. If the net proceeds of the condemnation award are made available to Mortgagor for restoration or repair, the net proceeds of the condemnation award shall be disbursed upon satisfaction of and in accordance with the terms and conditions set forth in the Section 11(b) above. Mortgagee is authorized (but is under no obligation) to collect any such proceeds.

**13. Stamp Tax.** If, by the Laws of the United States of America, or of any state, county, or municipality having jurisdiction over Mortgagor or the Mortgaged Property or any part thereof, any tax is assessed or becomes due in respect of the issuance of the Notes, or the execution, delivery, filing, granting or recording of this Mortgage or otherwise in connection with any of the other Loan Documents, Mortgagor shall pay such tax in the manner required by such Law.

**14. Prepayment Privilege.** Mortgagor may at any time prepay the Notes, in whole or in part.

**15. Effect of Extensions of Time and Amendments on Junior Liens and Others.** If the payment of the Obligations, or any part thereof, be extended or varied, or if any part of the security therefore be released, all Persons now or at any time hereafter liable therefore, or having an interest in the Mortgaged Property or any part thereof, shall be held to assent to such extension, variation or release; and any liability of such Persons and the lien and all provisions hereof shall continue in full force and effect, any right of recourse existing against all such Persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any Person who, upon consent by Mortgagee (given or withheld in its sole and absolute discretion) shall take a junior mortgage, or other junior lien upon the Mortgaged Property or any part thereof or any interest therein, shall take such lien subject to the rights of Mortgagee to supplement, amend, modify, restate and extend the Loan Documents or any of them, and to extend the maturity of the Obligations, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage or the lien of any other Loan Documents losing priority over the rights of any such junior lien.



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16. **Inspection of Premises.** Mortgagee, its employees and agents, shall have the right to inspect the Property and to inspect and make copies of all books, records and documents relating thereto pursuant to the provisions of the Notes and this Mortgage.

17. **Uniform Commercial Code.** (a) Mortgagor (as debtor) and Mortgagee (as secured party) agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of the State of Illinois, or under the Uniform Commercial Code in force in any other state to the extent the same is applicable to the security interest granted herein (in either case, as applicable, the “Code”) with respect to the Collateral, and (ii) that a security interest in and to the Collateral is hereby granted to Mortgagee, and (iii) that all of Mortgagor’s right, title and interest therein are hereby assigned to Mortgagee; all to secure payment of the Obligations and to secure performance by Mortgagor of the terms, covenants and provisions of the Notes, this Mortgage, and the other Loan Documents.

(b) If an Event of Default occurs under this Mortgage, Mortgagee, consistent with the appropriate provisions of the Code and other applicable Laws, shall have an option to proceed with respect to both the Real Estate and the Collateral in accordance with its rights, powers and remedies with respect to the Real Estate, in which event the default provisions of the Code shall not apply. The parties agree that if Mortgagee shall elect to proceed with respect to the Collateral separately from the Real Estate, Mortgagee shall have all remedies available to a secured party under the Code and ten (10) days’ notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, attorneys’ fees and legal expenses incurred by Mortgagee (and for purposes hereof, the term “attorneys” includes attorneys who are employees of Lender acting as counsel for Lender, and the term “legal expenses” shall include, without limitation, the fees charged by Lender for its in-house counsel). Mortgagor agrees that Mortgagor shall not, without the written consent of Mortgagee, dispose of, remove or permit to be removed from the Mortgaged Property any of the Collateral, other than as expressly permitted under this Mortgage, and that all replacements for each and every item of Collateral shall be at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, subject only to the Permitted Exceptions, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. Mortgagor covenants and represents that subject to the Permitted Exceptions all Collateral now is, and that all replacements thereof, substitutions therefore or additions thereto, unless Mortgagee otherwise consents, shall be free and clear of liens, encumbrances, title retention devices and security interests of others.

(c) Mortgagor and Mortgagee agree, to the extent permitted by Law, that: (i) all of the goods described within the definition of the words “Improvements” and “Fixtures” herein are or are to become fixtures on the Land; and (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a “fixture filing” within the meaning of Sections 9-313 and 9-402 of the Code. Mortgagor agrees that the filing of a Financing Statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing the express declaration and intention of the parties hereto, hereinabove

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stated, that everything used in connection with the production of income from the Mortgaged Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be regarded as part of the Real Estate irrespective of whether (i) any such item is physically attached to the Land or Improvements; (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee; or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (x) rights in or to the proceeds of any fire and/or hazard insurance policy; (y) any award in eminent domain proceedings for a taking or for loss of value; or (z) Mortgagor's interest as lessor in any present or future Leases or subleases or rights to Rents growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of Mortgagee's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to (x), (y) or (z) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivision or entity of the federal government, must be filed in the Code records.

(d) Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, a separate Security Agreement, Financing Statement or other similar security instruments, in form reasonably satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor in connection with the Mortgaged Property, which in the sole and exclusive opinion of Mortgagee is essential to the operation of the Mortgaged Property and which constitutes goods within the meaning of the Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this Mortgage under the Laws of the State of Illinois, and shall further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such documents. Mortgagor shall from time to time, on request of Mortgagee, deliver to Mortgagee an inventory of the Collateral in reasonable detail.

**18. Assignment of Leases and Rents.** (a) To further secure the Obligations, Mortgagor hereby sells, assigns and transfers unto Mortgagee, all the Rents, now due and which may hereafter become due under or by virtue of any of the Leases, whether written or verbal, or any letting of, or of any agreement, whether written or oral, for the use or occupancy of the Mortgaged Property or any part thereof, which may be hereafter made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, and all the Rents, to Mortgagee, and not merely the passing of a security interest. Mortgagor hereby constitutes and appoints Mortgagee as its true and lawful attorney-in-fact, coupled with an interest, of Mortgagor, empowered and authorized in the name, place and stead (with or without taking possession of the Mortgaged Property as provided in this Mortgage) of Mortgagor, (i) to demand, sue for, attach, levy, recover, and receive all Rents and give proper receipts, releases, and

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acquittances therefore and after deducting expenses of collection, to the extent permitted by Law, to apply the net proceeds as a credit upon any portion of the Obligations selected by Mortgagee notwithstanding the fact that such portion of the Obligations may not then be due and payable or that such portion of the Obligations is otherwise adequately secured, and Mortgagor does hereby authorize and direct any such lessee to deliver such payment to Mortgagee and (ii) to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said Rents arising from or accruing at any time hereafter, and now due or that may hereafter become due under each and every of the Leases or otherwise, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of this Mortgage. The foregoing appointment is irrevocable and continuing and such rights, powers, and privileges shall be exclusive in Mortgagee, its successors and assigns.

(b) Nothing contained herein shall be construed as constituting Mortgagee a "mortgagee-in-possession" in the absence of the taking of actual possession of the Mortgaged Property by Mortgagee pursuant to this Mortgage. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

(c) Mortgagor further agrees to assign and transfer to Mortgagee all future Leases upon all or any part of the Mortgaged Property and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Mortgaged Property as Mortgagee shall from time to time require.

(d) Although it is the intention of the parties that the assignment contained in this Section 18 shall be a present absolute assignment, it is expressly understood and agreed, anything contained herein to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon either of them by this Section 18 until an Event of Default shall have occurred under this Mortgage, or the Notes.

## **19. Sale of Units and Property.**

(a) Mortgagee hereby consents to the sale of the Property in the ordinary course of Mortgagor's business.

(b) Provided that at the time of request therefore Mortgagor is not in default in the performance of any of its obligations under the Notes or this Mortgage, Mortgagee will, upon presentation of an execution copy thereof by Mortgagor, execute and deliver to the title insurance company which is handling the closing of the sale of such units partial releases of this Mortgage, covering the personality in the unit to be sold, and its consent to a direction to convey such unit, to be used in connection with the sale of such unit. No such release or consent shall be delivered except in connection with a bona fide sale to a party which is not an affiliate. The use of such release may be conditioned by Mortgagee upon consummation of closing for which the release was requested, with the title insurance company being required to return the same to Mortgagee in the event the closing is not consummated within 30 days after delivery thereof.

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**20. Events of Default.** The occurrence of any one or more of the following events shall constitute an “**Event of Default**” under this Mortgage:

(a) An Event of Default shall have occurred under the Notes or any of the other Loan Documents beyond applicable notice and cure periods; or

(b) Mortgagor shall violate any of the terms, covenants or provisions set forth in Section 19 of this Mortgage; or

(c) Mortgagor shall default in the performance of any other term, covenant or agreement contained in this Mortgage (other than those specified elsewhere in this Section 20) for ten (10) days after written notice of such default has been given to Mortgagor by Mortgagee.

**21. Remedies.** Upon the occurrence of any Event of Default, and in addition to the rights, powers and remedies as may be available to Mortgagee under the Notes, or any of the other Loan Documents, or at Law or in equity conferred and to the extent permitted by applicable Laws, the following provisions shall apply:

(a) Acceleration. Mortgagee may at any time and from time to time declare any or all of the Obligations immediately due and payable and such Obligations shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate of any kind, all of which are hereby expressly waived by Mortgagor.

(b) Mortgagee’s Right to Enter and Take Possession, Operate and Apply Income. In any case in which under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the entire Obligations are declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor shall forthwith, upon demand of Mortgagee, surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Mortgaged Property or any part thereof, personally, or by its agent or attorneys. In such event Mortgagee in its discretion may, with or without force and with or without process of Law, as permitted by Law, enter upon and take and maintain possession of all or any part of said Mortgaged Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Mortgaged Property relating thereto, and may exclude Mortgagor, and each of their agents or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the Rents, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (i) to cancel or terminate any Lease for any cause or on any ground which would entitle Mortgagor to cancel the same; (ii) to elect to disaffirm any Lease which is then subordinate to the lien hereof; (iii) to extend or modify any then existing Leases and to make new

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Leases on such terms as Mortgagee reasonably determines to be commercially reasonable, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, not to exceed twelve (12) months beyond the maturity date of the Obligations and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (iv) to enter into any management, leasing or brokerage agreements covering the Mortgaged Property with third parties on such terms as Mortgagee reasonably deems to be commercially reasonable; (v) to complete renovation and construction of the Improvements and to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property as to it may seem judicious; (vi) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (vii) to receive all of such Rents; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any Leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur (other than losses caused solely by Mortgagee's gross negligence or willful misconduct) by reason of its performance of any action authorized under this Section 21(b) and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor. Should Mortgagee incur any such liability, loss or damage, by its performance or nonperformance of actions authorized by this Section 21(b), or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees, together with interest on any such amount at the Default Rate shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefore immediately upon demand.

(c) Foreclosure, etc. Mortgagee may, with or without entry, personally or by its agents or attorneys, insofar as applicable:

1 Sell the Mortgaged Property or any part thereof pursuant to the procedures provided by Law at one or more sales as an entirety or in parcels, and at such time and place upon such terms and after such notice thereof as may be required or permitted by Law; and/or

2 Institute an action of judicial foreclosure on this Mortgage, seek the appointment of a receiver as a matter of right, or institute other proceedings according to Law for the foreclosure hereof, and may prosecute the same to judgment, execution and sale for the collection of the Obligations, and all interest with respect thereto, together with all taxes and insurance premiums advanced by Mortgagee and other sums payable by Mortgagor hereunder, and all reasonable and actual fees, costs and expenses of such proceedings, including reasonable and actual attorneys' fees and expenses, in the case of which foreclosure Mortgagor will furnish to Mortgagee copies of all leases and other agreements affecting the Real Estate; and/or

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3 Take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at Law for the specific performance of any covenant, condition or agreement in the Loan Documents or in and of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect; and/or

4 Exercise in respect of the Mortgaged Property consisting of personal property or fixtures, or both, all of the rights available to a secured party upon default under the applicable provisions of the Code.

(d) Conduct of Sale.

1 To the extent permitted by Law of the State of Illinois, Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of Law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned; and/or

2 Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Section 21, Mortgagor or an officer of any court empowered to do so shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's true and lawful attorney in fact, coupled with an interest, in Mortgagor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold. For that purpose, Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power. Mortgagor hereby ratifies and confirms all that Mortgagor's said attorney or such substitute(s) shall lawfully do by virtue hereof.

Nevertheless, Mortgagor, if so requested by Mortgagee or any purchaser, shall ratify and confirm any such sale or sales by executing and delivering to Mortgagee or to such purchaser all such reasonable instruments as may be designated in such request. Any such sale or sales made under or by virtue of this Section 21, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at Law or in equity, of Mortgagor in and to the Property, interests and rights so sold, and shall be a perpetual bar both at Law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor; and/or

3 Upon any sale, whether under the power of sale hereby given or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, except as required by Law, it shall not be necessary for Mortgagee or any public officer acting under execution or order of court to have present or constructive possession of any of the Mortgaged Property; and/or

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4 The recitals contained in any conveyance made to any purchaser at any sale made pursuant hereto or under applicable Law shall be prima facie evidence of the matters therein stated, and all prerequisites to such sale shall be presumed to have been satisfied and performed; and/or

5 The receipt by Mortgagee of the purchase money paid at any such sale, or the receipt by any other person authorized to receive the same, shall be sufficient discharge therefore to any purchaser of the property or any part thereof, sold as aforesaid, and no such purchaser, or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money, or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale; and/or

6 In case the lien or security interest hereunder which shall be foreclosed by sale or by other judicial or non-judicial action, the purchaser at any such sale shall receive, as an incident to his ownership, the right to immediate possession of the property purchased, and if Mortgagor or Mortgagor's successors shall hold possession of said property, or any part thereof, subsequent to foreclosure, Mortgagor or Mortgagor's successors (except tenants who have entered into subordination, non-disturbance and attornment agreements with Mortgagee on Mortgagee's customary form) shall be considered as tenants at sufferance of the purchaser at foreclosure sale, and anyone occupying the property after demand made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of Law, and all damages by reason thereof are hereby expressly waived to the extent permitted by Law; and/or

7 Should any Event of Default occur under the terms of the Notes or this Mortgage, any reasonable expenses incurred by Mortgagee in prosecuting, resolving, or settling the claim of Mortgagee shall become an additional "Obligation" of Mortgagor hereunder; and/or

8 In the event a foreclosure hereunder shall be commenced by Mortgagee, Mortgagee may at any time before the sale abandon the suit, and may then institute a suit for the acceleration of the Notes evidenced by the Notes and for the foreclosure of the lien and security interest hereof. If Mortgagee should institute a suit for the acceleration of said Notes and for a foreclosure of the lien and security interest hereof, it may at any time before the entry of a final judgment in said suit dismiss the same and proceed to sell the Mortgaged Property, or any part thereof, in accordance with the provisions of this Mortgage; and/or

9 The purchase money proceeds or avails of any sale made under or by virtue of this Section 21, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Section 21 or otherwise, shall be applied in accordance with the provisions of Section 22 hereof; and/or

10 Upon any sale made under or by virtue of this Section 21 whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefore may make settlement for the

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purchase price by crediting upon the Obligations secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which are required to be paid under Section 21(c)(9).

(e) Appointment of Receiver. Immediately upon the commencement of, or at any time during the continuance of, any action, suit or other legal proceedings by Mortgagee to obtain judgment for the Obligations, including without limitation, principal of, or interest on, the Notes evidenced by the Notes and other sums required to be paid by Mortgagor pursuant to any provision of this Mortgage, or of any nature in aid of the enforcement of the Notes or of this Mortgage, including any foreclosure action, Mortgagor consents (and will not hereafter object) to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof and of all the earnings, revenues, rents, maintenance payments, issues, profits, to take possession of and to operate, maintain, develop and manage the Mortgaged Property or any part thereof, as a matter of right, and if Mortgagee shall so elect, Mortgagee shall have the absolute right to apply to a court of competent jurisdiction for the appointment of such a receiver or receivers, and such receiver or receivers shall be appointed as a matter of right, without notice (unless required by applicable Laws) without regard to the adequacy or inadequacy of any security for the Notes evidenced by the Notes forthwith, either before or after declaring the unpaid principal of the Notes to be due and payable. In every case when a receiver of the whole or any part of the Mortgaged Property shall be appointed under this Section or otherwise, the net income and profits of the Mortgaged Property shall, subject to the order of any court of competent jurisdiction, be paid over to, and shall be received by, Mortgagee to be applied as provided in Section 22 hereof.

**22 Application of the Rents or Proceeds from Foreclosure or Sale.** In any foreclosure of this Mortgage by judicial action, or any sale of the Mortgaged Property by advertisement or otherwise, in addition to any of the terms and provisions of the Loan Documents, there shall be allowed (and included in the decree for sale in the event of a foreclosure by judicial action) to be paid out of the Rents or the proceeds of such foreclosure proceeding and/or sale:

- (a) Obligations. All of the Obligations and other sums secured hereby which then remain unpaid;
- (b) Other Advances. All other items advanced or paid by Mortgagee pursuant to this Mortgage; and
- (c) Costs, Fees and Other Expenses. All court costs, reasonable and actual attorneys' and paralegals' fees and expenses, appraiser's fees, advertising costs, filing fees and transfer taxes, notice expenses, expenditures for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title insurance policies and similar data with respect to title which Mortgagee in the reasonable exercise of its judgment may deem necessary. All such expenses shall become additional Obligations secured hereby when paid or incurred by Mortgagee in connection with any proceedings, including but not limited to probate and bankruptcy proceedings, to which Mortgagee shall be a party, as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured or in connection with the preparations for the commencement of any suit for foreclosure, whether or not



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actually commenced, or sale by advertisement. The proceeds of any sale (whether through a foreclosure proceeding or Mortgagee's exercise of the power of sale) shall be distributed and applied in accordance with the terms of the Loan Documents.

**23 Judgment.** Mortgagee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage; and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right for the enforcement of the provisions of this Mortgage, or the foreclosure of the lien hereof; and in the event of a sale of the Mortgaged Property or any part thereof and of the application of the proceeds of sale, as provided in this Mortgage, to the payment of the indebtedness hereby secured, Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, the Notes and to enforce payment of all other charges, payments, and costs due under the Loan Documents, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest thereon at the rate provided in Notes. In case of proceedings against Mortgagor in insolvency or bankruptcy or any proceedings for its reorganization or involving the liquidation of its assets, then Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Notes to the full amount thereof, and all other payments, charges and costs due under the Loan Documents, without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Mortgaged Property.

**24 Waivers and Agreements Regarding Remedies.** To the full extent Mortgagor may do so, Mortgagor hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, extension and notice of election to accelerate the Obligations

(b) waives all rights to a marshaling of the assets of Mortgagor, including without limitation, the Mortgaged Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Mortgaged Property, and agrees not to assert any right under any Laws pertaining to the marshaling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Mortgaged Property without any prior or different resort for collection, or the right of Mortgagee to the payment of the Obligations out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based upon a claim which could be tried in an action for money damages, such defense, counterclaim or setoff may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

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(d) waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

**25 Suits to Protect the Mortgaged Property.** Mortgagee shall have the power and authority (but not the duty) to institute and maintain any suits and proceedings as Mortgagee may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or which violate the terms of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, or (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

**26 Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding affecting Mortgagor, or any constituent member of Mortgagor, to the extent permitted by Law, Mortgagee shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire amount due and payable by Mortgagor under the Loan Documents, at the date of the institution of such proceedings, and for any amounts which may become due and payable by Mortgagor after such date.

**27 Discontinuance of Proceedings, Position of Parties Restored.** If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Mortgagee, then and in every such case Mortgagee and Mortgagor shall be restored to their respective former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred or had been taken.

**28 Rights Cumulative.** Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at Law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Mortgagee and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Mortgagee 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. Each such remedy or right may be pursued separately, successively, or concurrently against Mortgagor, or against the Mortgaged Property or against either of them at the sole discretion of Mortgagee. No act of Mortgagee shall be construed as an election to proceed under any one provision of this Mortgage to the exclusion of any other provision. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as same shall become due, without regard to whether or not the balance of the Obligations shall then be due, and without prejudice to the right of

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Mortgagee thereafter to bring an action of foreclosure or any other action by reason of any other default or defaults by Mortgagor existing at the time such earlier action was commenced.

**29 No Liability on Mortgagee.** Notwithstanding anything contained herein to the contrary, Mortgagee shall not be obligated to perform or discharge, any Obligation, duty or liability of Mortgagor, whether under any of the Leases or otherwise, and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, claim expense, loss or damage which Mortgagee may or might incur with respect to the Mortgaged Property, or under or by reason of its exercise of rights hereunder, and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to be performed or discharged. Mortgagee shall not have responsibility for the control, care, management or repair of the Mortgaged Property, or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger (other than losses caused solely by the gross negligence or willful misconduct of the Mortgagee). No liability shall be enforced or asserted against Mortgagee in its exercise of the powers herein granted, and Mortgagor expressly waives and releases any such liability. Should Mortgagee incur any such liability, loss or damage, under any of the Leases or under or by reason hereof, or in the defense of any claims or demands, Mortgagor agrees to reimburse Mortgagee immediately upon demand for the amount thereof, including costs, expenses and attorneys' fees, together with interest thereon from date of such payment at the interest rate set forth in the Notes. For purposes of this paragraph, the term "attorneys" includes attorneys who are employees of Lender acting as counsel for Lender, and the terms "fees", "costs" and "expenses" shall include, without limitation, the fees charged by Lender for its in-house counsel.

**30 Further Assurances.** Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired. Upon any failure by Mortgagor so to do, Mortgagee may make, execute and record any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee its agent and attorney-in-fact for that purpose. Mortgagor will reimburse Mortgagee for any and all reasonable sums expended by Mortgagee in making, executing and recording such documents.

**31 Mortgagee's Performance of Mortgagor's Obligations.** Upon the occurrence of an Event of Default, or upon the occurrence of any emergency (which in Mortgagee's reasonable opinion would or could endanger, impair or otherwise harm the Mortgaged Property or any part thereof), Mortgagee, either before or after acceleration of the Obligations or the foreclosure of this Mortgage and during the period of redemption, if any, may, but shall not be required to, upon written notice to Mortgagor, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefore) in any form and manner deemed expedient to Mortgagee; and Mortgagee may, but shall not be required to, make full or partial payments with respect to any Permitted Exception and any other encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Property or any part thereof or contest any tax or assessment, and may, but shall not be required to, complete construction, furnishing and equipping of

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the Improvements, and rent, operate and manage the Mortgaged Property, and pay operating costs and expenses (including without limitation reasonable management fees) of every kind and nature in connection therewith, so that the Mortgaged Property shall be operational and usable for its intended purposes. All monies paid for any of the purposes herein authorized, and all reasonable expenses paid or incurred in connection therewith, including without limitation attorneys' fees and all costs of litigation through and including post-judgment and appellate proceedings, if any, and other monies advanced by Mortgagee to protect the Mortgaged Property or any part thereof, and the interest created by this Mortgage, or to complete construction, furnishing and equipping or to rent, Operate the Property or to pay any such operating costs and expenses thereof or to keep the Property operational and usable for its intended purpose shall be included within the term "Obligations" as used in this Mortgage, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default on the part of Mortgagor. Mortgagee, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any Tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, payment, discharge, compromise or settlement of any other lien or Permitted Exception, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the improvements on the Property or the rental, operation or management of the Property or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefore as Mortgagee may deem appropriate or may perform the same itself.

**32 Mortgagor's Successors.** In the event that the ownership of Mortgaged Property, or any part thereof, becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Obligations in the same manner as with Mortgagor; provided, however, that nothing contained in this Section 32 shall modify, limit or otherwise abrogate the restrictions on transfer set forth in Section 19.

**33 Successors and Assigns.** This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Wherever herein Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Notes, whether so expressed or not, and each such holder of the Notes shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce each and every term and provision hereof as fully and to the same extent and with the same effect as if such holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated Mortgagee.

**34 Provisions Severable.** If fulfillment of any provision of this Mortgage or any transaction related hereto shall at any time involve transcending the limit of validity prescribed by Law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained, other than the provisions requiring Mortgagor to pay the

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Obligations, operates or would prospectively operate to invalidate this Mortgage in whole or in part, then such clause or provision only shall be void, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect; and if such clause or provision requires Mortgagor to pay any of the Obligations, then at the sole option of Mortgagee, all of the Obligations shall become due and payable.

**35 Time of the Essence.** Time is of the essence as to each covenant, condition and provision of this Mortgage to be performed by Mortgagor, subject to any applicable notice, grace and/or cure periods provided in the Loan Documents..

**36 Captions and Pronouns.** The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

**37 Notices.** Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if hand delivered, if sent by reputable overnight courier for next Business Day delivery (effective the Business Day following delivery to such courier), if sent by telecopy with confirmation of receipt and a hard copy mailed in accordance with the provisions of this Section 37 (effective the business day following receipt of confirmation of receipt) or if mailed (effective two business days after mailing) by United States registered or certified mail, postage prepaid, return receipt requested:

If to the Borrower:

Peoria Sangamon Loftominium, LLC  
1212 North LaSalle Street, Suite 110  
Chicago, Illinois 60610  
Attn: Mr. John Cadden  
Telecopy Number: (312) 621-4165  
Confirmation Number: (312) 595-4759

with a copy to:

Anthony DiBenedetto, Esq.  
1212 North LaSalle Street, Suite 110  
Chicago, Illinois 60610  
Telecopy Number: (312) 621-4165  
Confirmation Number: (312) 595-4759

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If to Lender:

Horwood Marcus & Berk Chtd.  
180 N. LaSalle Street, Suite 3700  
Chicago, Illinois 60601  
Attn: Kenneth W. Bosworth, Esq.

Refusal to accept delivery of any notice shall be deemed to constitute receipt of such notice.

**38 Parties Not Partners.** Nothing contained in this Mortgage shall constitute Mortgagor and Mortgagee as joint venturers or partners with one another or agents for one another or render either of them liable for any debts or obligations of the other.

**39 Estoppel Letters.** Mortgagor, upon ten (10) Business Days' prior written notice, shall furnish Mortgagee with a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on the Obligations, and stating whether or not any off-sets or defenses exist against such principal and interest and, if so, the particulars thereof, and any other matters requested by Mortgagee. Mortgagee, upon ten (10) Business Days' prior written notice, shall furnish Mortgagor with a payoff letter setting forth the then unpaid principal of, and interest on, the Notes.

**40 Indemnification.**

(a) Mortgagor shall indemnify Mortgagee and save Mortgagee harmless from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and expenses, including, without limitation, reasonable architect's, engineer's, attorneys' and accountant's fees and all reasonable disbursements which may be imposed upon, incurred or asserted against Mortgagee by reason of: (i) any capital improvements, renovations or other work or thing done in, on or about the Mortgaged Property or any part thereof, (ii) any use, non-use, misuse, possession, occupation, alteration, repair, condition, operation, maintenance or management of the Mortgaged Property or any part thereof or any street, drive, sidewalk, curb, passageway or space comprising a part thereof or adjacent thereto, (iii) any negligence on the part of either Mortgagor or its agents, contractors, servants, employees, licensees or invitees, (iv) any accident, injury (including death) or damage to any person or property occurring in, on or about the Mortgaged Property or any part thereof or in, on or about any street, drive, sidewalk, curb, passageway or space adjacent thereof, (v) an Event of Default as defined herein, (vi) any lien or claim which may be alleged to have arisen on or against the Mortgaged Property or any part thereof under the Laws of the local or state government or any other governmental or quasi-governmental authority or any liability asserted against Mortgagee with respect thereto, (vii) any tax attributable to the execution, delivery, filing or recording of this Mortgage, the Notes, or any Loan Documents, or (viii) any contest permitted pursuant to the provisions of this Mortgage.

(b) The obligations of Mortgagor under this Section 40 shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Mortgaged Property. If any claim, action or proceeding is made or brought against Mortgagee by reason of any

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event as to which Mortgagor is obligated to indemnify, then upon demand by Mortgagee, Mortgagor, at its sole cost and expense, shall resist or defend such claim, action or proceeding in Mortgagee's name, if necessary by the attorneys for Mortgagor's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as Mortgagee shall approve in writing (which approval shall not be unreasonably withheld). Notwithstanding the foregoing, Mortgagee may engage its own attorneys in its reasonable discretion to defend it or to assist in its defense and Mortgagor shall pay the reasonable fees and disbursements of such attorneys.

**41 Non-Waiver By Mortgagee.** The failure of Mortgagee to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of its obligation to pay the Obligations, as and when due, by reason of Mortgagee's failure to comply with any request of Mortgagor to take any action to enforce any of the provisions of this Mortgage, the Notes or any of the Loan Documents. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Mortgaged Property, Mortgagee may release any person or entity at any time liable for the payment of the Obligations or any portion thereof or any part of the security held therefore, without in any manner impairing or affecting the Notes, Loan Documents or the lien thereof or the lien or priority of this Mortgage, as so extended and modified. Mortgagee may resort for the payment of the Obligations to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Obligations, or any portion thereof, or to enforce any covenant of this Mortgage, without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage.

**42 Governing Law.** Mortgagor hereby acknowledges, consents and agrees that the provisions of this Mortgage and the rights of all parties mentioned herein shall be governed by the Laws of the State of Illinois and interpreted and construed in accordance with such Laws (excluding the conflict of Laws for the State of Illinois).

**43 Interim Remedies.** Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as same shall become due, without regard to whether or not the balance of the Obligations shall then be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure or any other action by reason of any default or defaults by Mortgagor existing at the time such earlier action was commenced.

**44 RESERVED.**

**45 Repayment of Notes.** Upon the full repayment and performance of the Obligations secured hereby, Mortgagee, upon Mortgagor's written request and without charge to Mortgagor, shall execute and deliver to Mortgagee either a release of this Mortgage or an assignment of this Mortgage to a third party, as requested by Mortgagor.

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**46** **WAIVER OF JURY TRIAL.** MORTGAGOR AND MORTGAGEE EACH WAIVES ALL RIGHTS TO TRIAL BY JURY OF ANY SUITS, CLAIMS, COUNTERCLAIMS, AND ACTIONS OF ANY KIND ARISING UNDER OR RELATING TO THIS MORTGAGE. MORTGAGOR AND MORTGAGEE EACH ACKNOWLEDGES THAT THIS IS A WAIVER OF A LEGAL RIGHT AND REPRESENTS TO THE OTHER THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY. MORTGAGOR AND MORTGAGEE EACH AGREES THAT ALL SUCH SUITS, CLAIMS, COUNTERCLAIMS, AND ACTIONS SHALL BE TRIED BEFORE A JUDGE OF A COURT OF COMPETENT JURISDICTION, WITHOUT A JURY.

**47** **Jurisdiction.** Mortgagor irrevocably (a) submits to the non-exclusive personal jurisdiction of any state or federal court in the State of Illinois in any suit, action or other legal proceeding relating to this Mortgage; (b) agrees that all claims in respect of any such suit, action or other legal proceeding may be heard and determined in, and enforced in and by, any such court; (c) waives any objection that it may now or hereafter have to venue in any such court sitting in Cook County, Illinois or that such court sitting in Cook County, Illinois is an inconvenient forum; (d) agrees to service of process in any manner permitted by law, to any then active agent for service of process at any specified address or to Mortgagor at its address set forth above or to such other address of which Mortgagee shall have been notified in writing; (e) agrees that the failure of Mortgagor's agent to give any notice of any such service of process to Mortgagor shall not impair or affect the validity of such service or any judgment based thereon; (f) to the extent that Mortgagor has acquired, or hereafter may acquire, any immunity from jurisdiction of any such court or from legal process therein, waives, to the fullest extent permitted by applicable Law, such immunity; (g) to the fullest extent permitted by applicable law, in connection with, or with respect to, any suit, action or other legal proceeding relating to this Mortgage: (1) **WAIVES** any claim that it is immune from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to it or any of its property, (2) **WAIVES** any claim that it is not personally subject to the jurisdiction of any such court, and (3) **WAIVES ANY RIGHT TO ASSERT ANY COUNTERCLAIM THEREIN** (other than compulsory counterclaims under applicable Laws); and (h) agrees that Lender shall have the right to bring any legal proceedings for enforcement of a judgment entered by any of the aforementioned courts against Mortgagor in any other court or jurisdiction in accordance with applicable Laws. Notwithstanding the foregoing, nothing in this Section shall affect the right of Lender to bring any action or proceeding relating to this Notes in the courts of any other jurisdiction in which Lender can obtain personal jurisdiction and service of process under applicable Laws or the right, in connection with any legal action or proceeding, to serve legal process in any other manner permitted by applicable Laws.

[signature page follows]



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IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly signed and delivered the day and year first above written.

**Mortgagor:**

**PEORIA SANGAMON LOFTOMINIUM, LLC**, an Illinois limited liability company

By: A. P. Loftominium Consultants Inc., an Illinois corporation, its Manager

By: \_\_\_\_\_  
Name: John Cadden  
Its: Vice President

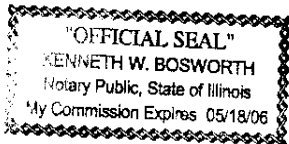
STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF COOK    )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that JOHN CADDEN, personally known to me to be the Vice President of A. P. Loftominium Consultants, Inc., the manager of Peoria Sangamon Loftominium, LLC, an Illinois limited liability company, who appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his/her free and voluntary act and deed as the Vice President of said corporation as the manager of said limited liability company for the uses and purposes therein set forth.

Given under my hand and official seal, this 30 day of August, 2004.

*Kenneth W. Bosworth*  
\_\_\_\_\_  
Notary Public

(Notary Seal)



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## EXHIBITS A

### Legal Description

UNIT(S) 101 IN THE HALE LOFTOMINIUM, A CONDOMINIUM, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE:

CERTAIN PLOTS IN S.F. GALE'S SUBDIVISION OF BLOCK 52 OF CARPENTER'S ADDITION TO CHICAGO OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; WHICH SURVEY IS ATTACHED AS EXHIBIT "B" TO THE DECLARATION RECORDED AS DOCUMENT NUMBER 00769056, AS AMENDED; TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN COOK COUNTY, ILLINOIS.

P.I.N.: 17-08-448-006-1046

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## EXHIBIT B

### Permitted Exceptions

1. Easements, covenants and conditions of record.
2. The condominium declaration.
3. The Condominium Property Act of the State of Illinois.

Property of Cook County Clerk's Office