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Doc#: 0723344005 Fee: \$68.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/21/2007 09:49 AM Pg: 1 of 23

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This instrument prepared by and  
after recording should be returned to:  
Joseph M. Hernandez, Esq.  
Greenberg Traurig, P.A.  
1221 Brickell Avenue  
Miami, Florida 33131-3261

## MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT  
AND FINANCING STATEMENT (the "Mortgage") is made and entered into as of the 6<sup>th</sup> day of  
August, 2007, by 7100 S. RHODES LLC, an Illinois limited liability company (the "Mortgagor"), whose  
address is 566 W. Lake Street, Suite 200, Chicago, Illinois 60661, and TENROCK CAPITAL LLC, a  
Delaware limited liability company (the "Mortgagee"), whose address is 1512 Palisade Avenue, Fort  
Lee, New Jersey 07024;

8371472 HAWKSB

### WITNESSETH:

WHEREAS, Mortgagee has this date made a loan for business use to Mortgagor and Mortgagor is  
justly and lawfully indebted to Mortgagee in the sum of ONE MILLION EIGHT HUNDRED TWENTY  
FIVE THOUSAND AND NO/100 DOLLARS (\$1,825,000.00) (the "Loan"), as evidenced by that certain  
promissory note executed by Mortgagor (as the same may be modified, amended, renewed and extended,  
the "Note") of even date herewith and to be paid according to its terms (reference to said Note is hereby  
made to the same extent as if set forth in full herein);

WHEREAS, said indebtedness and all other debts, obligations and liabilities secured hereby from  
time to time are referred to herein as the "Obligations", and Mortgagor and all makers, endorsers,  
sureties, guarantors, accommodation parties and all persons liable or to become liable with respect to the  
Obligations are each referred to herein as an "Obligor", and this Mortgage and the Note evidencing the  
Obligations and all other instruments and documents executed in connection with the Obligations by  
Mortgagor and/or any other Obligor are referred to herein as the "Credit Documents";

WHEREAS, this Mortgage covers goods which are or are to become fixtures, is effective as a  
financing statement filed as a fixture filing and is to be filed in the real estate records;

NOW, THEREFORE, to secure the payment of the Obligations and the full and faithful  
performance of the covenants and agreements contained in this Mortgage and the other Credit  
Documents, Mortgagor hereby grants, bargains, sells, conveys, assigns, transfers, mortgages, pledges,  
delivers, sets over, warrants and confirms to Mortgagee, and grants Mortgagee, its successors and assigns,  
a security interest in:

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All those certain lots, pieces, or parcels of land lying and being in Cook County, State of Illinois, being legally described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as the "Land"), together with the buildings and improvements now or hereafter situated thereon (the "Improvements") (the land and Improvements hereinafter referred to as the "Premises").

TOGETHER WITH all and singular the tenements, hereditaments, easements, riparian rights and other rights now or hereafter belonging or appurtenant to the Land, and the rights (if any) in all adjacent roads, ways, streams, alleys, strips and gores, and the reversion or reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, claim and demand whatsoever of Mortgagor of, in and to the same and every part and parcel thereof;

TOGETHER WITH any and all tangible property (collectively, the "Equipment") now or hereafter owned by Mortgagor and now or hereafter located at, affixed to, placed upon or used in connection with the Land or the Improvements, or any present or future improvements thereon, including without limitation, all machinery, equipment, appliances, fixtures, conduits and systems for generating or distributing air, water, heat, air conditioning, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse, sewage or garbage, or for fire prevention or extinguishing; all elevators, escalators, lifts and dumbwaiters; all motors, engines, generators, compressors, pumps, lift stations, tanks, boilers, water heaters, furnaces and incinerators; all furniture, furnishings, fixtures, appliances, installations, partitions, shelving, cabinets, lockers, vaults and wall safes; all carpets, carpeting, rugs, underpadding, linoleum, tiles, mirrors, wall coverings, windows, storm doors, awnings, canopies, shades, screens, blinds, draperies and related hardware, chandeliers and light fixtures; all plumbing, sinks, basins, toilets, faucets, pipes, sprinklers, disposals, laundry appliances and equipment, and kitchen appliances and equipment; all alarm, safety, electronic, telephone, music, entertainment and communications equipment and systems; all janitorial, maintenance, cleaning, window washing, vacuuming, landscaping, pool and recreational equipment and supplies; and any other items of property, wherever kept or stored, if acquired by Mortgagor with the intent of incorporating them in and/or using them in connection with the Land or the Improvements; together also with all additions thereto and replacements and proceeds thereof; all of which foregoing items described in this paragraph are hereby declared to be part of the real estate and encumbered by this Mortgage; and

TOGETHER WITH any and all rents, revenues, receipts, accounts receivable, income, issues, profits and proceeds of the Land or Improvements, and all right, title and interest of Mortgagor in and under all leases, licenses, concessions, rentals (transient or otherwise), tenancies and occupancy agreements of any nature whatsoever (and any extensions and renewals thereof), now or hereafter affecting the Land or Improvements; and

TOGETHER WITH (a) any and all awards or payments, including interest thereon and the right to receive the same, growing out of or resulting from any exercise of the power of eminent domain (including the taking of all or any part of the Land or the Improvements), or any alteration of the grade of any street upon which the Land abuts, or any other injury to, taking of, or decrease in the value of the Land or the Improvements or any part thereof; (b) all rights of Mortgagor in and to any hazard, casualty, liability, or other insurance policy carried for the benefit of Mortgagor and/or Mortgagee with respect to the Improvements or the Equipment, including without limitation any unearned premiums and all insurance proceeds or sums payable in lieu of or as compensation for any loss of or damage to all or any portion of the Improvements or the Equipment; (c) all rights of Mortgagor in and to all supplies and building materials, wherever located, for the construction or refurbishing of the Improvements, and any bill of lading, warehouse receipt or other document of title pertaining to any such supplies and materials; and (d) all rights of Mortgagor in, to, under, by virtue of, arising from or growing out of any and all present or future contracts, instruments, accounts, insurance policies, permits, licenses, equipment leases,

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trade names, plans, specifications, appraisals, reports, paid fees, choses-in-action, subdivision restrictions or declarations or other general intangibles whatsoever now or hereafter dealing with, affecting or concerning the Land or the Improvements or any portion thereof or interest therein, including but not limited to: (i) all contracts and agreements with any architect, engineer, designer, general contractor, supplier or landscaping firm, and any related plans, specifications or shop drawings, for or related to the Land or its development or the construction or refurbishing of the Improvements, (ii) all permits, licenses and approvals issued by any governmental authority from time to time with respect to the development of the Land or the construction or refurbishing or operation of the Improvements, including any zoning permits or occupancy permits; (iii) all environmental inspection reports, structural inspection reports, geotechnical evaluation reports, property appraisal reports, and all other reports, studies, evaluations and appraisals now or hereafter prepared for the Mortgagor with respect to the Land or Improvements; (iv) all service, maintenance or operating contracts and agreements pertaining to the Land or the Improvements, including any contracts pertaining to management, security, parking, cable or satellite television or other entertainment, waste disposal, maintenance, cleaning, laundry or operating supplies; (v) any agreements for the provision of water, sewer, electricity, telephone, gas or other utilities to the Land or the Improvements, (vi) all fidelity, construction, payment, performance and/or other bonds, (vii) any contracts now existing or hereafter made for the sale by Mortgagor of all or any portion of the Land or the Improvements, including any deposits paid by any purchasers (howsoever such deposits may be held) and any proceeds of such sales contracts, including any purchase-money notes and mortgages made by such purchasers, and (viii) any declaration of condominium, restrictions, covenants, easements or similar documents now or hereafter recorded against the title to all or any portion of the Land or Improvements;

TO HAVE AND TO HOLD the above-described and granted property, appurtenances and rights (referred to collectively in this Mortgage as the "Mortgaged Property") unto Mortgagee in fee simple forever.

PROVIDED, HOWEVER, that these presents are upon the condition that if Mortgagor (a) shall pay or cause to be paid to Mortgagee the principal and all interest payable in respect of the Obligations at the time and in the manner stipulated in the Credit Documents, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, (b) shall punctually perform, keep and observe all and singular the covenants and promises in the Credit Documents to be performed, kept and observed by and on the part of Mortgagor, and (c) shall not permit or suffer to occur any default under this Mortgage or any other Credit Document, then this Mortgage and all the interests and rights hereby granted, bargained, sold, conveyed, assigned, transferred, mortgaged, pledged, delivered, set over, warranted and confirmed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

Mortgagor covenants with and warrants to Mortgagee: (a) that Mortgagor has good and marketable title to the Mortgaged Property, is lawfully seised and possessed of the Mortgaged Property in good and insurable fee simple title therein, and has good and lawful right to sell, mortgage and convey the same; (b) that the Mortgaged Property is unencumbered except for any easements, restrictions or other title exceptions listed in the owner's affidavit(s) delivered to Mortgagee in connection with this Mortgage; and (c) that Mortgagor shall forever warrant and defend the Mortgaged Property unto Mortgagee, and the validity and priority of the lien of this Mortgage, against the lawful claims and demands of all persons whomsoever. Mortgagor further covenants and agrees with Mortgagee as follows:

1. **Payment and Performance.** Mortgagor shall pay all sums due Mortgagee at the time and in the manner provided in the Credit Documents, and Mortgagor shall otherwise perform, comply with and abide by each and every one of the stipulations, agreements, conditions and covenants contained in the Credit Documents.



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2. **Taxes, Assessments and Charges.** Mortgagor shall pay all taxes, assessments (whether general or special) and other charges whatsoever levied, assessed, placed or made against all or any part of the Mortgaged Property or any interest of Mortgagee therein, or against any Credit Document or any obligation thereunder. Mortgagor shall make such payment in full not later than thirty (30) days before the last day upon which the same may be paid without the imposition of interest (except interest on special assessments payable by law in installments, in which case Mortgagor shall pay each such installment when due) or other late charge or penalty, and Mortgagor shall deliver to Mortgagee receipts evidencing such payments promptly thereafter. If Mortgagor shall fail, neglect or refuse to pay any such taxes, assessments or other charges as aforesaid, then Mortgagee at its option may pay the same, and any funds so advanced by Mortgagee shall bear interest, shall be paid and shall be secured as provided in paragraph 14.
3. **Insurance.** (a) Mortgagor shall maintain property insurance with a reputable and highly rated insurance company or companies licensed in Illinois and reasonably acceptable to Mortgagee, covering all the Improvements, the Equipment and all tangible personal property encumbered by this Mortgage, for an amount not less than their full insurable value on a replacement cost basis, without contribution or coinsurance (or if coverage is written on a co-insurance basis, then an agreed amount endorsement is required), for the benefit of Mortgagor and Mortgagee as their interests may appear, by policies on such terms, in such form and for such periods as Mortgagee shall require or approve from time to time, insuring with extended coverage and broad form coverage against loss or damage by fire, lightning, flood, windstorm, hail, aircraft, riot, vehicles, explosion, smoke, falling objects, weight of ice or snow or sleet, collapse, sudden tearing asunder, breakage of glass, freezing, electricity, sprinkler leakage, water damage, earthquake, vandalism and malicious mischief, theft, riot attending a strike, civil commotion, war risks (when and if war risk coverage is available), and when and to the extent required by Mortgagee, against any other risks. Regardless of the types or amounts of insurance required and approved by Mortgagee, Mortgagor shall assign to Mortgagee all policies of insurance which insure against any loss or damage to the Mortgaged Property or any part thereof, as collateral and further security for the payment of the Obligations, with loss payable to Mortgagee pursuant to a standard mortgagee clause acceptable to Mortgagee. Mortgagor shall deliver to Mortgagee true and correct copies of all such policies. (b) **UNLESS MORTGAGOR PROVIDES MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS AGREEMENT, MORTGAGEE MAY PURCHASE INSURANCE AT MORTGAGOR'S EXPENSE TO PROTECT MORTGAGEE'S INTERESTS IN THE MORTGAGED PROPERTY. THIS INSURANCE MAY, BUT NEED NOT, PROTECT MORTGAGOR'S INTERESTS. THE COVERAGE THAT MORTGAGEE PURCHASES MAY NOT PAY ANY CLAIM THAT MORTGAGOR MAKES OR ANY CLAIM THAT IS MADE AGAINST MORTGAGOR IN CONNECTION WITH THE MORTGAGED PROPERTY. MORTGAGOR MAY LATER CANCEL ANY INSURANCE PURCHASED BY MORTGAGEE, BUT ONLY AFTER PROVIDING MORTGAGEE WITH EVIDENCE THAT MORTGAGOR HAS OBTAINED INSURANCE AS REQUIRED BY THIS AGREEMENT. IF MORTGAGEE PURCHASES INSURANCE FOR THE MORTGAGED PROPERTY, MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES MORTGAGEE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, AND SUCH COSTS SHALL BE SECURED AS PROVIDED IN PARAGRAPH 14 UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE TOTAL OUTSTANDING BALANCE OR OBLIGATION OF THE LOAN. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE MORTGAGOR MAY BE ABLE TO OBTAIN ON ITS OWN;** (c) If any insurance proceeds are received for loss or damage to the Improvements or the Equipment, then Mortgagee at its option may retain such proceeds and apply them toward the payment of the Obligations (in any order of priority Mortgagee may deem appropriate in its sole discretion), or Mortgagee may disburse them to Mortgagor

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for the repair or restoration of the damaged Improvements or Equipment in the same manner as disbursements under a construction loan; Mortgagee shall not be obligated to see to the proper application by Mortgagor of any such disbursement. (d) Mortgagor shall obtain and carry general comprehensive liability insurance with a reputable and highly rated insurance company or companies licensed in Illinois and reasonably acceptable to Mortgagee, which policy shall name both Mortgagor and Mortgagee as insureds, with initial limits of not less than One Million Dollars (\$1,000,000) as to personal injury or death, and One Hundred Thousand Dollars (\$100,000) with respect to property damage (or such greater or different limits which Mortgagee may require from time to time) and on such terms, in such form and for such periods as Mortgagee shall approve from time to time. (e) In the event of a foreclosure of this Mortgage, the purchaser of the Mortgaged Property shall succeed to all the rights of Mortgagor in and to all policies of insurance required under this Mortgage, including any right to unearned premiums. (f) Not less than thirty (30) days prior to the expiration date of each policy required under this Mortgage, Mortgagor shall deliver to Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee. (g) Each policy of insurance required under this Mortgage shall provide that it cannot lapse or be canceled or amended without at least thirty (30) days' advance written notice to Mortgagee, and that any loss shall be payable to Mortgagee notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of such insurance.

#### 4. Escrow Account.

At Mortgagee's option, Mortgagor shall pay to Mortgagee, together with and in addition to each regular installment of principal and/or interest payable under the Credit Documents, an amount deemed sufficient by Mortgagee to provide Mortgagee with funds in an escrow account sufficient to pay the taxes, assessments, insurance premiums and other charges next due at least thirty (30) days before the date the same are due. In no event shall Mortgagee be liable for any interest on any such funds held in the escrow account. At least thirty (30) days before the date the same are due, Mortgagor shall furnish to Mortgagee an official statement of the amount of said taxes, assessments, insurance premiums and other charges, and Mortgagee shall pay the same, but only if sufficient funds remain in the escrow account. In the event of any deficiency in the escrow account, Mortgagor shall upon notice from Mortgagee immediately deposit with Mortgagee such additional funds as Mortgagee may deem necessary to cure the deficiency, in its sole discretion. If Mortgagee elects to pay any such taxes, assessments, insurance premiums or other charges notwithstanding the escrow account deficiency, then all sums advanced by Mortgagee in excess of the escrow account balance shall bear interest, shall be paid and shall be secured as provided in paragraph 14. An official receipt for such sums shall be conclusive evidence of Mortgagee's payment and of the validity of the tax, assessment, insurance premium or other charge so paid. During the existence of any "Event of Default" (as defined below in paragraph 13) under this Mortgage or any other Credit Document, Mortgagee at its option may apply any or all funds in the escrow account against the Obligations or any other sums secured by this Mortgage, in any order of priority Mortgagee may deem appropriate in its sole discretion. At the time of any permitted transfer of the title to all of the Mortgaged Property then encumbered by this Mortgage, the balance in the escrow account shall inure to the benefit of such transferee without any specific assignment of such funds. Upon payment in full of the Obligations, the funds remaining in the escrow account (if any) shall be paid over to the record owner of the Mortgaged Property encumbered by this Mortgage as of the date of such full payment. The foregoing notwithstanding, absent an Event of Default, Mortgagor shall not be obligated to fund the escrow account described above.

5. Improvements and Development. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, none of the Improvements covered by the lien of this Mortgage shall be removed, demolished or materially altered or enlarged (except as required in the event of fire, other casualty or condemnation). Notwithstanding the foregoing, Mortgagor shall have the

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right to remove and dispose of, free from the lien of this Mortgage, such Equipment as from time to time may become worn out or obsolete, provided that, simultaneously with or prior to such removal, Mortgagor shall have replaced any such Equipment with new Equipment (of at least the same quality as that of the replaced Equipment when it was new) which shall be free from any title retention or other security agreement or other encumbrance, and, by such removal and replacement, Mortgagor shall be deemed to have subjected such new Equipment to the lien of this Mortgage. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, Mortgagor shall not undertake any development of the Land, nor construct any new Improvements thereon, nor initiate or join in or consent to any new (or any change in any existing) private restrictive covenant, zoning ordinance, master plan, site plan, easement, or other public or private restrictions limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. Mortgagor shall complete and pay for any permitted development and/or improvements undertaken on the Land within a reasonable time after commencing the same.

6. **Maintenance and Repair.** Mortgagor shall do everything necessary to maintain the Mortgaged Property in good condition and repair, shall operate the Mortgaged Property in a first-class manner, shall not commit or suffer any waste, impairment, abandonment or deterioration of the Mortgaged Property, shall promptly pay all utility fees for services provided to the Mortgaged Property, and shall comply with (or cause compliance with) all applicable restrictive covenants and all statutes, ordinances and requirements of any governmental authorities having jurisdiction over the Mortgaged Property or the use thereof. In the event of any fire or other casualty loss or damage to all or any part of the Mortgaged Property, Mortgagor shall notify Mortgagee within forty-eight (48) hours of such occurrence. Mortgagor shall promptly repair, restore, replace or rebuild any part of the Mortgaged Property which may be damaged or destroyed by any casualty whatsoever or which may be affected by any condemnation, alteration of grade, or other public or quasi-public taking or injury, except to the extent precluded by Mortgagee's retention and application of the insurance or condemnation proceeds against the Obligations. If Mortgagor shall fail, neglect or refuse to repair or maintain the Mortgaged Property as aforesaid, then Mortgagee may at its option undertake such repairs or maintenance, and any funds advanced therefor by Mortgagee shall bear interest, shall be paid and shall be secured as provided in paragraph 14.

7. **Assignment of Rents.** As further security for the repayment of the Obligations, Mortgagor hereby assigns and transfers to Mortgagee (i) all rents, revenues, receipts, accounts receivable, income, issues and profits and proceeds of the Mortgaged Property, and (ii) all right, title and interest of Mortgagor in and under all leases, licenses, concessions, tenancies and occupancy agreements of any nature whatsoever (and any extensions and renewals thereof) now or hereafter affecting the Mortgaged Property (the "Leases"), together with any guaranties thereof and any security deposits or prepaid rent thereunder.

(a) Mortgagor hereby empowers Mortgagee, its agents or attorneys, to demand, collect, sue for, receive, settle, compromise and give acquittances for all of the rents that may become due under the Leases and to avail itself of and pursue all remedies for the enforcement of the Leases and Mortgagor's rights thereunder that Mortgagor could have pursued but for this assignment. Mortgagee is hereby vested with full power and authority to use all measures, legal and equitable, deemed necessary or proper by Mortgagee to enforce this assignment, to collect the rents so assigned, and/or to cure any default and perform any covenant of Mortgagor as the landlord under any of the Leases, including without limitation the right to enter upon all or any part of the Mortgaged Property and to take possession thereof to the extent necessary to exercise such powers. Mortgagee shall have the right (but not the obligation) to advance any sums necessary to exercise such powers, which sums shall bear interest, shall be paid and shall be secured as provided in paragraph 14. Mortgagor hereby empowers Mortgagee to use and apply all such rents and other income of the Mortgaged Property to the payment of the Obligations and all interest thereon and any other indebtedness or liability of Mortgagor to Mortgagee, and to the payment of



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the costs of managing and operating the Mortgaged Property, including without limitation: (i) taxes, special assessments, insurance premiums, damage claims, and the costs of maintaining, repairing, rebuilding, restoring and making rentable the Improvements; (ii) all sums advanced by Mortgagee (with interest thereon) for the payment of such costs or for any other reason permitted by this Mortgage or any other Credit Document; and (iii) all costs, expenses and attorney's fees incurred by Mortgagee in connection with the enforcement of this Mortgage and/or any Lease; all in such order of priority as Mortgagee may deem appropriate in its sole discretion.

(b) Mortgagee shall not be obliged to press any of the rights or claims of Mortgagor assigned hereby, nor to perform or carry out any of the obligations of the landlord under any Lease, and Mortgagee assumes no duty or liability whatsoever in connection with or arising from or growing out of the covenants of Mortgagor in any Lease. This Mortgage shall not operate to make Mortgagee responsible for the control, care, management or repair of all or any part of the Mortgaged Property, nor shall it operate to make Mortgagee liable for (i) the performance or carrying out of any of the terms or conditions of any Lease, (ii) any waste of the Mortgaged Property by any tenant or any other person, (iii) any dangerous or defective condition of the Mortgaged Property, nor (iv) any negligence in the management, upkeep, repair or control of all or any part of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Mortgagor hereby indemnifies and holds Mortgagee harmless against any and all liability, loss, claim, damage, costs and attorney's fees whatsoever which Mortgagee may or might incur under any Lease or by reason of this assignment, and against any and all claims or demands whatsoever (and any related costs and attorney's fees) which may be asserted against Mortgagee 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 Lease. Nothing herein contained shall be construed as constituting Mortgagee a trustee or mortgagee in possession.

(c) Mortgagor shall promptly deliver to Mortgagee a true, correct and complete copy of each Lease as and when Mortgagor shall enter into the same, and Mortgagor shall procure and deliver to Mortgagee estoppel letters or certificates from each tenant, in form and substance satisfactory to Mortgagee, within thirty (30) days after Mortgagee's request therefor. Mortgagor hereby represents and warrants to Mortgagee (and shall be deemed to have represented and warranted to Mortgagee upon and as of the date of delivering to Mortgagee a copy of each Lease), except as previously or concurrently disclosed to and approved by Mortgagee in writing: (i) that each such copy delivered (or to be delivered) to Mortgagee is true, correct and complete; (ii) that Mortgagor is the sole owner of the entire landlord's interest in each Lease and has not previously assigned or pledged any Lease or any interest therein to any person other than Mortgagee; (iii) that all the Leases are in full force and effect and have not been altered, modified or amended in any manner whatsoever; (iv) that each tenant thereunder has accepted that tenant's respective premises and is paying rent on a current basis; (v) that no default exists on the part of such tenants or on the part of Mortgagor as landlord in their respective performances of the terms, covenants, provisions and agreements contained in the Leases; (vi) that no rent has been paid by any of the tenants for more than two (2) months in advance; (vii) that Mortgagor is not indebted to any tenant in any manner whatsoever so as to give rise to any right of set-off against or reduction of the rents payable under any Lease; and (viii) that no payment of rents to accrue under any Lease has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor directly or indirectly, whether by assuming any tenant's obligations with respect to other premises or otherwise.

(d) Mortgagor covenants and agrees with Mortgagee: (i) that each Lease shall remain in full force and effect irrespective of any merger of the interests of the landlord and tenant thereunder; (ii) that without the prior written consent of Mortgagee, which it may grant or withhold in its sole discretion, Mortgagor shall not terminate, modify or amend any Lease or any guaranty thereof, nor grant any concessions in connection therewith (either orally or in writing) nor accept any surrender or cancellation thereof, and that any attempted termination, modification, amendment, concession, surrender or

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cancellation without such written consent shall be null and void, provided, however, that Mortgagor may terminate or cancel the Lease of a defaulting tenant for the purpose of re-letting the premises; (iii) that Mortgagor shall not collect more than two (2) months' rent, income and/or profits arising or accruing under any Lease in advance of the due date for the same, nor discount any future accruing rents, nor suffer or permit to arise in favor of any tenant any release of liability or any right to withhold payment of rent, nor take any action or permit any omission or exercise any right of election which would in any way impair the value of any Lease or diminish any tenant's liability thereunder or have the effect of terminating or shortening the stated term of any Lease; (iv) that Mortgagor shall perform all of Mortgagor's covenants and agreements as landlord under each Lease and shall promptly send Mortgagee copies of any notice of alleged default on the part of Mortgagor as landlord received from any tenant thereunder; (v) that if requested by Mortgagee, Mortgagor shall expeditiously and in good faith enforce the Leases and all remedies available to Mortgagor in case of default by the tenants thereunder; and (vi) that Mortgagor shall not execute any other assignment or pledge of any Lease or any interest therein or any of the rents thereunder, nor consent to any tenant's assignment of any Lease or any subletting thereunder, nor request, accept, consent to or agree to any subordination of any Lease to any mortgage other than this Mortgage now or hereafter affecting the Mortgaged Property.

(e) Although Mortgagor and Mortgagee intend that this instrument shall be a present assignment, it is expressly understood and agreed that so long as no Event of Default shall exist under this Mortgage or any other Credit Document, Mortgagor may collect assigned rents and profits for not more than two (2) months in advance of the accrual thereof but upon the occurrence of any such Event of Default, or at any time during its continuance, all rights of Mortgagor to collect or receive rents or profits shall wholly terminate upon notice from Mortgagee. The tenants under all the Leases are hereby irrevocably authorized to rely upon and comply with (and shall be fully protected in so doing) any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may be or thereafter become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and none of them shall have any right or duty to inquire as to whether any Event of Default hereunder or under any other Credit Document shall have actually occurred or is then existing.

8. **Further Encumbrances.** Mortgagor shall not grant any other lien or mortgage on all or any part of the Mortgaged Property or any interest therein, nor make any further assignment of the leases and rentals of the Mortgaged Property without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion; any such unpermitted lien or mortgage or assignment by Mortgagor shall entitle Mortgagee to declare the Obligations immediately due and payable and to foreclose this Mortgage. Any such other lien or mortgage or assignment shall be junior to this Mortgage and to all permitted tenancies now or hereafter affecting the Mortgaged Property or any portion thereof and shall be subject to all renewals, extensions, modifications, releases, interest rate increases, future advances, changes or exchanges permitted by this Mortgage, all without the joinder or consent of such junior lienholder or mortgagee or assignee and without any obligation on Mortgagee's part to give notice of any kind thereto. Mortgagor shall maintain in good standing any other mortgage or encumbrance to secure debt affecting any part of the Mortgaged Property from time to time and shall not commit or permit or suffer to occur any default thereunder, nor shall Mortgagor accept any future advance under or modify the terms of any such mortgage or encumbrance which may then be superior to the lien of this Mortgage. Except for encumbrances permitted by Mortgagee, Mortgagor shall not commit or permit or suffer to occur any act or omission whereby any of the security represented by this Mortgage shall be impaired or threatened, or whereby any of the Mortgaged Property or any interest therein shall become subject to any attachment, judgment, lien, charge or other encumbrance whatsoever, and Mortgagor shall immediately cause any such attachment, judgment, lien, charge or other encumbrance to be discharged or otherwise bonded or transferred to other security. Mortgagor shall not directly or indirectly do anything or take any action which might prejudice any of the right, title or interest of Mortgagee in or to any of the



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Mortgaged Property or impose or create any direct or indirect obligation or liability on the part of Mortgagee with respect to any of the Mortgaged Property.

9. **Prohibited Transfers.** Mortgagor shall not cause or permit or suffer to occur any of the following events without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, and if any of the same shall occur without such consent, then Mortgagee shall have the right to declare the Obligations immediately due and payable and to foreclose this Mortgage: (a) if all or any portion of the legal or equitable or beneficial title to all or any portion of the Mortgaged Property or any interest therein shall in any manner whatsoever be sold, conveyed or transferred, either voluntarily or by operation of law; or (b) in the case of any portion of the Mortgaged Property directly or indirectly owned by a corporation (or a limited liability company or partnership or joint venture or trust or other business entity), if any stock or membership interest or partnership interest or joint venture interest or beneficial interest in such owner shall be transferred, or if such stock or membership interest or partnership interest or joint venture interest or beneficial interest shall be assigned, pledged, hypothecated, mortgaged or otherwise encumbered.
10. **Further Assurance.** From time to time and on demand, Mortgagor shall execute and deliver to Mortgagee (and pay the costs of preparing and recording) any further instruments required by Mortgagee to reaffirm, correct or perfect the evidence of the Obligations secured hereby and the lien and security interest of Mortgagee in all the Mortgaged Property and all additions, replacements and proceeds, including but not limited to mortgages, security agreements, financing statements, assignments and renewal and substitution notes.
11. **Estoppel Letters and Information.** Within three (3) days after request in person or within five (5) days after request by mail, Mortgagor shall furnish to Mortgagee a written statement, duly acknowledged, of the amount of principal and interest and other sums then owing on the Obligations and whether any offsets, counterclaims or defenses exist against the Obligations. Mortgagor shall promptly furnish to Mortgagee any financial or other information regarding Mortgagor or the Mortgaged Property required by any Credit Document or which Mortgagee may reasonably request from time to time.
12. **Notices.** Whenever Mortgagor or Mortgagee are obliged to give notice to the other, such notice shall be in writing and shall be given personally, or by telecopy (with confirmation of receipt), or by prepaid certified mail (return receipt requested), in which latter case notice shall be deemed effectively made when the receipt is signed or when the attempted initial delivery is refused or cannot be made because of a change of address of which the sending party has not been notified. Any notice to Mortgagee shall be addressed to the attention of a Managing Member of the Mortgagee. Until the designated addresses are changed by notice given in accordance with this paragraph, notice to either party shall be sent to the respective address set forth on the first page of this Mortgage.
13. **Events of Default.** At Mortgagee's option, all of the Obligations secured by this Mortgage, whether principal or interest or other sums, shall immediately or at any time thereafter become due and payable without notice to any Obligor, and Mortgagee shall immediately have all the rights accorded Mortgagee by law and hereunder to foreclose this Mortgage or otherwise to enforce this Mortgage and any other Credit Document, upon the occurrence of any of the following defaults (each an "Event of Default"): (a) failure to pay any sum due under any Credit Document and the expiration of the grace period (if any) provided therein; or (b) failure to pay any tax, assessment, utility charge, or other charge against the Mortgaged Property or any part thereof as and when required by this Mortgage; or (c) any waste, impairment, abandonment, deterioration, removal, demolition, material alteration or enlargement of any existing Improvements, or the commencement of construction of any new Improvements, in either case without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion; or (d) failure to keep in force the policies of insurance required by this Mortgage or any other

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Credit Document; or (e) Mortgagor's failure or refusal to provide any estoppel certificate within the time required by this Mortgage; or (f) Mortgagor's recordation of any notice limiting the amount of future advances that may be secured by this Mortgage; or (g) any unpermitted sale, transfer (whether voluntary or by operation of law), conveyance or further encumbering of all or any part of the Mortgaged Property or any interest therein, or the additional assignment of all or any part of the rents, income or profits arising therefrom; or (h) Mortgagor's failure to remove any involuntary lien on the Mortgaged Property or any part thereof within twenty (20) days after its filing, or the filing of any suit against the Mortgaged Property upon any claim or lien other than this Mortgage (whether superior or inferior to this Mortgage); or (i) Mortgagor's failure to comply within ten (10) days with a requirement, order or notice of violation of a law, ordinance, or regulation issued or promulgated by any political subdivision or governmental department claiming jurisdiction over the Mortgaged Property or any operation conducted on the Mortgaged Property (or, if such order or notice provides a time period for compliance, Mortgagor's failure to comply within such period), or, in the case of a curable noncompliance requiring longer than the applicable time period for its cure, Mortgagor's failure to commence to comply with said order or notice within said period or failure thereafter to pursue such cure diligently to completion; or (j) the issuance of any order by the State of Illinois, or any subdivision, instrumentality, administrative board or department thereof, declaring unlawful or suspending any operation conducted on the Mortgaged Property; or (k) if any representation, warranty, affidavit, certificate or statement made or delivered to Mortgagee by or on behalf of any Obligor from time to time in connection with the Obligations or this Mortgage or any other Credit Document shall prove false, incorrect or misleading in any respect deemed material by Mortgagee; or (l) the death or mental or physical incapacity of any Obligor who is a natural person, or the dissolution or merger or consolidation or termination of existence of any other Obligor, or the failure or cessation or liquidation of the business of any Obligor, or of the person(s) controlling any Obligor which is a business entity shall take any action authorizing or leading to the same; or (m) any default by any Obligor in the payment of any indebtedness for borrowed money (whether direct or contingent and whether matured or accelerated) to Mortgagee or to any person whomsoever, or if any Obligor shall become insolvent or unable to pay such Obligor's debts as they become due; or (n) the disposition or transfer or exchange of all or substantially all of any Obligor's assets for less than fair market value, or the issuance of any levy, attachment, charging order, garnishment or other process against any property of any Obligor, or the filing of any lien against any such property (and the expiration of any grace period provided in any Credit Document for the discharge of such lien); or (o) if any Obligor shall make an assignment for the benefit of creditors, file a petition in bankruptcy, apply to or petition any tribunal for the appointment of a custodian, receiver, intervenor or trustee for such Obligor or a substantial part of such Obligor's assets, or if any Obligor shall commence any proceeding under any bankruptcy, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if any Obligor shall by act or omission approve, consent to or acquiesce in the filing of any such petition or application against such Obligor or the appointment of any such custodian, receiver, intervenor or trustee or the commencement of any such proceeding against such Obligor or the entry of an order for relief with respect to such Obligor, or if any such petition or application shall have been filed or proceeding commenced against any Obligor which remains undismissed for thirty (30) days or more or in which an order for relief is entered, or if any Obligor shall suffer any such appointment of a custodian, receiver, intervenor or trustee to continue undischarged for thirty (30) days or more; or (p) if any Obligor shall have concealed, transferred, removed, or permitted to be concealed or transferred or removed, any part of such Obligor's property with intent to hinder, delay or defraud any of such Obligor's creditors, or if any Obligor shall have made or suffered a transfer of any of such Obligor's properties which may be invalid under any bankruptcy, fraudulent conveyance, preference or similar law, or if any Obligor shall have made any transfer of such Obligor's properties to or for the benefit of any creditor at a time when other creditors similarly situated have not been paid; or (q) the existence of any uncured default under any other mortgage or encumbrance affecting any part of the Mortgaged Property then encumbered by this Mortgage (in the case of a default for which such mortgage or other encumbrance provides a grace period, if the default remains uncured after the expiration of that grace period), or Mortgagor's acceptance of any

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future advance under, or modification of the terms of, any such other mortgage or encumbrance which may then be superior to the lien of this Mortgage; or (r) Mortgagee's election to declare the Obligations due and payable under the provisions of any other Credit Document; or (s) if at any time Mortgagee deems itself insecure for any reason whatsoever (notwithstanding any grace period in any Credit Document), or if any change or event shall occur which in Mortgagee's exclusive judgment impairs any security for the Obligations, increases Mortgagee's risk in connection with the Obligations, or indicates that any Obligor may be unable to perform such Obligor's obligations under any Credit Document; or (t) any default in the observance or performance of any other covenant or agreement of any Obligor in this Mortgage or any other Credit Document, the occurrence of any other event prohibited by the terms of this Mortgage or any other Credit Document, or the violation of any other provision of this Mortgage or any other Credit Document; or (u) Mortgagor has not filed for appropriate approvals with all applicable federal, state and local government officials and regulators for the proposed condominium and commercial subdivision concurrently with this Mortgage; or (v) ten (10) 2-bedroom condominium units are not closed within thirty (30) days of the date hereof. No consent or waiver expressed or implied by Mortgagee with respect to any default under this Mortgage shall be construed as a consent or waiver with respect to any further default of the same or a different nature; and no consent or waiver shall be deemed or construed to exist by reason of any curative action initiated by Mortgagee or any other course of conduct or in any other manner whatsoever except by a writing duly executed by Mortgagee, and then only for the single occasion to which such writing is addressed. In order to declare the Obligations due and payable because of Mortgagor's failure to pay any tax, assessment, insurance premium, charge, liability, obligation or encumbrance upon the Mortgaged Property as required by this Mortgage, or because of any other default, Mortgagee shall not be required to pay the same or to advance funds to cure the default, notwithstanding Mortgagee's option under this Mortgage or any other Credit Document to do so; no such payment or advance by Mortgagee shall be deemed or construed a waiver of Mortgagee's right to declare the Obligations due and payable on account of such failure or other default.

14. **Advances by Mortgagee.** In the event of any default in the performance of any of Mortgagor's covenants or agreements contained in this Mortgage or any other Credit Document or the violation of any term thereof, Mortgagee shall have the right (but in no event the obligation) at its option to cure the default or take any other action Mortgagee deems necessary or desirable to protect its security (including without limitation the payment of any taxes, assessments, insurance premiums, charges, liens or encumbrances required of Mortgagor under this Mortgage), without thereby waiving any rights or remedies otherwise available to Mortgagee. If Mortgagee shall elect to advance at any time any sum(s) for the protection of its security or for any other reason permitted or provided by any of the terms of this Mortgage or any other Credit Document, then such sum(s) shall be deemed Obligations, shall be repaid by Mortgagor on demand, shall be secured by this Mortgage and shall bear interest until paid at the highest rate allowed by applicable law, commencing on the date they are advanced by Mortgagee. Mortgagee's lien on the Mortgaged Property for such advances shall be superior to any right or title to, interest in, or claim upon all or any portion of the Mortgaged Property junior to the lien of this Mortgage.

15. **Receiver.** In any action to foreclose this Mortgage, or upon the actual or threatened waste to any part of the Mortgaged Property, Mortgagee shall have the right to apply without notice for the appointment of a receiver of the Mortgaged Property and the rents and profits thereof, and Mortgagee shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Mortgaged Property as security for the amounts due Mortgagee or the solvency of any Obligor. To the extent permitted by law, Mortgagor hereby waives any right to object to the appointment of a receiver as aforesaid and expressly consents that such appointment shall be made as an admitted equity and as a matter of absolute right to Mortgagee.

16. **Remedies.** The rights and remedies of Mortgagee under this Mortgage or any other Credit Document or applicable law shall be cumulative and concurrent and may be pursued separately,



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successively or together against any Obligor(s), the Mortgaged Property, any other collateral for the Obligations, or any one or more of the foregoing, all at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by law. Mortgagee's pursuit of any remedy shall not preclude pursuit of any other remedy until Mortgagee shall have recovered all sums due Mortgagee, together with the appropriate interest thereon and all costs of collection, including attorney's fees and appellate attorney's fees, with interest thereon. Neither Mortgagor nor anyone claiming through or under Mortgagor shall set up, claim or seek to take advantage of any appraisal, valuation, stay, moratorium, extension, exemption or redemption laws, now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the sale of the Mortgaged Property. To the maximum extent permitted by law, the Obligors, for themselves and all who may claim through or under any of them, hereby severally waive the benefit of all such laws and waive any and all rights to have the Mortgaged Property or any other collateral for the Obligations marshalled upon any foreclosure of this Mortgage or any other instrument securing the Obligations, and hereby severally agree that the Mortgaged Property and any such other collateral may be sold as an entirety or in such parcels, in such manner and in such order as Mortgagee in its sole discretion may elect.

17. **NO JURY TRIAL.** MORTGAGEE, MORTGAGOR AND EACH OBLIGOR HEREBY SEVERALLY, VOLUNTARILY, KNOWINGLY AND INTENTIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY OTHER CREDIT DOCUMENT OR CONCERNING THE OBLIGATIONS AND/OR THE MORTGAGED PROPERTY OR PERTAINING TO ANY TRANSACTION RELATED TO OR CONTEMPLATED IN THIS MORTGAGE, REGARDLESS OF WHETHER SUCH ACTION OR PROCEEDING CONCERNS ANY CONTRACTUAL OR TORTIOUS OR OTHER CLAIM. EACH OBLIGOR SEVERALLY ACKNOWLEDGES THAT THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT TO MORTGAGEE IN EXTENDING THE CREDIT DESCRIBED HEREIN, THAT MORTGAGEE WOULD NOT HAVE EXTENDED SUCH CREDIT WITHOUT THIS JURY TRIAL WAIVER, AND THAT SUCH OBLIGOR HAS BEEN REPRESENTED BY AN ATTORNEY OR HAS HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY REGARDING THIS MORTGAGE AND UNDERSTANDS THE LEGAL EFFECT OF THIS JURY TRIAL WAIVER.

18. **Fees and Expenses.** Mortgagor shall pay any and all reasonable costs, expenses and attorney's fees incurred by Mortgagee (regardless of whether in connection with any action, proceeding or appeal) to sustain the lien of this Mortgage or its priority, to protect or enforce any of Mortgagee's rights under this Mortgage or under any other Credit Document, to recover any indebtedness secured hereby, to contest or collect any award or payment in connection with the taking or condemnation of all or any part of the Mortgaged Property, or for any title examination or abstract preparation or appraisal or title insurance policy relating to the Mortgaged Property, and all such sums shall bear interest, shall be paid and shall be secured as provided in paragraph 14.

19. **Condemnation.** Immediately upon obtaining knowledge of the institution or pending institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, Mortgagor shall notify Mortgagee thereof. Mortgagee may participate in any such proceedings and may be represented therein by counsel of its selection, and Mortgagor will deliver to Mortgagee all instruments requested by Mortgagee from time to time to permit or facilitate such participation. In the event of any such condemnation proceedings, the award or compensation payable is hereby assigned to and shall be paid to Mortgagee, and Mortgagee shall not be obligated to question the amount of any such award or compensation. At Mortgagee's option, all or any portion of the award or compensation shall be applied toward payment of the Obligations (in any order of priority Mortgagee may deem appropriate in its sole discretion) or shall be disbursed to Mortgagor from time to time for the restoration of the Mortgaged Property in the same manner as disbursements under a construction loan; Mortgagee shall not be

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obligated to see to the proper application by Mortgagor of any such disbursement. Notwithstanding any such condemnation award or compensation or the rate of interest payable thereon, Mortgagor shall continue to pay interest on the Obligations except to the extent that Mortgagee shall have actually received and applied the award or compensation against the Obligations. If all of the Mortgaged Property is so taken but the award or compensation is insufficient to pay the Obligations in full, then at Mortgagee's option the unpaid balance shall be immediately due and payable.

20. **INTENTIONALLY DELETED.**

21. **No Shift of Taxes.** If any federal, state or local law shall hereafter be enacted which (a) for the purpose of ad valorem taxation shall deduct the amount of any lien from the value of real property, or (b) shall impose on Mortgagee the payment of all or any part of the taxes or assessments or charges required to be paid hereunder by Mortgagor, or (c) shall change in any way the laws for the taxation of mortgages or debts secured hereby or Mortgagee's interest in the Mortgaged Property, or shall change the manner of collecting such taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then upon demand Mortgagor shall pay such taxes or assessments or charges imposed on Mortgagee or shall reimburse Mortgagee therefor; provided, however, that if in the opinion of Mortgagee's counsel the requirement that Mortgagor make such payments might be unlawful or might result in the imposition of interest in excess of the maximum lawful rate, then Mortgagee shall have the right to declare the Obligations to be due and payable thirty (30) days after notice thereof to Mortgagor.

22. **Uniform Commercial Code.** This Mortgage is a "security agreement" and creates a "security interest" in favor of Mortgagee as a "secured party" and Mortgagor as "debtor" with respect to all property included in the Mortgaged Property which is covered by the Uniform Commercial Code and within the meanings of Section 9-313 and 9-402 of the Illinois Uniform Commercial Code. Upon default under the Note, this Mortgage or any other Credit Document, Mortgagee may at its option pursue any and all rights and remedies available to a secured party with respect to any portion of the Mortgaged Property so covered by the Uniform Commercial Code, or Mortgagee may at its option proceed as to all or any part of the Mortgaged Property in accordance with Mortgagee's rights and remedies in respect of real property. Mortgagor and Mortgagee agree that the mention of any portion of the Mortgaged Property in a financing statement filed in the records normally pertaining to personal property shall never derogate from or impair in any way their declared intention that all items of collateral described in this Mortgage are part of the real estate encumbered hereby to the fullest extent permitted by law, regardless of whether any such item is physically attached to the improvements or whether serial numbers are used for the better identification of certain items of Equipment. Specifically, the mention in any such financing statement of (a) the rights in or the proceeds of any insurance policy, (b) any award in eminent domain proceedings for a taking or for loss of value, (c) Mortgagor's interest as lessor in any present or future lease or right to income growing out of the use or occupancy of the Land or Improvements, whether pursuant to lease or otherwise, or (d) any other item included in the definition of the Mortgaged Property shall never be construed to alter any of the rights of Mortgagee as determined by this Mortgage or to impugn the priority of Mortgagee's lien and security interest with respect to the Mortgaged Property; such mention in a financing statement is declared to be for the protection of Mortgagee in the event any court shall hold that notice of Mortgagee's priority of interest with respect to any such portion of the Mortgaged Property must be filed in the Uniform Commercial Code records in order to be effective against or to take priority over any particular class of persons, including but not limited to the federal government and any subdivision or instrumentality of the federal government. This Mortgage or a carbon, photographic copy or other reproduction hereof or of any financing statement shall be sufficient as a financing statement. Mortgagor specifically authorizes Mortgagee to file any financing statement contemplated by this Mortgage without Mortgagor's signature.

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23. **Payments to Mortgagee.** Any payment made in accordance with the terms of the Credit Documents by any person at any time liable for the payment of the whole or any part of the Obligations, by any subsequent owner of the Mortgaged Property, or by any other person whose interest in the Mortgaged Property might be prejudiced in the event of a failure to make such payment (or by any partner, stockholder, officer or director of any such person), shall be deemed, as between Mortgagee and all such persons who at any time may be so liable or may have an interest in the Mortgaged Property, to have been made on behalf of all such persons. Mortgagee's acceptance of any payment which is less than full payment of all amounts then due and payable to Mortgagee, even if made by one other than the person liable therefor, shall not constitute a waiver of any rights or remedies of Mortgagee.
24. **Consent to Changes.** Mortgagor consents and agrees that, at any time and from time to time without notice, (a) Mortgagee and the owner(s) of any collateral then securing the Obligations may agree to release, increase, change, substitute or exchange all or any part of such collateral, and (b) Mortgagee and any person(s) then primarily liable for the Obligations may agree to renew, extend or compromise the Obligations in whole or in part or to modify the terms of the Obligations in any respect whatsoever. Mortgagor agrees that no such release, increase, change, substitution, exchange, renewal, extension, compromise or modification, no sale of the Mortgaged Property or any part thereof, no forbearance on the part of Mortgagee, nor any other indulgence given by Mortgagee (whether with or without consideration) shall relieve or diminish in any manner the liability of any Obligor, nor adversely affect the priority of this Mortgage, nor limit or prejudice or impair any right or remedy of Mortgagee. All Obligors and all those claiming by, through or under any of them hereby jointly and severally waive any and all right to prior notice of, and any and all defenses or claims based upon, any such release, increase, change, substitution, exchange, renewal, extension, compromise, modification, sale, forbearance or indulgence.
25. **Choice of law.** THIS MORTGAGE SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW JERSEY AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW JERSEY, PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS MORTGAGE, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE OF ILLINOIS SHALL APPLY.
26. **No Usury.** In no event shall any agreed to or actual exaction charged, reserved or taken as an advance or forbearance by Mortgagee as consideration for the Obligations exceed the limits (if any) imposed or provided by the law applicable from time to time to the Obligations for the use or detention of money or for forbearance in seeking its collection; Mortgagee hereby waives any right to demand any such excess. In the event that the interest provisions of the Credit Documents or any exactions required thereunder shall result at any time or for any reason in an effective rate of interest that transcends the maximum interest rate permitted by applicable law (if any), then without further agreement or notice the obligation to be fulfilled shall automatically be reduced to such limit and all sums received by Mortgagee in excess of those lawfully collectible as interest shall be applied against the principal of the Obligations immediately upon Mortgagee's receipt thereof, with the same force and effect as though the payor had specifically designated such extra sums to be so applied to principal and Mortgagee had agreed to accept such extra payment(s) as a premium-free prepayment or prepayments.
27. **Severability.** Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.



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28. **Inspection and Watchmen.** Mortgagee and any persons authorized by Mortgagee shall have the right, from time to time at the discretion of Mortgagee, upon reasonable notice to Mortgagor, to enter and inspect the Mortgaged Property. During the existence of any Event of Default under the terms of this Mortgage or any other Credit Document, if any of the Improvements or Equipment shall be unprotected or unguarded, or if any of the Improvements shall be allowed to remain vacant or deserted, then at its option Mortgagee may employ watchmen for the Mortgaged Property and expend any monies deemed necessary by Mortgagee to protect the same from waste, vandalism and other hazards, depredation or injury, and any sums expended by Mortgagee for such purpose shall bear interest, shall be paid and shall be secured as provided in paragraph 14.

29. **Abstracts.** Mortgagor shall deliver to Mortgagee or its designated agent the abstract or abstracts of title covering the Mortgaged Property as further security for the Obligations, which abstract(s) shall remain in the possession of Mortgagee or its agent at all times until all sums secured by this Mortgage are paid in full. In the event of a foreclosure of this Mortgage or other transfer of title to the Mortgaged Property, all right, title and interest of Mortgagor in and to such abstract(s) of title shall pass to the foreclosure purchaser or other transferee.

30. **Indemnity.** In the event Mortgagee shall be named as a party to any lawsuit brought at any time against Mortgagor or with respect to the Mortgaged Property or this Mortgage or the Obligations, then regardless of the merits of such lawsuit Mortgagor shall defend Mortgagee and indemnify and hold Mortgagee fully harmless from any and all claims, demands, damages, liabilities, judgments, losses, costs, expenses and attorney's fees arising out of or resulting from any such lawsuit or any appeal in connection therewith. Without limiting the generality of the foregoing indemnity, each of Mortgagor and Mortgagee represent and warrant to the other that it has dealt with no broker in connection with the Obligations, and that there are no brokerage fees or commissions owing in connection with the Obligations. The indemnities set forth in this paragraph shall survive the full payment and performance of the Obligations and the satisfaction of this Mortgage.

31. **No Partnership.** Mortgagor and Mortgagee hereby acknowledge and agree that Mortgagee is not, has never been, and shall not be deemed a partner or joint venturer of Mortgagor or any other Obligor with respect to the Mortgaged Property, and that the relationship of Mortgagee to said parties is, has always been, and shall continue to be strictly the role of a lender. Mortgagor hereby (a) waives and relinquishes any and all claims, demands, counterclaims and/or defenses alleging the existence of any partnership, joint venture or other fiduciary relationship between any of them and Mortgagee, and (b) agrees to indemnify and hold Mortgagee harmless against any and all losses, damages, penalties, fines, forfeitures, legal fees and related costs, judgments, and any other fees, costs and expenses that Mortgagee may sustain as the result of any such allegation by any person whomsoever.

32. **Environmental Laws.** Mortgagor represents and warrants to Mortgagee that Mortgagor has undertaken an appropriate inquiry into the previous ownership and uses of the Mortgaged Property consistent with good commercial or customary practice in an effort to minimize liability with respect to any substances defined or classified or identified as "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances" or other contaminants or pollution under any applicable federal or state or local laws, ordinances, rules or regulations now or hereafter in effect ("Hazardous Substances"). To the best of Mortgagor's knowledge and except as otherwise disclosed to Mortgagee in writing, Mortgagor represents and warrants that the Mortgaged Property is presently free from contamination by Hazardous Substances and that the Mortgaged Property and the activities conducted thereon do not pose any significant hazard to human health or the environment or violate any applicable federal, state or local laws, ordinances, rules or regulations pertaining to Hazardous Substances or industrial hygiene or environmental conditions ("Environmental Laws"). Mortgagor shall not cause or permit the Mortgaged Property to be used for the generation, handling, storage, transportation, disposal or

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release of any Hazardous Substances except as exempted or permitted under applicable Environmental Laws, and Mortgagor shall not cause or permit the Mortgaged Property or any activities conducted thereon to be in violation of any applicable Environmental Laws. Mortgagor agrees to indemnify Mortgagee and hold Mortgagee and its directors, officers, employees, successors and assigns harmless from and against any and all claims, losses, damages (including all foreseeable and unforeseeable consequential damages), liabilities, fines, penalties, charges, interest, administrative or judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including without limitation attorneys' fees and expenses), directly or indirectly resulting in whole or in part from any violation of any Environmental Laws applicable to the Mortgaged Property or any activity conducted thereon, or from any past, present or future use, generation, handling, storage, transportation, disposal or release of Hazardous Substances at or in connection with the Mortgaged Property, or any decontamination, detoxification, closure, cleanup or other remedial measures required with respect to the Mortgaged Property under any Environmental Laws. All sums paid and costs incurred by Mortgagee with respect to the foregoing matters shall bear interest, shall be paid and shall be secured as provided in paragraph 14. This indemnity shall survive the full payment and performance of the Obligations and the satisfaction of this Mortgage, and it shall inure to the benefit of any transferee of title to the Mortgaged Property through foreclosure of this Mortgage or through deed in lieu of foreclosure. The provisions of this paragraph are supplemental to and cumulative with, and do not limit or supersede the terms of, that certain Environmental Indemnity Agreement of even date herewith made by Mortgagor and others in favor of Mortgagee with respect to the Mortgaged Property.

33. **Subrogation.** Mortgagee is hereby subrogated (a) to the lien(s) of each and every mortgage, lien or other encumbrance on all or any part of the Mortgaged Property which is fully or partially paid or satisfied out of the proceeds of the Obligations, and (b) to the rights of the owner(s) and holder(s) of any such mortgage, lien or other encumbrance. The respective rights under and priorities of all such mortgages, liens or other encumbrances shall be preserved and shall pass to and be held by Mortgagee as security for the Obligations, to the same extent as if they had been duly assigned by separate instrument of assignment and notwithstanding that the same may have been canceled and satisfied of record.

34. **Representations and Warranties.** In order to induce Mortgagee to extend the credit secured hereby, Mortgagor represents and warrants that: (a) except as previously or concurrently disclosed in writing to Mortgagee, there are no actions, suits or proceedings pending or threatened against or affecting any Obligor or any portion of the Mortgaged Property or involving the validity or enforceability of this Mortgage or the priority of its lien, before any court of law or equity or any tribunal, administrative board or governmental authority, and no Obligor is in default under any other indebtedness or with respect to any order, writ, injunction, decree, judgment or demand of any court or any governmental authority; (b) the execution and delivery of this Mortgage and all other Credit Documents do not and shall not (i) violate any provisions of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award applicable to any Obligor, nor (ii) result in a breach of, or constitute a default under, any indenture, bond, mortgage, lease, instrument, credit agreement, undertaking, contract or other agreement to which any Obligor is a party or by which any of them or their respective properties may be bound or affected; (c) this Mortgage and all other Credit Documents constitute valid and binding obligations of the Obligor(s) executing the same, enforceable against such Obligor(s) in accordance with their respective terms; (d) all financial statements of the Obligors previously delivered to Mortgagee have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the correct respective financial conditions of the Obligors as of their respective dates, and the foregoing shall be true with respect to all financial statements of the Obligors delivered to Mortgagee hereafter; (e) there is no fact that the Obligors have not disclosed to Mortgagee in writing that could materially adversely affect their respective properties, businesses or financial conditions or the Mortgaged Property or any other collateral for the Obligations; (f) the Obligors have duly obtained all permits,

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licenses, approvals and consents from, and made all filings with, any governmental authority (and the same have not lapsed nor been rescinded or revoked) which are necessary in connection with the execution or delivery or enforcement of this Mortgage or any other Credit Document or the performance of any Obligor's obligations thereunder; (g) the proceeds of the Obligations are not being used to purchase or carry any "margin stock" within the meaning of Regulation "U" of the Board of Governors of the Federal Reserve System, nor to extend credit to others for that purpose; (h) each extension of credit secured by this Mortgage is exempt from the provisions of the Federal Consumers Credit Protection Act (Truth-in-Lending Act) and Regulation "Z" of the Board of Governors of the Federal Reserve System, because Mortgagor is a person fully excluded therefrom, and/or because said extension of credit is only for business or commercial purposes of Mortgagor to refinance existing mortgage debt and to fund renovation improvements and is not being used for personal, family, household or agricultural purposes; (i) no part of the Mortgaged Property constitutes the principal residence of Mortgagor or any Obligor; and (j) Mortgagor has invested from its own funds.

35. **Business Entity** If Mortgagor is a corporation, limited liability company, partnership or other business entity, or if Mortgagor consists of more than one person and any such person is such a business entity, then each such business entity hereby represents and warrants as to itself, in order to induce Mortgagee to extend the credit secured hereby, that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its creation and the State of Illinois; (b) it has all requisite power and authority (corporate or otherwise) to conduct its business, to own its properties, to execute and deliver this Mortgage and all other Credit Documents executed by it, and to perform its obligations under the same; (c) its execution, delivery and performance of this Mortgage and all other such Credit Documents have been duly authorized by all necessary actions (corporate or otherwise) and do not require the consent or approval of its stockholders (if a corporation) or of any other person or entity whose consent has not been obtained; and (d) the execution, delivery and performance of this Mortgage and all other Credit Documents do not and shall not conflict with any provision of its by-laws or articles of incorporation (if a corporation), operating agreement (if a limited liability company), partnership agreement (if a partnership) or trust agreement or other document pursuant to which it was created and exists.

36. **Future Advances**. This Mortgage shall secure such future advances as may be made by Mortgagee, at its option and for any purpose, within twenty (20) years from the date of this Mortgage and is governed by 765 ILCS 5/39 and 735 ILCS 5/15-1302. All such future advances shall be included within the term "Obligations", shall be secured to the same extent as if made on the date of the execution of this Mortgage, without regard to whether or not there is any advance made at the time this Mortgage is executed and without regard to whether or not there is any indebtedness outstanding at the time any advance is made, and shall take priority as to third persons without actual notice from the time this Mortgage is filed for record as provided by law. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time, but the total unpaid balance so secured at any one time shall not exceed two hundred percent (200%) of the maximum principal amount of \$1,825,000.00 of the Note, plus interest and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Property, with interest on those disbursements, plus any increase in the principal balance as the result of negative amortization or deferred interest. Without the prior written consent of Mortgagee, which Mortgagee may grant or withhold in its sole discretion, Mortgagor shall not file for record any notice limiting the maximum principal amount that may be secured by this Mortgage to a sum less than the maximum principal amount set forth in this paragraph.

37. **Other Indebtedness Secured**. In addition to the specific indebtedness identified hereinabove, the Obligations also include, and this Mortgage also secures, all indebtedness, obligations and liabilities



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of Mortgagor to Mortgagee of every kind and description whether or not presently contemplated by the parties, direct or indirect, otherwise secured or unsecured, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising, regardless of how the same arise or by what instrument, agreement or book account they may be evidenced or whether evidenced by any instrument, agreement or book account, including without limitation all loans (including any loan by renewal), all indebtedness, all undertakings to take or refrain from taking any action, all indebtedness, liabilities or obligations owing from Mortgagor to others that Mortgagee may have obtained by purchase, negotiation, discount, assignment or otherwise, and all interest, taxes, fees charges, expenses, and attorney's fees chargeable to Mortgagor or incurred by Mortgagee hereunder or under any other document or instrument delivered in connection herewith.

38. **Interpretation.** Whenever the context of any provision of this Mortgage shall so require, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other genders. Captions and headings in this Mortgage are for convenience only and shall not affect its interpretation. All references in this Mortgage to Exhibits, Schedules, paragraphs and subparagraphs refer to the respective subdivisions of this Mortgage, unless the reference expressly identifies another document. Wherever used in this Mortgage, unless the context clearly indicates a contrary intention or unless this Mortgage specifically provides otherwise: (a) the term "Mortgagor" shall include any subsequent owner(s) of the Mortgaged Property; (b) the term "Mortgagee" shall include any subsequent holder(s) of this Mortgage; (c) the term "Obligors" shall include any permitted successor(s) or permitted assign(s) of any Obligor; (d) the term "Obligations" shall include any modification of any Obligations from time to time and any future advances or other sums payable to Mortgagee under this Mortgage; (e) the term "Credit Documents" shall include any note or other instrument evidencing or pertaining to any future advance hereunder and any renewals, extensions or modifications of any Credit Document; and (f) the term "person" shall mean "an individual, corporation, partnership, limited partnership, unincorporated association, joint stock corporation, joint venture or other legal entity".

39. **Sale of Note.** The Note or a partial interest in the Note, together with this Mortgage and the other Credit Documents, may be sold one or more times without prior notice to Borrower. Borrower agrees to cooperate and provide any information reasonably requested by any parties purchasing any interest in the Note and the other Credit Documents.

40. **Waiver.** Mortgagor, on behalf of its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage, agrees that, to the fullest extent permitted by law, it will not at any time, (1) insist upon, plead or claim or take any benefit or advantage of any stay of execution, exemption, homestead, extension or moratorium law, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage or any Credit Document, (2) claim, take or insist upon any benefit or advantage of any law, now or at any time hereafter in force, providing for valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction, or (3) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States or any State or otherwise to redeem the property and rights sold pursuant to such sale or sales or any part thereof. Mortgagor hereby expressly waives and releases all rights, benefits, privileges, advantages of and exemptions under such laws, and covenants, to the fullest extent permitted by law, not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but will suffer and permit the execution of every power as though no such laws had been made or enacted. Mortgagor for itself and all who may claim through or under it, waives, to the extent it lawfully may do so, any and all homestead rights and, any and all rights to reinstatement, any and all right to have the property comprising the Premises marshaled upon any foreclosure of the lien hereof.

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41. **Miscellaneous.** Time is of the essence of all provisions of this Mortgage. Mortgagor hereby waives all right of homestead exemption (if any) in the Mortgaged Property. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several, and wherever the term "Mortgagor" is used it shall be deemed to refer to such persons jointly and severally. This Mortgage shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, and it shall inure to the benefit of Mortgagee and its successors and assigns and to the benefit of Mortgagor and Mortgagor's heirs, personal representatives and permitted successors and assigns. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

42. **Partial Release.** Mortgagor may obtain a release from the lien of this Mortgage of one or more condominium units comprising the Mortgaged Property in accordance with the terms hereof, upon the following terms and conditions:

(a) Mortgagor shall prepay to Mortgagee the principal sum equal to the amount of the applicable "paydown" pursuant to Schedule I attached hereto;

(b) no Event of Default shall have occurred and be continuing hereunder or under any of the Credit Documents;

(c) Mortgagor shall have given Mortgagee not less than three (3) business days notice of the proposed sale, which notice shall include a true, correct and complete copy of the executed contract for the sale of such unit, together with a proposed settlement statement with respect to such sale;

(d) all instruments and documents executed and delivered in connection with any release pursuant to this Section 42 shall be in form and substance acceptable to Mortgagee and its counsel, in their sole and absolute discretion; and

(e) all costs and expenses incurred by Mortgagee in connection with any release pursuant to this Section 42, including, without limitation, recording fees, title charges and reasonable expenses of Mortgagee's counsel, shall be paid by Mortgagor.

43. **Intentionally Deleted.**

44. **Business Loans.** Mortgagor stipulates, represents, warrants, affirms and agrees that each of the loans and other credit obligations secured hereby constitute a "business loan" within the meaning of Sections 205/4(a) or (c) of Chapter 815 of the Illinois Compiled Statutes, as amended. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law. Mortgagor acknowledges and agrees that (A) the proceeds of the loans will be used in accordance with subparagraph (1)(1) of Section 4 of the Illinois Interest Act approved May 24, 1879, as amended (815 ILCS 205/1 et seq.); (B) the Obligations secured hereby have been incurred by Mortgagor solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said Section 4; (C) the Obligations secured hereby constitute loans secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured Obligations are exempted transactions under

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the Truth-In-Lending Act, 15 U.S. C. Sec. 1601 et. seq. and have been entered into solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said section.

45. **Property Management.** Mortgagor shall include a "no lien" provision in any property management agreement hereafter entered into by Mortgagor with a property manager for the Property, whereby the property manager waives and releases any and all mechanics' lien rights that the property manager, or anyone claiming through or under the property manager, may have pursuant to 770 ILCS 60/1. Such property management agreement containing such "no lien" provision or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the county in which this Mortgage was filed, as appropriate.

46. **Maturity Date.** The Obligations shall be due and payable in full on or before February \_\_, 2008, as provided in the Credit Documents, subject to such extension periods, if any, pursuant to the Credit Documents.

[SIGNATURE PAGE TO FOLLOW]





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## EXHIBIT A

### Legal Description

STREET ADDRESS: 7100 S. RHODES

CITY: CHICAGO

COUNTY: COOK

TAX NUMBER:

20-27-202-018-0000

#### LEGAL DESCRIPTION:

LOTS 1 TO 4, BOTH INCLUSIVE, IN BLOCK 2 IN WALTER S. DRAY'S ADDITION TO PARK MANOR, IN THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

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## SCHEDULE I

### Partial Release Paydown and Renovation Escrow Amounts

First four (4) two (2) bedroom units- \$200,000.00 per unit which shall be applied to reduce loan principal

Balance of two (2) bedroom units- \$150,000.00 per unit which shall be applied to reduce loan principal

One (1) bedroom units- \$80,000.00 per unit which shall be applied to reduce loan principal

Property of Cook County Clerk's Office