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This instrument prepared by, and after recording, return to:

Kenneth Hartmann  
330 W. State Street  
Suite 200  
Geneva, IL 60134



Doc#: 0612126304 Fee: \$106.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 05/01/2006 12:17 PM Pg: 1 of 42

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## MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND INCOME, FIXTURE FINANCING STATEMENT AND SECURITY AGREEMENT

dated as of April 21, 2006 made by

**PARK PLACE APARTMENTS, L.L.C.**

to

**FIFTH THIRD BANK (CHICAGO)**

THIS INSTRUMENT IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE MORTGAGED PROPERTY AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF COOK COUNTY, ILLINOIS. THE ADDRESS OF MORTGAGEE [SECURED PARTY] AND THE ADDRESS OF MORTGAGOR [DEBTOR] ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THIS INSTRUMENT SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

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**THIS MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND INCOME, FIXTURE FINANCING STATEMENT AND SECURITY AGREEMENT** (hereinafter, this "Mortgage") is made and entered into as of April 21, 2006, by **PARK PLACE APARTMENTS, L.L.C.**, an Illinois limited liability company ("Mortgagor"), whose address is c/o Shorewood Properties, L.L.C., 61 S. Barrington Road, South Barrington, Illinois 60010 to **FIFTH THIRD BANK (CHICAGO)** ("Mortgagee"), whose address is 222 S. Riverside, 33rd Floor, Chicago, IL 60606 Attention: William J. Schlessner.

## WITNESSETH THAT:

**WHEREAS**, Mortgagor has executed and delivered: (i) its Loan Note of even date herewith (the "Loan Note") in the maximum originally stated principal sum of Seventeen Million Two Hundred Thousand Dollars (\$17,200,000) and (ii) its Revolving Credit Note of even date herewith (the "Revolving Credit Note") in the maximum originally stated principal sum of Eight Hundred Thousand Dollars (\$800,000) (the Loan Note and the Revolving Credit Note are referred to in this Mortgage as the "Notes") (the loan and any other amounts evidenced or secured by the Notes and the other Loan Documents (as hereinafter defined) being hereinafter referred to as the "Loan"), which Notes together with all interest thereon is made payable to the order of Mortgagee at the place designated in said Notes, in and by which said Notes Mortgagor promises to pay the said principal sum and interest thereon at the rate and in installments as provided in said Notes, with a final payment of the entire principal balance of the Notes, together with unpaid and accrued interest thereon, being due and payable on April 30, 2011, or earlier due and payable by reason of the acceleration of the maturity of the Notes in accordance with the terms thereof (such applicable date of maturity being hereinafter referred to as the "Maturity Date"), all of the terms and provisions of which Notes are hereby incorporated herein by this reference; and

**NOW, THEREFORE**, Mortgagor, to secure the Obligations (as hereinafter defined), and also in consideration of the sum of One Dollar (\$1.00) in hand paid, the receipt and adequacy of which is hereby acknowledged, does by these presents **HEREBY IRREVOCABLY GRANT, BARGAIN, SELL, ALIEN, DEMISE, RELEASE, CONVEY, ASSIGN, TRANSFER, MORTGAGE, PLEDGE, SET OVER AND CONFIRM** unto Mortgagee, its successors and assigns, all of Mortgagor's now existing and/or owned and hereafter arising and/or acquired right, title and interest of every nature in and to all of the following property, rights, interests and estates (collectively, the "Mortgage Property"):

(a) the plots, pieces and parcels of real property situated, lying and being in the County of Cook and State of Illinois, as more particularly described as set forth in Exhibit A attached hereto and made a part hereof (the "Land");

(b) all buildings, structures, Fixtures (as hereinafter defined) and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, modifications, improvements, enlargements, betterments, renewals, substitutions and replacements to or of any of the foregoing (the "Improvements");

(c) all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, ditches, ditch rights, reservoirs and reservoir rights, air rights and development rights, gas, oil and mineral rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or appertaining to the Land, the Improvements or the Fixtures, or which hereafter shall in any way belong, relate or be appurtenant thereto, and the reversion and reversions, remainder and remainders, and land lying in the front of any street, road or avenue, opened or proposed, in front of or adjoining the Land to the center line thereof and any and all sidewalks, drives, curbs, passageways, streets, spaces and alleys adjacent to or used in connection with the Land, the Improvements or the

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Fixtures and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same (the Land, the Improvements, the Fixtures and all of the foregoing property described in this Subsection (c) being sometimes hereinafter collectively referred to as the "Real Property");

(d) all goods, machinery, equipment, apparatus, tools, appliances, furniture, furnishings and fixtures of any and every kind ("Equipment") now or hereafter installed or located in or on, attached to, forming a part of or used or useable in connection with the Real Property or the present or future operation, business, ownership, maintenance, repair or management of the Real Property or in connection with any construction being conducted or which may be conducted thereon, including any and all such items now or at any time hereafter situated on the Real Property and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, recreation, laundry service and all other related or other such services including any antennae, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, escalators, fans, fittings, floor coverings, furnaces, furnishings, hardware, heaters, humidifiers, incinerators, motors, ovens, pipes, pumps, radiators, ranges, recreational facilities, screens, security systems, shades, shelving, sinks, stokers, stoves, toilets, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefore, together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf, whether or not the same are or shall be attached to the Real Property in any manner; it being mutually agreed that all of the aforesaid property placed on the Real Property shall, so far as permitted by law, be deemed to be fixtures ("Fixtures"), a part of the realty, and security for the Obligations;

(e) all accounts, accounts receivable, chattel paper, contract rights, letters of credit, instruments, documents or other claims, both at law and in equity, relating to the Real Property, the Equipment and/or the other Mortgaged Property ("Accounts"), and all Real Property, Equipment and/or other Mortgaged Property whose sale, lease or other disposition by Mortgagor have given or in the future give rise to Accounts and have been returned to or repossessed or stopped in transit by Mortgagor;

(f) all monies, reserves, deposits, security deposits, advances, security, certificates of deposit and deposit accounts and funds and interest or dividends thereon, securities, cash, cash equivalents and other property now or at any time hereafter maintained, deposited or in the possession or under the control of Mortgagee or its bailee, including the Imposition and Insurance Deposits (as hereinafter defined), or made by or on behalf of Mortgagor to others, including with respect to (i) insurance policies, (ii) utility services, (iii) refuse removal or sewer service, (iv) parking or similar services or rights, and (v) rental of Equipment, if any, relating to or otherwise used in the operation of the Real Property, the Equipment and/or the other Mortgaged Property;

(g) all present and future books, records, computer records, ledger cards, programs and other computer materials, customer and supplier lists, invoices, orders and other records relating to the Real Property, the Equipment and/or the other Mortgaged Property;

(h) all present and future leases, tenancies, licenses and other agreements written or oral affecting the use, enjoyment or occupancy of the Real Property, the Equipment and/or the other Mortgaged Property now or hereafter entered into including without limitation that certain (the "Leases"), together with all security therefore, and all rights of Mortgagor (i) to receive monies due and to become due under or pursuant to the Leases, (ii) to perform under the Leases, to compel performance and otherwise to exercise all remedies thereunder, including all rights to make determinations, to exercise any election or option contained in the Leases, to give or receive any notice or consent, to demand and receive any property the subject of any

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of the Leases, to file any claims and generally to take any action which (in the opinion of Mortgagee) may be necessary or advisable in connection with any of the foregoing, and (iii) to receive the proceeds of any claim for damages arising out of or for breach of any Leases and proceeds of any insurance, indemnity, warranty or guaranty with respect to the Leases;

(i) all rents, royalties, bonuses, issues, profits, revenue, income, and other benefits from the Real Property, the Leases, the Equipment and/or the other Mortgaged Property, howsoever occurring, existing, created or arising, together with all cash and security deposits, advance rentals and payments of a similar nature (the "Rents"), all of which Rents and all of the other Mortgaged Property in addition to the Real Property being hereby pledged primarily and on a parity with the Real Property and not secondarily, and the right to apply the same to the Obligations, provided, however, that permission is hereby given to Mortgagor so long as no Default (as hereinafter defined) has occurred hereunder, to collect, receive, take, use and enjoy such Rents as they become due and payable;

(j) all present and future rights, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Real Property, the Equipment and/or the other Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Real Property, the Equipment and/or the other Mortgaged Property and all claims against any Person with respect to any damage to the Real Property, the Equipment and/or the other Mortgaged Property, including damage arising from any defect in or with respect to the design or construction of the Real Property, the Equipment and/or the other Mortgaged Property and any damage resulting therefrom;

(k) all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking or condemnation of the Real Property, the Equipment, the Leases and/or the other Mortgaged Property, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking, condemnation or otherwise) thereto;

(l) all present and future insurance policies in force or effect insuring the Real Property, the Rents, the Leases, the Equipment and/or the other Mortgaged Property and any proceeds of or unearned premiums on any such insurance policies, including the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Real Property, the Rents, the Leases, the Equipment and/or the other Mortgaged Property and all refunds or rebates of Impositions (as hereinafter defined);

(m) all present and future option rights, purchase and sale contracts and the proceeds of any sale, option or contract to sell the Real Property, the Equipment and/or the other Mortgaged Property or any portion thereof, and Mortgagor hereby authorizes, directs and empowers Mortgagee, at its option, on behalf of Mortgagor, its successors and/or assigns, to adjust, compromise, claim, collect and receive such proceeds, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Obligations, notwithstanding the fact that the same may not then be due and payable or that the Obligations are otherwise adequately secured;

(n) all present and future goodwill, trademarks, trade names, logos, building names and other general intangibles relating to the Real Property, the Equipment and/or the other Mortgaged Property, and the goodwill associated therewith;

(o) all present and future agreements and contracts (said agreements and contracts shall be referred to herein as the "Agreements") relating to the purchase, sale, financing, architecture, consulting, engineering, demolition, construction, developing, equipping, furnishing, management, maintenance, landscaping, gardening, parking, sale, service, supply, repair, scavenger service, licensing, franchising,

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employment, easements, property rights, brokerage or leasing of or with respect to the Real Property, Equipment and/or other Mortgaged Property and similar such agreements and contracts, including architect's and engineer's agreements, construction, construction manager and design contracts, management agreements, operating agreements, service contracts, guaranties and warranties, whosoever the parties are to such Agreements, whether they include Mortgagor or any other party, together with (and the term "Agreements" shall include) all amendments, addenda, supplements, change orders, extras, renewals and extensions of such agreements and contracts and any collateral for any third party's performance under any of such agreements and contracts;

(p) all present and future building permits, other permits, licenses, approvals, consents, certificates and authorizations with or from any Governmental Authority (as hereinafter defined), that relate in any way to the construction, ownership, operation and/or use of the Real Property, Equipment and/or the other Mortgaged Property (the "Permits"), whoever is named in such Permits, whether it be Mortgagor or any other party, or in which Mortgagor has an interest, including, together with (and the term "Permit" shall include) all amendments, addenda, supplements, renewals and extensions of such permits, licenses, approvals, consents, certificates and authorizations;

(q) all present and future plans, specifications, surveys, drawings, tests, materials, studies, results, reports and design documents and other technical descriptions of whatever nature which relate to the development, construction, reconstruction, restoration, decoration, repair or replacement of the Real Property, Equipment and/or the other Mortgaged Property or which otherwise relate to the same (the "Materials"; the Agreements and the Materials are sometimes herein referred to collectively as the "Contracts", and the Agreements, the Permits and the Materials are sometimes herein referred to collectively as the "Documents");

(r) to the extent not included in Subsections (a) to (q) above, all other property and interests of Mortgagor of any kind or description whatsoever with respect to the Real Property, Equipment and/or other Mortgaged Property, wherever located, whether now owned or hereafter acquired, real or personal, tangible or intangible; and

(s) all present and future accessions and additions to, substitutions for, and all replacements, products, cash and non-cash proceeds and Proceeds (as hereinafter defined) of any of the foregoing, subject to the provisions hereinafter set forth.

**TO HAVE AND TO HOLD** the Mortgaged Property unto Mortgagee, his heirs, successors and assigns forever, for the uses herein set forth, free from all rights and benefits under the Homestead exemption and valuation laws of any state, which said rights and benefits Mortgagor does hereby release and waive, to the extent not prohibited by applicable law.

**PROVIDED, NEVERTHELESS**, that if Mortgagor shall pay in full when due the Monetary Obligations and shall duly and timely perform and observe all of the Nonmonetary Obligations, as those terms are hereinafter defined, then this Mortgage and the estate, right and interest of Mortgagee in the Mortgaged Property shall cease and become void and of no effect. The amount secured by this Mortgage shall in no event exceed three (3) times the face amount of the Notes.

## **MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:**

### **ARTICLE I**

#### **DEFINITIONS**

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Section 1.1 Certain Definitions. For all purposes of this Mortgage, except as otherwise expressly provided or unless the context clearly indicates a contrary intent:

(a) the foregoing recitals and all Exhibits hereto are hereby made a part of this Mortgage;

(b) all accounting terms not otherwise defined herein have the meaning ascribed to them in accordance with generally accepted accounting practices and principles, consistently applied ("GAAP"), in effect on the date thereof;

(c) the following words and phrases as used in this Mortgage and the other Loan Documents, to the extent applicable, shall be construed as follows, unless the context requires otherwise: (i) "and/or" shall mean any one or more of the things, events or Persons in connection with which the term is used; (ii) "at any time" shall mean "at any time and/or from time to time"; (iii) "any" shall mean "any one or more"; (iv) "herein", "hereof", "hereunder", "hereinafter" and words of similar import used in this Mortgage shall refer to this Mortgage as a whole and not to any particular Article, Section, Subsection, paragraph or other subdivision hereof or if used in another Loan Document shall refer to that Loan Document as a whole and not to any particular Article, Section, Subsection, paragraph or other subdivision thereof; (v) "including" shall mean "including, but not limited to, all others, whether similar or dissimilar"; (vi) "may" shall be construed as permissive and not obligatory; and (vii) "will" and "shall" shall each be construed as mandatory; and

(d) the capitalized terms defined as follows in this Section 1.1 have the meanings ascribed to them in this Section 1.1:

"Encumbrances" shall mean any and all mortgages, deeds of trust, deeds to secure debt, pledges, hypothecations, assignments, liabilities, claims, debts, exceptions, security interests, liens, Mechanic's Liens (as that term is hereinafter defined) and all other types of encumbrances, charges or transfers of, on or affecting the Mortgaged Property or any portion thereof or any interest therein including any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing and the filing of any financing statement.

"Environmental Laws" shall mean any and all present or future federal, state, county, municipal and other statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities pertaining to environmental protection, health, industrial hygiene or safety or Hazardous Substances including the Safe Drinking Water Act, Section 300f of the United States Code (the "U.S. Code) and each of the laws identified in the definition of Hazardous Materials herein contained.

"Governmental Authority" shall mean any nation or federal government, any state, regional, local or other political subdivision thereof and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Guarantor" shall mean each of the following persons Michael Origer, James Origer, Scott Origer, Susan Ellis, Jill Tabit and Sally Joyce.

"Guaranty of Payment" shall mean that Guaranty of Payment of even date herewith made by the Guarantors for the benefit of Mortgagee.

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"Hazardous Materials" means collectively, (i) any substance now or hereafter designated pursuant to Section 1251 et seq. of Title 33 of the U.S. Code, including Sections 1317(a) and 1321(b)(2)(A) thereof, (ii) any hazardous waste having the characteristics now or hereafter identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act, Section 6921 of Title 42 of the U.S. Code, (iii) any substance now or hereafter listed under the Toxic Substance Control Act, Section 2601 et seq. of Title 15 of the U.S. Code, (iv) any hazardous air pollutant now or hereafter listed under Section 112 of the Clean Air Act, Section 7401 et seq., of Title 42 of the U.S. Code, (v) any element, compound, mixture, solution, or substance, flammable explosives, polychlorinated biphenyl product, oil or petroleum product, radioactive materials, asbestos or any material containing asbestos, hazardous or toxic substances or other related materials, now or hereafter designated or listed pursuant to the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.) ("CERCLA"), and/or in the regulations adopted and publications promulgated pursuant to the foregoing or by any Governmental Authority, (vi) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency of the United States has taken action pursuant to Section 2606 of Title 15 of the U.S. Code, and (vii) any substances now or hereafter defined as or included in the definitions of "hazardous substances", "hazardous wastes", "hazardous materials", "pollutants", "toxic substances" or "solid waste" under any applicable federal, state, county, municipal and other statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities.

"Impositions" shall mean taxes including all ad valorem, sales (including those imposed on Rents), use, single business, gross receipts, value added, intangible transaction privilege, privilege or license or similar taxes, assessments (including all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereto and whether or not commenced or completed within the term of this Mortgage), ground rents, water, sewer or other rents and charges, excises, levies, fees (including license, permit, inspection, authorization and similar fees), and all other charges of Governmental Authorities, in each case whether general, special or otherwise, ordinary or extraordinary, or foreseen or unforeseen, of every character in respect of the Mortgaged Property including any Rents (including all interest and penalties thereon), which at any time prior to, during or in respect of the term hereof may be assessed or imposed on or in respect of or be a lien upon (i) Mortgagor (including all franchise, single business or other taxes imposed on Mortgagor for the privilege of doing business in the jurisdiction in which the Mortgaged Property is located) or Mortgagee, (ii) the Mortgaged Property or any part thereof including any Rent or any estate, right, title or interest therein, or (iii) any occupancy, operation, use or possession of, or sales from, or activity conducted on, or in connection with the Mortgaged Property or any part thereof or the leasing or use of the Mortgaged Property or any part thereof, or the acquisition or financing of the acquisition of the Mortgaged Property by Mortgagor. Nothing herein shall be construed to require Mortgagor to pay any tax, assessment, levy or charge imposed on Mortgagee in the nature of a franchise, capital levy, estate, inheritance, succession, income or net revenue tax.

"Legal Requirements" means all federal, state, county, municipal and other statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities (including any Environmental Law) affecting either the Mortgaged Property or the construction, use, alteration or operation thereof, or any part thereof, whether now or hereafter enacted and in force, and all permits, licenses and

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authorizations and regulations relating thereto, and all covenants, agreements, restrictions and encumbrances contained in any instruments, either of record or known to Mortgagee, at any time in force affecting the Mortgaged Property or any part thereof, including any which may (i) require repairs, modifications or alterations in or to the Mortgaged Property or any part thereof or (ii) in any way limit the use and enjoyment thereof.

"Loan Agreement" means that Loan Agreement of even date herewith made by Mortgagee and Mortgagee.

"Mechanic's Liens" shall mean any and all mechanic's liens, materialmen's liens, or other claims for liens made by Persons claiming to have provided labor or materials with respect to the Mortgaged Property.

"Obligations" shall mean the full, prompt and faithful payment and performance when due, whether at stated maturity, any and all extensions or renewals thereof, upon acceleration or otherwise, and at all times thereafter, of any and all debts, indebtedness, obligations and/or liabilities (of any and every kind or nature) of Mortgagee (or the successor in, including debtor in possession and trustee in bankruptcy, of Mortgagee) to Mortgagee, however created, arising, evidenced or secured, whether primary or secondary, direct or indirect, absolute or contingent, fixed or otherwise, joint, several or independent, now or hereafter owing, arising, existing, due or payable or to become due or payable, known or unknown to Mortgagee at the time of the execution of this Mortgage, arising out of or related to the Loan and/or the Loan Documents including (i) for the payment of principal, interest (whether at the LIBOR Based Rate or the Default Rate) and Late Charges (as those terms are defined in the Notes), and all other monies, payments, premiums, fees, charges, costs, expenses or other amounts under or secured by the Notes, the Loan Agreement, this Mortgage and the other Loan Documents; (ii) for the payment of any Rate Management Obligations; and (iii) of any and all of the other terms, covenants, conditions, representations, indemnities, liabilities and other obligations now or hereafter made or undertaken by Mortgagee to Mortgagee set forth in the Notes, the Loan Agreement, this Mortgage and/or the other Loan Documents. All Obligations which are monetary in nature including those specified in subsection (i) of the immediately preceding sentence are herein referred to as the "Monetary Obligations" or "Indebtedness Hereby Secured" and all Obligations which are nonmonetary in nature including those specified in subsection (ii) of the immediately preceding sentence are herein referred to as the "Nonmonetary Obligations".

"Permitted Exceptions" shall mean those certain exceptions to title set forth on Exhibit B attached hereto and made a part hereof.

"Person" shall mean any individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county, or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing, including any Governmental Authority.

"Proceeds" shall mean "proceeds" as such term is defined in the UCC and, in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Mortgagee or Mortgagee from time to time with respect to any of the Mortgaged Property, (ii) any and all payments (in any form whatsoever) made or due and payable to Mortgagee from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Mortgaged Property



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by any Governmental Authority (or any Person acting under color of Governmental Authority), and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Mortgaged Property.

"Rate Management Agreement" means any Rate Management Transactions and any other agreement, device or arrangement providing for payments which are related to fluctuations of interest rates, exchange rates or forward rates, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts or warrants, including, without limitation, any ISDA Master Agreement between the Borrower and the Lender or any of Lender's affiliates, and any schedules, confirmations and documents and other conforming evidence between the parties confirming transactions thereunder, all whether now existing or hereafter arising, and in each case as amended, modified or supplemented from time to time.

"Rate Management Obligations" means any and all obligations of Borrower to Lender or to Lender's affiliates, whether absolute, contingent or otherwise and howsoever and whensoever (whether now or hereafter) created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under or in connection with (i) any and all Rate Management Agreements, and (ii) any and all cancellations, buy-backs, reversals, terminations or assignments of any Rate Management Agreement.

"Rate Management Transaction" means any transaction (including any agreement with respect thereto) now existing or hereafter entered into between Borrower and Lender, or any Affiliate of Lender, which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures, or any other transaction which is governed by any ISDA Master Agreement between the Borrower and the Lender or any of the Lender's affiliates.

"UCC" shall mean the Uniform Commercial Code as in effect in the State of Illinois as of the date hereof.

## ARTICLE II

### **COVENANTS AND REPRESENTATIONS OF MORTGAGOR**

Section 2.1 Payment of Indebtedness and Performance of Covenants. Mortgagor shall, solely from the property held by Mortgagor in trust, (a) pay when due the Monetary Obligations, and (b) duly and punctually perform and observe or cause to be performed and observed all of the Nonmonetary Obligations, including the terms, covenants, conditions, warranties, representations, indemnities, liabilities and other Obligations on the part of Mortgagor to be performed or observed as provided in (i) the Notes, (ii) this Mortgage, (iii) the Loan Agreement; (iv) that certain Environmental Indemnity of even date herewith made by to Mortgagee (the "Environmental Indemnity") on the Mortgaged Property, and

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(v) all other documents or instruments now or hereafter evidencing, securing, guaranteeing, regulating or in any way related to the Loan (the Notes, the Mortgage, the Loan Agreement, the Environmental Indemnity, and such other documents and instruments being herein collectively referred to as the "Loan Documents").

Section 2.2 Maintenance, Repair, Compliance with Law, Use, Etc. Mortgagor shall (a) perform all obligations regarding the Mortgaged Property which are required under the Loan Agreement; (b) comply with all requirements of zoning, building, health, fire, traffic laws, rules, ordinances and regulations, and other Legal Requirements relating to the Mortgaged Property or any part thereof and comply with any laws or any other statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities applicable to Mortgagor; (c) comply with any restrictions and covenants of record with respect to the Mortgaged Property and the use thereof; and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Mortgaged Property or its use and occupancy; and (d) pay when due, all Impositions and Encumbrances, and upon request, exhibit to Mortgagee satisfactory evidence of such payment. Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any (i) unlawful use of, or nuisance to exist upon, the Mortgaged Property; (ii) granting of any easements, licenses, covenants, restrictions, conditions or declarations of use against the Mortgaged Property, other than the Reciprocal Operating Agreement and the Plat of Resubdivision (as those terms are defined in the Loan Agreement); or (iii) action or omission which shall result in the waste or diminution in value of the Mortgaged Property or any portion thereof or which shall in Mortgagee's judgment impair Mortgagee's security hereunder.

Section 2.3 Representations of Mortgagor. Mortgagor hereby covenants and represents to Mortgagee as follows:

(a) Mortgagor is the owner of and has good and indefeasible marketable fee simple title to the Mortgaged Property, free and clear of all Encumbrances and Impositions, except (i) the liens securing the Obligations; (ii) the lien of real estate taxes and assessments not yet due and payable; and (iii) the Permitted Exceptions. Currently there are no, and hereafter there shall not be any, contracts, instruments, licenses, options or agreements that relate to the purchase, lease or use of or otherwise affect the Mortgaged Property which have not been or will not be fully disclosed to Mortgagee by Mortgagor and approved in advance by Mortgagee, except to the extent may otherwise herein be specifically provided. Mortgagor shall forever defend and preserve such title and the validity and priority of the lien of this Mortgage against the claims of all Persons whomsoever.

(b) The Notes, this Mortgage and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, nor will the operation of any of the terms of the Notes, this Mortgage and the other Loan Documents, or the exercise of any right thereunder, render this Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, and no such right of rescission, set-off, counterclaim or defense has been asserted with respect thereto.

(c) Upon the timely recording of this Mortgage, and the timely filing of financing statements pursuant to the UCC, Mortgagee shall have a valid first, prior and perfected lien and security interest on the Mortgaged Property, free and clear of all Encumbrances, except Permitted Exceptions.

(d) Mortgagor is not a "foreign person" within the meaning of §1445(f)(3) of the Internal Revenue Code of 1986 as amended (the "IRC") and the related Treasury Department regulations, including temporary regulations.

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(e) To Mortgagor's knowledge, the location, existence and use of all of the Mortgaged Property is in compliance with all applicable zoning laws, rules, ordinances, regulations and other Legal Requirements, and the Mortgaged Property is, and shall be, in compliance with all other applicable Legal Requirements, including building, zoning, health, safety, OSHA, fire and Environmental Laws affecting the Mortgaged Property, and, in addition, none of the Real Property is in a special flood risk or flood plain area or in a federally designated flood hazard area or is designated as a wetland.

(f) The proceeds of the Notes will be used for business purposes and not for personal, family or household purposes; (ii) the Loan, including interest rate, fees and charges as contemplated hereby, is a business loan within the purview of 815 ILCS 205/4; (iii) the Loan is an exempted transaction under the Truth-in-Lending Act, Section 1601 et seq. of the U.S. Code; (iv) the Loan does not, and when disbursed will not, violate the provisions of the Illinois usury laws, any consumer credit laws or the usury laws of any state which may have jurisdiction over this transaction, Mortgagor or any of the Mortgaged Property; and (v) the Loan and the interest and interest rate, together with any and all fees, charges and other payments under this Mortgage and the Notes, including the interest (whether at the LIBOR Based Rate, or Default Rate) and Late Charges (as those terms are defined in the Notes) are not in violation of any other applicable federal, state, county, municipal and other statutes, laws, rules, orders, regulations, ordinances, judgments, decrees or injunctions of Governmental Authorities.

(g) To Mortgagor's knowledge, any and all Improvements, Fixtures, Equipment and facilities comprising part of the Mortgaged Property are or, when the construction and/or installation thereof are completed, will be free from structural defects and leaks and in good operating condition and repair and have legally adequate drainage.

(h) That (i) neither Mortgagor, nor any persons or entities holding any legal or beneficial interest whatsoever in Mortgagor (whether directly or indirectly), are named on any list of persons, entities, and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism ("Executive Order 13224"), as in effect on the date hereof, or any similar list issued by OFAC or any other department or agency of the United States of America (collectively, the "OFAC Lists"), (ii) neither Mortgagor, nor any persons or entities holding any legal or beneficial interest whatsoever in Mortgagor (whether directly or indirectly), are included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in the OFAC Lists; (iii) neither any Guarantor, nor any persons or entities holding any legal or beneficial interest whatsoever in any Guarantor (whether directly or indirectly), are named on any OFAC Lists; (iv) neither any Guarantor, nor any persons or entities holding any legal or beneficial interest whatsoever in any Guarantor (whether directly or indirectly), are included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in the OFAC Lists, and (v) neither Mortgagor nor any Guarantor, nor any persons or entities holding any legal or beneficial interest whatsoever in Mortgagor or any Guarantor (whether directly or indirectly), have conducted business with or engaged in any transaction with any person or entity named on any of the OFAC Lists or any person or entity included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in the OFAC Lists.

(i) Without limiting the effect of any of the foregoing, the representations set forth in this Mortgage shall be continuing and shall remain true and correct throughout the term of the Loan. As used herein, the term "to Mortgagor's knowledge" means the actual knowledge of any person who is a manager of Mortgagor, a member of Mortgagor, a principal in an entity which is a member of Mortgagor or a Guarantor.

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Section 2.4 Recognition of Disclosure. Any covenant, representation or warranty contained in this Mortgage or any Loan Document regarding the knowledge of Borrower or any Guarantor with respect to the compliance of the Premises with applicable law, including Environmental Laws (as defined in the Mortgage), shall be construed to be qualified by the contents of the Phase I environmental reports obtained by Borrower in connection with the application for this Loan.

Section 2.5 Contract Maintenance. Mortgagor will, for the benefit of Mortgagee, use commercially reasonable efforts to keep, observe, perform and satisfy each obligation, condition, covenant, and restriction affecting the Mortgaged Property or imposed on it under any agreement between Mortgagor and a third party relating to the Mortgaged Property or the Obligations secured hereby (collectively referred to as the "Third Party Agreements") so that there will be no default thereunder by Mortgagor which default could have a material adverse impact on either Mortgagor or the Mortgaged Property.

## ARTICLE III

### ENCUMBRANCES AND IMPOSITIONS

Section 3.1 Prohibition Against Encumbrances. Subject to the provisions of Section 3.3 hereof, Mortgagor shall not without the prior written consent of Mortgagee create or suffer or permit any Encumbrances, excepting only (a) liens securing the Obligations, (b) the lien of any real estate taxes and assessments not due and payable, and (c) the Permitted Exceptions.

Section 3.2 Payment of Impositions. Mortgagor shall pay or cause to be paid when due and before any penalty attaches all Impositions. Mortgagor shall furnish to Mortgagee receipts therefor without demand or further request on or before the date the same are due; and shall discharge any claim or lien relating to Impositions upon the Mortgaged Property. Nothing in this Section 3.2 contained shall require Mortgagor to pay any income, franchise, or excise tax imposed upon Mortgagee, excepting any such tax which may be levied against such income expressly as and for a specific substitute for Impositions on the Mortgaged Property, and then only in an amount computed as if Mortgagee derived no income from any source other than its interest hereunder.

Section 3.3 Contest of Mechanic's Liens and Impositions. Notwithstanding anything to the contrary contained herein, so long as no Default exists hereunder, Mortgagor, or any Person obligated to Mortgagor to do so, may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any Impositions or Mechanic's Liens by appropriate legal proceedings and defer payment and discharge thereof during the pendency of such contest, provided: (a) that such contest shall have the effect of preventing the collection of the Impositions so contested or the sale or forfeiture of the Mortgaged Property or any part thereof, or any interest therein, to satisfy such Mechanic's Lien or Imposition; (b) that, within thirty (30) days after the filing of such Mechanic's Lien, and prior to commencing any action with regard thereto, and that before any Impositions have been increased by any interest, penalties, or costs, and prior to such contest, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest the same or to cause such other Person to contest the same or cause the same to be contested; and (c) that Mortgagor shall have obtained a title insurance endorsement over such Mechanic's Lien or Imposition in form and from a company issuing the title insurance policy to Mortgagee for the Loan insuring Mortgagee against loss or damage by reason of the existence of such Mechanic's Lien or Imposition or Mortgagor shall have deposited or caused to be deposited with Mortgagee at such place as Mortgagee may from time to time in writing designate, and in the absence of such appointment, then at the place of payment designated in the Notes, a sum of money or other security which, when added to the monies or other security, if any, deposited with said title insurance company or Mortgagee, is sufficient, in Mortgagee's reasonable judgment, to pay in

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full such Mechanic's Lien or contested Impositions and all penalties and interest which might become due thereon, and shall keep on deposit an amount sufficient at all times, in Mortgagee's reasonable judgment, to pay in full such contested Mechanic's Lien or Impositions, increasing such amount to cover additional penalties and interest whenever, in Mortgagee's reasonable judgment, such increase is advisable. Such deposits are to be held without any allowance of interest.

If Mortgagor fails to maintain sufficient funds on deposit as hereinabove provided, fails to prosecute such contest or cause such contest to be prosecuted with reasonable diligence or fails to pay or cause to be paid the amount of the Mechanic's Lien or Impositions plus any interest and penalties finally determined to be due upon the conclusion of such contest, Mortgagee may, at its option, apply the monies and liquidate any security deposited as aforesaid in payment of, or on account of such Mechanic's Lien or such Impositions, or any portion hereof then unpaid, together with all penalties and interest thereon. If the amount of money and any such security so deposited is insufficient for the payment in full of such Mechanic's Lien or Impositions, together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, either deposit with Mortgagee a sum which, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Mortgagee has applied funds on deposit on account of such Mechanic's Liens or Impositions, restore such deposit to an amount satisfactory to Mortgagee. Provided that no Default exists hereunder, if the contest of the Mechanic's Lien claim or Imposition is ultimately resolved in favor of the claimant, if Mortgagor requests in writing, Mortgagee shall apply the money so deposited in full payment of such Mechanic's Lien or Impositions or that part thereof then unpaid together with all interest and penalties thereon when furnished with evidence satisfactory to Mortgagee of the amount of payment to be made. Any surplus remaining in the control of Mortgagee shall be paid to Mortgagor, provided that no Default then exists under this Mortgage.

## ARTICLE IV

### INSURANCE

Section 4.1 Section 4.01. Insurance Coverage. Mortgagor, at its expense, will continuously maintain the following described policies of insurance (the "Insurance Policies"):

(a) Primary commercial general liability insurance against claims for personal and/or bodily injury, death and/or property damage, occurring on, in or about the Mortgaged Property (including a Broad Form Property Damage Endorsement) in an amount of not less than \$1,000,000 combined single limit liability per occurrence, or such greater amounts as Mortgagee may from time to time reasonably request, with excess liability coverage in the amount of \$10,000,000;

(b) Liability and property damage coverages appropriate for the owner of a building to be demolished, as Mortgagee may reasonably request;

(c) If the Federal Insurance Administration (FIA) has designated or shall at any time designate the Real Property to be in a special flood hazard area, other than a zone "C", and designated the community in which the Real Property is located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available; and

(d) Such other types and amounts of insurance coverage insuring against such perils and hazards (including contingent liability insurance with respect to any building loss pertaining to non-conforming property and worker's compensation insurance) as are customarily maintained by owners or operators of like properties, or as Mortgagee may from time to time reasonably request.

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Anything to the contrary contained in this Mortgage or the other Loan Documents notwithstanding, unless Mortgagor provides Mortgagee with evidence of the insurance required by this Mortgage or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Premises or the other Mortgaged Property. This insurance may, but need not protect Mortgagee's interests. The coverage that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required hereunder or any of the other Loan Documents. If Mortgagee purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or the expiration of the insurance. The costs of the insurance may be added to the total outstanding indebtedness evidenced by the Notes or the other Loan Documents. The costs of the insurance obtained by Mortgagee may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

Section 4.2 Insurance Policies. All Insurance Policies shall be in such form and with such deductibles and written by such insurance companies as are reasonably satisfactory to Mortgagee. All Insurance Policies insuring against casualty and other appropriate policies shall include standard non-contributing mortgage endorsements in favor of and with loss payable to Mortgagee, as its interest may appear as the holder of this Mortgage, and as a first Mortgagee, as well as standard waiver of subrogation endorsements. All liability Insurance Policies shall name Mortgagee as an additional insured, shall be on an occurrence basis and shall contain a severability of interest clause for all additional insureds, with a no cross liability suits exclusion. All of the Insurance Policies shall provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Mortgagee and shall provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Mortgagee. Mortgagor will deliver to Mortgagee all Insurance Policies (or certified copies thereof), and evidence satisfactory to Mortgagee of premiums prepaid thereon for a minimum term of one (1) year in advance, to Mortgagee prior to the date hereof, and, in case of Insurance Policies about to expire, Mortgagor will deliver renewal or replacement Insurance Policies (or certified copies thereof) not less than thirty (30) days prior to the date of expiration thereof and evidence satisfactory to Mortgagee of premiums prepaid thereon for a minimum term of one (1) year in advance. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies. Insurance Policies maintained by other parties under the Leases may, if in conformity with the requirements of this Mortgage and if approved by Mortgagee, be presented to Mortgagee in satisfaction of Mortgagor's obligation to provide the insurance coverages provided by those Insurance Policies.

Section 4.3 Proceeds of Insurance. Mortgagor will give Mortgagee prompt notice of any loss or damage to the Mortgaged Property, and:

(a) In case of loss or damage covered by any of the Insurance Policies, Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such Insurance Policies which has not been settled within one hundred twenty (120) days without the consent of Mortgagor, or (ii) to allow Mortgagor to settle and adjust such claim with the consent of Mortgagee or such purchaser, which consent shall not be unreasonably withheld or delayed (or, at Mortgagee's option, without the consent of Mortgagee, which Mortgagee shall allow in any event if no Default exists hereunder and such claim is for less than One Million Dollars (\$1,000,000) worth of damage); provided that in either case Mortgagee or such purchaser shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by Mortgagee or such purchaser in the adjustment and collection of insurance proceeds shall be so much additional Monetary Obligations, and shall be reimbursed to Mortgagee or such purchaser upon demand

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or may be deducted by Mortgagee or such purchaser from said insurance proceeds prior to any other application thereof. Each insurance company which has issued an Insurance Policy is hereby authorized and directed to make payment for all losses covered by and Insurance Policy to Mortgagee alone, and not to Mortgagee and Mortgagor jointly.

(b) Mortgagee shall apply the proceeds of Insurance Policies consequent upon such casualty to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the loss or damage of the casualty, subject to the conditions and in accordance with all of the provisions of Section 4.4 hereof.

(c) If such proceeds of Insurance Policies are applied to so reimburse Mortgagor, Mortgagor hereby covenants to restore, repair, replace or rebuild the Improvements, to be of at least equal value, and of substantially the same character, as prior to such loss or damage, all to be effected in accordance with plans, specifications and procedures to be first submitted to and approved by Mortgagee in writing, and Mortgagor shall pay all costs of such restoring, repairing, replacing or rebuilding.

**Section 4.4 Disbursement of Insurance Proceeds.** Insurance proceeds held by Mortgagee for restoration, repairing, replacement or rebuilding of the Mortgaged Property, as provided in Section 4.3 above, shall be disbursed from time to time upon Mortgagee being furnished with (a) evidence satisfactory to it of the estimated cost of the restoration, repair, replacement and rebuilding, (b) funds (or assurances satisfactory to Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance, to complete and fully pay for the restoration, repair, replacement and rebuilding, and (c) such architect's certificates, waivers of lien, owner's and contractor's sworn statements, title insurance endorsements, plats of survey, builder's risk completed value all-risk (non-reporting), worker's compensation and owner's and contractor's protective liability insurance policies and such other evidences of cost, payment and performance as Mortgagee may require and approve. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Mortgagee in its reasonable judgment; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds, and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor to pay the cost of such repair, restoration, replacement or rebuilding, shall be at least sufficient in the reasonable judgment of Mortgagee to pay the entire unpaid cost of the restoration, repair, replacement or rebuilding, free and clear of all Encumbrances or claims for Encumbrances. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall, at the option of Mortgagee and provided that no Default has occurred and is then continuing hereunder, be paid to Mortgagor. All such proceeds of insurance held by Mortgagee shall be held in an interest-bearing account.

## ARTICLE V

### **ARTICLE V: DEPOSITS FOR IMPOSITIONS AND INSURANCE PREMIUMS**

**Section 5.1 Funds for Impositions.** If there is a Default hereunder, in addition to any and all other remedies available to Mortgagee, Mortgagee may upon written notice to Mortgagor require Mortgagor to deposit with Mortgagee or its designee, at the time of each payment of an installment due under the Notes, an additional amount sufficient to discharge the obligations of Mortgagor under Section 3.2 and/or Article IV hereof as and when they become due. The determination of the amount payable and of the fractional part thereof to be deposited with Mortgagee shall be made by Mortgagee in its discretion based on the prior year's amount and Mortgagee's estimate of the amount by which such amount can be expected to rise. If at any time within thirty (30) days prior to the due date of any of the obligations, the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full,

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Mortgagor shall, within seven (7) days after demand, deposit the amount of the deficiency with Mortgagee. If the amounts deposited are in excess of the actual obligations for which they were deposited, Mortgagee may refund any such excess, or, at its option, may hold the same and reduce proportionately the required monthly deposits for the ensuing year. Nothing herein contained shall be deemed to affect any right or remedy of Mortgagee under any other provision of this Mortgage or under any statute or rule of law to pay any such amount and to add the amount so paid to the Liabilities. All amounts held by Mortgagee or its designee shall be held not in trust and not as agent of Mortgagor, and may be commingled with other funds held by Mortgagee or its designee, and said amounts shall not bear interest, and shall be applied to the payment of the obligations in respect to which the amounts were deposited or, at the option of Mortgagee, to the payment of said obligations in such order or priority as Mortgagee shall determine. All amounts so deposited shall be held by Mortgagee or its designee as additional security for the Obligations. Mortgagor shall deliver to Mortgagee all bills, assessment statements and statements for any other applicable Impositions as soon as the same are received by Mortgagor, and Mortgagee shall be entitled to rely thereupon and shall be entitled to pay such amounts. If Mortgagee sells or assigns this Mortgage, Mortgagee shall have the right to transfer all amounts deposited under this Section to the purchaser or assignee, and Mortgagee shall thereupon be released and have no further liability hereunder for the application of such deposits, and Mortgagor shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

## ARTICLE VI

### CONDEMNATION AND EMINENT DOMAIN

Section 6.1 Condemnation and Eminent Domain. Any and all proceeds of awards (the "Awards") heretofore or hereafter made or to be made to the present, or any subsequent, owner of the Mortgaged Property, by any Governmental Authority for the taking, pursuant to condemnation or eminent domain proceedings (or settlement in lieu thereof), of all or any part of the Mortgaged Property (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereof, and the issuance of a warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, which Awards Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Mortgaged Property and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute, and deliver to Mortgagee, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all Awards and other compensation heretofore and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. If any portion of or interest in the Mortgaged Property is taken by condemnation or eminent domain, either temporarily or permanently, and the remaining portion of the Mortgaged Property is not, in the judgment of Mortgagee, a complete economic unit having substantially equivalent value to the Mortgaged Property as it existed prior to the taking, then, at the option of Mortgagee, all Obligations shall immediately become due and payable. After deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including attorney's fees, Mortgagee shall be entitled to apply the net proceeds toward repayment of such portion of the Obligations as it deems appropriate without affecting the lien of this Mortgage. At Mortgagee's option, and provided no Default has occurred and is then continuing, the Award shall be applied to reimburse Mortgagor for the cost of restoration and rebuilding the Mortgaged Property in accordance with plans, specifications and procedures which must be submitted to and approved by Mortgagee, and such Award shall be disbursed in the same manner as is hereinabove provided for the application of insurance proceeds, provided that any surplus after payment of



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such costs shall be applied on account of the Obligations. If the Award is not applied for reimbursement of such restoration costs, the Award shall be applied against the Obligations, in such order or manner as is provided in the Notes. Any reduction in the Obligations resulting from the application by Mortgagee of any Awards or payments as herein set forth shall be deemed to take effect only on the date of such application. If, prior to the receipt by Mortgagee of any Awards or payments, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive such Awards or payments to the extent of any deficiency found to be due upon such sale, with legal interest thereon, and of the attorneys' fees, costs, expenses and disbursements incurred by Mortgagee in connection with the collection of such Awards or payments.

## ARTICLE VII

### LEASES AND RENTS

#### Section 7.1 Leases and Rents.

(a) Mortgagor, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby bargain, sell, transfer, assign, convey, set over and deliver unto Mortgagee, all right, title and interest of Mortgagor in, to and under the Leases, together with all security therefor, and all rights of Mortgagor (i) to receive any and all Rents, and (ii) to perform under the Leases, to compel performance and otherwise to exercise all remedies thereunder, including all rights to make determinations, to exercise any election or option contained in the Leases, to give or receive any notice or consent, to demand and receive any property the subject of any of the Leases, to file any claims and generally to take any action which (in the opinion of Mortgagee) may be necessary or advisable in connection with any of the foregoing.

(b) Other than in the ordinary course of business, Mortgagor shall not enter into, amend, modify, extend, renew, terminate, surrender or cancel any Lease in any respect without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld. As a condition to granting such approval, Mortgagee may require, at its option, a separate collateral assignment, subordination, attornment and/or estoppel agreements with respect to the Lease, bearing the consent of the tenant thereunder.

(c) So long as no Default shall have occurred under this Mortgage, Mortgagor shall have the right to collect all of the Rents arising from the Leases, or renewals or extensions thereof, and shall hold the same, in trust, to be applied first to the payment of all Impositions upon the Mortgaged Property, secondly to the cost of the maintenance of Insurance Policies upon the Mortgaged Property required hereby, thirdly to the maintenance and repairs required hereby and lastly to the payment of the Monetary Obligations then due and payable, before using any part of the Rents for any other purposes.

(d) If a Default occurs hereunder, Mortgagee may, at its option, receive and collect all such Rents as they become due, from the Mortgaged Property and under any and all Leases of all or any part of the Mortgaged Property. Mortgagee shall thereafter continue to receive and collect all such Rents as long as such Default shall exist, and during the pendency of any foreclosure proceedings, and if there is a deficiency, during any redemption period which may now or hereafter exist under the laws of the State of Illinois or other applicable law. It is the intention of Mortgagor and Mortgagee that this Mortgage shall be and constitutes a present and absolute transfer and assignment of the Leases and the Rents assigned hereunder; provided, however, that anything contained herein to the contrary notwithstanding, Mortgagee shall not exercise any of the rights or powers conferred upon it hereunder unless and until a Default shall exist, and that prior to the occurrence of any such Default, Mortgagor shall be entitled to collect and receive the Rents, subject to the other provisions of this Mortgage.

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(e) Mortgagor shall (i) use commercially reasonable efforts to perform and discharge each and every obligation, covenant and agreement of the Leases to be performed by Mortgagor; (ii) use commercially reasonable efforts to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the other party to the Leases; (iii) deliver to Mortgagee, upon request, executed copies of any and all other and future Leases; (iv) give prompt notice to Mortgagee of any notice received from any of the other parties to Leases of default on the part of Mortgagor with respect to any of the Leases, together with an accurate and complete copy of any such notice; (v) use commercially reasonable efforts to enforce or secure the performance of each and every obligation, covenant, condition and agreement of the Leases to be performed by each of the other parties thereto.

## ARTICLE VIII

### SECURITY AGREEMENT

Section 8.1 Security Agreement. Mortgagor and Mortgagee agree that, notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that this Mortgage provides otherwise or such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the UCC, as hereinafter defined), this Mortgage shall constitute both a real property mortgage and a Security Agreement within the meaning of the UCC with respect to such portion of the Mortgaged Property or any other portion of the Mortgaged Property constituting property or interests in property, whether real or personal, tangible or intangible, which are subject to the priority and perfection of security interest provisions of the UCC or any similar law or statute (sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment and performance of the Obligations. To the extent permitted by applicable statutes and laws and in accordance with the provisions of Section 7.1 above, the security interests created hereby are specifically intended to cover and include all of the Leases and Rents, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder, including the present and continuing right to make claim for, bring actions and proceedings for the enforcement of, collect, receive and receipt for any and all of the rents, income, revenues, issues, profits, monies payable as damages, monies payable in lieu of the rent, monies payable as the purchase price of the Mortgaged Property, or any part thereof, and all awards and other claims for money and other sums of money payable or receivable under any of the Leases or with respect to the Mortgaged Property and to do any and all things which Mortgagor or any lessor is or may become entitled to do under the Leases. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this Section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) The terms and provisions contained in this Section 8.1 shall, unless otherwise defined or the context otherwise requires, have the meanings and be construed as provided in the UCC.

(b) The Collateral will be kept at the Real Property, unless Mortgagee otherwise agrees, and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the UCC). The Collateral may be affixed to the Real Property but will not be affixed to any other real estate.

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(c) Upon Default hereunder, Mortgagee shall have the remedies of a secured party under the UCC, including the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor (being the Debtor as that term is used in the UCC) can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the UCC); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the UCC. Mortgagee may (i) render the Collateral unusable without removal, (ii) dispose of the Collateral on the Real Property, or (iii) require Mortgagor to make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both Mortgagor and Mortgagee. Mortgagee will give Mortgagor at least ten (10) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale and, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Real Property, the Mortgaged Property including the Collateral to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorney's fees and reasonable legal expenses incurred by Mortgagee, shall be applied against the Obligations in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

(d) This Mortgage constitutes a financing statement for the purpose of Paragraph 9-402 of the UCC, and shall constitute a "fixture filing" under the UCC and shall be filed in the real estate records of the Recorder of Deeds of Cook County, Illinois.

(1) Name and mailing address of Debtor (Mortgagor): See address of Mortgagor in Section 13.1 below.

Address of Real Property: 875 Pacific Avenue, Hoffman Estates, IL

Name and mailing address of Secured Party (Mortgagee): 222 S. Riverside, 33rd Floor, Chicago, IL 60606 Attention: William J. Schlessler

(2) This financing statement covers the following types or items of personal property: the Mortgaged Property other than the Real Property but including the Fixtures.

(3) Some of the Collateral is are is to become fixtures on the Real Property described herein. Mortgagor is the record owner of the Real Property described herein.

## ARTICLE IX

### ARTICLE IX: PREPAYMENT PRIVILEGE

Section 9.1 Prepayment Privilege. Provided that no Default then exists under this Mortgage, privilege is reserved by Mortgagor to prepay the principal balance of the Notes subject to the terms and conditions as provided in the Notes.

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## ARTICLE X

### ARTICLE X: RESTRICTIONS ON TRANSFER

Section 10.1 Restrictions on Transfer. Mortgagor agrees that in determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Mortgagor in constructing, developing, owning and operating property such as the Mortgaged Property, found them acceptable and relied and continues to rely upon the same as the means of maintaining the value of the Mortgaged Property which is Mortgagee's primary security for the Notes. Mortgagor is experienced in borrowing money and developing, owning and operating property such as the Mortgaged Property, has been ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by, among other things, making new loans at such rates. Mortgagor further recognizes that any further financing placed upon the Mortgaged Property (a) could divert funds which would otherwise be used to pay the Notes secured hereby, (b) could result in acceleration and foreclosure of said further encumbrance which would force Mortgagee to take measures and incur expenses to protect its security, (c) would detract from the value of the Mortgaged Property should Mortgagee come into possession thereof with the intention of selling the same, and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, because a foreclosure by Mortgagee would be necessary to clear the title to the Mortgaged Property.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security for the repayment of the Loan, the value of the Mortgaged Property and the payment and performance of the Obligations including payment and performance of Mortgagor's obligations under the Loan Documents; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; and (iii) keeping the Mortgaged Property free of subordinate financing liens, Mortgagor agrees that if this Section 10.1 be deemed a restraint on alienation, that it is a reasonable one, and that Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, consent to, suffer or permit any Prohibited Transfer (as hereinafter defined). A "Prohibited Transfer" shall mean any sale or other conveyance, assignment, transfer, lien, pledge, mortgage, security interest or other Encumbrance or alienation, including the entering into of any contract, sale, installment sale or sale under articles of agreement (other than a contract with a third party for the sale of the Mortgaged Property which contract would provide for the repayment of the Loan at full at the closing of that sale transaction), the placement or granting of liens or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create an Encumbrance, the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, of any of the following properties, rights or interests which occurs, is granted, accomplished, attempted or effectuated without the prior written consent of Mortgagee, including any of the following:

(a) the Mortgaged Property or any part thereof or interest therein (including the sale, transfer or assignment of any leasehold or subleasehold interest in the Mortgaged Property, unless otherwise permitted by the terms of the Loan Documents), excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Mortgaged Property, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

(b) all or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a trustee;

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(c) the controlling shares (whether in one or a series of transaction(s)) of capital stock of any corporate Mortgagor, a corporation which is managing member or general partner of Mortgagor, a corporation which is a beneficiary of any trustee Mortgagor, a corporation which is a general partner in any partnership Mortgagor, a corporation which is a general partner in a partnership beneficiary of any trustee Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this Subsection 10.1(C) (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealer's Automated Quotation System);

(d) the controlling (whether in one or a series of transaction(s)) general partnership interest, membership interests or other beneficial interest in any Mortgagor which is a partnership, limited liability company or other entity (other than a corporation) or a partnership, limited liability company or other entity (other than a corporation) which is the beneficiary of a trustee Mortgagor;

In each case whether any such conveyance, sale (installment or otherwise), assignment, transfer, lien, pledge, mortgage, security interest, Encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by Mortgagor or any other Person, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section 10.1 shall not apply to (1) liens securing the Obligations, (2) the lien of current real estate taxes and assessments not yet due and payable, and (3) liens or Encumbrances specifically permitted by the terms hereof. "Controlling" as used in this Section 10.1 with respect to any Person shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or equity interests, by contract or otherwise. Mortgagor acknowledges that any agreements, liens or Encumbrances created in violation of the provisions of this Section 10.1 shall, at the option of Mortgagee, be voidable and, if Mortgagee exercises the option to void such agreement, lien or Encumbrance, it shall be of no further force or effect, and to the extent the provisions of this Section 10.1 conflict with or are inconsistent with similar provisions of the Notes or any of the other Loan Documents, Mortgagee, at its option may select which provisions shall govern and control.

## ARTICLE XI

### ARTICLE XI: DEFAULTS AND REMEDIES

Section 11.1 Defaults. If one or more of the following events (herein called "Defaults") shall occur:

(a) default at the Maturity Date in the payment of principal and all accrued and unpaid interest and any and all other monies then due on either Note;

(b) except as set forth in subparagraph 11.1(a) above, default in the payment of interest or any other monies due on either Note, as and when due in accordance with the terms of such Note, which default is not cured within five (5) days after notice to Mortgagor, provided that if two (2) notices have been given under this subparagraph (b) in any twelve (12) month period, the default in the payment of interest under either Note shall constitute a Default with no requirement of notice and no opportunity for cure;

(c) Except as set forth in subparagraphs 11.1(a) or (b) above, if any default be made in the payment monies required to be paid under this Mortgage and/or the other Loan Documents, as and when the same is due in accordance with the terms hereof or thereof (other than at the Maturity Date) and the continuance of such default for more than five (5) days after notice to Mortgagor,

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(d) If any Default or default shall exist under any the Revolving Credit Note, the Loan Agreement, or any other Loan Document or with regard to any of the other Obligations beyond applicable notice or grace periods, if any, therein provided,;

(e) The occurrence of a Prohibited Transfer;

(f) If (and for the purpose of this Subsection 11.1(f) only, the term Mortgagor shall mean and include not only Mortgagor, but also any successor in interest to Mortgagor who, pursuant to the terms of this Mortgage has acquired the Mortgaged Property (or the beneficial interest in a trust holding title thereto) subject to the Mortgage as well as any Person who, as Guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Obligations or any of the covenants or agreements contained herein):

(i) Mortgagor shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Act or any similar statutes or laws, now or hereafter in effect;

(ii) Mortgagor shall file an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay its or their debts as they mature;

(iii) Within ninety (90) days after the filing against Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar law or statute, now or hereafter in effect, such proceedings shall not have been dismissed or vacated;

(iv) All or a substantial part of the assets of Mortgagor are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within ninety (90) days;

(v) Mortgagor shall be adjudicated a bankrupt or shall have an order for relief entered in respect of it or them by any bankruptcy court;

(vi) Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its or their inability to pay its or their debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its or their property or the Mortgaged Property;

(vii) Any order issues appointing a custodian, receiver, trustee or liquidator of Mortgagor or all or a major part of the properties of Mortgagor or the Mortgaged Property is not vacated within thirty (30) days following the entry thereof; or

(viii) If a notice of lien, levy or assignment is filed of record with respect to the Mortgaged Property or with respect to all or any of the assets of Mortgagor by the United States government or any department, agency or instrumentality thereof or by any state, county, municipal or other Governmental Authority, or if any taxes or debts owing at any time to any one of them becomes a lien or Encumbrance upon the Mortgaged Property or any other assets of Mortgagor and any of the foregoing is not released within ninety (90) days after the same becomes a lien or Encumbrance;

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(g) If any statement or representation made by Mortgagor or furnished by Mortgagor to Mortgagee in connection with the transactions which gave rise to this Mortgage shall be false or misleading in any material respect;

(h) A judgment or judgments having a material adverse affect on Mortgagee or on the Mortgaged Property is or are outstanding against Mortgagor and the same is or are not satisfied or stayed within ninety (90) days;

(i) The Mortgaged Property or any part thereof is abandoned;

(j) Failure of Mortgagor to timely deliver the documents required by Section 12.1; or

(k) If any default occurs in the performance or observance of any other covenant, agreement or condition of Mortgagor hereunder, unless such default is governed by any of the other Subsections (a) through (j), both inclusive, of this Section 11.1 which default is susceptible to cure, and no other provision of this Mortgage or the other Loan Documents provides a specific cure period therefor and such default is susceptible to cure, in which event such default shall become a Default only if such default is not cured (i) within thirty (30) days after notice to Mortgagor;

then Mortgagee is hereby authorized and empowered, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Mortgagee hereunder, to declare, without further notice, all Obligations to be immediately due and payable (provided, however, that upon any of the events specified in Subsections 11.1(f)(i) through (vii) both inclusive, all Obligations will be immediately due and payable without notice or demand or any other declaration of the amounts due and payable) with interest thereon at the Default Rate, whether or not such Default be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage and/or to exercise any right, power or remedy provided by this Mortgage, the Note, or by law or in equity or any other Loan Document.

**Section 11.2 Foreclosure.** When the Obligations, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof in accordance with the laws of the State in which the Real Property is located and to exercise any other remedies of Mortgagee provided in the Note, this Mortgage, or any of the other Loan Documents, or which Mortgagee may have at law, at equity or otherwise. In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional Monetary Obligations in the decree or judgment of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this Section 11.2, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note, the other Loan Documents and/or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or the payment of any and all loan commissions, service charges, liquidated damages, expenses, and advances due to or paid or incurred by Mortgagee in connection with the Loan in accordance with the application and loan commitment issued in connection with this transaction (the "Commitment"), if any, and the other Loan Documents, or otherwise in dealing specifically therewith, shall be so much additional Monetary Obligations and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid.

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Section 11.3 Sale of Mortgaged Property. When the Obligations, or any part thereof, shall become due, whether by acceleration or otherwise, and pursuant to judicial proceedings in accordance with the laws of the State in which the Real Property is located, Mortgagee may elect to cause the Mortgaged Property or any part thereof to be sold as follows:

(a) Mortgagee may proceed as if all of the Mortgaged Property were real property, in accordance with Subsection 11.3(d) below, or Mortgagee may elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Real Property without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with Subsection 11.3(c) below, separate and apart from the sale of real property, the remainder of the Mortgaged Property being treated as real property.

(b) Mortgagee may cause any such sale or other disposition to be conducted immediately following the expiration of the grace period, if any, herein provided (or immediately upon the expiration of any redemption period, if any, herein provided) or Mortgagee may delay any such sale or other disposition for such period of time as Mortgagee deems to be in its best interest. Mortgagee may at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Mortgagee may deem to be in its best interest.

(c) Should Mortgagee elect to cause any of the Mortgaged Property to be disposed of as personal property as permitted by Subsection 11.3(a) above, it may dispose of any part thereof in any manner now or hereafter permitted by Section 8.1 hereof or in accordance with any other remedy provided by law.

(d) Should Mortgagee elect to cause to be sold all or any portion of the Mortgaged Property which is real property or which Mortgagee has elected to treat as real property, Mortgagee shall give such notice as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice as may then be required by law, Mortgagee, at the time and place specified in the notice, may cause to be sold such property, or any portion thereof specified by Mortgagee, at public auction to the highest bidder for cash in lawful money of the United States, subject however, to the provisions of Section 11.4 hereof. Mortgagee may, from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Real Property consists of several lots or parcels, Mortgagee may designate the order in which such lots or parcels shall be offered for sale or sold. Any Person, including Mortgagee, may purchase at the sale.

Section 11.4 Certain Rights of Holder of the Note. Upon any sale of the Mortgaged Property pursuant to judicial proceedings, if the holder of the Note is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the Monetary Obligations for or in settlement or payment of all or any portion of the purchase price of the property purchased, and, in such case, this Mortgage, the Note and documents evidencing expenditures secured hereby shall be presented to the Person conducting the sale in order that the amount of said indebtedness so used or applied may be credited thereon as having been paid.

Section 11.5 Mortgagee's Performance of Mortgagor's Obligations; Right of Possession. When a Default occurs hereunder, either before or after acceleration of the Obligations and the institution of foreclosure proceedings, and during the period of redemption, Mortgagee is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Mortgage and to collect the Rents assigned hereunder, and may, but shall not be required to, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient to Mortgagee, and Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its designee, and Mortgagee, in its discretion, with or without notice to Mortgagor, except as may be required hereby, and with or without process of law, may or may cause such designee to, enter upon and take and maintain possession of all or any



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part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Mortgaged Property relating thereto, excluding such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted, with or without so taking possession:

(a) Hold, rent, operate, manage, and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Property, including actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(b) Cancel or terminate any Lease or sublease of all or any part of the Mortgaged Property or any Document for any cause or on any ground that would entitle Mortgagor to cancel the same;

(c) Elect to disaffirm any Lease or sublease of all or any part of the Mortgaged Property or any Document made subsequent to this Mortgage without Mortgagee's prior written consent or as otherwise permitted by the Loan Documents;

(d) Extend or modify any then existing Leases and make new Leases of all or any part of the Mortgaged Property, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Obligations and the issuance of a deed or deeds to a purchaser at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all Persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(e) Perform or discharge any obligation of Mortgagor under the Leases and the Documents and any other documents, agreements, instruments, permits, licenses or bonds with respect to the Mortgaged Property, and cure any default thereunder or to protect or exercise the rights and remedies of Mortgagor or Mortgagee thereunder, at law, in equity or otherwise, including any rights and remedies of a secured party under the UCC, and with regard thereto may (i) notify any Person obligated to Mortgagor under or with respect thereto of the existence of a Default, (ii) require that performance thereof be made directly to Mortgagee at Mortgagor's expense, and (iii) advance such sums as are necessary or appropriate to satisfy Mortgagor's obligations thereunder;

(f) Construct, furnish, equip, operate, maintain, repair, rebuild and restore the Mortgaged Property or make the same rentable or saleable as may seem judicious to Mortgagee, and make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments, and improvements in connection therewith and insure and reinsure the Mortgaged Property and all risks incidental thereto, and receive all Rents, issues, deposits, profits and avails therefrom; and

(g) Pay all costs, expenses and charges of every kind and nature in connection therewith, including Impositions, Premiums, damage claims, and a reasonable fee for collection of the Rents and other income from and operation of the Mortgaged Property to Mortgagee or its agent, so that the Mortgaged Property shall be operational and usable for their intended purposes, and use the income from the Mortgaged Property, including the Rents, for such purposes or in reduction of the Monetary Obligations, all in such order and manner as Mortgagee shall select.

All monies paid, and all expenses paid or incurred in connection with the foregoing, including attorney's fees, to the extent permitted by applicable law, and other monies advanced by Mortgagee

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to protect the Mortgaged Property and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Mortgaged Property or to pay any such operating costs and expenses thereof or to keep the Mortgaged Property operational and usable for their intended purpose shall be so much Indebtedness Hereby Secured, whether or not the Indebtedness Hereby Secured, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate specified in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default nor shall the provisions of this Section 11.5 or any exercise by Mortgagee of its rights hereunder prevent any default from constituting a Default. Mortgagee, in making any payment hereby authorized (a) relating to Impositions, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any Encumbrance, may do so without inquiry as to the validity or amount of any claim for the Encumbrance which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Mortgaged Property or the rental, operation or management of the Mortgaged Property or the payment of operating costs and expenses thereof, may do so in such amounts and to such Persons as Mortgagee may deem appropriate. Nothing contained herein shall be construed to require Mortgagee to advance or expend monies for any purpose mentioned herein, or for any other purpose or to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the Lessor under any of the Leases or any other party under the Documents and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the Leases or any liabilities or obligations of Mortgagor or any other party under the Documents and Mortgagor shall continue to be liable for all obligations and liabilities thereunder. It is further understood that this Mortgage shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Property, or parts thereof, upon Mortgagee, nor shall it operate to make Mortgagee liable for the performance or discharge of any of the terms, conditions, duties or obligations under any of the Leases or the Documents or for any waste of the Mortgaged Property by any Lessees under the Leases or any other Person, or for any dangerous or defective condition of the Mortgaged Property.

Mortgagor hereby irrevocably constitutes and appoints Mortgagee its true and lawful agent and attorney-in-fact, with full power of substitution, to demand, enforce, collect, receive and give complete acquittances, releases and receipts for any and all benefits, rights and income accruing under the Leases and such other documents, agreements, instruments, permits, licenses or bonds, to modify, supplement and terminate the same in accordance herewith, and, at Mortgagee's discretion, to file any claim or take any other action or proceeding and make any settlement of any claims in connection therewith, in the name, place and stead of Mortgagor or in Mortgagee's name, with the same force and effect as Mortgagor could do if this Mortgage had not been made. Parties contracting with or for the benefit of Mortgagor hereunder are hereby expressly authorized and directed to perform any and all obligations due Mortgagor pursuant thereto or for the benefit of Mortgagee or such nominee as Mortgagee may designate in writing delivered to and received by such parties who are expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all obligations so performed, Mortgagor hereby waiving and releasing any claim Mortgagor may have against such third party for such reliance. It is hereby recognized that the power of attorney herein granted is coupled with an interest and is irrevocable. Mortgagor agrees to cooperate with Mortgagee in all ways requested by Mortgagee (including the giving of any notices requested by Mortgagee or joining in any notices given by Mortgagee and delivering to Mortgagee, upon Mortgagee's written demand, originals of any documents, agreements, instruments, permits, licenses or bonds relating to the Mortgaged Property and such other instruments and documents) to accomplish the foregoing provisions of this Section 11.5. Nothing herein contained shall be construed as constituting Mortgagee as a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property.

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Section 11.6 Receiver. Without limitation of Mortgagee's rights under other Sections hereof, at any time after Mortgagee shall be entitled to cause this Mortgage to be foreclosed pursuant to the terms hereof, Mortgagee may apply to any court of competent jurisdiction to appoint a receiver for the Mortgaged Property. Such appointment may be made either before or after sale, with or without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Mortgaged Property during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Mortgaged Property in payment in whole or in part of: (a) the Monetary Obligations or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien or Encumbrance which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

Section 11.7 Proceeds of Sale. The proceeds of any sale of the Mortgaged Property 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 Section 11.2 hereof, or incident to any sale under Section 11.3 hereof, including the expenses of sale, the attorneys' fees of Mortgagee, the actual cost of providing recording, mailing and posting notice, the cost of any search and/or other evidence of title procedures in connection therewith and any transfer tax on any deed or conveyance; Second, all other items which, under the terms hereof, constitute Monetary Obligations additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and Fifth, to the payment of surplus, if any, to whosoever may be lawfully entitled to reserve the same.

Section 11.8 Reimbursement. If Mortgagee shall be made a party to or shall intervene in any action or proceeding arising out of any act or occurrence at the Mortgaged Property, relating to or affecting the Mortgaged Property or the title thereto or the interest of Mortgagee under this Mortgage, or if Mortgagee employs an attorney to collect or enforce any or all of the Obligations, to realize on any security for the Obligations or to foreclose this Mortgage by judicial proceedings, Mortgagee shall be reimbursed by Mortgagor, immediately and without demand, for all reasonable costs, charges and attorneys' fees incurred by Mortgagee in any such case, and the same shall be secured hereby as a further charge and lien upon the Mortgaged Property.

Section 11.9 Insurance During Foreclosure. In case of an insured loss after the right to foreclose shall have accrued hereunder the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the Monetary Obligations, and the balance, if any, shall be paid as Mortgagee may reasonably determine. In the case of foreclosure of this Mortgage, the mortgagee's clause attached to each of the casualty Insurance Policies may be canceled and a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to the Person acquiring the Mortgaged Property pursuant to foreclosure or solely to Mortgagee. In the event of foreclosure or other sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all Insurance Policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the Insurance Policies without credit or allowance to Mortgagor for prepaid premiums thereon.

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Section 11.10 Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, and hereby voluntarily and knowingly waives, any stay, exemption, redemption, reinstatement, homestead or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof, on its own behalf, on behalf of all Persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every Person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof. Without limiting the foregoing, Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Paragraph 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et. Seq.) (the "IMFL")), or residential real estate (as defined in Paragraph 15-1219 of the IMFL), and to the full extent permitted by law, voluntarily and knowingly waives Mortgagor's rights to reinstatement and redemption as allowed under Paragraph 15-1601(b) of the IMFL. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or statute or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or statute or other restriction have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor hereby expressly waives any right which it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale thereof pursuant hereto.

Section 11.11 Compliance with Illinois Mortgage Foreclosure Law.

(a) If any provision in this Mortgage is determined to be inconsistent with any provision of IMFL (as defined in Section 11.10) the provisions of the IMFL shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with the IMFL.

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon a Default which are more limited than the rights that would otherwise be vested in Mortgagee under the IMFL in the absence of such provision, Mortgagee shall be vested with the rights granted in the IMFL to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Paragraphs 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

(d) Without limiting the generality of the foregoing, this Mortgage also secures all future advances made pursuant to the terms of this Mortgage or the other Loan Documents made after this Mortgage is recorded, including all monies so advanced by Mortgagee in accordance with the terms of this Mortgage to (i) preserve or restore the Mortgaged Property, (ii) preserve the lien of this Mortgage or the priority thereof or (iii) enforce this Mortgage, and, to the full extent permitted by Subsection (b)(5) of Paragraph 15-1302 of the IMFL or other law, shall be a lien from the time this Mortgage is recorded.

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Section 11.12 Power of Sale. Mortgagee acknowledges that a power of sale provision is not currently enforceable under the IMFL. Mortgagor acknowledges that in the event the IMFL is hereafter amended to permit the enforcement of a power of sale provision (the "Amendment"), such Amendment, to the extent permitted by law, will be enforceable against the Mortgagor and allow Mortgagee to proceed under the power of sale provisions of the IMFL. So long as the Default under which Mortgagee is proceeding occurs on or after the effective date of the Amendment, Mortgagee may elect to sell the Mortgaged Property by power of sale and, upon such election, such notice of Default and election to sell shall be given as shall be required by the Amendment. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, at the time and place specified in the notice of sale, Mortgagee, or such selling officer as required by the Amendment, shall sell such property, or any portion thereof specified by Mortgagee, at public auction to the highest bidder for cash in lawful money of the United States. Mortgagee may postpone the sale by public announcement thereof at the time and place noticed therefor. If the Mortgaged Property consists of several lots, parcels or interests, Mortgagee may designate the order in which the same shall be offered for sale or sold.

## ARTICLE XII

### ARTICLE XII: FINANCIAL STATEMENTS

Section 12.1 Financial Statements. Without demand or cost to Mortgagee, Mortgagor will, (a) within one hundred twenty (120) days after the end of each calendar year, furnish to Mortgagee: (i) Mortgagor's financial statements, including a profit and loss statement, balance sheet and cash flow statement of Mortgagor, certified by an officer of Mortgagor, respectively, as being true, complete and correct, (ii) financial statements for each Guarantor, including a balance sheet for each Guarantor certified by such Guarantor as being true, complete and correct, and (iii) a property rent roll in a form reasonably satisfactory to Mortgagee, showing for each rental unit in the Mortgaged Property the name of the tenant, the commencement date of the tenancy, the duration of the lease, the amount of the security deposit on hand with respect to that unit, the existence of any renewal options, and such other information as Mortgagee may reasonably require; and (b) within thirty (30) days after the same are required to be filed, furnish Mortgagee with copies of the federal income tax returns of Mortgagor and of each Guarantor. Such financial and operating statements shall be prepared and certified in accordance with generally accepted accounting principles, and shall contain such reasonable detail and information to enable Mortgagee to determine whether a Default exists hereunder. In the event that the financial and operating statements herein required are not duly and punctually furnished, Mortgagee may after notice in writing to Mortgagor and an additional ten (10) day opportunity to cure, require that the same shall be prepared, at Mortgagor's expense pursuant to audit by a firm of certified public accountants designated by Mortgagee, or Mortgagee may after notice in writing to Mortgagor and an additional ten (10) day opportunity to cure, impose a late fee of One Hundred Dollars (\$100) per day for each day that the financial statements are late.

## ARTICLE XIII

### ARTICLE XIII: NOTICES

Section 13.1 Notices. Any notice, demand or other communication which any party hereto or party named herein may desire or may be required to give to any other such party to be effective shall be in writing, and shall be deemed given only if and when personally delivered to the address of the party to receive such notice, demand or other communication, the day after being sent by a national courier for overnight deliver, or, if mailed, on the second Business Day after being deposited in United States registered or certified mail, postage prepaid, and in any case addressed to such party at its address set forth below, or to such other

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address as the party to receive such notice, demand or other communication may have designated upon at least seven (7) calendar days prior notice to all other parties by notice in accordance herewith:

(a) If to Mortgagee:

Fifth Third Bank (Chicago)  
222 S. Riverside Plaza, 33<sup>rd</sup> Floor  
Chicago, Illinois 60606  
Attention: William J. Schlessler

with a copy to:

Kenneth Hartmann, Esq.  
230 W. State Street  
Suite 200  
Geneva, Illinois 60134

(b) If to Mortgagor:

Park Place Apartments, L.L.C.  
c/o Shorewood Properties, L.L.C.  
61 S. Barrington Road  
South Barrington, Illinois 60010  
Attention: Michael Brim

with a copy to:

Stahl Cowen Crowley LLC  
55 W. Monroe Street  
Suite 500  
Chicago, IL 60603  
Attention: Jeffrey J. Stahl, Esq.

Except as may otherwise be specifically required herein, notice of the exercise of any right, power or option granted to Mortgagee by this Mortgage is not required to be given, and Mortgagor hereby expressly waives the right to receive any notices from Mortgagee with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Mortgagee to Mortgagor.

## ARTICLE XIV

### ARTICLE XIV: ENVIRONMENTAL COMPLIANCE

#### Section 14.1 Covenants and Representations

(a) Mortgagor has not, at any time, and, to Mortgagor's knowledge, no other Person has at any time, handled, buried, stored, retained, refined, transported, processed, manufactured, generated, produced, spilled, allowed to seep, leak, escape or leach, or pumped, poured, emitted, emptied, discharged, injected, dumped, transferred or otherwise disposed of or dealt with Hazardous Materials on, to or from the Mortgaged Property, and Mortgagor does not intend to and shall not use the Mortgaged Property or any part

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thereof or any other real property for the purpose of handling, burying, storing, retaining, refining, transporting, processing, manufacturing, generating, producing, spilling, seeping, leaking, escaping, leaching, pumping, pouring, emitting, emptying, discharging, injecting, dumping, transferring or otherwise disposing of or dealing with Hazardous Materials. In addition, without limitation to the foregoing provisions, Mortgagor represents that there is no asbestos in, on, over, or under all or any portion of the fireproofing or for any other purposes at or with respect to the Mortgaged Property.

(b) Mortgagor knows of no seepage, leak, escape, leach, discharge, injection, release, emission, spill, pumping, pouring, emptying or dumping of Hazardous Materials into waters on, under or adjacent to the Mortgaged Property or any part thereof, or onto lands from which such Hazardous Materials might seep, flow or drain into such waters.

(c) Mortgagor shall not permit any Hazardous Materials to be handled, buried, stored, retained, refined, transported, processed, manufactured, generated, produced, spilled, allowed to seep, leak, escape or leach, or to be pumped, poured, emitted, emptied, discharged, injected, dumped, transferred or otherwise disposed of or dealt with on, under, to or from the Mortgaged Property or any portion thereof at any time.

(d) Mortgagor represents that neither the Mortgaged Property nor any other property owned by Mortgagor is included or, to Mortgagor's knowledge proposed for inclusion on the National Priorities List issued pursuant to CERCLA by the United States Environmental Protection Agency (the "EPA") or on the inventory of other potential "Problem" sites issued by the EPA and has not otherwise been identified by the EPA as a potential CERCLA site or included or, to Mortgagor's knowledge proposed for inclusion on any list or inventory issued pursuant to any other Environmental Law, if any, or issued by any other Governmental Authority. Mortgagor represents that Mortgagor will comply with all Environmental Laws and any other federal, state or local environmental statute, regulation or common law.

(e) Mortgagor represents that no actions, suits, or proceedings have been commenced, or are pending, or to the knowledge of Mortgagor are threatened with respect to any Environmental Laws governing the use, manufacture, storage, treatment, transportation, or processing of Hazardous Materials with respect to the Mortgaged Property or any part thereof. Mortgagor has received no notice of, and has no knowledge of any occurrence or circumstance which with notice or the passage of time or both would give rise to a claim under or pursuant to any Environmental Law or under common law, pertaining to Hazardous Materials on, in, under or originating from the Mortgaged Property or any part thereof or any other real property owned or occupied by Mortgagor or arising out of the conduct of Mortgagor, including pursuant to any Environmental Law.

(f) Mortgagor has not knowingly waived any Person's liability with regard to Hazardous Materials in, on, under or around the Mortgaged Property.

(g) Mortgagor covenants that it shall, promptly upon (i) gaining knowledge of the release of any Hazardous Materials in, on, over, under, to or from the Mortgaged Property or any portion thereof, or onto, over, or under any contiguous real property, (ii) receiving any notice of any violation or administrative or judicial complaint or order having been filed or about to be filed against Mortgagor alleging violations of any Environmental Law requiring Mortgagor to take any action in connection with the release of any Hazardous Materials into the environment, or (iii) receiving any notice from any Governmental Authority or any other Person alleging that Mortgagor may be liable or responsible for costs associated with a response or cleanup of a release of Hazardous Materials into the environment or any damages caused by such release, notify Mortgagee of the presence and/or release of such Hazardous Material and of any notice, request for information or any inspection of the Mortgaged Property or any part thereof by any Governmental Authority with respect to any Hazardous Materials and provide Mortgagee with copies of such notice, request and any

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response to any such request or inspection. Within five (5) days after having learned of the enactment or promulgation of any Environmental Law which may result in any material adverse change in the condition, financial or otherwise, of Mortgagor or the Mortgaged Property, Mortgagor shall provide Mortgagee with notice thereof.

(h) Mortgagor covenants that it shall, in compliance with applicable Environmental Laws, conduct and complete all investigations, studies, sampling and testing (and promptly shall provide Mortgagee with copies of any such studies and the results of any such test) and all remedial, removal and other actions and shall spend all sums necessary and appropriate to immediately clean up and remove all Hazardous Materials in, on, over, under, from or affecting the Mortgaged Property or any part thereof in accordance with all such Environmental Laws applicable to the Mortgaged Property or any part thereof to the satisfaction of Mortgagee, and Mortgagee shall in no event be liable or responsible for any costs or expenses incurred in so doing. Mortgagor shall at all times observe and satisfy the requirements of and maintain the Mortgaged Property in strict compliance with all of Environmental Laws.

(i) Whether before or after a Default hereunder, and without regard to whether Mortgagee shall have taken possession of the Mortgaged Property or a receiver has been requested or appointed or any other right or remedy of Mortgagee has or may be exercised hereunder, Mortgagee shall have the right (but no obligation) to conduct such investigations, studies, sampling and/or testing of the Mortgaged Property or any part thereof as Mortgagee may, in its discretion, determine to conduct, relative to Hazardous Materials. Mortgagor shall cooperate fully in the conduct of such an audit. If Mortgagee decides to conduct such an audit because (i) there is a reasonable basis to believe that a violation of Environmental Laws may have occurred; (ii) Mortgagee's considering taking possession of or title to the Mortgaged Property after default by Mortgagor; (iii) a material change in the use of the Mortgaged Property which, in Mortgagee's opinion, increases the risk of noncompliance with Environmental Laws; or (iv) the introduction of Hazardous Material to the Mortgaged Property; then all costs and expenses incurred in connection therewith including, without limitation, consultants' fees and disbursements and laboratory fees, shall constitute a part of the Obligations and shall, upon demand by Mortgagee, be immediately due and payable and shall bear interest at the Default Rate from the date so demanded by Mortgagee until reimbursed. Nothing in this Mortgage shall give or be construed as giving Mortgagee the right to direct or control Mortgagor's actions in complying with Environmental Laws.

Section 14.2 Indemnification. Mortgagor covenants and agrees, at its sole cost and expense, to indemnify, protect, defend (with counsel acceptable to Mortgagee), hold and save harmless Mortgagee and its successors and assigns, and each of their employees, agents, officers and directors, from and against any and all fines, damages, losses, liabilities, settlements, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, damages (including consequential and punitive), disbursements or expenses of any kind or of any nature whatsoever, known or unknown, contingent or otherwise, whether incurred within or outside the judicial process (including, without limitation, attorneys' and experts' fees and disbursements and investigations and laboratory fees) which may at any time be imposed upon, incurred by or asserted or awarded against Mortgagee and arising from or out of, or in any way related to:

(a) The presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release or threat of release of any Hazardous Materials in, on, over, under, from or affecting all or any portion of the Mortgaged Property or any surrounding area;

(b) Any personal injury (including wrongful death, disease or other health condition related to or caused by, in whole or in part, any Hazardous Materials) or property damage (real or personal, tangible or intangible), compensation for lost wages, business income, profits, or other economic loss, damage to the natural resources or the environment, nuisance, pollution, contamination, leak, spill, release or other



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adverse effect on the environment arising out of or related to any Hazardous Materials in, on, over, under, from or affecting the Mortgaged Property or any part thereof;

(c) Any action, suit or proceeding brought or threatened, settlement reached, or order of any Governmental Authority relating to such Hazardous Material; and/or

(d) The enforcement of the provisions of Section 14.1 hereof or the violation thereof by Mortgagor or the assertion by Mortgagor of any defense to its obligations thereunder, whether any of such matters arise before or after foreclosure of the Mortgage or other taking of title to all or any portion of the Mortgaged Property by Mortgagee, including (i) the costs of removal of any and all Hazardous Materials from all or any portion of the Mortgaged Property or any surrounding areas, including the cost of any work performed and materials furnished in order to comply therewith, (ii) additional costs required to take necessary precautions to protect against the release of Hazardous Materials on, in, under or affecting the Mortgaged Property into the air, any body of water, any other public domain or any surrounding areas, and (iii) costs incurred to comply, in connection with all or any portion of the Mortgaged Property or any surrounding areas, with all Environmental Laws.

Any amounts payable to Mortgagee by reason of the application of this Article XIV shall be secured by this Mortgage and shall, upon demand by Mortgagee, become immediately due and payable and shall bear interest at the Default Rate from the date so demanded by Mortgagee until paid.

This indemnification shall survive repayment of the amounts due under the Note, the other Loan Documents or the other Obligations, cancellation of the Note, termination or release of this Mortgage, foreclosure of any liens on the Mortgaged Property by Mortgagee or a third party, or the conveyance thereof by the power of sale, trustee's sale, deed in lieu of foreclosure, assignment, or otherwise, and shall not be limited to the amount of any deficiency in any foreclosure or other sale of the Mortgaged Property. Nothing in this Article XIV shall be deemed to deprive the Mortgagee of any rights or remedies otherwise available to Mortgagee, including, without limitation, those rights and remedies provided elsewhere in this Mortgage or the other Loan Documents. Anything to the contrary contained herein notwithstanding, the indemnity contained in this Section 14.2 is not intended to indemnify Mortgagee for its own gross negligence or intentional misconduct occurring while Mortgagee or its successors or assigns have acquired title to or have taken possession of the Real Property.

## ARTICLE XV

### MISCELLANEOUS

Section 15.1 Recording of Mortgage, Change in Tax Laws, etc. Mortgagor will pay all filing, registration or recording fees, and all expenses, including attorneys' fees, incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Mortgaged Property, or any other law, statute or ordinance, any filing, registration or recording fee or tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law, statute or ordinance. In the event that any law, statute or ordinance has the effect of deducting from the value of the Mortgaged Property for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by Mortgagor, or changing in any way the law, statute or

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ordinance relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage, the Obligations or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, or reimburse Mortgagee therefor on demand, unless Mortgagee determines, in Mortgagee's reasonable judgment, that such payment or reimbursement by Mortgagor is unlawful, in which event the Obligations shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this Section 15.1 shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against the income of Mortgagee as a complete or partial substitute for taxes required to be paid by Mortgagor pursuant hereto.

Section 15.2 Effect of Extensions and Amendments. If the payment of the Obligations, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all Persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect, the right of recourse against all such Persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any Person taking a junior mortgage, or other Encumbrance upon the Mortgaged Property or any part thereof or any interest therein, shall take the said Encumbrance subject to the rights of Mortgagee to amend, modify, extend or release the Note, this Mortgage or any other document or instrument evidencing, securing or guarantying the Obligations, in each and every case without obtaining the consent of the holder of such junior Encumbrance and without the lien of this Mortgage losing its priority over the rights of any such junior Encumbrance. The same shall not negate any prohibition against such secondary financing contained herein.

Section 15.3 Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter. Mortgagor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Mortgagee shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired. Without limitation of the foregoing, Mortgagor will assign to Mortgagee, upon request, as further security for the Obligations, Mortgagor's interests in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments satisfactory to Mortgagee, but no such assignment shall be construed as a consent by Mortgagee to any agreement, contract, license or permit or to impose upon Mortgagee any obligations with respect thereto. From time to time, Mortgagor will furnish within fifteen (15) days after Mortgagee's request therefor a written and duly acknowledged statement of the amount due under the Note and under this Mortgage and whether any alleged offsets or defenses exist against the Obligations and whether any Default on the part of Mortgagor (or events which, with the passing of time or the giving of notice, or both, would become a Default) exists hereunder.

#### Section 15.4 Successors and Assigns.

(a) Holder of the Note. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and each and all of its successors and assigns (including each and every record owner from time to time of the Mortgaged Property or any other Person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Wherever herein Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such holder from time to time of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such holder of the Note from time to time were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated Mortgagee.

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(b) Covenants Run With Land; Successor Owners. All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of Mortgaged Property or any portion thereof becomes vested in a Person or Persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Obligations in the same manner as with Mortgagor without in any way releasing or discharging Mortgagor from its obligations hereunder. Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section 15.4(b) shall vary or negate the provisions of Article X hereof.

Section 15.5 Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Mortgagee. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to Mortgagee by this Mortgage is not required to be given.

Section 15.6 Subrogation. If any part of the Monetary Obligations is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior Encumbrances upon the Mortgaged Property or any part thereof, then Mortgagee shall be subrogated to the rights of the holder thereof in and to such other lien or Encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same, and regardless of whether said liens or Encumbrances are acquired by assignment or have been released of record by the holder thereof upon repayment. The foregoing right of subrogation is a material inducement to Mortgagee to make the Loan, and Mortgagee is expecting to be benefited by said right.

Section 15.7 Option to Subordinate. 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 condemnation) to any and all Leases of all or any part of the Mortgaged Property upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of the County in which the Real Property is located of a unilateral declaration to that effect.

Section 15.8 GOVERNING LAW AND CHOICE OF FORUM. THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS HAVING BEEN NEGOTIATED, EXECUTED, DELIVERED AND ACCEPTED WITHIN THE STATE OF ILLINOIS, AND THE PROCEEDS EVIDENCED BY THE NOTE, SECURED BY THIS MORTGAGE AND EVIDENCED, SECURED AND GUARANTEED BY THE OTHER LOAN DOCUMENTS HAVING BEEN DISBURSED FROM ILLINOIS, WHICH STATE MORTGAGOR AND MORTGAGEE AGREE HAS A SUBSTANTIAL RELATIONSHIP TO MORTGAGOR AND MORTGAGEE AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, MORTGAGOR AGREES THAT THIS INSTRUMENT AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF MORTGAGOR AND MORTGAGEE HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY AND CONSTRUED EXCLUSIVELY UNDER THE SUBSTANTIVE LAWS OF THE STATE OF ILLINOIS, WITHOUT REFERENCE TO THE CHOICE OR CONFLICTS OF LAW PRINCIPLES OF THAT OR ANY OTHER STATE. MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY COURT HAVING SITUS IN COOK COUNTY, ILLINOIS, AT MORTGAGEE'S DISCRETION, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE OR THE OTHER

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LOAN DOCUMENTS, AND HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURT. MORTGAGOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE IN ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT AS WELL AS ANY RIGHT IT MAY NOW OR HEREAFTER HAVE, TO REMOVE ANY SUCH ACTION OR PROCEEDING, ONCE COMMENCED, TO ANOTHER COURT ON THE GROUNDS OF FORUM NON CONVENIENS OR OTHERWISE. MORTGAGOR AGREES THAT A FINAL NONAPPEALABLE JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. MORTGAGOR AGREES NOT TO INSTITUTE ANY LEGAL ACTION OR PROCEEDING AGAINST EITHER MORTGAGEE OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PROPERTY, ARISING OUT OF OR RELATING TO THIS MORTGAGE, IN ANY COURT OTHER THAN THE ONE HEREINAFORE SPECIFIED IN THIS PARAGRAPH. NOTHING IN THIS PARAGRAPH SHALL AFFECT THE RIGHT OF MORTGAGEE TO BRING ANY ACTION OR PROCEEDING AGAINST MORTGAGOR'S PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTIONS.

Section 15.9 Waiver of Counterclaim and Statute of Limitations. Mortgagee hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Mortgagee or its agents. The pleadings of any statute of limitations as a defense to any and all obligations secured by this Mortgage are hereby waived to the full extent permitted by law.

Section 15.10 WAIVER OF JURY TRIAL. MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ON THE OTHER LOAN DOCUMENTS OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS MORTGAGE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS WHETHER VERBAL OR WRITTEN, ANY COUNTERCLAIM ALLOWED HEREBY OR ACTIONS OF MORTGAGEE OR MORTGAGOR. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE ENTERING INTO THE TRANSACTION EVIDENCED BY THE LOAN DOCUMENTS.

Section 15.11 Inspection of Mortgaged Property and Records. Mortgagee and its representatives and agents shall, at all reasonable times (unless a Default has occurred, then at any time), have the right to inspect the Mortgaged Property and all books, records and documents relating thereto, and access thereto shall be permitted for that purpose. Mortgagee shall keep and maintain full and correct books and records showing in detail the income and expenses of the Mortgaged Property and, within ten (10) days after demand therefor by Mortgagee, to permit Mortgagee or its agents to examine such books and records and all supporting vouchers and data at any time on request at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon. Mortgagee shall be entitled to a reasonable inspection fee plus all of its reasonable costs incurred incident to the inspection of the Mortgaged Property, all of which shall be payable upon demand. Mortgagee, in its reasonable discretion, will determine the necessity for and the number of inspections required and Mortgagee shall determine, at its reasonable discretion, each inspector used incident to an inspection.

Section 15.12 Test Appraisal. In the event any test appraisals of or with respect to the Mortgaged Property are required by any appropriate Governmental Authority, Mortgagee shall pay for all such testing, and shall comply, at their own expense, with such test appraisal including reduction of the principal balance of the Note at such times and in such amounts as shall be required to reduce the principal balance of the Note to a

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sum which does not exceed a certain percentage of the value of the Mortgaged Property as shown by such test appraisals.

Section 15.13 Time of the Essence. Time is of the essence of the Note, this Mortgage and the other Loan Documents.

Section 15.14 Sole Discretion; No Liability. Wherever pursuant to this Mortgage or the other Loan Documents, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that an arrangement or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee, unless otherwise specified. In the event that a claim or adjudication is made that Mortgagee has acted unreasonably or unreasonably delayed acting in any case where by law or under the Note, this Mortgage or the other Loan Documents it has an obligation to act reasonably or promptly, Mortgagee shall not be liable for any monetary damages, and Mortgagor's remedies shall be limited to injunctive relief or declaratory judgment. Anything contained herein to the contrary notwithstanding, it is expressly understood and agreed that Mortgagee's inspection and approval of the documentation pertaining to this Mortgage and any inspection of the Mortgaged Property made by Mortgagee shall be solely for Mortgagee's benefit, and Mortgagee shall have no liability to Mortgagor or any other Person by reason thereof.

Section 15.15 Captions and Gender; Headings. The captions and headings of the various Articles, Sections and Subsections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable. Except as otherwise specifically indicated, all references to Articles, Section and Subsections shall refer to Articles, Sections and Subsections of this Mortgage and all references to Exhibits refer to the Exhibits attached to this Mortgage.

Section 15.16 Provisions Severable. In the event that any provision hereof shall be held by a court of competent jurisdiction to be illegal, unenforceable or invalid, such provision shall be replaced by such legal, enforceable and valid provision as most nearly realizes the intent of the replaced provision. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid. It is the intent of Mortgagor and Mortgagee that Mortgagee have a valid and enforceable lien created hereby securing sums described herein and that this Mortgage shall be so construed as creating such a valid lien in favor of Mortgagee notwithstanding unenforceability of one or more provisions hereof.

Section 15.17 No Partnership; Joint and Several Obligations. Nothing contained herein, in the Note or in any other document or instrument evidencing or securing the Obligations shall be deemed to create a joint venture or partnership relationship between Mortgagor and Mortgagee; it being understood that solely the relationships of lender and borrower and mortgagor and mortgagee, as the case may be, shall be created in connection herewith. If this Mortgage is signed by more than one Person, the liability of each such Persons shall be joint and several in all respects.

Section 15.18 Restoration of Rights. In case Mortgagee shall have proceeded to enforce any right under this Mortgage by foreclosure sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder with respect to the Mortgaged Property subject to the lien hereof.

Section 15.19 Intervening Lien. Any agreement hereafter made pursuant to this Mortgage shall be superior to the rights of the holder to any intervening Lien.

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Section 15.20 Tax Reduction Proceedings. After a Default, Mortgagor shall be deemed to have appointed Mortgagee as its attorney-in-fact to seek a reduction or reductions in the assessed valuation of the Mortgaged Property for real property tax purposes or for any other purpose and to prosecute any action or proceeding in connection therewith. This power, being coupled with an interest, shall be irrevocable for so long as any part of the Obligations remain outstanding.

Section 15.21 No Merger. If Mortgagor's and Mortgagee's estates including, without limitation, Mortgagee's estate upon the delivery of a deed by Mortgagor in lieu of a foreclosure sale, or Mortgagee's estate upon a purchase of the Mortgaged Property by Mortgagee in a foreclosure sale, shall become the same, this Mortgage and the lien created hereby shall not be destroyed or terminated by the application of the doctrine of merger and in such event Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee as to the separate estates; and, as a consequence thereof, upon the foreclosure of the lien created by this Mortgage any Leases or subleases then existing and created by Mortgagor shall not be destroyed or terminated by application of the law of merger or as a result of such foreclosure unless Mortgagee or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any Lease or sublease unless Mortgagee or such purchaser shall give written notice thereof to such Lessee or sublessee.

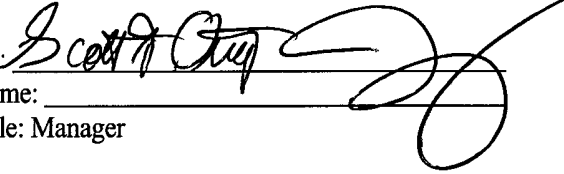
Section 15.22 Release Formula for Ninety Units. Upon: (i) not less than thirty days' prior written notice from Mortgagor to Mortgagee requesting a partial release of the Mortgage, and (ii) payment of a release price of Four Million Five Hundred Thousand Dollars (\$4,500,000), Mortgagee shall release the lien of this Mortgage from that portion of the Mortgaged Property which is identified on Exhibit B and referred to herein as the "Release Parcel." The Release Parcel shall not contain more than ninety residential apartment units.

Section 15.23 Deposit Account Activity. Mortgagor will establish and maintain with Mortgagee all operating accounts and other accounts related to the Mortgaged Property and all operating accounts and other accounts related to the 192 unit apartment complex adjoining the Mortgaged Property (the "Adjoining Property"), for such time as the Adjoining Property is owned by Mortgagor.

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

**PARK PLACE APARTMENTS, L.L.C.**, an Illinois limited liability company

By:   
Name: \_\_\_\_\_  
Title: Manager

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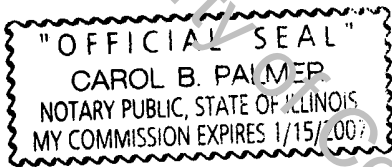
STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF COOK )

I, Carol B. Palmer, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Carol B. Palmer personally known to me to be the Manager of Park Place Apartments, L.L.C., an Illinois limited liability company and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of such limited liability company.

GIVEN under my hand and notarial seal this 21<sup>st</sup> day of April, 2006.

Carol B. Palmer  
Notary Public

My Commission Expires:



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## EXHIBIT A

### Legal Description

ALL OF LOTS 2, 3 AND 4 IN PARK PLACE, A SUBDIVISION IN THE NORTHWEST FRACTIONAL QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. ACCORDING TO THE PLAT THEEOF RECORDED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON OCTOBER 13, 1989, AS DOCUMENT NUMBER LR3832492.

EXCEPTING THEREFROM THAT PART OF SAID LOT 3 BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 3; THENCE NORTH 02 DEGREES 17 MINUTES 30 SECONDS WEST (WITH THE BASIS FOR THE BEARINGS BEING ASSUMED) ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 328.29 FEET TO THE POINT OF BEGINNING FOR THE PARCEL OF LAND HEREINAFTER DESCRIBED; THENCE SOUTH 87 DEGREES 42 MINUTES 30 SECONDS WEST ALONG A STRAIGHT LINE, PERPENDICULAR TO THE LAST DESCRIBED LINE, A DISTANCE OF 291.11 FEET TO THE POINT OF INTERSECTION OF SAID PERPENDICULAR LINE WITH THE WEST LINE OF SAID LOT 3, SAID WEST LINE OF LOT 3 BEING ALSO THE EAST LINE OF ATLANTIC AVENUE; THENCE NORTH 02 DEGREES 17 MINUTES 30 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 3, A DISTANCE OF 1,061.63 FEET TO A POINT OF CURVE IN SAID WEST LINE OF LOT 3; THENCE CONTINUING ALONG A WESTERLY LINE OF SAID LOT 3, BEING THE ARC OF A CIRCLE, CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 133.00 FEET, THE CHORD OF SAID ARC HAVING A LENGTH OF 133.75 FEET AND A BEARING OF NORTH 32 DEGREES 28 MINUTES 45 SECONDS WEST, AN ARC DISTANCE OF 140.14 FEET TO A POINT; THENCE NORTH 21 DEGREES 52 MINUTES 49 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 112.61 FEET TO A POINT; THENCE SOUTH 68 DEGREES 07 MINUTES 07 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 150.21 FEET TO A POINT; THENCE SOUTH 87 DEGREES 00 MINUTES 17 SECONDS EAST ALONG A STRAIGHT LINE, A DISTANCE OF 175.96 FEET TO A POINT ON THE EAST LINE OF SAID LOT 3; THENCE SOUTH 02 DEGREES 17 MINUTES 30 SECONDS EAST ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 1202.25 FEET TO THE POINT OF BEGINNING.

COMMON ADDRESS: <sup>845</sup> PACIFIC AVENUE, HOFFMAN ESTATES, ILLINOIS

PIN: 07-18-100-017-0000  
 07-18-100-018-0000  
 07-18-100-019-0000

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## EXHIBIT B

### Permitted Exceptions to Title

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