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Cook County Recorder of Deeds
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This Document Prepared by and
Return To:

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**MORTGAGE, SECURITY AGREEMENT AND
FINANCING STATEMENT**

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (the "Mortgage") is made as of ~~October 21~~^{December 21}, 2006 by and between PROGRESSIVE SQUARE LIMITED PARTNERSHIP PHASE I, an Illinois limited partnership (the "Mortgagor") and CHICAGO METROPOLITAN HOUSING DEVELOPMENT CORPORATION, an Illinois not for profit corporation (the "Mortgagee"), whose mailing address is 200 W. Adams Street, Suite 1710, Chicago, Illinois 60606.

4373159 MS/14

WITNESSETH:

WHEREAS, the Mortgagor is justly indebted to the Mortgagee in the principal sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) (the "Loan") evidenced by a certain Mortgage Note in the principal sum of \$500,000.00 executed by Mortgagor in favor of Mortgagee of even date herewith (the "Note"), whereby the Mortgagor promises to pay the said aggregate principal sum, late charges and interest and other obligations (collectively, the "Indebtedness") at the rate or rates and in installments, all as provided in the Mortgage Note, the terms of which are hereby incorporated herein by this reference. The final payment of principal and interest, if not sooner paid, shall be due on the maturity date as set forth in the Note; and

NOW THEREFORE, the Mortgagor, to secure the payment of said principal sum of money and said interest and late charges and other obligations in accordance with the terms, provisions and limitations of this Mortgage and of the Note, and the performance and the covenants and agreements herein contained by the Mortgagor to be performed, and also in consideration of the sum of ONE DOLLAR (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee and its successors and assigns, the following described parcels of real estate and all of its present and hereafter-acquired estate, right, title and interest therein, situated, lying and being in the County of Cook and State of Illinois to-wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO
AND MADE A PART HEREOF AS **EXHIBIT A**

which, with the property hereinafter described, is collectively referred to herein as the "Premises";

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TOGETHER with all improvements, tenements, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily); all tenant security deposits, utility deposits and insurance premium rebates to which Mortgagor may be entitled or which Mortgagor may be holding; and all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain fixtures, partitions and attached floor covering now or hereafter therein or thereon, and all fixtures, apparatus, equipment and articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation (whether single units or centrally controlled) all rents, issues, profits, income and other benefits now or hereafter arising from or in respect to the Premises, improvements or appurtenances (the "Rents"), it being intended that this granting clause shall constitute an absolute and present assignment of the Rents; any and all leases, licenses and other occupancy agreements now or hereafter affecting the Premises; including (without restricting the foregoing): all fixtures, apparatus, equipment and articles which relate to the use, occupancy, and enjoyment of the Premises, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared (to the maximum extent permitted by law) to form part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successor and assigns forever, for the purposes and uses herein set forth.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.

Mortgagor shall: (a) promptly repair, restore or rebuild any buildings and other improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability or adequacy of any casualty insurance proceeds or eminent domain awards so long as insurance proceeds are actually disbursed by Mortgagee to Mortgagor; (b) keep the Premises constantly in good condition and repair, without waste; (c) keep the Premises free from mechanics' liens or other liens or claims for lien (collectively called "Liens"), subject, however, to the rights of Mortgagor set forth in Paragraph 1.2 hereof; (d) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises (no such lien being permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (e) complete within a reasonable time any building(s) or other improvement(s) now or at any time in process of erection upon the Premises; (f) comply with federal, state and local requirements of law, regulations, ordinances, orders and judgments and all covenants, easements and restrictions of record with respect to the Premises and the use thereof; (g) make nor permit alterations in an amount in excess of the sum of Fifty Thousand and no/100 Dollars (\$50,000.00) in or to the Premises without Mortgagee's prior written consent; (h) suffer or

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permit no change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent; (i) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, easements, licenses, permits (including without limitation zoning variations and any non-conforming uses and structures), privileges, franchises and concessions applicable to the Premises or contracted for in connection with any present or future use of the Premises; (j) not commence any excavation, construction, earth work, or site work without Mortgagee's prior written consent; and (k) pay each item of Indebtedness secured by this Mortgage when due according to the terms hereof and of the Note. With respect to Mortgagor's covenant to repair, restore or rebuild as set forth in subparagraph (a) above, Mortgagee agrees that casualty insurance proceeds shall be made available to rebuild the Premises in the event: (i) the insurance proceeds are sufficient to completely rebuild the Premises, or within forty-five (45) days of the issuance of the proceeds, the Mortgagor provides the necessary additional proceeds, to completely rebuild the Premises; and (ii) the Premises are reconstructed in accordance with Plans and Specifications reasonably approved by Mortgagee and pursuant to such disbursement procedures as are reasonably required by Mortgagee.

2. Right to Contest

Anything in this Mortgage to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Lien not expressly subordinated to the lien hereof, and defer payment and discharge thereof during the pending of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) within ten (10) days after Mortgagor has been notified of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien; and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable; or in the alternative bond over such lien(s) with Chicago Title Insurance Company or such other title company found acceptable by Mortgagee. Such deposits are to be held without any allowance of interest. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the Lien plus any interest finally determined to be due upon the conclusion of such contest or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made.

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3. Payment of Taxes.

Mortgagor shall pay all general taxes before any penalty or interest attaches, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor within thirty (30) days following the date of payment. Mortgagor shall pay in full "under protest" any tax or assessment which Mortgagor may desire to contest, in the manner provided by law.

4. Insurance.

Mortgagor shall cause to be kept all buildings and improvements and the Collateral (as defined below) now or hereafter situated on said Premises insured against loss or damage by fire on a so-called "All Risks" (Special Perils) basis, including earthquake and flood when these risks are present in the determination of Mortgagee, and against such other hazards and without coinsurance as may be required by Mortgagee, in an amount which shall not be less than ninety percent (90%) of the full insurable replacement cost of the Premises without deduction for foundations or footings, including without limitation of the generality of the foregoing: (a) rent loss or business interruption insurance written on a Gross Rental Income, Gross Profits or Extended Period of Indemnity form in an amount equal to one hundred percent (100%) of the projected rents or revenue with a minimum period of indemnity of twelve (12) months or greater if required by Mortgagee; and (b) earthquake, boiler and machinery, and flood insurance whenever the same is available, and in the opinion of Mortgagee, such protection is necessary. Mortgagor shall also provide general liability insurance for personal injury and death and property damage in the minimum amount of Two Million Dollars for any one occurrence. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts reasonably satisfactory to Mortgagee, with waiver of subrogation and replacement cost endorsements and a standard non-contributory mortgagee clause attached to all policies, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. All insurance required hereunder shall name Mortgagee as Mortgagee, Additional Insured and Lender's Loss Payee. Mortgagor shall deliver all original policies, including additional and renewal policies or certificates evidencing same, to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies or if acceptable to Mortgagee, in lieu thereof, certificates of insurance not less than ten (10) days prior to their respective dates of expiration.

All insurance companies must have the following rating from AM Best's Rating Guide: Policy Rating A-1 or better and Financial Rating VII or better.

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 non-contributory 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 original policy or policies of such insurance. In the event of a foreclosure of the lien of this Mortgage, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be.

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Within ninety (90) days following the end of each fiscal year of Mortgagor, at the request of the Mortgagee, Mortgagor agrees to furnish evidence of replacement cost, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the buildings and other improvements on the Premises.

5. Adjustment of Losses with Insurer and Application of Proceeds of Insurance.

In case of loss or damage by fire or other casualty and the amount thereof has been reasonably estimated by the Mortgagee to be in excess of Fifty Thousand and no/100 Dollars (\$50,000.00), 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 receipt for any such insurance monies. Such insurance proceeds shall be made available to rebuild the Premises in the event: (i) the proceeds are sufficient to completely rebuild the Premises, or, within 45 days of the issuance of the proceeds, the Mortgagor provides the necessary additional proceeds to completely rebuild the Premises; and (ii) the Premises are reconstructed in accordance with such Plans and Specifications as are reasonably approved by Mortgagor pursuant to such disbursement procedures as are reasonably required by Mortgagee. If in the reasonable opinion of Mortgagee such insurance proceeds are not sufficient to repair, restore or rebuild the Premises, and Mortgagor fails to deposit with Mortgagee, within 45 days of the issuance of said insurance proceeds, the cash difference between the insurance proceeds and the cost to repair, restore or rebuild, then Mortgagee may apply the insurance proceeds to the reduction of Mortgagor's indebtedness hereunder. The buildings and other improvements shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor or any lessee for the cost of repair, rebuilding or restoration, any surplus, after payment of the cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party (hereinafter defined) shall, at the option of the Mortgagee, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee.

Notwithstanding the language in the preceding paragraph, in the event of a casualty loss which results in substantial damage to the Premises and the subsequent refusal of authorities to permit the rebuilding of the Premises, then the proceeds of insurance shall be paid to Mortgagee to reduce the Indebtedness. If the proceeds of insurance are not sufficient to repay the Indebtedness, the whole of the Indebtedness shall at once be immediately due and payable without notice to Mortgagor.

As used in this Paragraph 4, the term "Disbursing Party" refers to the Mortgagee and to any responsible trust company or title insurance company selected by the Mortgagee.

6. Stamp Tax; Effect of Changes in Laws Regarding Taxation.

- a. If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Notes, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further

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covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Notes.

In the event of the enactment, after this date, of any law of the state in which the Premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in any such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

7. Observance of Lease Assignment.

- a. As additional security for the performance of the and the payment of the Notes and for the faithful performance of the terms and conditions contained herein, Mortgagor assigns to the Mortgagee all of its right, title and interest as landlord in and to the leases, if any, and all future leases of the Premises.
- b. Mortgagor will not without Mortgagee's prior written consent: (i) execute any assignment or pledge of any rents or any leases of the Premises except an assignment or pledge securing the Indebtedness; or (ii) accept any payment of an installment of rent more than thirty (30) days before the due date thereof; or (iii) make any lease of the Premises except for actual occupancy by the tenant thereunder.
- c. Mortgagor, at its sole cost and expense, will: (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the tenants to be kept and performed, but Mortgagor shall not modify, amend, cancel, terminate or accept surrender of any lease (other than a sublease or new lease in the ordinary course of business) without prior written consent of Mortgagee; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the landlord or of any tenants thereunder; (iv) transfer and collaterally assign or cause to be separately transferred and collaterally assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; and (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written

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statement containing the names of all tenants and the terms of all leases of the Premises, including the space occupied and the rentals payable thereunder.

- d. Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee (unless Mortgagee is in possession of the Premises), expressly or by implication, to perform any of the covenants of any landlord under any of the leases assigned to Mortgagee or to pay any sum or money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay or cause to be performed and paid.
- e. 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 award in eminent domain), to any one or more leases affecting any part of the Premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office wherein this Mortgage was registered or filed for record, of a unilateral declaration to that effect.
- f. In the event of the enforcement by Mortgagee of any remedies provided for by law or by this Mortgage, the tenant under each lease of the Premises shall, at the option of the Mortgagee, attorn to any person succeeding to the interest of landlord as a result of such enforcement and shall recognize such successor in interest as landlord under such lease without change in the terms or other provisions thereof; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or said successor in interest.
- g. Mortgagee shall have the option to declare this Mortgage in default because of a material default of landlord in any lease of the Premises, whether or not such default is cured by Mortgagee pursuant to the right granted herein. It is covenanted and agreed that a default under any Assignment of Rents or Leases executed pursuant to this Paragraph 6, not cured within any applicable grace period, shall constitute a default hereunder, on account of which the whole of the Indebtedness secured hereby shall at once, at the option of the Mortgagee, become immediately due and payable, without notice to the Mortgagor.

8. Mortgagor and Lien Not Released.

- a. From time to time Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of the Mortgagor or Mortgagor's successors or assigns or the consent of any junior lien holder, guarantor or tenant, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant, agreement or condition: (a) release anyone primarily or secondarily liable on any of the Indebtedness; (b) accept a renewal Note therefor; (c) release from the

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lien of this Mortgage any part of the Premises; (d) take or release other or additional security for the Indebtedness; (e) consent to any plat, map or plan of the Premises; (f) consent to the granting of any easement; (g) join in any extension or subordination agreement; (h) agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the time of payment or the amount of the monthly installments payable thereunder; and (i) waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the Indebtedness.

- b. Any actions taken by Mortgagee pursuant to the terms of this Paragraph 7 shall not impair or affect: (a) the obligation of Mortgagor or Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty of any individual, if any, or legal entity for payment of the Indebtedness; and (c) the lien or priority of the lien hereof against the Premises.
- c. Mortgagor shall pay to Mortgagee a reasonable service charge and such title insurance premiums and attorneys' fees as may be incurred by Mortgagee for any action described in this Paragraph 7 taken at the request of Mortgagor.

9. Mortgagee's Performance on Defaulted Acts

In case of an Event of Default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems expedient, 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 said Premises or contest any tax or assessment or cure any default of any landlord 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 Mortgagee in regard to any tax referred to in Section 5 or to protect the Premises or the lien hereof, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the rate of interest set forth in the Notes applicable to a period when a default exists thereunder. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

10. Mortgagee's Reliance on Tax Bills, etc.

Mortgagee, in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or

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(b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

11. Event of Default; Acceleration of Indebtedness in Case of Event of Default.

An Event of Default shall be deemed to have occurred upon the default of any monetary or non-monetary obligation under the Notes or under this Mortgage or any other Loan Document by the Mortgagor and its failure to cure such default beyond any applicable grace period provided, therefore, if any. Upon and after the occurrence of an Event of Default under this Mortgage, at the option of Lender, and without prior demand, notice or legal process of any kind, and upon full payment of the Note and in any such event, the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without notice to Mortgagor. If while any insurance proceeds or condemnation awards are held by or for the Mortgagee to reimburse Mortgagor or any lessee for the cost of repair, rebuilding or restoration of building(s) or other improvement(s) on the Premises, as set forth in Paragraphs 6 and 18 hereof, the Mortgagee shall be or become entitled to accelerate the maturity of the Indebtedness, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the Indebtedness, and any excess held by it over the amount of Indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the same appear on the records of the Mortgagee.

12. Foreclosure; Expense of Litigation.

- a. When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee without in any way limiting Mortgagee's rights and remedies under the Note, shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's 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 said order or judgment) 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 Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to the title bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Premises. All expenditures and expenses of the nature as described in this paragraph and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Notes or the Premises, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate set forth in the Notes applicable to a period when a default exists thereunder, and shall be secured by this Mortgage.

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- b. At all times, the Mortgagor shall appear in and defend any suit, action or proceeding that might in any way in the sole judgment of the Mortgagee affect the value of the Premises, the priority of this Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the Indebtedness. Mortgagor shall, at all times, indemnify, hold harmless and reimburse Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and reasonable attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage, and shall bear interest after demand at the rate specified in the Note applicable to a period when an uncured default or Event of Default exists thereunder, and such interest shall be secured hereby and shall be due and payable on demand.

13. Application of Proceeds of Foreclosure Sale.

The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Paragraph hereof; second, all other items which may under the terms hereof constitute secured Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note in such manner as the Mortgagee shall elect; and fourth, any overplus to any party entitled thereto as their rights may appear.

14. Appointment of Receiver or Mortgagee in Possession.

Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee or any holder of the Note may be appointed as such receiver or as Mortgagee in possession. Such receiver or the Mortgagee in possession shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of such receiver or Mortgagee in possession, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver or Mortgagee in possession to apply the net income in its hands in payment in whole or in part of: (a) the Indebtedness secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or the lien of such order or judgment, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

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15. Rights Cumulative.

Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the Indebtedness including without limitation the Notes and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every right, power and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every right, power and remedy herein or therein 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, or discontinuance by, 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 default or acquiescence therein.

16. Mortgagee's Right of Inspection.

Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose; provided however, Mortgagee does not interfere with any tenant's right of possession of the Premises.

17. Condemnation.

Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award and any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. The Mortgagee shall make those proceeds available to Mortgagor or any lessee for repair, restoration or rebuilding of the Premises, in the manner and under the conditions that the Mortgagee may require; provided, however, that if in the opinion of Mortgagee the proceeds of such award are not sufficient to repair, restore or rebuild the Premises, and Mortgagor fails, within 30 days of the issuance of any award, to tender to Mortgagee the difference between such award and the cost to repair, restore or rebuild the Premises, then Mortgagee may apply the award proceeds to the reduction of Mortgagor's Indebtedness hereunder. In any event, the buildings and improvements shall be repaired, restored or rebuilt in accordance with plans and specifications to be submitted and approved by the Mortgagee. If the proceeds are made available by the Mortgagee, any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party shall, at the option of the Mortgagee, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. The application by Mortgagee of any such surplus proceeds to the Indebtedness shall not constitute a prepayment of the indebtedness as defined in the Note secured hereby so as to give rise to the incurring of a prepayment premium. No interest shall be allowed to Mortgagor on the proceeds of any award held by the Mortgagee.

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18. Release Upon Payment and Discharge of Mortgagor's Obligations.

Mortgagee shall release this Mortgage and the lien hereof by proper instrument only following payment and discharge of all Indebtedness secured hereby (including any interest and late charges provided for herein or in the Note).

19. Giving of Notice.

Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder shall be in writing, and shall be deemed to have been validly served, given or delivered (i) three (3) days after deposit in the United States mails, with proper postage prepaid, (ii) when sent after receipt of confirmation or answer back if sent by telecopy, or other similar facsimile transmission, (iii) one (1) Business Day after deposited with a reputable overnight courier with all charges prepaid, or (iv) when delivered, if hand-delivered by messenger, all of which shall be properly addressed to the party to be notified and sent to the address or number indicated as follows:

If to Mortgagee at: Chicago Metropolitan Housing Development Corporation
200 W. Adams Street, Suite 1710
Chicago, Illinois 60606
Attn: Rafael Leon, Executive Director

If to Mortgagor at: Progressive Square Limited Partnership Phase I
c/o CMHDC/Progressive, NFP
200 W. Adams Street, Suite 1710
Chicago, Illinois 60606

20. Waiver of Defense.

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

21. Waiver of Statutory Rights.

Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all rights to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Mortgage on behalf of the Mortgagor, and each and every person, except judgment creditors of the Mortgagor in its representative capacity, acquiring interest in or title to the Premises subsequent to the date of this Mortgage.

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22. Furnishing of Financial Statements to Mortgagee and Financial Covenants.

- a. Mortgagor covenants and agrees that it will keep and maintain, books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.
- b. Mortgagor covenants and agrees to furnish to the Mortgagee, within ninety (90) days following the end of every fiscal year applicable to the operation of the improvements on the Premises, an audited report of the operations of the improvements on the Premises for the year then ended, to be certified by Mortgagor satisfactory to the Mortgagee, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses. Each such certificate of each such annual report shall certify that the certifying party examined such records as were deemed necessary for such certification and that those statements are true, correct and complete. The Mortgagor will timely file its federal and state tax returns and forward copies of said returns to the Mortgagee within thirty (30) days thereafter.
- c. If Mortgagor fails to furnish promptly any report required by this Paragraph 21, the Mortgagee may elect (in addition to exercising any other right, remedy and power) to make an audit of all books and records of Mortgagor which in any way pertain to the Premises and to prepare the statement or statements which Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent Certified Public Accountant to be selected by the Mortgagee. Mortgagor shall pay all expenses of the audit and other services which expenses shall be secured hereby as additional Indebtedness and shall be immediately due and payable with interest thereon at the rate set forth in the Note applicable to a period when a default or Event of Default exists thereunder.

23. Filing and Recording Charges and Taxes.

Mortgagor will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the Note and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the Note, this Mortgage and all other documents securing the Note and all assignments thereof.

24. Business Purposes; Usury Exemption.

Mortgagor represents that Mortgagor owns and operates a "business" as that term is defined in Paragraph C of Subsection 4(I) of the Illinois Interest Act (815 ILCS 205/4), as

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amended and that the principal obligation secured hereby constitutes a "business loan" within the purview and operation of said paragraph.

25. Representations and Warranties.

To induce the Mortgagee to make the Loan, by virtue of the letter of direction for the execution hereof, the Mortgagor represents and warrants to the Mortgagee, each of which shall be true and correct as of the date of the execution and delivery of this Mortgage, and which shall survive the execution and delivery of this Mortgage:

- a. Organization and Name. Progressive Square Limited Partnership Phase I is an Illinois limited partnership duly organized, existing and in good standing under the laws of the State of Illinois. The Mortgagor is duly licensed or qualified in all foreign jurisdictions wherein the nature of its activities require such qualification or licensing. The exact legal name of Mortgagor is as set forth in the first paragraph of this Mortgage, and the Mortgagor currently does not conduct, nor has it during the last five (5) years conducted, business under any other name or trade name. The Mortgagor has no subsidiaries.
- b. Authorization; Validity. The Mortgagor and its General Partner have full right, power and authority to enter into this Mortgage, to make the borrowings and execute and deliver the Note as provided herein and to perform all of Mortgagor's duties and obligations under this Mortgage and the Note. The execution and delivery of this Mortgage and the Note will not, nor will the observance or performance of any of the matters and things herein or therein set forth, violate or contravene any provision of law or of the Certificate or Limited Partnership and limited partnership agreement of the Mortgagor. All necessary and appropriate action has been taken on the part of the Mortgagor to authorize the execution and delivery of this Mortgage and the Note. This Mortgage and the Note are valid and binding agreements and contracts of the Mortgagor in accordance with their respective terms.
- c. Compliance with Laws. The nature and transaction of the Mortgagor's businesses and operations and the uses of its properties and assets, including, but not limited to, the Premises, do not and during the term of the Loan shall not, violate or conflict with any applicable law, statute, ordinance, rule, regulation or order of any kind or nature, including, without limitation, the provisions of the Fair Labor Standards Act or any zoning, land use, building, noise abatement, occupational health and safety or other laws, any building permit or any condition, grant, easement, covenant, condition or restriction, whether recorded or not.
- d. Environmental Laws and Hazardous Materials. The Mortgagor represents, warrants and agrees with the Mortgagee that: (i) the Mortgagor has not generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials, on or off any of the Premises of the Mortgagor (whether or not owned by it) in any manner which at any time violates any Environmental Law or any license, permit, certificate, approval or similar authorization thereunder; (ii) the operations of the Mortgagor comply in all material respects

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with all Environmental Laws and all licenses, permits certificates, approvals and similar authorizations thereunder; (iii) there has been no investigation, proceeding, complaint, order, directive, claim, citation or notice by any governmental authority or any other person, nor is any pending or, to the best of the Mortgagor's knowledge, threatened, and the Mortgagor shall immediately notify the Mortgagee upon becoming aware of any such investigation, proceeding, complaint, order, directive, claim, citation or notice, and shall take prompt and appropriate actions to respond thereto, with respect to any non-compliance with, or violation of, the requirements of any Environmental Law by the Mortgagor or the release, spill or discharge, threatened or actual, of any Hazardous Material or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material or any other environmental, health or safety matter, which affects the Mortgagor or its business, operations or assets or any properties at which the Mortgagor has transported, stored or disposed of any Hazardous Materials; (iv) the Mortgagor has no material liability, contingent or otherwise, in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Material; and (v) without limiting the generality of the foregoing, the Mortgagor shall, following determination by the Mortgagee that there is non-compliance, or any condition which requires any action by or on behalf of the Mortgagor in order to avoid any non-compliance, with any Environmental Law, at the Mortgagor's sole expense, cause an independent environmental engineer acceptable to the Mortgagee to conduct such tests of the relevant site as are appropriate, and prepare and deliver a report setting forth the result of such tests, a proposed plan for remediation and an estimate of the costs thereof. For purposes of this Mortgage, "Hazardous Materials" shall mean (i) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601 et seq., as amended from time to time, and the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq., as amended from time to time; (ii) "hazardous wastes" as defined in The Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., as amended from time to time; and (iii) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other federal, state or local law, regulation, ordinance or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, dangerous, or toxic waste, substance or material, including The Toxic Substance Control Act of 1976, as amended 15 U.S.C. Sec. 2601 et seq., Clean Water Act, 33 U.S.C. Sec. 446 et seq., as amended, Clean Air Act, 42 U.S.C. Sec. 7401 et seq., or Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801 et seq.; and "Environmental Laws" means all federal, state and local law statutes, laws, regulations (including consent decrees and administrative orders, ordinances and requirements including those set forth in the definition of Hazardous Materials above), relating to public health and safety and protection of the environment.

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- e. Absence of Breach. The execution, delivery and performance of this Mortgage, the Note and any other documents or instruments to be executed and delivered by the Mortgagor in connection with the Loan shall not: (i) violate any provisions of law or any applicable regulation, order, writ, injunction or decree of any court or governmental authority, or (ii) conflict with, be inconsistent with, or result in any breach or default of any of the terms, covenants, conditions, or provisions of any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which the Mortgagor is a party or by which the Mortgagor or any of its property or assets may be bound.
- f. Collateral Representations. The Mortgagor is the exclusive owner of the Premises.
- g. Financial Statements. All financial statements submitted to the Mortgagee by the Mortgagor has been prepared in accordance with generally accepted accounting principles on a basis, except as otherwise noted therein, consistent with the previous fiscal year and truly and accurately reflect the financial condition of the Mortgagor and the results of the operations for the Mortgagor and as of such date and for the periods indicated. Since the date of the most recent financial statement submitted by the Mortgagor to the Mortgagee, there has been no material adverse change in the financial condition or in the assets or liabilities of the Mortgagor.
- h. Litigation and Taxes. There is no litigation, demand, charge, claim, petition or governmental investigation or proceeding pending, or threatened, against the Mortgagor, which, if adversely determined, would result in any material adverse change in the financial condition or properties, business or operations of the Mortgagor. The Mortgagor has duly filed all applicable income or other tax returns and have paid all income or other taxes, if any, when due. There is no controversy or objection pending or threatened in respect of any tax returns of the Mortgagor.
- i. Event of Default. No Event of Default has occurred and is continuing, and no event has occurred and is continuing which, with the lapse of time, the giving of notice, or both, would constitute such an Event of Default under this Mortgage or the Note and the Mortgagor is not in default (without regard to grace or cure periods) under any contract or agreement to which it is a party.
- j. Adverse Circumstances. No condition, circumstance, event, agreement, document, instrument, restriction, litigation or proceeding (or threatened litigation or proceeding or basis therefor) exists which (a) could adversely affect the validity or priority of the Liens granted to the Mortgagee under this Mortgage, (b) could materially adversely affect the ability of the Mortgagor to perform its obligations under any of the Note, or (c) would constitute a default under the Note.
- k. Lending Relationship. The Mortgagor acknowledges and agrees that the relationship hereby created with the Mortgagee is and has been conducted on an open and arm's length basis in which no fiduciary relationship exists and that the

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Mortgagor has not relied and is not relying on any such fiduciary relationship in executing this Mortgage and in consummating the Loan. The Mortgagee represents that it will receive the Notes payable to its order as evidence of a loan.

1. Business Loan. The Loan, including interest rate, fees and charges as contemplated hereby, (i) is a business loan within the purview of 815 ILCS 205/4(1)(c), as amended from time to time, (ii) is an exempted transaction under the Truth In Lending Act, 12 U.S.C. 1601 *et seq.*, as amended from time to time, and (iii) does not, and when disbursed shall not, violate the provisions of the Illinois usury laws, any consumer credit laws or the usury laws of any state which may have jurisdiction over this transaction, the Mortgagor or the Premises securing the Loan.
 - m. Compliance with Regulation U. No portion of the proceeds of the Loans shall be used by the Mortgagor, or any Affiliates of the Mortgagor, either directly or indirectly, for the purpose of purchasing or carrying any margin stock, within the meaning of Regulation U as adopted by the Board of Governors of the Federal Reserve System.
 - n. Governmental Regulation. The Mortgagor, nor its subsidiaries, if any, are not, or after giving effect to any loan, will not be, subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act or the Investment Company Act of 1940 or to any federal or state statute or regulation limiting its ability to incur indebtedness for borrowed money.
 - o. Place of Business. The principal places of business of the Mortgagor is 200 W. Adams Street, Suite 1710, Chicago, IL 60605 and the Mortgagor shall promptly notify the Mortgagee of any change in such locations. The Mortgagor will not remove or permit the Collateral to be removed from the Premises without the prior written consent of the Mortgagee.
 - p. Complete Information. This Mortgage and all financial statements, schedules, certificates, confirmations, agreements, contracts, and other materials submitted to the Mortgagee in connection with or in furtherance of making the Loan by or on behalf of the Mortgagor fully and fairly state the matters with which they purport to deal, and neither misstate any material fact nor, separately or in the aggregate, fail to state any material fact necessary to make the statements made not misleading.
26. Miscellaneous.
- a. Binding Nature. Notwithstanding anything to the contrary contained herein, this Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagor named on page 1 hereof, and its beneficiaries, successors, grantees, assigns, each subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor; and the word "Mortgagor" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the Indebtedness or any

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part thereof, whether or not such persons shall have executed the Note or this Mortgage.

- b. Release of Previous Holder. The word "Mortgagee," when used herein shall include the successors and assigns of the original Mortgagee named on page 1 hereof, and the holder or holders, from time to time, of the Note. However, whenever the Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability as Mortgagee with respect to the performance of each covenant and obligation of Mortgagee hereunder thereafter to be performed, provided that any monies in which the Mortgagor has an interest, which monies are then held by the seller of the Note, are turned over to the purchaser of the Note.
- c. Severability and Applicable Law. In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note or other document and this Mortgage, the Note or other document shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The validity and interpretation of this Mortgage and the Note are to be construed in accordance with and governed by the laws of the State in which the Premises are situated.
- d. Governmental Compliance. Mortgagor shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be so used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.
- e. Estoppel Certificate. Mortgagor, within fifteen (15) days after mailing of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the Indebtedness and whether or not any default, offset or defense then is alleged to exist against the Indebtedness and, if so, specifying the nature thereof.
- f. Non-Joinder of Tenant. After an Event of Default, or a default under the Mortgage, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as

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party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness secured hereby, 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.

g. Regulation G Clause. Mortgagor covenants that the proceeds evidenced by the Note secured hereby will not be used for the purchase or carrying of registered equity securities within the purview and operation of Regulation G issued by the Board of Governors of the Federal Reserve System.

h. Additional Documents. The Mortgagor will, from time to time, within fifteen (15) days after request by the Mortgagee, execute, acknowledge and deliver any financing statement, renewal affidavit, certificate, continuation statement, inventory or other similar documents as the Mortgagee may reasonably request in order to protect, preserve, continue, extend or maintain the security interest under the priority of this Mortgage and will, upon demand, pay any reasonable and necessary expense(s) incurred by the Mortgagee in the preparation, execution and filing of any such documents, with the proviso that the failure of Mortgagor to do so shall constitute a default hereunder and under the Notes.

i. Loan Expenses. Mortgagor hereby agrees to pay all expenses, charges, costs and fees hereby relating to the making of the Loan, including Mortgagee's reasonable attorney's fees in connection with the negotiation and documentation of the agreements contained in this Mortgage, all recording fees and charges, if any, title insurance charges and premiums, and all other expenses, charges, costs and fees referred to in or necessitated by the terms of this Mortgage (collectively, the "Loan Expenses"). In the event the Loan Expenses are not paid to Mortgagee within five (5) days after the written demand therefor by Mortgagee, the Loan Expenses shall bear interest from the date so incurred until paid at the Default Rate (as defined in the Note) or may be paid by Mortgagee at any time following said five (5) day written demand by disbursement of proceeds of the Loan.

27. Security Agreement and Financing Statement.

a. Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State in which the Premises are located with respect to all sums on deposit with the Mortgagee pursuant to Paragraphs 6 and 18 hereof ("Deposits") and with respect to any property included in the definition herein of the word "Premises", which property may not be deemed to form a part of the real estate described in EXHIBIT A or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes

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herein collectively referred to as the “Collateral”); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor’s right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

- b. Upon the occurrence of an event of a Default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, ten (10) days notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys’ fees and legal expenses incurred by Mortgagee. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as the Mortgagor is not in default under this Mortgage, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor shall from time to time, on request of the Mortgagee, deliver to the Mortgagee at the cost of the Mortgagor: (i) such further financing statements and security documents and assurances as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. The Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.
- c. The Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) any and all of the goods, machinery or equipment described within the definition of the word “Premises” herein are or are to become fixtures on the land described in EXHIBIT A; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a “fixture filing” within the meaning

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of Section 9-313 and 9-402 of the Code; and (iii) Mortgagor is the record owner of the land described in EXHIBIT A.

- d. If the Collateral is sold in connection with a sale of the Premises, Mortgagor shall notify the Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agree to assume Mortgagor's obligations as to the security interests herein granted and to execute whatever agreements and filing are deemed necessary by the Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral, Deposits and the deposits described in Paragraph 4 above.
- e. Mortgagor acknowledges that the Code has been revised to be effective July 1, 2001, to modify certain collateral classifications and create new collateral classifications not referenced in the Code. Mortgagor hereby grants to Mortgagee, effective immediately, and agrees that Mortgagee shall additionally currently have (to the extent not otherwise legally provided for in the above collateral description) a security interest in all collateral above described as same may be defined in the Code as revised (the "Revised Code") and in and to all those additional items of Mortgagor's tangible and intangible personal property, including payment intangibles, tangible and electronic chattel paper, commercial tort claims, letter of credit rights, rights as a beneficiary to demand payment or performance under letters of credit and software, all as defined in the Revised Code.
- f. Upon request of the Mortgagor, the Mortgagee, at the Mortgagee's sole and absolute option prior to discharge of this Mortgage, shall make future advances ("Future Advances") to the Mortgagor under the Note or any other agreement or loan executed by the Mortgagor or any one of them in order to protect Mortgagee's security interests. Such Future Advances, with interest thereon, shall be secured by this Mortgage but in no event, when taken together with the indebtedness evidenced by the Mortgage Notes or any successor, shall not exceed the total principal amount of One Million and No/100 Dollars (\$1,000,000).

28. Lien for Loan Commissions, Service Charges and the Like.

So long as the original Mortgagee named on page 1 hereof is the owner of the Note, and regardless of whether any proceeds of the loan evidenced by the Note have been disbursed, this Mortgage also secures the payment of all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan transaction intended to be secured hereby, all in accordance with the application of, and loan commitment issued to and accepted by, Mortgagor in connection with said loan.

29. Events of Default.

The Mortgagor, without notice or demand of any kind, shall be in default under this Mortgage upon the occurrence of any of the following events (each referred to herein as an "Event of Default"):

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- a. Nonpayment of Obligations. The failure by Mortgagor to make payment of principal or interest or payment of any other amount due to Mortgagee under the Note within five (5) days after the date when any such payment is due in accordance with the terms of the Note; or the failure of Mortgagor to make payment of any amounts due to Mortgagee under the Mortgage or the Note within ten (10) days after such amount is due under this Mortgage.
- b. Misrepresentation. Any written warranty, representation, certificate or statement in this Mortgage, the Note or any other agreement with the Mortgagee shall be false when made or at any time.
- c. Nonperformance. Any failure to perform or default in the performance of any covenant, condition or agreement contained: (a) in this Mortgage and, if capable of being cured, such failure to perform or default in performance continues for a period of thirty (30) days after the Mortgagor receives notice or knowledge from any source of such failure to perform or default in performance, or, where the Mortgagee's security interests are not impaired (other than in a *de minimis* manner) by such failure or default and if such failure or default can not be cured within such 30-day period, the failure to commence curing such failure or default within said 30-day period, to proceed with such cure thereafter in a reasonably diligent manner, and to complete such cure within sixty (60) days after expiration of such 30-day period, or (b) in the Note Documents or any other agreement with the Mortgagee and such failure to perform or default in performance continues beyond any applicable grace or cure period provided therein.
- d. Default under Note. A default under the Note, all of which covenants, conditions and agreements contained therein are hereby incorporated in this Mortgage by express reference, shall be and constitute an Event of Default under this Mortgage.
- e. Assignment for Creditors. Mortgagor makes an assignment for the benefit of creditors, fails to pay, or admits in writing its inability to pay its debts as they mature; or if a trustee of any substantial part of the assets of any obligor is applied for or appointed, and in the case of such trustee being appointed in a proceeding brought against such obligor, the obligor, by any action or failure to act indicates its approval of, consent to, or acquiescence in such appointment and such appointment is not vacated, stayed on appeal or otherwise shall not have ceased to continue in effect within thirty (30) days after the date of such appointment.
- f. Bankruptcy. Any proceeding involving Mortgagor is commenced by or against such payor under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law or statute of the federal government or any state government, and in the case of any such proceeding being instituted against such obligor, (i) either Mortgagor by any action or failure to act indicates its approval of, consent to or acquiescence therein, or (ii) an order shall be entered approving the petition in such proceedings and such order is not vacated, stayed on appeal or otherwise shall not have ceased to continue in effect within thirty (30) days after the entry thereof.

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- g. Judgments. The entry of any judgment, decree, levy, attachment, garnishment or other process, or the filing of any lien against Mortgagor which is not fully covered by insurance and such judgment or other process shall not have been, within thirty (30) days from the entry thereof, (i) bonded over to the satisfaction of the Mortgagee and appealed, (ii) vacated, or (iii) discharged.
- h. Change in Control; Sale of Assets. The Mortgagor shall not, either directly or indirectly, merge, consolidate, sell, transfer, license, lease, encumber or otherwise dispose of substantially all of its assets, or sell or discount substantially all of the Collateral (as defined herein), with or without recourse, notwithstanding allowances and discounts taken in the ordinary course of business, without prior written consent of Mortgagee.
- i. Collateral Impairment. The entry of any judgment, decree, levy, attachment, garnishment or other process, or the filing of any lien against, any of the Collateral (as defined in Section 27a) or the Premises or any collateral under a separate security agreement securing any of the obligations and such judgment or other process shall not have been, within thirty (30) days from the entry thereof, (i) bonded over to the satisfaction of the Mortgagee and appealed, (ii) vacated, or (iii) discharged, or the loss, theft, destruction, seizure or forfeiture, or the occurrence of any deterioration or impairment of any of the Collateral or the Premises or any of the collateral under any security agreement securing any of the obligations, or any decline or depreciation in the value or market price thereof (whether actual or reasonably anticipated), which causes the Collateral on the Premises, in the sole opinion of the Mortgagee acting in good faith, to become unsatisfactory as to value or character, or which causes the Mortgagee to reasonably believe that it is insecure and that the likelihood for repayment of the Loan is or will soon be impaired, time being of the essence. The cause of such deterioration, impairment, decline or depreciation shall include, but is not limited to, the failure by the Mortgagor to do any act deemed necessary by the Mortgagee to preserve and maintain the value and collectibility of the Collateral or the Premises.

30. Remedies.

Upon the occurrence of an Event of Default, the Mortgagee shall have all rights, powers and remedies set forth herein, in the Note, in any written agreement or instrument (other than this Mortgage or the Note) relating to any of the obligations or any security therefor, or as otherwise provided at law or in equity. Without limiting the generality of the foregoing, the Mortgagee may, at its option upon the occurrence of an Event of Default, declare its commitments to the Mortgagor to be terminated and all obligations to be immediately due and payable, provided, however, that upon the occurrence of an Event of Default under either Section 29f, "Assignment for Creditors", or Section 29e, "Bankruptcy", all commitments of the Mortgagee to the Mortgagor shall immediately terminate and all obligations shall be automatically due and payable, all without demand, notice or further action of any kind required on the part of the Mortgagee. The Mortgagor hereby waives any and all presentment, demand, notice of dishonor, protest, and all other notices and demands in connection with the enforcement of Mortgagee's rights under this Mortgage or the Note, and hereby consents to, and waives notice of release,

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with or without consideration, of the Mortgagor or of any Collateral on the Premises, notwithstanding anything contained herein or in the Note to the contrary. In addition to the foregoing:

- a. Possession and Assembly of Collateral. The Mortgagee may, without notice, demand or legal process of any kind, take possession of any or all of the Collateral (in addition to Collateral of which the Mortgagee already has possession), wherever it may be found, and for that purpose may pursue the same wherever it may be found, and may enter into the Premises where any of the Collateral may be or is supposed to be, and search for, take possession of, remove, keep and store any of the Collateral until the same shall be sold or otherwise disposed of and the Mortgagee shall have the right to store the same in the Premises without cost to the Mortgagee. At the Mortgagee's request, the Mortgagor will, at the Mortgagor's sole expense, assemble the Collateral and make it available to the Mortgagee at a place or places to be designated by the Mortgagee which is reasonably convenient to the Mortgagee and the Mortgagor.
- b. Sale of Collateral. The Mortgagee may sell any or all of the Collateral at public or private sale, upon such terms and conditions as the Mortgagee may deem proper, and the Mortgagee may purchase any or all of the Collateral at any such sale. The Mortgagee may apply the net proceeds, after deducting all costs, expenses, attorneys' and paralegals' fees incurred or paid at any time in the collection, protection and sale of the Collateral and the obligations, to the payment of the Notes and/or any of the other obligations, returning the excess proceeds, if any, to the Mortgagor. The Mortgagor shall remain liable for any amount remaining unpaid after such application, with interest. Any notification of intended disposition of the Collateral required by law shall be conclusively deemed reasonably and properly given if given by the Mortgagee at least five (5) calendar days before the date of such disposition. The Mortgagor hereby confirms, approves and ratifies all acts and deeds of the Mortgagee relating to the foregoing, and each part thereof.
- c. Standards for Exercising Remedies. To the extent that applicable law imposes duties on the Mortgagee to exercise remedies in a commercially reasonable manner, the Mortgagor acknowledges and agrees that it is not commercially unreasonable for the Mortgagee: (a) to fail to incur expenses reasonably deemed significant by the Mortgagee to prepare Collateral for disposition or otherwise to complete raw material or work-in-process into finished goods or other finished products for disposition; (b) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of; (c) to fail to exercise collection remedies against Account Debtors (as defined in the UCC) or other persons obligated on Collateral or to remove liens or encumbrances on or any adverse claims against Collateral; (d) to exercise collection remedies against Account Debtors and other persons obligated on Collateral directly or through the use of collection agencies and other collection specialists; (e) to advertise dispositions of Collateral through

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publications or media of general circulation, whether or not the Collateral is of a specialized nature; (f) to contact other persons, whether or not in the same business as the Mortgagor, for expressions of interest in acquiring all or any portion of the Collateral; (g) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the collateral is of a specialized nature; (h) to dispose of Collateral by utilizing Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets; (i) to dispose of assets in wholesale rather than retail markets; (j) to disclaim disposition warranties, including, without limitation, any warranties of title; (k) to purchase insurance or credit enhancements to insure the Mortgagee against risks of loss, collection or disposition of Collateral or to provide to the Mortgagee a guaranteed return from the collection or disposition of Collateral; or (l) to the extent deemed appropriate by the Mortgagee, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Mortgagee in the collection or disposition of any of the Collateral. The Mortgagor acknowledges that the purpose of this Section is to provide non-exhaustive indications of what actions or omissions by the Mortgagee would not be commercially unreasonable in the Mortgagee's exercise of remedies against the Collateral and that other actions or omissions by the Mortgagee shall not be deemed commercially unreasonable solely on account of not being indicated in this Section. Without limitation upon the foregoing, nothing contained in this Section shall be construed to grant any rights to the Mortgagor or to impose any duties on the Mortgagee that would not have been granted or imposed by this Mortgage or by applicable law in the absence of this Section. Any term used in this Section 32 and not defined herein shall have the meaning ascribed to it in the UCC (as hereinafter defined).

- d. UCC and Offset Rights. The Mortgagee may exercise, from time to time, any and all rights and remedies available to it under the Uniform Commercial Code in effect in Illinois ("UCC") or under any other applicable law in addition to, and not in lieu of, any rights and remedies expressly granted in this Mortgage or in any other agreements between any obligor and the Mortgagee and may, without demand or notice of any kind, appropriate and apply toward the payment of such of the obligations, whether matured or unmatured, including costs of collection and attorneys' and paralegals' fees, and in such order of application as the Mortgagee may, from time to time, elect, any indebtedness of the Mortgagee to any obligor, however created or arising, including, but not limited to, balances, credits, deposits, accounts or moneys of such obligor in the possession, control or custody of, or in transit to the Mortgagee. The Mortgagor hereby waives the benefits of any law that would otherwise restrict or limit the Mortgagee in the exercise of its right, which is hereby acknowledged, to appropriate at any time hereafter any such indebtedness owing from the Mortgagee to Mortgagor.
- e. Additional Remedies. The Mortgagee shall have the right and power to:
- i. instruct the Mortgagor, at its own expense, to notify any parties obligated on any of the Collateral, including, but not limited to, any

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Account Debtors, to make payment directly to the Mortgagee of any amounts due or to become due thereunder, or the Mortgagee may directly notify such obligors of the security interest of the Mortgagee, and/or of the assignment to the Mortgagee of the Collateral and direct such obligors to make payment to the Mortgagee of any amounts due or to become due with respect thereto, and thereafter, collect any such amounts due on the Collateral directly from such persons obligated thereon;

- ii. enforce collection of any of the Collateral, including, but not limited to, any Accounts, by suit or otherwise, or make any compromise or settlement with respect to any of the Collateral, or surrender, release or exchange all or any part thereof, or compromise, extend or renew for any period (whether or not longer than the original period) any indebtedness thereunder;
- iii. take possession or control of any proceeds and products of any of the Collateral, including the proceeds of insurance thereon;
- iv. extend, renew or modify for one or more periods (whether or not longer than the original period) the Note, any other of the obligations, any obligation of any nature of any other obligor with respect to the Note or any of the obligations;
- v. grant releases, compromises or indulgences with respect to the Notes, any of the obligations, any extension or renewal of any of the obligations, any security therefor, or to any other obligor with respect to the Note or any of the obligations;
- vi. transfer the whole or any part of securities which may constitute Collateral into the name of the Mortgagee or the Mortgagee's nominee without disclosing, if the Mortgagee so desires, that such securities so transferred are subject to the security interest of the Mortgagee, and any corporation, association, or any of the managers or trustees of any trust issuing any of said securities, or any transfer agent, shall not be bound to inquire, in the event that the Mortgagee or said nominee makes any further transfer of said securities, or any portion thereof, as to whether the Mortgagee or such nominee has the right to make such further transfer, and shall not be liable for transferring the same;
- vii. make an election with respect to the Collateral under Section 1111 of the Bankruptcy Code or take action under Section 364 or any other section of the Bankruptcy Code; provided, however, that any such action of the Mortgagee as set forth herein shall not, in any manner whatsoever, impair or affect the liability of the Mortgagor hereunder, nor prejudice, waive, nor be construed to impair, affect, prejudice or waive the Mortgagee's rights and remedies at law, in equity or by statute, nor release, discharge, nor be construed to release or discharge,

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the Mortgagor, any guarantor or other person liable to the Mortgagee for the obligations; and

- viii. at any time, and from time to time, accept additions to, releases, reductions, exchanges or substitution of the Collateral, without in any way altering, impairing, diminishing or affecting the provisions of this Mortgage, the Note, or any of the other obligations, or the Mortgagee's rights hereunder, under the Notes or under any of the other obligations.

31. The Mortgagor hereby ratifies and confirms whatever the Mortgagee may do with respect to the Collateral and agrees that the Mortgagee shall not be liable for any error of judgment or mistakes of fact or law with respect to actions taken in connection with the Collateral.

- a. Attorney-in-Fact. The Mortgagor hereby irrevocably makes, constitutes and appoints the Mortgagee (and any officer of the Mortgagee or any person designated by the Mortgagee for that purpose) as the Mortgagor's true and lawful proxy and attorney-in-fact (and agent-in-fact) in the Mortgagor's name, place and stead, with full power of substitution, to: (i) take such actions as are permitted in this Mortgage; (ii) execute such financing statements and other documents and to do such other acts as the Mortgagee may require to perfect and preserve the Mortgagee's security interest in, and to enforce such interests in the Collateral; and (iii) carry out any remedy provided for in this Mortgage, including, without limitation, endorsing the Mortgagor's name to checks, drafts, instruments and other items of payment, and proceeds of the Collateral, executing change of address forms with the postmaster of the United States Post Office serving the address of the Mortgagor, changing the address of the Mortgagor to that of the Mortgagee, opening all envelopes addressed to the Mortgagor and applying any payments contained therein to the obligations. The Mortgagor hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable. The Mortgagor hereby ratifies and confirms all that said attorney-in-fact may do or cause to be done by virtue of any provision of this Mortgage.
- b. No Marshaling. The Mortgagee shall not be required to marshal any present or future collateral security (including but not limited to this Mortgage and the Collateral) for, or other assurances of payment of, the obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order. To the extent that it lawfully may, the Mortgagor hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of the Mortgagee's rights under this Mortgage or under any other instrument creating or evidencing any of the obligations or under which any of the obligations is outstanding or by which any of the obligations is secured or payment thereof is otherwise assured, and, to

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the extent that it lawfully may, the Mortgagor hereby irrevocably waives the benefits of all such laws.

- c. Application of Proceeds. The Mortgagee will within three (3) business days after receipt of cash or solvent credits from collection of items of payment, proceeds of Collateral or any other source, apply the whole or any part thereof against the obligations secured hereby. The Mortgagee shall further have the exclusive right to determine how, when and what application of such payments and such credits shall be made on the obligations, and such determination shall be conclusive upon the Mortgagor. Any proceeds of any disposition by the Mortgagee of all or any part of the Collateral may be first applied by the Mortgagee to the payment of expenses incurred by the Mortgagee in connection with the Collateral, including attorneys' fees and legal expenses.
- d. No Waiver. No Event of Default shall be waived by the Mortgagee except in writing. No failure or delay on the part of the Mortgagee in exercising any right, power or remedy hereunder shall operate as a waiver of the exercise of the same or any other right at any other time; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder. There shall be no obligation on the part of the Mortgagee to exercise any remedy available to the Mortgagee in any order. The remedies provided for herein are cumulative and not exclusive of any remedies provided at law or in equity. The Mortgagor agrees that in the event that the Mortgagor fails to perform, observe or discharge any of its obligations or liabilities under this Mortgage or any other agreements with the Mortgagee, no remedy of law will provide adequate relief to the Mortgagee, and further agrees that the Mortgagee shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

32. Due on Sale or Further Encumbrance Clause.

- a. In determining whether or not to make the loan secured hereby, Mortgagee examined amongst other factors the creditworthiness of Mortgagor found it acceptable and relied and continue to rely upon same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Premises, found it and them acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the loan. Mortgagor is well-experienced in borrowing money and owning and operating property such as the Premises, is ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by

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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 Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises: (a) may divert funds which would otherwise be used to pay the Notes secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

- b. In accordance with the foregoing and for the purposes of: (i) protecting Mortgagee's security, both of repayment by Mortgagor and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens except with respect to the Subordinate Loan to the extent provided above, Mortgagor agrees that in the event this Paragraph be deemed a restraint or alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of legal and/or equitable or any beneficial interest therein, or any merger of any of them, with any other entity (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be an additional Event of Default hereunder.
- c. Any consent by the Mortgagee, or any waiver of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent default under this Paragraph.

33. Environmental Indemnity. Mortgagor agrees to indemnify and hold Mortgagee harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings, and costs and expenses (including, without limitation, reasonable attorneys' fees), arising directly or indirectly from or out of, or in any way connected with, any Hazardous Materials (including any referred to in the Environmental Report) located on or affecting the Premises whether or not the same originates or emanates from the Premises or any such contiguous real estate, including but not limited to (i) any loss of value of the Premises as a result of the existence of such Hazardous Materials; (ii) claims of third parties (including governmental agencies) for damages, penalties, response costs, and/or injunctive or other relief; (iii) costs of removal and restoration, including fees of attorneys and experts and costs of reporting the existence of any Hazardous Materials to any governmental agency; and (iv) any liability asserted against Mortgagee by any third party the result of the violation of the representation made in Paragraph 25d above.

34. Management Agent.

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- a. In the event Mortgagor hires a management agent or leasing agent for the Premises other than an Affiliate, such other designee(s) of Mortgagor shall be first approved in writing by Mortgagee, and said management contract and/or leasing contract shall be satisfactory to and subject to the approval of Mortgagee throughout the term of the Indebtedness, which approval shall not be unreasonably withheld. Each management contract and leasing contract shall contain a provision that in the event of a default by Mortgagor under the terms of this Mortgage, or the Notes or an Event of Default under any other Loan Document to secure the payment of the Notes, that said management contract and/or leasing contract is cancelable by Mortgagee upon thirty (30) days written notice. In the event of a default by Mortgagor with respect to the provisions of this Paragraph, then at the election of Mortgagee the Indebtedness shall become immediately due and payable and Mortgagee shall be entitled to exercise any or all remedies provided or referenced in this Mortgage.
- b. Any property management agreement for the Premises entered into hereafter with a property manager shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a "no lien" provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

35. Non recourse

Notwithstanding anything in this Note to the contrary, neither Borrower nor any partner of Borrower shall be personally liable for the repayment of any of the principal of or interest due under the Note or for any deficiency judgment that Lender may obtain after foreclosure on its collateral after default by Borrower, provided, however, that Borrower nor any general partner of Borrower shall not be exonerated or exculpated for any deficiency, loss or damage suffered by Lender as a result of the failure by Borrower to comply with any of the terms or conditions of the Mortgage (other than the provisions relating to the payment of principal, interest or late charges), including losses resulting from:

- a. Borrower's fraud or material misrepresentation;
- b. The intentional misapplication by Borrower of insurance or condemnation proceeds relating to the Real Estate or other security provided under any of the Loan Documents;
- c. The Borrower committing or suffering to occur waste or intentional damage to the

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Real Estate;

- d. Borrower's failure to comply with provisions of the Mortgage prohibiting the voluntary sale or further encumbering of the collateral;
- e. Borrower's intentional failure to apply proceeds of rents and other income of the collateral toward the costs of maintenance and operation of the Property and to the payment of taxes, lien claims, insurance premiums and debt service and other indebtedness to the extent that the Mortgage required such rents and income to be so applied;
- f. Borrower's collection of rentals for periods of more than one month in advance under leases of the Property;
- g. The Borrower's failure to pay any loss, liability or expense (including reasonable attorneys fees) incurred by Lender or any of its affiliates arising out of any claim or allegation made by Borrower, its successors or assigns, that this note or the Mortgage establish a joint venture or partnership arrangement between Borrower and Lender or that for any purpose this note is not recognized as debt;
- h. Any liability or claim relating to the mishandling or misapplication of any security deposits or other tenant deposits;

And provided further, that the foregoing limitations on Borrower's personal liability with respect to principal and interest shall not impair the validity of the indebtedness secured by Lender's collateral or the lien on or security interest in the collateral or the right of Lender as mortgagee or secured party to foreclose and/or enforce the collateral after default by Borrower.

36. WAIVER OF JURY TRIAL. MORTGAGOR AND MORTGAGEE WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN MORTGAGEE AND MORTGAGOR ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH OR THE TRANSACTIONS RELATED THERETO. MORTGAGOR AND MORTGAGEE HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHTS TO TRIAL BY JURY.

37. WAIVER OF BOND. MORTGAGOR WAIVES THE POSTING OF ANY BOND OTHERWISE REQUIRED OF MORTGAGEE IN CONNECTION WITH ANY JUDICIAL PROCESS OR PROCEEDING TO OBTAIN POSSESSION OF, REPLEVY, ATTACH OR LEVY UPON COLLATERAL OR ANY OTHER SECURITY FOR THE

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LIABILITIES, TO ENFORCE ANY JUDGMENT OR OTHER COURT ORDER ENTERED IN FAVOR OF MORTGAGEE, OR TO ENFORCE BY SPECIFIC PERFORMANCE, TEMPORARY RESTRAINING ORDER, PRELIMINARY OR PERMANENT INJUNCTION, THIS AGREEMENT, OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN MORTGAGEE AND MORTGAGOR.

50. Governing Law. The validity and interpretation of this Mortgage shall be construed in accordance with the laws and decisions of the State of Illinois.

IN WITNESS WHEREOF, the Mortgagor has executed this instrument as of the day and year first above written.

**PROGRESSIVE SQUARE LIMITED
PARTNERSHIP PHASE I,** an Illinois limited partnership

BY: CMHDC/PROGRESSIVE, NFP, an Illinois not-for-profit corporation, its general partner

By: 

Name: Rafael Lean

Title: President

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STATE OF ILLINOIS)
) SS
COUNTY OF _____)

The undersigned, a Notary Public in and for the Court and State aforesaid, **DOES HEREBY CERTIFY THAT** Rafael Leon, as President of CMHDC/PROGRESSIVE, NFP, as General Partner of PROGRESSIVE SQUARE LIMITED PARTNERSHIP PHASE I, an Illinois limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that he/she has signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said PROGRESSIVE SQUARE LIMITED PARTNERSHIP PHASE I for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 20 day of September 2006.

Kristi L. Harper
Notary Public

My commission expires: 5/8/2010

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EXHIBIT A
LEGAL DESCRIPTION

PARCEL 1:

LOTS 11 AND 12 IN BLOCK 3 IN ANA PRICE'S SUBDIVISION OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT PART TAKEN FOR STREET), IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 10 IN BLOCK 3 IN ANA PRICE'S SUBDIVISION OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN (EXCEPT THAT PART TAKEN FOR STREET), IN COOK COUNTY, ILLINOIS.

Common Address: 4748-56 South Wabash Avenue in Chicago, Illinois
PIN Numbers: 20-10-100-034
20-10-100-035
20-10-100-036