

UNOFFICIAL COPY

PREPARED BY AND AFTER
RECORDING RETURN TO:

LaSalle Bank National Association
4747 W. Irving Park Road
Chicago, Illinois 60641
Attn: Meg Compton



PERMANENT TAX INDEX NUMBER:

14-29-309-039

Doc#: 0628440093 Fee: \$84.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/11/2006 12:09 PM Pg: 1 of 31

PROPERTY ADDRESS:

2616 N. Magnolia
Chicago, Illinois 60614

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

THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING dated as of June 19, 2006 (the "Mortgage"), is executed by 4721 MALDEN DEVELOPMENT, LLC, an Illinois limited liability company, whose address is 4721 N. Malden, Chicago, Illinois 60640 (the "Mortgagor"), to and for the benefit of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns (the "Mortgagee").

FIRST AMERICAN TITLE

RECITALS: ORDER #

1508860

WHEREAS, The Mortgagor is justly indebted to the Mortgagee in the principal sum of One Million Eight Hundred Fifty Thousand Dollars (\$1,850,000), evidenced by that certain Construction Mortgage Note of even date herewith, made payable to the order of and delivered to Mortgagee, (such note and any and all notes issued in renewal thereof or in substitution or replacement therefor are hereinafter referred to as the "Note") in connection with a construction loan facility extended to the Mortgagor (the "Loan"). Each installment shall be paid at such place as the holder of the Note may, from time to time, in writing appoint, and in the absence of such appointment, then at the office of Mortgagee set forth above.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor agrees as follows:

AGREEMENTS:

The Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to the Mortgagee, its successors and assigns, and grants a security interest in, the following described

31

UNOFFICIAL COPY

property, rights and interests (referred to collectively herein as the "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

(a) The real estate located in the State of Illinois and legally described on Exhibit A attached hereto and made a part hereof (the "Real Estate");

(b) 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 the Mortgagor and located 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 the 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 the Mortgagor or on its behalf (the "Improvements");

(c) 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 the Mortgagor of, in and to the same;

(d) All rents, revenues, issues, profits, proceeds, income, royalties, accounts, accounts receivable, escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by the Mortgagor thereon, to be applied against the Indebtedness (as hereinafter defined); provided, however, that the Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

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

(f) All fixtures and articles of personal property now or hereafter owned by the 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, 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

UNOFFICIAL COPY

manner; it being mutually agreed that all of the aforesaid property owned by the 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 the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code of the State of Illinois (the "Code") in effect from time to time), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in the Mortgagee, as a Secured Party, and the Mortgagor, as Debtor, all in accordance with the Code;

(g) All of the Mortgagor's interests in "General Intangibles" (as defined in the Code) now owned or hereafter acquired and related to the Premises, including, without limitation, all of the Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which the Mortgagor is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to the Mortgagor thereunder; (iii) all intellectual property related to the Premises; and (iv) all choses in action and causes of action relating to the Premises;

(h) All of the Mortgagor's "Accounts" (as defined in the Code) now owned or hereafter created or acquired as relate to the Premises, including, without limitation, all of the following now owned or hereafter created or acquired by the Mortgagor: (i) accounts receivable, contract rights, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the 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 the Mortgagor); (v) uncertificated securities, (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 (vii) all warranties, guarantees, permits and licenses in favor of the Mortgagor with respect to the Premises; and

(i) 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 Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

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

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, prepayment premium, reimbursement obligations, and other indebtedness evidenced by or owing under the Note, the Construction Loan Agreement of even date herewith between Mortgagor

UNOFFICIAL COPY

and Mortgagee, as amended from time to time (the "Loan Agreement"), any interest rate swap or hedge agreement now or hereafter entered into between the Mortgagor and the Mortgagee and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing, and any other documents now or hereafter executed in connection therewith (the "Loan Documents"); (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Mortgagor or any other obligor to or benefiting the Mortgagee which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement to the Mortgagee of any and all sums incurred, expended or advanced by the Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, any of the other Loan Documents, any interest rate swap or hedge agreement or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, the "Indebtedness").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title. The Mortgagor represents, warrants and covenants that (a) the Mortgagor is acquiring title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of the Mortgagee and as otherwise described on Exhibit B attached hereto and made a part hereof (the "Permitted Exceptions"); and (b) the Mortgagor has legal power and authority to mortgage and convey the Premises.
2. Maintenance, Repair, Restoration, Prior Liens, Parking. The Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, the Mortgagor will:
 - (a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose;
 - (b) keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien;
 - (c) pay when due the Indebtedness in accordance with the terms of the Mortgage Note and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by the Mortgagor under the Mortgage Note, this Mortgage and the other Loan Documents;
 - (d) pay when due any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;
 - (e) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;

UNOFFICIAL COPY

- (f) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
- (g) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage;
- (h) make no material alterations in the Premises or demolish any portion of the Premises without the Mortgagee's prior written consent, except in accordance with the Loan Agreement or as required by law or municipal ordinance;
- (i) suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Mortgagee's prior written consent;
- (j) pay when due all operating costs of the Premises;
- (k) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Mortgagee's prior written consent;
- (l) provide and thereafter maintain adequate parking areas within the Premises as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; and
- (m) cause the Premises at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations, including, without limitation, Mortgagor shall (i) ensure, and cause each of its subsidiaries to ensure, that no person who owns twenty percent (20%) or more of the equity interests in the Mortgagor, or otherwise controls the Mortgagor or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (ii) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (iii) comply, and cause each of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

3. Payment of Taxes and Assessments. The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to the Mortgagor's right to contest the same, as provided by the terms hereof; and the Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor within ten (10) days after Mortgagee's request.

UNOFFICIAL COPY

4. Tax Deposits. Upon the request of Mortgagee at any time, Mortgagor shall deposit with the Mortgagee, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of the most recent ascertainable annual Taxes on the Premises. If requested by the Mortgagee, the Mortgagor shall also deposit with the Mortgagee an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as estimated by the Mortgagee. Such deposits are to be held without interest and are to be used for the payment of Taxes next due and payable when they become due. If the funds so deposited are insufficient to pay any such Taxes for any year (or installments thereof, as applicable) when the same shall become due and payable, the Mortgagor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of the Mortgagee. The Mortgagee, in making any payment hereby authorized relating to Taxes, 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 thereon.

5. Mortgagee's Interest In and Use of Deposits. Upon an Event of Default, the Mortgagee may, at its option, apply any monies at the time on deposit pursuant to Section 4 hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as the Mortgagee may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, the Mortgagor shall immediately, upon demand by the Mortgagee, deposit with the Mortgagee an amount equal to the amount expended by the Mortgagor from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to the Mortgagor. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of the Mortgagor. The Mortgagee shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless the Mortgagor, prior to an Event of Default, shall have requested the Mortgagee in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. The Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

6. Insurance. The Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by the Mortgagee, in accordance with the terms, coverages and provisions described on Exhibit C attached hereto and made a part hereof, and such other insurance as the Mortgagee may from time to time reasonably require. Unless the Mortgagor provides the Mortgagee evidence of the insurance coverages required hereunder, the Mortgagee may purchase insurance at the Mortgagor's expense to cover the Mortgagee's interest in the Premises. The insurance may, but need not, protect the Mortgagor's interest. The coverages that the Mortgagee purchases may not pay any claim that the Mortgagor makes or any claim that is made against the Mortgagor in connection with the Premises. The Mortgagor may later cancel any insurance purchased by the Mortgagee, but only after providing the Mortgagee with evidence that the Mortgagor has obtained insurance as required by this Mortgage. If the Mortgagee purchases insurance for the Premises, the Mortgagor will be responsible for the costs of such insurance,

UNOFFICIAL COPY

including, without limitation, interest and any other charges which the Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance the Mortgagor may be able to obtain on its own.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance. Upon the request of Mortgagee at any time, Mortgagor shall deposit with Mortgagee beginning on the first payment date following notice from Mortgagee and continuing on the first day of each month thereafter, an amount equal to the premiums that will next become due and payable on such policies divided by the number of months to elapse prior to the date when such premiums become delinquent. No interest shall be payable on such deposits, and such deposits need not be kept in a separate account.

In case of loss or damage by fire or other casualty, Mortgagee is authorized (a) to settle and adjust any claim under insurance policies which insure against such risks, or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized, to collect and issue a receipt for any such insurance money. In accordance with Article VIII of the Loan Agreement, such insurance proceeds shall be applied either to reduce the indebtedness secured hereby or to reimburse Mortgagor for the cost of rebuilding and restoration. Irrespective of whether such insurance proceeds are used to reimburse Mortgagor for the cost of said rebuilding or restoration or not, and irrespective of whether such insurance proceeds are or are not adequate for such purpose, the buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the cost of rebuilding, repairing or restoring the building and improvements can reasonably exceed the sum of \$25,000, then Mortgagee shall approve plans and specifications of such work before such work shall be commenced. In any case, where the insurance proceeds are used for rebuilding and restoration, such proceeds shall be disbursed in the manner and under the conditions that the Mortgagee may require and upon Mortgagee being furnished with satisfactory evidence of the estimated cost of completion thereof and with architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics' lien claims. If the estimated cost of completion exceeds the amount of the insurance proceeds available, Mortgagor immediately shall, on written demand of Mortgagee, deposit with Mortgagee in cash the amount of such estimated excess cost. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. Any surplus which may remain out of said insurance proceeds after payment of such cost of building or restoration shall, at the option of the Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto without interest.

UNOFFICIAL COPY

7. Condemnation. Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. In accordance with Article VIII of the Loan Agreement, such condemnation proceeds shall be applied either to reduce the indebtedness secured hereby or to reimburse Mortgagor for the cost of rebuilding and restoration. Irrespective of whether such proceeds are made available for restoration or rebuilding, and irrespective of whether such proceeds are adequate for such purpose, the buildings and improvements shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by the Mortgagee. In the event said proceeds are used for rebuilding or restoration, the proceeds of the award shall be disbursed in the manner and under the conditions that the Mortgagee may require and paid out in the same manner as provided in Paragraph 6 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. In such event, if the estimated cost to complete rebuilding or restoration exceeds the proceeds of the condemnations awards, Mortgagor immediately shall, on written demand of the Mortgagee, deposit with the Mortgagee in cash the amount of such excess cost. Any surplus which may remain out of said award after payment of such cost of building or restoration shall, at the option of the Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any party entitled thereto without interest.

8. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, the Mortgagor shall pay such tax in the manner required by any such law. The Mortgagor further agrees to reimburse the Mortgagee for any sums which the Mortgagee may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, the Mortgagor shall not be required to pay any income or franchise taxes of the Mortgagee.

9. Lease Assignment. (a) Mortgagor does hereby sell, assign, transfer and set over unto Mortgagee all right, title and interest of Mortgagor in and to all rents, issues, revenues, and profits of the Premises, together with all right, title and interest of Mortgagor in and to any other leases or occupancy agreements which may be hereafter entered into for all or any portion of the Premises (collectively, the "Leases"), and any and all extensions and renewals thereof, and including any security deposits or interests therein now or hereafter held by Mortgagor and the benefit of any guarantees executed in connection with any of the Leases. This Assignment is absolute and is effective immediately; however, until notice is sent by Mortgagee to the Mortgagor in writing that an event of default has occurred under the Note or under any other Loan Document (each such notice, a "Notice"), Mortgagor may receive, collect and enjoy the rents, income and profits accruing from the Premises.

(b) Representations. Mortgagor represents and warrants that: (i) there is no Lease in effect with respect to the Premises; (ii) it has made no prior assignment or pledge of the rents assigned hereby or of the Mortgagor's interest in any of the Leases; (iii) no default exists in any of the Leases and there exists no state of fact which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases; (iv) Mortgagor shall fulfill and perform each and every covenant and condition of each of the Leases by the landlord thereunder to be fulfilled or performed and, at the sole cost and expense of Mortgagor, enforce (short of termination of any of the Leases) the performance and observance of each and every covenant and condition of all the Leases by the tenants

UNOFFICIAL COPY

thereunder to be performed and observed; (v) none of the Leases have been modified or extended; (vi) Mortgagor is the sole owner of the landlord's interest in the Leases; (vii) the Leases are valid and enforceable in accordance with their terms; and (viii) no prepayment of any installment of rent for more than one (1) month due under any of the Leases has been received by Mortgagor.

(c) Negative Covenants of Mortgagor. Mortgagor shall not without Mortgagee's prior written consent, (i) execute an assignment or pledge of the rents from the Premises or any part thereof, or of the Mortgagor's interest in any of the Leases, except to Mortgagee; (ii) modify, extend or otherwise alter the terms of any of the Leases; (iii) accept prepayments of any installments of rents to become due under any of the Leases for more than one (1) month; (iv) in any manner impair the value of the Premises; or (v) permit the Leases to become subordinate to any lien other than a lien created by the Loan Documents or a lien for general real estate taxes not delinquent.

(d) Affirmative Covenants of Mortgagor. Mortgagor on and after title is conveyed to it shall at its sole cost and expense (i) at all times promptly and faithfully abide by, discharge or perform all of the covenants, conditions and agreements contained in the Leases; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of the Leases on the part of the occupants to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases of the obligations, duties or liabilities of Mortgagor, as Lessor, and of the occupants thereunder, and pay all costs and expenses of Mortgagee, including reasonable attorneys' fees in any such action or proceeding in which Mortgagee may appear; (iv) transfer and assign to Mortgagee any and all Leases subsequently entered into, upon the same terms and conditions as are herein contained, and make, execute and deliver to Mortgagee upon demand any and all instruments required to effectuate said assignment; (v) furnish to Mortgagee, within ten (10) days after a request by Mortgagee to do so, a written statement containing the names of all occupants of the Premises or any part thereof, the terms of their respective Leases, the space occupied and the rentals payable thereunder; (vi) exercise within five (5) days of the demand therefor by Mortgagee any right to request from the lessee under any of the Leases a certificate with respect to the status thereof; (vii) furnish Mortgagee promptly with copies of any notices of default which Mortgagor may at any time forward to any lessee of the Premises of any part thereof; and (viii) pay immediately upon demand all sums expended by Mortgagee under the authority hereof, together with interest thereon at the default rate provided in the Loan Agreement.

(e) Agreement of Mortgagor. (i) Should Mortgagor fail to make any payment or to do any act as herein provided for, then Mortgagee, but without obligation so to do, and without releasing Mortgagor from any obligation hereof, may make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Mortgagor in the Leases contained, and in exercising any such powers to incur and pay necessary costs and expenses, including reasonable attorneys' fees, all at the expense of Mortgagor.

(ii) This Assignment shall not operate to place responsibility for the control, management, care and/or repair of the Premises upon Mortgagee and Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under

UNOFFICIAL COPY

the Leases, or under or by reason of this Assignment, and Mortgagor shall and does hereby agree to indemnify and to hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, except any such claims or demands resulting from the acts or actions of Mortgagee. Should Mortgagee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor with interest at the Default Rate (as defined in the Loan Agreement).

(iii) Nothing herein contained shall be construed as constituting Mortgagee a "mortgagee in possession" in the absence of the taking of actual possession of the Premises by Mortgagee, pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

(iv) A demand on any lessee by Mortgagee for the payment of the rent on any default claimed by Mortgagee shall be sufficient warrant to the lessee to make future payment of rents to Mortgagee without the necessity for further consent by Mortgagor.

(v) Mortgagor does further specifically authorize and instruct each and every present and future lessee of the whole or any part of the Premises to pay all unpaid rental agreed upon in any tenancy to Mortgagee upon receipt of demand from Mortgagee to pay the same, and Mortgagor hereby waives the right, claim or demand it may now or hereafter have against any such lessee by reason of such payment of rental to Mortgagee or compliance with other requirements of Mortgagee pursuant to this Assignment.

(vi) Mortgagor hereby irrevocably appoints Mortgagee as its true and lawful attorney with full power of substitution and with full power for Mortgagee in its own name and capacity or in the name and capacity of Mortgagor, from and after the service of the Notice of any default not having been cured, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the subject Premises, and at Mortgagee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, in its own name or otherwise, which Mortgagee may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits. Occupants of the subject Premises are hereby expressly authorized and directed to pay any and all amounts due Mortgagor pursuant to the Leases directly to Mortgagee or such nominee as Mortgagee may designate in writing delivered to and received by such occupants who are expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all payments so made.

(vii) In the event any lessee under the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state, or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Mortgagor covenants and agrees that if any of the Leases is so terminated or rejected, no settlement

UNOFFICIAL COPY

for damages shall be made without the prior written consent of Mortgagee, and any check in payment of damages for termination or rejection of any such Lease shall be made payable both to Mortgagor and Mortgagee. The Mortgagor hereby assigns any such payment to Mortgagee and further covenants and agrees that upon the request of Mortgagee, it shall duly endorse to the order of Mortgagee any such check, the proceeds of which shall be applied to whatever portion of the indebtedness secured by this Assignment Mortgagee may elect.

(f) Action Upon Default. Upon the occurrence of a default under this Mortgage, the Note or any of the Loan Documents, Mortgagee may, at its option, from and after the Notice and expiration of applicable period of grace, if any, and without regard to the adequacy of the security for the indebtedness hereby secured, either in person, or by agent with or without bringing any action or proceeding, or by receiver to be appointed by a court, enter upon, take possession of, manage and operate the Premises or any part thereof; and do any acts which Mortgagee deems proper to protect the security hereof, and, either with or without taking possession of said Premises, in the name of Mortgagor or in its own name sue for or otherwise collect and receive such rents, issues, profits, and advances, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, but not being limited to, reasonable attorneys' fees, management fees and broker's commissions, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. Mortgagee reserves, within its own discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted, and shall not be accountable for more monies than it actually receives from the Premises. The entering upon and taking possession of said Premises or the collection of such rents, issues, profits and advances and the application thereof, as aforesaid, shall not cure or waive any default under the Loan Documents or the Note. Mortgagor agrees that it shall facilitate in all reasonable ways Mortgagee's collection of said rents, and shall, upon request by Mortgagee, promptly execute a written notice to each lessee directing the lessee to pay rent to Mortgagee.

(g) Mortgagee's Right to Exercise Remedies. No remedy conferred upon or reserved to Mortgagee herein or in the Loan Documents or the Note or in any other agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy, and all representations herein and in the Note or the Loan Documents, contained shall be cumulative and concurrent, and shall be in addition to every other remedy given hereunder and thereunder or now or hereafter existing at law or in equity or by statute. The remedies may be pursued singly, successively or together against the Mortgagor and/or the Premises at the sole discretion of Mortgagee. No delay or omission of Mortgagee to exercise any right or power accruing upon any default shall impair any such right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein, and every power or remedy given by this Assignment to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee.

(h) Defeasance. As long as Mortgagor shall not be in default under this Mortgage, the Note or any of the Loan Documents, Mortgagor shall have the right to collect upon, but not prior to accrual, all rents, issues, profits and advances from the Premises and to retain, use and enjoy the same. Upon the payment in full of all indebtedness secured hereby and the compliance with all obligations, covenants and agreements herein and in the Note and the Loan Documents, this Assignment shall become and be void and of no effect, but the affidavit of any officer of Mortgagee showing any part of

UNOFFICIAL COPY

said indebtedness remaining unpaid or showing non-compliance with any such terms of conditions shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.

10. Effect of Extensions of Time and Other Changes. If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in the 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 the Mortgagee, notwithstanding such extension, variation, release or change.

11. Effect of Changes in Laws Regarding Taxation. If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (b) the imposition upon the Mortgagee of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by the Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness or the holders thereof, then the Mortgagor, upon demand by the Mortgagee, shall pay such Taxes or charges, or reimburse the Mortgagee therefor; provided, however, that the Mortgagor shall not be deemed to be required to pay any income or franchise taxes of the Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for the Mortgagee it is or may be unlawful to require the Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then the Mortgagee may declare all of the Indebtedness to be immediately due and payable.

12. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee. If an Event of Default has occurred, the Mortgagee may, but need not, make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient by the Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of the Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by the Mortgagee in regard to any tax referred to in Section 8 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by the Mortgagor to the Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Mortgage Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by the Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of the Mortgagee's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage,

UNOFFICIAL COPY

any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by the Mortgagor to the Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Mortgage Note). The interest accruing under this Section 12 shall be immediately due and payable by the Mortgagor to the Mortgagee, and shall be additional Indebtedness evidenced by the Note and secured by this Mortgage. The Mortgagee's failure to act shall never be considered as a waiver of any right accruing to the Mortgagee on account of any Event of Default. Should any amount paid out or advanced by the Mortgagee hereunder, or pursuant to any agreement executed by the Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then the Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Security Agreement The Mortgagor and the Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of the Mortgagor or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other 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 Premises or may not constitute a "fixture" (as defined in the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof (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 the Mortgagee, and the Collateral and all of the Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the Indebtedness. 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 Premises; and the following provisions of this section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

(a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting the Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(b) The Collateral is to be used by the Mortgagor solely for business purposes.

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

(d) The only persons having any interest in the Premises are the Mortgagor, the Mortgagee and holders of interests, if any, expressly permitted hereby.

UNOFFICIAL COPY

(e) No Financing Statement (other than Financing Statements showing the 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 the Mortgagor, at its own cost and expense, upon demand, will furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statements and other documents in form satisfactory to the Mortgagee and will do all such acts as the 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 the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting the Mortgagee and no other party and liens and encumbrances (if any) expressly permitted hereby; and the 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 the Mortgagee to be desirable.

(f) Upon an Event of Default hereunder, the Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral or any part thereof, and for that purpose, so far as the 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 Code); and the 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 the Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations, as provided in the Code. The Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. The Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by the Mortgagee which is reasonably convenient to both parties. The Mortgagee will give the Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of the Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. The Mortgagee may buy at any public sale. The 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 foreclosure sale of the Premises. If the Mortgagee so elects, the Premises 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 the Mortgagee, shall be applied against the Indebtedness in such order or manner as the Mortgagee shall select. The Mortgagee will account to the Mortgagor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Section 13, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

(h) This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of the Mortgagor (Debtor) and the Mortgagee (Secured Party)

UNOFFICIAL COPY

are hereinbelow set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located. The Mortgagor is the record owner of the Premises.

(i) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between the 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 the Mortgagor, as lessor thereunder.

14. Restrictions on Transfer. The Mortgagor, without the prior written consent of the Mortgagee, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). 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":

(i) The Premises 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 Premises, 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;

(ii) 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;

(iii) 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, which directly or indirectly controls the day to day operations and management of the 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 Section 14 shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, 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.

(b) In determining whether or not to make the Loan, the Mortgagee evaluated the background and experience of the Mortgagor and its officers in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is the Mortgagee's security for the Note. The Mortgagor

UNOFFICIAL COPY

and its officers are well experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. The Mortgagor recognizes that the 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. The Mortgagor further recognizes that any secondary junior financing placed upon the Premises (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by any such junior encumbrancer which would force the Mortgagee to take measures and incur expenses to protect its security; (iii) would detract from the value of the Premises should the Mortgagee come into possession thereof with the intention of selling same; and (iv) would impair the Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by the Mortgagee would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (a) protecting the Mortgagee's security, both of repayment and of value of the Premises; (b) giving the Mortgagee the full benefit of its bargain and contract with the Mortgagor; (c) allowing the Mortgagee to raise the interest rate and collect assumption fees; and (d) keeping the Premises free of subordinate financing liens, the Mortgagor agrees that if this Section 14 is deemed a restraint on alienation, that it is a reasonable one.

15. Events of Default; Acceleration. Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) The Mortgagor fails to pay (i) any installment of principal or interest payable pursuant to the terms of the Mortgage Note, or (ii) any other amount payable to Mortgagee under the Note, this Mortgage or any of the other Loan Documents when due;

(b) The Mortgagor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by the Mortgagor under the Note, this Mortgage or any of the other Loan Documents;

(c) the existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to the Mortgagee by the Mortgagor or any guarantor of the Note;

(d) The Mortgagor or any guarantor of the Note files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of the Mortgagor or of all or any substantial part of the property of the Mortgagor or any guarantor of the Note or any of the Premises or all or a substantial part of the assets of the Mortgagor or any guarantor of the Note are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within thirty (30) days;

UNOFFICIAL COPY

(e) the commencement of any involuntary petition in bankruptcy against the Mortgagor or any guarantor of the Note or the institution against the Mortgagor or any guarantor of the Note of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of the Mortgagor or any guarantor of the Note which shall remain undismissed or undischarged for a period of thirty (30) days;

(f) the dissolution, termination or merger of the Mortgagor or any guarantor of the Note or the occurrence of the death or declaration of legal incompetency of any individual guarantor of the Note;

(g) the occurrence of a Prohibited Transfer;

(h) the occurrence of an "Event of Default" under the Note or any of the other Loan Documents.

If an Event of Default occurs, the Mortgagee may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to the Mortgagor, with interest thereon accruing from the date of such Event of Default until paid at the Default Rate (as defined in the Mortgage Note).

16. Foreclosure; Expense of Litigation. When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of the Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding

UNOFFICIAL COPY

shall be immediately due and payable by the Mortgagor, with interest thereon until paid at the Default Rate (as defined in the Mortgage Note) and shall be secured by this Mortgage.

17. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as the Mortgagee may determine in its sole and absolute discretion.

18. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by the Mortgagee, appoint a receiver for the Premises in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and the Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when the Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

19. Mortgagee's Right of Possession in Case of Default. At any time after an Event of Default has occurred, the Mortgagor shall, upon demand of the Mortgagee, surrender to the Mortgagee possession of the Premises. The Mortgagee, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude the Mortgagor and its employees, agents or servants therefrom, and the Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents. The Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, the Mortgagee shall have full power to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same;
- (b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing leases and to enter into new leases;

UNOFFICIAL COPY

(d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as the Mortgagee deems are necessary;

(e) insure and reinsure the Premises and all risks incidental to the Mortgagee's possession, operation and management thereof; and

(f) receive all of such avails, rents, issues and profits.

20. Application of Income Received by Mortgagee. The Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as the Mortgagee may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to the Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

21. Compliance with Illinois Mortgage Foreclosure Law. (a) If any provision in this Mortgage shall be inconsistent with any provision of applicable foreclosure law, provisions of such law 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.

(b) If any provision of this Mortgage shall grant to the Mortgagee (including the Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 18 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in the Mortgagee or in such receiver under the Act in the absence of said provision, the Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by the Mortgagee, whether before or after any decree or judgment of foreclosure, and whether or not enumerated in other sections of this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

22. Rights Cumulative. Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right,

UNOFFICIAL COPY

power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

23. Mortgagee's Right of Inspection. The Mortgagee and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times upon not less than twenty four (24) hours prior notice to the Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

24. Release Upon Payment and Discharge of Mortgagor's Obligations. The Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by the Mortgagee in connection with the execution of such release.

25. Notices. Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

If to Mortgagor:	4721 Maiden Development, LLC 4721 N. Maiden Chicago, Illinois 60640 Attn: Henry Kazmierczak
------------------	--

If to Mortgagee:	LaSalle Bank National Association 4747 W. Irving Park Road Chicago, Illinois 60641 Attn: Meg Compton
------------------	---

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

26. Waiver of Rights. The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now

UNOFFICIAL COPY

or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law;

(b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(c) If the Mortgagor is a trustee, the Mortgagor represents that the provisions of this paragraph (including the waiver of reinstatement and redemption rights) were made at the express direction of the Mortgagor's beneficiaries and the persons having the power of direction over the Mortgagor, and are made on behalf of the trust estate of the Mortgagor and all beneficiaries of the Mortgagor, as well as all other persons mentioned above.

27. Expenses Relating to Note and Mortgage. The Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, the Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided the Mortgagor shall not be required to pay any income or franchise taxes of the Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. The Mortgagor recognizes that, during the term of this Mortgage, the Mortgagee:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which the Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the possession or foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(iv) May enter into negotiations with the Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the

UNOFFICIAL COPY

Premises, the assumption of liability for any of the Indebtedness or the transfer of the Premises in lieu of foreclosure; or

All expenses, charges, costs and fees described in this Section 27 shall be additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate (as defined in the Mortgage Note) and shall be paid, together with said interest, by the Mortgagor forthwith upon demand.

28. Further Instruments. Upon request of the Mortgagee, the Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

29. Additional Indebtedness Secured. All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by the Mortgagee to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

30. Indemnity. The Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against the Mortgagee in the exercise of the rights and powers granted to the Mortgagee in this Mortgage, and the Mortgagor hereby expressly waives and releases any such liability. The Mortgagor shall indemnify and save the Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "Claims"), of whatever kind or nature which may be imposed on, incurred by or asserted against the Mortgagee at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which the Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to the Mortgagee in accordance with the terms of this Mortgage; provided, however, that the Mortgagor shall not be obligated to indemnify or hold the Mortgagee harmless from and against any Claims directly arising from the gross negligence or willful misconduct of the Mortgagee. All costs provided for herein and paid for by the Mortgagee shall be so much additional Indebtedness and shall become immediately due and payable upon demand by the Mortgagee and with interest thereon from the date incurred by the Mortgagee until paid at the Default Rate (as defined in the Mortgage Note).

31. Subordination of Property Manager's Lien. Any property management agreement for the Premises 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 Premises shall be subject and subordinate to the lien of this Mortgage and shall provide that the Mortgagee may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at the Mortgagee's request, shall be recorded with the

UNOFFICIAL COPY

Recorder of Deeds of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, the Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with the 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.

32. Compliance with Environmental Laws. The Mortgagor acknowledges that concurrently herewith the Mortgagor has executed and delivered to the Mortgagee an Environmental Indemnity Agreement dated as of the date hereof (the "Indemnity") pursuant to which the Mortgagor has fully indemnified the Mortgagee for certain environmental matters concerning the Premises, as more particularly described therein. The provisions of the Indemnity are hereby incorporated herein and this Mortgage shall secure the obligations of the Mortgagor thereunder. The Mortgagor agrees to abide by all of the provisions of the Indemnity.

33. Miscellaneous.

(a) Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against the Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of the Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions; Governing Law. In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Mortgagor and the Mortgagee shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

(c) Municipal Requirements. The Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Mortgagor hereby assigns to the Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by the Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) Rights of Tenants. The Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of the Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not

UNOFFICIAL COPY

be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Option of Mortgagee to Subordinate. At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by the Mortgagee of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(f) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee-in-possession in the absence of the actual taking of possession of the Premises by the Mortgagee pursuant to this Mortgage.

(g) Relationship of Mortgagee and Mortgagor. The Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of the Mortgagor or of any lessee, operator, concessionaire or licensee of the Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, the Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of the Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of the Mortgagor and the Mortgagee hereunder is solely that of debtor/creditor.

(h) Time of the Essence. Time is of the essence of the payment by the Mortgagor of all amounts due and owing to the Mortgagee under the Note and the other Loan Documents and the performance and observance by the Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

(i) No Merger. The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Premises, and if the Mortgagee acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) Consent to Jurisdiction. TO INDUCE MORTGAGEE TO ACCEPT THE NOTE, THE MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS, WITH THE EXCEPTION OF ANY FORECLOSURE PROCEEDINGS WHICH SHALL BE IN THE COUNTY WHERE THE PREMISES ARE LOCATED. THE MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON THE MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO THE

UNOFFICIAL COPY

MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

(k) Waiver of Jury Trial. THE MORTGAGOR AND THE MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

(l) Complete Agreement. This Mortgage, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Mortgagor and the Mortgagee.

(m) Construction Loan. The Mortgage Note evidences a debt created by one or more disbursements made by the Mortgagee to the Mortgagor to finance the cost of the construction of certain improvements upon the Real Estate in accordance with the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in the Code. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the Indebtedness immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate (as defined in the Loan Agreement). Upon completion of the improvements described in the Loan Agreement free and clear of mechanic's lien claims, and upon compliance with all of the terms, conditions and covenants of the Loan Agreement, the Loan Agreement and the terms of this paragraph shall become null and void and of no further force and effect. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage.

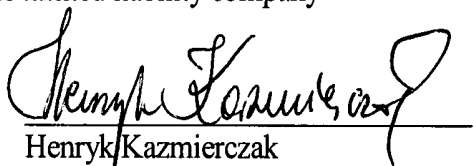
(n) Remedies Against Other Collateral. The Mortgagor hereby acknowledges that certain Loan Documents other than this Mortgage create liens on collateral located in counties or states other than the counties and state in which the Premises are located. The Mortgagor further acknowledges that this Mortgage and the other Loan Documents are cross-defaulted and the Loan secured hereby is also secured by the other Loan Documents. The Mortgagor agrees that the Mortgagee may proceed, at the same or at different times, to foreclose any or all liens against such collateral (or sell such collateral

UNOFFICIAL COPY

under power of sale) by any proceedings appropriate in the county and state where such collateral lies, and that no event of enforcement taking place in any county or state pursuant to any of the Loan Documents shall preclude or bar enforcement in any other county or state. Any foreclosure or other appropriate remedy brought in any county or state in which collateral is located may be brought and prosecuted as to any part of such collateral without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other part of the collateral for the Loan.

IN WITNESS WHEREOF, Mortgagor executed this Mortgage the day and year first above written.

4721 MALDEN DEVELOPMENT LLC, an Illinois limited liability company

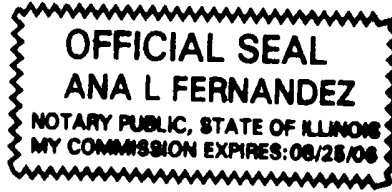
By: 
Henryk Kazmierczak
Its: Manager

Property of Cook County Clerk's Office

184500452

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)



The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO
HEREBY CERTIFY that Henryk Kazmierczak, the manager of 4721
MALDEN DEVELOPMENT, LLC, who is personally known to me to be the same person whose
name is subscribed to the foregoing instrument, appeared before me this day in person and
acknowledged that as such Henryk Kazmierczak signed and delivered the said instrument as
his own free and voluntary act and as the free and voluntary act of said limited liability company, for
the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20 day of June, 2006.

Ana L. Fernandez
Notary Public

My Commission Expires:

8/25/06

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

Legal Description of Premises

Lot 18 in the Subdivision of the East Half of Block 2 of Ogden Sheldon and Company's Subdivision of Outlot 44 of Sheffield's Addition to Chicago, in Section 29, Township 40 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Property Address: 2616 N. Magnolia,
Chicago, Illinois 60614

PIN: 14-29-309-039

Property of Cook County Clerk's Office

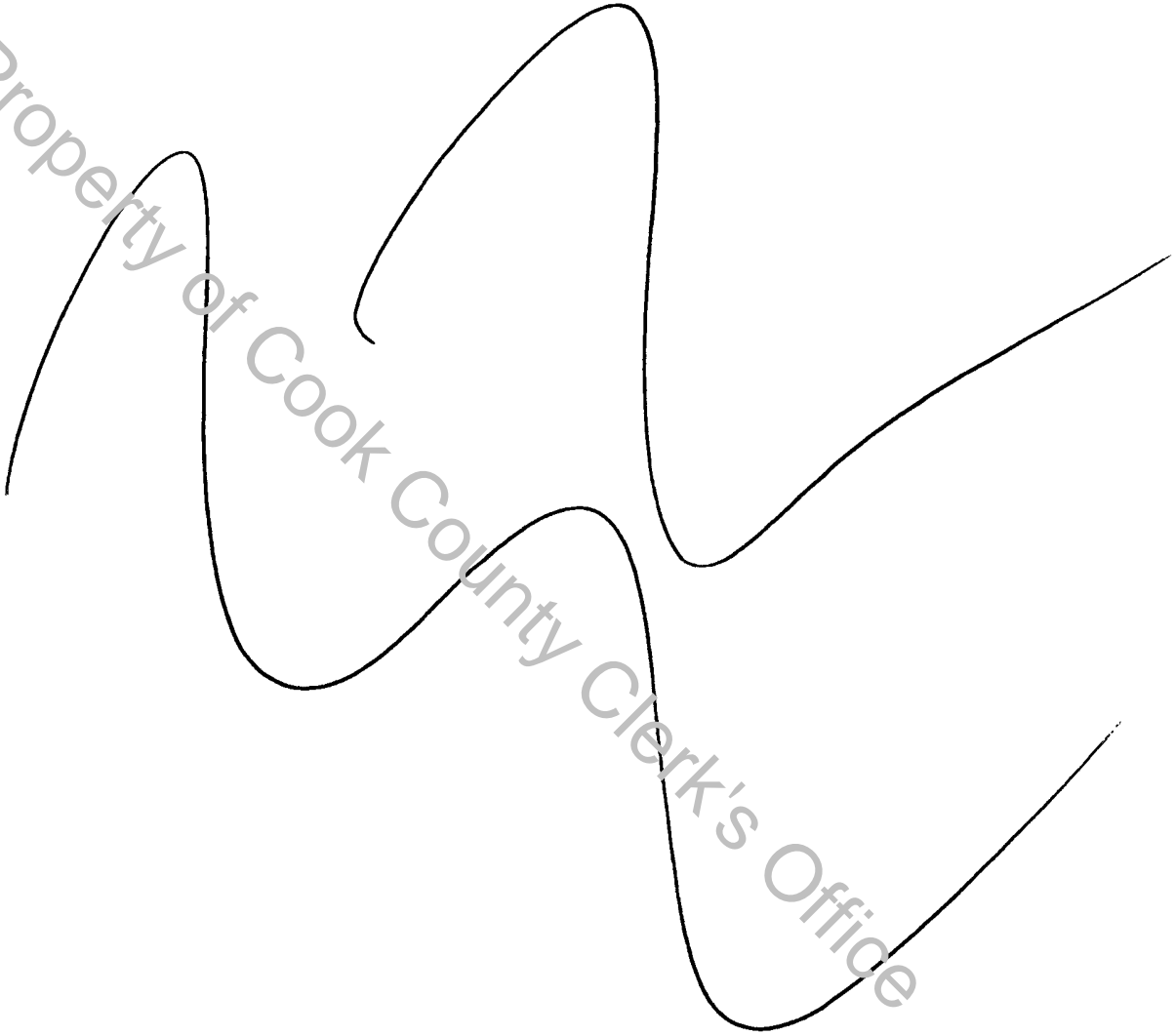
UNOFFICIAL COPY

EXHIBIT B

Permitted Exceptions

General real estate taxes not yet due and payable.

Property of Cook County Clerk's Office



UNOFFICIAL COPY

EXHIBIT C

INSURANCE REQUIREMENTS

GENERAL INFORMATION

1. All insurance policies referred to herein shall be in form and substance acceptable to LaSalle Bank National Association ("LaSalle").
2. LaSalle must receive evidence/certificates of insurance at least ten (10) business days prior to closing. Original policies must be provided to LaSalle as soon as they are available from insurers. Certified copies should be available within sixty (60) to ninety (90) days.
3. Proof of coverage must be on an ACORD 27 - EVIDENCE OF PROPERTY INSURANCE form. Liability insurance must be written on ACORD 25 or its equivalent. NOTE: Please remove any "endeavor to" and "but failure to mail such notice shall impose... representatives" language as it relates to notices. Initials by an authorized representative should appear next to any deletions on the certificates.
4. All property policies shall contain a standard mortgage clause in favor of LaSalle and shall provide for a thirty (30) day written notice to LaSalle of any material change or cancellation. Certificates with disclaimers will NOT be accepted.
5. Property & Builders Risk certificates must show LaSalle as First Mortgagee and Loss Payee as follows:

LaSalle Bank National Association
 135 South LaSalle Street
 Chicago, Illinois 60603
 Attention: Meg Compton

LaSalle may be shown as "Mortgagee and Loss Payee As Their Interests May Appear" until the insurance agent receives release of interest from the prior lender. At that time, the insurance policies will need to be endorsed to show LaSalle as First Mortgagee and Loss Payee.

7. The insured property must be identified as 2616 N. Magnolia, Chicago, Illinois 60614.
8. All insurance companies must have a Policy Rating of "A" and a Financial Rating of "VIII" from AM Best's Rating Guide.
9. The insurance documentation must be signed by an authorized representative of the Insurer.

UNOFFICIAL COPY

SPECIFIC REQUIREMENTS

1. If the property policy is a blanket policy or limit, LaSalle must receive a schedule of the amount allocated to the property/rents or the amounts allocated to the property must be indicated on the certificate.
2. Coverage must be on an "all risk" (Special Perils), 100% replacement cost basis without deduction for foundations and footings, and WITHOUT co-insurance. The co-insurance must be waived or an Agreed Amount endorsement must be included and either "No Co-insurance" or "Agreed Amount" must be provided and indicated on the certificate.
3. Ordinance or Law coverage providing for demolition and increased cost of construction, must be provided and indicated on the certificate.
4. Other coverages such as earthquake, boiler and machinery (which includes the mechanics of the building, such as elevators), and flood will be required when these risks are present.
5. Rent Loss or Business Income coverage shall be in an amount equal to 100% of the projected annual rents or revenue with a minimum period of indemnity of 12 months, or such greater period as LaSalle may require. This coverage needs to be written on a Gross Rental Income, Gross Profits or Extended Period of Indemnity form, not on an actual loss sustained basis which may terminate as soon as the premises are tenantable or operational.
6. LaSalle and 4721 Malden Development LLC must be named as Additional Insured for all general liability coverage, with a minimum limit of \$2,000,000 for any one occurrence.

ADDITIONAL REQUIREMENTS - CONSTRUCTION LOANS

1. Coverage must be All Risk Builders Risk Course of Construction, including earthquake and flood when these risks are present. The Builders Risk insurance amount must cover at least 100% of hard costs and 100% of the soft costs.
2. Under the Evidence of Property form, the builders risk coverage should make the following statement: "The General Contractor (name) and all subordinates of any tier are named insured with respect to builders' risk."
3. Rent coverage must be 100% of the anticipated annual rents (assuming full occupancy) written on a delayed income basis. The policy shall allow for partial or full occupancy.
4. Coverage should also include permission to occupy clause.