



# UNOFFICIAL COPY

Agreement, protecting and preserving the collateral (defined herein), disbursements authorized by this Mortgage or insurance on the Premises, with interest on such disbursements.

## 1. GRANT OF MORTGAGE

1.1. Premises, Improvements and Goods . To secure payment of the indebtedness evidenced by the Note, including any future advances thereunder and any renewals or extensions thereof, the Liabilities and the performance of the covenants and agreements of Mortgagor hereunder Mortgagor does by these presents WARRANT, CONVEY and MORTGAGE unto Mortgagee, all of Mortgagor's estate, right, title and interest in the real estate situated, lying and being in the County of Cook, and State of Illinois, legally described on attached Exhibit A and made part hereof, which is referred to herein as the "Premises", together with (i) all, improvements, buildings, tenements, hereditaments, appurtenances, strips and gores of land, water, gas, oil, minerals, and easements located in, on, over or under the Premises, and all types and kinds of building and construction materials, furniture, fixtures, apparatus, machinery and equipment, including without limitation, all of the foregoing used in any construction on the Premises or to supply heat, gas, air conditioning, water, light, power, refrigeration or ventilation (whether single units or centrally controlled) and all screens, window shades, storm doors and windows, floor coverings, awnings, stoves, refrigerators, dishwashers and water heaters, whether now on or in the Premises or hereafter erected, installed or placed on or in the Premises, and whether or not physically attached to the Premises (collectively, the "Improvements"); and (ii) all building materials, goods, construction materials, appliances, blinds, window shades, carpeting, floor coverings, elevators, office equipment, growing plants, fire sprinklers and alarms, control devices, equipment, and all window cleaning, building cleaning, recreational, monitoring, garbage, air conditioning, pest control and other equipment, tools, furnishings, furniture, light fixtures and non-structural additions to the Premises regardless of whether located in or on the Premises or located elsewhere for purposes of fabrication, storage or otherwise and all renewals and replacements therefore or articles in substitution thereof and all proceeds and products thereof, including without limitation all rights in and under the escrow accounts established pursuant to Section 2.3 of this Mortgage (all of the foregoing is herein referred to as "Goods"). The foregoing items are and shall be deemed a part of the Premises and a portion of the security for the Liabilities as between the parties hereto and all persons claiming by, through or under them. Notwithstanding the agreement that the Goods shall be deemed a part of the Premises, to the extent that the Goods may constitute goods as defined under the Illinois Uniform Commercial Code, this Mortgage shall constitute a security agreement creating a security interest in the Goods, as collateral, with Mortgagee as a secured party and Mortgagor as Debtor, all in accordance with the Illinois Uniform Commercial Code and as more specifically provided for in Section 4 of this Mortgage.

1.2 Accounts and Intangibles . Further, Mortgagor does hereby grant a security interest in, pledge, assign, transfer, deliver and grant to Mortgagee all of Mortgagor's right, title and interest in and to all accounts and general intangibles relating to the development or use of the Premises, including but not limited to all governmental permits relating to construction on the Premises, all names under or by which the Premises or any Improvements or Goods on the Premises may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the

# UNOFFICIAL COPY

Premises whether now existing or hereafter acquired or arising and in all accessions thereto and products and proceeds thereof (collectively, the "Accounts and Intangibles").

1.3 Insurance and Condemnation Awards. Further, Mortgagor does hereby grant a security interest in, pledge, assign, deliver and grant to Mortgagee all of Mortgagor's right, title and interest in and to all proceeds of the conversion, voluntarily or involuntarily, of the Premises or any part thereof into cash or liquidated claims, including without limitation, proceeds of insurance and condemnation awards (collectively, the "Insurance and Condemnation Awards").

1.4. Leases and Rents. Further, Mortgagor does hereby grant a security interest in, pledge, assign, transfer, deliver and grant to Mortgagee all now existing or hereafter arising leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money or other consideration for the use, possession or occupancy of, or any estate in, the Premises or any part thereof (collectively, the "Leases") and all now existing or hereafter arising rents, issues, profits, royalties, avails, income and other benefits derived or owned by Mortgagor directly or indirectly from the Premises (collectively, the "Rents"), it being the intention hereby to establish an absolute transfer and assignment of all such Leases and Rents. Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Mortgagee) with or without taking possession of the Premises as provided in Section 5.7 hereof, to lease any portion of the Premises to any party on such terms as Mortgagee shall determine, and to collect all rents due with the same rights and powers and subject to the same immunities as Mortgagee would have upon taking possession pursuant to the terms of Section 5.7 of this Mortgage. Mortgagor represents that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that payment of none of the Rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Mortgagor. Mortgagor waives any right of set off against any person in possession of any portion of the Premises. Mortgagor agrees that Mortgagor will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing contained in this Mortgage shall be construed as constituting Mortgagee a mortgagee-in-possession in the absence of the taking of the actual possession of the Premises pursuant to Section 5.7 of this Mortgage. Mortgagor hereby expressly waives all liability of Mortgagee in the exercise of the powers granted to Mortgagee pursuant to this Mortgage. Mortgagor shall not enter into any lease of any portion or all of the Premises without the prior written consent of Mortgagee. Mortgagor shall assign to Mortgagee all future leases on any part of the Premises and shall execute and deliver to Mortgagee, upon request by Mortgagee, all such further assurances and assignments as Mortgagee may require. Although the assignment contained this paragraph is a present assignment, Mortgagee shall not exercise any of the rights or powers conferred upon Mortgagee pursuant to this paragraph until a Default exists pursuant to the terms of this Mortgage.

1.5. Plans and Contracts. Further, Mortgagor does hereby grant a security interest in, pledge, assign, transfer, deliver and grant to Mortgagee all now existing or hereafter arising rights of Mortgagor to plans and specifications, designs, drawings and other matters prepared for any construction or Improvements in or on the Premises (collectively, the "Plans") and all rights

# UNOFFICIAL COPY

of Mortgagor under any contracts executed by Mortgagor, or any beneficiary of Mortgagor, as owner with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection, with, the Premises (collectively, the "Contracts").

1.6. Waiver of Homestead Exemption. Further, Mortgagor does hereby expressly waive and release all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois.

## 2. MORTGAGOR COVENANTS AND REPRESENTATIONS

While any of the Liabilities remain outstanding, Mortgagor represents, warrants, covenants and agrees as follows:

2.1. Repair, Payment, Compliance and Performance. Mortgagor shall (a) promptly repair, restore or rebuild any buildings or Improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and, except for this Mortgage, free from any encumbrances, security interests, liens, mechanics' liens or claims or lien and any other claims or demands against Mortgagor's title to the Premises, (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises and upon request exhibit satisfactory evidence of the discharge of such lien or charge to Mortgagee; (d) complete in a good and workmanlike manner using new materials of first class quality and within a reasonable time the Premises, Improvements and Units now or at any time in process of construction and renovation upon the Premises; (e) comply and cause any tenant of the Premises to comply with all requirements of all federal, state and local laws, regulations and ordinances with respect to the construction, maintenance or use of the Premises; (f) make no material alterations in the Premises, except as required by law or municipal ordinance, (g) refrain from impairing or diminishing the value of the Premises; (h) not seek, make or consent to, without Mortgagee's prior written consent, any change in the zoning or conditions of use of the Premises or in the plans for the Improvements or Units thereof or thereon; (i) use the proceeds of the Note solely for the purpose set forth in Loan Agreement; (j) perform and comply with all of the terms, provisions and conditions of the Loan Agreement including without limitation those provisions pertaining to the construction and renovation of the Improvements and Units (as defined in the Loan Agreement) upon the Premises. In the event an event of Default has not occurred, Mortgagee shall allow Mortgagor to use proceeds of insurance to comply with the provisions of this paragraph. In the event an event of Default has occurred, then at the option of Mortgagee, the Mortgagee shall either allow the Mortgagor to use the proceeds of any insurance to comply with the provisions of this paragraph or Mortgagee shall apply the proceeds to reduce the Liabilities. Mortgagor shall establish a construction escrow with Chicago Title & Trust Company for the construction of and/or the repair and renovation of the Improvements and Units to the Premises. Mortgagor shall comply with the Title Company's procedures so as to cause the Title Company to waive any and all mechanic's lien exceptions on the Mortgagee's mortgage insurance policy.

2.2. Payment of Taxes. Mortgagor shall pay, when due and before any penalty attaches, all general taxes, special taxes, special assessments, water taxes or charges, drainage



# UNOFFICIAL COPY

taxes or charges, sewer service taxes or charges, and other taxes, assessments or charges against the Premises. Mortgagor shall, upon written request, furnish to Mortgagee duplicate paid receipts for such taxes, assessments and charges. To prevent Default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax, assessment or charge which Mortgagor may desire to contest prior to such tax, assessment or charge becoming delinquent.

2.3. Establishment of Tax Escrow. In the event Mortgagor fails to pay any real estate taxes when due, at request of Mortgagee, Mortgagor shall establish and maintain with Mortgagee a non-interest bearing escrow account in an amount sufficient to pay real estate taxes when due. In the event Mortgagee requires the escrow account, Mortgagor covenants and agrees to deposit at the place as Mortgagee may, from time to time, in writing appoint and, in the absence of appointment, then at the office of Mortgagee commencing with the next interest payment pursuant to the Note secured hereby, and on each and every interest payment and principal and interest payment date thereafter until the Liabilities secured by this Mortgage are fully paid, a sum equal to the last total annual taxes and assessments for the last ascertainable year (general and special) with respect to the Premises divided by the number of annual interest payments and principal and interest payments due under the Note, as the case may be. Notwithstanding the foregoing, if the taxes or assessments for the last ascertainable year exclude the Improvements or Units or any part thereof now constructed or to be constructed or renovated on the Premises, then the amount of the deposits to be paid pursuant to this paragraph shall be based upon the reasonable estimate of Mortgagee as to the amount of taxes and assessments which shall be levied or assessed. Concurrent with the first monthly installment of the tax escrow payment, Mortgagor will also deposit with Mortgagee an amount based upon the taxes and assessments so ascertainable or so estimated by Mortgagee, as the case may be, for taxes and assessments with respect to the Premises on an accrual basis for the period from January 1, immediately following the year for which all taxes and assessments have been fully paid to and including the date of the first installment tax and assessment deposit hereinabove mentioned. The deposits are to be held in trust without allowance of interest and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any of the taxes or assessments (general or special) for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of a notice and demand from Mortgagee deposit the additional funds as may be necessary to pay such taxes and assessments (general and special). Any excess shall be applied to subsequent deposits for taxes and assessments.

2.4. Delivery of Documents. Mortgagor shall deliver to Mortgagee all agreements, instruments, chattel paper, and documents creating or evidencing the Leases, the Accounts and Intangibles, all amendments and supplements thereto, and any other document which is, or which evidences, governs or creates Collateral (defined below), together with assignments of the Leases from Mortgagor to Mortgagee, which assignments shall be in form and substance satisfactory to Mortgagee. Mortgagor shall not, without Mortgagee's prior written consent, procure, permit or accept any prepayment, discharge or compromise of any rent or release any tenant from any obligation at any time while the Liabilities secured hereby remains unpaid.

2.5. Condemnation Awards. Any award of damages resulting from condemnation proceedings, exercise of the power of eminent domain, or the taking of the Premises for public

# UNOFFICIAL COPY

use are hereby transferred, assigned and shall be paid to Mortgagee. Such awards or any part thereof may be applied by Mortgagee, after the payment of all of Mortgagee's expenses, including costs and attorneys' and paralegals' fees, to the reduction of the indebtedness secured hereby in such order of application as Mortgagee may elect. Mortgagee is hereby authorized, on behalf and in the name of Mortgagor, to execute, and deliver valid acquittances and to appeal from any such award.

2.6. Insurance. Mortgagor shall keep the premises and all buildings, Improvements and Units now or hereafter situated on the Premises insured under Builders Risk Insurance with extended coverage over fire and other casualties using completed values for the amount of full insurable value for all improvements and renovations and Improvements and Units under construction or renovation at any time on the Premises. Mortgagor shall keep the Premises and the Improvements and Units now or hereafter situated on the Premises insured against loss or damage by fire, lightning, windstorm, vandalism and malicious damage and such other hazards as may from time to time be designated by Mortgagee. Mortgagor shall keep all the Improvements and Units now or hereafter situated on the Premises insured against loss or damage by flood, if the Premises are located in a flood hazard zone. Each insurance policy shall be for an amount sufficient to pay in full the cost of replacing or repairing the buildings, Improvements and Units on the Premises and, in no event, less than the aggregate principal amount of the Note. Mortgagor shall obtain liability insurance with respect to the Premises and Units in an amount which is acceptable to Mortgagee. All policies shall be issued by companies satisfactory to Mortgagee. Each insurance policy shall be payable, in case of loss or damage, to Mortgagee. In the event an event of Default has not occurred, Mortgagee shall allow Mortgagor to use the proceeds of the insurance to repair and restore the Premises, Improvements and Units. In the event an event of Default has occurred, Mortgagee shall at its option either allow Mortgagor to use the proceeds of any insurance to repair and restore the Premises, Improvements and Units or apply the proceeds of any insurance to reduce the Liabilities. Each insurance policy shall contain a standard mortgagee clause and lender's loss payable clause or endorsement in form and substance satisfactory to Mortgagee. In the event of any loss, Mortgagor shall give immediate notice thereof to Mortgagee and any appropriate insurers. The Mortgagee may make any proof of loss to any insurer, if the Mortgagor fails to make a proof of loss immediately to any such insurer. Mortgagor shall deliver all insurance policies, including additional and renewal policies, to Mortgagee. In case of insurance about to expire, Mortgagor shall deliver to Mortgagee renewal policies not less than ten (10) days prior to the respective dates of expiration. Each insurance policy shall not be cancelable by the insurance company without at least 30 days' prior written notice to Mortgagee.

2.7. Due on Sale. Notwithstanding any other provisions of this Mortgage, the Mortgagor shall not lease, amend any lease or renew any lease except in the ordinary course of business of Mortgagor, sell, assign, pledge, transfer, mortgage, charge or otherwise encumber, or contract to do any of the foregoing, of all or any portion of the Premises or the Improvements or Units or any interest therein or sell, assign, pledge, transfer or otherwise incumber or contract to do any of the foregoing of all or any portion of the ownership of any beneficial interest or power of direction in a land trust which holds title to the Premises or Units without the prior written consent of Mortgagee.

# UNOFFICIAL COPY

2.8. Ownership. Mortgagor is the sole owner of the Premises free from any lien, encumbrance or claim, except this Mortgage.

2.9. Environmental Representations and Warranties. The Mortgagor represents and warrants the following:

(a) the use which the Mortgagor makes or intends to make of the Premises will not result in the unlawful or unauthorized disposal or other release of any hazardous substance or solid waste on or to the Premises; and

(b) the Mortgagor will comply with all applicable Environmental Laws regarding the asbestos on the Premises before, during and after the construction of the Improvements on the Premises.

(c) The Mortgagor will provide the Mortgagee with any environmental reports and approvals of state agencies as Mortgagee may request, including but not limited to no remedial action confirmations.

The terms "hazardous substance", "release" and "threatened release" have the meanings specified in CERCLA (defined below), and the terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA; provided, however, in the event either CERCLA or RCRA (defined below) is amended so as to broaden the meaning of any term defined thereby, such broader meanings shall apply subsequent to the effective date of such amendment, and provided further that, to the extent the laws of the state in which the Premises is located establish a meaning for "hazardous substance", "release", "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply with regard to the Premises. The terms "hazardous facilities", "pollutants" or "contaminants" shall have the meanings specified in any applicable Environmental Laws.

2.10. Maintenance of Permits and Licenses. The Mortgagor shall maintain in full force and effect all licenses, bonds, franchises, leases, patents, trademarks, service marks, contracts and other rights necessary to the profitable conduct of its business, including, without limitation, all notices, permits or licenses, if any, filed or obtained with regard to compliance with Environmental Laws. The Mortgagor shall continue in and limit its operations to the same general line or type of business as that presently conducted by it and shall comply with all applicable Environmental Laws.

2.11. Lessees to Comply with Environmental Representations and Warranties. The Mortgagor shall cause any and all lessees or other operators of the Premises to conduct their respective businesses so as to comply in all material respects with all Environmental Laws.

2.12. Removal of Hazardous Substances. The Mortgagor shall not permit the presence of any hazardous substances, hazardous facilities, pollutants or contaminants, including friable asbestos on the Premises except in compliance with Environmental Laws. If the Mortgagee determines at any time that friable asbestos exists on or in the Premises and may present a health hazard, or if removal of any hazardous substance from the Premises is or may be required by

# UNOFFICIAL COPY

applicable governmental or regulatory authorities or pursuant to applicable laws or regulations, the Mortgagee may, in its sole discretion, require the removal or containment of such asbestos or any other hazardous substances at the Mortgagor's sole expense.

2.13. Disposal of Hazardous Substances by Lessees and Operators. The Mortgagor shall cause all lessees or other operators of the Premises to dispose of any and all hazardous substances or solid waste generated or stored at the Premises only at facilities and by carriers maintaining compliance with the Environmental Laws. To the best of the Mortgagor's knowledge, after diligent inquiry, all lessees are operating in compliance with valid permits and licenses under RCRA and any other Environmental Law, and shall cause all lessees to obtain certificates of disposal from all contractors employed in connection with the transport or disposal of such hazardous substances or solid waste.

2.14. Notice of Violations. If the Mortgagor or any lessees or operators of the Premises shall receive (a) notice that any violation of any Environmental Law may have been committed or is about to be committed by the Mortgagor; (b) notice that any administrative or judicial complaint or order has been filed or is about to be filed against the Mortgagor alleging violation of any Environmental Law or requiring the Mortgagor to take any action in connection with the release or threatened release of hazardous substances or solid waste into the environment; or (c) any notice from a federal, state, or local governmental agency, court or private party alleging that the Mortgagor may be liable or responsible for costs associated with a response to or cleanup of a release or disposal of a hazardous substance or solid waste into the environment or any damages caused thereby, including without limitation any notice that the Mortgagor is a "potentially responsible party" as defined by CERCLA, the Mortgagor shall provide the Mortgagee with a copy of such notice within ten (10) days of the Mortgagor's receipt thereof. The Mortgagor shall provide the Mortgagee with notice of the enactment or promulgation of any Environmental Law which may result in a material adverse change in the business, financial condition, or operations of the Mortgagor within fifteen (15) days after the Mortgagor obtains knowledge thereof.

2.15. Right to Inspect Premises. The Mortgagee, or any person designated by the Mortgagee, shall have the right, from time to time hereafter, to call at the Mortgagor's Premises or place or places of business (or any other place where the collateral or any information relating thereto is kept or located) during reasonable business hours, and upon reasonable prior notice without hindrance or delay, to:

(a) verify such matters concerning the Premises as the Mortgagee may consider reasonable under the circumstances;

(b) upon reasonable suspicion of a violation of or non-compliance with Environmental Laws, inspect the Premises, and conduct any other tests or procedures at the Mortgagor's expense including but not limited to soil borings if recommended by an environmental firm acceptable to Mortgagee and inspect any books, records, journals, orders, receipts, correspondence, notices, permits or licenses, and to determine, at the Mortgagor's expense, whether any hazardous substances are present on, in or under the Premises.



# UNOFFICIAL COPY

The Mortgagor will deliver to the Mortgagee, within ten (10) days of request therefor, any instruments necessary to obtain records from any person maintaining such records. The Mortgagor shall pay on demand or within twenty (20) days thereafter all costs and expenses incurred by the Mortgagee in acquiring information pursuant to this section with interest thereon at a per annum rate equivalent to the post maturity rate set forth in the Note. All expenditures incurred pursuant to the powers herein contained shall become a part of the Liabilities secured hereby. The Mortgagee shall not be liable to account to the Mortgagor for any action taken pursuant hereto.

2.16. Definition of CERCLA. As used herein, CERCLA means the Comprehensive, Environmental, Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.

2.17. Definition of Environmental Laws. As used herein, Environmental Laws means any and all laws, statutes, ordinances, rules, regulations, orders, or determinations of any federal or state governmental authority or courts pertaining to health or the environment in effect at any time in any and all jurisdictions in which the Mortgagor is or at any time may be doing business, or where the Premises are located, including without limitation, the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq., the Comprehensive, Environmental, Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq., (CERCLA), the Federal Water Pollution Control Act Amendments, 33 U.S.C. Section 1251 et seq., the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. Section 651 et seq., the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq., (RCRA), the Safe Drinking Water Act, as amended, 42 U.S.C. Section 300(f) et seq., the Toxic Substances Control Act, as amended, 5 U.S.C. Section 2622 et seq., and the Illinois Environmental Protection Act, as amended, 415 ILCS 5/1 et seq.

2.18. Definition of RCRA. As used herein, RCRA means the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.

### 3. MORTGAGEE RIGHTS

While any of the Liabilities remain outstanding, Mortgagor represents, warrants, covenants and agrees as follows:

3.1. Remedies not exclusive; Delay. No remedy or right of Mortgagee hereunder shall be exclusive. Each right or remedy of Mortgagee with respect to the Liabilities, this Mortgage or the Premises shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay by Mortgagee in exercising or omitting to exercise any remedy or right accruing on Default shall impair any such remedy or right, or shall be construed to be a waiver of any such Default, or acquiescence therein, or shall affect any subsequent Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently and when and as often as may be deemed expedient by Mortgagee.

# UNOFFICIAL COPY

3.2. Accuracy of Estimates and Statements. If Mortgagee makes any payment authorized by this Mortgage relating to taxes, assessments, insurance premiums, charges, liens, security interests, encumbrances or insurance, Mortgagee may do so according to any bill, statement or estimate received from the appropriate party claiming such funds without inquiry into the accuracy or validity of such bill, statement or estimate or into the validity of the lien, encumbrance, security interest, tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

3.3. Right to Inspect Premises, Books and Records. Mortgagee shall have the right to inspect all books and records, construction and renovation progress reports, tenant and guest registers, offices, insurance policies and other papers for examination and the making of copies and extracts and shall have the right to inspect the Premises, Improvements and Units at all reasonable times and access thereto shall be permitted for that purpose.

## 4. MORTGAGE AS SECURITY AGREEMENT

4.1 Grant of Security Interest in Personal Property. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code with respect to (a) all sums at any time on deposit for the benefit of Mortgagee or held by Mortgagee pursuant to any of the provisions of this Mortgage and (b) with respect to any Goods which may not be deemed to be affixed to the Premises owned by Mortgagor or in which Mortgagor has an interest within the meaning of the Illinois Uniform Commercial Code and all replacements of, substitutions for, additions to and proceeds thereof (collectively, the "Personal Property"). Mortgagor hereby grants Mortgagee a security interest in the Personal Property, to secure payment of the Liabilities. The provisions of this Section 4 shall not limit the applicability of any other provision of this Mortgage but shall be in addition to the other provisions of this Mortgage.

4.2 UCC Financing Statement. Mortgagor will, at Mortgagor's expense, will execute and deliver to Mortgagee such financing statements, information and other documents in form and substance satisfactory to Mortgagee and will perform all such acts as Mortgagee shall request or require from time to time to establish and maintain a perfected security interest in the Personal Property.

4.3 Rights of Secured Party. Upon and after any Default, Mortgagee shall have all the rights and remedies of a secured party under the laws of Illinois, as amended from time to time, this Mortgage, the Note, and any other instruments, documents and agreements relating to the Liabilities or the Personal Property or the Collateral, all of which rights and remedies shall be cumulative and none exclusive. Further, Mortgagee may (a) in its sole discretion declare any or all of the Liabilities to be immediately due and payable without notice or demand to Mortgagor or any other person; (b) in connection with the collection, any amounts due under the Note and this Mortgage and in the enforcement or attempted enforcement of Mortgagee's rights and remedies under the Note and Mortgage, Mortgagee shall pay all costs and expenses of Mortgagee, including all attorneys' and paralegals' fees, replevin bonds, court costs, as well as all costs of retaking, holding, preparing for sale or lease, selling or leasing any of the Personal Property; (c) demand, sue for, collect, make any compromise, renewal, extension, settlement, release, exchange, or take any other action to protect Mortgagee's interests with respect to any of

# UNOFFICIAL COPY

the Liabilities or the Personal Property; (d) without demand or notice, demand and notice being specifically waived by Mortgagor enter any of the Premises of Mortgagor without the obligation to pay rent and remove the Personal Property and Mortgagee may require Mortgagor at the expense of Mortgagor, to assemble any of the Personal Property and make the Personal Property available at such times or places as Mortgagee shall determine; and (e) at any time dishonor any checks or drafts drawn by Mortgagor on Mortgagee. Mortgagor agrees that, in order for Mortgagee to enter the Premises where the Personal Property is believed by Mortgagee to be located, Mortgagee is irrevocably authorized to disconnect or disable in any manner any security devices or other similar devices. Mortgagor agrees that Mortgagee, at any time and from time to time, and whether before or after any Default shall have the right to set-off, appropriate and apply toward the payment of any of the Liabilities in such order of application as Mortgagee may from time to time elect, any cash, credits, deposits, accounts, securities, and any other property of Mortgagor or of any Guarantor in the possession, custody or control of Mortgagee for any reason.

4.4 Notice of Disposition of Personal Property. If any notification of intended disposition of any of the Personal Property is required by law, such notification shall be deemed reasonable and properly given if mailed, postage prepaid, to Mortgagor at the address specified hereunder at least ten (10) days before such intended disposition. Notification shall not be necessary if the Personal Property is perishable or threatens to decline speedily in value, or is of a type customarily sold in a recognized market. The sale, lease, or other disposition of any or all of the Personal Property after Default may be for cash, credit or any combination thereof, and Mortgagee may purchase any or all of the Personal Property at a public sale, or if permitted by law, at a private sale. Any sale of the Personal Property may involve only a part of it and may occur at different locations, at different times, and may be adjourned without notice to anyone at any time. Mortgagee shall have the right to conduct from time to time any sale or lease of any of the Personal Property on the Mortgagor's Premises without any obligation to pay rent. Any net proceeds from the sale or other disposition of any of the Personal Property may be applied by Mortgagee, in its sole discretion, to the payment of all expenses and costs incurred by Mortgagee, including costs and attorneys' and paralegals' fees, relating in any manner to the disposition of the Personal Property. Any balance of such proceeds may be applied by Mortgagee to the payment of the Liabilities, in such order of application as Mortgagee may from time to time elect, and Mortgagor irrevocably waives the right to direct application of any payments received by Mortgagee from Mortgagor or other person or source, or in connection with the Personal Property. Mortgagor shall remain liable for any deficiency on the Liabilities. If there are more than one Mortgagor, Mortgagee shall pay any surplus proceeds to any one or more of Mortgagor as Mortgagee may determine. Mortgagor hereby agrees to indemnify, defend and hold Mortgagee harmless from any and all claims, causes of action, losses and liabilities relating to any act or failure to act by Mortgagee in any manner with respect to the Liabilities or the Personal Property and from any and all claims, causes of action, losses, and liabilities by, against, between or among Mortgagor arising out of or in connection with any of the Liabilities or the Personal Property.

4.5 Mortgage a Financing Statement. This Mortgage is intended to be a financing statement within the provisions of Section 9-502 of the Illinois Uniform Commercial Code with respect to the Personal Property and the Goods which are or may become fixtures to the

# UNOFFICIAL COPY

Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth above. This Mortgage is to be filed for record with the Recorder of Deeds of the county where the Premises are located. Mortgagor is the record owner of the Premises.

## 5. DEFAULT AND RIGHTS ON DEFAULT.

5.1. Acceleration upon Default. Upon Default, at the sole option of Mortgagee, the Note or any other Liabilities shall become immediately due and payable, and Mortgagor shall pay all expenses of Mortgagee, including attorneys' and paralegals' fees, incurred in connection with this Mortgage and all expenses incurred in the enforcement of Mortgagee's rights in the Premises and other costs incurred in connection with the disposition of the Premises. The term "Default" when used in this Mortgage means any one or more of the events, conditions or acts defined as a "Default" in the Note, or the failure of Mortgagor to pay and perform the Note, or Liabilities in accordance with their terms, or failure of Mortgagor to comply with or to perform in accordance with any representation, warranty, term, provision, condition, covenant or agreement contained in this Mortgage, the Loan Agreement or any instrument, agreement or writing securing any Liabilities to which the Mortgagor, any other maker of the Note and Mortgagee are parties. Any Default under the Note shall be Default under this Mortgage. Upon Default, Mortgagee shall have the absolute right to possession of the Premises.

5.2. Right to Perform upon Default. Upon any Default, Mortgagee may, but need not, make any payment or perform any act required of Mortgagor hereunder or under the terms of the Loan Agreement, including but not limited to the completion of the construction and renovation of any Improvements and/or Units on the Premises, in any form and manner deemed expedient by Mortgagee. Any such advances and/or payments made shall be secured by this Mortgage and become part of Mortgagor's indebtedness to Mortgagee. Mortgagee may, but need not, make full or partial payments of principal or interest on any encumbrances, liens or security interests affecting the Premises, and Mortgagee may purchase, discharge, compromise or settle any tax lien or other lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment. Mortgagee may, enter upon the Premises and employ watchmen to protect the Goods, the Personal Property and the Improvements from depredation or injury and to preserve and protect the Collateral. All moneys paid for any of the purposes herein authorized and all costs and expenses paid or incurred in connection therewith, including attorneys' and paralegals' fees, and any other funds advanced by Mortgagee to protect the Premises or the lien hereof, plus compensation to Mortgagee for each matter concerning which action herein authorized may be taken, shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at a per annum rate equivalent to the post maturity rate set forth in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to Mortgagee on account of any Default hereunder.

5.3. Right to Foreclose. When the indebtedness secured hereby shall become due whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien of this Mortgage. In any suit to foreclose the lien of this Mortgage, there shall be allowed and included as additional indebtedness in the judgment of foreclosure all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for costs, attorneys' and paralegals' fees,



# UNOFFICIAL COPY

appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, title insurance policies, tax and lien searches, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute the foreclosure suit or to evidence to bidders at any foreclosure sale. All of the foregoing items, which may be expended after entry of the foreclosure judgment, may be estimated by Mortgagee. All expenditures and expenses mentioned in this paragraph, when incurred or paid by Mortgagee shall become additional indebtedness secured hereby and shall be immediately due and payable, with interest thereon at a rate equivalent to the post maturity interest rate set forth in the Note. This paragraph shall also apply to any expenditures or expenses incurred or paid by Mortgagee or on behalf of Mortgagee in connection with (a) any proceeding, including without limitation, probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness secured hereby, or (b) any preparation for the commencement of any suit for the foreclosure of this Mortgage after accrual of the right to foreclose whether or not actually commenced or preparation for the commencement of any suit to collect upon or enforce the provisions of the Note or any instrument which secures the Note after Default, whether or not actually commenced, or (c) any preparation for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

5.4. Distribution of Proceeds of Sale. The proceeds of any foreclosure sale may be distributed and applied at the option of the Mortgagee in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all the items that are mentioned in the immediately preceding paragraph; second, all other items which under the terms of this Mortgage constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note and the Liabilities (first to interest and then to principal); fourth, any surplus to Mortgagor or Mortgagor's legal representatives, successors or assigns, as their rights may appear. The Mortgagor shall remain liable for any deficiency.

5.5. Appointment of Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such suit is filed may appoint a receiver of the Premises. The receiver's appointment may be made either before or after entry of judgment of foreclosure, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for the receiver and without regard to the then value of the Premises or whether the Premises shall be then occupied as a homestead or not. Mortgagee may be appointed as the receiver or as Mortgagee in possession. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of the foreclosure suit and, in case of an entry of judgment of foreclosure, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor except for the intervention of the receiver, would be entitled to collect the rents, issues and profits. Such receiver shall also have all other powers which may be necessary or are usual for the protection, possession, control, management and operation of the Premises. The court in which the foreclosure suit is filed may from time to time authorize the receiver to apply the net income in the receiver's hands in payment in whole or in part of the indebtedness secured hereby, or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien

# UNOFFICIAL COPY

or encumbrance which may be or become superior to the lien hereof or of the judgment, and the deficiency judgment against Mortgagor or any guarantor of the Note in case of a foreclosure sale and deficiency.

5.6. Availability of Defenses. No action for the enforcement of the lien or of any provision of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

5.7. Possession of Premises. Upon and after any Default, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, the Mortgagee shall be entitled, in its discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the Rents, the Leases and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating thereto; (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Leases and other Collateral relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Leases and other Collateral relating thereto including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent; (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any lease or sublease made subsequent hereto or subordinated to the lien hereto; (vi) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsure the Collateral for all risks incidental to the Mortgagee's possession, operation and management thereof; and (viii) receive such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as the Mortgagee in its discretion may deem proper, the Mortgagor hereby granting the Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Default without notice to the Mortgagor or any other person. The Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may determine: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include compensation to the Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance herein above authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and (c) to the payment of any Liabilities.

# UNOFFICIAL COPY

5.8. Duty to Assemble Collateral. Upon and after any Default, the Mortgagee may exercise from time to time any rights and remedies available to it under applicable law. The Mortgagor shall, promptly upon request by Mortgagee, assemble the Collateral and make it available to the Mortgagee at such place or places, reasonably convenient for the Mortgagee, as the Mortgagee shall designate. Any notification required by law of intended disposition by the Mortgagee of any of the Collateral shall be deemed reasonably and properly given if given at least five days before such disposition. Without limiting the foregoing, whenever there exists a Default hereunder, the Mortgagee may, with respect to so much of the Collateral as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (i) notify any person obligated on the Collateral to perform directly for the Mortgagee that person's obligations thereunder, (ii) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of the Mortgagor to allow collection of the Collateral, (iv) take control of any proceeds of the Collateral, (v) enter upon any premises where any of the Collateral may be located and take possession of and remove such Collateral, (vi) sell any or all of the Collateral, free of all rights and claims of the Mortgagor therein and thereto, at any public or private sale, and (vii) bid for and purchase any or all of the Collateral at any such sale. Any proceeds of any disposition by the Mortgagee of any of the Collateral may be applied by Mortgagee to the payment of expenses in connection with the Collateral, including attorneys' and paralegals' fees and legal expenses, and any balance of such proceeds shall be applied by the Mortgagee toward the payment of such of the Liabilities and in such order of application as the Mortgagee may from time to time, in its sole and unreviewable discretion, elect. The Mortgagee may exercise from time to time any rights and remedies available to Mortgagee under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to Mortgagee under applicable law. The Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies hereunder. The Mortgagor hereby constitutes the Mortgagee its attorney-in-fact with full power of substitution to take possession of the Collateral upon any Default and, as the Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by the Mortgagee to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Liabilities are outstanding.

5.9. Performance of Contracts after Default. The Mortgagee may, in its sole discretion at any time after the occurrence of a Default, notify any person obligated to the Mortgagor under or with respect to any Intangible or any Contract of the existence of a Default, require that performance be made directly to the Mortgagee at the Mortgagor's expense, and advance such sums as are necessary or appropriate to satisfy the Mortgagor's obligations thereunder; and the Mortgagor agrees to cooperate with the Mortgagee in all ways reasonably requested by the Mortgagee (including the giving of any notices requested by, or joining in any notices given by, the Mortgagee) to accomplish the foregoing.



# UNOFFICIAL COPY

5.10. Mortgagee not Obligated to Perform. Notwithstanding anything contained in this Mortgage, the Mortgagee shall not be obligated to perform or discharge, and does not undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether under this Mortgage, under any of the Leases, under any Intangible, under any Contract or otherwise, and the Mortgagor shall and does hereby agree to indemnify against and hold the Mortgagee harmless of and from (i) any and all liabilities, losses or damages which the Mortgagee may incur or pay under or with respect to any of the Collateral or under or by reason of its exercise of rights hereunder; and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained in any of the Collateral or in any of the contracts, documents or instruments evidencing or creating any of the Collateral. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence (excluding any acts of willful and wanton misconduct) in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against the Mortgagee in Mortgagee's exercise of the powers herein granted to Mortgagee, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage under any of the Leases or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys and paralegals' fees.

## 6. DEFINITIONS

6.1. Collateral. "Collateral" means the Premises, the Improvements, the Units, the Goods, the Personal Property, the Accounts and Intangibles, the Rents, the Leases, the Plans, the Contracts, and the Insurance and Condemnation Awards.

6.2. Liabilities. "Liabilities" means any and all liabilities, obligations and indebtedness of Mortgagor and any other maker of the Note to Mortgagee under the Note, the Loan Agreement and this Mortgage, and for any other liabilities, obligations and indebtedness of Mortgagor and any other maker of the Note and any Guarantor of Mortgagor to Mortgagee whether heretofore, now or hereafter owing or arising, due or payable, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, whether existing or arising, through discount, overdraft, purchase, direct loan, by operation of law or otherwise. "Liabilities" also includes all costs of collection, legal expenses, and attorneys' and paralegals fees incurred or paid by Mortgagee in attempting to enforce Mortgagee's rights, remedies and security interests hereunder, including advising the Mortgagee or drafting any documents for the Mortgagee at any time, or to enforce or collect the Note, any guaranty of the Note, or any other indebtedness of Mortgagor or any other maker of the Note or any guarantor of the Note under any guaranty of payment of the Note to Mortgagee, or in the repossession, custody, sale, lease, assembly or other disposition of any collateral for the Note. "Liabilities" also includes all of the indebtedness or contractual duties of partnerships to Mortgagee created or arising while Mortgagor, any other maker of the Note or any guarantor of the Note may be or may have been a member of those partnerships.



# UNOFFICIAL COPY

6.3. Mortgagor. The word "Mortgagor" when used herein shall also include all persons or parties liable for the Liabilities secured hereby or any part thereof, whether or not such persons or parties shall have executed the Note, or this Mortgage, including their respective heirs, estates, personal representative, successors and assigns. Each Mortgagor shall be jointly and severally obligated hereunder. The singular shall include the plural, the plural shall mean the singular and the use of any gender shall be applicable to all genders. The word "Mortgagee" includes the successors and assigns of Mortgagee. This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all persons or parties claiming by, under or through Mortgagor and inure to the benefit of Mortgagee and the successors and assigns of Mortgagee.

## 7. MISCELLANEOUS

7.1. Release of Mortgage. Mortgagee shall partially release this Mortgage in accordance with the terms and provisions of Section 14 of the Loan Agreement. Mortgagee shall release this Mortgage by a proper release after payment and satisfaction in full of the Note and all Liabilities.

7.2. Waiver of Redemption and Reinstatement. MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF THE MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE. IN THE EVENT THE PREMISES IS AGRICULTURAL PROPERTY AND MORTGAGOR IS AN ILLINOIS CORPORATION, A FOREIGN CORPORATION LICENSED TO DO BUSINESS IN THE STATE OF ILLINOIS OR A CORPORATE TRUSTEE OF AN EXPRESS TRUST, MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES, AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE. IN THE EVENT THE PREMISES IS RESIDENTIAL PROPERTY AS DEFINED UNDER THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, BUT PRIOR TO THE FILING OF A COMPLAINT FOR FORECLOSURE, THE PREMISES CEASES TO QUALIFY AS RESIDENTIAL PROPERTY, MORTGAGOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE OF THIS MORTGAGE AND ANY RIGHTS OF REINSTATEMENT PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS REGARDING FORECLOSURE OF MORTGAGES, ON MORTGAGOR'S OWN BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS

# UNOFFICIAL COPY

OF THE MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PREMISES AS OF OR SUBSEQUENT TO THE DATE OF THIS MORTGAGE.

7.3. Construction; Severability. This Mortgage has been made, executed and delivered to Mortgagee in Chicago, Illinois and shall be construed in accordance with the laws of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law. If any provisions of this Mortgage are prohibited by or determined to be invalid under applicable law, such provisions shall be ineffective to the extent of such prohibitions or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Mortgage.

7.4. Waiver or Amendment in writing. No waiver, amendment or modification of any of the terms or provisions of this Mortgage shall be deemed to have been made unless such waiver, amendment or modification is in writing and signed by an authorized officer of Mortgagor.

7.5 Waiver of Trial by Jury. **THE MORTGAGOR AND MORTGAGEE HAVING BEEN FULLY ADVISED BY LEGAL COUNSEL KNOWINGLY AND VOLUNTARILY WAIVE ALL RIGHTS TO TRIAL BY JURY.**

WITNESS the hand and seal of Mortgagor the day and year set forth above.

Address:  
1035 W. Lake Street, Suite 301  
Chicago, Illinois 60607

1849-51 W. Cornelia LLC.  
an Illinois limited liability company

By: KMZ MANAGER LLC  
an Illinois limited liability company  
Its: Manager 

By: \_\_\_\_\_  
Kenneth Motew  
Its: Manager

By: \_\_\_\_\_  
Michael Zucker  
Its: Manager

This Instrument has been prepared by and should be mailed to:

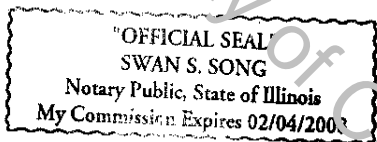
Paul J. Richter  
Kelly, Olson, Michod, DeHaan & Richter, L.L.C.  
30 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606  
(312) 236-6700

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Swan S. Song, a Notary Public in and for the County and State aforesaid do hereby certify that Kenneth Motew personally known to me to be the same person who is Manager of KMZ Manager LLC, an Illinois limited liability company manager of 1849-51 W. Cornelia LLC, an Illinois limited liability company subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he, being thereunto duly authorized, signed and delivered said instrument as Manager of KMZ Manager LLC, as his own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 25<sup>th</sup> day of April, 2006.



Swan S. Song  
NOTARY PUBLIC

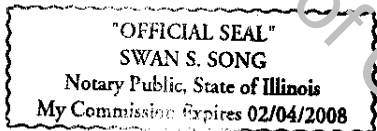
My Commission Expires: 2/4/2008

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Swan S. Song, a Notary Public in and for the County and State aforesaid do hereby certify that Michael Zucker personally known to me to be the same person who is Manager of KMZ Manager LLC, an Illinois limited liability company manager of 1849-51 W. Cornelia LLC, an Illinois limited liability company subscribed to the foregoing instrument, appeared before me this day in person and acknowledged to me that he, being thereunto duly authorized, signed and delivered said instrument as Manager of KMZ Manager LLC, as his own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 25<sup>th</sup> day of April, 2006.



Swan S. Song  
NOTARY PUBLIC

My Commission Expires: 2/4/2008



# UNOFFICIAL COPY

## EXHIBIT A

LOTS 20 AND 21 IN CHARLES J. FORD'S SUBDIVISION OF LOT 38 OF EXECUTOR'S OF W. E. JONES SUBDIVISION OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 14-19-411-001-0000

COMMON ADDRESS: 1849 W. Cornelia  
Chicago, Illinois 60657

Property of Cook County Clerk's Office