



Doc#: 0618643007 Fee: \$90.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 07/05/2006 06:54 AM Pg: 1 of 34

This document prepared  
by and when recorded  
mail to:

Keith L. Moore, Esq.  
806 Greenwood Street  
Evanston, IL 60201

**AMENDED AND RESTATED CONSTRUCTION MORTGAGE,  
ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

THIS AMENDED AND RESTATED CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of this 24<sup>th</sup> day of June, 2006, by ESTATE HOMES OF LINCOLN PARK COMMONS, LLC, an Illinois limited liability company ("Mortgagor") to FIRST BANK AND TRUST COMPANY OF ILLINOIS (herein together with its successors and assigns, including each and every from time to time holder of the Note hereinafter described called "Mortgagee" or "Lender").

**WITNESETH**

WHEREAS, Mortgagor (sometimes also referred to herein as "Borrower") is the owner and holder of fee simple title in and to all of the real estate described in Exhibit "A" attached hereto and by this reference made a part hereof which real estate forms a portion of Premises hereinafter described;

WHEREAS, Borrower executed and delivered to Lender that certain Promissory Note (herein called the "Note"), dated as of June 21, 2005 and payable to Mortgagee in the original principal sum of ELEVEN MILLION SIX HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$11,650,000.00) (the "Original Loan"), and bearing interest on such principal from time to time outstanding at the rate specified in the Note; and

WHEREAS, payment of the Note is secured by, among other things, that certain Construction Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of June 21, 2005, and recorded on June 23, 2005 with the Cook County Recorder of Deeds as Document No. 0517402203 (the "Original Mortgage"); and

WHEREAS, upon the sale of certain portions of the Premises, Lender erroneously executed and recorded the following documents (collectively, the "Partial Releases"):

- (i) Partial Release of Mortgage or Trust Deed by Corporation dated as of October 19, 2005, recorded on December 8, 2005, as Document No. 0534241166; and

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- (ii) Partial Release of Mortgage or Trust Deed by Corporation dated as of November 30, 2005, recorded on April 8, 2006 as Document No. 0609641007; and
- (iii) Partial Release of Mortgage or Trust Deed by Corporation dated as of November 30, 2005, recorded on April 8, 2006 as Document No. 0609641008; and
- (iv) Partial Release of Mortgage or Trust Deed by Corporation dated as of April 5, 2006, and recorded on June 13, 2006 as Document No. 0616441112; and

WHEREAS, it was the intention of Lender in executing and recording the foregoing Partial Releases that the following portions of the Premises be released from the lien and effect of the Original Mortgage (the "Released Premises"):

LOTS 3, 14, 17, 18 AND 36, AND THE NORTH 1/2 OF LOT 16 IN LINCOLN PARK CLUB SUBDIVISION, RECORDED JULY 9, 2002, AS DOCUMENT 0020749722 AND RE-RECORDED JULY 19, 2002, AS DOCUMENT 0020790850, BEING A RESUBDIVISION OF VARIOUS LOTS, PARTS OF LOTS AND VACATED STREET AND ALLEYS IN VARIOUS SUBDIVISIONS IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 2658, 2664 and 2668 North Geneva Terrace, and 630 West Drummond  
(currently known as 640 West Drummond)

WHEREAS, accordingly, it is and was the intention of Borrower and Lender that the Original Mortgage still constitutes a lien and encumbrance on the following portion of the Premises (the "Unreleased Premises"):

LOTS 6, 15 AND 33, AND THE SOUTH 1/2 OF LOT 16 IN LINCOLN PARK CLUB SUBDIVISION, RECORDED JULY 9, 2002, AS DOCUMENT 0020749722 AND RE-RECORDED JULY 19, 2002, AS DOCUMENT 0020790850, BEING A RESUBDIVISION OF VARIOUS LOTS, PARTS OF LOTS AND VACATED STREET AND ALLEYS IN VARIOUS SUBDIVISIONS IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 2653 and 2662 North Geneva Terrace

WHEREAS, upon the recording of this Amended and Restated Mortgage, it is intended that the lien and encumbrance of this Mortgage add and include the following to the Premises secured by the Original Mortgage (the "Added Premises"):

Lots 7, 8 and 9, IN LINCOLN PARK CLUB SUBDIVISION, RECORDED JULY 9, 2002, AS DOCUMENT 0020749722 AND RE-RECORDED JULY 19, 2002, AS DOCUMENT 0020790850, BEING A RESUBDIVISION OF VARIOUS LOTS, PARTS OF LOTS AND

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VACATED STREET AND ALLEYS IN VARIOUS SUBDIVISIONS IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 2657 and 2659 North Geneva Terrace

WHEREAS, Borrower acknowledges and agrees that it was not intended that the Unreleased Parcels be released from the lien and effect of the Original Mortgage and that the Original Mortgage was and is intended to still constitute a lien and encumbrance on the Unreleased Parcels; and

WHEREAS, accordingly, Borrower executes this Amended and Restated Mortgage to ratify and reconfirm the Original Mortgage as a first priority lien and encumbrance on the Unreleased Parcels; and

WHEREAS, as a precaution against the possibility that the recording of the Partial Releases could be interpreted to have had the legal effect of being a full release and termination of the Original Mortgage, Borrower also executes this Amended and Restated Mortgage to restate and reestablish a first priority lien and encumbrance on the Unreleased Premises and to grant and establish a first priority lien and encumbrance on the Added Premises; and

WHEREAS, concurrently with the execution of this Amended and Restated Mortgage, Borrower, Guarantor and Lender have executed that certain Loan Modification Agreement, Amendment to Note, Mortgage and Other Loan Documents (the "Modification Agreement"), wherein the stated principal amount of the Note was increased to **EIGHTEEN MILLION TWO HUNDRED NINETY-NINE THOUSAND FOUR HUNDRED FIFTY DOLLARS (\$18,299,450.00)** and the Maturity Date was extended to January 1, 2007; and

WHEREAS, notwithstanding the foregoing, after giving effect to the amount of principal that has previously been repaid from the sale of the Released Premises and the amount of the Original Loan that is currently outstanding and the amount of the Original Loan, as amended hereby, that is available for disbursement, the Original Loan, as modified, shall be **TEN MILLION TWO HUNDRED THOUSAND DOLLARS (\$10,200,000.00)** (the "Loan"), as further delineated below; and

WHEREAS, the amount of the Loan available for disbursement as of the date hereof equals **SEVEN MILLION FIVE HUNDRED EIGHT THOUSAND SEVEN HUNDRED NINETY-THREE AND 27/100THS DOLLARS (\$7,508,793.27)**, which is the amount of **TEN MILLION TWO HUNDRED THOUSAND DOLLARS (\$10,200,000.00)**, minus the principal balance currently outstanding under the Note in the amount of **TWO MILLION SIX HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED NINETY-SEVEN DOLLARS (\$2,672,497.00)**, and minus interest that has accrued and is unpaid on the Loan as of the date hereof in the amount of **EIGHTEEN THOUSAND SEVEN HUNDRED NINE AND 73/100THS DOLLARS (\$18,709.73)**; and

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WHEREAS, the (i) indebtedness evidenced by the Note and the other Loan Documents and the Other Security Agreements, as defined in Paragraph 27 below, as modified by the Modification Agreement, including the principal thereof and interest and premiums, if any thereon, and all substitutions, modifications, amendments, restatements, extensions or renewals thereof, in whole or in part, (ii) any further advances made by holder of the Note to Borrower or any other Maker under the Note or this Mortgage, for any purpose set forth herein, or in any document executed in connection therewith, at any time, before the release and cancellation of this Mortgage, (iii) all other sums which may be at any time due or owing or required to be paid as herein provided, and (iv) all of which are herein sometimes called the "Indebtedness Hereby Secured"; PROVIDED HOWEVER, THAT THE INDEBTEDNESS HEREBY SECURED SHALL NOT EXCEED A SUM EQUAL TO THREE (3) TIMES THE LOAN AMOUNT OF THE NOTE, as modified; and

WHEREAS, all references to the Note and to the Indebtedness Secured Hereby contained in this Mortgage shall mean and include the Note, as modified by the Modification Agreement; and

WHEREAS, all references to the Maturity Date contained in this Mortgage shall mean and include the date of January 1, 2007; and

NOW, THEREFORE, to secure the payment of the principal of and interest on the Note according to its tenor and effect, and to secure the payment of all other Indebtedness Hereby Secured, and the performance and observance of all the covenants, agreements and provisions herein and in the Note and this Mortgage contained, and in consideration of the premises and of the sum of \$10.00 paid to Mortgagor, and for other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged by Mortgagor, Mortgagor DOES HEREBY GRANT, REMISE, MORTGAGE, RELEASE, ALIEN AND CONVEY unto Mortgagee, its successors and assigns forever, the real estate described in Exhibit "A" attached hereto and by this reference made a part hereof (herein, together with the property mentioned in the next succeeding paragraphs hereto, called the "Premises" or the "Mortgaged Property"), and the other exceptions to title accepted by Mortgagee in Schedule B of the title insurance policy obtained by Mortgagee in connection with the recording of this Mortgage (the "Permitted Exceptions");

TOGETHER with all right, title and interest of Mortgagor including any after-acquired title or reversion, in and to the rights of ways, streets, avenues and alleys adjoining the Premises;

TOGETHER with all regular and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including any other claim at law or in equity as well as any after-acquired title, franchise or license, and the reversions and remainders thereof;

TOGETHER with each and every lease, license and other document or instrument granting to any person or entity any right to use or occupy, and any other agreement with respect to the use or occupancy of, all or any portion of the Mortgaged Property or the improvements of any type or nature located thereon, whether heretofore, now or hereafter entered into (the "Leases");

TOGETHER with the rents, deposits, issues, profits, proceeds, revenues, awards and other

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benefits of the Mortgaged Property from time to time accruing (including, without limitation, all payments under the Leases, licenses and documents described above, proceeds of insurance, condemnation awards and payments in lieu thereof, tenant security deposits, escrow funds, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of sale, lease, sublease, license, concession or other grant of the right of the possession, use or occupancy of all or any portion of the Mortgaged Property, or personalty located thereon, or rendering of services by Mortgagor or any operator or manager of the Mortgaged Property or acquired from others including, without limitation, from the rental of any space, 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) (collectively, the “**Rents**”);

TOGETHER with all of the contracts and agreements, whether written or oral, to which Mortgagor is or hereafter becomes a party, including, without limitation, purchase contracts for the sale of all or any portion of the Premises, contracts pertaining to architectural services, contracts pertaining to engineering services, and contracts relating in any manner to the ownership, use, enjoyment, construction, occupancy, management, maintenance, operation or repair of all or any portion of the Premises, the equipment located thereon or otherwise related to all or any part of the real and personal property described elsewhere herein (the “**Contracts**”);

TOGETHER with all permits, licenses, entitlements and other governmental approvals, whether now or hereafter existing or acquired in connection with the current or proposed use of the Mortgaged Property;

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the Premises and/or the operation and convenience of any building or buildings and improvements located thereon, including, but without limitation, all furniture, furnishings, equipment, apparatus, machinery, motors, elevators, fittings and all plumbing, electrical, heating, lighting, ventilating, refrigerating, incineration, air conditioning and sprinkler equipment, systems, fixtures and conduits and all renewals or replacements thereof or articles in substitution therefor, in all cases whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed that all of the Premises shall, so far as permitted by law, be deemed to be fixtures, a part of the realty and security for the Indebtedness Hereby Secured.

TOGETHER with all of Mortgagor’s personal property, now owned or hereafter acquired, regardless of whether located in, on or about the Premises, including, but not limited to: Accounts; As-extracted Collateral; Chattel Paper; Commodity Accounts; Commodity Contracts; Deposit Accounts; Documents; Equipment; Farm Products; Fixtures; General Intangibles; Goods, and all accessions thereto and goods with which the goods are commingled; Health-Care-Insurance Receivables; Instruments; Inventory; Investment Property; Letter-of-Credit Rights; Payment Intangibles; Promissory Notes; Software; Supporting Obligations and Supplementary Obligations related to the foregoing; Proceeds of the foregoing; and any Commercial Tort Claims (all of the

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foregoing, along with any of the other property and interests referred to in Granting Clauses above, to which a security interest may attach and be perfected under the terms of the UCC, are hereinafter referred to as the "Collateral").

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 such agreement and declaration may be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code) this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 17 hereof;

TOGETHER with all right, title, estate and interest of Mortgagor in and to the Premises, estate, property, improvements, furniture, furnishings, apparatus and fixtures hereby conveyed, assigned, pledged and hypothecated, or intended so to be, and all right to retain possession of the Premises after event of default in payment, or breach of any covenant herein contained; and

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Premises for any taking by eminent domain, either permanent or temporary, of all or any part of the Premises or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, which said awards and compensation are hereby assigned to Mortgagee pursuant to the provisions hereof, and Mortgagor, in the event of the occurrence and continuation of an Event of Default hereunder, hereby appoints Mortgagee its attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at the option of the attorney, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust or compromise the claim for any award and to collect and receive the proceeds thereof, 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 Indebtedness Hereby Secured, all subject to the provisions of Paragraph 10 hereof

TO HAVE AND TO HOLD the Premises, with the appurtenances, and fixtures, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses and purposes herein set forth together with all right to possession of the Premises upon the occurrence of any Event of Default as hereinafter defined, Mortgagor hereby RELEASING and WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois.

PROVIDED, NEVERTHELESS, that if Mortgagor shall cause to be paid when due the Indebtedness Hereby Secured and shall cause to be duly and timely performed and observed all of the terms, provisions, covenants and agreements herein provided to be performed and observed by Mortgagor, then this Mortgage and the estate, right and interest of Mortgagee in the Premises shall cease and become void and of no effect, otherwise to remain in full force and effect.

Mortgagor COVENANTS AND AGREES AS FOLLOWS:

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1. Payment of Indebtedness: Mortgagor shall cause to be paid when due, subject to any applicable grace, notice or cure periods provided for herein, in the Note or the other Loan Documents: (a) the principal of and interest and premium, if any, on the indebtedness evidenced by the Note and (b) all other Indebtedness Hereby Secured, and Mortgagor shall cause to be duly and punctually performed and observed all of the terms, provisions, conditions, covenants and agreements on Mortgagor's or Borrower's part to be performed or observed as provided herein and in the Note, and this Mortgage shall secure such payment, performance and observance.

2. Maintenance, Repair, Restoration, Liens, Etc.: Mortgagor shall (a) promptly repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or be destroyed in accordance with paragraph 8, 9 and 10 hereof; (b) keep the Premises in good condition and repair, without waste, and free from mechanic's, materialmen's or like liens or claims or other liens or claims for lien (except for any mechanic's or materialmen's lien or claim that is immediately insured or bonded over to Lender's reasonable satisfaction while Mortgagor is diligently contesting same); (c) pay, when due, any Indebtedness which may be secured by a lien or charge of the Premises superior to the lien hereof and, upon request, exhibit to Mortgagee satisfactory evidence of the discharge of such prior lien; (d) complete the construction of any improvements within a reasonable time, now or at any time in the process of repair or erection upon the Premises; (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof, including, without limitation, the accessibility requirements of the Americans With Disabilities Act of 1990 and the rules and regulations promulgated thereunder, if applicable, (f) make or permit no material alterations in the Premises, or by law or ordinance, without the prior written consent of Mortgagee, which consent will not be unreasonably withheld or delayed by Mortgagee and except as contemplated under the Other Security Agreements; (g) suffer or permit no change in the general nature of the occupancy of the Premises, except as contemplated under the other Security Agreements; (h) initiate or acquiesce in no zoning reclassification with respect to the Premises; and (i) suffer or permit no unlawful use of, or nuisance to exist upon the Premises.

3. Other Liens: Mortgagor shall not create or suffer or permit any mortgage, lien, charge or encumbrance to attach to the Premises, whether such lien, charge or encumbrance is inferior or superior to the lien of this Mortgage, excepting only the lien of real estate taxes and assessments not due or delinquent.

4. Taxes: Mortgagor shall pay before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against Mortgagor, if applicable to the Premises or any obligation or agreement secured hereby, and Mortgagor shall, upon written request furnish to Mortgagee duplicate receipts therefor. Mortgagor shall pay in full under protest in the manner provided by statute, any Taxes which Mortgagor may desire to contest; provided, however, that if deferment of payment of any such Taxes is required to conduct any contest or review, Mortgagor shall deposit with Mortgagee the full amount thereof, together with an amount equal to the estimated interest and penalties thereon during the period of contest, and in any event, shall pay such Taxes notwithstanding such contest, if in the opinion of Mortgagee the Premises shall be in jeopardy or in danger of being forfeited or foreclosed, and if

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Mortgagor shall not pay the same when required so to do, Mortgagee may do so and may apply such deposit for the purpose. In the event that any law or court decree has the effect of deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises, or the manner of collection of Taxes, so as to adversely affect this Mortgage or Indebtedness Hereby Secured or Mortgagee, then, and in any such event and in the further event that such taxes are not paid, Mortgagor, upon demand by Mortgagee, shall pay such Taxes, or reimburse Mortgagee therefor on demand, unless such payment or reimbursement by Mortgagor is unlawful in which event the Indebtedness Hereby Secured shall be due and payable within ten (10) days after written demand by Mortgagee to Mortgagor. Nothing in this Paragraph 4 contained shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if Mortgagee derived no income from any source other than its interest hereunder.

5. Insurance Coverage: Mortgagor will insure or cause to be insured and keep or cause to be kept insured all of the buildings and improvements now or hereafter constructed or erected upon the Premises and each and every part and parcel thereof, against such perils and hazards as Mortgagee may from time to time require, in conformance with Mortgagee's standard requirements for property and liability insurance coverage as delivered to Mortgagor by Mortgagee as of the date hereof and as recommended from time-to-time by Mortgagee's third-party insurance consultants, and in any event including the following:

(a) Insurance against loss by fire, casualty, vandalism risks covered by the so-called all-risk and extended coverage endorsement (and during the period of any construction on the Premises, so-called "builder's risk" insurance), and such other risks as Mortgagee may reasonably require, without co-insurance and in amounts equal to full replacement value of the improvements located from time to time on the Premises;

(b) Commercial general public liability insurance against bodily injury and property damage in an amount not less than \$2,000,000 per occurrence or combined single limit;

(c) Steam boiler, machinery and other insurance of the types and in amounts as Mortgagee may require but in any event not less than customarily carried by persons owning or operating like properties; and

(d) Rental or business interruption insurance in amounts sufficient to cover debt service, property taxes, insurance premiums and general operating expenses of the Premises for a period of not less than 12 months.

6. Insurance Policies: All policies of insurance to be maintained and provided as required by Paragraph 5 hereof shall be in form, companies and amounts reasonably satisfactory to Mortgagee and all policies of property insurance shall have attached thereto mortgagee clauses or

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endorsements in favor of and with loss payable to and in form reasonably satisfactory to Mortgagee, and all liability insurance policies shall be properly endorsed to name Mortgagee as an additional insured thereunder. Mortgagor will deliver all policies (or certificates evidencing said policies), including additional and renewal policies to Mortgagee unless such policies are delivered to the holder of the Note and, in case of insurance policies about to expire, Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

7. Deposits for Tax and Insurance Deposits: (a) If required by Mortgagee, for the purpose of providing funds with which to pay the general taxes and special assessments levied against the Premises, Mortgagor shall, commencing at any time required by Mortgagee prior to repayment of the Indebtedness Hereby Secured, make a monthly deposit with the Mortgagee on the fifteenth day of every month, in an amount estimated by Mortgagee to be equal to 1/12th of the general real estate taxes and special assessments for the next annual period coming due against the Premises. In addition, at such time as said payments are required to be commenced, Mortgagor shall also deposit with Mortgagee the amount estimated by Mortgagee to be necessary, along with the monthly payments so initiated, to be sufficient to accumulate in Mortgagee's custody at least thirty (30) days prior to the next two (2) installments of taxes and special assessments coming due, the amount estimated by Mortgagee to pay such installments. The amount of the reserve may be adjusted based on the current monthly escrow deposit amount required under this Paragraph 7(a). All deposits required hereunder shall be computed and made by Mortgagor so that Mortgagee shall have in its possession one month prior to the due date, the amount necessary to pay the said real estate taxes and assessments. If, at the time tax bills are issued for real estate taxes or special assessments for any year, the amount theretofore so deposited shall be less than the amount of such taxes and assessments for that year, Mortgagor agrees to deposit with Mortgagee the difference between the amount theretofore deposited hereunder and the amount required to effect payment of general real estate taxes and special assessments for such year, such deposit to be made within ten (10) days prior to the penalty date of such tax bills. In the event of any overdeposit, the excess shall be credited against the next monthly payment(s) coming due. In the event of a default in any of the provisions contained in this Mortgage, the Mortgagee may, at its option, without being required so to do, apply any tax deposits on hand on any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, the then remaining tax deposits shall be paid to Mortgagor. All tax deposits are hereby pledged as additional security for the Indebtedness Hereby Secured. Mortgagee shall not be required to hold any such tax deposits in a segregated account and shall have no obligation to pay interest on said tax deposits. Said deposits shall not be subject to the direction or control of Mortgagor.

(b) If required by Mortgagee, for the purpose of providing funds with which to pay the premiums for the insurance coverage required to be maintained by Mortgagor under the terms of this Mortgage, Mortgagor shall, commencing at any time required by Mortgagee prior to repayment of the Indebtedness Hereby Secured, Mortgagor shall (upon request) make a monthly deposit with Mortgagee on the fifteenth day of every month, in an amount estimated by the Mortgagee to be equal to 1/12th of the amount of the annual premiums for all insurance covering the Premises. The amounts collected pursuant hereto shall be held by Mortgagee for the purpose of providing funds with which to pay all insurance premiums coming due on the policies of insurance required to be maintained under this Mortgage. In addition to the monthly deposits required hereunder, Mortgagor

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shall also maintain on reserve a deposit with Mortgagee of three times the monthly escrow deposit amount required under this Section 7(b). The reserve amount shall be paid to Mortgagee on demand and shall be maintained until this Mortgage is released. The amount of the reserve may be adjusted based on the current monthly escrow deposit amount required under this Paragraph 7(b). All deposits required hereunder shall be computed and made by Mortgagor so that the Mortgagee shall have in its possession one month prior to the due date, the amount necessary to pay premiums for renewal or replacement of expiring insurance policies. If, at the time bills for renewal or replacement of insurance policies are received, the amount theretofore so deposited shall be less than the amount needed to renew or replace expiring insurance policies, Mortgagor agrees to deposit with Mortgagee the difference between the amount theretofore deposited hereunder and the amount required to effect payment for the renewal or replacement of expired insurance policies, such deposit to be made within ten (10) days prior to the due date for payment of renewal or replacement of insurance policies. In the event of any overdeposit, the excess shall be credited against the next monthly payment(s) coming due. In the event of a default in any of the provisions contained in this Mortgage, Mortgagee may, at its option, without being required so to do, apply any insurance deposits on hand on any of the Indebtedness Hereby Secured, in such order and manner as Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, the then remaining insurance deposits shall be paid to Mortgagor. All insurance deposits are hereby pledged as additional security for the Indebtedness Hereby Secured. Mortgagee shall not be required to hold any such insurance deposits in a segregated account and shall have no obligation to pay interest on said insurance deposits. Said insurance deposits shall not be subject to the direction or control of Mortgagor.

8. Proceeds of Insurance: Mortgagor will give Mortgagee prompt notice of any damage to or destruction of the Premises, and:

(a) In case of loss covered by policies of insurance, 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 to any claim under such policies without the consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss, and provided that in any case Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds, and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to Mortgagee upon demand.

(b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty"), and if, in the reasonable judgment of Mortgagee, the Premises can be restored to their condition at least comparable to their condition immediately prior to the Insured Casualty and of such value and condition adequately securing the outstanding balance of the Indebtedness Hereby Secured and such restoration is estimated for completion prior to the Maturity Date of the Note and within the time period necessary to keep any and all leases with any tenants of the Premises in good standing and in full force and effect without the threat of termination thereof, and if adequate and collectible business loss insurance or Mortgagor's other readily available resources are

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sufficient to cover all debt service on the Note during the estimated construction period, then, if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, the proceeds of insurance shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises of part thereof, as provided for in Paragraph 9 hereof; and Mortgagor hereby covenants and agrees forthwith to commence and diligently to proceed with such restoring, repairing, replacing or rebuilding; provided, always, that Mortgagor shall pay all costs of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(c) Except as provided in Subsection (b) of this Paragraph 8, Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner as Mortgagee may elect.

(d) In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the restoring, repairing, replacing or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to be of at least equal value, and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications to be first submitted to and approved by Mortgagee and any tenant of the Premises.

9. Disbursement of Insurance Proceeds. In the event Mortgagor is entitled to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the restoration, repair, replacement and rebuilding with funds (or assurances satisfactory to Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance, to complete the proposed restoration, repair, replacement and rebuilding and with such tenant consents, approvals and estoppels, and architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and other such evidences of cost, payment and performance as Mortgagee may reasonably require and approve, and Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work. 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. 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 for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient, in the reasonable judgment of Mortgagee, to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding or costs or fees incurred in obtaining such proceeds shall, at the option of Mortgagee, be applied on account of the Indebtedness Hereby Secured. No interest shall be allowed to Mortgagor on account of any proceeds of insurance or other funds held in the hands of Mortgagee.

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10. Condemnation: Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation including any payments made in lieu of and/or in settlement of a claim or threat of condemnation. Except as provided in the sentence immediately following this sentence, Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness Hereby Secured then most remotely to be paid, whether due or not, or require Mortgagor to restore or rebuild the Premises, in which event, the proceeds shall be held by Mortgagee and used to reimburse Mortgagor for the cost of such rebuilding or restoring. If, in the reasonable judgment of Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the condemnation and adequately securing the outstanding balance of the Indebtedness Hereby Secured, the award shall be used to reimburse Mortgagor for the cost of restoration and rebuilding; provided always, that no Event of Default has occurred and is then continuing. If Mortgagor is required or permitted to rebuild or restore the Premises as aforesaid, such rebuilding or restoration shall be effected solely in accordance with plans and specifications previously submitted to and approved by Mortgagee, and proceeds of the award shall be paid out in the same manner as is provided in Paragraph 9 hereof for the payment of insurance proceeds towards the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagor shall pay such costs in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of the award after payment of such costs of rebuilding or restoration or costs or fees incurred in obtaining such award shall, at the option of Mortgagee, be applied on account of the Indebtedness Hereby Secured. No interest shall be allowed to Mortgagor on account of any award held by Mortgagee.

11. Tax Stamp: If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagor or the Premises, any tax becomes due in respect of the issuance of the Note or this mortgage, Mortgagor shall pay such tax in the manner required by law.

12. Fee Schedule and Collateral Inspection. Mortgagor acknowledges that Mortgagee charges fees for services it provides in connection with administering its loans including but not limited to, release fees, construction draw fees and inspection fees. These may or may not differ substantially from fees charged by other institutions. Mortgagor hereby acknowledges receipt of Mortgagee's current Commercial Real Estate Loan Fee Schedule for the various services described above, a copy of which is attached to the Loan Agreement. Mortgagor agrees to pay Mortgagee's fees pursuant to said Schedule and authorizes Mortgagee to charge said fees directly to the balance of the Loan at the discretion of Mortgagee. Mortgagor acknowledges that Mortgagee may, in its sole discretion and from time to time, have the collateral inspected and evaluated, either by independent contractors or in-house employees, and that the costs incurred by Mortgagee for such inspections shall be paid by Mortgagor. In the event that Mortgagee uses in-house resources for such inspection/valuation, Mortgagor acknowledges that the fee owed to Mortgagee shall be \$1,500 in addition to expenses incurred by Mortgagee in connection with the collateral inspection. Mortgagor hereby authorizes Mortgagee, at Mortgagee's discretion, to increase the principal balance of the Note to pay this fee and any other costs, expenses or fees payable to Mortgagee.

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13. Effect of Extension of Time and Amendments of Junior Liens and Other: If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, 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, firm or corporation taking a junior mortgage or other lien, upon the Premises or any interest therein, shall take the said lien subject to the rights of Mortgagee to amend, modify and supplement this Mortgage, the Note and the Other Security Agreements herein referred to, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior liens.

14. Mortgagee's Performance of Mortgagor's Obligations: In case of an Event of Default herein, Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof and during the period of redemption, if any, may but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any form and manner deemed expedient to Mortgagee, and Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment, and may, but shall not be required to, complete construction, furnishing and equipping of the improvements upon the Premises and rent, operate and manage the Premises and such improvements and pay operating costs and expenses, including management fees of every kind and nature in connection therewith, so that the Premises and improvements shall be operational and usable for their intended purposes. After an Event of Default hereunder, all monies paid for any of the purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including reasonable attorney's fees and other monies advanced by Mortgagee to protect the Premises and the lien hereof or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such improvements or to pay any such operating costs and expenses thereof or to keep the Premises and improvements operational and usable for its intended purpose, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the face amount of the Note, and shall become immediately due and payable without notice and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate"). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Mortgagee in making any payment hereby authorized (a) relating to taxes and assessments, 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 other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; and (c) in connection with the completion of construction, furnishing or equipping of the improvements of the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

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15. Inspection of Premises and Records: Upon reasonable prior oral notice to Mortgagor, Mortgagee shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times, and access thereto shall be permitted for that purpose. No prior notice whatsoever shall be required of Mortgagee after the occurrence of an Event of Default or in cases of emergency where notice is impracticable.

16. Assignment of Leases and Rents.

(a) Assignment. For \$10.00 and other good and valuable consideration, including the indebtedness evidenced by the Notes, the receipt and sufficiency of which are hereby acknowledged, Mortgagor has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey absolutely unto Lender the Leases and the Rents, subject only to the hereinafter referenced License, to have and to hold the Leases and the Rents unto Lender, forever, and Mortgagor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Leases and the Rents unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof by or through Mortgagor; provided, however, if Mortgagor shall pay or cause to be paid and shall perform and discharge or cause to be performed and discharged, the Indebtedness Hereby Secured on or before the date same is to be paid, performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles and interests conveyed pursuant to this assignment shall become revested in Mortgagor without the necessity of any further act or requirement by Mortgagor or Lender.

(b) Limited License. Lender hereby grants to Mortgagor a limited license (the "License"), nonexclusive with the rights of Lender reserved in this Mortgage, to exercise and enjoy all incidences of ownership of the Leases and the Rents, including specifically but without limitation the right to collect, demand, sue for, attach, levy, recover and receive and retain the Rents, and to give proper receipts, releases and acquittances therefor. Mortgagor hereby agrees to receive all Rents and hold the same as a trust fund and to apply the Rent so collected, to the payment, satisfaction and discharge of the indebtedness described in the Loan Documents as and when the same shall become due and payable. Thereafter, Mortgagor may use the balance of the Rent collected in any manner not inconsistent with the Loan Documents.

(c) Enforcement of Leases. Subject to and in accordance with the terms and conditions of Section 16 of this Mortgage, Mortgagor shall (i) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon the landlord under any Lease, (ii) maintain each of the Leases in full force and effect during the term thereof, (iii) to the extent commercially reasonable, appear in and defend any action or proceeding in any manner connected with any of the Leases, (iv) deliver to Lender copies of executed counterparts of all Leases, and (v) deliver to Lender such further information, and execute and deliver to Lender such further assurances and assignments, with respect to the Leases as Lender may from time to time reasonably request. Without Lender's prior written consent, Mortgagor shall not materially discount any

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future accruing Rent, or assign or grant a security interest in or to the License or any of the Leases.

(d) Suits; Attornment. Subject to the License and the provisions of Section 16(b) of this Mortgage, Lender hereby reserves and may exercise the right and Mortgagor hereby acknowledges that Lender has the right (but not the obligation), upon the occurrence and during the continuance of an Event of Default, to collect, demand, sue for, attach, levy, recover and receive any Rent, to give proper receipts, releases and acquittances therefor and, after deducting the expenses of collection, to apply the net proceeds thereof as a credit upon any portion of any indebtedness secured hereby selected by Lender, notwithstanding that such portion selected may not then be due and payable or that such portion is otherwise adequately secured. Mortgagor hereby authorizes and directs any lessee of the Mortgaged Property to deliver any such payment to, and otherwise to attorn all other obligations under the Leases direct to, Lender. Mortgagor hereby ratifies and confirms all that Lender shall do or cause to be done by virtue and in compliance with the terms of this assignment. No lessee shall be required to inquire into the authority of Lender to collect any Rent, and any lessee's obligation to Mortgagor shall be absolutely discharged to the extent of its payment to Lender.

(e) Remedies. Upon or at any time after the occurrence of any Event of Default, Lender, at its option and in addition to the remedies provided in this Mortgage, shall have the complete, continuing and absolute right, power and authority to terminate the License solely by the giving of written notice of termination to Mortgagor. Upon Lender's giving of such notice, the License shall immediately terminate without any further action being required of Lender. Thereafter, as long as any Event of Default shall exist, Lender shall have the exclusive right, power and authority to take any and all action as described above, regardless of whether a foreclosure sale of the remainder of the Mortgaged Property has occurred under this Mortgage, or whether Lender has taken possession of the remainder of the Mortgaged Property or attempted to do any of the same. No action referred to above or in this Section taken by Lender shall constitute an election of remedy. Notwithstanding any term to the contrary herein, in the event of such a termination of Mortgagor's License, such License shall be reinstated when and if the applicable Event of Default shall have been cured or waived.

(e) No Obligation of Lender. Neither the acceptance by Lender of the assignment granted in this Mortgage, nor the granting of any other right, power, privilege or authority in this Mortgage, nor the exercise of any of the aforesaid, shall (a) prior to the actual taking of physical possession and operational control of the Mortgaged Property by Lender, be deemed to constitute Lender as a "**mortgagee in possession**" or (b) at any time thereafter, obligate Lender (i) to appear in or defend any action or proceeding relating to the Leases, the Rents or the remainder of the Mortgaged Property, (ii) to take any action hereunder, (iii) to expend any money or incur any expenses or perform or discharge any obligation, duty or liability with respect to any Lease, (iv) to assume any obligation or responsibility for any deposits which are not physically delivered to Lender or (v) for any injury or damage to person or property sustained in or about the Mortgaged Property, provided that nothing

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herein shall relieve Lender of liability for the willful misconduct or gross negligence or omissions of Lender.

(f) Mortgagor's Indemnities. So long as the License is in effect, Mortgagor shall indemnify and hold Lender harmless from and against any and all liability, loss, cost, damage or expense which Lender incurs under or by reason of this assignment, or for any action taken by Lender hereunder in accordance with the terms hereof, or by reason of or in defense of any and all claims and demands whatsoever which are asserted against Lender arising out of the Leases. In the event Lender incurs any such liability, loss, cost, damage or expense, the amount thereof together with all reasonable attorneys' fees and interest thereon at the Default Rate shall be payable by Mortgagor to Lender, within 30 days after demand by Lender, and shall be secured by this Mortgage, provided that Mortgagor shall have no duty or liability hereunder to indemnify and hold Lender harmless from matters resulting from the willful misconduct or gross negligence of Lender.

17. Uniform Commercial Code: This Mortgage constitutes a Security Agreement under the Uniform Commercial Code (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate owned by Mortgagor (all for the purposes of this Paragraph 17 called "Collateral"); 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 Premises, and the following provisions of this paragraph 17 shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof.

(b) The Collateral is to be used by Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises.

(c) The Collateral will be kept at the real estate comprised within the Premises and will not be removed therefrom other than in the ordinary course of business without the consent of Mortgagee (being the Secured Party as that term is used in the Code) or any other person and the Collateral may be affixed to such real estate but will not be affixed to any other real estate.

(d) The only persons having any interest in the collateral are Mortgagor and its beneficiaries, Mortgagee, permitted tenants and users thereof.

(e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to Mortgagee such further



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information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts and things as Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances and Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable.

(f) Upon an Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such default not having previously been cured), Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Paragraph 17 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place where 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 Code); 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 Code. Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least fifteen (15) business days notice of the time and place of any public sale thereof 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 mail or equivalent, postage prepaid, to the address of Mortgagor shown in the notice provision of this Mortgage at least fifteen (15) business 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 the 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 estate comprised within the Premises, the Collateral and real estate 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 legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness Hereby Secured. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

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(g) The remedies of Mortgage hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of the other remedies of Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness Hereby Secured remains unsatisfied.

(h) The terms and provisions contained in this Paragraph 17 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(i) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral and the goods described at the beginning of this Mortgage which goods are or are to become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in Paragraph 38 hereof. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located. Mortgagor is the record owner of the Premises.

18. Restrictions on Transfer: It shall be an Event of Default hereunder if, without the prior written consent of Mortgagee any one or more of the following shall occur:

(a) If Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien (subject to the provisions contained in this Mortgage allowing Mortgagee to contest certain liens), pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility;

(b) If Mortgagor is a Land Trustee, then, if any beneficiary of Mortgagor shall create, effect or consent to, or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of all or any portion of such beneficiary's beneficial interest in Mortgagor;

(c) If Mortgagor is a partnership or joint venture or limited liability company, or if any beneficiary of a trustee mortgagor is a partnership or joint venture or limited liability company, then if any general partner or joint venturer or member in such partnership or joint venture or limited liability company shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of all or any part of the partnership interest or joint venture interest or limited liability company interest, as the case may be, of such partner or joint venturer or member; or

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(d) If Mortgagor is a corporation, or if any beneficiary of a trustee mortgagor is a corporation, then the merger, liquidation or dissolution of such corporation or the sale of all or substantially all of its assets not in the ordinary course of business or share exchange or the sale, assignment, transfer, lien, pledge, security interest or other encumbrance or alienation of the outstanding securities of such corporation,

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, that the foregoing provisions of this Paragraph 18 shall not apply to: (i) liens securing the Indebtedness Hereby Secured, (ii) the lien of current taxes and assessments not in default, or (iii) any transfer of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, in Mortgagor or any beneficiary of a trustee mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee. The provisions of this Paragraph 18 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, shares of stock of, membership interest, partnership or joint venture in, Mortgagor or any beneficiary of a trustee mortgagor.

19. Events of Default: If one or more of the following events (herein individually called an "Event of Default") shall occur and be continuing after the expiration of all applicable cure periods:

(a) If default be made in the due and punctual payment of the Note, or any installment thereof, either principal or interest, as and when the same is due and payable and after any applicable grace period provided for in the Note or other Loan Documents shall have expired; or

(b) If default be made and shall continue for ten (10) days after written notice thereof by Mortgagee to Mortgagor in the making of any payment of monies required to be made hereunder or under any further advance that constitutes part of the Indebtedness Hereby Secured; or

(c) If an Event of Default under any Loan Document, or under any Other Security Agreements defined in Paragraph 27, or under any Additional Security Instruments defined in Paragraph 40, shall occur and be continuing after the expiration of all applicable cure periods; or

(d) If an Event of Default pursuant to Paragraph 18 hereof (subject to Mortgagor's right to contest certain liens under the terms of this Mortgage) shall occur and be continuing without notice or period of grace of any kind; or

(e) If (and for the purpose of this Paragraph 19(e) only, the term Mortgagor shall mean and include not only Mortgagor but any beneficiary of a trustee mortgagor, and each

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person who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness Hereby Secured or any of the covenants or agreements contained herein):

(i) Mortgagor shall file a petition in voluntary bankruptcy under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect, or

(ii) Mortgagor shall file an answer admitting insolvency or inability to pay its debts, or

(iii) Within sixty (60) days after the filing against Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar law, such proceedings shall not have been vacated or stayed, or

(iv) Mortgagor shall be adjudicated a bankrupt, or a trustee or receiver shall be appointed for Mortgagor for all or the major part of Mortgagor's property or the Premises, in any voluntary proceeding, or any court shall have taken jurisdiction of all or the major part of Mortgagor's property or the Premises in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Mortgagor, and such trustee or receiver shall not be discharged or such jurisdiction, relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days, or

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

(vi) Mortgagor's property or the Premises shall be levied upon by execution or other legal process which is not stayed or vacated within thirty (30) days, or

(vii) Mortgagor shall merge, liquidate or dissolve or sell all or substantially all its assets not in the ordinary course of its business.

(f) the breach by Mortgagor of any of the terms, covenants, conditions, warranties or representations contained in this Mortgage, which is not cured within thirty (30) days after written notice from Lender; provided, however, in the event that such breach is not curable by Mortgagor, despite its diligent efforts, within said initial thirty (30) day period, Mortgagor shall have up to thirty (30) additional days to cure such breach, provided that Mortgagor continues to make diligent efforts to cure said breach and such cure is completed within said additional time period; or

(g) Omitted;

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(h) If Mortgagee accelerates the indebtedness evidenced by the Note in accordance with the provisions thereof;

(i) If there occurs a material adverse change in the financial condition of Mortgagor;

(j) If a default shall occur and be continuing under any other indebtedness now or hereafter owed Mortgagee by Mortgagor, except as provided under the Loan Agreement;

then, so long as such Event of Default still exists, Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of Mortgagee hereunder to declare, without further notice all Indebtedness Hereby Secured to be immediately due and payable, 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, any other Loan Document, or the Other Security Agreements, or the Additional Security Instruments or by law or in equity conferred.

20. Possession by Mortgagee: When the Indebtedness Hereby Secured shall become due, whether by acceleration or otherwise, Mortgagee shall, if applicable law permits, have the right to enter into and upon the Premises and take possession thereof or to appoint an agent or trustee for the collection of rents, issues and profits of the Premises; and the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, may be applied to the payment of taxes, insurance premiums and other charges applicable to the Premises, or in reduction of the Indebtedness Hereby Secured; and the rents, issues and profits of and from the Premises are hereby specifically pledged to the payment of the Indebtedness Hereby Secured.

21. Foreclosure: When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for 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 Premises. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, shall be so much additional Indebtedness Hereby Secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate per annum until paid.

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22. Receiver/Mortgagee in Possession: Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the Court in which such complaint is filed may appoint a receiver of the Premises or Mortgagee as mortgagee in possession. Such appointment may be made either before or after sale, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and Mortgagee hereunder or any holder of the Note or any employee or agent thereof may be appointed as such receiver or mortgagee in possession. Such receiver or mortgagee in possession shall have the power to collect the rents, issues and profits of the Premises 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 or mortgagee in possession, would be entitled to collection of such rents, issues and profits and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver or mortgagee in possession to apply the net income from the Premises in his hands in payment in whole or in part of:

(a) The Indebtedness Hereby Secured or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof of such decree, provided such application is made prior to the foreclosure sale; or

(b) The deficiency in case of a sale and deficiency.

23. Proceeds of Foreclosure Sale: The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 21 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note or under any further advances as are herein mentioned; Fourth, to the principal remaining unpaid upon the Note; and upon any further advances as are herein mentioned; and lastly, any overplus to Mortgagor, and its successors or assigns, as their rights may appear.

24. Insurance Upon Foreclosure: In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in rebuilding or restoring the buildings or improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to such decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in such case made and provided, then in

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every such case, each every successive redelector may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redelector. In the event of a foreclosure sale, Mortgagee is hereby authorized, without consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to Mortgagor for prepaid premiums thereon.

25. Waiver: 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, any stay, exemption 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 Premises, 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. Mortgagor hereby expressly waives any and all rights of any automatic stay or redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes, 735 ILCS 5/15-1601, and any statute enacted in replacement or substitution thereof. Mortgagor will not invoke or utilize any such law or laws 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 laws have been made or enacted. .

In the event that Mortgagor (as defined in 19(e)), is the subject of any insolvency, bankruptcy, receivership, dissolution, reorganization or similar proceeding whether described in Paragraph 19(e) or otherwise, Mortgagee is further authorized and empowered, at its option to the automatic lifting of any automatic stay as to the enforcement of any right, power or remedy provided by this Mortgage, the Note, or the Other Security Agreements, including but not limited to, the stay imposed by Section 362 of the United States Federal Bankruptcy Code, as amended. Mortgagor hereby expressly consents to the immediate lifting of any such automatic stay, and will not contest any motion by Mortgagee to lift such stay.

26. Hazardous Materials:

(a) Definitions: For the purpose of this Mortgage, Mortgagor and Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

(i) "Hazardous Materials" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section

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6901 et. seq.), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et. seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) any substance and presence of which on the Premises is prohibited by any Governmental Requirements; (f) petroleum products; and (g) any other substance which by any Governmental Requirement requires special handling in its collection, storage, treatment or disposal.

(ii) "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the improvements, facilities, soil, ground water, air or other elements on, or of, the Premises by Hazardous Materials, or the contamination of the buildings, facilities, soil, ground water, air or other elements on, or of, any other property as a result of Hazardous Materials at any time (whether before or after the date of this Mortgage) emanating from the Premises.

(iii) "Governmental Requirement" shall mean any federal, state or local law, rule or regulation relating to Hazardous Materials or Hazardous Materials Contamination now or hereafter applicable to Premises, including, without limitations, those certain laws, regulations and rules referred in that certain Certificate and Indemnity Regarding Hazardous Substances delivered by Beneficiary in favor of Mortgagee of even date herewith.

(b) Mortgagor's Warranties: Mortgagor hereby represents and warrants that, except as set forth in any environmental report delivered by Mortgagor to Mortgagee (the "Report"), no Hazardous Materials are now located on the Premises and that neither Mortgagor nor any other person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of, on, under or at the Premises or any part thereof, except for de minimis quantities of Hazardous Materials which are kept, stored and used at the Premises in accordance with applicable law and in the ordinary course of Mortgagor's business. Except as set forth in the Report, no part of the Premises has ever been used, to the best of Mortgagor's knowledge prior to Mortgagor's becoming the Owner of the Premises, or will be used during Mortgagor's ownership of the Premises as a manufacturing, storage or dump site for Hazardous Materials, nor is any part of the Premises affected by any Hazardous Materials Contamination. To the best of Mortgagor's knowledge and belief, and except as set forth in the Report, no property adjoining the Premises has ever been used as a manufacturing, storage or dump site for Hazardous Materials nor is any other property adjoining the Premises affected by Hazardous Materials Contamination.

(c) Mortgagor's Covenants: Mortgagor agrees to (a) give notice to Mortgagee immediately upon Mortgagor acquiring knowledge of the presence of any Hazardous Materials on the Premises or of any Hazardous Materials Contamination with a full description thereof; (b) promptly comply with any Governmental Requirement requiring the



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removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Mortgagee with satisfactory evidence of such compliance; and (c) provide Mortgagee, within thirty (30) days after demand by Mortgagee, with a bond letter of credit or similar financial assurance evidencing to Mortgagee's satisfaction that the necessary funds are available to pay the cost of removing, treating or disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Premises as a result thereof.

(d) Site Assessments: Mortgagee (by its officers, employees and agents) at any time and from time to time, either prior to or after the occurrence of an Event of Default, may contract for the services of persons (the "Site Reviewers") to perform environmental site assessments ("Site Assessments") on the Premises for the purpose of determining whether there exists on the Premises any environmental condition which could result in any liability, cost or expense to the owner or occupier of such Premises arising under any state, federal or local law, rule or regulation relating to Hazardous Materials. Notwithstanding the foregoing, Mortgagee agrees that, prior to the occurrence of an Event of Default, it shall perform the site assessments referred to above at Mortgagor's expense only if there is, in Mortgagee's reasonable belief, the threat or existence of Hazardous Materials Contamination at the Premises. The Site Assessment may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Mortgagor which do not impede the performance of the Site Assessment. The Site Reviewers are hereby authorized to enter upon the Premises for such purposes. The Site Reviewers are further authorized to perform both above and below ground testing for environmental damage or the presence of Hazardous Materials on the Premises and such other tests on the Premises as may be necessary to conduct the Site Assessment in the reasonable opinion of the Site Reviewers. Mortgagor will supply to the Site Reviewers such historical and operational information regarding the Premises as may be reasonably requested by the Site Reviewers to facilitate the Site Assessment and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Mortgagee shall make the results of such Site Assessment fully available to Mortgagor, which (prior to an Event of Default) may at its election participate under reasonable procedures in the direction of such Site Assessment and the description of tasks to be performed by the Site Reviewers. The cost of performing such Site Assessment shall be paid by Mortgagor upon demand of Mortgagee and any such obligations shall constitute additional Indebtedness Hereby Secured by this Mortgage.

(e) Indemnification: Regardless of whether any Site Assessments are conducted hereunder, any Event of Default shall have occurred and be continuing or any remedies in respect of the Premises are exercised by Mortgagee, Mortgagor shall defend, indemnify and hold harmless Mortgagee from any and all liabilities (including strict liability), actions, demands, penalties, losses, costs or expenses (including, without limitation, reasonable attorney's fees and remedial costs), suits, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release of this Mortgage) be paid, incurred or suffered by or asserted against, Mortgagee by any person or entity or governmental agency for, with respect to or as a direct or indirect

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result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Premises of any Hazardous Materials or Hazardous Materials Contamination or arise out of or result from the environmental condition of the Premises or the applicability of any Governmental Requirement relating to Hazardous Materials (including, without limitation, CERCLA or any so called federal, state or local "Superfund" or "Superlien" laws, statute, law, ordinance, code, rule, order or decree), regardless of whether or not caused by or within the control of Mortgagee. The representations, covenants and warranties contained in this Section 26 shall survive the release of this Mortgage.

(f) Mortgagee's Right to Remove Hazardous Materials: Mortgagee shall have the right, but not the obligation, without in any way limiting Mortgagee's other rights and remedies under this Mortgage, to enter onto the Premises or to take such other actions as it deems necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials or Hazardous Materials Contamination on the Premises following receipt of any notice from any person or entity asserting the existence of any Hazardous Materials or Hazardous Materials Contamination pertaining to the Premises, or any part thereof which, if true, could result in an order, suit, imposition of a lien on the Premises, or other action and/or which, in Mortgagee's sole opinion, could jeopardize Mortgagee's security under this Mortgage. All reasonable costs and expenses paid or incurred by Mortgagee in the exercise of any such rights shall be secured by this Mortgage and shall be payable by Mortgagor upon demand.

27. Other Security Agreements: As further security for the Indebtedness Hereby Secured, Borrower and/or Mortgagor (and/or certain other parties) have concurrently herewith executed and delivered, or may hereafter execute and deliver to Mortgagee the other "Loan Documents", as defined in the Loan Agreement (the "Other Security Agreements"). All the terms and conditions of the Other Security Agreements are hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length. Mortgagor agrees that it will duly perform and observe or cause to be performed and observed all obligations accepted by it under the Other Security Agreements. Nothing herein contained shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty or liability of Mortgagor under the Other Security Agreements. Any and all reasonable costs and expenses incurred by Mortgagee, including reasonable attorney's fees, incurred by Mortgagee in the defense of any claims or demand therefor (whether successful or not), shall be so much additional Indebtedness Hereby Secured, and Mortgagor shall reimburse Mortgagee therefor on demand, together with interest at the Default Rate under the Note from the date of demand to the date of payment.

28. Mortgagee in Possession: Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises.

29. Omitted.

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30. Further Assurances: Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper, in the sole judgment of Mortgagee, 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.

31. Mortgagor's Successors: In the event that the ownership of Premises 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 Indebtedness Hereby Secured in the same manner as with Mortgagor. Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph 31 shall vary or negate the provisions of Paragraph 19 hereof.

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

33. Successors and Assigns: This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every from time to time record owner of the Premises 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 from time to time holder 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 herein, as fully and to the same extent and with the same effect as if such from time to time holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated Mortgagee.

34. Provisions Severable/Conflict: The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

35. Waiver of Defense: 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 to the party interposing the same in an action at law upon the Note.

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36. Time of Essence: Time is of the essence of the Note, this Mortgage, and any other document evidencing or securing the Indebtedness Hereby Secured.

37. Captions and Pronouns: The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way and 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.

38. Notices: Any notices and other communications required or desired to be given hereunder shall be in writing and shall be deemed to have been properly given if: (a) served in person; (b) mailed by United States registered or certified mail, with proper postage prepaid, return receipt requested, or (c) sent by nationally recognized overnight mail carrier, to the following address:

If to Lender: First Bank and Trust Company of Illinois  
300 East Northwest Highway  
Palatine, IL 60067  
Attention: C. Richard Schuler

With a copy to: Keith L. Moore, Esq.  
806 Greenwood Street  
Evanston, IL 60201

If to Mortgagor: **ESTATE HOMES OF LINCOLN  
PARK COMMONS, LLC**  
2650 North Ashland Avenue  
Chicago, IL 60614  
Attn: Stuart Rose

With a copy to: Allen B. Glass, Esq.  
55 East Jackson Street, Suite 500  
Chicago, IL 60604

provided, however, that the failure to give a copy of such notice shall not adversely affect the validity or enforceability of such notice. Any such notice or other communication mailed as provided in this Section shall be deemed to have been given and received: (a) on the date delivered, if personally delivered; (b) on the third (3rd) business day after mailing, if sent by United States registered or certified mail; and (c) on the next business day, if sent by nationally recognized overnight mail carrier. Any party may change its address for service of notice by giving notice to the other party in the manner hereinabove provided.

39. Release: Mortgagee shall release this Mortgage and the Original Mortgage and the liens thereof by proper instrument upon payment of all Indebtedness Hereby Secured and shall issue partial release(s) of this Mortgage and the Original Mortgage as they pertain to portion(s) of the Geneva Terrace-Amended Mortgage.4.doc

6/29/2006

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Mortgaged Property upon sale of said portion(s) by Mortgagor and receipt by Mortgagee of the Release Price(s) (as defined in the Loan Agreement, as modified) pertaining to the portion(s) of the Mortgaged Property then being sold.

40. Omitted.

41. Construction Loan; Future Advances. The Note evidences a debt created by one or more disbursements made by Mortgagee to Borrower to acquire the Premises, as well as finance the cost of the construction of certain improvements upon the Premises in accordance with the provisions of the Loan Agreement of even date herewith between Borrower and Mortgagee, and this Mortgage is a construction mortgage as such term is defined in Section 9-313(1)(c) of the Illinois Uniform Commercial Code. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an uncured and continuing Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute an Event of Default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the Indebtedness Hereby Secured immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness Hereby Secured and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate (as defined in the Note). In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage. This Mortgage secures future advances that may be made from time to time under the terms of the Loan Agreement. Each advance shall have, to the fullest extent allowed by law, the same priority as if made at the original date hereof, provided that such disbursement is made within twenty years from the date hereof. All advances made under the terms of the Loan Agreement shall be deemed to be obligatory advances, including those made for the purpose of completing the improvements on the Premises and those made for the purpose of protecting Mortgagee's collateral or for other costs and expenses and purposes allowed under the terms of this Mortgage, the Loan Agreement or the other Loan Documents.

All advances, disbursements and expenditures (collectively "Protective Advances") made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Illinois Mortgage Foreclosure Act (the "Act"), 735 ILCS 5/15-1101 et seq. shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Property; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due, installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance;

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(ii) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act,

(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(g) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act;

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Mortgaged Property imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member in any way affecting the Mortgaged Property; (vii) costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be; (viii) pursuant to any lease or other agreement for occupancy of the Mortgaged Property; and (ix) if this Mortgage is insured, payments of FHA or private mortgage insurance.

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All Protective Advances shall be so much additional secured obligations secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after a default under the terms of the Loan Agreement.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (1) the determination of the amount of the Indebtedness Secured Hereby secured by this Mortgage at any time;
- (2) the obligations found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional Obligations becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (3) if the right of redemption has not been waived by this Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;
- (4) the determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (5) the application of income in the hands of any receiver or lender in possession; and
- (6) the computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

The maximum amount of indebtedness secured by this Mortgage shall be three (3) times the principal amount of the Note, plus interest, plus any disbursements for the payment of taxes and insurance on the Mortgaged Property, together with interest thereon, plus the amount of any other Protective Advances, together with interest thereon.

[Signature Pages Follow]

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ESTATE HOMES OF LINCOLN PARK COMMONS, LLC

By: Stuart Rose  
Name: Stuart Rose  
Title: Manager

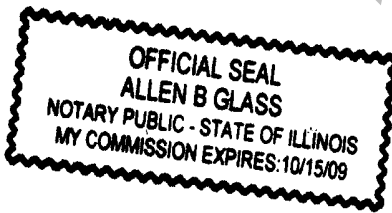
STATE OF ILLINOIS )  
COUNTY OF Cook )

The Undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, Stuart Rose, the Manager of ESTATE HOMES OF LINCOLN PARK COMMONS, LLC, personally known to me to be the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and swore and acknowledged under oath that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes set forth therein.

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

Allen B Glass  
Notary Public

My Commission expires: 10/15/09





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## EXHIBIT A

### LEGAL DESCRIPTION OF THE REAL ESTATE

#### PARCEL 1:

LOT 6 IN LINCOLN PARK CLUB SUBDIVISION, RECORDED JULY 9, 2002, AS DOCUMENT 0020749722 AND RE-RECORDED JULY 19, 2002, AS DOCUMENT 0020790850, BEING A RESUBDIVISION OF VARIOUS LOTS, PARTS OF LOTS AND VACATED STREETS AND ALLEYS IN VARIOUS SUBDIVISIONS IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 2653 North Geneva Terrace, Chicago, IL  
PIN#: 14-28-304-040-0000

#### PARCEL 2:

LOT 7 AND THE SOUTH 1/2 OF LOT 8 IN LINCOLN PARK CLUB SUBDIVISION, RECORDED JULY 9, 2002, AS DOCUMENT 0020749722 AND RE-RECORDED JULY 19, 2002, AS DOCUMENT 0020790850, BEING A RESUBDIVISION OF VARIOUS LOTS, PARTS OF LOTS AND VACATED STREETS AND ALLEYS IN VARIOUS SUBDIVISIONS IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 2657 North Geneva Terrace, Chicago, IL  
PIN#: 14-28-304-083-0000

#### PARCEL 3:

THE NORTH 1/2 OF LOT 8 AND ALL OF LOT 9 IN LINCOLN PARK CLUB SUBDIVISION, RECORDED JULY 9, 2002, AS DOCUMENT 0020749722 AND RE-RECORDED JULY 19, 2002, AS DOCUMENT 0020790850, BEING A RESUBDIVISION OF VARIOUS LOTS, PARTS OF LOTS AND VACATED STREETS AND ALLEYS IN VARIOUS SUBDIVISIONS IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 2659 North Geneva Terrace, Chicago, IL  
PIN#: 14-28-304-084-0000

#### PARCEL 4:

GenevaTerrace-AmendedMortgage.4.doc  
6/29/2006

# UNOFFICIAL COPY

LOT 15 AND THE SOUTH 1/2 OF LOT 16 IN LINCOLN PARK CLUB SUBDIVISION, RECORDED JULY 9, 2002, AS DOCUMENT 0020749722 AND RE-RECORDED JULY 19, 2002, AS DOCUMENT 0020790850, BEING A RESUBDIVISION OF VARIOUS LOTS, PARTS OF LOTS AND VACATED STREETS AND ALLEYS IN VARIOUS SUBDIVISIONS IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 2662 North Geneva Terrace, Chicago, IL  
PIN#: 14-28-304-088-0000

## PARCEL 5:

LOT 33 IN LINCOLN PARK CLUB SUBDIVISION, RECORDED JULY 9, 2002, AS DOCUMENT 0020749722 AND RE-RECORDED JULY 19, 2002, AS DOCUMENT 0020790850, BEING A RESUBDIVISION OF VARIOUS LOTS, PARTS OF LOTS AND VACATED STREETS AND ALLEYS IN VARIOUS SUBDIVISIONS IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: Parking Space with No Address, Access from Alley off West Drummond,  
Chicago, IL  
PIN#: 14-28-304-067-0000

## PARCEL 6:

A PERPETUAL ACCESS EASEMENTS FOR THE BENEFIT OF ALL OWNERS OF LOTS 6, 15 AND SOUTH 1/2 OF LOT 16, AND LOT 33, TOGETHER WITH THEIR TENANTS, GUESTS, AGENTS AND INVITEES, AS SET FORTH BY THE DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS FOR THE LINCOLN PARK COMMONS HOMEOWNERS ASSOCIATION DATED JANUARY 10, 2002 AND RECORDED JANUARY 15, 2002 AS DOCUMENT 0020061321, AMENDED BY FIRST AMENDMENT RECORDED 0508434021, SECOND AMENDMENT RECORDED AS DOCUMENT 0508434022 AND THE THIRD AMENDMENT TO BE RECORDED SEPTEMBER 29, 2005 AS DOCUMENT 0527227129, FOR THE PURPOSE OF A PEDESTRIAN COURT EASEMENT FOR INGRESS AND EGRESS ON, OVER AND ALONG THOSE PORTIONS OF THE LAND KNOWN AS LOTS 6 AND 26, AND IDENTIFIED ON THE PLAT OF SUBDIVISION AS "PEDESTRIAN COURT". PRIVATE ALLEYWAY EASEMENTS, FOR PUBLIC INGRESS AND EGRESS OF PERSONS AND VEHICLES, ON, OVER AND ALONG THOSE PORTIONS OF THE LAND IDENTIFIED AS "PRIVATE ALLEYS" ON SAID PLAT, RECORDED JULY 9, 2002, AS DOCUMENT 0020749722 AND RE-RECORDED AS DOCUMENT 0020790850