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221 North LaSalle Street  
Suite 1200  
Chicago, Illinois



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Cook County Recorder of Deeds  
Date: 02/09/2007 04:10 PM Pg: 1 of 14

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## SECOND MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS SECOND MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT (the

"Mortgage") is made as of this 9<sup>th</sup> day of February, 2007 by and between 500 W. 31<sup>st</sup> LLC, an Illinois limited liability company (the "Mortgagor"), whose mailing address is 908 W. 31<sup>st</sup> St., Chicago, Illinois 60608 to Thomas DiPiazza and Richard Ferro (collectively the "Mortgagee"), whose mailing address is: 3611 S. Normal, Chicago, Illinois

### WITNESSETH:

WHEREAS the Mortgagor is justly indebted to the Mortgagee in the principal sum of Three Hundred Fifty Thousand Dollars (\$350,000.000 evidenced by that certain Promissory Note of Mortgagor and certain other co-makers of even date herewith (the "Note"), made payable to the order of and delivered to the Mortgagee, whereby the Mortgagor promised to pay the said principal sum, late charges, and interest at the rate and in installments, all as provided in the Note. The final payment of principal and interest, if not sooner paid, shall be due on MARCH 1<sup>st</sup>, 2009, unless extended as provided in the Note. All such payments on account of the Indebtedness (as that term is hereinafter defined) secured hereby shall be applied first to interest on the unpaid principal balance, secondly to any other sums due thereunder, thirdly to all other advances and sums secured hereby, and the remainder to principal, all of said principal and interest being made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of the Mortgagee;

NOW, THEREFORE, the Mortgagor, to secure the payment of said principal sum of money and said interest and late charges in accordance with the terms, provisions and limitations of this Mortgage and of the Note, and the performance of the covenants and agreements herein contained by the Mortgagor to be performed, and also in consideration of the sum of ONE DOLLAR (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee and its successors and assigns, the following described real estate and all of its present and hereafter-acquired estate, rights, title and interest therein situated, lying and being in the County of Cook and State of Illinois, without any relief whatsoever from valuation or appraisal laws of the State of Illinois to-wit:

LOTS 27, 28, 29 AND 30 IN BLOCK 7 IN DAVID DAVIS SOUTH ADDITION, A SUBDIVISION OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 (EXCEPT THE EAST 83 FEET THEREOF) OF SECTION 28, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN 17-28-331-046-0000 17-28-331-047-0000  
which, with the property hereinafter described, is collectively referred to herein as the "Premises."

TOGETHER with all improvements, tenements, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging (except for any personal property owned by tenants), and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily); all tenant security deposits, utility deposits and insurance premium rebates to which Mortgagor may be entitled or which Mortgagor may be holding; and all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain fixtures, partitions and attached floor covering now or hereafter therein or thereon, and all fixtures, apparatus, equipment and articles now or hereafter therein or thereon used to supply heat,

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gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation (whether single units or centrally controlled) including (without restricting the foregoing): all fixtures, apparatus, equipment and articles (other than trade fixtures used in the operation of a business and other than inventories held for sale) which relate to the use, occupancy, and enjoyment of the Premises; it being understood that the enumeration of any specific articles of property shall not exclude or be held to exclude any items or property not specifically mentioned. All of the land, estate and property herein above described, real, personal and mixed, whether affixed or annexed or not (except where otherwise herein above specified) and all rights hereby conveyed and Mortgaged are intended so to be as a unit and are hereby understood, agreed and declared (to the maximum extent permitted by law) to form part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and Mortgaged hereby.

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

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

**THIS MORTGAGE IS EXPRESSLY MADE SUBORDINATE TO THAT CERTAIN MORTGAGE (THE "SENIOR MORTGAGE") OF EVEN DATE HERewith MADE BY MORTGAGOR TO CHICAGO COMMUNITY BANK ("SENIOR LENDER") SECURING INDEBTEDNESS IN THE PRINCIPAL AMOUNT OF ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000) AND ANY ADVANCES DESCRIBED THEREIN AND SUCH OTHER SUMS AS DESCRIBED IN THE SENIOR MORTGAGE.**

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

1. Mortgage shall: (a) promptly repair, restore or rebuild any buildings and other improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability or adequacy or any casualty insurance proceeds or eminent domain awards; (b) keep the Premises constantly in at least the condition and repair as of the date, hereof, without waste; (c) keep the Premises free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), subject, however, to the rights of the Mortgagor set forth in Paragraph 1.a. below; (d) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request, exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (e) complete within a reasonable time any building(s) or other improvement(s) now or at any time in process of erection upon the Premises; (f) comply with all federal, state and local requirements of law, regulations, ordinances, orders and judgments and all declarations, declarations of condominium, bylaws, rules, regulations, covenants, easements and restrictions of record with respect to the Premises and the use and/or occupancy thereof; (g) make no structural alterations in or on the Premises without Mortgagee's prior written consent; (h) suffer or permit no change in the general nature of the use or occupancy of the Premises without Mortgagee's prior written consent, except for residential leases for terms not exceeding one (1) year; (i) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, easements, licenses, permits (including without limitation zoning variations and any non-conforming uses and structures), privileges, franchises and concessions applicable to the Premises or contracted for in connection with any present or future use of the Premises; and (j) pay each item of Indebtedness secured by this Mortgage when due according to the terms hereof and of the Note. As used in this Paragraph 1 and elsewhere in this Mortgage, the term "Indebtedness" means and includes the unpaid principal sum evidenced by the Note, together with all interest and late charges, and all other sums at any time as provided in the Note and secured by this Mortgage.

**Right to Contest**

1. a. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Lien not expressly subordinated to the lien hereof, and defer payment and discharge thereof during the pending of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) that, within ten (10) days after Mortgagor has been notified of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien, and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee, may from time to time in writing appoint, a sum of money which shall be sufficient, in the judgment of the Mortgagee, to pay in full such Lien and all interest which might

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become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of the Mortgagee, such increase is advisable. Such deposits, if held by Mortgagee, are to be held without any interest accruing to the benefit of the Mortgagor or Beneficiary. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the Lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or shall fail to maintain sufficient funds on deposit as herein above provided, Mortgagee may, at its option, apply the money so deposited with Mortgagee in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon, if any. If the amount of money so deposited with Mortgagee shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon, if any, (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made. After such payments, any sums thereafter remaining shall be refunded to Mortgagor.

**Payment of Taxes**

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

**Tax Deposits**

3. If required by Mortgagee (and only to be required if Mortgagor fails to timely pay all general taxes and/or Mortgagor is not required to provide a tax escrow with Senior Lender), Mortgagor shall deposit with the Mortgagee or such depository (the "Depository") as the Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, commencing on the date of disbursement of any portion of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs, a sum equal to one hundred five percent (105%) of the amount of all real estate taxes and assessments (general and special) next due upon or for the Premises (the amount of such taxes next due to be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed) reduced by the amount, if any, then on deposit with the Mortgagee or the Depository, divided by the number of months to elapse before one (1) month prior to the date when such taxes and assessments will become due and payable. Such deposits are to be held without any allowance or interest to Mortgagor 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 so deposited are insufficient to pay any such taxes or assessments (general or special) when the same become due and payable, the Mortgagor shall, within ten (10) days after demand therefor from the Mortgagee or Depository, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year the excess shall be applied to a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of the Mortgagee or the Depository.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 3 shall be based upon the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purposes of such computation.

**Insurance Deposits**

3a. If required by Mortgagee (only to be required if Mortgagor fails to pay insurance premiums when due and Mortgagor is not otherwise then escrowing such premiums with the Senior Lender) for the purpose of providing funds with which to pay



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premiums when due on all policies of fire and other hazard insurance covering the Premises and the Collateral, as that term is defined in this Mortgage, Mortgagor shall deposit with the Mortgagee or the Depository, commencing on the date of disbursement of any portion of the proceeds of the Note and on the first day of each month following the month in which said disbursement occurs, a sum equal to the Mortgagee's estimate of the premiums that will next become due and payable on such policies reduced by the amount, if any, then on deposit with the Mortgagee or the Depository, divided by the number of months to elapse before one (1) month prior to the date when such premiums become due and payable. No interest shall be allowed to Mortgagor on account of any deposit made hereunder and said deposit need not be kept separate and apart from any other funds of the Mortgagee or the Depository.

**Mortgagee's Interest In and Use of Tax and Insurance Deposits; Security Interest**

4. In the event of a default hereunder, the Mortgagee may, at its option but without being required so to do, apply any monies at the time on deposit pursuant to Paragraphs 3 and 3.a. hereof to any of Mortgagor's obligations contained herein or in the Note, in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises as the same appear on the records of the Mortgagee. A security interest, within the meaning of the Uniform Commercial Code of the State of Illinois, is hereby granted to the Mortgagee in and to all monies at any time on deposit pursuant to Paragraphs 3 and 3.a. hereof and such monies and all of Mortgagor's rights, title and interest therein are hereby assigned to Mortgagee, all as additional security for the Indebtedness hereunder and shall, in the absence of default hereunder, be applied by the Mortgagee or Depository for such purposes as the Mortgagee shall direct shall not be subject to the direction or control of the Mortgagor; provided, however, that neither the Mortgagee nor the Depository shall be liable for any failure to apply to the payment of taxes or assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have furnished Mortgagee with the original bills therefor and requested, in writing, of Mortgagee or the Depository to make application of such funds to the payment of the particular taxes or assessments or insurance premiums for payment of which they were deposited. Neither Mortgagee nor the Depository shall be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

**Insurance**

5. Mortgagor shall keep all improvements and the Collateral now or hereafter situated on, or used in connection with, said Premises insured against loss or damage by fire on a so-called "All Risks" basis and against such other hazards as may reasonably be required by Mortgagee, including without limitation of the generality of the foregoing: (a) rent loss or business interruption insurance whenever in the opinion of the Mortgagee such protection is necessary; and (b) flood insurance whenever same is available and, in the opinion of Mortgagee, such protection is necessary. Mortgagor shall also provide insurance coverages with such limits for personal injury and death and property damage as Mortgagee may from time-to-time require. Mortgagee shall have the right to direct that any or all of the limits of coverage of the insurance policies herein described be increased to such amounts as the Mortgagee shall, from time-to-time, in the exercise of its reasonable business judgment deem appropriate. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with waiver of subrogation and replacement cost endorsements and a standard non-contributory Mortgagee clause attached to all policies, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver all original policies, including additional and renewal policies (or other reasonably satisfactory evidence of insurance with respect thereto), to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory Mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure of the lien of this Mortgage, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be.

Within ninety (90) days following the end of each fiscal year of Mortgagor, at the request of the Mortgagee, Mortgagor agrees to furnish evidence of replacement cost, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance

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companies to determine the then replacement cost of the buildings, and other improvements on the Premises.

## **Adjustment of Losses with Insurer and Application of Proceeds of Insurance**

6. In case of loss or damage by fire or other casualty, Mortgagee is authorized, subject to the rights, if any, granted to a senior mortgagee: (a) to settle and adjust any claim under insurance policies which insure against such risks; or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance monies. Such insurance proceeds may, at the option of the Mortgagee be: (a) applied in reduction of the Indebtedness, whether due or not; or (b) held by the Mortgagee and applied to pay for the cost of repair, rebuilding or restoration of the buildings and other improvements on the Premises. Notwithstanding the foregoing to the contrary, Mortgagee agrees to make the insurance proceeds available to Mortgagor to fulfill any of Mortgagor's obligations to rebuild, repair or restore the Premises as may be required by the Lease. If the Mortgagee shall allow the insurance proceeds to be used for repair, restoration or rebuilding, then the Mortgagee agrees to make said proceeds available to reimburse Mortgagor for the cost of repair, rebuilding or restoration of buildings or other improvements on the Premises, provided that such proceeds shall be made available in the manner and under the conditions that the Mortgagee may require; in such event, the buildings and other improvements shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the cost of rebuilding, repairing or restoring the buildings and other improvements may reasonably exceed ten percent (10%) of the unpaid principal balance as of the date of damage or destruction, then the Mortgagee must approve all plans and specifications of such work before such work shall be commenced. If the proceeds are made available by the Mortgagee to reimburse the Mortgagor or any lessee for the cost of repair, rebuilding or restoration, any surplus, after payment of the cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party, as that term is hereinafter defined, shall, at the option of the Mortgagee, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on any proceeds of insurance held by the Disbursing Party.

As used in this Paragraph 6, the term "Disbursing Party" refers to the Mortgagee and to any responsible trust or title insurance company selected by the Mortgagee.

## **Stamp Tax; Effect of Changes in Laws Regarding Taxation**

7. If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, Mortgagee or the Premises, any tax is due or becomes due in respect of the issuance of the Note or any document securing same, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any such tax.

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

## **Observance of Lease Assignment**

8. As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgagor has contemporaneously herewith executed a certain Assignment of Leases and Rents whereby Mortgagor has assigned to the Mortgagee all of its rights, title and interest as landlord in and to the leases listed on the Schedule of Leases attached to the Assignment of Leases and Rents and all current and future leases of the Premises.

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Mortgagor will not, without Mortgagee's prior written consent: (i) execute any further assignment or pledge of any rents or any leases of all or any portion of the Premises except an assignment or pledge securing the Indebtedness; (ii) accept any payment of any installment of rent more than thirty (30) days before the due date thereof; (iii) modify, alter, amend or in any way change the terms and provisions of any lease; or (iv) waive the obligation of any tenant under any of the leases to fully and timely perform in strict accordance with the terms thereof. The provisions of clauses (iii) and (iv) above shall not apply to residential tenants under residential leases.

Mortgagor, at its sole cost and expense, will: (i) at all times promptly discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the tenants to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the landlord or of any tenants thereunder; (iv) transfer and assign or cause to be separately transferred and assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the Premises or any portion thereof hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; and (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all tenants and the terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder.

Nothing in this Mortgage or in any other documents relating to the Note shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of any landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay or cause to be performed and paid.

At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in eminent domain), to any one or more leases affecting any part of the Premises, upon the execution by Mortgagee and recording or registration thereof, at any time hereafter, in the office wherein this Mortgage was registered or filed for record, of a unilateral declaration to that effect.

In the event of the enforcement by Mortgagee of any remedies provided for by law or by this Mortgage, the tenant under each lease of the Premises shall, at the option of the Mortgagee (but provided automatic attornment is provided for in each such lease), attorn to any person succeeding to the interest of landlord as a result of such enforcement and shall recognize such successor-in-interest as landlord under such lease without change in the terms or other provisions thereof; provided, however, that **Mortgagor and Lien Not Released**

9. From time to time Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor or Mortgagor's successors or assigns or the consent of any guarantor or tenant, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant, agreement or condition: (a) release anyone primarily or secondarily liable on any of the Indebtedness; (b) accept a renewal note or notes therefor; (c) release from the lien of this Mortgage any part of the Premises; (d) take or release other or additional security for the Indebtedness; (e) consent to any plat, map or plan of the Premises; (f) consent to the granting of any easement; (g) join in any extension or subordination agreement; (h) agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the time of payment or the amount of the monthly installments payable thereunder; and (i) waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the Indebtedness.

Any actions taken by Mortgagee pursuant to the terms of this Paragraph 9 shall not impair or affect: (a) the obligation of Mortgagor or Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the Indebtedness; and (c) the lien or priority of the lien hereof against the Premises.

Mortgagor shall pay to Mortgagee a reasonable service charge and such title insurance premiums and attorneys' fees as may be incurred by Mortgagee for any action described in this Mortgage taken at the request of Mortgagor.

#### **Mortgagee's Performance of Defaulted Acts**



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10. In case of default herein by Mortgagor and same not being cured within the period, if any, herein below provided, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in Paragraphs 7 or 7.1 or to protect the Premises or the lien hereof, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the rate of interest set forth in the Note applicable to a period when a default exists thereunder. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

## **Mortgagee's Reliance on Tax Bills, etc.**

11. Mortgagee, in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) with respect to the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim or lien which may be asserted.

## **Acceleration of Indebtedness in Case of Default**

12. If: (a) default be made in the due and punctual payment of principal or interest on the Note, or any other payment due in accordance with the terms thereof or hereof; (b) the Mortgagor or the Beneficiary or any guarantor or co-maker of the Note shall (i) file a petition of liquidation, reorganization or adjustment of debt under Title 11 of the United States Code (11 U.S.C. § 101 et seq.) or any similar law, state or federal, whether now or hereafter existing, or (ii) file any answer admitting insolvency or inability to pay its debts, or (iii) fail to obtain a vacation or stay of involuntary proceedings within thirty (30) days, as hereinafter provided; or (c) any order for relief of the Mortgagor or the Beneficiary or any guarantor or co-maker of the Note shall be entered in any case under Title 11 of the United States Code, or a trustee or a receiver shall be appointed for the Mortgagor or Beneficiary or for any guarantor or co-maker of the Note, or for all or the major part of the property of Mortgagor or Beneficiary or of any guarantor or co-maker of the Note in any voluntary or involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the property of the Mortgagor or Beneficiary or of any guarantor or co-maker of the Note in any voluntary or involuntary proceeding for the reorganization, dissolution, liquidation, adjustment of debt or winding up of the Mortgagor or Beneficiary or of any guarantor or co-maker of the Note and such trustee or receiver shall not be discharged or such jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days; or (d) the Mortgagor or the Beneficiary or any guarantor or co-maker of the Note shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all or any major part of its property; or (e) default shall be made in the due observance or performance of any other covenant, agreement or condition hereinbefore or hereinafter contained and required to be kept or performed or observed by the Mortgagor and same is not cured within twenty (20) days after notice thereof from Mortgagee to Mortgagor; (f) default shall be made in the due observance or performance of any covenant, agreement or condition required to be kept or observed by Mortgagor in any other instrument given at any time to secure the payment of the Note and same is not cured within twenty (20) days after notice thereof from Mortgagee to Mortgagor, then and in any such event, the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without further notice to Mortgagor; provided however, if a default other than the payment of monetary amount by its nature cannot reasonably be cured within twenty (20) days, then Mortgagor shall have a reasonable period of time not to exceed sixty (60) days to cure the default if Mortgagor diligently attempts to cure the default. If, while any insurance proceeds or condemnation awards are held by or for the Mortgagee to reimburse Mortgagor or any lessee for the cost of repair, rebuilding or restoration of building(s) or other improvement(s) or other improvement(s) on the Premises, as set forth in Paragraphs 6 and 18 hereof, the Mortgagee shall be or become entitled to accelerate the maturity of the Indebtedness, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the Indebtedness, and any excess held by it over the amount of the Indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the same appear on the records of the Mortgagee.

**UNOFFICIAL COPY****Foreclosure; Expense of Litigation**

13. When the Indebtedness or any part thereof become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or any part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of said order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens' Certificates and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to, or the value of, the Premises. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder, and shall be secured by this Mortgage.

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

**Application of Proceeds of Foreclosure Sale**

14. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 13, above; second, all other items which may, under the terms hereof, constitute Indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to any party entitled thereto as their rights may appear on the records of the Mortgagee.

**Appointment of Receiver or Mortgagee-In-Possession**

15. Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises, the Mortgagee or any holder of the Note may be appointed as such receiver or as Mortgagee in possession. Such receiver, or the Mortgagee-in-possession, shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times, if any, when Mortgagor, except for the intervention of such receiver or Mortgagee-in-possession, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver or Mortgagee-in-possession to apply the net income in its hands in payment in whole or in part of; (a) the Indebtedness or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof on the lien of such order or judgment, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency. The rights granted to Mortgagee under this Section 15 are subordinate to the rights, if any, granted to any senior mortgagee.

**Rights Cumulative**



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16. Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the Indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee; and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of, or discontinuance by, the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

## Mortgagee's Right of Inspection

17. Mortgagee shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

## Condemnation

18. Subject and subordinate to the rights, if any, granted to any senior mortgagee, Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award and any claim for damages for any of the Premises taken or damaged under the power of the eminent domain or by condemnation. The Mortgagee may elect at its option: (a) to apply the proceeds of the award or claim upon or in reduction of the Indebtedness, whether due or not; or (b) to make those proceeds available to Mortgagor or any lessee for repair, restoration or rebuilding of the Premises, in the manner and under the conditions that the Mortgagee may require. Notwithstanding the foregoing to the contrary, Mortgagee agrees to make any condemnation proceeds available to Mortgagor which may be necessary for Mortgagor to fulfill its obligations under the Lease. In any event, if the building(s) and improvement(s) are repaired, restored or rebuilt, it shall be accomplished in accordance with plans and specifications to be submitted to and approved by the Mortgagee. If the proceeds are made available by the Mortgagee, any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party shall, at the option of the Mortgagee, be applied on account of the Indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee.

## Release Upon Payment and Discharge of Mortgagor's Obligations

19. Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon indefeasible payment and discharge of all Indebtedness and upon payment of a reasonable fee to Mortgagee for the execution of such proper instrument.

## Giving of Notice

20. Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof, by certified mail, return receipt requested, addressed to the Mortgagor or to the Mortgagee, as the case may be, at the respective addresses set forth on the first page hereof or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder.

## Waiver of Defense

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

22. A. **Waiver of Statutory Rights** Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Mortgage on behalf of the Mortgagor, the

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trust estate and all persons beneficially interested therein and each and every person, except judgment creditors of the Mortgagor in its representative capacity and of the trust estate, acquiring any interest in or title to the Premises subsequent to the date of this Mortgage. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, (i) Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Loan Documents, as that term is herein defined; and (ii) to the extent not prohibited by law, Mortgagor does hereby waive any right to a trial jury in any action or proceeding to enforce or defend any rights of the Mortgagee under this Mortgage or any of the Loan Documents, or relating thereto or arising therefrom and agree that any such action or proceeding shall be tried before a court and not before a jury.

**B. Waiver of Marshalling** Notwithstanding the existence of any other security interests in the Premises and/or Collateral held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all portions of the Indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, Beneficiary and any other party who consents to this Mortgage and any party who now or hereafter acquires a security interest in the Premises and/or Collateral hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

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

23. Mortgagor shall provide such financial statements as may be reasonably requested by Mortgagee from time to time until the Indebtedness is paid in full.

**Filing and Recording Charges and Taxes**

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

**Usury Exemption**

25. Mortgagor agrees and represents that: (i) this instrument and the rights and obligations of all parties hereunder shall be governed by and construed under the substantive laws of the State of Illinois, without reference to the conflict of law principles of such state; (ii) the obligation evidenced by the Note secured hereby is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601, et seq.; and (iii) said obligation constitutes a business loan within the purview of Illinois Revised Statutes Chapter 17, Section 6404.

**Miscellaneous**

26.1 **Release of Previous Holder** The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on page 1 hereof, and the holder or holders, from time to time, of the Note. However, whenever the Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder thereafter to be performed, provided that any monies in which the Mortgagor has an interest, which monies are then held by the seller of the Note, are transferred to the purchaser of the Note. This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagor named on page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor; and the word "Mortgagor" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage, provided however, the foregoing shall not be construed as the consent or approval of Mortgagee to any transfer set forth in Paragraph 29 herein below.

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**26.2 Severability and Applicable Law** In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note or other document and this Mortgage, the Note or other document shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The validity and interpretation of this Mortgage and the Note it secures and any other document given at any time to secure the payment of the Note are to be construed in accordance with and governed by the laws of the State of Illinois.

**26.3 Governmental Compliance** Mortgagor shall not, by act or omission, permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be so used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.

**26.4 Estoppel Certificate** Mortgagor, within fifteen (15) days of a request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the Indebtedness and where or not any default, offset or defense then is alleged to exist against the Indebtedness and, if so, specifying the nature thereof and such other items reasonably requested by Mortgagee.

**26.5 Non-Joinder of Tenant** After an event of default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and said subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendant or defendants in any such civil action or failure of any such order or judgment to foreclose their rights shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

**26.6 Regulation U Clause** Mortgagor covenants that no portion of the proceeds evidenced by the Note will not be used for the purchase or carrying of registered equity securities within the purview and operation of Regulation U issued by the Board of Governors of the Federal Reserve System.

**26.7 Loan Documents** It is acknowledged and agreed that:

A. The Indebtedness is, in addition to this Mortgage, secured and guaranteed by certain documents and instruments, which documents and instruments, together with all extensions and renewals of the Note and all other documents and instruments heretofore, now or hereafter given to evidence, secure or guarantee the payment of, or made in connection with the negotiation, origination and extension of, or given to perfect or continue the lien or security interest thereby created to secure the Indebtedness, is herein collectively referred to as the "Loan Documents".

B. Mortgagor covenants and agrees that all the terms, covenants, conditions, representations, warranties, obligations and provisions of the Note, and all the Loan Documents are, by this reference, adopted and incorporated into this Mortgage to the same full extent and with the same binding force and effect as if all of such terms, covenants, conditions, representations, warranties, obligations and provisions were herein stated in full, and that the Mortgagor shall pay, perform, keep and observe, or cause to be paid, performed, kept and observed fully, faithfully and strictly all the terms, covenants, conditions, representations, warranties, obligations and provisions contained in the Note and all the Loan Documents, it being the express intent that each of this Mortgage, the Note and all the Loan Documents complement and supplement the others to the extent necessary or required to protect, preserve and confirm the rights, powers and remedies of the Mortgagee in respect of the Indebtedness.

**26.8 Indemnity** The Mortgagor hereby indemnifies, protects, saves and holds forever harmless the Mortgagee, and its directors, officers, employees, agents and independent contractors, (for the purposes of this paragraph, the "Indemnified Parties") from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses,



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including, without limitation, court costs and reasonable attorneys' fees and expenses, imposed upon, incurred by or asserted against the Indemnified Parties, or any of them, as a result of, in connection with or arising from (i) the ownership or operation of the Premises or any interest therein or receipt by the Mortgagor or the Beneficiary of any rent or other sum therefrom; (ii) any accident, injury to or death of persons or loss of damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways, (iii) the condition of the Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways; (iv) any failure on the part of the Mortgagor or any co-maker of the Note to perform or comply with any of the terms, covenants, conditions and provisions of the Loan Documents; or (v) the performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof. Any amounts payable to the Indemnified Parties, or any of them, under this paragraph which are not paid within three (3) business days after written demand therefor by the Indemnified Parties shall be so much additional Indebtedness hereby secured and shall bear interest from the date of such demand to the date of receipt by the Indemnified Parties of payment at the rate set forth in the Note applicable to a period when a default exists thereunder, and the Mortgagee shall, in addition to any other right, power or remedy available to the Mortgagee, have the same rights, powers and remedies in the event of nonpayment of any such sum by the Mortgagor as in the case of a default by the Mortgagor in the payment of the Indebtedness. The obligations of the Mortgagor under this paragraph shall survive any termination, release or satisfaction of this Mortgage.

### **Security Agreement and Financing Statement**

27. Mortgagor and Mortgagee agree: (1) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State of Illinois as amended with respect to all sums on deposit with the Mortgagee pursuant to Paragraphs 6 and 8 hereof (the "Deposits") and with respect to any personal property included in the definition herein of the word "Premises", which personal property may not be deemed to form a part of the real estate described in Exhibit "A" or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of the Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

In the event of a default under this Mortgage, and such is not cured within the period, if any, so provided herein above, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and the improvements thereon and Collateral in accordance with its rights, powers and remedies with respect to the real property and the improvements thereon, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property and the improvements thereon, ten (10) days notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee, including, but not limited to, equitable actions and all appeals. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as the Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unservicable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee at the cost of the Mortgagor: (i) such further financing statements and security documents and assurances as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. The Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

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The Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Premises" herein are or are to become fixtures on the land described in Exhibit "A"; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code; and (iii) Mortgagor is a record owner of the land described in Exhibit "A".

If the Collateral is sold in connection with a sale of the Premises, Mortgagor shall notify the Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agree to assume Mortgagor's obligations as to the security interests herein granted and to execute whatever agreements and filings are deemed necessary by the Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral, Deposits and the deposits described in Paragraphs 3 and 3a. above.

**Lien for Loan Commissions, Service Charges, etc.**

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

**Due on Sale or Further Encumbrance Clause**

29. Mortgagor and Mortgagee agree that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be a default hereunder for which no notice need be given and no cure period shall be permitted. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore a default hereunder:

any mortgage, sale, conveyance, assignment or other transfer of, or the grant of a security interest in all or any part of the title to the Premises or the beneficial interest or power of direction under the trust agreement, if any, with the Mortgagee.

Any consent by the Mortgagee, or any waiver of an event of default, under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

**Right to Prepay; and Partial Releases of Mortgage Upon Sale of Homes**

30. Mortgagor has the right to prepay the indebtedness evidenced by the Note at any time in whole or in part.

In connection with bona fide third party sales of individual homes constructed on the real estate secured by this Mortgage, the Mortgagee shall provide partial releases from the lien of the Mortgage at the same time the Senior Lender provides partial releases of the lien of its Senior Mortgage. After the Senior Mortgage has been fully released, Mortgagee shall provide partial releases as provided.

**31. Hazardous Substances - Status and Indemnity**

1. As a material inducement to Mortgagee to disburse the funds evidenced by the Note secured hereby, the Mortgagor does hereby represent and covenant other than previously disclosed that (a) there is no presence of any Hazardous Substances, as that term is hereinafter defined, on, at, in or affecting the Premises or the groundwater underlying same; (b) no spills, releases, discharges, or disposal of Hazardous Substances that have occurred or are presently occurring on, in, at or onto the Premises; (c) no spills or disposal of Hazardous Substances that have occurred or are occurring off the Premises as a result of any construction on, at, in or the operation and use of the Premises; (d) there is no presence of any equipment containing polychlorinated biphenyl ("PCB"); and (e) there is no presence of any asbestos in use or on the Premises.

2. In connection with construction in, at on or the operation and use of the Premises, there has been no failure to comply

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with all applicable local, state, and federal environmental laws, regulations, ordinances, and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport, and disposal of any Hazardous Substances.

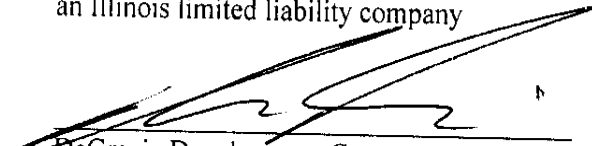
3. In addition to all other obligations of the Mortgagor to indemnify the Mortgagee, Mortgagor agrees to indemnify and hold Lender harmless from and against any and all claims, demands, damages, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings, costs, and expenses (including without limitation reasonable attorney's fees) arising directly or indirectly from, out of, or in any way connected with (a) the presence of any Hazardous Substances in, at, on or off the Premises or (b) any violation or alleged violation of any local, state, or federal environmental law, regulation, ordinance, or administrative or judicial order relating to Hazardous Substances, whether attributable to events occurring before or after Mortgagor's acquisition of the Premises. The obligations of Mortgagor and Beneficiary under this paragraph shall survive any termination, release or satisfaction of this Mortgage.

Mortgagor covenants that it shall not create, store, or release or allow the creation, storage or release of any Hazardous Substances on the Property and, at Mortgagor's sole cost and expense, it shall remove or cause to be removed any Hazardous Substances on, at or in the Property or the groundwater underlying same.

As used herein, "Hazardous Substances" shall mean: Any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous or toxic substance, or other similar term by any federal, state, or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated in the future as such statutes, regulations, or ordinances may be amended from time to time.

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

500 W. 31<sup>st</sup> LLC  
an Illinois limited liability company


  
DeGrazia Development Company, its Manager  
By: Michael Passarelli, Vice President

STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Michael Passarelli, Vice President of DeGrazia Development Company as Manager of 500 W. 31<sup>st</sup> LLC, an Illinois limited liability company (the "Company"), and is known to me to be the same person whose name is subscribed to the foregoing instrument and appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and the free and voluntary act of the Company for the uses and purposes therein set forth.

Given under my hand and official seal this 9 day of February, 2007

My Commission expires 6-13-07

  
\_\_\_\_\_  
Notary Public

