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This instrument was prepared by and when recorded please return to:

William K. Smith, Esq.
Ulmer & Berne LLP
1660 West 2nd Street, Suite 1100
Cleveland, Ohio 44113-1448



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Cook County Recorder of Deeds
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SECOND-PRIORITY CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF RENTS AND LEASES (Adjustable Rate Note)

THIS SECOND-PRIORITY CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING 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 West Chicago Avenue, Suite 750, Chicago, Illinois 60610, and **National City Bank**, a national banking association ("**Lender**") having an office at Suite 400, 2000 Auburn Drive, Beachwood, Ohio 44122.

RECITALS:

A. Mortgagor and Lender are parties to that certain Mezzanine Loan Agreement, dated of even date herewith (which, together with any and all modifications and amendments, is referred to as the "Loan Agreement"), pursuant to which Lender has agreed to make a loan (the "Loan") to Mortgagor in the principal amount not to exceed Ten Million Seven Hundred Fifty Thousand Dollars (\$10,750,000) and to disburse the proceeds thereof to or for the account of Mortgagor on the terms and subject to the conditions set forth therein.

B. The indebtedness advanced and hereafter to be advanced pursuant to the Loan Agreement is evidenced by Mortgagor's Promissory Note, dated of even date herewith, to Lender (which, together with all extensions, renewals, amendments, modifications and replacements and substitutes therefor, is referred to as the "**Note**"), pursuant to which Mortgagor promises to pay to the order of Lender the principal sum not to exceed Ten Million Seven Hundred Fifty Thousand Dollars (\$10,750,000), 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 Note, with a maturity of November 30, 2009, with respect to all principal and interest not required to be sooner paid, unless the maturity date is extended pursuant to the terms of the Note or the Loan Agreement. The Note provides, 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 the terms of the Note and the Loan Agreement. Capitalized terms

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not specifically defined elsewhere in this Mortgage have the meanings set forth in the Loan Agreement.

C. Lender requires that Mortgagor execute and deliver this Mortgage to secure the payment and performance of the obligations and duties of Mortgagor under the Note, the Loan Agreement and all other documents, agreements and instruments executed by Mortgagor in connection with, or to evidence or secure, the Loan (the Note, the Loan Agreement, this Mortgage and all such other documents, agreements and instruments, together with any and all future modifications or amendments to any of the same, 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 Note,
- (ii) the payment of all other indebtedness that this Mortgage secures pursuant to its terms or that is payable under the terms of any of the Loan Documents, and
- (iii) the performance and observance of the covenants and agreements contained in and the payment of all obligations and liabilities of Mortgagor under this Mortgage and/or the Loan Documents (all of the indebtedness, obligations, agreements and liabilities identified in clauses (i), (ii) and (iii) being referred to 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 Lender, its successors and assigns forever, the real estate described in Exhibit A attached hereto and made a part hereof (the "**Real Estate**") and all of Mortgagor's estate, right, title and interest therein, situated in Cook County, 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, which 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

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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 heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion;

(d) Improvements. All buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of any improvements now or hereafter erected thereon, 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 Section (d) is referred to as the "Improvements");

(e) Fixtures. All fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the Real Estate; all furniture and furnishings used in the operations of the Premises; and all additions and renewals or replacements or articles in substitution therefor, whether or not the same are or shall be attached to the building or buildings in any manner (the property described in this Section (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 Lender or Mortgagor or held by Lender (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 of 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, variances, land use entitlements, approvals, consents, clearances and rights obtained from Governmental Authorities 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,

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- (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 amendments, supplements, modifications and additions, extensions and renewals and substitutions,
- (v) the books and records of Mortgagor relating to design, development, construction, operation or management of the Real Estate and/or Improvements, and
- (vi) any and all rights of Mortgagor under the Illinois Condominium Property Act;

it being mutually agreed, intended and declared that all of the foregoing property shall, so far as permitted by applicable Requirements of Law, be deemed to form a part and parcel of the 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 Lender shall furnish to Lender official receipts therefor 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 notice by Lender, Mortgagor shall deposit at the place Lender may from time to time in writing appoint, and in the absence of appointment, then at the office of Lender, commencing on the first day of the first month after request therefor by Lender, and on the first day of each month thereafter until the Obligations are fully paid, a sum equal to one-twelfth on the total annual taxes and assessments for the last ascertainable year (general and special) on the Premises (unless taxes are based upon assessments which exclude the Improvements or any part now constructed, or to be

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constructed, in which event the amount of deposits shall be based upon Lender'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 initial deposit made pursuant to Section 2.3(b), also deposit with Lender an additional amount as Lender may reasonably determine is necessary to enable Lender to pay the 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 demand therefor, deposit such 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 Lender pursuant to this Section 2.3(c) shall bear interest at a rate not less than the lowest rate offered by Lender to its commercial customers in the ordinary course of business from time to time on demand deposit accounts.

(d) Escrow Accounts under the Senior Mortgage. Notwithstanding the requirements set forth in Sections 2.3(b) and 2.3(c), above, Lender agrees by its acceptance of this Mortgage that if during the pendency of the Senior Mortgage (hereinafter defined), Mortgagor is required to establish and to fund escrow accounts for the payment of real estate taxes or the accrual of sums necessary to enable the Senior Mortgagee (defined below) to cause the timely payment of said estate taxes pursuant to the Senior Mortgage, and if Mortgagor in fact establishes and funds such accounts as so required, Mortgagor shall be excused from its obligations under Sections 2.3(b) and (c) of this Mortgage.

(e) Evidence of Payment. Unless Mortgagor is making deposits with Lender as provided in Sections 2.3(b) and 2.3(c), receipts showing and evidencing payment of all taxes and assessments (general and special) levied in respect of the Premises shall be provided to Lender within thirty (30) days after the due date for payment of same.

2.4 Insurance; Casualty Loss.

(a) Required Insurance Coverages. Mortgagor shall provide or cause to be provided to Lender insurance policies including, when applicable, umbrella policies, which insurance must be in effect at all times during the term of the Loan, in amounts, in form, with deductibles and issued by companies satisfactory to Lender and qualified to do business in the State of Illinois, for

- (i) Full replacement value all-risk Builders' Risk Insurance (non-reporting form) issued with respect to the Project in an amount equal to the computed value of the Project with extended coverage, "X", "C" and "U" coverages and vandalism and malicious mischief coverage bearing a replacement cost agreed-amount endorsement with an acceptable mortgagee clause in favor of the Lender;

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- (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 Authority as a special flood hazard area;
- (v) After completion of the Improvements, casualty insurance 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 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) Such other insurance coverages as Lender may require in accordance with the terms of the Loan Documents.

(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 Lender. 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 shall provide that the insurance shall not be canceled (including for non-payment) or modified without at least thirty (30) days' prior written notice from the insurance carrier to Lender and shall provide that no claims shall be paid without at least ten (10) days prior written notice to Lender. Upon Lender's request, Mortgagor shall furnish evidence satisfactory to Lender 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 Lender.

(d) Insurance Proceeds. In the event of any loss covered by the insurance, Mortgagor shall promptly notify Lender of the loss in writing, and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for any loss directly and solely to Lender (which may, but need not, make proof of loss). Lender (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, upon demand by Lender, all receipts, vouchers, and releases required by the insurance companies. After deducting any costs of collection, Lender may use or apply the proceeds, at its sole option,

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- (i) as a credit upon any portion of the indebtedness evidenced by the Note (without any prepayment fee or penalty of any kind), or
- (ii) to repairing and restoring the Improvements, in which event Lender shall not be obliged to see to the proper application thereof nor shall the released amount used for restoration be deemed a payment on the indebtedness evidenced by the Note, 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, any undisbursed proceeds of the Loan which may be available for such purpose under the Loan Agreement and, during the pendency of the Senior Loan (defined below) any undisbursed and available proceeds of the Senior Loan which the Senior Mortgagee agrees or is obligated under the Senior Loan Documents to make available for such purpose) are sufficient, in Lender's reasonable judgment, after first deducting and paying the reasonable expenses, if any, incurred by Lender in the collection of proceeds, to fully restore, repair and replace the damaged portions of the Premises and to otherwise pay all costs and related expenses Lender shall make the insurance proceeds available to Mortgagor for restoration of the Improvements. If the proceeds (plus any additional sums deposited by Mortgagor and any available proceeds of the Loan and the Senior Loan) are insufficient in Lender'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 Lender or make other arrangements satisfactory to Lender to pay the deficiency. In the event proceeds are applied to restoring the Improvements, the proceeds shall be made available, from time to time, upon terms and conditions reasonably imposed by the Lender and comparable to the requirements customarily imposed by it for the disbursement of the proceeds of construction loans. If the estimated cost of the work exceeds ten percent (10%) of the maximum principal amount of the Senior Loan, Mortgagor shall furnish Lender with all plans and specifications for rebuilding or restoration as Lender may reasonably require and approve. Any funds deposited with Lender pursuant to this Section 2.4(e) shall bear interest at a rate not less than the lowest rate offered by Lender to its commercial customers in the ordinary course of business from time to time on demand deposit accounts.

(f) 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 then in force, and any claims or proceeds shall pass to Lender or any purchaser or grantee.

(g) Optional Insurance Escrow. Upon the occurrence of an Event of Default and upon notice from Lender, Mortgagor shall deposit at the place as Lender may from time to time in writing appoint, and in the absence of an appointment, then at the office of Lender, commencing on the first day of the first month after request therefor by Lender, and on the first day of each month thereafter until the Obligations are fully paid, a sum equal to one-twelfth of the insurance premiums on the Premises.

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(h) Additional Escrow. In addition, Mortgagor shall, concurrently with the initial deposit made pursuant to Section 2.4(g), also deposit with Lender an additional amount as Lender may reasonably determine is necessary to enable Lender 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 demand therefor, 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 Lender pursuant to this Section 2.4(h) shall bear interest at a rate not less than the lowest rate offered by Lender to its commercial customers in the ordinary course of business from time to time on demand deposit accounts.

(i) Lender's Rights Subordinated. Mortgagor and (by its acceptance of this Mortgage) Lender acknowledge that this Mortgage and all of the Lender's rights and remedies hereunder are subject and subordinated to the Senior Mortgage and the rights and remedies of the Senior Mortgagee thereunder, all as more fully described in Section 8.24 of this Mortgage and as provided in the Intercreditor Agreement (defined below). Without limiting the generality of the foregoing, and with specific reference to the rights and options provided to Lender in this Section 2.4, Mortgagor and Lender agree that so long as the Senior Mortgage and the Intercreditor Agreement remain in full force and effect: (i) the amounts and forms of insurance required of Mortgagor under Section 2.4(c), and the issuers of such insurance, shall be acceptable to Lender if and for so long as they are acceptable to the Senior Mortgagee; (ii) any blanket insurance coverage which may be proposed by Mortgagor and which is acceptable to the Senior Mortgagee shall likewise be acceptable to Lender; (iii) Lender's right to make proof of loss and to hold and disburse loss payments shall be subject to the corresponding rights of the Senior Mortgagee under the Senior Mortgage, and (unless otherwise specifically provided in the Intercreditor Agreement) Lender shall be bound by any election which the Senior Mortgagee may make pursuant to the Senior Mortgage to make some portion (or all) of the net proceeds from any insured casualty available to Mortgagor for the purpose of the restoration, repair or replacement of the damaged portions of the Premises; and (iv) Lender will not require Mortgagor to establish or to fund any escrow of the nature described in Section 2.4(g) or (h) if the Senior Mortgagee shall then enforce, and Mortgagor shall comply with, any corresponding escrow funding obligation under the Senior Mortgage.

(j) Evidence of Payment. Unless Mortgagor is making deposits with Lender as provided in Sections 2.4(g) and 2.4(h), receipts showing and evidencing payment of all premiums shall be provided to Lender within thirty (30) days after the due date for payment of same.

(k) 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 Condominium Act, the provisions of the Condominium 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.

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(a) Preservation. All Improvements shall be completed substantially in accordance with the Plans and Specifications (as such term is defined in the Senior Mortgage). No Improvement shall 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 Lender, 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 covered personal property or by any separate security agreement, 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 thereon or reservation of title.

(b) Restoration. Mortgagor shall promptly repair, restore, or rebuild any Improvements on the Premises that may become damaged or be destroyed; provided, however, that if Lender has elected to apply insurance loss proceeds toward payment of the Obligations as provided in Sections 2.4(d) and 2.4(e), then 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 waste, impairment or deterioration of the Premises or any part or improvement, and shall keep and maintain the Premises and every part in good repair and condition and effect repairs that Lender may require, and, from time to time, make all needed and proper replacements and additions so that the Improvements 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 Lender 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 which may be made of or the kind of improvements that can be constructed or placed on the Premises or any part thereof without the Lender's prior, written consent (such consent shall not be unreasonably withheld, conditioned or delayed, and during the pendency of the Senior Mortgage shall not be withheld as to any matter to which the Senior Mortgagee shall have consented), and shall promptly notify Lender of, and appear in and defend, at its sole cost and expense, any proceedings seeking to effect any of the foregoing. Notwithstanding the foregoing, the Lender consents to the 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 that is owned or controlled by Mortgagor shall be constructed unless plans and specifications therefor have been first submitted to Lender 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 Lender'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 which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Premises.

(b) Lender'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 Lender's prior written approval (which shall not be unreasonably withheld, delayed or conditioned, and, during the pendency of the Senior Mortgage, shall be granted as to any matter to which the Senior Mortgagee shall have consented). After approval, Mortgagor, at its sole cost and expense, shall immediately effect the alterations or removal required and approved by Lender. 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 thereof or any interest therein 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, 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 the Senior Mortgage and any other Senior Loan Documents encumbering the Premises, the lien of this Mortgage and those of the Permitted Exceptions) 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 Lender satisfactory evidence of the payment and discharge of any liens, charges, and encumbrances, asserted or claimed to exist against the Premises, except for any lien

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or encumbrance permitted hereby or expressly consented to by Lender, with respect to which Mortgagor shall pay, when due, the related obligations, and upon Lender's request, furnish to Lender satisfactory evidence of payment or payments.

(b) Subordination of Liens. Without in any way limiting Lender'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 shall be subject and subordinate to all leases pertaining to the Premises whether then in existence or thereafter 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 Note, or shall otherwise impose a tax or impose an assessment on this Mortgage or on the Note 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 Lender thirty (30) days after the mailing of notice of election to Mortgagor. However, the election shall be unavailing and this Mortgage and the Note shall be and remain in effect if Mortgagor lawfully may pay for any stamps or tax, including interest and penalties thereon, to or on behalf of Lender and Mortgagor does in fact pay, when payable, for all stamps or tax, as the case may be, including interest and penalties thereon.

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 thereon, or imposing upon Lender 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 Lender'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 Lender, shall pay the taxes or assessments, or reimburse Lender therefor. If, however, in the opinion of counsel for Lender:

(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, Lender 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 Lender's federal or state income tax.

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

2.11 Eminent Domain.

(a) **Notice of Proceeding.** Mortgagor shall give Lender 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 Lender copies of any papers served in connection with any action or proceeding of which Mortgagor has notice.

(b) **Awards to Lender.** Lender is authorized, at its option, to commence, appear in and prosecute, through counsel selected by Lender, in its own or in Mortgagor's name, any action or proceeding. All compensation, awards, damages, claims, rights of action and proceeds and the right (collectively "**Awards**") are assigned by Mortgagor to Lender and Lender is authorized to collect and receive from any Governmental Authority any Awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Premises by any Governmental Authority for the taking, by condemnation or eminent domain, assigned from Mortgagor to Lender. Lender is authorized to give appropriate receipts and acquittances. Mortgagor shall make, execute and deliver to Lender 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 Lender for the purpose of validly and sufficiently assigning to Lender all Awards heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any proceeding. Lender's rights and options under this Section 2.11 are subject to the prior rights, remedies and options of the Senior Mortgagee under the Senior Loan Documents.

(c) **Application.** The proceeds of all Awards shall be paid to Lender and may be applied by Lender, 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 Sections 2.4(d) and 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 Lender at the rate not less than the lowest rate offered by Lender to commercial customers in the ordinary course of business from time to time or demand deposit accounts. Mortgagor shall execute further assignments of any Awards as Lender may require.

2.12 Right to Contest Taxes and Mechanics' Liens. The obligations of Mortgagor under Sections 2.3 and 2.7 are subject to Mortgagor's rights 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 Lender written notice of its intention to contest the same in a timely manner, which, with respect to any contested mechanic's lien claim, means within thirty (30) days after Mortgagor receives actual notice of its filing,

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(b) So long as the Senior Mortgage and the Intercreditor Agreement shall remain in effect, Mortgagor providing Lender with such evidence as Lender may reasonably require to confirm that such contest is permitted by the terms of the Senior Mortgage or has been approved, in writing, by the Senior Mortgagee,

(c) 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 Lender pursuant to an endorsement to Lender's existing policy of title insurance in form and substance reasonably acceptable to Lender, or (ii) making and later maintaining with Lender or such other depository as Lender may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in Lender's sole discretion, be acceptable to Lender), and in either case having a present value equal to not less than 150% of the amount which, in Lender'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 thereon in the event of a final determination adverse to Mortgagor or in the event Mortgagor fails to prosecute any contest as required (provided, however, that if such contest shall arise during the pendency of the Senior Mortgage and if Mortgagor is required by the Senior Mortgagee to provide it with security of the nature described in this Section 2.12(d)(ii) and shall comply with such requirement, Lender shall not require any additional security or collateral under this Section), and

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

ARTICLE 3. PROVISIONS RELATING THE SECURITY INTEREST

3.1 Grant of Security Interest. As to any of the property which 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 Lender 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 of the Real Estate.

3.2 Execution of Security Agreement and Financing Statement. Mortgagor, within ten (10) days after request, shall execute, acknowledge and deliver to Lender any security agreement, financing statement or other similar security instrument consistent with the terms of this Mortgage and the other Loan Documents covering all property of any kind whatsoever owned by Mortgagor that Lender may determine to be essential to the operation of the Premises and as to which there may be any doubt as to whether the title to the same has been conveyed, or a security interest perfected, by this Mortgage under the laws of the State of Illinois and execute and deliver any financing statement, affidavit, certificate or other document as Lender may reasonably request in order to establish, perfect preserve, maintain, continue, and extend the

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security interest. Mortgagor further agrees to pay to Lender, within ten (10) business days after demand therefor, all costs and expenses (including reasonable attorneys, paralegal, legal assistant and law clerk fees) incurred by Lender in connection with the preparation, execution, recording, filing, and re-filing of any document delivered by Mortgagor under this Section 3.2. To the extent that this Mortgage operates as a security agreement under the Uniform Commercial Code, Lender shall have all rights and remedies conferred for the benefit of a Secured Party.

3.3 Certain Acts of Lender. Lender, at its sole option, without notice and without regard to the consideration, if any, paid therefor, 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 Loan 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 a renewal note,

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

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

(f) consent to the granting of any easement,

(g) join in any extension or subordination agreement,

(h) agree in writing with Mortgagor to modify the rate of interest or period of amortization of the 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 the 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 Lender. Lender 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 of Lender by 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

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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.

ARTICLE 4. PROVISIONS RELATING TO ASSIGNMENT OF RENTS AND LEASES

4.1 Assignment of Rents and Leases. Mortgagor presently assigns to Lender all of Mortgagor's interest and rights as lessor in and to all leases now or hereafter 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). The foregoing assignment is made expressly subject to the prior rights of the Senior Mortgagee under the Senior Mortgage and the other Senior Loan Documents.

4.2 Rents and Leases.

(a) **Lender Authority to Collect.** Pursuant to the assignment made by Mortgagor in the preceding section and subject as therein provided to the prior rights of the Senior Mortgagee under the Senior Loan Documents, Lender 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 Lender the right, power and authority to collect all rents, issues, proceeds and profits and Mortgagor appoints Lender its true and lawful agent and attorney-in-fact, at the option of Lender, 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 thereafter accruing and becoming payable during the continuance of any Event of Default, and to apply the same to the Obligations. However, Mortgagor shall have the right to collect all rents, issues, profits and proceeds (but not more than one month in advance unless the written approval of Lender 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 the cure of any Event of Default, Lender shall take such actions as may be necessary to reinstate the license of Mortgagor to receive all rents, issues, proceeds and profits occurring and to accrue from the Premises pursuant to any leases. Upon request of Lender, Mortgagor shall execute and deliver to Lender 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

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- (ii) other instruments as Lender may deem necessary, convenient or appropriate in connection with the payment and delivery directly to Lender 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 Lender and not merely the granting of a security interest.

Lender 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 such other terms and conditions as Lender may deem necessary or appropriate.

(b) Lender Not Obligated to Perform under Leases. Nothing in this Mortgage or in any Loan Document shall be construed to obligate Lender, expressly or by implication, to perform any of the covenants of Mortgagor, as lessor, lessee or assignor, under any of the leases assigned to Lender 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 Lender 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 Lender, 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 Lender or the successor in interest.

(d) Lender's Right to Subordinate. At the option of Lender, 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 Lender and recording, at any time hereafter, in the Office of the Recorder in and for the county wherein the Real Estate is situated, of a unilateral declaration to that effect.

4.3 Inspection of Premises. Mortgagor shall permit Lender and its agents to inspect the Premises at all times and access shall be permitted for the inspections contemplated by the Loan Agreement.

4.4 Access by Lender. Mortgagor shall at all times deliver to Lender 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 Lender 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.

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ARTICLE 5. ENVIRONMENTAL MATTERS

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

(a) No Hazardous Substances. 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 Substance or authorize any other Person to do so, except to the extent:

- (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 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 Lender 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 Substance on, under or in the Premises, or the migration of any Hazardous Substance 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 Substance 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 Substance 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 Substance on, under or in the Premises.

(d) Lender's Right to Participate in Legal Proceedings. Lender has the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to

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the Premises in connection with any Environmental Law and shall have its attorneys' fees in connection therewith paid by Mortgagor.

5.2 Representations and Warranties Relating to Environmental Matters.

Mortgagor represents and warrants to Lender 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 knowledge, threatened investigation or proceeding by any Governmental Authority with respect to a violation of any Environmental Law.

(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 Substance on, under or about the Premises or the migration of Hazardous Substances from or to other real property adjoining the Premises.

(c) No Permits Required. To Mortgagor's 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 business activities or operations of Mortgagor at the Premises.

(d) No Hazardous Substances. 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 Substance 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 Lender, sell, transfer, convey, lease or sublease, alien, pledge, hypothecate, mortgage, encumber, or assign the title or any interest (beneficial or otherwise) 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 Contract and shall have the right to obtain partial releases of this Mortgage in accordance with the terms of the Loan Agreement.

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ARTICLE 7. DEFAULTS

7.1 Default and Remedies.

(a) Default under Note or other Loan Documents. It shall constitute an "**Event of Default**" under this Mortgage when and if any Event of Default occurs under and as such term is defined in the Note, the Loan Agreement or any other Loan Document.

(b) Default under Any Senior Loan Document. It shall constitute an Event of Default under this Mortgage when and if an "Event of Default" shall occur under (and as defined in) the Senior Mortgage or any of the other Senior Loan Documents and shall remain uncured following the expiration of the period of notice or grace (if any) applicable to the same under such document.

(c) Default under Mortgage. It shall constitute an Event of Default under this Mortgage if there is a default under any section of this Mortgage which is not cured within any applicable cure period.

(d) Remedies of Lender 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, Lender 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 proceedings shall be subject to, and shall not affect the unmatured part of the Obligations, and this Mortgage shall be and continue as a lien on the Premises securing the unmatured 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 Lender shall elect,
- (v) with respect to any part of the Premises constituting property of the type in respect of which a security interest granted thereon is governed by the UCC, exercise all rights, options and remedies of secured parties under the

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UCC, including the right to possession of any property or any part thereof, 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.

(e) Lender 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 to enforce any other remedy of Lender 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 which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, paralegal, 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 Lender may deem necessary either to prosecute a suit or to evidence to bidders at any sale which may be had pursuant to any decree the true condition of the title to or value of the Premises.

(f) Lender 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 the lien or before or after sale, forthwith, upon application by Lender, Mortgagor shall surrender to Lender and Lender shall be entitled to take actual possession of the Premises, or any part thereof, personally or by its agent or attorneys, to the fullest extent permitted by applicable Requirements of Law, Lender 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 therefrom and may, as attorney-in-fact or agent of Mortgagor, or in its own name as Lender 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 of the rights, privileges and powers granted at any times hereafter, without notice to Mortgagor,
- (ii) cancel or terminate any lease on any ground which would entitle Mortgagor to cancel the same,

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- (iii) elect to disaffirm any lease made subsequent to this Mortgage or subordinated to the lien,
- (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 to lessees to extend or renew terms to expire, beyond the maturity date of the Obligations and the issuance of 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 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, discharge of the Obligations, satisfaction of any foreclosure decree, or 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 to Lender may deem judicious,
- (vi) insure and reinsure the Premises and all risks incidental to Lender's possession, operation and management, 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 times hereafter without notice to Mortgagor.

Lender 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 shall and does agree to indemnify and hold Lender harmless of and from any liability, loss or damage (except for willful misconduct or gross negligence of Lender) that it may or might incur under leases or under or by reason of the assignment thereof and of and from any claims and demands whatsoever which 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 Lender incur any liability, loss or damage, under any leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured hereby, and Mortgagor shall reimburse Lender therefor promptly following request by Mortgagee. Lender shall provide Mortgagor with informational copies of all records of such costs, fees and expenses; provided, however, that the amount of the costs and fees referred to in this section shall not be subject to challenge by Mortgagor.

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

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- (i) to the payment of the operating expenses of the Premises, including reasonable compensation to Lender or the receiver and its agent or agents, if management of the Premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring lessees and entering into leases and the payment of premiums of insurance as authorized above,
- (ii) to the payment of taxes, special assessments, and water taxes and other charges now due or which may hereafter become due on the Premises, or which may become a lien prior to the lien of this Mortgage,
- (iii) to the payment of 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 placing priority in condition as will, in the sole judgment of Lender or receiver, make the Premises readily rentable,
- (iv) to the payment of any outstanding balance of the Senior Loan and to any Obligations or any deficiency which 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.

(h) 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 Lender, 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 successors or assigns, except for the intervention of any receiver, would be entitled to collect rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the Premises, during the whole of the period. To the extent permitted by applicable Requirements of Law, the receiver may be authorized by the court to extend or modify any then existing leases and 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 maturity date of the Obligations, it being understood and agreed that any leases and the options or other provisions to be contained therein, shall be binding upon Mortgagor and all Persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure

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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.

(i) Sale of Premises upon Foreclosure. All or any portion of the Premises or any interest or estate therein 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 Lender, in its sole discretion, may elect, to the maximum extent permitted by the Requirements of Law. At any sale, Lender may bid for and acquire, as purchaser, the Premises or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the Obligations due the amount of Lender's bid.

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

- (i) on account of all costs and expenses incident to the foreclosure proceedings, including all costs and expenses set forth in Section 7.1(e),
- (ii) all other items which, under the terms, constitute Obligations additional to that evidenced by the Note, with interest, at Default Rate,
- (iii) all principal and interest remaining unpaid on the Note in the order as Lender may determine in accordance with the standards set forth in the Loan Documents, and
- (iv) any surplus to the person or persons as shall be legally entitled thereto.

(k) Right of Offset. Mortgagor agrees that subject to the Requirements of Law and the terms of the Loan Agreement, upon an Event of Default Lender may, at its option, offset all money, bank or other deposits or credits now or later held by Lender or owed by Lender to Mortgagor against all amounts due under the Note or against any other amounts which may be due Lender from Mortgagor. Any offset amounts may be applied in any order and manner elected by Lender. When the Obligations have been fully paid, any remaining deposits shall be paid to Mortgagor or to the persons or persons as may be legally entitled thereto. 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 Lender for the purposes for which made and shall not be subject to the direction or control of Mortgagor.

(l) Lender Entitled to Deficiency Decree. At any foreclosure proceeding, if the Premises shall be 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.

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

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

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

(p) 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 or acquiescence, nor shall it affect any subsequent Event of Default of the same or of a different nature.

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

(r) Lender's Rights Cumulative and Concurrent. The rights and remedies of Lender as provided in this Mortgage and the Loan Documents shall be 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 Lender, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by Requirements of Law. If Lender elects to pursue one right or remedy under this Mortgage or the Loan Documents, Lender may at any time cease proceeding under the right or remedy and may proceed under any other right or remedy under this Mortgage or the Loan Documents.

(s) 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 Lender's election, Lender 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 Lender, in addition to any other remedies that Lender may have or under any of the Loan Documents, Lender may in its sole discretion do any one or more of the following:

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- (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(s), perform any one or more of the 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 Lender from time to time may determine.

Mortgagor is liable to Lender for all sums paid or incurred to construct and equip the Project whether same are paid or incurred pursuant to the provisions of this Subsection or otherwise. All payments made or liabilities incurred by Lender of any kind whatsoever shall be paid by Mortgagor to Lender upon demand with interest at the Default Rate from the date of payment by Lender to the date of Lender's receipt of reimbursement from Mortgagor and shall be secured by this Mortgage. For purposes of exercising the rights granted in this Subsection, Mortgagor irrevocably constitutes and appoints Lender 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 Lender's Performance of Defaulted Acts. If an Event of Default shall occur, Lender may, but need not, make any payment or perform any act required of Mortgagor in any form and manner deemed expedient by Lender. By way of illustration and not in limitation, Lender may, but need not:

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- (a) make full or partial payments of principal, interest, penalties or late charges on or with respect to the Senior Loan or on any other prior encumbrances,
- (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.

Lender 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 thereof, and Lender 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, or 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 Lender'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, Lender, 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 Lender's choosing. All monies paid or incurred in connection therewith, including reasonable attorney's fees, and any other monies advanced by Lender to protect the Premises and the lien, shall be so much additional Obligations, and shall become immediately due and payable by Mortgagor to Lender without notice and with interest thereon at the default interest rate specified in the Note. Inaction of Lender shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor or 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 Note 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 Lender makes any future advances (a) the term "Note," as used in this Mortgage, shall include all promissory notes and other documents

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evidencing such future advances in addition to the Promissory Note identified in the Recitals of this Mortgage, and (b) the term "Loan Documents" shall include all documents executed in connection with the future advance(s) in addition to all other documents described in such recitals.

8.2 Partial Invalidity. Mortgagor and Lender 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 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 Lender that such 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 herein or therein, as the case may be, and that the rights, obligations and interest of Mortgagor and Lender 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 shall have been paid by Mortgagor in connection with the Obligations, the excess shall be applied by Lender to the unpaid principal balance of the Obligations in the manner Lender may in its sole discretion determine, or refunded to Mortgagor in the manner to be determined by Lender and if any excess interest has accrued, Lender shall eliminate the excess interest so that under no circumstances shall interest on the Obligations exceed the maximum rate allowed by applicable Law.

8.3 Subrogation. In the event the proceeds of the Obligations, or any part thereof, or any other amount paid out or advanced by Lender shall be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, and except as otherwise provided with respect to the indebtedness secured by the Senior Mortgage in the Intercreditor Agreement, Lender shall be subrogated to such 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.

8.4 Lender'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, Lender is authorized and empowered to deal with vendee or transferee with reference to the Premises, or the Obligations, or with reference to any of the terms or conditions, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from Mortgagor's covenants and undertakings, specifically including Section 2.7 and without Lender waiving its rights to accelerate the Obligations in the event of a breach of Section 2.7.

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

- (a) sustaining the lien of this Mortgage or its priority,

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(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 Lender's rights under the Loan Documents,

(e) recovering any Obligations,

(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(e),

shall constitute additional Obligations and shall be due and payable by Mortgagor within ten (10) Business Days following its receipt of written notice from Lender.

8.6 Giving of Notice. Any notice, demand, consent, authorization, request, approval or other communication given or required shall 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 Lender:

National City Bank
Suite 400
2000 Auburn Drive
Beachwood, Ohio 44122
Attention: Matt Sheets
Facsimile No. (216) 488-0253
Email: matthew.sheets@nationalcity.com

With mandatory copy to:

Ulmer & Berne, LLP
Suite 1100
1660 West 2nd Street
Cleveland, Ohio 44113
Attention: William K. Smith
Telephone: (216) 583-7348
Facsimile No. (216) 583-7349
Email: wsmith@ulmer.com

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To Mortgagor:

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

With mandatory copy to:

Patricia S. Ullman
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606-6473
Telephone: (312) 258-5688
Facsimile: (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 hereafter specify to the others by like notice.

8.7 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 Lender shall not at any time thereafter be held to be abandonment of such rights.

8.8 Lender's Lien for Service Charge and Expenses. At all times, regardless of whether any proceeds of the Note 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 Lender in connection with the Obligations.

8.9 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.

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

8.11 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.

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8.12 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 actions, suit or proceeding arising under this Mortgage, Mortgagor and Lender shall submit to the jurisdiction and venue of the appropriate federal and state courts of the State of Illinois sitting in Cook County, Illinois.

8.13 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 "**Lender**" includes the successors and assigns of Lender.

(c) The following words and phrases shall be construed as follows: "any" shall be construed as "any and all"; "include" and "including" shall be construed as "including but not limited to"; and "will" and "shall" shall each be 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) shall be to the agreement or instrument as in effect from time to time, including any amendments, replacements, restatements, modifications, extensions, renewals and/or supplements.

8.14 Further Assurances. Mortgagor shall execute, acknowledge and deliver to Lender and to any subsequent holder of the Note 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 re-affirm, to correct and to perfect the evidence of the Obligations and the lien of Lender 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 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.

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

8.16 Waivers by Mortgagor. To the extent permitted by all applicable Requirements of Law, Mortgagor shall not apply for or avail himself of any appraisal, valuation,

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reinstatement, redemption, stay, extension, or exemption laws or any so called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but waives the benefit of such laws. Mortgagor, for himself and all who may claim through or under it, waives any right to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien and agrees that any court having jurisdiction to foreclose such 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 herein granted, on behalf of Mortgagor and all persons beneficially interested therein, 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.

8.17 Condition of the Premises. As of the date hereof, the condition of the Premises is substantially the same as that shown on the survey delivered to Lender in connection with the Loan, 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.

8.18 After Acquired Property. Any property hereafter acquired and placed, installed or incorporated on or into the Premises, which is of the kind or nature herein provided, or is intended to be and becomes subject to the lien, 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 herein, but nevertheless, Mortgagor shall from time to time, if requested by Lender, execute and deliver any and all further assurances, conveyances and assignments as Lender may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all later-acquired property.

8.19 Business Loan Recital.

(a) The Loan constitutes a business loan, and is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, et seq.

(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 Note above the lawful maximum, if any, in effect from time to time in the applicable jurisdiction for loans to Mortgagors 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 clause or provision shall be deemed modified to the extent necessary to be in compliance with applicable Law, or

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- (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.

8.20 No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien do not merge in fee simple title to the Premises, it is understood and agreed that should Lender acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien 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.

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

8.22 No Liability on Lender. This Mortgage is intended only as security for the obligations herein set forth. Notwithstanding anything contained herein to the contrary, Lender shall not be obligated to perform or discharge any obligation, duty or liability of Mortgagor, whether hereunder, under any of the leases affecting the Premises, under any contract relating to the Premises or otherwise, and Mortgagor shall and does agree to indemnify against and hold Lender harmless of and from:

(a) any liability, loss or damage which Lender may incur under or with respect to any portion of the Premises or under or by reason of its exercise of rights hereunder, and

(b) any claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any of the contracts, documents or instruments affecting any portion of the Premises or affecting any rights of Lender.

Unless and until an Event of Default occurs and Lender takes possession of the Premises, Lender 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 Lender in its exercise of the powers granted to it, and Mortgagor expressly waives and releases any liability. Should Lender 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 Lender immediately upon demand for the full amount, including costs, expenses and reasonable attorneys' fees.

8.23 Consent and Approval. Whenever in this Mortgage or as a matter of law it is provided or held that Lender's consent or approval shall not be unreasonably withheld or the actions of Lender shall be reasonable or not unreasonable, the remedy of Mortgagor in the event

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Mortgagor shall claim and establish that Lender has unreasonably withheld consent or approval or has acted unreasonably, shall be limited to injunction or declaratory judgment and in no event shall Lender be liable for a money judgment.

8.24 Concerning the Senior Mortgage; the Intercreditor Agreement. This Mortgage and all of the rights, remedies and options of Lender hereunder are subject and subordinated in all respects to the lien and optional of that certain Construction Mortgage, Security Agreement, Fixture Filing and Assignment of Rents and Leases (the "Senior Mortgage"), dated of even date herewith, from Mortgagor in favor of NATIONAL CITY BANK, AS AGENT (in such capacity, and together with its successors and assigns in such capacity, the "Senior Mortgagee"), securing a loan to Mortgagor (the "Senior Loan") in the maximum principal amount of Ninety Million Dollars (\$90,000,000) made pursuant to a Construction Loan Agreement (the "Senior Loan Agreement") dated of even date herewith by and among Borrower, the Senior Mortgagee in its capacity as agent as aforesaid and the lenders party thereto, and is evidenced and secured by certain additional documents, instruments and agreements described in or required by the Senior Loan Agreement (the "Senior Loan Documents"). Reference is hereby made to an Intercreditor Agreement, dated of even date herewith, by and between Lender and the Senior Mortgagee and filed or to be filed in the real property recorder of Cook County, Illinois, concurrently with the filing of this Mortgage in such records (the "Intercreditor Agreement"). Among other things, the Intercreditor Agreement sets forth certain agreements between Lender and the Senior Mortgagee with respect to the relative priorities of this Mortgage and the Senior Mortgage and the respective rights and remedies of the Lender hereunder and the Senior Mortgagee under the Senior Mortgage which are intended to govern the relationship between this Mortgage (and the Lender's rights and remedies hereunder) and the Senior Mortgage (and the Senior Mortgagee's rights and remedies thereunder) at all times during the pendency of the Senior Mortgage. This Mortgage and the Intercreditor Agreement are intended to be consistent and harmonious; in the event and to the extent of any inconsistency between the terms of this Mortgage and any corresponding provision of the Intercreditor Agreement, the terms of the Intercreditor Agreement shall govern.

8.25 Limitation on Recourse. Mortgagor's obligation for the payment of the indebtedness evidenced by the Note and secured by this Mortgage is subject to the limitation on recourse set forth in Section 7.14 of the Loan Agreement, which provision is incorporated by this reference as part of this Mortgage as if set forth in its entirety herein.

[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., President

By: GS 1600 Museum Park, LLC,
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.
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., President

By: CS 1600 Museum Park, LLC,
an Illinois limited liability company
a Member and Manager

By: Forest City Central Station, Inc.,
an Ohio corporation, a Member and Manager

By: _____
Name: JAMES L. BROHASKA
Title: VICE PRESIDENT

By: Jerry 1600 Museum Park, L.L.C.,
a Member and Manager

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

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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., President

By: CS 1600 Museum Park, LLC,
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.,
a Member and Manager

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

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(EDC Management, Inc. acknowledgement)

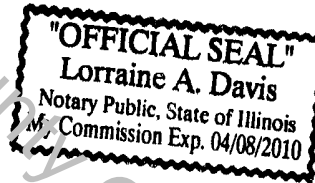
STATE OF ILLINOIS)

COUNTY OF COOK)

I, Lorraine A. Davis, a notary public in the County and State aforesaid, do certify that Ronald B. Shipka, Jr, personally known to me to be the President of EDC Management, Inc., an Illinois corporation, 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 such capacity, 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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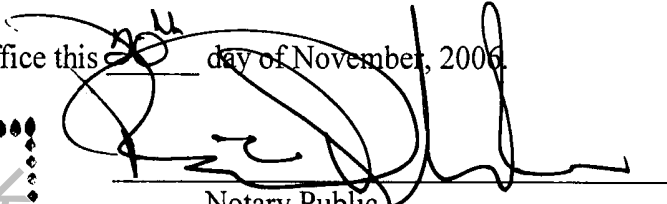
(Jerry 1600 Museum Park, L.L.C., acknowledgement)

STATE OF ILLINOIS)

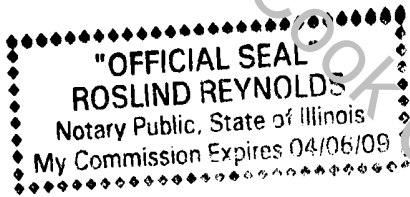
COUNTY OF COOK)

I, Roslind Reynolds, a notary public in the County and State aforesaid, do certify that Gerald W. Fogelson, personally known to me to be a Manager of Jerry 1600 Museum Park, L.L.C., 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 the foregoing capacity, 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 20 day of November, 2006.



Notary Public



County Clerk's Office

UNOFFICIAL COPY

(Forest City Central Station, Inc., acknowledgement)

STATE OF OHIO)

COUNTY OF CUYAHOGA)

I, Benjamin Hagenchuk, a notary public in the County and State aforesaid, do certify that James Monaska, personally known to me to be the Vice President of Forest City Central Station, Inc., an Ohio corporation, 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 the foregoing capacity, 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 16th day of November, 2006.

Benjamin Hagenchuk
Notary Public

Clerk of Cook County Clerk's Office

UNOFFICIAL COPY

(Forest City Central Station, Inc., acknowledgement)

STATE OF OHIO)

COUNTY OF CUYAHOGA)

I, BETH ANN RAPENCHUK, a notary public in the County and State aforesaid, do certify that JAMES BROHASKA, personally known to me to be the VICE PRESIDENT of Forest City Central Station, Inc., an Ohio corporation, 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 the foregoing capacity, 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 16th day of November, 2006.

Beth Ann Rapenchuk
Notary Public


**Beth Ann Rapenchuk
Notary Public, State of Ohio
My Commission Expires 01-28-08**

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EXHIBIT A

LEGAL DESCRIPTION

Property of Cook County Clerk's Office



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EXHIBIT A

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 89 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.

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

UNOFFICIAL COPY

DESCRIBED LAND:

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 LIEN 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.

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Cook County Clerk's Office