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Chicago, IL 60606



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Cook County Recorder of Deeds
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CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF RENTS AND LEASES (Adjustable Rate and Revolving Credit)

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES ("Mortgage") is dated and effective as of November 30, 2006 by and between **1600 Museum Park LLC**, an Illinois limited liability company ("Mortgagor"), having its principal offices c/o Enterprise Companies, 600 W. Chicago Ave., Suite 750, Chicago, Illinois 60610, and **National City Bank**, a national banking association in its capacity as Agent for Lenders as that term is defined in the Loan Agreement ("Mortgage").

RECITALS:

A. Pursuant to the terms and conditions of a Construction Loan Agreement dated as of the date of this Mortgage (as amended, restated or replaced from time to time, the "Loan Agreement") between Mortgagor, as Borrower, and Mortgagee, as Agent, Agent agreed to loan to Mortgagor the maximum aggregate principal amount of \$90,000,000 with maximum aggregate funding of \$95,965,000 (the "Loan"). Capitalized terms not specifically defined in this Mortgage have the meanings set forth in the Loan Agreement.

B. The Loan is evidenced by certain revolving promissory notes in favor of Mortgagee in the maximum aggregate principal amount of \$90,000,000 with aggregate funding of \$95,965,000 (the aggregate promissory notes, together with all extensions, renewals, amendments, modifications, splits and replacements and substitutes, the "Notes"), pursuant to which Mortgagor promises to pay the principal sum, together with interest on the balance of the principal from time to time outstanding and unpaid at the rates and at the times specified in the Notes, with a maturity of November 30, 2009 with respect to all principal and interest not required to be sooner paid, unless the Term of the Loan is extended pursuant to the terms of the Notes. The Notes provide, among other things, that interest on the principal amount outstanding from time to time will be paid at a fluctuating rate, which rate shall be determined in accordance with their terms.

C. Mortgagee requires that Mortgagor execute and deliver this Mortgage to secure the payment and performance of the obligations and duties of Mortgagor under the Notes and all

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other documents, agreements and instruments executed by Mortgagor. (The Notes and any other documents, agreements and instruments, in each case as the same may be renewed, extended, amended, supplemented, modified and/or restated from time to time, are collectively referred to as the "**Loan Documents**").

NOW, THEREFORE, to secure:

- (i) the payment when and as due and payable of the principal sum of and interest on the Notes and any extensions, renewals, modifications and substitutes thereof,
- (ii) the payment of all other indebtedness that is payable under the terms of any of the Loan Documents (all of the indebtedness, obligations, agreements and liabilities identified in clauses (i) and (ii) being referred to as the "**Secured Indebtedness**"), and
- (iii) the performance and observance of the covenants and agreements contained in this Mortgage and/or the Loan Documents (the "**Covenants and Agreements**"), the Secured Indebtedness and the Covenants and Agreements are collectively referred to herein as the "**Obligations**").

ARTICLE 1. GRANT OF MORTGAGE

1.1 Mortgage. Mortgagor does by these presents MORTGAGE, GRANT, CONVEY, TRANSFER, BARGAIN, WARRANT, ALIEN, PLEDGE, SELL AND ASSIGN to Mortgagee, its successors and assigns forever, the real estate described in Exhibit A (the "**Real Estate**") and all of Mortgagor's estate, right, title and interest therein, situated in the County of Cook and State of Illinois;

TOGETHER WITH:

- (a) **Reversions.** All estate, right, title, and interest of Mortgagor, if any, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, vaults, roadways, strips and gores, and alleys adjoining or within the boundaries of the Real Estate;
- (b) **Other Property Rights.** All and singular the tenements, hereditaments, easements, licenses, minerals, appurtenances, passages, waters, water courses, riparian, irrigation and drainage rights, and other rights, liberties and privileges in any way now or later appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversion and reversions and remainder and remainders; property and rights, if any, that by the express provisions of this Mortgage are required to be subjected to the lien and any additional property and rights that from time to time, by installation or writing of any kind, may be subjected to the lien by Mortgagor or by anyone on Mortgagor's behalf;
- (c) **Access Rights.** All rights in and to common areas and access roads on adjacent land previously or subsequently granted to Mortgagor and any after-acquired title or reversion;
- (d) **Improvements.** All buildings and improvements of every kind and description now or later erected or placed on the Real Estate and all materials intended for construction,

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reconstruction, alteration, and repairs of any improvements now or later erected on the Real Estate, all of which materials shall be deemed to be included within the Real Estate immediately upon the delivery to the Real Estate (the property described in this clause (d) is referred to as the "**Improvements**");

(e) **Fixtures.** All fixtures and personal property now or later owned by Mortgagor and attached to or contained in and used in connection with the Real Estate; furniture and furnishings owned by Mortgagor used in the operations of the Premises (as defined below); and all additions and renewals or replacements or articles in substitution whether or not the same are or shall be attached to the building or buildings in any manner (the property described in this clause (e) is referred to as the "**Fixtures**");

(f) **Proceeds.** All proceeds or sums payable in lieu of or as compensation for the loss of or damage to the Real Estate and Improvements, all rights in and to all present and future fire and other insurance policies pertaining to the Real Estate and Improvements, any sums at any time on deposit for the benefit of Mortgagee or Mortgagor or held by Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage and all awards, compensation, damages and/or proceeds paid or to be paid in connection with, or in lieu of, any condemnation, eminent domain, change of grade or similar proceeding for the taking or for the degradation in the value of all or any part of the Real Estate and Improvements; and

(g) **Documents and Intangibles.** All contracts, documents, agreements, contract rights and general intangibles relating to design, development, operation, construction upon, management, leasing, sale and use of the Real Estate and Improvements, including:

- (i) all names under which or by which the Real Estate and/or Improvements may at any time be owned and operated, or any variations of the names (excluding Museum Park, Museum Park East, Central Station and any derivative or any of the foregoing), and all goodwill in any way relating to the Real Estate and Improvements and all service marks and logo types used in connection with the Real Estate,
- (ii) all permits, licenses, authorizations, approvals, variances, land use entitlements, approvals, consents, clearances and rights obtained from governmental agencies issued or obtained in connection with the development, construction upon, use, occupation, leasing, sale or operation of the Real Estate and/or Improvements,
- (iii) all materials prepared for filing or filed with any governmental authority,
- (iv) all plans, specifications, drawings, maps, surveys, studies, architectural, engineering and construction contracts, management and leasing contracts and other agreements and documents, of whatever kind or character, relating to the use, construction upon, occupation, leasing, sale or operation of the Real Estate, the Improvements, and/or the Fixtures, whether now existing or later entered into, and in, to and under any

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amendments, supplements, modifications and additions, extensions and renewals and substitutions, and

- (v) the books and records of Mortgagor relating to design, development, construction, operation or management of the Real Estate and/or the Improvements,
- (vi) any and all rights of Mortgagor under the Illinois Condominium Property Act.

it being mutually agreed, intended and declared that all of the above-listed property shall, so far as permitted by applicable Requirements of Law, be deemed to form a part and parcel of the pledged Real Estate and for the purpose of this Mortgage to be real estate, and covered by this Mortgage. The Real Estate, Fixtures and Improvements and all of the other property described in granting clauses (a) through (g) above are collectively referred to as the "**Premises**".

ARTICLE 2. MORTGAGE COVENANTS

2.1 Incorporation of Recitals. The recitals are incorporated as if fully restated.

2.2 Payment of Principal and Interest. Mortgagor pledges the Premises to secure the prompt payment, when and as due and payable, of the Obligations.

2.3 Taxes and Other Charges.

(a) **Payment of Taxes.** Subject to Section 2.12, Mortgagor shall pay, on or before the date due, all general taxes, special taxes, special assessments, water charges, sewer service charges, association charges, and all other charges of whatever kind, ordinary or extraordinary, whether public or private, which may be levied or imposed against the Premises, and if requested by Mortgagee shall furnish to Mortgagee official receipts within thirty (30) days after payment. Mortgagor shall also pay when due all charges incurred for the benefit of the Premises for utilities, including energy, fuel, gas, electricity, water, sewer, and garbage removal, whether or not the charges are liens against the Premises.

(b) **Optional Tax Escrow.** Upon the occurrence of an Event of Default and upon notice from Mortgagee, Mortgagor shall deposit at the place Mortgagee may from time to time in writing appoint, and in the absence of appointment, then at the office of Mortgagee, commencing on the first day of the first month after a request by Mortgagee, and on the first day of each subsequent month until the Obligations are fully paid, a sum equal to one-twelfth (1/12th) of the total annual taxes and assessments for the most recently-completed ascertainable year (general and special) on the Premises (unless taxes are based upon assessments that exclude the Improvements or any part now constructed, or to be constructed, in which event the amount of deposits shall be based upon Mortgagee's estimate as to the amount of taxes and assessments to be levied and assessed).

(c) **Additional Escrow.** In addition, Mortgagor shall, concurrently with any required initial deposit made pursuant to clause (b) above, also deposit with Mortgagee an additional amount as Mortgagee may reasonably determine is necessary to enable Mortgagee to pay the

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annual taxes and assessments on the Premises prior to delinquency. The deposits need not be kept separate and apart, and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds deposited are insufficient to pay any taxes or assessments (general and special) for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of a demand from Mortgagee, deposit additional funds as may be necessary to pay taxes and assessments (general and special) in full. If the funds deposited exceed the amount required to pay taxes and assessments (general and special) for any year, the excess shall be applied on subsequent deposits. Any funds deposited with Mortgagee pursuant to this clause (c) shall bear interest at a rate not less than the lowest rate offered by Mortgagee to its commercial customers in the ordinary course of business from time to time on demand deposit accounts.

(d) Evidence of Payment. Unless Mortgagor is making deposits with Mortgagee, receipts showing and evidencing payment of all taxes and assessments (general and special) levied in respect of the Premises shall be provided to Mortgagee within ten (10) business days after request.

2.4 Insurance; Casualty Loss.

(a) Required Insurance Coverage. Mortgagor shall provide or cause to be provided to Mortgagee insurance policies including, where applicable, umbrella policies, which insurance policies must be in effect at all times prior to the payment of all amounts due under the Loan Agreement, in amounts, in form, with deductibles and issued by companies satisfactory to the Mortgagee and qualified to do business in the State of Illinois, for:

- (i) Full replacement of all Risk Builder's Risk Insurance (non-reporting form) issued with respect to the Project in an amount equal to the completed value of the Project with extended coverage, "X," "C" and "U" coverage and vandalism and malicious mischief coverage bearing a replacement cost agreed amount endorsement with an acceptable mortgagee clause in the Mortgagee's favor;
- (ii) Comprehensive general public liability insurance in an amount not less than Four Million Dollars (\$4,000,000);
- (iii) If required by applicable law, workers' compensation insurance and employer's liability insurance for Mortgagor and all contractors and subcontractors in amounts as may be required by statute;
- (iv) Flood Insurance if the Real Estate is located in an area designated by the Federal Emergency Management Agency or any other applicable governmental or quasi-governmental authority having jurisdiction over the Premises as a special flood hazard area;
- (v) After completion of the Improvements, casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement in amounts not less than the full insurable

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replacement value of all Improvements, Fixtures and equipment from time to time of the Premises and bearing a replacement cost agreed amount endorsement;

- (vi) Steam boiler, machinery and pressurized vessel insurance (if applicable to the Premises); and
- (vii) other insurance coverage as the Mortgagee may reasonably require.

(b) Blanket Policies; Renewals. All of the requirements for insurance coverage may be satisfied by a blanket or umbrella insurance policy, provided it is acceptable to Mortgagee. Mortgagor shall deliver renewal policies of required insurance, together with written evidence that premiums for all policies have been paid in full, at least thirty (30) days prior to the expiration of the then-current policy.

(c) Policy Requirements. All required policies must provide that the insurance may not be canceled (including for non-payment) or modified without at least thirty (30) days' prior written notice from the insurance carrier to Mortgagee and that no claims may be paid without at least ten (10) days prior written notice to Mortgagee. Upon Mortgagee's request, Mortgagor shall furnish evidence satisfactory to Mortgagee that workers' compensation insurance and public liability insurance have been obtained and are being maintained by Mortgagor and by those parties maintaining insurance policies under which Mortgagor is named as an additional insured, in amounts and with companies satisfactory to Mortgagee.

(d) Insurance Proceeds. In the event of any loss covered by insurance, Mortgagor must promptly notify Mortgagee of the loss in writing. Mortgagor authorizes and directs each and every insurance company concerned to make payments for any loss directly and solely to Mortgagee (which may, but need not, make proof of loss). Mortgagee (subject to the prior written consent and approval of Mortgagor) is authorized to adjust, collect and compromise in its discretion all claims under all policies. Mortgagor shall sign, promptly following demand by Mortgagee, all receipts, vouchers and releases required by the insurance companies in connection with the loss. After deducting any costs of collection, Mortgagee may use or apply the proceeds, at its sole option,

- (i) as a credit upon any portion of the Notes (without any prepayment premium or fee of any kind), or
- (ii) to repairing and restoring the Improvements, in which event Mortgagee shall not be obligated to see to the proper application of the proceeds nor shall the amount used for restoration deemed to be a payment on the Secured Indebtedness, or
- (iii) to deliver same to Mortgagor.

(e) Application of Balance of Proceeds. Notwithstanding anything contained in the preceding paragraph to the contrary, provided and only so long as no Event of Default has occurred and is continuing, and provided further that the proceeds of the insurance (plus any additional sums deposited by Mortgagor and Undisbursed Loan Proceeds) are sufficient, in

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Mortgagee's reasonable judgment, after first deducting and paying the reasonable expenses, if any, incurred by Mortgagee in the collection of such proceeds, to fully restore, repair and replace the damaged portions of the Premises and to otherwise pay all costs and related expenses. Mortgagee shall make the insurance proceeds available to Mortgagor for restoration of the Improvements. If the proceeds (plus any additional sums deposited by Mortgagor and Undisbursed Loan Proceeds) are insufficient, in Mortgagee's reasonable judgment, to complete such restoration, repair and replacement, and to pay all such costs and related expenses, then Mortgagor shall deposit the entire amount of any deficiency with Mortgagee or make other arrangements satisfactory to Mortgagee to pay the deficiency. In the event proceeds are applied to restoring the Improvements, the proceeds shall be made available, from time to time in accordance with the terms of the Loan Agreement and the Disbursement Agreement. If the estimated cost of restoration of the Improvements exceeds ten percent (10%) of the original aggregate principal amount of the Notes, Mortgagor shall furnish Mortgagee with all plans and specifications for rebuilding or restoration as Mortgagee may reasonably require and approve. Any funds deposited with Mortgagee pursuant to this clause (e) shall bear interest at a rate not less than the lowest rate offered by Mortgagee to its commercial customers in the ordinary course of business from time to time on demand deposit accounts.

(f) Optional Insurance Escrow. Upon the occurrence of an Event of Default and upon notice from Mortgagee, Mortgagor shall deposit at the place as Mortgagee may from time to time in writing appoint, and in the absence of an appointment, then at the office of Mortgagee, commencing on the first day of the first month after a request by Mortgagee, and on the first day of each subsequent month until the Obligations are fully paid, a sum equal to one-twelfth (1/12th) of the insurance premiums on the Premises for the most recently-completed ascertainable year.

(g) Additional Escrow. In addition, Mortgagor shall, concurrently with any required initial deposit made pursuant to clause (f) above, also deposit with Mortgagee an additional amount as Mortgagee may reasonably determine that is necessary to enable Mortgagee to pay the annual insurance premiums on the Premises prior to delinquency. Deposits need not be kept separate and apart, and are to be used for the payment of insurance on the Premises next due and payable when they become due. If the deposited funds are insufficient to pay any insurance for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of a demand, deposit additional funds as may be necessary to pay the premiums in full. If the funds deposited exceed the amount required to pay premiums, the excess shall be applied on subsequent deposits. Any funds deposited with Mortgagee pursuant to this clause (g) shall bear interest at a rate not less than the lowest rate offered by Mortgagee to its commercial customers in the ordinary course of business from time to time on demand deposit accounts.

(h) Assignment of Policies. In the event of foreclosure of this Mortgage, or other transfer of title to the Premises in extinguishment of the Obligations, all right, title and interest of Mortgagor in and to any insurance policies on the premises then in force, and any claims or proceeds related thereto shall pass to Mortgagee or any purchaser or grantee.

(i) Condominium Provisions. Notwithstanding anything in this Mortgage to the contrary, upon the recordation of a condominium declaration submitting the Land and the Improvements to the provisions of the Condominium Act, the provisions of the Condominium

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Act shall prevail in the event of any conflict between the provisions of this Mortgage and the provisions of the Condominium Act with respect to the use of insurance proceeds.

2.5 Preservation, Restoration and Use of Premises.

(a) Preservation. All Improvements shall be completed substantially in accordance with the terms of the Plans and Specifications. No Improvement may be altered, removed or demolished nor shall any fixtures, appliances or other personal property subject to the lien, on, in or about the Improvements be severed, removed, sold, encumbered or mortgaged, without the prior written consent of Mortgagee, except for sales contemplated under the Loan Agreement. In the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property constituting part of the Premises hereunder, the same shall be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances or reservation of title.

(b) Restoration. Mortgagor shall promptly repair, restore or rebuild any Improvements on the Premises that become damaged or destroyed; provided, however, that if Mortgagee has elected to apply insurance loss proceeds toward payment of the Obligations as provided in Section 2.4(d) and Section 2.4(e), the provisions of this sentence shall not apply. The Improvements shall be restored or rebuilt as to be of at least equal value and substantially the same character as prior to the damage or destruction.

(c) No Waste. Mortgagor shall not permit, commit or suffer any material physical waste, material impairment or material deterioration of all or any portion of the Real Estate, and shall keep and maintain the Real Estate and every part in good repair and condition and effect repairs that Mortgagee may reasonably require, and, from time to time, make replacements and additions so that the Real Estate will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Mortgagor shall not suffer or permit the Premises to be abandoned or to be used for a purpose other than that for which the Premises are presently used, or represented to Mortgagee to be used.

(d) Use Restrictions. Mortgagor shall not subject the Premises to any use covenants or restrictions and shall not initiate, join in or consent to any change in any existing private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses that may be made of or the kind of improvements that can be constructed or placed on the Premises or any part without the prior consent of Mortgagee, such consent not to be unreasonably withheld, conditional or delayed, and shall promptly notify Mortgagee of, and appear in and defend, at its sole cost and expense, any proceedings seeking to effect any of the foregoing. Notwithstanding the foregoing, Mortgagee consents to recording of the Declaration of Condominium against the Premises.

(e) Plan Approval. Except for those improvements contemplated by the Plans and Specifications, no improvement on the Real Estate or on land adjoining the Real Estate which is owned or controlled by Mortgagor shall be constructed unless plans and specifications have been first submitted to Mortgagee and approved by it as entailing no prejudice to the Obligations.

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(f) Management. Mortgagor shall not cause or permit the Person, firm or other entity responsible for the management of the Premises to be changed without Mortgagee's prior written consent.

2.6 Compliance with Governmental and Other Requirements.

(a) Compliance. Mortgagor shall comply in all material respects with all applicable Requirements of Law relating to the Premises or its use by Mortgagor and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance required under Section 2.4 and to preserve and extend any rights, consents, licenses, permits, privileges, franchises and concessions (including rights, consents, licenses, permits, privileges, franchises and concessions relating to land use development, landmark preservation, construction, access, water rights, noise, pollution, zoning variances, special exceptions and nonconforming uses) that are applicable to the Premises or that have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Premises.

(b) Mortgagee's Approval of Changes. In the event that any Improvements must be altered or removed to enable Mortgagor to comply with the provisions of this Section 2.6, Mortgagor shall not commence any alterations or removals without Mortgagee's prior written approval in accordance with the Loan Agreement. After approval, Mortgagor, at its sole cost and expense, shall promptly effect the alterations or removal approved by Mortgagee. Mortgagor shall not by act or omission permit any building or other improvement on land not subject to the lien of this Mortgage to encroach onto or otherwise rely upon the Premises or any part of or any interest in it to fulfill any municipal or governmental requirement.

(c) No Encroachments. No Improvement shall encroach onto or otherwise rely upon any land not subject to the lien of this Mortgage to fulfill any governmental or municipal requirement.

2.7 Liens, Encumbrances and Transfers of Ownership.

(a) No Liens. Subject to Section 2.12, and except for the lien of the mortgage and other Mezzanine Loan Documents securing the Mezzanine Loan, Mortgagor shall keep the Premises free from liens of mechanics and materialmen and from all other liens, charges, and encumbrances of whatever nature (other than the lien of this Mortgage and the Permitted Exceptions listed on Exhibit B hereto) regardless of:

- (i) whether the same arise voluntarily or involuntarily on the part of Mortgagor; and
- (ii) whether the same are subordinate to, prior to or on a parity with the lien of this Mortgage,

and shall furnish to Mortgagee satisfactory evidence of the payment and discharge of any liens, charges and encumbrances on the Premises, except for any lien or encumbrance expressly consented to by Mortgagee, with respect to which Mortgagor shall pay, when due, the related

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obligations, and promptly following Mortgagee's request, furnish to Mortgagee satisfactory evidence of payment or payments.

(b) **Subordination of Liens.** Without in any way limiting Mortgagee's right to withhold its consent to Mortgagor granting or creating a lien against all or any part of the Premises that is subordinate to the lien of this Mortgage, any lien for which consent is given by Mortgagee shall be subject and subordinate to all commercial leases pertaining to the Premises whether then in existence or later arising, and further subject to any renewals, extensions, modifications, releases, increases, changes or exchanges pertaining to the Obligations, without the consent of any subordinate lien holder and without any obligation to give notice of any kind, regardless of whether or not expressed in the consent or in the document granting the subordinate lien.

2.8 Stamp Tax. If at any time the United States of America or any state, local or municipal government shall require Internal Revenue or other documentary stamps on this Mortgage or on the Notes, or shall otherwise impose a tax or impose an assessment on this Mortgage or on the Notes, or shall require payment of an interest equalization tax upon the Obligations, then the principal of the Obligations and the accrued interest shall be and become due and payable at the election of Mortgagee thirty (30) days after the mailing of notice of such election to Mortgagor. However, the election shall be unavailing and this Mortgage and the Notes shall be and remain in effect if Mortgagor lawfully may pay for any stamps or tax, including interest and penalties to or on behalf of Mortgagee and Mortgagor does in fact pay, when payable, for all stamps or tax, as the case may be, including interest and penalties.

2.9 Effect of Change in Laws Regarding Taxation. In the event of the enactment, after the date of this Mortgage, of any law of the United States of America or of the State of Illinois that deducts from the value of the land for the purpose of taxation any lien or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens required to be paid by Mortgagor, or changing in any material way the Requirements of Law relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of real property taxes, so as to materially and adversely affect this Mortgage or the Obligations, then Mortgagor, within ten (10) business days following written demand by Mortgagee, shall pay the taxes or assessments or reimburse Mortgagee. If, however, in the opinion of counsel for Mortgagee:

- (a) it might be unlawful to require Mortgagor to make payment, or
- (b) the making of payment might result in the imposition of interest beyond the maximum amount permitted by applicable Requirements of Law,

then, and in any event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Obligations to be and become due and payable within thirty (30) days from the giving of notice.

Notwithstanding the foregoing, Mortgagor shall not be obligated to pay any portion of Mortgagee's federal or state income tax.

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2.10 Authority. Mortgagor is lawfully seized of the Premises, the same are free from all liens and encumbrances except for the lien of this Mortgage and the other Loan Documents and other Permitted Exceptions.

2.11 Eminent Domain.

(a) **Notice of Proceeding.** Mortgagor shall give Mortgagee immediate notice of any action or proceeding for the taking through condemnation of all or any part of the Premises, including severance and consequential damage and change in grade of streets, and shall deliver to Mortgagee copies of any papers served in connection with any action or proceeding of which Mortgagor has notice.

(b) **Awards to Mortgagee.** Mortgagee is authorized, at its option, to commence, appear in and prosecute, through counsel selected by Mortgagee, in its own or in Mortgagor's name, any action or proceeding related to condemnation of the Real Estate. All compensation, awards, damages, claims, rights of action and proceeds (collectively "**Awards**") related to condemnation of the Real Estate are assigned by Mortgagor to Mortgagee and Mortgagee is authorized to collect and receive from any Governmental Authority any Awards now or later made or to be made to the Mortgagor by any Governmental Authority for the taking, by condemnation or eminent domain, assigned from Mortgagor to Mortgagee. Mortgagee is authorized to give appropriate receipts and acquittances. Mortgagor shall make, execute and deliver to Mortgagee at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any further assignments and instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning to Mortgagee all Awards previously made or to be made to Mortgagor for any taking, either permanent or temporary, under any proceeding.

(c) **Application.** The proceeds of all Awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all of its expenses in connection with proceedings, including costs and reasonable attorneys' fees, to the reduction of the Obligations, or to restoring the Improvements (in which event the same shall be paid out in the same manner as is provided with respect to insurance proceeds in Section 2.4(d) and Section 2.4(e)), all without affecting the security interest created by this Mortgage. Interest shall accrue to the benefit of Mortgagor on any Award paid to or held by Mortgagee at the rate not less than the lowest rate offered by the Mortgagee to commercial customers in the ordinary course of business from time to time on demand deposit accounts. Mortgagor shall execute further assignments of any Awards as Mortgagee may reasonably require.

2.12 Right to Contest Taxes and Mechanics' Liens. The obligations of Mortgagor under Section 2.3(a) and Section 2.7 are subject to the rights of Mortgagor to contest in good faith the validity or amount of any tax or assessment or lien arising from any work performed at or materials furnished to the Premises which right, however, is conditional upon:

(a) Mortgagor giving Mortgagee prompt written notice of its intention to contest the same which, with respect to any contested mechanic's lien claim, shall mean within thirty (30) days after Mortgagor receives actual notice of its filing,

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(b) Mortgagor either (i) causing any contested matter to be insured over by a title insurer qualified to do business in the State of Illinois and acceptable to Mortgagee pursuant to an endorsement to Mortgagee's existing lender's title insurance policy in form and substance reasonably acceptable to Mortgagee or (ii) making and later maintaining with Mortgagee or other depository as Mortgagee may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in Mortgagee's sole discretion, be acceptable to Mortgagee, and in either case having a present value equal to not less than 150% of the amount which, in Mortgagee's sole judgment, determined from time to time, shall be sufficient to pay in full any contested tax, assessment or lien and penalties, costs and interest that may become due in the event of a final determination adverse to Mortgagor or in the event Mortgagor fails to prosecute any contest as required, and

(c) Mortgagor diligently prosecuting any contest by appropriate legal proceedings or other appropriate means. In the event Mortgagor shall, in Mortgagee's reasonable judgment, fail to prosecute any contest with reasonable diligence or fail to maintain funds or other security on deposit as above provided, Mortgagee may, at its option, liquidate any securities deposited with Mortgagee, and apply the proceeds and other monies deposited with Mortgagee in payment of, or on account of, any taxes, assessments, or liens or any portion then unpaid, including the payment of all penalties and interest.

ARTICLE 3. PROVISIONS RELATING TO THE SECURITY INTEREST

3.1 Grant of Security Interest. As to any of the Premises that does not form a part and parcel of the Real Estate, this Mortgage is a security agreement under the Uniform Commercial Code as enacted in the State of Illinois (the "UCC") and creates on behalf of Mortgagee as Secured Party (as the term is defined in the UCC) a security interest in personal property, rents and Fixtures and a fixture filing in the Fixtures. No security interest is granted in or attaches to any trade fixtures or personal property of any lessee or purchaser of any part of the Real Estate.

3.2 Execution of Security Agreement and Financing Statement. Mortgagor, within ten (10) business days after request, shall execute, acknowledge and deliver to Mortgagee any security agreement, financing statement, or other similar security instrument, in form satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor that, in the sole opinion of Mortgagee, is essential to the operation of the Premises and concerning which there may be any doubt as to whether the title to same has been conveyed, or a security interest perfected, by this Mortgage under the laws of the State of Illinois and execute, acknowledge and deliver any financing statement, affidavit, continuation statement, certificate or other document as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue and extend the security interest. Mortgagor further agrees to pay to Mortgagee, within ten (10) business days after demand, reasonable costs and expenses (including attorneys', paralegal, legal specialist, legal assistant and law clerk fees) incurred by Mortgagee in connection with the preparation, execution, recording, filing and refile of any document delivered by Mortgagor in accordance with this Section 3.2. To the extent that this Mortgage operates as a security agreement under the UCC, Mortgagee shall have all rights and remedies conferred for the benefit of a Secured Party.

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3.3 Certain Acts of Mortgagee. Mortgagee, at its sole option, without notice and without regard to the consideration, if any, paid and notwithstanding the existence at that time of any inferior liens, may:

(a) release any part of the Premises or any Person liable for any Obligations, without in any way affecting that Person's liability under this Mortgage or the Documents, and without in any way affecting the priority of the lien of this Mortgage,

(b) agree with any Person obligated on the Obligations to extend the time for payment of any part or all of the Obligations,

(c) accept renewal Notes,

(d) take or release other or additional security for the Obligations,

(e) consent to any plat, map or plan of the Real Estate,

(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 Obligations or change the time of payment or the amount of the monthly installments, or

(i) waive or fail to exercise any right, power or remedy granted by Requirements of Law, this Mortgage or the Loan Documents.

No agreement shall, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any Person personally obligated for the Obligations, but shall, as applicable, extend the lien as against the title of all Persons having any interest in the Premises which interest is subject to this Mortgage.

3.4 Documentation Requiring Action by Mortgagee. Mortgagee shall, without unreasonable delay, execute all documents necessary to create utility and other easements necessary for the completion of the Project and those actions regarding the Condominium Report and Condominium Declaration required by Section 8.26 of the Loan Agreement

3.5 Fixture Filing. This Mortgage is intended to be a financing statement under the Uniform Commercial Code with respect to all personal property of the Mortgagor pledged herein and all fixtures. The addresses of Mortgagor and Mortgagee are as set forth in Section 8.61 of this Mortgage. This Mortgage is to be filed for record in the real estate records of the county where the Real Estate is located. Mortgagor is the record owner of the Real Estate.

3.6 Construction Mortgage. This is a construction mortgage within the meaning of Section 9-334(h) of the Illinois Uniform Commercial Code and is entitled to all the benefits and priorities afforded such a mortgage under state law.

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ARTICLE 4. PROVISIONS RELATING TO ASSIGNMENT OF RENTS AND LEASES

4.1 Assignment of Rents and Leases. Mortgagor presently assigns to Mortgagee all of Mortgagor's interest and rights as lessor in and to all leases now or later affecting the Real Estate and/or the Improvements or any part of them, whether written or oral, and all rents, issues, proceeds and profits accruing and to accrue from the Real Estate and/or the Improvements, whether payable pursuant to any present or future leases or otherwise arising out of any letting of or any agreement for the sale, occupancy or use of the Real Estate and/or any portion that may have been made or in the future agreed to by Mortgagor, together with any deposits and profits now due and/or that may become due and any guaranties executed in connection with the leases (which are pledged primarily and on a parity with the Real Estate, and not secondarily).

4.2 Rents and Leases.

(a) **Mortgagee Authority to Collect.** Pursuant to the assignment made by Mortgagor in the preceding section, Mortgagee is entitled to receive all rents, issues, proceeds and profits accruing and to accrue from the Premises pursuant to any leases. Mortgagor grants and confers upon Mortgagee the right, power and authority to collect all rents, issues, proceeds and profits and Mortgagor appoints Mortgagee its true and lawful agent and attorney-in-fact, at the option of Mortgagee, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue in the name of Mortgagor, for all rents, issues, profits and proceeds accrued but unpaid and in arrears at the date of an Event of Default as well as all rents, issues, profits and proceeds later accruing and becoming payable during the continuance of any Event of Default, and to apply the same to the Obligations. However, Mortgagor has the right to collect all rents, issues, profits and proceeds (but not more than one month in advance unless the written approval of Mortgagee has first been obtained), and to retain and enjoy the same, as long as an Event of Default is not continuing. In the event of a cure of any Event of Default, Mortgagor shall take such actions as may be necessary to reinstate the license of Mortgagee to receive all rents, issues, proceeds and profits accruing and to accrue from the Premises pursuant to any leases. Upon request of Mortgagee, Mortgagor shall execute and deliver to Mortgagee the following:

- (i) a specific assignment, in recordable form, of any lease, sublease, license, concession or other agreement now or later affecting all or any portion of the Premises to furnish evidence of the assignment made by this Mortgage; and
- (ii) other instruments as Mortgagee may deem necessary, convenient or appropriate in connection with the payment and delivery directly to Mortgagee of all of the rents, issues, profits and proceeds accruing and to accrue under any of the leases of all or any portion of the Premises. Mortgagor acknowledges that to facilitate the performance of its obligations under the Loan Documents, the assignment of the rents, issues, profits and proceeds and of Mortgagor's right, title and interest in and to leases, is intended to be an absolute assignment from Mortgagor to Mortgagee and not merely the granting of a security interest.

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Mortgagee may require Mortgagor to execute and deliver a separate document, in recordable form, to evidence this absolute assignment and its terms. The document shall set forth other terms and conditions as Mortgagee may deem necessary or appropriate.

(b) Mortgagee Not Obligated to Perform under Leases. Nothing in this Mortgage or in any Loan Document shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor, as lessor, lessee or assignor, under any of the leases assigned to Mortgagee or to pay any sum of money or damages provided to be paid by the lessor or lessor's assignee, each and all of which covenants and payments Mortgagor agrees to perform and pay.

(c) Lessee Attornment. In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each lease of all or any part of the Premises subordinate to the lien of this Mortgage shall, at the option of Mortgagee, attorn to any Person succeeding to the interest of Mortgagor, as a result of enforcement and shall recognize any successor in interest as lessor under the lease without change in the terms or other provisions. However, the successor in interest shall not be bound by any payment of rent for more than one month in advance or any amendment or modification to any lease made without the prior consent of Mortgagee or the successor in interest.

(d) Mortgagee's Right to Subordinate. At the option of 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 Awards) to any leases of all or any part of the Premises, upon the execution by Mortgagee and recording, at any time later, in the Office of the Recorder in and for the county where the Real Estate is situated, of a unilateral declaration to that effect.

4.3 Inspection of Premises. Mortgagor shall permit Mortgagee and its agents to inspect the Premises at all reasonable times and access shall be permitted for the inspections as provided in Section 8.11 of the Loan Agreement.

4.4 Access by Mortgagee. Mortgagor shall upon request deliver to Mortgagee duplicate originals or certified copies of all leases, agreements and documents relating to the Premises. Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and upon written demand therefor shall allow Mortgagee to examine and copy books and records and all supporting vouchers and data any time and from time to time, on request, at its office or at other locations as may be mutually agreed upon.

ARTICLE 5. ENVIRONMENTAL MATTERS

5.1 Covenants Regarding Environmental Compliance. Mortgagor covenants and agrees that, until the Loan, together with all accrued interest on the Loan, and all other fees and charges payable to Mortgagee under the Loan Documents, are paid in full:

(a) No Hazardous Materials. Mortgagor will not use, generate, manufacture, produce, store, release, discharge, pour, inject, or dispose of on, under or about the Premises or transport to or from the Premises any Hazardous Materials or authorize any other Person to do so, except to the extent:

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- (i) reasonably required in connection with the business activities or operations of Mortgagor at the Premises permitted under the Mortgage, and
- (ii) in accordance with the following clause (b) below.

(b) Mortgagor Compliance. Mortgagor shall comply with, shall keep and maintain the Premises in compliance with the Environmental Indemnity Agreement and shall not cause or permit the Premises to be in violation of, any Environmental Law.

(c) Required Notice by Mortgagor. Mortgagor shall give immediate written notice to Mortgagee of:

- (i) any pending or threatened litigation or proceeding of which Mortgagor has written notice before, or inquiry by, any Governmental Authority in which any Person alleges the presence, release or threat of release, placement or disposal of any Hazardous Materials on, under or in the Premises, or the migration of any Hazardous Materials from or to other real property adjoining the Premises;
- (ii) all written communications and claims made or threatened by any Person against Mortgagor, or the Premises with respect to any loss or injury related to the presence, release, placement or disposal of any Hazardous Materials on, under or in the Premises;
- (iii) receipt of written notice by Mortgagor of any fact, occurrence or condition relating to the release or presence of any Hazardous Materials from, at or in the vicinity of the Premises that could adversely affect the Premises or the value or the use of the Premises; and
- (iv) any written notice that any Governmental Authority has determined that there is a release or threat of release of any Hazardous Materials on, under or in the Premises.

(d) Mortgagee's Right to Participate in Legal Proceedings. Mortgagee has the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Premises in connection with any Environmental Law and shall have its related attorneys' fees paid by Mortgagor.

5.2 Representations and Warranties Relating to Environmental Matters. Mortgagor represents and warrants to Mortgagee that:

(a) No Violations. To Mortgagor's knowledge, neither the Premises nor Mortgagor is in violation in any material respect of any Environmental Law nor subject to any existing, pending or, to Mortgagor's actual knowledge, threatened investigation or proceeding by any Governmental Authority with respect to a violation of any Environmental Law.

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(b) No Notices Received. Mortgagor has not received any notice of any proceeding or inquiry by any Governmental Authority with respect to the presence, release or threat of release of any Hazardous Materials on, under or about the Premises or the migration of Hazardous Materials from or to other real property adjoining the Premises.

(c) No Permits Required. To Mortgagor's actual knowledge, Mortgagor is not required by any Environmental Law to obtain any permits or licenses to construct or use any improvements, fixtures, equipment or machinery forming a part of the Premises, or used in connection with existing or currently-contemplated business activities or operations of Mortgagor at the Premises.

(d) No Hazardous Materials. The present and intended use of the Premises will not result in, and to Mortgagor's actual knowledge the prior use of the Premises has not resulted in, the use, generation, manufacture, production, storage, discharge, disposal or release of any Hazardous Materials on, under, in or about the Premises, except as permitted under Section 5.1(a).

(e) No Underground Storage Tanks. To Mortgagor's actual knowledge, there are no underground storage tanks or other storage vessels or containers under the surface of the Premises.

(f) Use of Premises. To Mortgagor's actual knowledge, the Premises have not been used as a sanitary landfill or dump or for industrial waste disposal, chemical storage or any similar uses.

(g) No Wetlands. To Mortgagor's actual knowledge, the Premises do not contain any wetlands, as that term is defined in 33 CFR §320, et seq.

ARTICLE 6. DUE ON SALE/ENCUMBRANCE

Subject to the terms and conditions of the Loan Agreement, Mortgagor shall not, without the prior written consent of Mortgagee, sell, transfer, convey, lease or sublease, alien, pledge, hypothecate, mortgage, encumber, or assign the title or any interest (beneficial or otherwise) in or to all or any portion of the Premises, or the rents, issues or profits pertaining to the Premises, whether by operation of law, voluntarily, or otherwise, and shall not contract to do any of the foregoing, provided however, that Mortgagor shall be entitled to enter into Unit Sales Contracts, and shall have the right to obtain Partial Releases of this Mortgage in accordance with the terms of the Loan Agreement.

ARTICLE 7. DEFAULTS

7.1 Default and Remedies.

(a) Default under Notes or other Loan Documents. It shall constitute an "**Event of Default**" under this Mortgage when and if any "**Event of Default**" occurs under the Notes, the Loan Agreement or any other Loan Document.

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(b) Default under Mortgage. It shall constitute an Event of Default under this Mortgage if there is a default under any section of this Mortgage that is not cured after notice and within any applicable cure period.

(c) Remedies of Mortgagee upon Default. In addition to any other remedy specified in any of the Loan Documents, if any Event of Default under this Mortgage shall occur, Mortgagee may, at its option:

- (i) declare the entire amount of the Obligations to be immediately due and payable, without notice or demand (each of which is expressly waived by Mortgagor) whereupon the same shall become immediately due and payable,
- (ii) institute proceedings for the complete foreclosure of this Mortgage,
- (iii) institute proceedings to collect any delinquent installment or installments of the Obligations without accelerating the due date of the entire amount of the Obligations by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of the Obligations only, and any sale of the Premises under a foreclosure proceeding shall be subject to, and shall not affect the unmaturing part of the Obligations, and this Mortgage shall be and continue as a lien on the Premises securing the unmaturing Obligations,
- (iv) take steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in this Mortgage or any of the Loan Documents, or in aid of the execution of any power granted, or for any foreclosure, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect,
- (v) with respect to any part of the Premises constituting property of the type in respect of which a related security interest is governed by the UCC, exercise all rights, options and remedies of secured parties under the UCC, including the right to possession of any property or any part of property, and the right to enter, without legal process, any premises where any property may be found, it being agreed and understood by Mortgagor that any requirement of the UCC for reasonable notification shall be sent by mailing written notice to Mortgagor at its address set forth below at least ten (10) days prior to sale or other event for which notice is required, or
- (vi) enforce this Mortgage in any other manner permitted under the laws of the State of Illinois.

(d) Mortgagee Entitled to Costs of Suit. In any suit to foreclose the lien of this Mortgage, including any partial foreclosure pursuant to clause (c)(iii) above, or enforce any other remedy of Mortgagee under this Mortgage or any of the Loan Documents, there shall be allowed and included, as additional Obligations in the judgment or decree, all expenditures and expenses

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that may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, paralegal, legal specialist, legal assistant and law clerk fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title commitments, title reports, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem necessary either to prosecute a suit or to evidence to bidders at any sale that may be had pursuant to any decree the true condition of the title to or value of the Premises.

(e) Mortgagee Entitled to Possession upon Default. Upon the occurrence of an Event of Default, whether or not the entire principal of the Obligations is declared to be immediately due, or whether before or after the institution of legal proceedings to foreclose this lien or before or after sale, forthwith, upon application by Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Premises, or any part of the Premises, personally or by its agent or attorneys, to the fullest extent permitted by any applicable Requirements of Law. Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts of Mortgagor or the then manager of the Premises, and may exclude Mortgagor, its agents or servants, wholly from the Premises and may, as attorney-in-fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers granted in this Mortgage:

- (i) hold, operate, manage and control the Premises and conduct the business, if any, either personally or by its agents, and with full power to use measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, granting full power and authority to exercise each and every one of the rights, privileges and powers granted by this Mortgage at any later times, without notice to Mortgagor,
- (ii) cancel or terminate any lease on any ground that would entitle Mortgagor to cancel the same,
- (iii) elect to disaffirm any lease made subsequent to this Mortgage or that is subordinate to the lien hereof,
- (iv) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options of lessees to extend or renew terms to expire, beyond the Term of the Loan and issue a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any leases, and the options or other provisions to be contained in those leases, are binding upon Mortgagor and all Persons whose interests in the Premises are subject to this lien and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale or discharge of the Obligations, satisfaction of any foreclosure decree or

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issuance of any certificate of sale or deed to any purchaser,

- (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee,
- (vi) insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and
- (vii) receive all avails, rents, issues and profits; granting full power and authority to exercise each and every of the rights, privileges and powers granted at any later times without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor agrees to defend, indemnify and hold Mortgagee harmless from any liability, loss or damage (except for willful misconduct or gross negligence of Mortgagee) that it may or might incur under leases or under or by reason of the assignment of such leases and from any claims and demands whatsoever that may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any leases. Should Mortgagee incur any liability, loss or damage, under any leases or under or by reason of the assignment of such leases, or in the defense of any claims or demands, the amount, including costs, reasonable attorneys' fees and expenses, shall be secured hereby, and Mortgagor shall reimburse Mortgagee for such amount promptly following request by Mortgagee. (Mortgagee shall provide Mortgagor with informational copies of all records of such costs, fees and expenses; provided however, that the amount of the same shall not be subject to challenge by Mortgagor.)

(f) Application of Funds upon Possession by Mortgagee. Any avails, rents, issues and profits of the Premises received by Mortgagee after having possession of the Premises, or pursuant to any assignment to Mortgagee under the provisions of this Mortgage or of any separate assignment of rents or assignment of leases related hereto, shall be applied in payment of or on account of the following, in such order as Mortgagee (or in case of a receivership, as the court) may determine:

- (i) to the payment of the operating expenses of the Premises, including reasonable compensation to Mortgagee or the receiver and its agent or agents, if management of the Premises has been delegated to an agent or agents, and the payment of premiums of insurance as authorized above,
- (ii) to the payment of taxes, special assessments, water taxes and other charges now due or that may later become due on the Premises or that may become a lien prior to the lien of this Mortgage,
- (iii) to the payment for all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Premises, including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the Premises, and of

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placing the Premises in such condition as will, in the judgment of Mortgagee or receiver, make the Premises readily rentable,

- (iv) to the payment of any Obligations or any deficiency that may result from any foreclosure sale, or
- (v) with respect to any surplus or remaining funds, to the Person or Persons as shall be legally entitled to same.

(g) Mortgagor Consent to Appointment of Receiver. Upon or at any time after the filing of any action to foreclose this Mortgage, Mortgagor consents, upon application by Mortgagee, to the appointment of a receiver of the Premises. The appointment may be made either before or after sale without notice and without regard to the solvency or insolvency, at the time of application for receiver, of the Person or Persons, if any, liable for the payment of the Obligations and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. The receiver shall have the power to take possession, control, and care of the Premises and to collect the rents, issues and profits of the Premises during the pendency of any foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by Mortgagor), as well as during any further times when Mortgagor, its heirs, administrators, executors, successors or assigns, except for the intervention of any receiver, would be entitled to collect, and all other powers that may be necessary or are useful for the protection, possession, control, management and operation of the Premises, during the whole of the period. To the extent permitted by Requirements of Law, the receiver may be authorized by the court to extend or modify any then-existing leases to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Term of the Loan, it being understood and agreed that any leases and the options or other provisions to be contained in the leases, shall be binding upon Mortgagor and all Persons whose interests in the Premises are subject to the lien created under this Mortgage and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

(h) Sale of Premises upon Foreclosure. All or any portion of the Premises or any interest or estate of the Premises sold pursuant to any court order or decree obtained pursuant to this Mortgage shall be sold in one parcel as an entirety, or in parcels and in the manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by Requirements of Law. At any sale, Mortgagee may bid for and acquire, as purchaser, the Premises or any part of the Premises, and in lieu of paying cash, may make settlement for the purchase price by crediting upon the Obligations due the amount of Mortgagee's bid.

(i) Distribution of Proceeds of Sale. The proceeds of any sale of the Premises pursuant to a foreclosure under Section 7.1(h) shall be distributed and applied in the following order of priority:

- (i) on account of all costs and expenses incident to the foreclosure

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proceedings, including all costs and expenses set forth in Subsection 7.1(d) above,

- (ii) to all other items that, under the terms, constitute Obligations additional to that evidenced by the Notes, with interest at the Default Rate,
- (iii) to all principal and interest remaining unpaid on the Notes in the order as Mortgagee may, in its sole discretion, determine, and
- (iv) to any surplus to the Person or Persons as shall be legally entitled.

(j) Right of Offset. Mortgagor agrees that subject to Requirements of Law and the Loan Agreement upon an Event of Default under the Notes or this Mortgage or any of the Loan Documents, Mortgagee may, at its option, offset all money, bank or other deposits or credits now or later held by Mortgagee or owed by Mortgagee to Mortgagor against all amounts due under the Notes or against any other amounts that may be due Mortgagee from Mortgagor. Any offset amounts may be applied in any order and manner elected by Mortgagee. When the Obligations have been fully paid, any remaining deposits shall be paid to Mortgagor or to the Person or Persons as may be legally entitled to the deposits. Any deposits are pledged as additional security for the prompt payment of the Obligations and any other indebtedness and shall be held to be irrevocably applied by Mortgagee for the purposes for which made and shall not be subject to the direction or control of Mortgagor.

(k) Mortgagee Entitled to Deficiency Decree. At any foreclosure proceeding, if the Premises are sold for a sum less than the total amount of the indebtedness for which judgment is given, the judgment creditor shall be entitled to the entry of a deficiency decree against Mortgagor and against the property of Mortgagor for the amount of the deficiency and Mortgagor does irrevocably consent to the appointment of a receiver for the Premises and the property of Mortgagor and of the avails, rents, issues and profits after sale until the deficiency decree is satisfied in full.

(l) No Defense. No action for the enforcement of the lien of this Mortgage shall be subject to any defense that would not be good and available to the party interposing the same in an action of law upon the Notes.

(m) Acceptance of Partial Payment not Waiver by Mortgagee. To the extent permitted by Requirements of Law, acceptance by Mortgagee of any payment that is less than payment in full of all amounts due and payable at the time of payment shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal of the Obligations then remaining unpaid, together with all accrued interest, immediately due and payable without notice, or any other rights of Mortgagee at that time or any subsequent time, nor nullify any prior exercise of the option or the rights of Mortgagee without its express consent.

(n) Mortgagor Liable for Prepayment Premium and Costs of Suit. In case, after legal proceedings are instituted to foreclose this Mortgage, and tender is made of the entire Obligations due, Mortgagee shall be entitled to reimbursement for expenses incurred in connection with the legal proceedings, including expenditures as are enumerated above, and any

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expenses shall be so much additional Obligations, and no suit or proceedings shall be dismissed or otherwise disposed of until any fees, expenses and charges have been paid in full.

(o) Failure to Exercise Right not a Waiver. No delay in the exercise of or failure to exercise any remedy or right accruing on the occurrence of any Event of Default shall impair any remedy or right or be construed to be a waiver of any Event of Default, nor shall it affect any subsequent Event of Default of the same or of a different nature.

(p) Mortgagee Entitled to Rescind Acceleration of Maturity. Acceleration of maturity, once made by Mortgagee, may at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies may, at Mortgagee's option, be discontinued or dismissed, whereupon, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and powers of Mortgagee shall continue as if acceleration had not been made or proceedings had not been commenced, as the case may be.

(q) Mortgagee's Rights Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in this Mortgage and the Loan Documents are cumulative and concurrent and may be pursued separately, successively or together against Mortgagor, any guarantor or the Premises, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as necessary, all to the maximum extent permitted by Requirements of Law. If Mortgagee elects to pursue one right or remedy under this Mortgage, or the Loan Documents, Mortgagee may at any time cease pursuing the right or remedy and pursue any other right or remedy under this Mortgage or the Loan Documents.

(r) Completion of Work. In the event any work with respect to the Project is being performed with respect to the Premises, upon the occurrence of an Event of Default, in addition to any other remedies, at Mortgagee's election, Mortgagee may enter upon the Premises and perform any work and labor necessary to complete the Project or any portion of the Premises in accordance with the terms of the Loan Agreement. To implement the rights of Mortgagee, in addition to any other remedies that Mortgagee may have or under any of the Loan Documents, Mortgagee may in its sole discretion do any one or more of the following:

- (i) enter upon the Premises and complete the Project and employ watchmen, all at the risk, cost and expense of Mortgagor;
- (ii) at any time discontinue any work commenced in respect of the Project and change any course of action undertaken by it and not be bound by any limitations or requirements of time whether set forth in any of the Loan Documents or otherwise;
- (iii) assume any contract made by Mortgagor in any way relating to the Project, including any architect, engineering or construction contract, and take over and use all or any part of the labor, materials, supplies and equipment contracted for by Mortgagor, whether or not previously incorporated into the Project; and
- (iv) in connection with any work undertaken by Mortgagor pursuant to the provisions of this Subsection 7.1(r), perform any one or more of the

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following:

- (A) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials, supplies and equipment in connection with any construction of the Project;
- (B) pay, settle or compromise all bills or claims that may become liens against the Project, or that have been or may be incurred in any manner in connection with completing the Project or for the discharge of liens, encumbrances or defects in the title of the Project; and
- (C) take or refrain from taking any action under this Mortgage as Mortgagee from time to time may determine.

Mortgagor is liable to Mortgagee for all sums paid or incurred to construct and equip the Project whether the same are paid or incurred pursuant to the provisions of this Subsection 7.1(r) or otherwise. All payments made or liabilities incurred by Mortgagee of any kind whatsoever shall be paid by Mortgagor to Mortgagee upon demand with interest at the Default Rate from the date of payment by Mortgagee to the date of Mortgagee's receipt of reimbursement from Mortgagor and shall be secured by this Mortgage. For purposes of exercising the rights granted in this Subsection 7.1(r), Mortgagor irrevocably constitutes and appoints Mortgagee as Mortgagor's true and lawful attorney-in-fact with full power of substitution to execute, acknowledge and deliver any instruments and to do and perform any acts in the name of and on behalf of Mortgagor upon the occurrence of an Event of Default. This power of attorney shall be a power coupled with an interest and cannot be revoked.

7.2 Mortgagee's Performance of Defaulted Acts. If an Event of Default occurs, Mortgagee may, but need not, make any payment or perform any act required of Mortgagor in any form and manner deemed expedient by Mortgagee. By way of illustration and not in limitation, Mortgagee may, but need not:

- (a) make full or partial payments of principal, interest, penalties or late charges on prior encumbrances, if any,
- (b) purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim,
- (c) redeem from any tax sale or forfeiture affecting the Premises,
- (d) contest any tax or assessment,
- (e) collect rents,
- (f) prosecute collection of any sums due with respect to the Premises, and
- (g) make repairs to the Premises.

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Mortgagee is authorized to make or advance, in the place and stead of Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental charges, fines, impositions, or liens asserted against the Premises and may do so according to any bill, statement, or estimate procured from the appropriate Governmental Authority without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim, and Mortgagee is further authorized to make or advance in the place and stead of Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge, or payment otherwise relating to any other purpose and authorized, but not enumerated in this Section 7.2, and may do so whenever, in Mortgagee's sole judgment and discretion, any advance or advances shall seem necessary or desirable to protect the full security intended to be created by this Mortgage, and in connection with any advance, Mortgagee, at its option, may and is authorized to obtain a continuation abstract or report of title or commitment for title insurance or title insurance policy prepared by an abstractor or title insurance company of Mortgagee's choosing. All monies paid or incurred in connection with Mortgagee's rights under this Section 7.2, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien, shall be so much additional Obligations, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest at the Default Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Event of Default.

ARTICLE 8. GENERAL TERMS

8.1 Future Advances. This Mortgage is given to secure not only existing indebtedness, but also such future advances as are made after the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed 200% of the original principal of the Notes plus disbursements made for the payment of taxes, levies or insurance on the Premises, with interest on such disbursements. Nothing contained herein, however, shall obligate Mortgagee to make any future advances. If Mortgagee makes any future advances, (a) the term "Notes", as used in this Mortgage, shall include all promissory notes and other documents evidencing such future advances in addition to the Promissory Notes identified in Paragraph B. of the RECITALS clause of this Mortgage, and (b) the term "Loan Documents" shall include all documents executed in connection with the futures advance(s) in addition to all other documents described in Paragraph C. of the RECITALS clause above.

8.2 Revolving Advances. This Mortgage secures various revolving advances, which may be borrowed and reborrowed by the Mortgagor, all subject to the terms of the Loan Agreement. Any and all advances, and without regard to whether the unpaid balance of the loan at any time reaches zero, shall be secured by a lien which dates from the date of recordation of this Mortgage.

8.3 INTENTIONALLY DELETED

8.4 Partial Invalidity. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage comports with all applicable Requirements of Law. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage is

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found by a court of competent jurisdiction to be in violation of any applicable Requirements of Law, and if a court should declare any portion, provision or provisions of this Mortgage to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that any portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if any illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained in this Mortgage, and that the rights, obligations and interests of Mortgagor and Mortgagee under the remainder of this Mortgage shall continue in full force and effect. If under the circumstances, interest in excess of the limit allowable by applicable Requirements of Law is paid by Mortgagor in connection with the Obligations, the excess shall be applied by Mortgagee to the unpaid principal balance of the Obligations in the manner Mortgagee may in its sole discretion determine, or refunded to Mortgagor in a manner to be determined by Mortgagee and if any excess interest has accrued, Mortgagee shall eliminate the excess interest so that under no circumstances shall interest on the Obligations exceed the maximum rate allowed by applicable Requirements of Law.

8.5 Subrogation. In the event the Loan Proceeds, any part of the Loan Proceeds or any other amount paid out or advanced by Mortgagee shall be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon all of the Premises or any part of the Premises, Mortgagee shall be subrogated to that other lien or encumbrance and to any additional security held by the holder and shall have the benefit of the priority of all of same.

8.6 Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer, by operation of law or otherwise, of all or any part of the Premises except the sale of Units, Mortgagee is authorized and empowered to deal with vendee or transferee with reference to the Premises, or the Obligations, or with reference to any other the terms or conditions, as of the sale or transfer fully and to the same extent as it might deal with Mortgagor, without in any way releasing or discharging Mortgagor from Mortgagor's covenants and undertakings hereunder, specifically including Section 2.6 and without Mortgagee waiving its rights to accelerate the Obligations in the event of a breach of Section 2.6.

8.7 Expenses Incurred by Mortgagee. Any out-of-pocket costs, damages, expenses or fees, including reasonable attorneys' fees, paralegal, legal specialist, and legal assistant fees incurred by Mortgagee in connection with:

- (a) sustaining the lien of this Mortgage or its priority,
- (b) obtaining any abstract, title opinion, title report, title searches, commitment for title insurance or title insurance policy,
- (c) protecting the Premises,
- (d) protecting or enforcing any of Mortgagee's rights under the Loan Documents,
- (e) recovering any Obligations,

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(f) any litigation or other legal proceedings (including bankruptcy, probate and administrative law proceedings) affecting this Mortgage or the Premises, or

(g) preparing for the commencement, defense or participation in any threatened litigation or proceedings, or as otherwise enumerated in Section 7.1(c),

shall constitute additional Obligations and shall be payable by Mortgagor within ten (10) Business Days following receipt of written notice from Mortgagee, subject to disbursement from Loan proceeds (to the extent covered by the Budget).

8.8 Giving of Notice. Any notice, demand, consent, authorization, request, approval or other communication given or required must contain a clear and concise statement of the purpose of the notice, reference this Mortgage and is effective and valid only if in writing, signed by the party giving notice and delivered in person by a commercial messenger service regularly retaining receipts for delivery, a reputable overnight express courier or delivery service from whom a receipt is obtained, by facsimile or email transmission (to be followed immediately by an original sent by one of the other enumerated means), or, if mailed, sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Mortgagee:

National City Bank
One North Franklin, Suite 2150
Chicago, IL 60606
Attention: Robert A. West
Telephone No. (312) 333-5211
Facsimile No. (312) 384-4623
Email: Robert.West@nationalcity.com

With a mandatory copy to:

Lord, Bissell & Brook LLP
111 S. Wacker Drive
Chicago, IL 60606
Attn: John N. Oest, Esq.
Telephone No. (312) 443-0434
Facsimile No. (312) 896-6434
Email: joest@lordbissell.com

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and another mandatory copy to:

Agent Services
629 Euclid Avenue
Locator 01-3028
Cleveland, OH 44114
Attention: Traci Sajewski
Telephone No. (216) 222-4526
Facsimile No. (216) 222-0103
Email: Traci.Sajewski@nationalcity.com

To Mortgagee:

Ronald B. Shipka, Jr.
Enterprise Companies
600 West Chicago Avenue, Suite 750
Chicago, IL 60610
Telephone No. (312) 348-6900
Facsimile No. (312) 670-3805
Email: jr@theenterprisecompanies.com

With mandatory copies to:

Patricia S. Ullman
Schiff Hardin LLP
6600 Sears Tower
Chicago, IL 60606-6473
Telephone No. (312) 258.5688
Facsimile No. (312) 258.5600
Email: pullman@schiffhardin.com

All notices shall be considered given on the date when delivered (refusal of delivery shall constitute delivery), or if mailed, upon the date of receipt of notice as evidenced by the return receipt with respect to notices received by the sender, addressed to the parties to be notified at the addresses set forth above or to any other addresses as any party may later specify to the others by like notice.

8.9 Time is of the Essence. It is specifically agreed that time is of the essence of this Mortgage. The waiver of any of the options, rights or remedies of Mortgagee will not at any later time constitute an abandonment of those rights.

8.10 Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any proceeds of the Notes have been disbursed, this Mortgage shall secure (in addition to any proceeds of any Obligations disbursed from time to time) the payment of any loan commissions, origination fees, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the Obligations.

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8.11 Modifications. This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

8.12 Covenants to Run with the Real Estate. All the covenants of Mortgagor shall run with and touch and concern the Real Estate.

8.13 Captions. The captions and headings of various Sections are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions.

8.14 Governing Law; Jurisdiction and Venue. This Mortgage and all disputes, claims and controversies relating to it, are to be governed by, and construed in accordance with the laws of the State of Illinois without reference to choice of law or conflict of law rules. In the event of any action, suit or proceeding arising under this Mortgage, Mortgagor and Mortgagee shall submit to the jurisdiction and venue of the appropriate federal and state courts of the State of Illinois, sitting in Cook County, Illinois.

8.15 Binding on Successors and Assigns; Certain Definitions.

(a) This Mortgage and all provisions and covenants of Mortgagor extend to and are binding upon Mortgagor's successors and assigns and all Persons claiming under or through Mortgagor.

(b) The word "**Mortgagee**" shall include the successors and assigns of Mortgagee.

(c) The following words and phrases are construed as follows: "any" is construed as "any and all"; "include" and "including" is construed as "including but not limited to"; and "will" and "shall" are each construed as mandatory.

(d) Words of the masculine, feminine or neuter gender mean and include the corresponding words of the other genders, and words implying the singular number mean and include the plural number and vice versa. References to and other words implying persons include firms, associations, partnerships (including limited partnerships), limited liability companies, trusts, corporations and other legal entities, including public bodies as well as natural persons.

(e) All references to any agreement or instrument (including this Mortgage) are to the agreement or instrument as in effect from time to time, including any amendments, replacements, restatements, modifications, extensions, renewals and/or supplements.

8.16 Further Assurances. Mortgagor agrees to execute, acknowledge and deliver to Mortgagee and to any subsequent holder of the Notes from time to time upon demand (and pay the costs of preparation and recording) any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to reaffirm, to correct and to perfect the evidence of the Obligations and the lien of Mortgagee as to all or any part of the Premises intended to be mortgaged, whether now mortgaged, later substituted for or acquired subsequent to the date of this Mortgage and

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extensions or modifications, and will do or cause to be done all further acts and things as may be necessary fully to effectuate the intent of this Mortgage.

8.17 Recording and Filing. Mortgagor, at its expense, will cause this Mortgage and all supplements for which constructive notice must be given to protect Mortgagee, at all times to be recorded and filed, and re-recorded and refiled, in a manner and in places as Mortgagee shall request, and will pay all recording, filing, re-recording, re-filing, taxes, fees and other charges to the maximum extent permitted by Requirements of Law.

8.18 Waivers by Mortgagor. To the extent permitted by all applicable Requirements of Law, Mortgagor shall not apply for or avail itself of any appraisal, valuation, reinstatement, redemption, stay, extension, or exemption laws or any so called "moratorium laws," now existing or later enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but waives the benefit of those laws. Mortgagor, for itself and all who may claim through or under it, and hereby waives any right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien granted in this Mortgage and agrees that any court having jurisdiction to foreclose that lien may order the Premises sold as an entirety. Mortgagor waives any rights of redemption, including redemption from judgment of foreclosure and/or from sale under any order or decree of foreclosure, pursuant to rights granted in this Mortgage, on behalf of Mortgagor and all Persons beneficially interested in the Mortgage, if any, and each and every Person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other Persons to the extent permitted by applicable Requirements of Law.

8.19 Condition of the Premises. As of the date of this Mortgage, the condition of the Premises is substantially the same as that shown on the survey delivered to Mortgagee in connection with the loan evidenced by the Notes, and Mortgagor has taken no action, nor suffered any action to be taken, that might adversely affect Mortgagor's interest in the Premises, or Mortgagor's ability to perform its covenants.

8.20 After Acquired Property. Any property later acquired and placed, installed or incorporated on or into the Premises, that is of the kind or nature described in this Mortgage, or is intended to be and becomes subject to the lien granted in this Mortgage, shall *ipso facto*, and without any further conveyance, assignment or act of Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described in this Mortgage, but nevertheless, Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all further assurances, conveyances and assignments as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all later-acquired property.

8.21 Business Loan Recital.

(a) The Loan evidenced by the Notes constitutes a business loan that comes within the purview of Subparagraph (1)(c) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended from time to time (815 ILCS 205/4(1)(a)-(n), inclusive), and is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, *et seq.*

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(b) No clause or provision contained in this Mortgage or any of the Loan Documents shall be construed or operate:

- (i) to raise the interest rate set forth in the Notes above the lawful maximum, if any, in effect from time to time in the applicable jurisdiction for loans to borrowers of the type, in the amount, for the purposes, and otherwise of the kind contemplated, or
- (ii) to require the payment or the doing of any act contrary to law; but if any clause or provision contained shall otherwise operate to invalidate this Mortgage and/or any of the Loan Documents, in whole or in part, then
 - (A) the clauses or provisions shall be deemed modified to the extent necessary to be in compliance with applicable Requirements of Law, or
 - (B) to the extent not possible, shall be deemed void as though not contained and the remainder of this Mortgage and the Loan Documents shall remain operative and in full force and effect.

8.22 No Merger. It being the desire and intention of the parties that this Mortgage and the lien granted in this Mortgage do not merge in fee simple title to the Premises, it is understood and agreed that should Mortgagee acquire an additional or other interests in or to the Premises or the ownership of the Premises, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien granted under this Mortgage shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

8.23 No Partnership or Joint Venture. Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor. Without limitation, Mortgagee shall not be deemed to be a partner or joint venturer on account of its becoming a Mortgagee in possession or exercising any rights pursuant to this Mortgage, the Loan Documents or otherwise.

8.24 No Liability on Mortgagee. This Mortgage is intended only as security for the obligations set forth in this Mortgage. Notwithstanding anything contained in this Mortgage to the contrary, Mortgagee is not required to perform or discharge and Mortgagor neither undertakes to perform nor discharge, any obligation, duty or liability of Mortgagee, whether under this Mortgage, under any of the leases affecting the Premises, under any contract relating to the Premises or otherwise, and Mortgagor agrees to defend, indemnify against and hold Mortgagee harmless of and from:

- (a) any liability, loss or damage that Mortgagee may incur under or with respect to any portion of the Premises or under or by reason of its exercise of rights under this Mortgage, and
- (b) any claims and demands whatsoever that may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms,

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covenants or agreements contained in any of the contracts, documents or instruments affecting any portion of the Premises or affecting any rights of Mortgagee.

Unless and until an Event of Default occurs and Mortgagee takes possession of the Premises, Mortgagee shall have no responsibility for the control, care, management or repair of the Premises and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any lessee, licensee, employee, stranger or other Person. No liability shall be enforced or asserted against Mortgagee in its exercise of the powers granted to it, and Mortgagor expressly waives and releases any liability. Should Mortgagee incur any liability, loss or damage under any of the leases affecting the Premises or under or by reason, or in the defense of any claims or demands, Mortgagor agrees to reimburse Mortgagee immediately upon demand for the full amount, including costs, expenses and reasonable attorneys' fees.

8.25 Consent and Approval. Whenever in this Mortgage or as a matter of law it is provided or held that Mortgagee's consent or approval shall not be unreasonably withheld or the actions of Mortgagee shall be reasonable or not unreasonable, the remedy of Mortgagor in the event Mortgagor shall claim and establish that Mortgagee has unreasonably withheld consent or approval or has acted unreasonably, shall be limited to injunction or declaratory judgment and in no event shall Mortgagee be liable for a money judgment.

8.26 Limitation on Recourse.

(a) Notwithstanding any provision hereof, but subject in all respects to the provisions of the Environmental Indemnity and the Guaranty, neither Borrower nor any member of Borrower shall be personally liable by reason of any default in the payment or performance of the obligations of Borrower under this Notes; provided, however, that the foregoing limitation of recourse shall not impair or otherwise affect

- (i) any of Lender's rights or remedies against any collateral now or hereafter pledged to Lender as security for the obligations of Borrower,
- (ii) any of Lender's rights or remedies against any other person or entity liable for the obligations of Borrower, including without limitation any of Lender's rights or remedies against all or any of the Guarantors under either of the Guaranty, or
- (iii) the obligations and liabilities of Borrower and each of the Guarantors under the Environmental Indemnity.

(b) The provisions hereof shall not:

- (i) constitute a waiver, release or impairment of any obligation evidenced or secured by the Notes, the Mortgage or any other Loan Document;
- (ii) be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) of the U.S. Bankruptcy Code to file a claim for the full amount of the Loan secured by the Mortgage or to

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require that all collateral shall continue to secure the Loan owing to the Lender in accordance with the Loan Documents;

- (iii) impair the right of Lender to obtain the appointment of a receiver; or
- (iv) affect the validity or enforceability of, or limit recovery under, any guaranty made in connection with the Loan Documents.
- (v) impair the right to name the Borrower as a party defendant in any action or proceeding, subject to the provisions of this paragraph;
- (vi) impair the Agent's ability to assert any unpaid amount due under the Loan as a defense or offset against any claim or cause of action against Agent (or any of the Lenders) by Borrower or any of its constituent members, or any guarantor or indemnitor;
- (vii) impair the ability of the Lender to recover any loan proceeds not applied as required under the Loan Documents.

(c) Notwithstanding anything herein to the contrary, nothing herein shall be deemed to prejudice the right of Lender to pursue or obtain personal recourse liability against Borrower and to recover actual damages incurred by Lender resulting from:

- (i) obligations and liabilities under the Environmental Indemnity Agreement;
- (ii) fraud or intentional material misrepresentation by Borrower in connection with the Loan;
- (iii) insurance and/or condemnation proceeds received by Borrower but not applied in accordance with of the Loan Documents; or
- (iv) any act of arson or malicious destruction by Borrower.
- (v) any application of proceeds of the sale of Units, other than as permitted under the terms of the Loan Documents;
- (vi) any misappropriation of escrow deposits from any purchaser of a Unit;
- (vii) Borrower's entering into sales contracts in violation of the Loan Documents.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

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IN WITNESS WHEREOF, Mortgagor has signed these presents the day and year first above written.

MORTGAGOR:

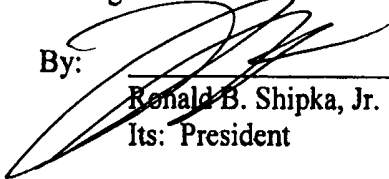
1600 MUSEUM PARK LLC, an Illinois limited liability company

By: **EDC 1600 MUSEUM PARK, LLC**,
an Illinois limited liability company,
a member and manager

By: **EDC Management, Inc.**,
an Illinois corporation,

Its: **Manager**

By: _____



Ronald B. Shipka, Jr.

Its: **President**

By: **CS 1600 MUSEUM PARK, L.L.C.**,
an Illinois limited liability company,
a member and manager

By: **Forest City Central Station, Inc.**,
an Ohio corporation, a member and
manager

By: _____

Name: _____

Title: _____

By: **Jerry 1600 Museum Park, L.L.C.**,
an Illinois limited liability company, a
member and manager

By: _____

Name: **Gerald W. Fogelson**

Title: **Manager**

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, Mortgagor has signed these presents the day and year first above written.

MORTGAGOR:

1600 MUSEUM PARK LLC, an Illinois limited liability company

By: **EDC 1600 MUSEUM PARK, LLC**,
an Illinois limited liability company,
a member and manager

By: **EDC Management, Inc.**,
an Illinois corporation,
Its: **Manager**

By: _____
Ronald B. Shipka, Jr.
Its: **President**

By: **CS 1600 MUSEUM PARK, L.L.C.**,
an Illinois limited liability company,
a member and manager

By: **Forest City Central Station, Inc.**,
an Ohio corporation, a member and
manager

By: _____
Name: **JERRY McCOWN**
Title: **VICE PRESIDENT**

By: **Jerry 1600 Museum Park, L.L.C.**
an Illinois limited liability company, a
member and manager

By: _____
Name: **Gerald W. Fogelson**
Title: **Manager**

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, Mortgagor has signed these presents the day and year first above written.

MORTGAGOR:

1600 MUSEUM PARK LLC, an Illinois limited liability company

By: **EDC 1600 MUSEUM PARK, LLC**,
an Illinois limited liability company,
a member and manager

By: **EDC Management, Inc.**,
an Illinois corporation,

Its: **Manager**

By: _____
Ronald B. Shipka, Jr.
Its: **President**

By: **CS 1600 MUSEUM PARK, L.L.C.**,
an Illinois limited liability company,
a member and manager

By: **Forest City Central Station, Inc.**,
an Ohio corporation, a member and
manager

By: _____
Name: _____
Title: _____

By: **Jerry 1600 Museum Park, L.L.C.**
an Illinois limited liability company, a
member and manager

By: _____
Name: **Gerald W. Fogelson**
Title: **Manager**

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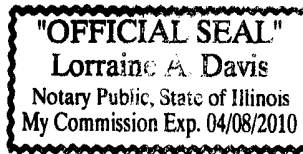
STATE OF Illinois

COUNTY OF Cook

I, Lorraine A. Davis, a notary public in the County and State aforesaid, do certify that Ronald A. Shida personally known to me to be the President of EDC Management, Inc. and who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the instrument in his capacity as President, as his own free and voluntary act and as the free and voluntary act of the company for the uses and purposes therein set forth.

Given under my hand and seal of office this 30th day of November, 2006.

Lorraine A. Davis
Notary Public



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STATE OF OHIO)

COUNTY OF CUYAHOGA)

I, PATRICIA A. COMAI, a notary public in the County and State aforesaid, do certify that LAYTON McCOWN personally known to me to be the VICE PRESIDENT of *, and who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the instrument in his capacity as VICE PRES., as his own free and voluntary act and as the free and voluntary act of the company for the uses and purposes therein set forth.

Given under my hand and seal of office this 29th day of NOV., 2006.

* FOREST CITY CENTRAL STATION, INC.

Patricia Comai

Notary Public



PATRICIA A. COMAI, Notary Public
STATE OF OHIO
My Commission Expires June 26, 2010
(Recorded in Lake County)

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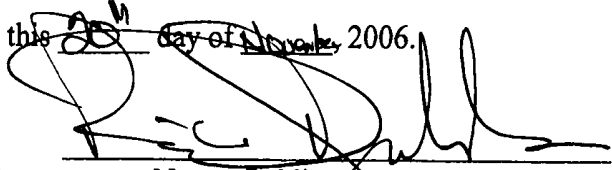
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STATE OF Illinois

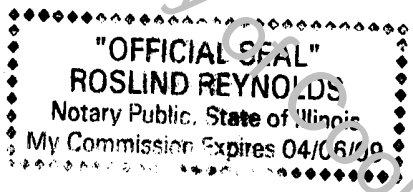
COUNTY OF Cook

I, Rosling Reynolds, a notary public in the County and State aforesaid, do certify that Gerald Fecelson personally known to me to be the Manager of First US and who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the instrument in his capacity as Manager, as his own free and voluntary act and as the free and voluntary act of the company for the uses and purposes therein set forth.

Given under my hand and seal of office this 25th day of November, 2006.



Notary Public

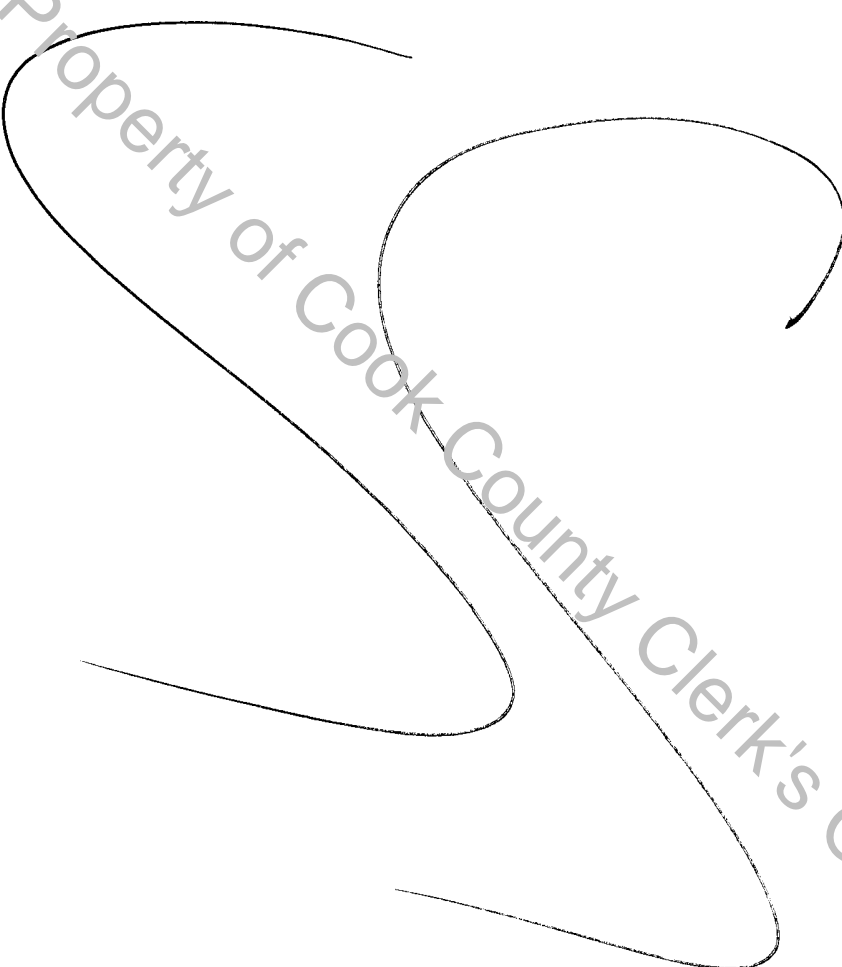


Property Clerk's Office

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EXHIBIT A LEGAL DESCRIPTION OF THE REAL PROPERTY

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LEGAL DESCRIPTION

Parcel 1:

That part of the Southwest fractional quarter of Section 22, Township 39 North, Range 14, East of the Third Principal Meridian, described as follows: Commencing at the intersection of the North line of the 66 foot wide East 18th Street with the East line of the 66 foot wide South Prairie Avenue; thence North 00 degrees 05 minutes 55 seconds West along the East line of South Prairie Avenue, aforesaid, 404.92 feet to the point of beginning; thence North 00 degrees 05 minutes 55 seconds West along the East line of South Prairie Avenue, aforesaid, 219.04 feet to the Northwest corner of Lot 1 in E.L. Sherman's Subdivision of Lots 4, 5 and 6 in Block 1 of Clarke's Addition and Lot 1 in Block 1 and the West half of Block 2 of subdivision of 49 1/2 acres south of and adjoining the North 20.90 Acres of the Southwest fractional quarter of said Section 22; thence North 39 degrees 56 minutes 28 seconds East along the North line of Lot 1 in E.L. Sherman's Subdivision aforesaid, 119.65 feet to a point on the West right of way of the Illinois Central Railroad Company as fixed by agreement recorded October 20, 1941 as Document Number 12778000 and by a counterpart agreement recorded December 6, 1941, as Document Number 12806262; thence South 16 degrees 48 minutes 27 seconds East along said West right of way line fixed by agreement, 57.74 feet to a point on the West right of way line of the Illinois Central Railroad; thence South 27 degrees 20 minutes 27 seconds East along the last mentioned West right of way line of the Illinois Central Railroad, 175.70 feet; thence North 90 degrees 00 minutes 00 seconds West 90.34 feet; thence South 00 degrees 02 minutes 31 seconds East, 7.82 feet; thence North 90 degrees 00 minutes 00 seconds West 126.33 feet to the point of beginning, in Cook County, Illinois.

Parcel 2:

The property and space of the Illinois Central Railroad Company lying above a horizontal plane having an elevation of 65.00 feet above Chicago City Datum and lying within the boundaries, projected vertically, of that part of said land property and space, described as follows: That part of Lots 7 and 12 in assessors division of Lots 1, 2 and 3 in Block 1 of Clarke's addition to Chicago in the Southwest fractional quarter of fractional Section 22, Township 39 North, Range 14, East of the Third Principal Meridian, bounded and described as follows: Beginning at the Southwest corner of said Lot 12 and running thence North 00° 02' 49" West along the West line of said Lots 12 and 7, a distance of 84.19 feet to the Northwest corner of said Lot 7; thence North 89° 57' 41" East along the North line of said Lot 7, a distance of 58.26 feet; thence South 27° 02' 14" East along a straight line, a distance of 94.49 feet to an intersection with the South line of said Lot 12, at a point 101.28 feet East of the Southwest corner thereof, and thence South 89° 57' 41" West along said South line of Lot 12, a distance of 101.28 feet to the point of beginning, in Cook County, Illinois.

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Parcel 3:

A non-exclusive easement for the benefit of Parcel 1 as created by Grant of Easement dated August 31, 2003 and recorded October 23, 2003 as document number 0329632054 from Prairie Station Townhouse 2 Partners, L.L.C. to Central Station, L.L.C. for the purposes of ingress and egress over the following:


That part of the Southwest fractional quarter of Section 22, Township 39 North, Range 14, East of the Third Principal Meridian, described as follows: Commencing at the intersection of the North Line of the 66 foot wide East 18th Street with the East line of the 66 foot wide South Prairie Avenue; thence North 00 degrees 05 minutes 55 seconds West along the East line of South Prairie Avenue, aforesaid, 255.00 feet; thence North 89 degrees 54 minutes 05 seconds East, 110.00 feet; thence South 00 degrees 05 minutes 55 seconds East, 20.00 feet; thence North 89 degrees 54 minutes 05 seconds East, 198.00 feet to a point on the West right of way line of the Illinois Central Railroad; thence North 27 degrees 20 minutes 27 seconds West along the West right of way line of the Illinois Central Railroad, aforesaid, 199.50 feet to the point of beginning; thence North 90 degrees 00 minutes 00 seconds West 90.34 feet; thence South 00 degrees 02 minutes 31 seconds East, 19.65 feet; thence North 90 degrees 00 minutes 00 seconds East 100.49 feet to a point on the West right of way line of the Illinois Central Railroad, aforesaid; thence North 27 degrees 20 minutes 27 seconds West along said West right of way line, 22.12 feet to the point of beginning, in Cook County, Illinois.

PINS: 17-22-304-026-0000; 17-22-304-061-0000; 17-22-501-019-0000;

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EXHIBIT B PERMITTED EXCEPTIONS

Property of Cook County Clerk's Office



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PERMITTED EXCEPTIONS

1. General real estate taxes for 2006 that are not yet due or payable.
2. Mortgage dated November 30, 2006 and recorded _____ as document _____ made by 1600 Museum Park LLC, an Illinois limited liability company to National City Bank, a national banking association, as agent for itself and other lenders to secure notes aggregating \$90,000,000.00.
3. Assignment of Rents recorded _____ as document _____ made by 1600 Museum Park LLC, an Illinois limited liability company to National City Mortgage, a national banking association, as agent for itself and other lenders.
4. The land lies within the boundaries of a special service area as disclosed by ordinance recorded as document 91075841, and is subject to additional taxes under the terms of said ordinance and subsequent related ordinances.
5. Terms, provisions, conditions and limitations of the Central Station Redevelopment Agreement dated as of November 1, 1991, and recorded November 1, 1991, as document 91574409, together with consent and Partial Subordination Agreement recorded November 1, 1991 as document 91574410, by and among the City of Chicago, Central Station Development Corporation, Chicago Title and Trust Company, as Trustee under Trust Agreements numbered 1092252 and 1080000, Central Station Limited Partnership, 1304 S. Indiana Avenue Limited Partnership, and Forest City Central Station, Inc.

As amended by First Amendment to Central Station Redevelopment Agreement recorded December 23, 1994, as document 04071129.
6. The subject property falls within the boundaries of the near south tax increment financing redevelopment project area, dated May 24, 1991 as disclosed by the Central Station Redevelopment Agreement dated as of November 1, 1991, and recorded November 1, 1991, as document 91574409 and is subject to the terms, conditions and provisions contained therein.
7. Easement in favor of Prairie District Homes, LLC, an Illinois limited liability company, its successors and assigns, to install, operate, maintain and remove, from time to time, those public and private utilities, together with the right to install required service connections and for the purpose of initial construction of improvements recorded/filed November 6, 2001 as document number 0011040259 affecting the land, and the terms and provisions contained therein.
8. Covenants, conditions and restrictions contained in the Quitclaim deed from Illinois Central Railroad Company to Chicago Title Land Trust Company, as Trustee under Trust Agreement dated March 1, 1990 known as Trust Number 1080000, recorded September

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27, 2001 as document 0010901608 relating to the natural flow of drainage water and the construction of a fence.

(Affects that portion of the land lying East of the East line of Lots 1 thru 9 in E. L. Sherman's Subdivision)

9. Terms, conditions, covenants, restrictions and easements contained in the grant of easement made by and between Central Station, L.L.C. and Prairie Station Townhomes 2 Partners, L.L.C. dated August 31, 2003 and recorded as document number 0329632054 and rights of the adjoining owner or owners to the concurrent use of said easement granted therein.
10. Rights, if any, of public and quasi-public utilities in the land as disclosed by plat of survey number 2005-04742-001 prepared by Gremley & Biedermann dated November 11, 2005 and last recertified October 3, 2006 as No. 2006-07060 depicting metal tower, overhead electrical wires, utility pole, monitoring well, storm manholes, storm catch basins and water manholes.