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BY AND AFTER RECORDING  
RETURN TO:

Doc#: 0606235268 Fee: \$58.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/03/2006 01:27 PM Pg: 1 of 18

Peter L. Regas  
Regas, Frezados & Dallas LLP  
111 W. Washington St.  
Suite 1525  
Chicago, IL 60602  
(312) 236-4400

## FOR RECORDER'S USE ONLY

This documents contains a total of 18 pages, including Exhibit A.

### MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT AND <sup>W. ST</sup>FIXTURE FILING (hereinafter referred to as the "Mortgage") is made the 1<sup>st</sup> day of March, 2006, by ~~7243 West Touhy, LLC~~, an Illinois limited liability company (hereinafter referred to as "Mortgagor") to **Mutual Bank**, a banking association having its principal office at 16540 South Halsted Street, Harvey, Illinois 60426 (hereinafter referred to as "Mortgagee") to secure an Indebtedness in the original principal amount of \$1,930,000.00 (the "Original Principal Amount").

### WITNESSETH:

WHEREAS, Mortgagor has concurrently herewith executed and delivered a certain promissory note (the "Note") of even date herewith, payable to the order of Mortgagee, for the Original Principal Amount, bearing interest as provided therein;

NOW, THEREFORE, in consideration of the Mortgagee's advancement to Mortgagor of the Original Principal Amount (less any fees, expenses and/or other amounts which Mortgagee has been authorized by Mortgagor to retain) and in consideration of the covenants and undertakings herein set forth and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

In order to secure the due and punctual payment in full by Mortgagor of the Original Principal Amount, interest thereon and all other amounts due or to become due under or in connection with this Mortgage and/or the Note, or any extensions, renewals, or replacements of the Note, (this Mortgage and the Note and/or any extensions, renewals, or replacements of the Note are hereinafter collectively referred to as the "Loan Documents") and any and all reasonable expenses paid or incurred by Mortgagee under or in connection with the perfection or enforcement of the Loan Documents and the performance of all other obligations and liabilities of Mortgagor under or in connection with the Loan Documents (all of the aforesaid are hereinafter collectively called the "Indebtedness"), Mortgagor does hereby MORTGAGE, WARRANT, GRANT, ASSIGN, TRANSFER, SET OVER, DELIVER AND CONVEY unto Mortgagee upon the terms

Box 400-CTCC

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18/8

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and conditions of this Mortgage, the real property located in Cook County, Illinois, commonly known as, **and legally described as:**

**PARCEL 1:**

THE WEST 43.25 FEET OF LOT 21 IN BLOCK 1 RIDGELAWN SUBDIVISION OF THE EAST 10 ACRES OF THE NORTH 60 ACRES OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED SEPTEMBER 8, 1891 AS DOCUMENT 1531813 IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

LOTS 1 AND 2 (EXCEPT THE WEST 6.91 FEET THEREOF) IN EDISON PARK MANOR SUBDIVISION IN THE WEST 5 ACRES OF THE EAST 15 ACRES OF THE NORTH 30 ACRES OF THE EAST ½ OF THE NORTHWEST 1/4 OF SECTION 36, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE WEST 75 FEET OF THE NORTH 283 FEET THEREOF) IN COOK COUNTY, ILLINOIS.

PIN: 09-36-205-006-0000  
 09-36-205-007-0000  
 09-36-205-052-0000

ADDRESS OF PROPERTY: 7243 W. TOUHY AVENUE, CHICAGO, ILLINOIS

**PARCEL 3:**

LOT 21 (EXCEPT THE WEST 43.25 FEET THEREOF) AND ALL OF LOTS 22, 23 AND 24 (EXCEPT THE EAST 1 FOOT) IN BLOCK 1 IN RIDGE LAW SUBDIVISION OF THE EAST 10 ACRES OF THE NORTH 60 ACRES OF THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED 1531813, IN COOK COUNTY, ILLINOIS

PIN: 09-36-205-007-0000  
 09-36-205-008-0000  
 09-36-205-009-0000  
 09-36-205-010-0000

ADDRESS OF PROPERTY: 7231-7235 W. TOUHY AVENUE, CHICAGO, ILLINOIS

(the "Real Estate"), together with all rights, title and interests of Mortgagor in and to: (i) All rights, privileges, interests, tenements, hereditaments, easements and appurtenances in any way now or hereafter pertaining to the Real Estate ("Easements"); (ii) all buildings and other improvements of every kind and description now or hereafter placed on the Real Estate, together with all fixtures, machinery and other articles of personal property now or hereafter attached to or regularly used in connection with the Real Estate, and

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all replacements thereof ("Improvements"); (iii) all extensions, improvements, betterments, substitutes, replacements, renewals, additions and appurtenances of or to the Easements or Improvements ("Additions"); (iv) All rents, issues, proceeds, income and profits of the Real Estate, Easements, Improvements and Additions, including all payments made in connection with leases, subleases and other agreements affecting the Real Estate, Easements, Improvements or Additions ("Rents"); and (v) All awards, payments or proceeds of conversion, whether voluntary or involuntary, of any of the foregoing, including, without limitation, all insurance, condemnation and tort claims ("Proceeds"). (Hereinafter, the Real Estate, Easements, Improvements and Additions are referred to collectively as the "Premises" and the Premises together with the Rents and Proceeds are referred to collectively as the "Mortgaged Property").

SUBJECT, HOWEVER, TO THE ENCUMBRANCES AND OTHER MATTERS, IF ANY, LISTED ON EXHIBIT A (HEREINAFTER COLLECTIVELY REFERRED TO AS "PERMITTED EXCEPTIONS" OR "PERMITTED ENCUMBRANCES").

TO HAVE AND TO HOLD the above granted and described Mortgaged Property for the use and benefit of Mortgagee, and the successors and assigns of Mortgagee, forever, subject to the provisions hereof.

## ARTICLE I

### Representations and Warranties of Mortgagor

SECTION 1.01. Mortgagor represents and warrants to the best of Mortgagor's knowledge that (i) Mortgagor has good, marketable and insurable fee simple title to the Real Estate and the Improvements, free and clear of all liens, charges and encumbrances of every kind and character except for Permitted Exceptions; (ii) Mortgagor has full power and lawful authority to encumber and convey the Mortgaged Property as provided herein; (iii) all Improvements now or hereafter comprising part of the Mortgaged Property are free and clear of all liens, charges and encumbrances of every kind and character, except for Permitted Exceptions; (iv) this Mortgage is and will remain a valid and enforceable first lien on and security interest in the Mortgaged Property subject only to Permitted Exceptions; and (v) Mortgagor will forever defend such title and the validity, enforceability and priority of the lien and security interest hereof against the claims of all persons and parties whomsoever subject only to the Permitted Exceptions.

### SECTION 1.02. Hazardous Substances.

(a) Mortgagor represents and warrants that Mortgagor shall not, nor shall Mortgagee permit any other person or entity to, place, hold, locate or dispose of any Hazardous Substances on, under or at the Premises or any part thereof in contravention of law. Mortgagee shall comply with and shall ensure compliance by all tenants, subtenants, licensees and users (if any are hereafter permitted) of the Premises with all applicable federal, state and local laws, ordinances, rules and regulations.

(b) Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from and against any and all losses, liabilities (including strict liability), damages, injuries, penalties, expenses and costs of whatever kind or nature, known or unknown, contingent or otherwise, including, without limitation, reasonable attorneys' fees, incurred or suffered by, or asserted against, Mortgagee by any person or entity or governmental agency, for or with respect to a breach or violation of the covenant or warranty set forth in Section 1.02(a) above. The provisions of this Section 1.02 shall survive defeasance and/or foreclosure or termination of this Mortgage.

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(c) For purposes of this Mortgage, the term "Hazardous Substances" shall mean and include those elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency ("EPA") and the list of toxic pollutants designated by Congress or the EPA or defined by any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability (including strict liability) or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereinafter in effect. Hazardous Substances shall include, but shall not necessarily be limited to, any substance giving rise to liability under: the Resource Conservation Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq.; or any other applicable environmental statute, law, regulation or ordinance imposing or authorizing the imposition of liability upon the transferee or mortgagee of real estate in the event of a violation thereof.

## SECTION 1.03. Miscellaneous Representations.

The Mortgagor represents and warrants as follows:

(a) The Mortgagor has full power to carry on its business as presently conducted, including the power to execute, deliver and perform its obligations under the Loan Documents and to own the Mortgaged Property and conduct its business within the State of Illinois.

(b) This Mortgage and the Note secured hereby have been duly executed and delivered by the Mortgagor, and each such document constitutes the legal, valid and binding obligation and agreement of the Mortgagor, enforceable in accordance with their respective terms.

(c) Neither the execution and delivery by the Mortgagor of the Loan Documents, nor the performance and observance by the Mortgagor of the terms of the Loan Documents contravene any provision of existing law or regulation and the Loan Documents do not and will not conflict with or result in any breach of or constitute a default under any instrument binding upon the Mortgagor nor any order, writ, injunction, decree or demand of any court or any governmental authority affecting the Mortgagor or the Mortgaged Property.

(d) There are no pending or threatened bankruptcy or like proceedings against or involving the Mortgagor under the Bankruptcy Code of the United States or any chapter thereof or any like statute, state or Federal.

(e) This Mortgage and the Note secured hereby have been executed by the Mortgagor for a valid "business purpose" and not as part of any "consumer" transaction.

## ARTICLE II Covenants of Mortgagor

### SECTION 2.01. General Covenants.

(a) Payment of Obligations. Mortgagor will punctually pay or cause to be paid when due the Indebtedness and will perform and observe all of its obligations under the Loan Documents all without relief from valuation and appraisal laws.

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(b) Defense of Title Litigation. If the lien, security interest, validity or priority of this Mortgage shall be endangered or legally challenged, or if any action or proceeding is instituted against Mortgagor or Mortgagee with respect thereto, Mortgagor will promptly notify Mortgagee thereof and will diligently endeavor to cure any defect on which such challenge, action or proceeding is based. If Mortgagor shall fail to comply with its obligations under this Section 2.01, Mortgagee is authorized (but shall not be obligated) to take such steps as Mortgagee may reasonably deem necessary or proper for the defense of any such action or proceeding or the protection of the lien, security interest, validity or priority of this Mortgage. Mortgagor shall, within five (5) days after demand, reimburse Mortgagee for all reasonable expenses (including reasonable attorneys' fees and disbursements) incurred by Mortgagee in connection with the foregoing matters. All such costs and expenses of Mortgagee, until reimbursed by Mortgagor, shall be part of the Indebtedness and shall be deemed to be secured by this Mortgage.

## SECTION 2.02. Operation and Maintenance.

(a) Care and Condition of Mortgaged Property. Mortgagor shall (a) promptly repair, restore or rebuild the Premises or any portion thereof which is damaged or destroyed; (b) keep the Premises in good condition and repair, without waste, and free from encroachments and from mechanic's or materialman's lien or claims for lien not expressly subordinated to this Mortgage; (c) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property, whether or not superior to the lien of this Mortgage; (d) comply with all requirements of law and covenants and restrictions of record applicable to the Premises or its use; and (e) permit no change in or alteration of the design, structural character or general nature of the Real Estate and the Improvements (once constructed) without Mortgagee's prior written consent (which consent shall not be withheld unreasonably).

(b) Legality of Use. Mortgagor will not use or occupy, or permit the Premises to be used or occupied, in any manner which violates any applicable law or which constitutes a public or private nuisance or which makes void, voidable or cancelable any insurance then in force with respect thereto.

## SECTION 2.03. Insurance.

(a) Required Insurance: Mortgagor will keep the Premises insured against loss by fire, extended casualty, vandalism, malicious mischief and such other hazards as reasonably may be required from time to time by Mortgagee for the benefit and protection of Mortgagee, including comprehensive and contractual liability insurance and general public liability insurance (including dram shop liability, if alcoholic beverages are available at the premises) with single combined limits of coverage for bodily injury of not less than \$1,000,000.00 per claim/per occurrence and for damage to property of not less than \$300,000 per claim/per occurrence (together, the "Required Insurance"). The Required Insurance shall be written in forms, amounts, and by companies reasonably satisfactory to Mortgagee, and losses thereunder shall be payable to Mortgagee pursuant to standard non-contributing mortgage endorsements in favor of Mortgagee. Unless otherwise agreed by Mortgagee, all policies of Required Insurance, including additional and renewal policies, shall be deposited with and held by Mortgagee. Any monies received as payment for any loss for damage to the Premises under any of the Required Insurance shall be applied toward the restoration of the Premises, except, if in the reasonable opinion of Mortgagee the value of the real estate has significantly diminished even if such restoration were performed, then, at the option of Mortgagee, such insurance proceeds shall be applied toward the prepayment of the Indebtedness. Proceeds paid or payable to Mortgagor in consequence of damage or loss to the Premises shall be deemed held in trust by Mortgagor for the benefit of Mortgagee and shall be applied to restoration of the Premises or, at the election of Mortgagee, in such other fashion as

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Mortgagee reasonably may require. The Required Insurance must include an endorsement that the same may not be cancelled for any reason without at least thirty (30) days prior written notice to the Mortgagee.

(b) Collateral Protection Act Disclosure: **Mortgagor acknowledges that Mortgagor has read the following disclosure required by the Illinois Collateral Protection Act:**

"Unless you (the Mortgagor) provide us (the Mortgagee) with evidence of the insurance coverage required by your agreement with us (as set forth in Section 2.03(a), above), we may purchase insurance at your expense to protect our interests in your collateral (the Premises). This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral (the Premises). You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral (the Premises), you will be responsible for the costs of that insurance, including interest and other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you are able to obtain on your own."

SECTION 2.04. Condemnation. If all or any part of the Mortgaged Property is taken or damaged pursuant to an exercise, or threat of exercise, of the power of eminent domain, the entire Proceeds payable in respect of the part so taken or damaged are hereby assigned to and shall be paid directly to Mortgagee. All such Proceeds actually received by Mortgagee, after deduction therefrom of all costs and expenses (including reasonable attorneys' fees) incurred by Mortgagee in connection with the taking, shall be applied toward the restoration of the Premises, as well as expenses incurred by Borrower, except that if the value of the Real Estate, in Mortgagee's reasonable opinion, has significantly diminished by said condemnation, then such Proceeds shall be applied towards the indebtedness.

SECTION 2.05. Taxes. Mortgagor will pay and discharge or cause to be paid and discharged when due, and before any penalty attaches, all taxes (including real and personal property taxes), general and special assessments, water and sewer rents or assessments, and all other governmental and municipal charges and impositions of any kind imposed upon or assessed against Mortgagor or the Mortgaged Property, or any part thereof, or arising in respect of the occupancy, use or possession thereof. Upon written notice to Mortgagor, Mortgagee may elect (but shall not be obligated to so elect) to require Mortgagor to pay into escrow with Mortgagee, on a monthly basis or otherwise, an amount reasonably calculated to provide sufficient funds to timely pay estimated annual real estate taxes and special assessments assessed against the Premises as they become due, including a reserve of at least two months for these payments. Such funds shall be held without interest and may be commingled with other funds of the Mortgagee. If the escrowed funds shall be insufficient to timely pay the actual amount of real estate taxes and special assessments (if any) as the same become due, Mortgagor shall promptly cure such deficiency to enable timely full payment. The Mortgagee shall have the right, but not the obligation, to utilize the escrowed funds, as aforesaid, to pay real estate taxes and special assessments assessed against the Premises; but Mortgagor shall at all times remain primarily responsible for making all such payments.

SECTION 2.06. Protection of Security by Mortgagee. Mortgagee may, at Mortgagee's option, but without any duty or obligation of any sort to do so and without in any way waiving or relieving any default by Mortgagor, make any payment and perform any act required of Mortgagor by this Mortgage, including

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but not limited to, payment of insurance premiums, taxes, assessments, repair expenses and prior liens and encumbrances. All such payments so incurred, including reasonable attorneys' fees and any other reasonable expenses incurred by Mortgagee, to protect the Mortgaged Property shall constitute advancements immediately due and payable by Mortgagor and shall be deemed to be secured by this Mortgage.

SECTION 2.07. Inspection. Mortgagor shall permit Mortgagee and/or Mortgagee's authorized representatives, upon reasonable advance notice, to enter upon and inspect the Premises during normal business hours.

SECTION 2.08. Records and Reports. Mortgagor shall keep and maintain complete and accurate books and records in accordance with sound and generally accepted accounting principles with respect to all operations of or transactions involving the Mortgaged Property. Copies of said books and records shall be made available by Mortgagor for inspection by Mortgagee, upon request of Mortgagee.

SECTION 2.09. Certificates. Mortgagor and Mortgagee, within fourteen (14) days after written request from the other (which request shall make specific reference to this Section of this Mortgage), shall furnish to such requesting party a written statement, duly acknowledged, certifying to such party (and/or, any proposed assignee of this Mortgage) as to: (a) the amount of the Indebtedness then owing under this Mortgage, (b) whether the Loan Documents have been modified (and, if modified, specifying such modification); (c) whether, to the best knowledge of the certifying party, there are any defaults existing or claimed to exist under the Loan Documents (and, if so, specifying such defaults), (d) the terms of payment and maturity date of the Indebtedness, (e) the date to which interest has been paid under the Note and this Mortgage, (f) if the certifying party is the Mortgagor, the name and address of all lessees and occupants of the Premises, and a current rent roll detailing the expiration date of all outstanding leases and tenancies, periodic rental amounts, the date to which rents have been paid and other pertinent information reasonably specified by Mortgagee, and (g) whether, to the best knowledge of the certifying party, any offsets or defenses exist against the Indebtedness (and, if any are alleged to exist, a detailed description thereof).

SECTION 2.10. Contracts and Leases Relating to the Premises. Mortgagor shall not execute any declaration of covenants, conditions or restrictions or other instrument or agreement affecting the Mortgaged Property or any part thereof, or any amendment or modification with respect to any of the foregoing (including without limitation any reciprocal easement agreement), without the prior approval of Mortgagee. Notwithstanding the foregoing, Mortgagor may, without the prior approval of Mortgagee, execute one or more lease(s) affecting part or all of the Premises provided such lease (the "Permitted Lease"): (a) is subordinate to the lien of this Mortgage; (b) provides for payment of reasonable rental; (c) is not for an illegal purpose or other purpose which may damage the reputation or value of the Premises; and (d) is executed at a time when no Event of Default has occurred and is continuing under this Mortgage. All Rents and other Proceeds payable with respect to any Permitted Lease (as well as any other lease, whether or not permitted) are hereby assigned by Mortgagor to Mortgagee as additional security for the Indebtedness and such assignment is deemed to be a present, absolute, and irrevocable assignment thereof so long as this Mortgage shall remain in effect; provided, Mortgagor is hereby granted the right to continue to collect such Rents and other Proceeds for periods not exceeding forty-five (45) days advance payment, and to use and apply the same as Mortgagee deems appropriate, until such time as Mortgagee may serve written notice upon Mortgagor and any lessee or occupant (whether pursuant to a Permitted Lease or otherwise) that an Event of Default (as defined in Section 5.02 hereof) has occurred. Upon Mortgagee serving such notice of an Event of Default, Mortgagor shall have no further right to collect and receive such Rents and Proceeds and, in the event any such sums shall be received and/or collected by Mortgagor after such notice, Mortgagor shall hold

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the same in trust for the exclusive benefit of Mortgagee and shall promptly deliver the same to Mortgagee, or as Mortgagee may otherwise direct in writing, upon demand.

## ARTICLE III

### Additional Advances; Expenses; Indemnity

SECTION 3.01. Additional Advances and Disbursements. Mortgagor agrees that, if an Event of Default (as defined in Section 5.02 hereof) shall occur and be continuing or if a default has occurred which, through the lapse of time and/or inaction of the Mortgagor may ripen into an Event of Default, Mortgagee shall have the right, but not the obligation, in Mortgagor's name or in Mortgagee's own name, with or without notice to Mortgagor, to advance all or any part of such amounts or to perform any or all such actions as may be necessary, appropriate or expedient to cure such default or Event of Default or to prevent the occurrence of an Event of Default, and, for such purpose, Mortgagor expressly grants to Mortgagee the right (but not the obligation), in addition and without prejudice to any other rights or remedies hereunder, to enter upon and take possession of the Premises to such extent and as often as Mortgagee may deem necessary, desirable or expedient. As between Mortgagor and Mortgagee, no such advance or performance by Mortgagee shall be deemed to have cured any such default or Event of Default by Mortgagor. All sums advanced and all expenses incurred by Mortgagee in connection with such advances or actions and all other sums advanced or expenses incurred by Mortgagee hereunder or under applicable law (whether required or optional and whether indemnified hereunder or not) shall be demand obligations owing by Mortgagor to Mortgagee and shall bear interest, from the date paid or incurred by Mortgagee until reimbursed, at an interest rate equal to the Default Rate (as defined in Section 5.09 hereof). All such amounts advanced or incurred, and all such interest thereon, shall be part of the Indebtedness, and shall be secured by this Mortgage. Mortgagee, upon making any such advance, shall, additionally, be subrogated to all of the rights of the person receiving such advance.

### SECTION 3.02. Indemnity.

(a) Mortgagor agrees to indemnify and hold Mortgagee harmless from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including reasonable attorneys' fees and disbursements) which may be imposed on, incurred by or asserted against Mortgagee by reason or on account of, or in connection with: (i) any default or Event of Default by Mortgagor hereunder or under the Note; (ii) Mortgagee's exercise of any of its rights and remedies hereunder or under the Note; (iii) construction, reconstruction or alteration of the Improvements; (iv) any negligence or willful misconduct of Mortgagor, any lessee or occupant of the Premises, or any of their respective agents, contractors, subcontractors, servants, employees, licensees or invitees; (v) any accident, injury, death or damage to any person or property occurring in, on or about the Premises or any street, drive, sidewalk, curb or passageway adjacent thereto; and/or (vi) any other occurrence arising out of or in any way connected with the Premises, except if caused by the act or omission of the Mortgagee. Any amount payable to Mortgagee under this Section 3.02 shall be payable within five (5) days after Mortgagee's demand therefor, shall be deemed part of the Indebtedness and shall be secured by this Mortgage.

(b) Mortgagor's obligations under this Article III shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal by any insurance carrier to perform any obligation on its part under any such policy of insurance.

## ARTICLE IV

### Transfer of Mortgaged Property



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SECTION 4.01. Mortgagor shall not, without the prior written consent of Mortgagee (which consent may not be unreasonably withheld) lease (except for a "Permitted Lease" as defined in Section 2.10 hereof), transfer, sell, contract to sell or in any way further encumber all or any part of the Mortgaged Property, or any interest therein, unless concurrently therewith the Indebtedness secured by this Mortgage shall be paid in full.

## ARTICLE V Defaults and Remedies

SECTION 5.01. Default and Acceleration. Time is of the essence with respect to Mortgagor's performance of its obligations arising under this Mortgage. Upon the occurrence of any "Event of Default" (as defined in Section 5.02), and at any time thereafter, then, in any and every such case, the entire Indebtedness shall, at the option of Mortgagee, become immediately due and payable without notice, presentment, demand, protest, notice of protest, or other notice of dishonor or demand of any kind, all of which are hereby expressly waived by Mortgagor; and Mortgagee shall have the right immediately or at different times as Mortgagee may choose (without constituting a binding election of remedies): (i) to foreclose the mortgage lien created by this Mortgage against part or all of the Mortgaged Property and sell such Mortgaged Property to satisfy, in whole or in part, the Indebtedness; (ii) to enforce every other security interest created by this Mortgage; (iii) to enforce its rights under the Note; (iv) to enforce its rights under any guarantee of part or all of the Indebtedness and/or any other guaranteed obligations arising hereunder; (v) to institute any action, suit or other proceeding which Mortgagee may deem necessary or proper for the protection of its interests; and (vi) to be placed as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Mortgaged Property.

SECTION 5.02. Events of Default. The following shall each constitute an "Event of Default" for the purposes of this Mortgage:

(a) If any representation or warranty made by Mortgagor in this Mortgage shall prove to have been false or misleading in any material respect when made or delivered and the damage sustained by Mortgagee by reason of such misrepresentation or breach of warranty is not cured to Mortgagee's satisfaction within five (5) days after Mortgagee gives Mortgagor written notice thereof;

(b) Non-payment when due (whether, in either case, the same becomes due at maturity or by acceleration or otherwise) of: (i) any installment of the principal or interest payable under the Note; (ii) any fee or other amount (including, without limitation, any late payment penalty, Rents or Proceeds) payable under this Mortgage or the Note; and the failure to cure such non-payment within ten (10) days after Mortgagee's notice to Mortgagor that payment has not been received; provided, however, Mortgagee shall not be required to provide Mortgagor with a notice of non-payment and/or opportunity cure as a condition precedent to Mortgagee declaring the occurrence of an Event of Default if, during the preceding twelve (12) month period, a notice of non-payment of a similar nature was previously required to be given on at least two (2) occasions.

(c) Any default in the due observance or performance of any covenant or undertaking required to be performed by Mortgagor pursuant to this Mortgage other than as specified in Section 5.02(b), and the continuation of such default for a period of thirty (30) days after written notice from Mortgagee to Mortgagor specifying such default; provided, if such default shall be non-fiscal in nature and shall be of such type or nature which cannot reasonably be cured within thirty (30) days, an Event of Default shall not be deemed

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to have occurred if, within such thirty (30) day period, Mortgagor shall take substantial steps to commence curing such default and shall thereafter diligently pursue such efforts to cure to completion.

(d) If Mortgagor shall: (i) voluntarily commence any case or proceeding under any Federal or state bankruptcy, insolvency or similar law; (ii) consent to the institution of, or fail to controvert in a timely and appropriate manner, any such case or proceeding; (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator or similar official for Mortgagor, or for a substantial part of its property; (iv) file an answer admitting the material allegations of a complaint filed against it in any such case or proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable to pay or admit in writing the inability, or fail generally, to pay its debts as they become due; or (vii) take any action for the purpose of effecting any of the foregoing.

(e) If an involuntary case or proceeding shall be commenced seeking: (i) relief in respect of Mortgagor under any Federal or state bankruptcy, insolvency or similar law; (ii) the appointment of a receiver, trustee, custodian, sequestrator or similar official for Mortgagor or the Premises; (iii) the winding-up or liquidation of a Mortgagor; or (iv) a levy, attachment, forfeiture or seizure of part or all of the Mortgaged Property; which in any such case shall not be dismissed within thirty (30) days after the same shall have been commenced.

(f) Any material default by Mortgagor under or with respect to: (i) any other mortgage or other security document encumbering part or all of the Mortgaged Property; or (ii) any other instrument which constitutes or evidences a Permitted Exception, which, in either case, is not cured within any applicable time period provided under such document or instrument.

(g) The abandonment by Mortgagor of the Premises.

**SECTION 5.03. Enforcement Expenses.** All expenses which may be paid or incurred by or on behalf of Mortgagee in connection with: (a) an Event of Default; (b) a default or other occurrence which, through the passage of time would, if not cured, result in an Event of Default; (c) collection of the Indebtedness; and/or (d) the foreclosure of this Mortgage; for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and cost of procuring all title searches, policies and examinations and similar data and assurances with respect to title as Mortgagee may reasonably deem necessary with respect to the foregoing, shall constitute a part of the Indebtedness, shall be immediately due and payable by Mortgagor with interest thereon at the Default Rate (as defined in Section 5.09), and shall be allowed and included as Indebtedness in any judgment for sale.

## **SECTION 5.04. Mortgagee in Possession; Foreclosure Proceedings and Receiver**

(a) Upon the occurrence of an Event of Default, Mortgagee shall have the right to be placed as mortgagee in possession or to have a receiver appointed to take possession of all or any part of the Mortgaged Property, with the power to protect and preserve the Mortgaged Property, to operate the Mortgaged Property preceding foreclosure or sale, and to collect the Rents from the Mortgaged Property and apply the proceeds, over and above the cost of the receivership, against the indebtedness. The mortgagee in possession or receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Mortgaged Property exceeds the indebtedness by a substantial amount. Employment by Mortgagee shall not disqualify a person from serving as a receiver.

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(b) Upon the commencement of any proceedings to foreclose this Mortgage, Mortgagee shall be entitled forthwith, without limitation on any other right or remedy of Mortgagee hereunder, to the appointment of a receiver or receivers, as a matter of right, without the giving of notice to any other party, without regard to the adequacy or inadequacy of any security for the Indebtedness and without the requirement of any bond. Mortgagee shall be entitled to recover judgment either before or after or during the pendency of any proceedings for the enforcement of this Mortgage. The right of Mortgagee to recover such judgment shall not be affected by the exercise of any other right, power or remedy for the enforcement of this Mortgage or the foreclosure of the lien of this Mortgage.

SECTION 5.05. No Exclusive Remedy. Each and every right, power and remedy conferred upon or reserved to Mortgagee in this Mortgage is cumulative and shall be in addition to every other right, power and remedy given in this Mortgage or now or hereafter existing at law or in equity. No delay or omission of Mortgagee in the exercise of any right, power or remedy shall be construed to be a waiver of any Event of Default or any acquiescence therein.

SECTION 5.06. Application of Proceeds. Except as herein expressly provided otherwise, the proceeds and avails of any sale referred to in Section 5.01, together with any other sums which may be held or received by Mortgagee hereunder, whether under the provisions of this Article V or otherwise, shall be applied as follows:

FIRST: To the payment of the costs, and expenses of any such sale, including attorneys' fees and disbursements, and of any judicial proceeding wherein the same may be made, and of all expenses, liabilities and Advancements made or incurred by Mortgagee hereunder, together with interest thereon at the Default Rate (as defined in Section 5.09), and all taxes, assessments and other charges, except any taxes, assessments or other charges subject to which the Premises shall have been sold.

SECOND: To the payment in full of the Indebtedness (including principal, interest, premium, penalty and fees) in such order as Mortgagee may elect.

THIRD: To the extent permitted by applicable law, to be set aside by Mortgagee as adequate security in its reasonable judgment for the payment of sums which would have been paid to Mortgagee under clauses FIRST and SECOND above, but which sums are not yet due and payable or liquidated.

FOURTH: To the payment of the balance, if any, to whomsoever may be lawfully entitled to receive the same.

## SECTION 5.07. Additional Provisions as to Remedies.

(a) To the extent permitted by applicable law, no right or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right or remedy, and each and every such right or remedy shall be cumulative and continuing, shall be in addition to every other right or remedy given hereunder, or under the Note or now or hereafter existing at law or in equity, and may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

(b) No delay or omission by Mortgagee in exercising any right or remedy hereunder during the continuance of an Event of Default shall impair such exercise or be construed to be a waiver of any such Event of Default or an acquiescence therein.