

# UNOFFICIAL COPY



Doc#: 0523155239 Fee: \$64.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/19/2005 01:17 PM Pg: 1 of 21

## MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FINANCING STATEMENT

### THIS MORTGAGE PREPARED BY:

Selfreliance Ukrainian American Federal Credit Union  
2332 W. Chicago Ave., Chicago, IL, 60622

THIS MORTGAGE, SECURITY AGREEMENT, AND FINANCING STATEMENT  
(Mortgage) is made as of **AUGUST 12, 2005**, by **OLEKSIUK PROPERTIES, LTD.**  
(Mortgagor) whose mailing address is **422 E. PALATINE RD., PALATINE, IL 60074**, in  
favor of **SELFRELIANCE UKRAINIAN AMERICAN FEDERAL CREDIT UNION**,  
(Mortgagee), whose mailing address is **2332 W. Chicago Ave., Chicago, IL 60622**.

Mortgagor is justly indebted to Mortgagee, including, without limitation, the principal sum of **TWO HUNDRED THIRTEEN THOUSAND AND NO/DOLLARS (\$213,000.00)** as evidenced by a certain promissory note of even date herewith (Note), made payable to the order of and delivered to Mortgagee, whereby the obligor promises to pay the Note, late charges, prepayment premiums (if any), and interest at the rate or rates provided in the Note. Said Note provides for monthly installments of principal and interest of **\$1,405.10** due on the **12TH** day of each month commencing with **SEPTEMBER 12, 2005** until Note is fully paid. The final payment of principal and interest, if not sooner paid, renewed, modified, extended, or renegotiated, shall be due on the **12TH** day of **AUGUST, 2012**. All such payments on account of the indebtedness secured hereby shall be applied first to interest on the unpaid principal balance of the Note, secondly to any other sums due thereunder, third to all other advances and sums secured hereby, and the remainder to principal.

The Maximum Principal Balance (not including interest thereon at a rate which may vary from time to time and any other charges and collection costs which may be owing from time to time under said Note) shall not exceed **TWO HUNDRED THIRTEEN THOUSAND AND NO/DOLLARS (\$213,000.00)**.

# UNOFFICIAL COPY

Mortgagor, in order to secure the payment of said principal sum of money and said interest and late charges and prepayment premiums, if any, fees, and expenses, in accordance with the terms, provisions, and limitations of this Mortgage and of the Note, and all modifications, amendments, extensions and renewals thereof, either directly or indirectly as evidenced by a guaranty of payment of performance executed by Mortgagor or a beneficiary of Mortgagor and the performance of the covenants and agreements herein contained by Mortgagor to be performed, as security for repayment of any and all other liabilities and obligations of Mortgagor or its beneficiary now or hereafter due Mortgagee, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, and in consideration of the sum of \$1 in hand paid, the receipt of which is hereby acknowledged, does by these presents mortgage, grant, remise, release, alien, and convey unto Mortgagee and its successors and assigns the following described real estate and all of its present and hereafter acquired estate, right, title, and interest therein, lying and being in the County of COOK and State of Illinois to wit:

## **PARCEL 1: RETAIL AREA 2**

**THAT PROPERTY AND SPACE CONTAINED WITHIN AND BETWEEN A CERTAIN HORIZONTAL PLANE LOCATED 17.94 FEET ABOVE CHICAGO CITY DATUM AND THAT CERTAIN OTHER HORIZONTAL PLANE LOCATED 30.89 FEET ABOVE CHICAGO CITY DATUM LYING WITHIN THE BOUNDARIES PROJECTED VERTICALLY OF THAT PART OF LOTS 29 (EXCEPT THE WEST 18.33 FEET), 30, 31, AND 32, TAKEN AS A SINGLE TRACT IN SUBDIVISION OF THE SOUTH PART OF BLOCK 14 IN SUFFERN'S SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:**

**COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 32; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 32, BEING ALSO THE NORTH LINE OF WEST CHICAGO AVENUE, AND ALSO BEING THE EXTERIOR OF A FOUR STORY BRICK AND CONCRETE BLOCK BUILDING COMMONLY KNOWN AS 2246-50 WEST CHICAGO AVENUE IN CHICAGO; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 38.62 FEET THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, A DISTANCE OF 1.03 FEET TO A POINT ON THE VERTICAL LINE OF INTERSECTION OF THE INTERIOR FACES OF TWO WALLS OF SAID BUILDING, BEING THE POINT OF BEGINNING OF THE PARCEL HEREIN DESCRIBED:**

**THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 28.80 FEET TO A CORNER OF THE WALL; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 6.96 FEET TO A CORNER OF THE WALL; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG INTERIOR FACE OF SAID WALL, A DISTANCE OF 1.82 FEET TO A CORNER OF THE WALL; THENCE NORTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 44.31 FEET TO A CORNER OF THE WALL; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 6.92 FEET TO A CORNER OF A WALL; THENCE SOUTH AT RIGHT**

# UNOFFICIAL COPY

ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 8.66 FEET TO A CORNER OF A WALL; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 22.22 FEET TO A CORNER OF THE WALL; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 0.27 FEET TO A CORNER OF THE WALL; THENCE EAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 1.67 FEET TO A CORNER OF THE WALL, THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 37.65 FEET TO A CORNER OF THE WALL; THENCE WEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 0.19 FEET TO A CORNER OF A WALL; THENCE SOUTH AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, BEING ALONG THE INTERIOR FACE OF SAID WALL, A DISTANCE OF 4.69 FEET TO A CORNER OF THE WALL TO THE POINT OF BEGINNING.

**PARCEL 2: UNIT NUMBER P 7 IN 2246-50 WEST CHICAGO CONDOMINIUM AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE: LOTS 29 (EXCEPT THE WEST 18.33 FEET THEREOF) 30, 31, AND 32 IN SUBDIVISION OF THE SOUTH PART OF BLOCK 14 IN SUFFERN'S SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.**

**WHICH SURVEY IS ATTACHED AS EXHIBIT "B" TO THE DECLARATION OF CONDOMINIUM OWNERSHIP RECORDED AS DOCUMENT NUMBER 0423034079, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, IN COOK COUNTY, ILLINOIS.**

**PIN: 17-06-329-038-0000**

**commonly known as 2250 W. CHICAGO AVE., CHICAGO, IL 60622**

which, with the property hereinafter described, is collectively referred to herein as the "Premises."

TOGETHER with all improvements, tenements, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging, and all rents, issues, and profits thereof for as long as and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with the real estate and not secondarily); all tenant security deposits, utility deposits, and insurance premium rebates to which Mortgagor may be entitled or that Mortgagor may be holding; and all fixtures, apparatus, equipment, and articles (other than inventories held for sale) that relate to the use, occupancy, and enjoyment of the Premises. All of the land, estate, and property hereinabove described, real, personal, and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended to be as a unit and are hereby understood, agreed, and declared (to the maximum extent permitted by law) to form part and parcel of the real estate and to be

# UNOFFICIAL COPY

appropriated to the use of the real estate and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD the Premises unto Mortgagee and its successors and assigns forever, for the purpose and uses herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. MAINTENANCE, REPAIR, AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC. Mortgagor shall (a) promptly repair, restore, or rebuild any buildings and other improvements now or hereafter on the Premises that may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability or adequacy of any casualty insurance proceeds or eminent domain awards; (b) keep the Premises constantly in good condition and repair, without waste; (c) keep the Premises free from mechanics liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), subject, however, to the rights of Mortgagor set forth in the next Paragraph below; (d) immediately pay when due any indebtedness that may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof (no such subsequent lien to be permitted hereunder) and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (e) complete within a reasonable time any buildings or other improvements now or at any time in process of erection on the Premises; (f) comply with all federal, state, and local requirements of law, regulations, ordinances, orders, and judgments and all covenants, easements, and restrictions of record with respect to the Premises and the use thereof; (g) make no alterations in the Premises without Mortgagee's prior written consent; (h) suffer or permit no change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent; (i) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, easements, licenses, permits (including without limitation zoning variations and any nonconforming uses and structures), privileges, franchises, and concessions applicable to the Premises or contracted for in connection with any present or future use of the Premises; and (j) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof and of the Note. As used in this Paragraph and elsewhere in the Mortgage, the term "Indebtedness" means and includes the unpaid principal sum evidenced by the Note, together with all interest, additional interest, late charges, and prepayment premiums thereon (if any), and all other sums at any time secured by this Mortgage.

Anything in (c) and (d) above to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any lien not expressly subordinated to the lien hereof and defer payment and discharge thereof during the pendency of such contest, provided that (i) such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such lien; (ii) within ten days after Mortgagor has been notified of the assertion of such lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest that lien; and (iii) Mortgagor shall have deposited with Mortgagee a sum of money that shall be sufficient in the judgment of Mortgagee to pay in full the lien and all interest that might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing the amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable. Such deposits are to be held without any allowance of interest. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the lien plus any interest,

# UNOFFICIAL COPY

cost, and expenses finally determined to be due upon the conclusion of such contest, to the extent that amount exceeds the amount that Mortgagee will pay as provided below or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on such lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of the lien, together with all interest thereon, Mortgagor shall, upon demand, deposit with Mortgagee a sum that, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of the contest, apply the money so deposited in full payment of the lien or that part thereof then unpaid (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount to be paid.

2. **PAYMENT OF TAXES.** Mortgagor shall pay all general taxes before any penalty or interest attaches, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts thereof within 30 days following the date of payment. Mortgagor shall pay in full, under protest, any tax or assessment that Mortgagor may desire to contest, in the manner provided by law.

3. **TAX DEPOSITS.** Unless waived from time to time by Mortgagee in writing, Mortgagor shall deposit with Mortgagee, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which the disbursement occurs (unless otherwise agreed to by Mortgagee), a sum equal to the amount of all real estate taxes and assessments (general and special) next due on or for the Premises (the amount of such taxes next due to be based on Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed) reduced by the amount, if any, then on deposit with Mortgagee, divided by the number of months to elapse before two months prior to the date when such taxes and assessments first become due and payable. Such deposits are to be held without any allowance or payment of interest to Mortgagor and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general or special) when they become due and payable, Mortgagor shall, within ten days after receipt of demand therefor from Mortgagee, deposit such additional funds as may be necessary to pay the taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay the taxes and assessments (general and special) for any year, the excess shall be applied on a subsequent deposit or deposits. These deposits need not be kept separate and apart from any other funds of Mortgagee.

Anything in this Paragraph 3 to the contrary notwithstanding, if the funds so deposited are insufficient to pay any such taxes or assessments (general or special) or any installment thereof, Mortgagor will, not later than the 30th day prior to the last day on which the taxes or assessments may be paid without penalty or interest, deposit with Mortgagee the full amount of any such deficiency.

If any such taxes or assessments (general or special) shall be levied, charged, assessed, or imposed on or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment, or imposition on or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this

# UNOFFICIAL COPY

Paragraph 3 shall be based on the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purpose of this computation.

4. **INSURANCE DEPOSITS.** For the purpose of providing funds with which to pay premiums when due on all policies of fire and other hazard insurance covering the Premises and the Collateral (defined below) and unless waived from time to time by Mortgagee in writing, Mortgagor shall deposit with Mortgagee, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which the disbursement occurs (unless otherwise agreed to by Mortgagee), a sum equal to Mortgagee's estimate of the premiums that will next become due and payable on such policies reduced by the amount, if any, then on deposit with Mortgagee, divided by the number of months to elapse before two months prior to the date when such premiums become due and payable. No interest shall be allowed or paid to Mortgagor on account of any deposits made hereunder, and these deposits need not be kept separate and apart from any other funds of Mortgagee.

5. **MORTGAGEE'S INTEREST IN AND USE OF TAX AND INSURANCE DEPOSITS; SECURITY INTEREST.** In the event of a default hereunder, Mortgagee may, at its option but without being required so to do, apply any money at the time of deposit pursuant to Paragraphs 3 and 4 hereof on any of Mortgagor's obligations contained herein or in the Note, in such order and manner as Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises as they appear on the records of Mortgagee. A security interest, within the meaning of the Uniform Commercial Code of the State in which the Premises are located, is hereby granted to Mortgagee in and to all money at any time on deposit pursuant to Paragraphs 3 and 4 hereof, and this money and all of Mortgagor's right, title, and interest are hereby assigned to Mortgagee, all as additional security for the indebtedness hereunder and shall, in the absence of default hereunder, be applied by Mortgagee for the purposes for which made hereunder and shall be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes or assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have furnished Mortgagee with the bills therefor and requested Mortgagee in writing to make application of such funds to the payment of the particular taxes or assessments or insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes or assessments or insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

6. **INSURANCE.** Mortgagor shall keep all buildings and improvements and the Collateral (defined in Paragraph 28 below) now or hereafter situated on the Premises insured against loss or damage by fire on a so-called "All Risks" basis and against such other hazards as may reasonably be required by Mortgagee, including without limitation of the generality of the foregoing (a) rent loss or business interruption insurance whenever, in the opinion of Mortgagee, such protection is necessary, and (b) flood insurance whenever it is available and, in the opinion of Mortgagee, such protection is necessary. Mortgagor shall also provide insurance coverages with such limits for personal injury, death, and property damage as Mortgagee may require. All policies of insurance to be furnished hereunder shall be in forms, companies, and amounts satisfactory to Mortgagee, with waiver of subrogation and replacement cost endorsements and a standard non-contributory mortgagee clause attached to all policies, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without 30 days'

# UNOFFICIAL COPY

prior written notice to Mortgagee. Mortgagor shall deliver all original policies, including additional and renewal policies, to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies not less than 30 days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure of the Mortgage, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee, or purchaser, as the case may be.

Within 90 days following the end of each fiscal year of Mortgagor, at the request of Mortgagee, Mortgagor agrees to furnish evidence of replacement cost, without cost to Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the buildings and other improvements on the Premises.

7. ADJUSTMENT OF LOSSES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE. In case of the loss or damage by fire or other casualty, Mortgagee is authorized (a) to settle and adjust any claim under insurance policies that insure such risks; or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance money. As long as (a) each lease applicable to the premises is in full force and effect and each tenant thereunder is not in default and such loss or damage shall not result in the termination or cancellation of any of those leases or give any tenant thereunder the right to terminate or cancel its lease; (b) no insurer denies liability as to any insured or claims any right of participation in any of Mortgagee's security; and (c) this Mortgage is not in default, then such insurance proceeds, after deducting therefrom any expense incurred by Mortgagee in the collection thereof, shall be made available by Mortgagee for the repair, rebuilding, or restoration of the buildings and other improvements on the Premises. In any event, the buildings and other improvements shall be repaired, restored, or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the insurance proceeds are made available for repair, rebuilding, or restoration, they shall be disbursed upon the "Disbursing Party" (hereinafter defined) being furnished with satisfactory evidence of the cost of completion thereof and with architects' certificates, waivers, or liens, contractors' and subcontractors' sworn statements, title continuations, and other evidence of cost and payments so that Disbursing Party can verify that the amounts disbursed from time to time are represented by completed and in-place work and that the work is free and clear of mechanics lien claims. No payment made prior to the final completion of the work shall exceed 90 percent of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of Disbursing Party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If the cost of rebuilding, repairing, or restoring the buildings and other improvements may reasonably exceed the sum of \$50,000, then Mortgagee must approve plans and specifications of the work before the work shall be commenced. Any surplus that may remain out of these insurance proceeds, after payment of the cost of repair, rebuilding, and restoration and the reasonable charges of Disbursing Party, shall, at the option of Mortgagee, be applied on account of the indebtedness or paid to any party entitled thereto as they appear on the

# UNOFFICIAL COPY

records of Mortgagee. No interest shall be allowed to Mortgagor on any proceeds of insurance held by Disbursing Party.

As used in this Paragraph 7, the term "Disbursing Party" refers to Mortgagee and/or any title insurance company selected by Mortgagee.

8. **STAMP TAX; EFFECT OF CHANGES IN LAWS REGARDING TAXATION.** If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over Mortgagor, any tax is due or becomes due in respect to the Note or this Mortgage, Mortgagor covenants and agrees to pay the tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums that Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

In the event of the enactment of any law of the state in which the Premises are located imposing on Mortgagee the payment of the whole or any part of taxes, assessments, or charges on the lien of this Mortgage, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness to be and become due and payable 60 days from the giving of such notice.

9. **OBSERVANCE OF LEASE ASSIGNMENT.** As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgagor and its beneficiaries do hereby assign to Mortgagee all of their right, title, and interest as landlords in and to the present leases and all future leases of the Premises. All leases of the Premises are subject to the approval of Mortgagee as to form, content, and tenant.

Mortgagor will not and Mortgagor's beneficiaries will not, without Mortgagee's prior written consent (a) execute an assignment or pledge of any rents or any leases of the Premises except an assignment or pledge securing the Indebtedness in favor of Mortgagee; (b) accept any payment of any installment of rent more than 30 days before the due date thereof; or (c) make any lease of the Premises except for actual occupancy by the tenant thereunder.

Mortgagor shall not and the beneficiaries of Mortgagor, if any, shall not enter into or permit to be entered into any management contract, assignment, or sublease of any lease, license, or concession pertaining to the Premises without the prior written approval of Mortgagee having first been obtained and following such approval shall not amend or modify the document without further written approval of Mortgagee.

Mortgagor at its sole cost and expense will (a) at all times promptly and faithfully abide by, discharge, and perform all of the covenants, conditions, and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (b) enforce or secure the performance of all the covenants, conditions, and agreements of such leases on the part of the tenants to be kept and performed, but Mortgagor shall not and Mortgagor's



# UNOFFICIAL COPY

beneficiaries shall not modify, amend, cancel, terminate, or accept surrender of any lease without prior written consent of Mortgagee; (c) appear in and defend any action or proceeding arising under, growing out of, or in any manner connected with such leases or obligations, duties, or liabilities of the landlord or of any tenants thereunder; (d) transfer and assign or cause to be separately transferred and assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the Premises heretofore or hereafter entered into, and make, execute, and deliver to Mortgagee upon demand any and all instruments required to effect the assignment; (e) furnish Mortgagee, within ten days after a request by Mortgagee so to do, a written statement containing the names of all tenants and the terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder; and (f) exercise within five days of any demand therefor by Mortgagee any right to request from the tenant under any lease of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the Note secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of the landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay or cause to be performed and paid.

At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in eminent domain), to any one or more leases affecting any part of the Premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office in which this Mortgage was registered or filed for record, of a unilateral declaration to that effect.

In the event of the enforcement by Mortgagee of any remedies provided for by law or by this Mortgage, the tenant under each lease of the Premises shall, at the option of Mortgagee, attorn to any person succeeding to the interest of landlord as a result of such enforcement and shall recognize the successor in interest as landlord under the lease without change in the terms or other provisions thereof; provided, however, that the successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or the successor in interest. Each tenant, upon request by the successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

Mortgagee shall have the option to declare this Mortgage in default because of a material default of landlord in any lease of the Premises, whether or not such default is cured by Mortgagee pursuant to the right granted herein. It is covenanted and agreed that a default under any Assignment of Rents or Leases executed pursuant to this Paragraph 9, or otherwise, shall constitute a default hereunder, on account of which the whole of the Indebtedness secured hereby shall at once, at the option of Mortgagee, become immediately due and payable, without notice to Mortgagor.

**10. MORTGAGOR AND LIEN NOT RELEASED.** From time to time Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor, its beneficiaries, or its successors or assigns or the consent of any junior lien holder, grantor, or tenant, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant, agreement, or condition, (a) release anyone primarily or secondarily liable on any of

# UNOFFICIAL COPY

the Indebtedness; (b) accept a renewal note or notes of the Note; (c) release from the lien of this Mortgage any part of the Premises; (d) take or release other or additional security for the indebtedness; (e) consent to any plat, map, or plan of the Premises or Declaration of Condominium as to the Premises (in whole or in part); (f) consent to the granting of any easement; (g) join in any extension or subordination agreement; (h) agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the time of payment or the amount of the installments payable thereunder; and (i) waive or fail to exercise any right, power, or remedy granted by law or in this Mortgage or in any other instrument given at any time to evidence or secure the payment of the indebtedness.

Any actions taken by Mortgagee pursuant to the terms of this Paragraph 10 shall not impair or affect (a) the obligation of Mortgagor or Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements, and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the indebtedness; and (c) the lien or priority of the lien hereof against the Premises.

Mortgagor shall pay to Mortgagee a reasonable service charge and such title insurance premiums and attorneys' fees (including those of in-house staff) as may be incurred by Mortgagee for any action described in this Paragraph 10 taken at the request of Mortgagor or its beneficiary or beneficiaries.

**11. MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS.** In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or assessment or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Premises. All money paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other funds advanced by Mortgagee in regard to protecting the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the rate of interest set forth in the Note applicable to a period when a default exists thereunder. 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.

**12. MORTGAGEE'S RELIANCE ON TAX BILLS, ETC.** Mortgagee in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any computer or billing service, bill, statement, or estimate procured from the appropriate public office or title company without inquiry into the accuracy of that bill, statement, or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; or (b) for the purchase, discharge, compromise, or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien that may be asserted.

**13. ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT.** If (a) default occurs in the due and punctual payment of principal or interest on the Note, or any other payment due in accordance with the terms thereof; or (b) Mortgagor or any beneficiary thereof or any guarantor of the Note shall (i) file a petition for liquidation, reorganization, or adjustment of debt under Title 11 of the United States Code or any similar law, state or federal, whether now or hereafter

# UNOFFICIAL COPY

existing, or (ii) file any answer admitting insolvency or inability to pay debts, or (iii) fail to obtain a vacation or stay of involuntary proceedings within ten days, as hereinafter provided; or (c) any order for relief of Mortgagor or any beneficiary thereof or any guarantor of the Note shall be entered in any case under Title 11 of the United States Code, or a trustee or a receiver shall be appointed for Mortgagor or for any beneficiary thereof or any guarantor of the Note, or for all or the major part of the property of Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the property of Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceedings for the reorganization, dissolution, liquidation, adjustment of debt, or winding up of Mortgagor or of any beneficiary thereof or of any guarantor of the Note and such trustee or receiver shall not be discharged or such jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed within ten days; or (d) Mortgagor or any beneficiary thereof or any guarantor of the Note secured hereby shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all or any major part of its property; (e) default shall occur in the due observance or performance of any other covenant, agreement, or condition contained in this Mortgage and required to be kept or performed or observed by Mortgagor or its beneficiary; (f) default shall occur in the due observance or performance of any covenant, agreement, or condition required to be kept or observed by Mortgagor or its beneficiary or beneficiaries in the Note or any guarantor thereof or in any other instrument given at any time to secure the payment of the Note, then and in any such event, the whole of the Indebtedness shall at once, at the option of Mortgagee, become immediately due and payable without notice to Mortgagor. If, while any insurance proceeds or condemnation awards are held by or for Mortgagee to reimburse Mortgagor or any lessee for the cost of repair, rebuilding, or restoration of buildings or other improvements on the Premises, as set forth herein, Mortgagee shall be or become entitled to accelerate the maturity of the Indebtedness, then and in any such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the Indebtedness, and any excess held by it over the amount of the Indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the entitlement appears on the records of Mortgagee.

14. FORECLOSURE; EXPENSE OF LITIGATION. When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien of this Mortgage for such Indebtedness or any part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale all expenditures and expenses that may be paid or incurred by or on behalf of Mortgagee including, without limitation, expenditures for attorneys' fees, including those of in-house counsel, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute the civil action or to evidence to bidders at any sale that may be had pursuant to the order or judgment the true condition of the title to, or the value of, the Premises. All expenditures and expenses of the nature in this Paragraph 14 mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate, appellate, and bankruptcy proceedings, or in

# UNOFFICIAL COPY

preparation for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder, and shall be secured by this Mortgage.

At all times, Mortgagor shall appear in and defend any suit, action, or proceeding that might in any way, in the sole judgment of Mortgagee, affect the value of the Premises, the priority of this Mortgage, or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the Indebtedness. Mortgagor shall, at all times, indemnify, hold harmless, and reimburse Mortgagee on demand for any and all loss, damage, expense, or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action, or proceeding, and the sum of such expenditures shall be secured by this Mortgage and shall bear interest after demand at the rate specified in the Note applicable to a period when an uncured default exists thereunder, and such interest shall be secured hereby and shall be due and payable on demand.

15. APPLICATION OF PROCEEDS OF FORECLOSURE SALE. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 14 hereof; second, to all other items that may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, to all principal and interest remaining unpaid on the Note; and fourth, to any parties entitled thereto as their rights may appear.

16. APPOINTMENT OF RECEIVER OR MORTGAGEE IN POSSESSION. Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which the action was commenced may, upon request of Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for a receiver and without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead, and Mortgagee or any holder of the Note may be appointed as such receiver as Mortgagee in possession. Such receiver or Mortgagee in possession shall have power to collect the rents, issues, and profits of the Premises during the pendency of the foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there shall be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of the receiver or Mortgagee in possession, would be entitled to collect the rents, issues, and profits, and all other powers that may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the Premises during the whole of that period. The court from time to time may authorize the receiver or Mortgagee in possession to apply the net income in its hands in payment in whole or in part of (a) the Indebtedness secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment, or other lien that may be or become superior to the lien hereof or the lien of such order of judgment, provided that the application is made prior to foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

17. RIGHTS CUMULATIVE. Each right, power, and remedy conferred on Mortgagee by this Mortgage and by all other documents evidencing or securing the Indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power, and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every such right,

# UNOFFICIAL COPY

power, and remedy may be exercised from time to time as often and in such order as may be deemed expedient by 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, or discontinuance by, 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.

18. **MORTGAGEE'S RIGHT OF INSPECTION.** Mortgagee and its representatives, agents, or participants shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose.

19. **EMINENT DOMAIN AND/OR CONDEMNATION.** Mortgagor hereby assigns, transfers, and sets over into Mortgagee the entire proceeds of any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. As long as (a) any applicable lease is in full force and effect and each tenant thereunder is not in default and the taking does not result in the termination or cancellation of any of those leases or give any tenant thereunder the right to cancel its lease; (b) the Premises require repair, rebuilding, or restoration; and (c) this Mortgage is not in default, then any award, after deducting from it any expenses incurred in the collection thereof, shall be made available by Mortgagee for the repair, rebuilding, or restoration of the Premises in accordance with plans and specifications to be submitted to and approved by Mortgagee.

In all other cases, Mortgagee may elect to apply the proceeds of the award on or in reduction of the Indebtedness, whether due or not, or make those proceeds available for repair, restoration, or rebuilding of the Premises in accordance with plans and specifications to be submitted to and approved by Mortgagee. In any case in which proceeds are made available for repair, rebuilding, or restoration, the proceeds of the award shall be paid out in the same manner and under the same conditions provided in Paragraph 7 hereof for the payment of insurance proceeds toward the cost of repair, rebuilding, or restoration. Any surplus that may remain out of the award after payment of the cost of repair, rebuilding, and restoration and the reasonable charges of Disbursing Party shall, at the option of Mortgagee, be applied on account of the Indebtedness or paid to any party entitled to it as the entitlement appears on the records of Mortgagee. No interest shall be allowed to Mortgagor on account of any proceeds of any award held by Mortgagee.

20. **RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS.** Mortgagee shall release (in whole or partially) this Mortgage and the lien (in whole or partially) by proper instrument upon payment and discharge of all Indebtedness (or an applicable agreed portion) secured hereby (including any prepayment charges and late charges provided for herein or in the Note) and upon payment of a reasonable fee to Mortgagee for the preparation and execution of such proper instrument as shall be determined by Mortgagee in its absolute discretion.

21. **GIVING OF NOTICE.** Any notice that either party hereto may desire or be required to give to the other party shall be in writing, and the mailing thereof, by certified mail addressed to Mortgagor or Mortgagee, as the case may be, at the respective addresses set forth on the first page of this Mortgage or at such other place as any party hereto may by notice in writing designate as the place of notice, shall constitute service of notice hereunder.

# UNOFFICIAL COPY

22. **WAIVER OF DEFENSE.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense that would not be good and available to the party interposing it in an action at law on the Note.

23. **WAIVER OF STATUTORY RIGHTS.** Mortgagor shall not and will not (nor shall any beneficiary of Mortgagor) apply for or avail itself of any appraisal, valuation, stay, extension, or exemption laws or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, including its beneficiaries, waives any and all right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien of this Mortgage and agrees that any court having jurisdiction to foreclose this lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Mortgage on behalf of Mortgagor, the trust estate, and all persons beneficially interested in it and each and every person, except judgment creditors of Mortgagor in its representative capacity and of the trust estate acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

24. **FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE.** Mortgagor covenants and agrees that it will keep and maintain, or cause its beneficiaries from time to time to keep and maintain, books and records of account in which full, true, and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

Mortgagor covenants and agrees to furnish to Mortgagee, within 90 days following the end of every fiscal year applicable to the operation of the Improvements on the Premises a copy of a report of the operations of the Improvements on the Premises for the year then ended, to be certified by Mortgagor or its beneficiaries (or a general partner if a beneficiary of Mortgagor is a partnership, or the chief financial officer if a beneficiary of Mortgagor is a corporation) satisfactory to Mortgagee, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses. Each such certificate to each such annual report shall certify that the certifying party examined those records as were deemed necessary for the certification and those statements are true, correct, and complete.

If Mortgagor fails to furnish promptly any report required by this Paragraph 24, Mortgagee may elect (in addition to exercising any other right, remedy, and power) to make an audit of all books and records of Mortgagor and its beneficiaries that in any way pertain to the Premises and to prepare the statement or statements that Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent Certified Public Accountant to be selected by Mortgagee. Mortgagor shall pay all expenses of the audit and other services, which expenses shall be secured hereby as additional Indebtedness and shall be immediately due and payable with interest thereon at the rate set forth in the Note applicable to a period when default exists thereunder.

25. **FILING AND RECORDING CHARGES AND TAXES.** Mortgagor will pay all filing, registration, recording, and search and information fees, all expenses incident to the execution

# UNOFFICIAL COPY

and acknowledgement of this Mortgage and all other documents securing the Note, and all federal, state, county, and municipal taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the execution, delivery, filing, recording, or registration of the Note, this Mortgage, and all other documents securing the Note and all assignments thereof.

26. **BUSINESS PURPOSE; USURY EXEMPTION.** Mortgagor hereby represents, or if applicable Mortgagor has been advised by its beneficiaries, that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4 and that the principal obligation secured hereby constitutes a "business loan" that comes within the purview and operation of that section.

27. **MISCELLANEOUS. Binding Nature.** This Mortgage and all provisions hereof shall extend to and be binding on the original Mortgagor named on Page 1 hereof and its successors, grantees, and assigns, each subsequent owner or owners of the Premises, and all persons claiming under or through Mortgagor; and the word "Mortgagor" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage, and shall also include any beneficiary of Mortgagor, direct or indirect.

*Release of Previous Holder.* The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on Page 1 hereof and the holder or holders, from time to time, of the Note. However, whenever the Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder thereafter to be performed, provided that any funds in which Mortgagor has an interest that are then held by the seller of the Note are turned over to the purchaser of the Note.

*Severability and Applicable Law.* In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, the Note, or the other document and this Mortgage, the Note, or the other document shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it. The validity and interpretation of this Mortgage and the Note it secures are to be construed in accordance with and governed by the laws of the State in which the Premises are situated.

*Governmental Compliance.* Mortgagor shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any government requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor that would result in a violation of any of the provisions of this Paragraph 27 shall be void.

# UNOFFICIAL COPY

*Estoppel Certificate.* Mortgagor, within 15 days after mailing of a written request by Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the Indebtedness and whether any default, offset, or defense then is alleged to exist against the Indebtedness and, in so doing, specifying the nature thereof.

*Non-Joinder of Tenant.* After an event of default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their right shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

*Evasion of Prepayment Premium.* If maturity of the Indebtedness is accelerated by Mortgagee because of an event of default, as herein provided, and a tender of payment is made by or on behalf of Mortgagor in an amount necessary to satisfy the Indebtedness at any time prior to judicial confirmation of foreclosure sale, such tender shall constitute an evasion of the prepayment premium provided for in the Note, if any, and shall be treated as a prepayment thereunder. Any such tender must therefore include the prepayment premium, if any, required under the Note, or if at that time there is no prepayment privilege provided for in the Note, then such payment will include a prepayment premium of two percent of the then-unpaid principal balance of the Note.

28. SECURITY AGREEMENT AND FINANCING STATEMENT. Mortgagor and Mortgagee agree that (a) this Mortgage shall constitute a "Security Agreement" within the meaning of the Uniform Commercial Code (Code) of the State in which the Premises are located with respect to all sums on deposit with Mortgagee pursuant to Paragraphs 7 and 19 hereof (Deposits) and with respect to any property included in the definition herein of the word "Premises," which property may not be deemed to form a part of the real estate described in Exhibit A or may constitute a "fixture" (within the meaning of §9-334 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and books and records relating to the Premises and operation thereof and the proceeds thereof (said property, replacements, substitutions, additions, and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (b) a security interest in and to the Collateral and Deposits is hereby granted to Mortgagee; and (c) the Deposits and all of Mortgagor's right, title, and interest therein are hereby assigned to Mortgagee; all to secure payment of the Indebtedness and to secure performance by Mortgagor of the terms, covenants, and provisions hereof.

In the event of a default under this Mortgage, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and the Collateral in accordance with its rights, powers, and remedies with respect to the real property, 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 property, five 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, reasonable attorneys' fees and legal expenses incurred by Mortgagee, including those of in-house staff. Mortgagor agrees that without the written consent of Mortgagee Mortgagor will not remove or permit to be removed from the Premises any of the



# UNOFFICIAL COPY

Collateral, except that as long as Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable, or unnecessary for use in the operation of the Premises, but only upon replacing it or substituting for it other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that the replacement or substituted Collateral shall be subject to the security interest of this Mortgage and covered hereby. Mortgagor shall, from time to time, on request of Mortgagee, deliver to Mortgagee at the cost of Mortgagor (a) such further financing statements and security documents and assurance as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (b) an inventory of the Collateral in reasonable detail. Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions thereof, or additions thereto, unless Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices, and security interests of others.

Mortgagor and Mortgagee agree, to the extent permitted by law, that this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of §9-102(40) and 9-334 of the Code.

If the Collateral is sold in connection with a sale of the Premises, Mortgagor shall notify Mortgagee prior to the sale and shall require as a condition of sale that the purchaser specifically agree to assume Mortgagor's obligations as to the security interest herein granted and to execute whatever agreements and filings are deemed necessary by Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral, Deposits, and the deposits described in Paragraph 5 above.

**29. LIEN FOR LOAN COMMISSIONS, SERVICE CHARGES, AND THE LIKE.** As long as the original Mortgagee named on Page 1 of this Mortgage is the owner of the Note, and regardless of whether any proceeds of the loan evidenced by the Note have been disbursed, this Mortgage also secures the payment of all loan commissions, service charges, fees to its attorneys (including in-house staff), liquidated damages, expenses, and advances due to or incurred by Mortgagee in connection with the loan transaction intended to be secured hereby, all in accordance with the application of, and the loan commitment issued to and accepted by, one or more of Mortgagee or Mortgagor's beneficiaries in connection with the loan, if applicable.

**30. DUE ON SALE OR FURTHER ENCUMBRANCE CLAUSE.** In determining whether to make the loan secured hereby, Mortgagee examined the creditworthiness of Mortgagor and/or Mortgagor's beneficiaries or guarantors (if applicable), found it to be acceptable, and relied and continues to rely on it as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagor and/or the beneficiaries or guarantors (if applicable) in owning and operating property such as the Premises, found them to be acceptable, and relied and continues to rely on them as the means of maintaining the value of the Premises that are Mortgagee's security for the loan. It is recognized that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan the security for which is purchased by a party other than the original Mortgagor and/or its beneficiaries (if applicable). Mortgagor and/or its beneficiaries (if applicable) further recognize that any secondary or junior financing placed on the Premises, or the beneficial interest of beneficiaries in Mortgagor, (a) may divert funds that would otherwise be used to pay the Note secured hereby; (b) could result in

# UNOFFICIAL COPY

acceleration and foreclosure by any such junior encumbrancer, which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling them; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (a) protecting Mortgagee's security, both of repayment by the Indebtedness and of the value of the Premises; (b) giving Mortgagee the full benefit of its bargain and contract with Mortgagor and/or its beneficiaries (if applicable); (c) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (d) keeping the Premises and the beneficial interest (if applicable) free of subordinate financing liens, the beneficiaries (if applicable) and Mortgagor agree that if this Paragraph 30 is deemed a restraint on alienation, it is a reasonable one and that any sale, conveyance, assignment, further encumbrance, or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without Mortgagee's prior written consent shall be an event of default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default hereunder:

- a. any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises or the beneficial interest or power of direction under the trust agreement with Mortgagor, if applicable;
- b. any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of Mortgagor (if a corporation) or the corporation that is the beneficiary or one of the beneficiaries under the trust agreement with Mortgagor, or of any corporation directly or indirectly controlling such beneficiary corporation;
- c. any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any general partnership interest of the limited partnership or general partnership (herein called the "Partnership") that is Mortgagor or the beneficiary or one of the beneficiaries under the trust agreement with Mortgagor;
- d. any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of any corporation directly or indirectly controlling any such Partnership.

Any consent by Mortgagee, or any waiver of an event of default, under this Paragraph 30 shall not constitute a consent to or waiver of any right, remedy, or power of Mortgagee upon a subsequent event of default under this Paragraph.

31. HAZARDOUS MATERIALS. Mortgagor and its beneficiary (for purposes of this paragraph, collectively called "Mortgagor") represent, warrant, and covenant that Mortgagor has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Premises in any manner that violates federal, state, or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of Hazardous Materials, and that, to the best of Mortgagor's knowledge, no prior owner of the Premises or any tenant, subtenant, prior tenant, or prior subtenant has used Hazardous Materials on, from, or affecting the Premises in any manner that violates federal, state, or local

# UNOFFICIAL COPY

laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, or disposal of Hazardous Materials. Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials. Without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, store, manufacture, refine, or process Hazardous Materials, except in compliance with all applicable federal, state, and local laws or regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant or subtenant, a release of Hazardous Materials onto the Premises or onto any other property. Mortgagor shall comply with and ensure compliance by all tenants and subtenants with all applicable federal, state, or local laws, ordinances, rules, and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations, or permits required thereunder. Mortgagor shall (a) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Premises (i) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, (ii) to the satisfaction of Mortgagee, and (iii) in accordance with the orders and directives of all federal, state, and local governmental authorities, and (b) defend, indemnify, and hold harmless Mortgagee and its employees, agents, officers, and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to, (i) the presence, disposal, release, or threatened release of any Hazardous Materials that are on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or other entities; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of Mortgagee, that are based on or in any way related to such Hazardous Materials including, without limitation, attorneys' and consulting fees, investigation and laboratory fees, court costs, and litigation expenses. In the event the Mortgage is foreclosed, or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Premises to Mortgagee free of any and all Hazardous Materials, so that the condition of the Premises shall conform with all applicable federal, state, or local laws, ordinances, rules, and regulations affecting the Premises. For purposes of this Paragraph 31, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous, regulated toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601, *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §1801, *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §6901, *et seq.*), and the regulations adopted and publications promulgated pursuant thereto, or any other federal, state, or local environmental law, ordinance, rule, or regulation. Mortgagor shall secure all permits and approvals and file all notifications required under state and local laws, ordinances, and regulations prior to undertaking asbestos abatement activities. The provisions of this Paragraph 31 shall be in addition to any and all other obligations and liabilities Mortgagor may have to Mortgagee at common law and shall survive the transactions contemplated herein.

32. REVOLVING CREDIT. In the event that this Mortgage secures a revolving credit note, this Mortgage shall secure not only the existing indebtedness, but also such future advances, whether they are obligatory or to be made at the option of the Mortgagee or otherwise, as are made within

# UNOFFICIAL COPY

20 years from the date hereof, to the same extent as if such future advances were made on the date of execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage, and although there may be no indebtedness outstanding at the time any advance is made. The total amount of indebtedness that is secured hereby may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed the maximum principal amount of the Note, plus interest thereon, and any disbursements made for the payment of taxes, special assessments, or insurance on the Premises, with interest on such disbursements. Upon cancellation of the indebtedness Mortgagor shall release this Mortgage without charge to Borrower, except for charges allowed by existing Federal and State laws and regulations.

33. EXCULPATORY. In the event the Mortgagor executing this Mortgage is an Illinois land trust, this Mortgage is executed by Mortgagor not personally, but as Trustee aforesaid in the exercise of the power and authority conferred on and vested in it as such Trustee, and Mortgagor hereby warrants that it possesses full power and authority to execute this instrument, and it is expressly understood and agreed that nothing contained herein or in the Note shall be construed as creating any liability on Mortgagor personally to pay the Note or any interest, late charge, or premium that may accrue thereon, or any Indebtedness secured by this Mortgage, or to perform any covenant, either express or implied herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that as far as Mortgagor is personally concerned, the legal holder or holders of the Note and the owner or owners of any Indebtedness secured hereby shall look solely to the Premises and Collateral hereby mortgaged, conveyed, and assigned and to any other security given at any time to secure the payment thereof.

# UNOFFICIAL COPY

Mortgagor has executed this instrument as of the day and year first above written.

**OLEKSIUK PROPERTIES, LTD.**

By: *Irene Oleksiuk*  
IRENE OLEKSIUK

Its: President

By: *Alexander Oleksiuk*  
ALEXANDER OLEKSIUK

Its: Secretary

Address: 422 E.Palatine Rd., Palatine, IL 60074

STATE OF ILLINOIS     )  
  ) ss.  
COUNTY OF COOK     )

I, Julie A. Swanson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **IRENE OLEKSIUK AND ALEXANDER OLEKSIUK** personally known to me to be the **PRESIDENT AND SECRETARY, respectively of OLEKSIUK PROPERTIES, LTD.** in whose name the above and foregoing instrument is executed, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their free and voluntary act and as the free and voluntary act of said **OLEKSIUK PROPERTIES, LTD.**, as aforesaid, for the uses and purposes therein set forth, and the said Secretary then and there acknowledged that he as custodian of the corporate seal of said **OLEKSIUK PROPERTIES, LTD.** did affix the said corporate seal to said instrument as his free and voluntary act and as the free and voluntary act of said **OLEKSIUK PROPERTIES, LTD.** as aforesaid for the uses and purposes therein set forth.

GIVEN under my hand and notary seal this **12th** day of **AUGUST, 2005**

*Julie A. Swanson*

