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Cook County Recorder of Deeds
Date: 08/16/2006 11:36 AM Pg: 1 of 34

This Document Prepared by
and after Recording Return to:

Momkus, McCluskey, Monroe, Marsh &
Syratos
3051 Oak Grove Road
Suite 220
Downers Grove, Illinois 60515

Attn: John D. Furdy, Jr.

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0607-22231
CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT
THIS MORTGAGE SECURES FUTURE ADVANCES

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") is made July 21, 2006 between 432 N. Elmwood, LLC, an Illinois limited liability company, 232 North Harvey Avenue, Oak Park, Illinois 60302 ("Mortgagor") and Omni National Bank, a national banking association, 137 North Oak Park Avenue, Suite 310, Oak Park, Illinois 60301 ("Mortgagee").

1. Recitals;

1.1 Pursuant to that certain Construction Loan Agreement dated July 21, 2006 (the "Loan Agreement") Mortgagee has agreed to make a loan to Mortgagor in the amount of Six Hundred Fifty Thousand and 00/100 Dollars (\$650,000.00) or so much thereof as shall be actually disbursed by Mortgagee to, or on behalf of, Mortgagor (the "Loan") for the purposes and upon the terms and conditions set forth in the Loan Agreement.

1.2 Mortgagor has executed and delivered to Mortgagee a Promissory Note (the "Note"), wherein Mortgagor promises to pay to Mortgagee the sum of Six Hundred Fifty Thousand and 00/100 Dollars (\$650,000.00), together with interest and other charges as therein stated (the "Loan Amount") upon the terms and conditions set forth therein.

1.3 Mortgagor has also executed and delivered to Mortgagee

A. Guaranties executed by Brett L. Williams, 212 North Harvey Avenue, Oak Park, Illinois 60302, Element Worx, LLC, limited liability company, 212 North Harvey Avenue, Oak Park, Illinois, 60302, Mark Risch, 232 North Harvey Avenue, Oak Park, Illinois 60302 and Cindy Risch, 232, Oak Park, Illinois 60302 (collectively, "Guarantor")

of even date herewith, which, together with this Mortgage, secure Mortgagor's obligations to Mortgagee pursuant to the Note ("Borrower's Liabilities"). The Loan Agreement, the Note and the foregoing documents, together with any and all documents or instruments executed in connection therewith, including any modifications, extensions or renewals thereof, are hereinafter referred to as the "Loan Documents", all of which are incorporated herein by reference.

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PRAIRIE TITLE
6821 W. NORTH AVE.
OAK PARK, IL 60302

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1.4 As further security for any and all Borrower's Liabilities, Mortgagor has agreed to grant to Mortgagee a first mortgage lien on, and security interest in, the Mortgaged Property (as defined below) according to the terms of this Mortgage.

2. Grant. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns, and grants a security interest in, the following described property, rights and interests, all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (defined below) and not secondarily:

THE REAL ESTATE legally described in Exhibit A attached hereto and made a part hereof ("Real Estate");

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf (the "Improvements");

TOGETHER WITH all easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, 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;

TOGETHER WITH all rents, revenues, issues, profits, proceeds, income, royalties, "accounts," including "health-care-insurance receivables," escrows, letter-of-credit rights (each as defined in UCC, defined below), security deposits, impounds, reserves, tax refunds and other rights to monies from the Mortgaged Property and/or the businesses and operations conducted by Mortgagor thereon, to be applied against Borrower's Liabilities;

TOGETHER WITH all interest of Mortgagor in all leases now or hereafter on the Mortgaged Property, whether written or oral (the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture,

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hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for Borrower's Liabilities; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the Real Estate and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code in effect from time to time in the jurisdiction in which the Real Estate is located (the "UCC"), this instrument shall constitute a security agreement, creating a first and prior security interest in such goods, as collateral, in Mortgagee, as secured party, and Mortgagor, as debtor, all in accordance with the UCC; and

TOGETHER WITH all of Mortgagor's interests in "general intangibles" including "payment intangibles" and "software" (each as defined in the UCC) now owned or hereafter acquired and related to the Mortgaged Property, including, without limitation, all of Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Mortgagor is or may become a party and which relate to the Mortgaged Property; (ii) all obligations and indebtedness owed to Mortgagor thereunder; (iii) all intellectual property related to the Mortgaged Property; and (iv) all choses in action and causes of action relating to the Mortgaged Property;

TOGETHER WITH all of Mortgagor's accounts now owned or hereafter created or acquired as relate to the Mortgaged Property, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due to become due to Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of Mortgagor); (v) "securities," "investment property," "financial assets," and "securities entitlements" (each as defined in the UCC); and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Mortgaged Property;

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Mortgaged Property or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Mortgaged Property or proceeds of any sale, option or contract to sell the Mortgaged Property or any portion thereof.

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All of the Real Estate, buildings and improvements, fixtures, machinery, furniture, equipment, tenements, hereditaments and appurtenances, proceeds and other property interests above described and hereby mortgaged are sometimes collectively referred to herein as the "Mortgaged Property."

TO HAVE AND TO HOLD the Mortgaged Property hereby conveyed or mentioned and intended so to be, unto Mortgagee, in fee simple, forever.

PROVIDED ALWAYS, and this instrument is upon the express condition that, if Mortgagor pays to Mortgagee Borrower's Liabilities, including, without limitation, the Principal Sum under the Note, the interest thereon and all other sums payable by Mortgagor to Mortgagee as are secured hereby, in accordance with the provisions of the Loan Documents and this Mortgage, at the times and in the manner specified, without deduction, fraud or delay, and Mortgagor performs and complies with all the agreements, conditions, covenants, provisions and stipulations contained herein and in the Loan Documents then this Mortgage and the estate hereby granted shall cease and become void.

3. **Mortgagor's Representations.** Mortgagor warrants and represents that it possesses a good and marketable title to an indefeasible fee simple estate in the Mortgaged Property, subject only to those title exceptions listed in the mortgagee's title insurance policy approved by and issued to Mortgagee, insuring the priority of the lien of this Mortgage ("Permitted Exceptions"); that Mortgagor has full power and lawful authority to subject the Mortgaged Property to the lien of this Mortgage in the manner and form herein provided, that it shall be lawful for Mortgagee at all times to enter upon, hold, occupy and enjoy the Mortgaged Property and every part thereof; that the Mortgaged Property is free from all liens and encumbrances subject only to the Permitted Encumbrances; that all information, reports, papers and data given to Mortgagee with respect to the Mortgaged Property or Mortgagor are accurate in all material respects; that no notice of taking by eminent domain or condemnation of any part of the Mortgaged Property has been received, and Mortgagor has no knowledge that any of such is contemplated; that the Mortgaged Property and the present use and occupancy thereof are in compliance with all applicable laws, rules, ordinances, statutes and regulations ("applicable laws"); and that no part of the Mortgaged Property (a) is located in an area designated by any federal, state or local governmental entity as having a special flood hazard or (b) relies for compliance with any applicable law upon a parcel or parcels of real property not contained in the Real Estate.

4. **Payment and Performance.** Mortgagor shall pay to Mortgagee, in accordance with the terms of the Loan Documents and this Mortgage, the principal and interest, and other sums therein set forth; shall perform and comply with all the agreements, conditions, covenants, provisions and stipulations of the Loan Documents and this Mortgage; and shall timely perform all of its material obligations and duties as landlord under any lease of all or any portion of the Mortgaged Property now or hereafter in effect.

5. **Maintenance of Mortgaged Property.** Mortgagor shall keep and maintain or cause to be kept and maintained all buildings and improvements now or at any time hereafter erected on the Mortgaged Property and the sidewalks and curbs abutting them, in good order and condition and in a rentable and tenantable state of repair, and will make or cause to be made, as and when necessary for such purpose, all repairs, renewals and replacements, structural and nonstructural, exterior and

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interior, ordinary and extraordinary, foreseen and unforeseen. Mortgagor shall abstain from and shall not permit the commission of waste in or about the Mortgaged Property; Mortgagor shall not remove or demolish, or alter the structural character of, any building erected at any time on or constituting a part of the Mortgaged Property or alter the exterior of the building, except in connection with the construction of the Improvements to the Real Estate as provided in the Loan Agreement and normal tenant improvements reasonably required to make the Mortgaged Property ready for tenant occupancy and fully paid for, without the prior written consent of Mortgagee; and shall not permit the Mortgaged Property to become vacant, deserted or abandoned. Mortgagor further covenants and agrees to maintain in good condition on the Mortgaged Property all items of inventory, equipment and any other personal property necessary for or used in the maintenance and operation of the Mortgaged Property, free of any lien or security interest (except liens or security interest in favor of Mortgagee, or liens or security agreements approved in writing by Mortgagee). Mortgagor shall not apply for and obtain any change in the zoning of the Real Estate without the prior written consent of Mortgagee, which Mortgagee can grant or withhold in its sole and absolute discretion.

6. Insurance.

6.1 Mortgagor shall keep the Mortgaged Property continuously insured, to the extent of its full insurable value, against loss or damage by fire, with extended coverage and against such other hazards (including, without limitation, coverage against loss or damage by vandalism, malicious mischief, sprinkler leakage and flood and perils and acts of terrorism) as Mortgagee may reasonably require, and shall maintain comprehensive general public liability, including all legal liability to the extent insurable imposed upon Mortgagor and all court costs and attorneys' fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Mortgaged Property, and property damage and workmen's compensation insurance, in an insurance company or companies qualified to insure property located in the state in which the Mortgaged Property is located and satisfactory in all respects to Mortgagee, and in such total amounts as Mortgagee may reasonably require from time to time. Such insurance shall contain agreed amount endorsements, inflation guard endorsements and replacement cost endorsements reasonably satisfactory to Mortgagee. During the course of any construction or repair or improvements on the Mortgaged Property for which builder's risk insurance may be obtained, Mortgagor shall acquire and maintain builder's completed value risk insurance against all risks of physical loss, including collapse and transit coverage, during construction of such improvements, with deductibles not to exceed \$1,000.00 in non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished. All policies of insurance, including policies for any amounts carried in excess of the required minimum and policies not specifically required by Mortgagee, shall be in form reasonably satisfactory to Mortgagee, shall name Mortgagee as the insured, shall be maintained in full force and effect, shall be assigned and delivered to Mortgagee, with premiums prepaid, as collateral security for payment of Borrower's Liabilities, shall be contain a Standard Lender's Loss Payable Endorsement, not subject to contribution, and shall provide for at least thirty (30) days' notice of cancellation, termination, modification, refusal to renew or reduction to Mortgagee. If the insurance, or any part thereof, shall expire, or be withdrawn, or become void or unsafe by Mortgagor's breach of any condition thereof, or become void or unsafe by reason of the failure or impairment of the capital of any company in which the insurance may then be carried, or if for any reason in the reasonable

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opinion of Mortgagee the insurance shall be unsatisfactory to Mortgagee, Mortgagor shall place new insurance on the Mortgaged Property satisfactory to Mortgagee.

If all or any portion of the Improvements, or any portion of the Real Estate shall be located within a federally designated flood hazard zone, Mortgagor shall obtain flood insurance in an amount equal to the lesser of the full insurable value of the Mortgaged Property or the maximum amount of flood insurance available.

In the event of foreclosure of the lien of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of Borrower's Liabilities all right, title and interest of Mortgagor in and to all policies of casualty insurance covering all or any part of the Mortgaged Property shall inure to the benefit of and pass to the successors in interest to Mortgagee or the purchaser or grantee of the Mortgaged Property or any part thereof.

As used herein, "*full insurable value*" means the actual replacement cost of the Mortgaged Property (without taking into account any depreciation), determined annually by an insurer or by Mortgagor or, at the request of Mortgagee, by an independent insurance broker (subject to Mortgagee's reasonable approval) including an endorsement covering acts of municipal authorities including increased cost of construction and demolition.

6.2 Mortgagor shall deliver to Mortgagee the original (or certified) copy of each policy of insurance, or certificate of insurance (ACORD 27) issued by the insurer or a general agent of the insurer under a general power of attorney, and evidence of payment of all premiums for each such policy prior to the initial disbursement of Loan proceeds and thereafter at least thirty (30) days prior to the expiration of each such policy. All policies shall be endorsed to provide Mortgagee, to the extent available from the insurer, at least thirty (30) days written notice of any material change, cancellation or non-renewal. Each insurance policy procured by Mortgagor shall contain, if obtainable, (i) a waiver by the insurer of the right of subrogation against Mortgagor, and (ii) a statement that the insurance shall not be invalidated if any insured waives in writing, prior to a loss, all or any right of recovery against any party for loss accruing to the property described in the insurance policy. All renewal policies, with premiums paid, shall be delivered to Mortgagee at least thirty (30) days before expiration of the old policies. If Mortgagor shall fail or refuse to maintain insurance as required by this Paragraph 6, Mortgagee may do so at the cost of Mortgagor, which shall be added to and become a part of Borrower's Liabilities. Each insurance policy procured by Mortgagor shall contain, if obtainable, (i) a waiver by the insurer of the right of subrogation against Mortgagee, and (ii) a statement that the insurance shall not be invalidated if any insured waives in writing, prior to a loss, all or any right of recovery against any party for loss accruing to the property described in the insurance policy.

6.3 Each insurance company concerned is hereby authorized and directed to make payment under such insurance, including return of unearned premiums, directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and Mortgagor appoints Mortgagee, irrevocably, as Mortgagor's attorney-in-fact to endorse any draft therefor. Any such insurance proceeds or payments so received by Mortgagee may, at the option of Mortgagee, be: (i) applied in reduction of Borrower's Liabilities, whether due or not, and in any order selected by Mortgagee; or (ii) held by Mortgagee (without interest) and applied to pay for the cost of repair, rebuilding or restoration of the

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Mortgaged Property. Such proceeds may be commingled with the other monies of Mortgagee and need not be held in a separate account.

A. If Mortgagee elects to make said proceeds available to reimburse Mortgagor for the cost of repair, rebuilding or restoration of the Mortgaged Property, such proceeds shall be made available in the manner and under such conditions as Mortgagee, in its sole discretion, may require. Mortgagor shall on demand deposit with Mortgagee any sums necessary, as determined by Mortgagee in its sole discretion, to make up any deficits between the actual cost of the work and the available insurance proceeds and provide such lien waivers and completion bonds as Mortgagee may require. In any event, the Mortgaged Property shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such loss. Any surplus which may remain after payment of all costs of restoration or repair may at the option of Mortgagee be applied on account of Borrower's Liabilities then most remotely to be paid, whether due or not, without application of any prepayment premium or shall be returned to Mortgagor, the choice of application to be solely at the discretion of Mortgagee.

B. If Mortgagee elects to retain and apply such proceeds to the reduction of Borrower's Liabilities, Mortgagee shall have the right in its sole and absolute discretion to apply any such proceeds, in such order and in such amounts as Mortgagee may elect, against: (i) any amounts payable by Mortgagor hereunder or under the Loan Documents, (ii) or accrued and unpaid interest under the Note, (iii) or the outstanding Principal Sum of the Note.

6.4 No application of insurance proceeds to the payment of Borrower's Liabilities shall postpone any of the current installments of principal or interest becoming due under the Loan Documents until all sums due and payable pursuant to the Loan Documents and all interest and other sums due hereunder and thereunder have been paid in full.

6.5 Such policies of insurance and all renewals thereof are hereby assigned to Mortgagee as additional security for payment of Borrower's Liabilities and Mortgagor hereby agrees that any values available thereunder upon cancellation or termination of any of said policies or renewals, whether in the form of return of premiums or otherwise, shall be payable to Mortgagee as assignee thereof. If Mortgagee becomes the owner of the Mortgaged Property or any part thereof by foreclosure or otherwise, such policies, including all right, title and interest of Mortgagor thereunder, shall become the absolute property of Mortgagee. Mortgagor shall not change the present use of any portion of the Mortgaged Property in any manner or permit any condition to exist on the Mortgaged Property which would permit an insurer to cancel or increase the premium for any insurance policy or invalidate such policy in whole or in part. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under this Paragraph 6 unless Mortgagee is included thereon as a named insured with loss payable to Mortgagee under a non-contributory mortgagee clause satisfactory to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out, specifying the insurer thereunder and full particulars as to the policies evidencing the same.

6.6 If Mortgagor shall fail to make proof of loss as required hereby, Mortgagor shall be in default hereunder, and Mortgagee may, but shall not be obligated to, make such proof of loss on behalf of Mortgagor and, in such event, each insurance company is directed to deal exclusively

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with Mortgagee in connection with the compromise or settlement of the loss, and Mortgagor shall be bound conclusively thereby. Each insurance company is entitled to rely conclusively on a written statement from Mortgagee as to the existence of an Event of Default or a Default hereunder.

7. **Taxes and Other Charges.** Mortgagor shall pay before they are due and payable and before any interest, charge or penalty is due thereon, without any deduction, defalcation or abatement, all taxes, assessments, levies, liabilities, obligations, encumbrances, water and sewer rents and all other charges or claims of every nature and kind which may be imposed, suffered, placed, assessed, levied, or filed at any time against Mortgagor, the Mortgaged Property or any part thereof or against the interest of Mortgagee therein, or with respect to the Loan Documents or Mortgage and/or the ownership of either thereof by Mortgagee, or which by any present or future law may have priority over Borrower's Liabilities either in lien or in distribution out of the proceeds of any judicial sale, without regard to any law heretofore or hereafter to be enacted imposing payment of the whole or of any part upon Mortgagee; and insofar as any such tax, assessment, levy, liability, obligation or encumbrance is of record, the same shall be promptly satisfied and discharged of record and the original official document (such as, for instance, the tax receipt or the satisfaction paper officially endorsed or certified, or such other evidence of payment as Mortgagee shall require) shall be delivered to Mortgagee not later than five (5) days subsequent to the due date thereof. Mortgagor will not apply for or claim any deduction, by reason of this Mortgage, from the taxable value of all or any part of the Mortgaged Property. It is expressly agreed that no credit shall be claimed or allowed on the interest payable on the Note because of any taxes or other charges paid. Provided, however, that if, pursuant to this Mortgage or otherwise, Mortgagor shall have deposited with Mortgagee before the due date thereof sums sufficient to pay any such taxes, assessments, levies, water and sewer rents, charges or claims, and Mortgagor is not otherwise in Default, they shall be paid by Mortgagee; and provided further, that if Mortgagor is not in Default hereunder and in good faith and by appropriate legal action shall contest the validity of any such item, or the amount thereof, and shall have established on its books or by deposit of cash with Mortgagee, as Mortgagee may elect, a reserve for the payment thereof in such amount as Mortgagee may require (including any interest and penalties which may be payable in connection therewith), then Mortgagor shall not be required to pay the item or to produce the required receipts, while the reserve is maintained and so long as the contest operates to prevent collection, and is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Mortgagor. Further, Mortgagor will not apply for or claim any deduction, by reason of this Mortgage, from the taxable value of all or any part of the Mortgaged Property. It is expressly agreed that no credit shall be claimed or allowed on the interest payable on the Note because of any taxes or other charges paid. The provisions of this paragraph shall apply regardless of any changes in the tax law subsequent to the execution of this Mortgage.

8. **Installments for Insurance, Taxes and Other Charges.** Without limiting the effect of Paragraphs 6 and 7 hereof, Mortgagee may require Mortgagor to pay to Mortgagee (or to such other entity as Mortgagee shall designate), monthly with the monthly installments of interest (or the monthly installments of principal and/or interest, when applicable), an amount equal to one-twelfth (1/12) of (a) the annual premiums for the insurance policies referred to hereinabove and (b) annual real estate taxes, and (c) the water and sewer rents, any special assessments, charges or claims and any other item which at any time may be or become a lien upon the Mortgaged Property prior to the lien of this Mortgage all as reasonably estimated by Mortgagee; and on demand from time to time Mortgagor shall pay to Mortgagee any additional sums necessary to pay the premiums and other

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items, all as estimated by Mortgagee. So long as no Default or Event of Default shall exist, Mortgagee shall, at its sole option (upon submission of appropriate bills therefor from Mortgagor), to the extent that sufficient funds shall then be on deposit, pay such amounts when the same become due and payable or shall release sufficient funds to Mortgagor for the payment thereof. The amounts so paid shall be security for the premiums and other items and shall be used in payment thereof if Mortgagor is not otherwise in Default hereunder. No amount so paid shall be deemed to be trust funds but may be commingled with general funds of Mortgagee and no interest shall be payable thereon. If, pursuant to any provision of this Mortgage or the Loan Documents, the whole amount of the unpaid principal debt becomes due and payable, Mortgagee shall have the right, in its sole and absolute discretion, to apply any amount so held, in such order and in such amounts as Mortgagee may elect, against: (a) any amounts payable by Mortgagor hereunder or under the Loan Documents, and/or (b) accrued and unpaid interest under the Note, and/or (c) the outstanding Principal Sum of the Note. At Mortgagee's sole option, Mortgagee from time to time may waive, and after any such waiver may reinstate, the provisions of this Paragraph requiring the monthly payments. Mortgagor will furnish to Mortgagee bills and other requests for payment in sufficient time to enable Mortgagee to pay such taxes, assessments, levies, charges and fees as provided above. Mortgagee, in making any payment hereby authorized relating to such amounts, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

Upon the occurrence of a Default or an Event of Default, Mortgagee may, at its option, apply any monies at the time on deposit pursuant to this Paragraph 8 to cure an Event of Default or to pay any of Borrower's Liabilities in such order and manner as Mortgagee may elect. If such deposits are used to cure such Default or Event of Default or pay any of Borrower's Liabilities, Mortgagor shall immediately, upon demand by Mortgagee, deposit with Mortgagee an amount equal to the amount expended by Mortgagor from the deposits, plus interest thereon at the Default Rate (as defined in the Note). When Borrower's Liabilities have been fully paid, any remaining deposits shall be returned to Mortgagor. Such deposits are hereby pledged as additional security for Borrower's Liabilities and shall not be subject to the direction or control of Mortgagor. Mortgagee shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless Mortgagor, prior to an Event of Default, shall have requested Mortgagee in writing to make application of such funds to the payment of such amounts, accompanied by the official statements or bills for such Taxes. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any official issuing such statements or bills or responsible for the collection thereof.

9. Corporate Existence and Taxes. If Mortgagor or any successor or grantee of Mortgagor is a corporation or other legally separate legal entity, it shall keep in effect its existence and rights under the laws of the state of its organization and its right to own property and transact business in the state in which the Mortgaged Property is situated during the entire time that it has any ownership interest in the Mortgaged Property. Mortgagor shall file returns for such taxes with the proper authorities, bureaus or departments and it shall pay, when due and payable and before interest or penalties are due thereon, all taxes owing by Mortgagor to the United States, to such state of organization and to the state in which the Mortgaged Property is situated and any political subdivision thereof, and shall produce to Mortgagee receipts showing payment of any and all such taxes, charges or assessments prior to the last dates upon which such taxes, charges or assessments

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are payable without interest or penalty charges, and within ten (10) days of receipt thereof all settlements, notices of deficiency or overassessment and any other notices pertaining to Mortgagor's tax liability which may be issued by the United States, such state of incorporation, the state in which the Mortgaged Property is situated and any political subdivision thereof.

10. Documentary and Other Stamps. If at any time the United States, the state in which the Mortgaged Property is located or any political subdivision thereof, or any department or bureau of any of the foregoing, shall require documentary, revenue or other stamps on the Loan Documents secured hereby or this Mortgage, Mortgagor on demand shall pay for them with any interest or penalties payable thereon.

11. Future Taxes. If hereafter any law or ordinance shall be adopted imposing a tax directly or indirectly on Mortgagee with respect to the Mortgaged Property, the value of Mortgagor's equity therein, or Borrower's Liabilities evidenced by the Loan Documents and secured by this Mortgage, Mortgagee, at its election, shall have the right at any time after the tax has been imposed to give Mortgagor written notice declaring that Borrower's Liabilities shall be due on a specified date not less than sixty (60) days thereafter which notice shall specify the nature of the tax which is the basis for acceleration; provided, however, that such election shall be ineffective if, prior to the specified date, Mortgagor lawfully pays the tax (in addition to all other payments required hereunder) and agrees to pay the tax whenever it becomes due and payable thereafter, which agreement shall then constitute a part of this Mortgage.

12. Security Agreement. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the UCC with respect to (a) all sums at any time on deposit for the benefit of Mortgagor or held by Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Mortgaged Property or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the UCC) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "supporting obligations" (as defined in the UCC) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of Borrower's Liabilities. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage or law, but shall be in addition thereto.

12.1 Mortgagor (being the obligor as that term is used in the UCC) is and will until satisfaction in full of Borrower's Liabilities, be the true and lawful owner of the Collateral and has rights in and the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

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12.2 The Collateral is and will be used by Mortgagor solely for business purposes related to the Mortgaged Property.

12.3 The Collateral will be kept at the Real Estate and, except for Obsolete Collateral (defined in Paragraph 22.1A), will not be removed therefrom without the consent of Mortgagee (being the secured party as that term is used in the UCC). The Collateral may be affixed to the Real Estate but will not be affixed to, or used in connection with, any other real estate.

12.4 The only persons having any interest in the Mortgaged Property are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby.

12.5 No Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at Mortgagor's own cost and expense, upon demand, will furnish to Mortgagee such further 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 as Mortgagee may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for Borrower's Liabilities, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of 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 desirable.

12.6 Upon the occurrence of a Default or an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Loan Documents, which are hereby incorporated herein in their entirety and the UCC, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the UCC); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to any right of reinstatement or redemption accruing to Mortgagor in satisfaction of Mortgagor's obligations, as provided in the UCC. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Mortgaged Property. 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 ten (10) days notice (which the parties agree is commercially reasonable notice) of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any

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foreclosure sale of the Mortgaged Property. If Mortgagee so elects, the Mortgaged Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against Borrower's Liabilities in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition, and Mortgagor shall be liable for any deficiency.

12.7 The terms and provisions contained in this Paragraph 12, unless the context otherwise requires, shall have the meanings and be construed as provided in the UCC.

12.8 This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the UCC with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are as set forth in this Mortgage. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Mortgaged Property is located.

12.9 Notwithstanding any release of any or all of the property included in the Mortgaged Property which is deemed "*real property*", any proceedings to foreclose this Mortgage or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interest created hereby and referred to above until the repayment or satisfaction in full of Borrower's Liabilities.

12.10 To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

12.11 Mortgagor agrees that:

A. Where Collateral is in possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;

B. Mortgagor will cooperate with Mortgagee in obtaining control with respect to Collateral consisting of deposit accounts, investment property, letter of credit rights and electronic chattel paper.

12.12 Until Borrower's Liabilities have been paid in full, Mortgagor will not change the state where it is located or change its company name without giving Mortgagee at least thirty (30) days prior written notice in each instance.

12.13 Mortgagor shall not, without Mortgagee's prior written consent thereto:

A. Grant any lien or security interest in or assign any of the Collateral to any Person or permit, grant or suffer lien, claim or encumbrance upon any of the Collateral (whether or not subordinated to the interest of Mortgagee);

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- B. Sell, transfer or dispose of any of the Collateral, except for Obsolete Collateral, as provided in Paragraph 22.1A;
- C. Enter into any transaction not in the ordinary course of business which materially and adversely affects the Collateral or the ability of Mortgagor to repay Borrower's Liabilities;
- D. Other than as specifically permitted in or contemplated by this Mortgage, encumber, pledge, mortgage, sell, lease or otherwise dispose of or transfer, whether by sale, merger, consolidation or otherwise, any of Mortgagor's assets or any interest therein;
- E. Discontinue Mortgagor's business as conducted on the date hereof or engage in any business which would substantially alter the nature of Mortgagor's business or Mortgagor's assets as conducted on the date hereof; or
- F. Incur any Indebtedness except:
 - (1) Unsecured trade debt in the ordinary course of business; or
 - (2) Indebtedness that is unsecured and is to Persons who execute and deliver to Mortgagee in form and substance acceptable to Mortgagee and its counsel subordination agreements subordinating their claims against Mortgagor therefor to the payment of Borrower's Liabilities.

13. Power of Attorney. Mortgagor hereby specifically grants to Mortgagee and its representatives a full and irrevocable power of attorney coupled with an interest during the Term on behalf of Mortgagor to:

13.1 At any time, and from time to time, to file in any jurisdiction any initial financing statements, continuation statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Mortgage;

13.2 To contact any insurer of the Collateral to ascertain the status of the insurance coverage on the Collateral, and, to the extent that Mortgagor has failed to do so as required by Paragraph 6 of this Mortgage, obtain separate insurance coverage as to the Mortgaged Property or any portion thereof as to which insurance has or is about expire.

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13.3 Following the occurrence of a Default or an Event of Default to:

- A.** Inquire into, collect, receive, or compromise, in Mortgagor's own name or that of Mortgagor, any and all amounts due or to become due under each item of Collateral.
- B.** Obtain, adjust, settle and cancel all insurance on the Collateral.
- C.** To endorse, negotiate and deposit for the benefit of Mortgagor, as fully as Mortgagor itself could do, and in the name of Mortgagor, any and all checks, warrants, drafts and other negotiable instruments, naming Mortgagor as payee, which come into the possession of Mortgagor in the exercise of its rights hereunder.
- D.** To notify the U.S. Postal Service to change the address for delivery of mail addressed to Mortgagor to such address as Mortgagor shall select and to designate from time to time; to receive and open all mail addressed to Mortgagor believed by Mortgagor to be related to Mortgagor's Liabilities or other matter related to this Agreement.

13.4 Mortgagor agrees that a photostatic copy of this Mortgage showing Mortgagor's execution hereof shall be sufficient evidence of the power of attorney herein granted and authorizes all third parties to act in reliance thereon.

14. Compliance with Laws and Regulations. Mortgagor shall comply with all laws, ordinances, regulations and orders of all federal, state, municipal and other governmental authorities relating to the Mortgaged Property. Mortgagor will pay all license fees and similar municipal charges for the use of the Mortgaged Property and any other areas now or hereafter comprising part thereof or used in connection therewith and will not, unless so required by a governmental agency having jurisdiction, discontinue use or occupancy of any portion of the Mortgaged Property without the prior written consent of Mortgagee. Mortgagor shall not take or permit any action with respect to the Mortgaged Property which will in any manner impair the security of this Mortgage.

15. Inspection. Mortgagee and any persons authorized by Mortgagee shall have the right at any time, to enter the Mortgaged Property at a reasonable hour to inspect and photograph its condition and state of repair and/or for the purpose of appraising the same.

16. Declaration of No Set-Off. Within one (1) week after being requested to do so by Mortgagee, Mortgagor shall certify to Mortgagee or to any proposed assignee of this Mortgage, in a writing duly acknowledged, the amount of principal, interest and other charges then owing on the obligation secured by this Mortgage and by prior liens, if any, and whether Mortgagor claims any set-offs or defenses against Mortgagor's obligation to pay such amounts, and if so the precise basis for such set-offs or defenses.

17. Financial Statements.

17.1 Mortgagor shall deliver to Mortgagee:

- A.** Within thirty (30) days after filing, but in no event later than August 15 of each year (unless the time for filing thereof shall be extended as allowed by law, and then on or before the

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extended filing date) until satisfaction in full of all of Borrower's Liabilities, federal income tax returns, including all supporting schedules and exhibits, for Mortgagor.

B. Such other data and information (financial and otherwise) as Mortgagee, from time to time, may reasonably request.

18. Required Notices. Mortgagor shall notify Mortgagee promptly of the occurrence of any of the following:

18.1 A fire or other casualty causing material damage to the Mortgaged Property;

18.2 Receipt of notice:

A. Of eminent domain proceedings or condemnation of all or any part of the Mortgaged Property;

B. From any governmental authority relating to the structure, use, maintenance or occupancy of the Mortgaged Property;

C. From any tenant of all or any portion of the Mortgaged Property relating to any provision of the Leases;

D. From the holder or claimant of any lien or security interest in the Mortgaged Property or any part thereof.

18.3 Substantial change in the occupancy of the Mortgaged Property;

18.4 Commencement of any litigation affecting, or which may potentially materially effect, the Mortgaged Property, other than accident claims fully covered by insurance and for which the insurance carrier has acknowledged liability; or

18.5 The occurrence of any Default or Event of Default under any of the Loan Documents.

19. Condemnation.

19.1 In the event of any condemnation or taking of any part of the Mortgaged Property by eminent domain, alteration of the grade of any street, or other injury to or decrease in the value of the Mortgaged Property by any public or quasi-public authority or corporation, all proceeds (that is, the award or agreed compensation for the damages sustained) allocable to Mortgagor are hereby assigned by Mortgagor to Mortgagee to further secure the payment of Borrower's Liabilities. No settlement for damages sustained shall be made by Mortgagor without Mortgagee's prior written approval. Mortgagee is authorized and empowered (but not required) to collect and receive any such condemnation award and all condemnation proceeds which then shall be applied in the order and in the amounts that Mortgagee, in Mortgagee's sole discretion, may elect, to the reduction of Borrower's Liabilities, or toward payment to Mortgagor, on such terms as Mortgagee may specify, to be used for the sole purpose of altering, restoring or rebuilding any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of the taking, alteration of grade or other injury to the Mortgaged Property. Mortgagor shall execute such further assignments

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of any such awards as Mortgagee may require. If Mortgagee elects to apply such proceeds to reduction of Borrower's Liabilities, Mortgagee shall have the right in its sole and absolute discretion to apply any such proceeds, in such order and in such amounts as Mortgagee may elect, against any amounts payable by Mortgagor hereunder or under the Loan Documents.

19.2 If such proceeds are paid to Mortgagor for the purpose of altering, restoring or rebuilding ("*restoration*") any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of the taking, alteration of grade or other injury to the Mortgaged Property, for the purpose of actual construction, such restoration shall be treated as a reconstruction following a casualty loss pursuant to Paragraph 6 and shall be governed by the provisions of such Paragraph.

19.3 If prior to the receipt of the proceeds by Mortgagee the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive the proceeds to the extent of:

- A. Any deficiency found to be due to Mortgagee in connection with the foreclosure sale, with legal interest thereon and
- B. Reasonable attorneys' fees, costs and disbursements incurred by Mortgagee in connection with collection of the proceeds and the proceedings to establish the deficiency.

19.4 If the amount of the initial award of damages for the condemnation is insufficient to pay in full Borrower's Liabilities with interest and other appropriate charges, Mortgagee shall have the right to prosecute to final determination or settlement an appeal or other appropriate proceedings in the name of Mortgagee or Mortgagor, for which Mortgagee is hereby appointed irrevocably as attorney-in-fact for Mortgagor, which appointment, being for security, is irrevocable. In that event, the expenses of the proceedings, including reasonable attorneys' fees, shall be paid first out of the proceeds and only the excess, if any, paid to Mortgagee shall be credited against the amounts due under this Mortgage.

19.5 Nothing herein shall limit the rights otherwise available to Mortgagee, at law or in equity, including the right to intervene as a party to any condemnation proceeding.

19.6 No application of condemnation proceeds to the payment of Borrower's Liabilities shall postpone any of the current installments of principal or interest becoming due under the Loan Documents until the Loan Documents and all interest and other sums due thereunder and hereunder are paid in full.

20. Assignment of Leases.

20.1 Mortgagor hereby assigns to Mortgagee the Leases and all rents and profits of the Mortgaged Property as further security for the payment of Borrower's Liabilities and Mortgagor grants to Mortgagee the right to enter upon the Mortgaged Property for the purposes of collecting the same and to let the Mortgaged Property or any part thereof; provided, however, that Mortgagor, so long as no Default or Event of Default (which has not been cured within the applicable period of grace, if any) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof, and Mortgagor agrees to use such rents and profits in payment of

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principal and interest becoming due on this Mortgage and in payment of taxes, assessments, sewer rents, water rents and charges becoming due as aforesaid, but such privilege of Mortgagor may be revoked by Mortgagee without notice upon the occurrence of a Default or Event of Default which shall not be cured within the applicable period of grace, if any. Mortgagor shall not, without the written consent of Mortgagee, receive or collect rent or other charge for a period of more than one month in advance. Mortgagee shall not be deemed to have accepted the assignment except as a pledge or be obligated as lessor by virtue of this assignment except by a separate and express written agreement of Mortgagee. This assignment and grant is absolute and irrevocable and shall continue in effect until Borrower's Liabilities shall have been paid in full.

20.2 Following the occurrence of a Default or Event of Default (which shall not be cured within the applicable period of grace, if any), Mortgagor hereby authorizes and instructs each and every present and future tenant of any of the Mortgaged Property to pay all rents directly to Mortgagee and to perform all other obligations of that tenant for the direct benefit of Mortgagee, as if Mortgagee were the landlord under the lease with that tenant, immediately upon receipt of a demand by Mortgagee to make such payment or perform such obligations. No tenant shall have any responsibility to ascertain whether such demand is permitted hereunder or whether a Default or Event of Default shall have occurred. Mortgagor hereby waives any right, claim or demand it may now or hereafter have against any such tenant by reason of such payment of rents or performance of obligations to Mortgagee; and any such payment or performance to Mortgagee shall discharge Borrower's Liabilities of the tenant to make such payment or performance to Mortgagee. Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from any and all liability under any lease and for any and all claims and demands which may be asserted against Mortgagee by reason of any alleged obligations to perform any provision of any lease, except as to Mortgagee's own gross negligence or willful misconduct.

20.3 Within ten (10) days after receipt of a demand herefor from Mortgagee, Mortgagor will deliver to Mortgagee a statement under oath setting forth the name(s) of each tenant occupying space in the Mortgaged Property, a brief description of the space occupied, the rental payable and the date of expiration of the respective Lease(s), and the status of the rental payments due thereunder, and whether there exists a default by any party thereto. If requested in Mortgagee's demand, a true copy of each Lease shall be attached to such statement.

20.4 Mortgagor shall promptly (i) perform all of the provisions of the Leases on the part of the landlord thereunder to be performed; (ii) enforce all of the provisions of the Leases on the part of the tenants thereunder to be performed; and (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or Borrower's Liabilities of Mortgagor as landlord or of the tenants thereunder.

20.5 Mortgagor shall not enter into any lease or agreement to lease all or any part of the Mortgaged Property (i) without obtaining Mortgagee's prior written approval of the tenant and form and substance of the lease; provided, however, that Mortgagor may enter into leases for less than all of the Real Estate using an unmodified form of lease previously approved in writing by Mortgagee, and (ii) unless, at Mortgagee's option, landlord's interest in any such lease is assigned to Mortgagee, on such form of assignment as Mortgagee shall specify, as additional collateral security for Borrower's Liabilities; provided, however, that Mortgagor may enter into future leases for the

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Mortgaged Property in the ordinary course of Mortgagor's business using an unmodified form of lease previously approved in writing by Mortgagee.

20.6 To the extent that anything contained in this Paragraph 20 is expressly inconsistent with the terms of the Assignment of Rents, the terms of the Assignment of Rents shall control.

21. No Other Financing or Liens. Without the prior written consent of Mortgagee, which Mortgagee can grant or withhold in its sole and absolute discretion, Mortgagor shall not create or cause or permit to exist any lien on, or security interest in the Mortgaged Property or any part thereof (whether or not such lien or security interest is subordinate to the lien of this Mortgage), including any furniture, fixtures, appliances, machinery, equipment, or other items of personal property which are intended to be or become part of the Mortgaged Property, or securing repayment of monies paid to or for the benefit of Mortgagor or Mortgagee.

22. Restrictions on Transfer.

22.1 Without the prior written consent of Mortgagee, which Mortgagee can grant or withhold in its sole and absolute discretion, Mortgagor shall not effect, suffer or permit any Prohibited Transfer (defined below). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

- A.** The Mortgaged Property or any part thereof or interest therein, excepting only sales or other dispositions of Collateral ("Obsolete Collateral") no longer useful in connection with the operation of the Mortgaged Property, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;
- B.** Any shares of capital stock of a corporate Mortgagor, a corporation which is a general partner or managing member/manager in a partnership or limited liability company Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate Mortgagor or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System which does not result in a change of actual control);
- C.** All or any part of the managing member or manager interest, as the case may be, in a limited liability company mortgagor or a limited liability company which is a general partner of a partnership mortgagor;
- D.** All or any part of the general partner or joint venture interest, as the case may be, of a partnership mortgagor or a partnership which is a manager of a limited liability company mortgagor or the conversion of a partnership mortgagor to a corporation or limited liability company; or
- E.** If there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable,

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which directly or indirectly controls the day to day operations and management of Mortgagor and/or owns a controlling interest in Mortgagor; in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise.

Provided, however, that the foregoing provisions of this Paragraph 22 shall not apply (i) to liens securing Borrower's Liabilities, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Mortgaged Property, 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, 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 or personal representatives, or (iv) to leases permitted by the terms of the Loan Documents, if any.

22.2 In determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Mortgagor and its members, or principals in owning and operating property such as the Mortgaged Property, found such background and experience acceptable and relied and continues to rely upon the same as the means of maintaining the value of the Mortgaged Property which is Mortgagee's security for payment of Borrower's Liabilities. Mortgagor and its members, or principals are well experienced in borrowing money and owning and operating property such as the Mortgaged Property. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary junior financing placed upon the Mortgaged Property (a) may divert funds which would otherwise be used to pay Borrower's Liabilities; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Mortgaged Property should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Mortgaged Property. In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment of Borrower's Liabilities and of value of the Mortgaged Property; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and collect assumption fees; and (iv) keeping the Mortgaged Property free of subordinate financing liens, Mortgagor agrees that should this Paragraph 22 be deemed a restraint on alienation, that it is a reasonable one.

23. Right to Remedy Defaults. If Mortgagor should fail to pay corporate taxes, real estate or other taxes, assessments, water and sewer rents, charges and claims on or before the date on which any penalty may be imposed with respect thereto, or fail to pay insurance premiums, or fail to make necessary repairs, or permit waste, or fail to comply with any other provision of this Mortgage or the Loan Documents, Mortgagee, at its election and without notice to Mortgagor, shall have the right to make any payment or expenditure and to take any action which Mortgagor should have made or taken, or which Mortgagee deems reasonably necessary to protect the security of this Mortgage or the Mortgaged Property, without prejudice to any of Mortgagee's rights or remedies available hereunder or otherwise, at law or in equity. All such sums, as well as costs, advanced by Mortgagee pursuant to this Mortgage shall be due immediately from Mortgagor to Mortgagee, shall

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be secured hereby, and shall bear interest at the Default Rate from the date of payment by Mortgagee until the date of repayment. Notwithstanding the foregoing, Mortgagee shall not exercise its right to pay overdue corporate taxes, real estate or other taxes, assessments, water and sewer rents, charges and claims, provided that Mortgagor has a good faith dispute regarding the same and is diligently disputing any such corporate tax, real estate or other tax, assessment, water and sewer rent, charge or claim. However, Mortgagee may require Mortgagor to post a bond or other security in an amount sufficient to satisfy such disputed taxes, assessments, rents, charges or claims.

24. Notices to Mortgagee. Mortgagor agrees that any notice given by Mortgagor to Mortgagee shall be given by registered or certified mail, return receipt requested, to the address for Mortgagee set forth herein and only to that address, and such notice shall be deemed to have been received no earlier than the date actually and physically received at the address for Mortgagor set forth herein.

25. Actions of Mortgagee. Without affecting the lien and/or priority of this Mortgage upon the Mortgaged Property or any part thereof or affecting the liability of Mortgagor or any other person liable for payment of all or any part of Borrower's Liabilities secured by this Mortgage or for performance of any obligation contained herein Mortgagee may, at any time and from time to time without notice to or the consent of any other person or entity (except for Mortgagor in the case of a modification of the terms of the Loan Documents or this Mortgage), extend the time of payment of Borrower's Liabilities, agree to modify the terms of the Loan Documents or this Mortgage, release any person liable for payment of any indebtedness secured hereby or for performance of any obligation, release all or any part of the security held for Borrower's Liabilities or exercise or refrain from exercising or waive any right Mortgagee may have.

26. Additional Advances; Future Indebtedness. Without limiting any other provisions of this Mortgage, Mortgagee may make future advances, up to a total amount (which shall include the Loan Amount) of One Million Three Hundred Thousand and 00/100 Dollars (\$1,300,000.00) and this Mortgage shall secure repayment of such advances and the interest thereon, for the payment of taxes, assessments, maintenance charges, insurance premiums, or costs similar or dissimilar incurred for the protection of the Mortgaged Property or for the lien of this Mortgage, expenses incurred by Mortgagee by reason of Default by Mortgagor, or advances made under a construction loan to enable the completion of the improvements for which the construction loan was originally made. This Mortgage shall further constitute security for any and all present and future loans and advances that may be made by Mortgagee to Mortgagor or to Mortgagor under the Note at any time or times hereafter whether or not any reference is made to this Mortgage at the time that such loans or advances are made. Notwithstanding the preceding language, Mortgagor acknowledges that Mortgagee has no obligation to make any such additional advances other than as specifically set forth in the Loan Documents.

27. Notice to Prior Lienholders. Mortgagor hereby authorizes Mortgagee, without liability and at Mortgagee's sole discretion, to give notice in form and substance satisfactory to Mortgagee of the lien and security interest created by this Mortgage to a holder of a previously recorded mortgage which is a lien on the Mortgaged Property in order, among other things, to subordinate further advances by such mortgage holder.

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- 28.** Events of Default. Each of the following shall constitute an event of default (hereinafter called "Event of Default" or "Default") hereunder:
- 28.1** The failure of Mortgagor to pay any sum secured by this Mortgage.
- 28.2** Mortgagor's noncompliance or nonperformance of any other term, covenant or condition contained in this Mortgage.
- 28.3** The occurrence of a Default or an Event of Default not involving the payment of money under any of the Loan Documents which is not cured within the applicable cure or grace period, if any, as therein provided.
- 28.4** Material breach by Mortgagor of any warranty or material untruth of any representation contained in this Mortgage or the Loan Documents.
- 28.5** Material breach by Mortgagor of any landlord's covenant under any of the Leases.
- 28.6** If Mortgagor shall be in default under any mortgage or other lien against all or any portion of the Mortgaged Property or any document executed or delivered in connection therewith.
- 28.7** If Mortgagor shall cause or permit any Prohibited Transfer (other than by execution on the Loan Documents or foreclosure under this Mortgage), except as otherwise permitted in Paragraph 22 hereof.
- 28.8** If any inferior lien encumbers the Mortgaged Property or any part thereof without the express written consent of Mortgagee which can be granted or withheld in Mortgagee's sole discretion.
- 28.9** If any of the following occurs with respect to Mortgagor, any guarantor or surety of Mortgagor's obligations, or any general partner or member of Mortgagor or of any such guarantor or surety: (i) insolvency, assignment for the benefit of creditors, the entry of an order for relief under The Bankruptcy Code of 1978, as amended, 11 U.S.C. §101 et seq (the "Bankruptcy Code"), or the filing of a bill in equity or the initiation of other proceedings for the appointment of a receiver of assets; (ii) the voluntary filing of a petition or initiation of other proceedings in any court for a composition with creditors for relief in any manner from the payment of debts when due under any state or federal law; or (iii) the institution of any proceedings in bankruptcy or for the appointment of a receiver, liquidator, trustee or other such officer under any state or federal law by any creditor which is not dismissed within sixty (60) days.
- 28.10** Should any federal or state tax lien or any claim or lien for labor or materials be filed of record against Mortgagor or the Mortgaged Property or any part thereof; provided, however, that Mortgagor may contest such filing as provided in Paragraph 43.
- 28.11** The entry of final judgment against Mortgagor greater than one percent (1%) of the then outstanding amount of Borrower's Liabilities, if such judgment is not satisfied, set aside or superseded by bond or appeal within fifteen (15) days after entry.

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28.12 The receipt by Mortgagee of written notice from Mortgagor, any guarantor or surety of Mortgagor's obligations or any other party, purportedly sent to terminate, limit or restrict future advances.

29. Remedies.

29.1 Upon the happening of any Default or Event of Default, following the expiration of all applicable periods of grace, if any, Borrower's Liabilities, including, without limitation, the entire unpaid balance of the Principal Sum under the Note and all accrued interest and all other sums secured by this Mortgage shall, at the election of Mortgagee, become immediately due and payable, without notice or demand.

29.2 When Borrower's Liabilities shall become due and payable because of maturity or because of the occurrence of any Default or Event of Default, or otherwise, then forthwith:

A. Mortgagee may institute an action of mortgage foreclosure against the Mortgaged Property, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the mortgage security or any other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the principal debt, with interest at the rate stipulated in the Loan Documents to the date of Default, and thereafter at the Default Rate, together with all other sums due by Mortgagor in accordance with the provisions of the Loan Documents and this Mortgage, including all sums which may have been loaned or advanced by Mortgagee to, or on behalf of, Mortgagor after the date of this Mortgage, and all sums which may have been advanced by Mortgagee for taxes, water or sewer rents, charges or claims, payments on prior liens, insurance or repairs to the Mortgaged Property, all costs of suit, reasonable attorneys' fees and other expenses in connection therewith, together with interest at such rate on any judgment obtained by Mortgagee from and after the date of any Sheriff's sale until actual payment is made by the Sheriff of the full amount due Mortgagee; or

B. To the extent allowed by law, in the event of the occurrence of a Default or an Event of Default and after the expiration of all applicable periods of grace, if any, irrespective of whether the right to foreclose this Mortgage has accrued to Mortgagee and in addition to all other remedies of Mortgagee provided by law or this Mortgage, whether payment of Borrower's Liabilities has then been accelerated or whether foreclosure proceedings have been commenced, Mortgagee may, without notice to or demand upon Mortgagor, take possession of the Mortgaged Property in a manner which is consistent with the laws of the State in which the Mortgaged Property is located. While in possession of the Mortgaged Property, Mortgagee shall have all powers granted to a mortgagee in possession by the statutes of such State, including, without limitation, the power to:

(1) Collect rents (which Mortgagor hereby assigns to Mortgagee for such purpose) and manage, lease, alter and repair and restore the Mortgaged Property or portions thereof, cancel or modify existing leases, obtain insurance and in general have and exercise all powers and rights customarily incident to absolute ownership; and

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(2) Pay out of any rents so collected for the management and repair charges, taxes, insurance commissions, fees and all other expenses, including a reasonable management fee to Mortgagee or an agent or affiliate of Mortgagee and reasonable attorneys' fees, and, after creating reasonable reserves, apply the balance (if any) on account of Borrower's Liabilities.

C. Mortgagee may remain in possession of the Mortgaged Property, in the event of foreclosure, until the foreclosure sale and thereafter during the entire period of redemption, if a deficiency exists. Mortgagee shall incur no liability for, nor shall Mortgagor assert any claim or setoff as a result of, any action taken while Mortgagee is in possession of the Mortgaged Property, except only for Mortgagee's own gross negligence. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession as long as there exists a Default or an Event of Default; or

D. Mortgagee may, upon any proper action or proceeding being commenced for the foreclosure of this Mortgage, apply for, and Mortgagee as a matter of right, without consideration of the value of the Mortgaged Property as security for the amount due Mortgagee, or of the solvency of any person, firm or corporation obligated for the payment of such amount, shall be entitled to, the appointment by any competent court or tribunal, without prior demand or notice to any party and without the necessity of posting a bond, of a receiver of rents and profits and rental value of the Mortgaged Property, with power to take possession of the Mortgaged Property, including possession from Mortgagor if in possession and occupying any portion of the Mortgaged Property, and in the latter case to require Mortgagor, as a condition of remaining in possession and occupation, to pay the reasonable rental value for the use and occupation thereof, with further power to lease and repair the Mortgaged Property and to renovate same to suit new tenants and with such other powers as may be deemed necessary, and such receiver after deducting all proper charges and expenses attending the execution of the said trust as receiver, shall each month pay over to Mortgagee the residue of the said rents and profits and rental value, to be applied by Mortgagee to the payment of the amount remaining secured hereby, or to any deficiency (whether or not any judgment therefor may be entered and irrespective of the market value of the Mortgaged Property) which may exist in the event of foreclosure by sale after applying the proceeds of the sale of the Mortgaged Property to the payment of the amount due, including interest, costs and expenses of such foreclosure and sale, or in the event of strict foreclosure to the payment of any deficiency existing thereunder. Mortgagor hereby consents to such appointment of a receiver. A receiver, while in possession of the Mortgaged Property, shall have the right to make repairs and to make improvements necessary or advisable in its or his opinion to preserve the Mortgaged Property, or to make and keep it rentable to the best advantage, and Mortgagee may advance moneys to a receiver for such purposes. Any moneys so expended or advanced by Mortgagee or by a receiver (together with interest at the Default Rate) shall be repaid so far as possible out of the rents collected after payment of other expenses properly chargeable against said rents, and any unpaid balance of moneys so advanced or expended shall be added to and become a part of the debt secured by this Mortgage.

E. Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not Borrower's Liabilities shall be due, and without

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prejudice to any remedy of Mortgagee provided by law or the Loan Documents, including, without limitation, the right of Mortgagee thereafter to bring an action of Mortgage Foreclosure, or any other action, for any Default by Mortgagor existing at the time the earlier action was commenced.

F. Any real estate sold pursuant to any writ or order of execution issued on a judgment obtained by virtue of the Loan Documents or this Mortgage, or pursuant to any other judicial proceedings under this Mortgage, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect.

30. Due on Sale-Consent by Mortgagee. To the extent not prohibited by State or federal law, Mortgagee may, at its option, declare immediately due and payable all sums secured by this Mortgage upon the occurrence of a Prohibited Transfer of the Real Estate or any portion thereof, or interest therein.

31. Cumulative Rights. The rights and remedies of Mortgagee as provided in this Mortgage and the Loan Documents shall be cumulative and concurrent; may be pursued separately, successively or together against Mortgagor or against the Mortgaged Property, or both, at the sole discretion of Mortgagee; and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

32. No Waiver Implied. Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of this Mortgage or the Loan Documents shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage or the Loan Documents, and Mortgagee shall have the right thereafter to insist upon strict performance by Mortgagor of any and all of them. Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for Borrower's Liabilities secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of this Mortgage or the Loan Documents without first having obtained the consent of Mortgagor or such other person; and in the latter event Mortgagor and all such other persons shall continue to be liable to make payments according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

33. Waiver of Jury Trial. In consideration of the agreement of Mortgagee to make the Loan, and in the interest of obtaining a speedier and less costly hearing of any dispute, Mortgagor irrevocably waives jury trial and the right thereto in any and all disputes involving Mortgagor or Mortgagor's parent, affiliates or related entities or any officer, director, shareholder, member, attorney, partner, or principal of any of them, whether hereunder or under any other agreements, notes, papers, instruments or documents heretofore or hereafter executed or any other contract whether similar or dissimilar. The foregoing shall be deemed a covenant enforceable independently of all other provisions of this Mortgage.

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34. Additional Waivers. In consideration of the agreement of Mortgagee to make the Loan, Mortgagor hereby waives:

34.1 All errors, defects and imperfections in any proceeding instituted by Mortgagee under the Loan Documents or this Mortgage, or both;

34.2 All benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for payment, and hereby waives the benefit of and will agree that it not apply for or avail itself such laws.

34.3 Unless specifically required herein, all notices of Mortgagor's Default or of Mortgagee's election to exercise, or Mortgagee's actual exercise of any option under the Loan Documents or this Mortgage.

34.4 All benefit or advantage of any such law or laws to the extent that it lawfully may, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

35. Waiver of Statutory Rights; Time of the Essence. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, redemption, stay, extension, or exception laws, or any so-called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and hereby waives the benefit of such laws. Mortgagor, for Mortgagor and all who may claim through or under Mortgagor, waives any and all right to have the collateral for this Mortgage marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Mortgagor hereby waives any and all rights of reinstatement and/or redemption from sale under any order or decree of foreclosure of this Mortgage pursuant to rights herein granted, on behalf of Mortgagor, and each and every person acquiring any interest in or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of applicable statutes. Time is of the essence of this Mortgage.

36. Compliance with Illinois Mortgage Foreclosure Law.

36.1 If any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (the "Act"), provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

36.2 If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee in possession) or a receiver appointed pursuant to the provisions of Paragraph 29.2D of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of a Default or an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said

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provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

36.3 Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to Borrower's Liabilities and/or by the judgment of foreclosure.

37. Environmental Representations and Covenants.

37.1 For purposes of this Paragraph, the following terms shall have the following meanings:

A. "Hazardous Substances" if means those elements and compounds which are designated as such in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601(14) or 40 C.F.R. § 302, any substance containing petroleum as that term is used in Section 9001 of the Resource Conservative and Recovery Act, 42 U.S.C. § 6991, 40 C.F.R. § 280.1, or any "Pollutant" or "Contaminant" as defined in Section 104(a)(2) of CERCLA, and any other hazardous substances as that term may be further defined in applicable state or local laws; and "Wastes" means any hazardous waste, residual waste, solid waste or other waste as those terms are defined in applicable federal, state or local laws.

B. "Mold" means surficial or airborne microbial constituents, regardless of genus, species, or whether commonly referred to as mildew, mold, mold spores, fungi, bacteria or similar description.

C. "Mold Condition" means the growth or existence of Mold, in such condition, location or quantity as would, individually, or in the aggregate, in the reasonable judgment of Mortgagee have any material adverse effect on (i) human health or the environment, (ii) the value or condition of the Property, or (iii) the business or financial condition of Mortgagor.

37.2 Mortgagor represents and warrants that to the best of its knowledge:

A. Except as set forth in the Phase I Environmental Study heretofore delivered by Mortgagor to Mortgagee and approved by Mortgagee, no Hazardous Substances and no Wastes are present on the Mortgaged Property including, without limitation, asbestos or area-formaldehyde, and there has been no use of the Mortgaged Property that may, under any federal, state, or local environmental statute, ordinance or regulation, require, at any time, any closure or cessation of the use of the Mortgaged Property and/or impose, at any time, upon Mortgagor or its successors any response costs or other monetary obligations.

B. If there is no Mold Condition existing along the Mortgaged Property.

37.3 Mortgagor further represents and warrants that to the best of its knowledge, it has not been identified in any litigation, administrative proceeding or investigation as a responsible party or potentially responsible party for any liability for response costs, natural resource damages or other damages or liability for prior disposal or releases of Hazardous Substances, Wastes or other environmental pollutants or contaminants; and that no lien or superlien has been recorded, filed or otherwise asserted against any real or personal property of Mortgagor for any cleanup costs or other

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response costs incurred in connection with any environmental contamination that is attributable, in whole or in part, to Mortgagor.

37.4 Mortgagor covenants to and agrees with Mortgagee that without the prior written consent of Mortgagee which Mortgagee can grant or withhold in its sole and absolute discretion (i) Mortgagor will not, nor will it permit any tenant or other occupant of the Mortgaged Property to, store, use or generate any Hazardous Substance in or on the Mortgaged Property, except as may be permitted by applicable law; and (ii) Mortgagor will not, nor will it permit any tenant or other occupant of the Mortgaged Property to, treat or dispose of any Wastes in or on the Mortgaged Property, nor will Mortgagor, for more than the maximum period of time allowed by the applicable federal, state or local law without being required to obtain a permit or approval therefor, store any Wastes in or on the Mortgaged Property. Mortgagee may require written confirmation in the form acceptable to Mortgagee and its counsel that: (aa) Mortgagor has obtained all necessary permits and approvals to perform such activities; (bb) Mortgagor will perform such activities in compliance with all applicable laws in a safe and effective manner that will not endanger persons or property and will not diminish the value of any collateral or other security provided by Mortgagor to Mortgagee to secure any and all advances hereunder; (cc) if Mortgagee so requires, Mortgagor will obtain adequate insurance or posted adequate surety to insure that Mortgagor will have sufficient resources to contain, control, abate and remedy any and all contamination of collateral and the environment that might foreseeably result, in the case of any Hazardous Substances, from any release of any such Substances or materials containing any such Substances that would be generated, stored or used by Mortgagor in or about the Mortgaged Property; or, in the case of any Wastes, from any release of contamination from any such Wastes that would be treated, disposed of or stored by Mortgagor in or on the Mortgaged Property.

37.5 Mortgagor shall indemnify and hold Mortgagee harmless from any and all liability, loss or damage suffered or incurred as a result of a claim, demand, cost or judgment in favor of a third party (which obligations shall survive payment of the Loan Documents and satisfaction of this Mortgage), including without limitation a governmental authority, arising from:

- A. The deposit, storage, disposal, burial, dumping, injecting, spilling, leaking or other placement or release in or on the Mortgaged Property of Hazardous Substances or Wastes proven to have occurred subsequent to the date hereof, including but not limited to:
 - (1) Liability for costs of removal or remedial action incurred by the United States Government or the State in which the Mortgaged Property is located, or response costs incurred by any other person, or damages from injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction or loss, incurred pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9607;
 - (2) Liability for cost and expenses of abatement, correction or cleanup, fines, damages, response costs or penalties which arise from the provisions of any other statute, state or federal; and
 - (3) Liability for personal injury or property damage caused by any such deposit, storage, disposal, burial, dumping, injecting, spilling, leaking, placement or release and arising

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under any statutory or common-law tort theory, including damages assessed for the maintenance of the public or private nuisance, response costs or for the carrying on of an abnormally dangerous activity.

B. The existence now, or hereafter, of any Mold Condition on the Mortgaged Property.

38. Further Assurances. Mortgagor will execute and deliver such further instruments and perform such further acts as may be requested by Mortgagee from time to time to confirm the provisions of this Mortgage or the Loan Documents, to carry out more effectively the purposes of this Mortgage or the Loan Documents, or to confirm the priority of the lien created by this Mortgage on any property, rights or interest encumbered or intended to be encumbered by the lien of this Mortgage or the Loan Documents.

39. Administrative Fee. If any of the payments of principal and interest or other sums due under the Loan Documents or this Mortgage shall become overdue for a period of ten (10) days, Mortgagor shall pay to Mortgagee an "administrative charge" equal to five percent (5%) of the outstanding amount of principal or interest or other charges overdue, in order to defray part of the cost of collection and handling of such charge. Mortgagor agrees that the additional administrative costs which will be incurred by Mortgagee as result of and in connection with any late payment are extremely difficult and impractical to ascertain, and that the amount of five percent (5%) of the amount overdue is a reasonable estimate of such additional administrative costs, does not constitute interest, and is not a penalty.

40. Indemnification. Mortgagor hereby irrevocably agrees to indemnify and save harmless Mortgagee from and against any and all loss or damage of whatsoever kind and from any suits, claims or demands, including, without limitation, Mortgagee's reasonable attorneys' fees and expenses, on account of any matter or thing arising out of this Mortgage or in connection herewith excepting obligations which arise solely as a result of Mortgagee's gross negligence or willful misconduct.

41. Attorneys' Fees. If Mortgagee becomes a party to any suit or proceeding affecting the Mortgaged Property or title thereto, the lien created by this Mortgage or Mortgagee's interest therein, or if Mortgagee engages counsel to advise Mortgagee concerning any matter relating to this Mortgage or the Loan Documents or to collect any of Borrower's Liabilities or to enforce performance of the agreements, conditions, covenants, provisions or stipulations of this Mortgage or the Loan Documents, Mortgagee's costs, expenses, reasonable attorneys' fees through appeal, including, but not limited to, all costs relating to support staff, environmental testing, and expert witnesses, whether or not suit is instituted, shall be paid to Mortgagee by Mortgagor, on demand, with interest at the then effective rate set forth in the Note, and until paid they shall be deemed to be part of Borrower's Liabilities.

42. Communications. All notices, disclosures, or other communications which are required or permitted hereunder shall be in writing and shall be delivered in person, or by facsimile or sent by U.S. registered or certified mail, postage prepaid, to the parties at the addresses set forth above. Notice may be sent by e-mail to the e-mail address of a party if set forth herein. Notice delivered personally shall be deemed received upon delivery. Notice delivered by facsimile shall be deemed received upon delivery, provided that the original copy of such notice, properly executed by the

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sender (if required) shall be sent by U.S. Mail, postage prepaid, and received by the addressee within three (3) business days after delivery of the facsimile copy. Notice delivered by registered or certified mail shall be deemed received on the third (3rd) business day after posting. Notice by e-mail shall be deemed received on the day upon which such notice is sent. Any party may change the address to which notices for such party may be sent by written notice to the other party.

43. Contests. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Mortgaged Property or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Mortgaged Property ("Contested Liens"), and no Contested Liens shall constitute a Default or an Event of Default hereunder, if, but only if:

43.1 Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;

43.2 Mortgagor shall either pay under protest or deposit with Mortgagee the full amount ("Lien Amount") of such Contested Lien, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;

43.3 Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Mortgaged Property, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee, in so doing, including fees and expenses of Mortgagee's attorneys (all of which shall constitute a part of Borrower's Liabilities, bearing interest at the Default Rate until paid, and payable upon demand);

43.4 Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be a part of Borrower's Liabilities, bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply monies deposited as provided in subsection 43.2 above and may demand payment upon any bond or title indemnity furnished as aforesaid.

44. Statement of Indebtedness. Mortgagor, within seven (7) days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of Borrower's Liabilities secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

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- 45. Subordination of Property Manager's Lien.** Any property management agreement for the Mortgaged Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Mortgaged Property shall be subject and subordinate to the lien of this Mortgage and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of a Default or an Event of Default hereunder which shall not be cured within the applicable period of grace, if any. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the Recorder of Deeds of the county where the Mortgaged Property is located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage, and shall deliver a fully executed copy thereof to Mortgagee.
- 46. Effect of Extensions of Time and Other Changes.** If the payment of Borrower's Liabilities or any part thereof shall be extended or varied, if any part of any security for the payment of Borrower's Liabilities shall be released, if the rate of interest charged under the Note is changed or if the time for payment thereof shall be extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property or having an interest in Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation, release or change.
- 47. Covenant Running with the Real Estate.** Any act or agreement to be done or performed by Mortgagor shall be construed as a covenant running with the Real Estate and shall be binding upon Mortgagor and its successors and assigns as if they had personally made such agreement.
- 48. Amendment.** This Mortgage cannot be changed or amended, except by agreement in writing signed by the party against whom enforcement of the change is sought.
- 49. Applicable Law.** This Mortgage shall be governed by and construed according to the laws, without regard to its conflict of law rules, of the State in which the Mortgaged Property is located.
- 50. Construction and Interpretation.** Whenever used in this Mortgage, unless the context clearly indicates a contrary intent:
- 50.1** The word "Mortgagor" shall mean the entity which executes this Mortgage and any subsequent owner of the Mortgaged Property and such subsequent owner's respective heirs, executors, administrators, successors and assigns;
- 50.2** For all purposes of this Mortgage all capitalized terms shall have the meaning ascribed thereto in the Loan Agreement unless defined otherwise herein.

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50.3 All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, and all replacements and substitutions therefor.

50.4 The word "Mortgagee" shall mean the person or entity specifically named herein as "Mortgagee" or any subsequent holder of this Mortgage;

50.5 The word "entity" shall mean individual, corporation, partnership or unincorporated association;

50.6 The words "Knowledge" or "Best Knowledge": shall mean in connection with any warranty or representation that the Person making the warranty or representation has made due and reasonable inquiry as to the truth of such warranty or representation.

50.7 The use of any gender shall include all genders;

50.8 The singular number shall include the plural and the plural the singular as the context may require.

51. Negotiations. Mortgagor expressly represents and warrants to, and agrees with, Mortgagee that:

51.1 Prior to executing this Mortgage, Mortgagor has fully informed itself of the terms, contents, conditions and effects of this Mortgage and the Loan Documents.

51.2 Mortgagor has:

- A.** Relied solely and completely upon its own judgment in executing this Mortgage and the Loan Documents;
- B.** Had the opportunity to seek and has obtained the advice of counsel before executing this Mortgage and the Loan Documents;
- C.** Acted voluntarily and of its own free will in executing this Mortgage and the Loan Documents, and is not acting under duress, whether economic or physical, in executing this Mortgage and the Loan Documents.

51.3 This Mortgage and the Loan Documents are the result of arm's length negotiations conducted by and among the parties and their respective counsel. Mortgagor and Mortgagor's legal counsel have reviewed this Mortgage and the Loan Documents and have had an opportunity to revise (or request revision of) this Mortgage and the Loan Documents and, therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Mortgage and the Loan Documents.

52. Captions. The captions preceding the text of the paragraphs or subparagraphs of this Mortgage are inserted only for convenience of reference and shall not constitute a part of this Mortgage, nor shall they in any way affect its meaning, construction or effect.

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53. Non-Merger. Mortgagor intends and agrees that this Mortgage shall NOT merge into any judgment entered or recovered by Mortgagee against Mortgagor under the Loan Documents or under or pursuant to any other note, document or instrument. Notwithstanding the recovery or entry of any such judgment against Mortgagor, all of the terms, provisions, covenants, undertakings and agreement of Mortgagor whether hereunder or under the Loan Documents or any other note, document or undertaking of Mortgagor, whether relating thereto or not, shall remain in full force and effect and shall be enforceable strictly in accordance with their terms as fully as though no such judgment had been entered or recovered against Mortgagor.

54. Inconsistent Terms. In the event of any inconsistency between this Mortgage and the Loan Documents, the terms of the Loan Documents shall govern.

55. Counterparts. This Mortgage may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

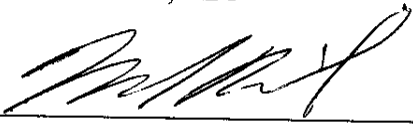
56. Incorporation of Recitals; Terms. The Recitals to this Mortgage are incorporated herein. Capitalized terms not otherwise defined herein shall have the meaning accorded to them in the Loan Documents.

57. Construction Mortgage. This Mortgage secures a construction loan which contemplates future advances by Mortgagee to Mortgagor to fund the construction of certain improvements on the Real Estate described in the Loan Documents, but only to the extent that and for so long as Mortgagor complies with the provisions of the Loan Documents. All such future advances shall be secured by the lien of this Mortgage as if such advances had been made on the date of execution hereof,

58. Cross Default. Any Default or Event of Default by Mortgagee under any of the Loan Documents shall be considered a Default or an Event of Default under this Mortgage, and any Default or Event of Default under this Mortgage shall be considered a Default or Event of Default under the Loan Documents, and in any such event, Mortgagee shall be entitled to exercise all or some or any of its remedies under the Loan Documents, or as may otherwise be available to Mortgagee at law or in equity, in such order as Mortgagee may elect.

This Agreement has been duly executed as of the day and year specified at the beginning hereof.

MORTGAGOR:
432 N. Elmwood, LLC

by: 
manager

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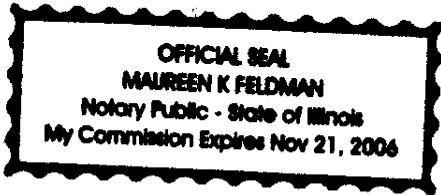
ACKNOWLEDGMENT

STATE OF Illinois)
) SS
 COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Mark Risch of 432 N. Elmwood, LLC, an Illinois limited liability company,, known to me (or proved to me on the basis of satisfactory evidence) to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, after being duly sworn, acknowledged that:

1. The execution and implementation of this Agreement was duly authorized by the Managers of said Company.
2. He signed and delivered this Agreement as his own free and voluntary act for the uses and purposes therein set forth and for the uses and purposes of said Company.

Given under my hand and Notarial Seal this 20 day of July, 2006



Maureen K. Feldman
 NOTARY PUBLIC

My Commission Expires: Nov 21, 2006

UNOFFICIAL COPY

EXHIBIT A Legal Description

The South 51 feet of the North 100 feet of the West Half of Lot 4 (except alley) and the South 51 feet of the North 100 feet of Lots 5, 6 and 7 in Block 7 in the Village of Ridgeland in East Half of Section 7, also the Northwest Quarter and the West Half of the West Half of the Southwest Quarter of Section 8, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Street Address: 432 North Elmwood, Oak Park, Illinois
Property Identification Number: 16-07-205-002-0000

Property of Cook County Clerk's Office