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THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:

Keith L. Moore, Esq.
806 Greenwood Street
Suite 201
Evanston, Illinois 60201



Doc#: 0725433007 Fee: \$100.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/11/2007 07:21 AM Pg: 1 of 39

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,

SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of the 17th day of August, 2007, by **NORTH STAR TRUST COMPANY**, not personally, but as Trustee (the "Trustee") under Trust Agreement dated June 29, 2001 and known as Trust Number 01-3690, having an office at 500 West Madison Street, Suite 3150, Chicago, IL 60661, an **LIFEGATE REALTY II, LLC**, an Illinois limited liability company (the "LLC"), having an office at PO Box 11, St. Charles, IL 60174 (the Trust and the LLC are hereinafter referred to collectively as "Borrower") to **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, having an office at 209 South LaSalle Street, Suite 410, Chicago, Illinois 60604 ("Lender").

WITNESSETH:

WHEREAS, Borrower has executed and delivered to Lender that certain Promissory Note of even date herewith (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Note"), payable to the order of Lender in the initial principal amount of **ONE MILLION FOUR HUNDRED NINETY THOUSAND AND No/100 Dollars (\$1,490,000.00)** or such lesser total amount as may be disbursed thereon, which note bears interest and is payable to Lender as more fully described therein and which Note shall mature as provided therein, but in no event later than August 17, 2008, pursuant to the terms and conditions of the Loan Agreement (as defined below).

WHEREAS, Lender is desirous of securing the prompt payment of the Note together with interest and any premium thereon in accordance with the terms of the Note, and any additional indebtedness accruing to Lender on account of any future payments, advances or expenditures made by Lender pursuant to, or any other obligation of Borrower arising under, any of the following documents (collectively, the "Loan Documents"): (i) the Note, (ii) this Mortgage, (iii) the Loan Agreement of even date herewith (the "Loan Agreement"); (iv) any and all other documents or instruments securing the indebtedness evidenced by the Note, and (v) any and all documents securing, evidencing or otherwise relating to any obligations of Borrower under any interest rate swap cap, collar or other interest rate hedging product relating to the Loan entered into between Borrower and Lender or its Affiliate;

39
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NOW, THEREFORE, to secure the payment, performance and observance by Borrower of all of the terms, covenants and conditions contained herein and in the Note, the Loan Agreement, and the other Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, Borrower has executed and delivered this Mortgage and does hereby grant a lien and/or security interest, as applicable, in, and grant, convey, assign, mortgage and warrant and confirm, to Lender and its successors and assigns forever, all of the property now or hereafter owned by Borrower or used or obtained by Borrower in connection with the operation of the Project, or other rights or assets, described in the following GRANTING CLAUSES (the "**Mortgaged Property**"):

A. All those certain tracts, pieces or parcels of land legally described in Exhibit A attached hereto and hereby made a part hereof and all surface and subsurface soils, minerals and water located thereon and thereunder (the "**Land**"); and

B. All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land (the "**Improvements**"), and all furnishings, furniture, fixtures, machinery, inventory, equipment, appliances, systems, building materials, vehicles and personal property of every kind and nature whatsoever including, without limitation, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, keys or other entry systems, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, elevators and motors, plumbing and heating fixtures and systems, carpeting and other floor coverings, water heaters, air conditioning apparatus and systems, refrigerating plant, refrigerators, computers and all hardware and software therefor, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be attached to said buildings, structures or improvements, or which are or shall be located in, on or about the Land, or which, wherever located (including, without limitation, in warehouses or other storage facilities or in the possession of or on the premises of vendors or manufacturers thereof), are used or intended to be used in or in connection with the construction, fixturing, equipping, furnishing, use, operation or enjoyment of the Land or the improvements thereon, now or hereafter owned by Borrower, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing, together with all warehouse receipts or other documents of title relating to any of the foregoing and the benefit of any deposits or payments now or hereafter made by Borrower in connection with any of the foregoing; and

C. All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, licenses, privileges, liberties, tenements, hereditaments and appurtenances whatsoever in any way belonging, relating or appertaining to the Mortgaged Property, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower and the reversion and reversions, remainder and remainders thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same; and

D. Each and every lease or sublease, license and agreements and other document or instrument, including, without limitation, those described in Granting Clause C above, granting to any person or entity any right to use or occupy, and any other agreement with respect to the use or occupancy of, all or any portion of the Land or the Improvements, whether heretofore, now or hereafter entered into (the "**Leases**"); and

E. The rents, deposits, issues, profits, proceeds, revenues, awards and other benefits of the Project from time to time accruing (including, without limitation, all payments under the Leases, licenses and documents described in Granting Clause D above, proceeds of insurance, condemnation awards and payments in lieu thereof, tenant security deposits and escrow funds, now existing or hereafter arising or

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created out of sale, lease, sublease, license, or other grant of the right of the possession, use or occupancy of all or any portion of the Mortgaged Property, or personalty located thereon, or rendering of services by Borrower or any operator or manager of the Project, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same) (collectively, the "**Rents**"); and

F. All proceeds and avails from rentals, mortgages, sales, conveyances or other dispositions or realizations of any kind or character of or from the foregoing Rents now or hereafter existing, all of which shall constitute proceeds of collateral pursuant to Section 9-102(a)(64) of the Uniform Commercial Code, as adopted in Illinois; and

G. All inventory, accounts, cash, cash receipts, deposit accounts, accounts receivable, general intangibles, payment intangibles, software, chattel paper (whether electronic or tangible), instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, proceeds of the sale of promissory notes, any other rights to the payment of money; and

H. All of the personal property and any and all other personal property, whether tangible or intangible, not otherwise described herein and now or at any time hereafter owned by the Borrower and now or at any time hereafter located in or on or otherwise utilized in any one or more of the ownership, use, enjoyment, construction, occupancy, management, maintenance, repair and operation of the Land, the Improvements or the equipment located thereon, including, without limitation, books of account, files and all trade names, trademarks, service marks, copyrights, patents and other intellectual property and any and all funds of Borrower from time to time in Lender's possession, all of which shall constitute proceeds of collateral pursuant to Section 9-102(a)(64) of the Uniform Commercial Code, as adopted in Illinois (the "**Personalty**"); and

I. All of the contracts and agreements and any and all other contracts or agreements, whether written or oral, to which Borrower is or hereafter becomes a party, to the extent assignment is permitted therein, including, without limitation, any interest rate swap, cap, collar or other interest rate hedging product relating to the Loan entered into between Borrower and Lender (or its Affiliate), contracts pertaining to architectural services, contracts pertaining to engineering services, and contracts relating in any manner to the ownership, use, enjoyment, construction, occupancy, management, maintenance, operation or repair of all or any portion of the Land, the Improvements, the equipment located thereon or the Personalty or otherwise related to all or any part of the real and personal property described elsewhere herein, and all rights, powers, privileges, benefits and remedies of Borrower thereunder; and

J. To the extent assignment thereof is legally permissible, all franchises, permits, licenses, entitlements and rights therein respecting the ownership, use, enjoyment, occupation, management, maintenance, repair and operation of any of the foregoing; and

K. Any and all rights, titles, interests, estates and other claims, at law or in equity, that Borrower now has or may hereafter acquire in or to any proceeds from the sale, assignment, conveyance, hypothecation, grant, pledge or other transfer of any or all of the foregoing real or personal property; and

L. Any and all refunds, rebates, reimbursements, reserves, deferred payments, deposits, cost savings, governmental subsidy payments, governmentally registered credits (such as emissions reduction credits) and payments of any kind due from or payable by any governmental authority or any insurance or utility company relating to any or all of the Mortgaged Property; and

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M. All refunds, rebates, reimbursements and payments of any kind due from or payable by any governmental authority for any taxes, assessments or governmental or quasi-governmental charges or levies imposed upon Borrower with respect to the Mortgaged Property or upon any or all of the Mortgaged Property; and

N. All monies relating to the Mortgaged Property held in any cash collateral or operating account maintained with Lender or any Affiliate of Lender now or at any time hereafter, all monies held in any capital expenditure escrows or other operational escrows or reserve funds and any other escrows, reserves or letters of credit benefiting or relating to the Mortgaged Property; and

O. All right, title and interest of Borrower arising from the operation of the Mortgaged Property in and to all payments for goods or property sold or leased or for services rendered, whether or not yet earned by performance, and not evidenced by an instrument or chattel paper including, without limiting the generality of the foregoing, all accounts, accounts receivable, contract rights, book debts, and notes arising from the operation of an industrial facility.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Lender, its successors and assigns, to its own proper use, benefit and advantage forever, subject, however, to the terms, covenants and conditions herein contained.

WITHOUT LIMITATION OF THE FOREGOING, Borrower hereby further grants unto Lender, pursuant to the provisions of the Uniform Commercial Code, as adopted in Illinois, a security interest in all of the Mortgaged Property, which property includes, without limitation, goods which are or are to become fixtures, the Leases and the Rents.

THIS MORTGAGE IS GIVEN TO SECURE payment of the principal and interest evidenced by the Note, and performance of each and every of the covenants, conditions and agreements of Borrower contained in this Mortgage or in any of the other Loan Documents (all of which obligations are referred to collectively herein as the "indebtedness secured hereby" or the "indebtedness").

THIS MORTGAGE IS GIVEN TO SECURE NOT ONLY EXISTING INDEBTEDNESS, BUT ALSO SUCH FUTURE ADVANCES, IF ANY, WHETHER SUCH ADVANCES ARE OBLIGATORY OR ARE TO BE MADE AT THE OPTION OF THE LENDER, OR OTHERWISE TO THE SAME EXTENT AS IF SUCH FUTURE ADVANCES WERE MADE ON THE DATE OF THE EXECUTION OF THIS MORTGAGE. THE TOTAL AMOUNT OF INDEBTEDNESS THAT MAY BE SO SECURED MAY DECREASE OR INCREASE FROM TIME TO TIME, BUT THE TOTAL UNPAID PRINCIPAL BALANCE SO SECURED AT ONE TIME SHALL NOT EXCEED TWICE THE FACE AMOUNT OF THE NOTE, PLUS INTEREST THEREON, AND ANY DISBURSEMENTS MADE FOR THE PAYMENT OF TAXES, LEVIES OR INSURANCE ON THE MORTGAGED PROPERTY, WITH INTEREST ON SUCH DISBURSEMENTS.

PROVIDED, HOWEVER, THE FOREGOING PRESENTS are made upon the condition that, if Borrower (i) shall pay or cause to be paid to Lender the principal and interest payable pursuant to the Note and the Loan Agreement at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, (ii) shall pay or cause to be paid all amounts to be paid by Borrower under this Mortgage, and (iii) shall keep, perform and observe each and every one of the covenants and promises in this Mortgage or in any of the other Loan Documents expressed to be kept, performed and observed by and on the part of Borrower, then this Mortgage shall cease, terminate and be void; however, if such conditions are not all satisfied, this Mortgage shall otherwise remain in full force and effect.

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BORROWER FURTHER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

ARTICLE 1

BORROWER'S COVENANTS, REPRESENTATIONS AND WARRANTIES

1.1 **Performance under the Loan Documents.** Borrower shall perform, observe and comply with all of the provisions hereof and of the Note and shall duly and punctually pay to Lender the principal sum of money expressed in the Note with interest thereon at the times and in the manner provided in the Note and in the Loan Documents and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by Borrower. In addition, Borrower shall perform or cause to be performed all of the terms, covenants and conditions of the other Loan Documents to be kept and performed by Borrower.

1.2 **Warranty of Title.** At the time of the recordation of this Mortgage, Borrower is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Property which constitutes real property and owns good title to the portion of the Mortgaged Property which constitutes personal property, and Borrower has good right, full power and lawful authority to convey, mortgage and grant a security interest in all of the same in the manner and form contemplated and provided under the Loan Documents. Said title of Borrower in the Mortgaged Property is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, other than liens expressly permitted under the Loan Documents, including, as to the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature. Borrower shall and will forever defend the title to the Mortgaged Property against the claims of all persons whomsoever.

1.3 **Taxes.** Borrower shall pay, or cause to be paid, all installments of taxes, assessments and other similar charges which are assessed, levied, confirmed, imposed, or which become a lien upon or against the Mortgaged Property, or any portion thereof, or which become payable with respect thereto or with respect to the occupancy, use or possession of the Mortgaged Property before the same become delinquent, and shall promptly deliver to Lender receipt therefor. In the event Borrower desires to contest the validity of any such taxes or assessments, Borrower shall (i) prior to the due date thereof, notify Lender in writing that Borrower intends to so contest the same, (ii) if requested by Lender pay the entire amounts of such taxes or assessments when due or, if a contest is permitted by law without such payment on or before the due date thereof, deposit with Lender security in form and content and amounts satisfactory to Lender for the payment of 100% of such tax or assessment, or provide to Lender such other indemnity or assurance of timely payment as may be acceptable to Lender, and (iii) if requested by Lender deposit additional security or indemnity, from time to time, so that, at all times, adequate security or indemnity will be available for the payment of the full amount of the taxes or assessments, together with all interest, penalties, costs and charges accrued or accumulated thereon. If the foregoing deposits are made and Borrower continues, in good faith, to contest the validity of such taxes or assessments by appropriate legal proceedings which shall operate to prevent the collection thereof and the sale of the Mortgaged Property, or any part thereof, to satisfy the same, Borrower shall be under no obligation to pay such tax or assessment until such time as the same has been decreed, by court order, to be a valid lien on the Mortgaged Property. Lender shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to the payment of any unpaid tax or assessment to prevent the sale or forfeiture of the Mortgaged Property, without any liability on Lender's part for any failure to apply the security or indemnity so deposited, unless Borrower requests, in writing, the application thereof to the payment of the particular tax or assessment for which such deposit was made. Any surplus deposit retained by Lender, after the payment of the tax or assessment for which the same was made, shall be repaid to Borrower, unless an Event of Default (as hereinafter defined) exists, or an event has occurred or condition exists which, with the giving of notice or the passage of time, or both,

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could give rise to an Event of Default, in which event such surplus shall be applied by Lender to the Note and in such order and manner as Lender may determine.

1.4 **Mortgage Taxes.** In the event of the passage of any federal, state or local governmental law, order, rule or regulation subsequent to the date hereof which changes or modifies in any manner the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to materially and adversely affect Lender, all sums secured by this Mortgage and all interest accrued thereon shall become due forthwith at the option of Lender and be payable 90 days after notice to Borrower. Notwithstanding the foregoing, instead of paying all the sums secured by this Mortgage and all interest accrued thereon as provided above, Borrower shall have the right to pay to Lender an amount which will place Lender in exactly the same position Lender would have been in had the events outlined above not occurred, provided, however, if such payment may, in Lender's judgment, be considered unlawful by a court of competent jurisdiction, then such payment may not be made and all sums secured by this Mortgage and all interest accrued thereon shall become due forthwith at the option of Lender and payable 90 days after notice to Borrower as aforesaid.

1.5 **No Tax Credits.** Borrower shall not claim or demand or be entitled to receive any credit or credits on the principal or interest payable under the terms of the Note or on any other sums secured hereby, for so much of the taxes, assessments or similar charges assessed against the Mortgaged Property, or any part thereof, as are applicable to the indebtedness secured hereby or to Lender's interest in the Mortgaged Property. No deduction shall be claimed from the taxable value of the Mortgaged Property or any part thereof by reason of the Note or this Mortgage.

1.6 **Utilities.** Borrower shall pay or cause to be paid when due any and all charges for utilities, whether public or private, with respect to the Mortgaged Property or any part thereof, and all license fees, rents or other charges for the use of any appurtenance to the Mortgaged Property.

1.7 **Liens.** The Mortgaged Property shall be kept free and clear of all liens and encumbrances (unless the same are bonded or insured over in a manner satisfactory to Lender) of every nature or description, including, without limitation, liens and encumbrances arising from past due taxes or assessments and from charges for labor, materials, supplies or services, other than liens expressly permitted under the Loan Documents.

1.8 **Subrogation.** Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.9 **Insurance.** Borrower shall, at its expense, maintain insurance policies in accordance with the terms and conditions set forth as follows:

(a) **Types of Policies.** Borrower, at its sole cost and expense, shall insure and keep insured the entire Property against such perils and hazards, and in such amounts and in accordance with the requirements set forth on **Exhibit B** attached hereto and made a part hereof, and, in any event, including, without limitation, the following coverages:

(b) **All Risk.** Insurance against loss to the Property which, during any construction, shall be on an "All Risk" perils "Builders' Risk" (as more particularly described on **Exhibit B**) "Completed Value" form and, after completion of construction, shall be on an "All Risk" policy form (as more particularly described on **Exhibit B**) covering, among other things, insurance risks of all physical loss "Causes of Loss - Special Form," including theft, and insurance against such other risks as Lender may reasonably require. Such policies shall be in amounts equal to the full replacement cost of the Project plus Borrower's interest in any leasehold improvements.

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(c) **Flood.** If the Property is now, or at any time while any obligation of Borrower hereunder remains outstanding shall be, situated in any area which an appropriate Governmental Authority designates as a Special Flood Hazard Area, insurance against loss or damage by flood or mud slide in compliance with the Flood Disaster Protection Act of 1973, as amended from time to time, in amounts reasonably acceptable to Lender.

(d) **Public Liability.** Commercial general public liability insurance against death, bodily injury and property damage arising in connection with the Property. Such policy shall be written on an occurrence form and shall list Borrower as the named insured, shall designate thereon the location of the Property and shall have such limits as Lender may reasonably require.

(e) **Contractor's Insurance.** During the entire period of any construction of Improvements, Borrower shall cause to be furnished to Borrower and, upon request by Lender, certificates from the insurance carrier for each general contractor evidencing workers' compensation, employers' liability, commercial auto liability, excess umbrella liability coverage and commercial general liability insurance (including contractual liability and completed operations coverage) written on an occurrence form, with such general liability insurance limits as Lender may reasonably require. Borrower shall be named as an additional insured under such liability policies. Borrower shall cause each subcontractor to maintain commercial general liability, commercial automobile liability, workers' compensation, employers' liability and excess umbrella liability coverage in form and amount reasonably satisfactory to Lender.

(f) **Other Insurance.** Any other insurance relating to the Property and the use and operation thereof described on **Exhibit B**.

(g) **Policy Requirements.** All insurance shall be carried in companies with a current Best's Insurance Guide Rating of at least A-IX and which is authorized to do business in the state in which the Property is located. Furthermore, all insurance shall be in form and content reasonably acceptable to Lender, provide thirty (30) days' advance written notice to Lender before any cancellation, adverse material modification or notice of non-renewal and, to the extent limits are not otherwise specified herein, contain deductibles which are in amounts reasonably acceptable to Lender. All physical damage policies and renewals shall contain a standard mortgage clause naming Lender as mortgagee, which clause shall expressly state that any breach of any condition or warranty by Borrower shall not prejudice the rights of Lender under such insurance. No additional parties shall appear in the mortgage or loss payable clause with respect to the Project without Lender's prior written consent. All evidence of insurance shall reference the specific projects being covered by name and address and shall otherwise be in form and substance acceptable to Lender. All deductibles shall be in amounts reasonably acceptable to Lender.

(h) **Notice; Evidence of Renewal.** Any notice pertaining to insurance and required pursuant to this Article shall be given in the manner provided in this Mortgage and at any additional address of which Lender gives Borrower prior written notice. Borrower shall use its best efforts to deliver to Lender evidence of renewal satisfactory to Lender at least five (5) Business Days before the expiration of existing policies or any prior renewal thereof. If Lender has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Lender shall have the right, but not the obligation, to purchase such insurance without prior notice to Borrower. Any amounts so disbursed by Lender pursuant to this Article shall be a part of the Loan and shall bear interest at the Default Rate provided in the Note. Nothing contained in this Agreement shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Article.

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(i) **Separate Insurance.** Borrower shall not carry any separate insurance on the Property concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Lender's prior written consent and, in the event Lender grants its consent, any such policy shall nevertheless have attached thereto a standard non-contributing mortgagee clause, with loss payable to Lender, and shall otherwise meet all other requirements set forth in this Article.

1.10 **Casualty.** Borrower shall give immediate notice to Lender of any damage to or loss of the Mortgaged Property or any portion thereof in excess of \$250,000. In case of such damage or loss which is covered by any of the insurance policies maintained by Borrower, Lender is hereby authorized to adjust, collect and compromise all claims thereunder during the continuance of an Event of Default hereunder; and in such case, Borrower shall sign immediately upon demand by Lender, or, in the event Borrower fails to do so, Lender may sign or endorse on Borrower's behalf, all necessary proofs of loss, receipts, releases and other papers required by the insurance companies to be signed by Borrower. Borrower hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. In all other cases, Borrower shall have the right to adjust and compromise such insurance claims and any proceeds shall be payable to Lender and Borrower jointly. Lender may deduct from such insurance proceeds any reasonable expenses incurred by Lender in the settlement and collection thereof, including, without limitation, reasonable attorneys' fees and expenses. The remaining proceeds are referred to herein as the "**Net Insurance Proceeds**".

1.11 **Condemnation.** If all or any part of the Mortgaged Property, other than a part the loss of which, in Lender's sole reasonable discretion, would not materially and adversely affect the operation of the Project, shall be damaged or taken through condemnation (which term, when used herein, shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily, if in Lender's judgment (after having reviewed any business interruption insurance held by Borrower at the time of such taking) such taking causes a material, adverse impact on (i) the Mortgaged Property and (ii) Borrower's ability to pay the indebtedness in accordance with the Loan Documents, or permanently, the entire indebtedness secured hereby shall, at the option of Lender, become immediately due and payable. Lender shall be entitled to all compensation, awards and other payments or relief therefor and all such compensation, awards, damages, claims, rights, actions and proceedings, and the right thereto, are hereby assigned by Borrower to Lender and shall be paid to Lender. Borrower agrees to execute such further assignments of, or payment directions relating to, any compensations, awards, damages, claims, rights, actions and proceedings as Lender may require. Lender may deduct from such compensation, awards and other payments any reasonable expenses incurred by Lender in the collection and settlement thereof, including, without limitation, attorneys' fees and expenses. The remaining amount is referred to herein as the "**Net Award Proceeds**". Lender is hereby authorized, at its option, to commence, appear in and prosecute, in its own name or in the name of Borrower, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith during the continuance of an Event of Default hereunder; in all other cases, Borrower shall have the right to prosecute, settle or compromise any such claim and any proceeds therefrom shall be payable to Borrower and Lender jointly. Lender shall not be liable to Borrower for any failure to collect any amount in connection with any such proceeding unless such failure constitutes willful misconduct or gross negligence on the part of Lender.

1.12 **Restoration.** If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause, Borrower shall promptly and with all due diligence restore and repair the Mortgaged Property provided the Net Insurance Proceeds or the Net Award Proceeds (in either event, the "**Proceeds**") are available (regardless of whether the Proceeds are sufficient) to pay the cost of such restoration or repair and Lender does not accelerate the Indebtedness pursuant to Section 1.11 above. Lender may require that all plans and specifications for such restoration or repair be submitted to and

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approved by Lender in writing prior to commencement of the work. Lender may require evidence of the estimated cost of completion of such restoration or repair satisfactory to Lender and, thereafter, such architect's certificates, waivers of lien, contractors' sworn statements, title insurance endorsements, plats of survey and other evidence of cost, payment and performance relating to such restoration or repair work which is satisfactory to Lender.

1.13 **Application of Insurance Proceeds.** At Lender's election, to be exercised by written notice to Borrower within 30 days following Lender's unrestricted receipt in cash or the equivalent thereof of the Proceeds, the entire amount of the Proceeds shall be either (i) applied to the amounts outstanding under the Note and in such order and manner as Lender may elect, or (ii) made available to Borrower on the terms and conditions set forth in this Section to finance the cost of restoration or repair, with any excess to be applied to the amounts outstanding under the Note in the inverse order of their maturity. Notwithstanding the foregoing, if there is sufficient time, as reasonably determined by Lender, to substantially complete restoration or repair prior to the maturity date and the aggregate amount of the Proceeds shall not exceed \$250,000.00, and if no Event of Default exists at the time of Lender's election (except an Event of Default caused by such taking or casualty), then Lender must elect the option set forth in clause (ii) of the preceding sentence. If the amount of the Proceeds to be made available to Borrower pursuant to this Section is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Borrower shall cause to be deposited with Lender or an affiliate of Lender, as designated by Lender, the amount of such deficiency within 30 days after Lender's written request therefor (but in no event later than the commencement of the work) and Borrower's deposited funds shall be disbursed prior to the Proceeds. If Borrower is required to deposit funds under this Section, the deposit of such funds shall be a condition precedent to Lender's obligation to disburse the Proceeds held by Lender hereunder. The amount of the Proceeds which is to be made available to Borrower, together with any deposits made by Borrower hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either, at Lender's option, to Borrower or directly to the contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workmanlike manner and paid for fully so that no liens or claims may arise by reason thereof. If Lender requires mechanics' and materialmen's lien waivers in advance of making disbursements, such waivers shall be deposited with an escrow trustee acceptable to Lender pursuant to a construction loan escrow agreement satisfactory to Lender. No payment made prior to final completion of the repair or restoration shall exceed 90% of the value of the work performed from time to time. Notwithstanding anything to the contrary in this Section 1.13, in the event the amount of Proceeds is less than \$250,000, and Lender elects, or must elect clause (ii) of the first sentence of this Section 1.13, Lender shall pay the entire amount of such Proceeds directly to Borrower without requiring compliance with the foregoing procedures and Borrower shall thereafter be obligated to repair or restore the Mortgaged Property regardless of whether or not the Proceeds are sufficient to finance the necessary repairs or restoration. Lender may commingle any such funds held by it with its other general funds. Any funds held by Lender under this Section 1.13 shall accrue interest for the benefit of Borrower and Borrower shall not be entitled to a credit against any amounts outstanding under the Note except and to the extent the funds or any interest thereon are applied thereto pursuant to this Section. Without limitation of any of the foregoing, Lender shall have the right at all times to apply such funds to the cure of any Event of Default or the performance of any obligations of Borrower hereunder or under any of the other Loan Documents.

1.14 **Governmental Authority Payments.** Borrower agrees with respect to the collateral described in Granting Clauses L and M hereof (the "Governmental Authority Payments") as follows: (i) that Borrower shall, at Borrower's sole expense, promptly take all actions necessary to obtain all proceeds to which Borrower is entitled in connection with the Governmental Authority Payments, including, without limitation, the filing of applications or claims and the prosecution of appeals or

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litigation, if reasonably necessary and cost effective, (ii) that, in the event of an Event of Default by Borrower under this Mortgage, Borrower shall direct the payor with regard to any of the Governmental Authority Payments to remit same directly to Lender when due, (iii) that Borrower shall forward promptly to Lender all notices and correspondence relating in any manner to any of the Governmental Authority Payments and any proceeds received by Borrowers in connection with any of the Governmental Authority Payments, (iv) that, during the continuance of an Event of Default hereunder, the proceeds of any of the Governmental Authority Payments received by Lender shall be applied toward the repayment of the Note in a manner determined by Lender in its sole discretion or, at the request of Borrower and with the consent of Lender, said proceeds shall be deposited in a secured deposit account maintained with Lender or an affiliate of Lender, as designated by Lender, and applied from time to time toward the payment of any expenses relating to the Mortgaged Property, in a manner determined by Lender in its sole discretion, and (v) that, in the event of an Event of Default by Borrower under this Mortgage, Lender shall be and hereby is appointed as Borrower's agent with respect to any of the Governmental Authority Payments and in that capacity Lender shall have the right to take all such actions that Lender deems necessary and expedient in order to obtain all proceeds to which Borrower is entitled with respect to any of the Governmental Authority Payments.

1.15 **General Care of the Property.** Borrower shall preserve and maintain or cause to be preserved and maintained the Mortgaged Property in good condition and repair, shall not commit or suffer any waste thereof, and shall keep the same in a clean and orderly condition. Borrower shall not do or suffer to be done anything which will increase the risk of fire or of any other hazard to the Mortgaged Property or any part thereof. No buildings, structures, improvements, fixtures, personal property or other part of the Mortgaged Property shall be removed, added to, demolished or altered structurally to any extent or altered non-structurally in any material respect without the prior written consent of Lender. Borrower shall promptly comply, and cause the Mortgaged Property and the occupants or users thereof to comply, with all present and future laws, ordinances, orders, rules and regulations and other requirements of any governmental authority affecting the Mortgaged Property or any part thereof or the use or occupancy thereof. Upon reasonable advance notice, Lender and its representatives are hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours during the term of this Mortgage.

1.16 **Leases and Other Agreements Affecting the Mortgaged Property.** Borrower shall duly and punctually perform all terms, covenants, conditions and agreements binding upon Borrower or the Mortgaged Property under any lease or any other agreement or instrument of any nature whatsoever which involves or affects the Mortgaged Property or any part thereof and which is binding on Borrower. Nothing in the preceding sentence shall be deemed to eliminate Borrower's rights to cure defaults to the extent provided in this Mortgage. Borrower represents and warrants that Borrower has heretofore furnished Lender with true and complete copies of all such leases, agreements and instruments existing on the date of this Mortgage. Borrower agrees to furnish Lender with executed copies of all leases hereafter entered into with respect to all or any part of the Mortgaged Property. Borrower shall not, without the express written consent of Lender, enter into any new lease or modify, surrender, terminate, extend or renew, either orally or in writing, any lease now existing or hereafter created upon the Mortgaged Property or any part thereof, nor shall Borrower permit an assignment or sublease thereof without the express written consent of Lender, which consent shall not be unreasonably withheld, conditioned, or delayed. If Lender so requests, Borrower shall cause the tenant under each or any of such leases to enter into subordination and attornment agreements with Lender which are satisfactory to Lender. Borrower shall not accept payment of advance rents or security deposits equal, in the aggregate, to more than one month's rent without the express written consent of Lender. In order to further secure payment of the Note and the observance, performance and discharge of Borrower's obligations hereunder, Borrower hereby assigns, transfers and sets over to Lender all of Borrower's right, title and interest in, to and under all of the leases now or hereafter affecting the Mortgaged Property or any part thereof and in and to all of

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the rents, issues, profits, revenues, awards and other benefits now or hereafter arising from the Mortgaged Property or any part thereof. Unless and until an Event of Default occurs, Borrower shall be entitled to collect the rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property (except as otherwise provided in this Mortgage) as and when they become due and payable. Lender shall be liable to account only for rents, issues, profits, revenues, awards and other benefits of the Mortgaged Property actually received by Lender pursuant to any provision of this Mortgage.

1.17 **Impairment of Security.** Without limitation of any other provision hereof, Borrower shall not assign, in whole or in part, the rents, issues, profits, revenues, awards and other benefits from the Mortgaged Property without the prior written consent of Lender; any such assignment made without Lender's prior written consent shall be null and void and of no force and effect and the making thereof shall constitute an Event of Default under this Mortgage. Without limitation of the foregoing, Borrower shall not in any other manner impair the security of this Mortgage for the payment of the indebtedness secured hereby.

1.18 **Prohibition of Further Encumbrance.** Except as expressly permitted in the Loan Documents, Borrower shall not, without the prior written consent of Lender, further mortgage, hypothecate, pledge or otherwise encumber, whether by operation of law or otherwise, any interest in the Mortgaged Property. Any such encumbrance made without Lender's prior written consent shall be null and void and of no force or effect, and any mere attempt to create or cause an encumbrance in default of the terms hereof shall constitute an Event of Default under this Mortgage.

1.19 **Prohibition of Transfer.** Except as expressly permitted in the Loan Documents, Borrower shall not, without the prior written consent of Lender, sell, assign or otherwise transfer, whether directly or indirectly, by operation of law or otherwise, all or any portion of any interest in the Mortgaged Property, except replacements of personal property in the ordinary course of business. Any such transfer made without Lender's prior written consent shall be null and void and of no force and effect, and any mere attempt to create or cause a transfer in default of the terms hereof shall constitute an Event of Default under this Mortgage.

1.20 **Further Assurances; After Acquired Property.** At any time and from time to time, upon request from Lender, Borrower shall make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, to cause to be recorded or filed, or both, and from time to time thereafter to be re-recorded or refiled, or both, at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further mortgages, security agreements, financing statements, continuation statements, instruments of further assurances, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (i) the obligations of Borrower under this Mortgage, the Note and the other Loan Documents, and (ii) the lien and security interest of this Mortgage as a first and prior lien and security interest upon all of the Mortgaged Property, whether now or hereafter acquired by Borrower. Upon any failure by Borrower to so make, execute and deliver each of such documents after written demand, Lender may make, execute, record, file, re-record and refile, as appropriate, any and all such mortgages, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as its agent and attorney-in-fact in connection therewith. The lien and security interest hereof will automatically attach, without further act, to all after-acquired property owned by Borrower attached to or used in connection with the operation of the Mortgaged Property or any part thereof.

1.21 **Formation.** Borrower is a duly formed limited liability company under the laws of the State of Illinois, validly existing, in good standing and fully qualified to do business in the State of Illinois and has full power and authority to consummate the transactions contemplated hereby.

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ARTICLE 2

SECURITY AGREEMENT

2.1 **Grant of Security Interest.** Without limiting any of the provisions of this Mortgage, Borrower, as Debtor, and referred to in this Article as “**Debtor**” (whether one or more) hereby grants to Lender, as Secured Party, and referred to in this Article as “**Secured Party**” (whether one or more), a security interest in all of Debtor’s remedies, powers, privileges, rights, titles and interests (including all of Debtor’s power, if any, to pass greater title than it has itself) of every kind and character now owned or hereafter acquired, created or arising in and to (i) the Mortgaged Property (including both that now and that hereafter existing) to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (810 ILCS 5/1 et seq.) of the State of Illinois (the “UCC”), (ii) all equipment, accounts, general intangibles, fixtures, inventory, chattel paper, notes, documents and other personal property used, intended or acquired for use, on, or in connection with the use or operation of, the Mortgaged Property, or otherwise related to the Mortgaged Property, and all products and proceeds of it, including all Rents (as such term is defined in Article 2 above) and all security deposits under Leases now or at any time hereafter held by or for Debtor’s benefit, all monetary deposits which Debtor has been required to give to any public or private utility with respect to utility services furnished to the Mortgaged Property, all funds, accounts, instruments, accounts receivable, documents, trademarks, trade names and symbols used in connection therewith and notes or chattel paper arising from or by virtue of any transactions related to the Mortgaged Property, all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Mortgaged Property, and all guaranties and warranties obtained with respect to all improvements, equipment, furniture, furnishings, personal property and components of any thereof located on or installed at the Mortgaged Property, in each case to the extent assignable by its terms or pursuant to applicable law and (iii) the following described property:

(a) **Contracts.** All contracts now or hereafter entered into by and between Debtor and any contractor or between Debtor and any other party, as well as all right, title and interest of Debtor under any subcontracts, providing for the construction (original, restorative or otherwise) of any improvements to or on any of the Mortgaged Property or the furnishing of any materials, supplies, equipment or labor in connection with any such construction, in each case to the extent assignable by its terms or pursuant to applicable law;

(b) **Development Contracts.** All contracts now or hereafter entered into by and between Debtor and any party, as well as all right, title, interest and beneficial interest of Debtor under any other contract or subcontract (including any right, title and interest assigned to Debtor), providing for the development of all or any portion of the Land;

(c) **Insurance Claims.** Any and all rights to or claims under insurance policies benefiting Mortgagor or the Mortgaged Property;

(d) **Plans.** All of the plans, specifications and drawings (including plot plans, foundation plans, floor plans, elevations, framing plans, cross-sections of walls, mechanical plans, electrical plans and architectural and engineering plans and architectural and engineering studies and analyses) heretofore or hereafter prepared by any architect, engineer or other design professional, in respect of any of the Mortgaged Property;

(e) **Design, etc. Agreements.** All agreements now or hereafter entered into with any person or entity in respect of architectural, engineering, design, management, development or consulting services rendered or to be rendered in respect of planning, design, inspection or supervision of the construction, management or development of any of the Mortgaged Property, in each case to the extent

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assignable by its terms or pursuant to applicable law;

(f) **Lender or Investor Commitments.** Any commitment issued by any lender or investor other than Mortgagee to finance or invest in any of the Mortgaged Property, in each case to the extent assignable by its terms or pursuant to applicable law;

(g) **Bonds.** Any completion bond, performance bond and labor and material payment bond and any other bond relating to the Mortgaged Property or to any contract providing for construction of improvements to any of the Mortgaged Property, in each case to the extent assignable by its terms or pursuant to applicable law; and

(h) **Reimbursements.** Any right to reimbursements, rebates, credits, refunds or other consideration or monies, with respect to the Mortgaged Property, to be received pursuant to any municipal utility district reimbursement agreements (or any similar writings) (collectively, the "**Reimbursement Agreements**"); together with all substitutions for and proceeds of any of the foregoing received upon the rental, sale, exchange, transfer, collection or other disposition or substitution of it and together with all general intangibles now owned by Debtor or existing or hereafter acquired, created or arising (whether or not related to any of the foregoing Property).

All the property described or referred to in this Section is collectively referred to as the "**Collateral**". The Mortgaged Property and the Collateral are collectively referred to as the "**Property**". In the event of any express inconsistency between the provisions of this Section and **Article 3** regarding any Rents or Lease, the provisions of **Article 3**, as applicable and to the extent valid, enforceable and in effect, shall govern and control.

2.2 **Debtor's Covenants Concerning Personality Subject to the UCC.** Debtor covenants and agrees with Secured Party that in addition to and cumulative of any other remedies granted in this Mortgage to Secured Party, upon or at any time after the occurrence of an Event of Default (defined in **Article 4**):

(a) Secured Party is authorized, in any legal manner and without breach of the peace, to take possession of the Collateral (Debtor hereby waiving all claims for damages arising from or connected with any such taking) and of all books, records and accounts relating thereto and to exercise without interference from Debtor any and all rights which Debtor has with respect to the management, possession, operation, protection or preservation of the Collateral, including the right to sell or rent the same for the account of Debtor and to deduct from such sale proceeds or such rents all costs, expenses and liabilities of every character incurred by Secured Party in collecting such sale proceeds or such rents and in managing, operating, maintaining, protecting or preserving the Collateral and to apply the remainder of such sales proceeds or such rents on the Debt in such manner as Secured Party may elect. Before any sale, Secured Party may, at its option, complete the processing of any of the Collateral and/or repair or recondition the same to such extent as Secured Party may deem advisable and any sums expended therefor by Secured Party shall be reimbursed by Debtor. Secured Party may take possession of Debtor's premises to complete such processing, repairing and/or reconditioning, using the facilities and other property of Debtor to do so, to store any Collateral and to conduct any sale as provided for herein, all without compensation to Debtor. All costs, expenses, and liabilities incurred by Secured Party in collecting such sales proceeds or such rents, or in managing, operating, maintaining, protecting or preserving such properties, or in processing, repairing and/or reconditioning the Collateral if not paid out of such sales proceeds or such rents as hereinabove provided, shall constitute a demand obligation owing by Debtor and shall bear interest from the date of expenditure until paid at the rate of Default Rate (as defined in the Note and the Loan Agreement), all of which shall constitute a portion of the indebtedness secured hereby. If necessary to obtain the possession provided for above, Secured Party may invoke any

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and all legal remedies to dispossess Debtor, including specifically one or more actions for forcible entry and detainer. In connection with any action taken by Secured Party pursuant to this Section, Secured Party shall not be liable for any loss sustained by Debtor resulting from any failure to sell or let the Collateral, or any part thereof, or from other act or omission of Secured Party with respect to the Collateral unless such loss is caused by the willful misconduct and bad faith of Secured Party, nor shall Secured Party be obligated to perform or discharge any obligation, duty, or liability under any sale or lease agreement covering the Collateral or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder.

(b) Secured Party may, without notice except as hereinafter provided, sell the Collateral or any part thereof at public or private sale (with or without appraisal or having the Collateral at the place of sale) for cash, upon credit, or for future delivery, and at such price or prices as Secured Party may deem best, and Secured Party may be the purchaser of any and all of the Collateral so sold and may apply upon the purchase price therefor any of the indebtedness and thereafter hold the same absolutely free from any right or claim of whatsoever kind. Upon any such sale Secured Party shall have the right to deliver, assign and transfer to the purchaser thereof the Collateral so sold. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right of whatsoever kind, including any equity or right of redemption, stay or appraisal which Debtor has or may have under any rule of law or statute now existing or hereafter adopted. To the extent notice is required by applicable law, Secured Party shall give Debtor written notice at the address set forth herein (which shall satisfy any requirement of notice or reasonable notice in any applicable statute) of Secured Party's intention to make any such public or private sale. Such notice (if any is required by applicable law) shall be personally delivered or mailed, postage prepaid, at least ten (10) calendar days before the date fixed for a public sale, or at least ten (10) calendar days before the date after which the private sale or other disposition is to be made, unless the Collateral is of a type customarily sold on a recognized market, is perishable or threatens to decline speedily in value. Such notice (if any is required by applicable law), in case of public sale, shall state the time and place fixed for such sale or, in case of private sale or other disposition other than a public sale, the time after which the private sale or other such disposition is to be made. Any public sale shall be held at such time or times, within the ordinary business hours and at such place or places, as Secured Party may fix in the notice of such sale. At any sale the Collateral may be sold in one lot as an entirety or in separate parcels as Secured Party may determine. Secured Party shall not be obligated to make any sale pursuant to any such notice. Secured Party may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at any time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned. In case of any sale of all or any part of the Collateral on credit or for future delivery, the Collateral so sold may be retained by Secured Party until the selling price is paid by the purchaser thereof, but Secured Party shall incur no liability in case of the failure of such purchaser to take up and pay for the Collateral so sold, and in case of any such failure, such Collateral may again be sold upon like notice. Each and every method of disposition described in this Section shall constitute disposition in a commercially reasonable manner. Each Collateral Obligor (as hereinafter defined), to the extent applicable, shall remain liable for any deficiency.

(c) Secured Party shall have all the rights of a secured party after default under the UCC and in conjunction with, in addition to or in substitution for those rights and remedies:

(i) Secured Party may require Debtor to assemble the Collateral and make it available at a place Secured Party designates which is mutually convenient to allow Secured Party to take possession or dispose of the Collateral; and

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(ii) it shall not be necessary that Secured Party take possession of the Collateral or any part thereof before the time that any sale pursuant to the provisions of this Article is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; and

(iii) before application of proceeds of disposition of the Collateral to the indebtedness, such proceeds shall be applied to the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Secured Party, each Collateral Obligor, to the extent applicable, to remain liable for any deficiency; and

(iv) the sale by Secured Party of less than the whole of the Collateral shall not exhaust the rights of Secured Party hereunder, and Secured Party is specifically empowered to make successive sale or sales hereunder until the whole of the Collateral shall be sold; and, if the proceeds of such sale of less than the whole of the Collateral shall be less than the aggregate of the indebtedness secured hereby, this Mortgage and the security interest created hereby shall remain in full force and effect as to the unsold portion of the Collateral just as though no sale had been made; and

(v) in the event any sale hereunder is not completed or is defective in the opinion of Secured Party, such sale shall not exhaust the rights of Secured Party hereunder and Secured Party shall have the right to cause a subsequent sale or sales to be made hereunder; and

(vi) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of any indebtedness or as to the occurrence of any default, or as to Secured Party having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and the Collateral to be sold having been duly given, as to any other act or thing having been duly done by Secured Party, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and

(vii) Secured Party may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Secured Party, including the sending of notices and the conduct of sale, but in the name and on behalf of Secured Party; and

(viii) demand of performance, advertisement and presence of property at sale are hereby waived and Secured Party is hereby authorized to sell hereunder any evidence of debt it may hold as security for the indebtedness secured hereby. All demands and presentments of any kind or nature are expressly waived by Debtor. Debtor waives the right to require Secured Party to pursue any other remedy for the benefit of Debtor and agrees that Secured Party may proceed against any Collateral Obligor for the amount of the indebtedness owed to Secured Party without taking any action against any other Collateral Obligor or any other person or entity and without selling or otherwise proceeding against or applying any of the Collateral in Secured Party's possession.

2.3 **UCC Rights are not Exclusive.** Should Secured Party elect to exercise its rights under the UCC as to part of the personal property or fixtures described in this Mortgage, such election shall not preclude Secured Party from exercising any or all of the rights and remedies granted by the other Articles of this Mortgage as to the remaining personal property or fixtures.

2.4 **Mortgage is Also Financing Statement.** Secured Party may, at its election, at any time after delivery of this Mortgage, file an original of this Mortgage as a financing statement or sign one or more copies of this Mortgage to use as a UCC financing statement. Secured Party's signature may be placed between the last sentence of this Mortgage and Debtor's acknowledgment or may follow Debtor's acknowledgment. Secured Party's signature need not be acknowledged and is not necessary to the

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effectiveness of this Mortgage as a deed of trust, mortgage, assignment, pledge, security agreement or (unless otherwise required by applicable law) as a financing statement. This Mortgage constitutes a financing statement filed as a fixture filing in the land records of the county in which the Land is located, with respect to any and all fixtures comprising the Mortgaged Property. The "debtor" is Borrower and the "secured party" is Lender. The collateral is as described in the granting clause of this Mortgage, and the addresses of the debtor and secured party are the addresses stated on the first page of this Mortgage for notices to such parties. The owner of record of the Land is the Borrower.

2.5 **No other Financing Statements on the Collateral.** So long as any amount remains unpaid on the indebtedness, Debtor will not execute and there will not be filed in any public office any financing statements affecting the Collateral other than financing statements in favor of Secured Party under this Mortgage, unless prior written specific consent and approval of Secured Party shall have been first obtained.

2.6 **Secured Party May File Financing and Continuation Statements.** Mortgagor hereby irrevocably authorizes Mortgagee at any time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Property (i) as all assets of Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Property falls within the scope of Article 9 of the UCC, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contains any other information required by Section 9-501, et seq., of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor and (ii) in the case of a financing statement filed as a fixture filing or indicating Property as extracted collateral or timber to be cut, a sufficient description of real property to which the Property relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Debtor will pay the costs of filing or recording, in all public offices at any time and from time to time whenever filing or recording of this Mortgage, any financing statement, amendment, or any continuation statement is deemed by Secured Party or its counsel to be necessary or desirable.

2.7 **Fixtures.** Certain of the Collateral is or will become "fixtures" (as that term is defined in the UCC) on the Land, and when this Mortgage is filed for record in the real estate records of the county where such fixtures are situated, it shall also automatically operate as a financing statement filed as a fixture filing in accordance with Section 9-502, et seq., of the UCC, upon such of the Collateral which is or may become fixtures.

2.8 **Assignment of Non-UCC Personal Property.** To the extent that any of the Collateral is not subject to the UCC of the state or states where it is situated, Debtor hereby assigns to Secured Party all of Debtor's right, title and interest in the Collateral to secure the indebtedness. Release of the lien of this Mortgage shall automatically terminate this assignment.

2.9 **Debtor's Warranties Concerning Collateral.** Debtor warrants and represents to Secured Party that it is the legal and equitable owner and holder of the Collateral free of any adverse claim and free of any security interest or encumbrance except only for the security interest granted hereby in the Collateral and those other security interests (if any) expressly referred to or described in this Mortgage (such warranty to supersede any provision contained in this Mortgage limiting the liability of Mortgagor). Debtor agrees to defend the Collateral and its proceeds against all claims and demands of any person at any time claiming the Collateral, its proceeds or any interest in either. Debtor also warrants and represents that Debtor has not heretofore signed any financing statement directly or indirectly affecting the Collateral or any part of it which has not been completely terminated of record, and no such financing statement signed by Debtor is now on file in any public office except only those statements (if any) true and correct copies of which Debtor has actually delivered to Secured Party.

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2.10 **Certain Powers of Secured Party.** Debtor hereby authorizes and directs each account debtor and each other person or entity obligated to make payment in respect of any of the Collateral (each a "Collateral Obligor") to pay over to Secured Party, its officers, agents or assigns, upon demand by Secured Party, all or any part of the Collateral without making any inquiries as to the status or balance of the secured indebtedness and without any notice to or further consent of Debtor. Debtor hereby agrees to indemnify each Collateral Obligor and hold each Collateral Obligor harmless from all expenses and losses which it may incur or suffer as a result of any payment it makes to Secured Party pursuant to this paragraph. To facilitate the rights of Secured Party hereunder, Debtor hereby authorizes Secured Party, its officers, employees, agents or assigns:

(a) to notify Collateral Obligors of Secured Party's security interest in the Collateral and to collect all or any part of the Collateral without further notice to or further consent by Debtor, and Debtor hereby constitutes and appoints Secured Party the true and lawful attorney of Debtor (such agency being coupled with an interest), irrevocably, with power of substitution, in the name of Debtor or in its own name or otherwise, to take any of the actions described in the following clauses (b), (c), (d), (e), (f) and (g);

(b) to ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all amounts which may be or become due or payable under the Collateral and to settle and/or adjust all disputes and/or claims directly with any Collateral Obligor and to compromise, extend the time for payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, on such terms and conditions as Secured Party may determine (without thereby incurring responsibility to or discharging or otherwise affecting the liability of Debtor to Secured Party under this Mortgage or otherwise);

(c) to direct delivery of, receive, open and dispose of all mail addressed to Debtor and to execute, sign, endorse, transfer and deliver (in the name of Debtor or in its own name or otherwise) any and all receipts or other orders for the payment of money drawn on the Collateral and all notes, acceptances, commercial paper, drafts, checks, money orders and other instruments given in payment or in part payment thereof and all invoices, freight and express bills and bills of lading, storage receipts, warehouse receipts and other instruments and documents in respect of any of the Collateral and any other documents necessary to evidence, perfect and realize upon the security interests and obligations of this Mortgage;

(d) in its discretion to file any claim or take any other action or proceeding which Secured Party may deem necessary or appropriate to protect and preserve the rights, titles and interests of Secured Party hereunder;

(e) to sign the name of Debtor to financing statements, drafts against Collateral Obligors, assignments or verifications of any of the Collateral and notices to Collateral Obligors;

(f) to station one or more representatives of Secured Party at the Mortgaged Property for the purpose of exercising any rights, benefits or privileges available to Secured Party hereunder or under any of the Credit Documents or at law or in equity, including receiving collections and taking possession of books and records relating to the Collateral; and

(g) to cause title to any or all of the Collateral to be transferred into the name of Secured Party or any nominee or nominees of Secured Party.

The powers conferred on Secured Party pursuant to this Section are conferred solely to protect Secured Party's interest in the Collateral and shall not impose any duty or obligation on Secured Party to perform

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any of the powers herein conferred. No exercise of any of the rights provided for in this Section shall constitute a retention of collateral in satisfaction of the indebtedness as provided for in Section 9-505 of the UCC.

2.11 **Standard of Care.** Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral in its possession if it takes such action for that purpose as Debtor requests in writing, but failure of Secured Party to comply with such request shall not of itself be deemed a failure to exercise reasonable care, and no failure of Secured Party to take any action not so requested by Debtor shall be deemed a failure to exercise reasonable care in the custody or preservation of any such Collateral.

2.12 **Change Terms, Release Collateral.** Secured Party may extend the time of payment, arrange for payment in installments, otherwise modify the terms of, or release, any of the Collateral, without thereby incurring responsibility to Debtor or discharging or otherwise affecting any liability of Debtor. Secured Party shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

ARTICLE 3

ASSIGNMENT OF LEASES AND RENTS

3.1 **Assignment.** For ten dollars (\$10.00) and other good and valuable consideration, including the indebtedness evidenced by the Note, the receipt and sufficiency of which are hereby acknowledged, Borrower has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey absolutely unto Lender the Leases and the Rents, subject only to the hereinafter referenced License, to have and to hold the Leases and the Rents unto Lender, forever, and Borrower does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Leases and the Rents unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof by or through Borrower; provided, however, if Borrower shall pay or cause to be paid and shall perform and discharge or cause to be performed and discharged, the indebtedness hereby secured on or before the date same is to be paid, performed and discharged, then this assignment shall terminate and be of no further force and effect, and all rights, titles and interests conveyed pursuant to this assignment shall become revested in Borrower without the necessity of any further act or requirement by Borrower or Lender.

3.2 **Limited License.** Lender hereby grants to Borrower a limited license (the "License"), nonexclusive with the rights of Lender reserved in this Mortgage, to exercise and enjoy all incidences of ownership of the Leases and the Rents, including specifically but without limitation the right to collect, demand, sue for, attach, levy, recover and receive the Rents, and to give proper receipts, releases and acquittances therefor. Borrower hereby agrees to receive all Rents and hold the same as a trust fund to be applied, and to apply the Rent so collected, to the payment, satisfaction and discharge of the indebtedness described in the Note as and when the same shall become due and payable. Thereafter, Borrower may use the balance of the Rent collected in any manner not inconsistent with the Loan Documents.

3.3 **Enforcement of Leases.** Subject to and in accordance with the terms and conditions of Section 1.16 of this Mortgage, Borrower shall (a) duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon the landlord under any Lease, (b) maintain each of the Leases in full force and effect during the term thereof, (c) to the extent commercially reasonable, appear in and defend any action or proceeding in any manner connected with any of the Leases, (d) deliver to Lender copies of executed counterparts of all Leases and (e) deliver to Lender such further information, and execute and deliver to Lender such further assurances and

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assignments, with respect to the Leases as Lender may from time to time reasonably request. Without Lender's prior written consent, Borrower shall not materially discount any future accruing Rent, or assign or grant a security interest in or to the License or any of the Leases.

3.4 **Suits; Attornment.** Subject to the License and the provisions of Section 4.1(b) of this Mortgage, Lender hereby reserves and may exercise the right and Borrower hereby acknowledges that Lender has the right (but not the obligation), upon the occurrence and during the continuance of an Event of Default, to collect, demand, sue for, attach, levy, recover and receive any Rent, to give proper receipts, releases and acquittances therefor and, after deducting the expenses of collection, to apply the net proceeds thereof as a credit upon any portion of the indebtedness secured hereby selected by Lender, notwithstanding that such portion selected may not then be due and payable or that such portion is otherwise adequately secured. Borrower hereby authorizes and directs any lessee of the Mortgaged Property to deliver any such payment to, and otherwise to attorn all other obligations under the Leases direct to, Lender. Borrower hereby ratifies and confirms all that Lender shall do or cause to be done by virtue and in compliance with the terms of this assignment. No lessee shall be required to inquire into the authority of Lender to collect any Rent, and any lessee's obligation to Borrower shall be absolutely discharged to the extent of its payment to Lender.

3.5 **Remedies.** Upon or at any time after the occurrence of any Event of Default, Lender, at its option and in addition to the remedies provided in this Mortgage, shall have the complete, continuing and absolute right, power and authority to terminate the License solely by the giving of written notice of termination to Borrower. Upon Lender's giving of such notice, the License shall immediately terminate without any further action being required of Lender. Thereafter, as long as any Event of Default shall exist, Lender shall have the exclusive right, power and authority to take any and all action as described above, regardless of whether a foreclosure sale of the remainder of the Mortgaged Property has occurred under this Mortgage, or whether Lender has taken possession of the remainder of the Mortgaged Property or attempted to do any of the same. No action referred to above or in this section taken by Lender shall constitute an election of remedy. Notwithstanding any term to the contrary herein, in the event of such a termination of Borrower's License, such License shall be reinstated when and if the applicable Event of Default shall have been cured or waived.

3.6 **No Obligation of Lender.** Neither the acceptance by Lender of the assignment granted in this Mortgage, nor the granting of any other right, power, privilege or authority in this Mortgage, nor the exercise of any of the aforesaid, shall (a) prior to the actual taking of physical possession and operational control of the Mortgaged Property by Lender, be deemed to constitute Lender as a "mortgagee in possession" or (b) at any time thereafter, obligate Lender (i) to appear in or defend any action or proceeding relating to the Leases, the Rents or the remainder of the Mortgaged Property, (ii) to take any action hereunder, (iii) to expend any money or incur any expenses or perform or discharge any obligation, duty or liability with respect to any Lease, (iv) to assume any obligation or responsibility for any deposits which are not physically delivered to Lender or (v) for any injury or damage to person or property sustained in or about the Mortgaged Property, provided that nothing herein shall relieve Lender of liability for the willful misconduct or gross negligence or omissions of Lender.

3.7 **Borrower's Indemnities.** So long as the License is in effect, Borrower shall indemnify and hold Lender harmless from and against any and all liability, loss, cost, damage or expense which Lender incurs under or by reason of this assignment, or for any action taken by Lender hereunder in accordance with the terms hereof, or by reason of or in defense of any and all claims and demands whatsoever which are asserted against Lender arising out of the Leases. In the event Lender incurs any such liability, loss, cost, damage or expense, the amount thereof together with all reasonable attorneys' fees and interest thereon at the Default Rate specified in the Note shall be payable by Borrower to Lender, within ten (10) days after demand by Lender, and shall be secured by this Mortgage, provided that

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Borrower shall have no duty or liability hereunder to indemnify and hold Lender harmless from matters resulting from the willful misconduct or gross negligence of Lender.

ARTICLE 4

BORROWER'S DEFAULT

4.1 Borrower's Defaults and Lender's Remedies.

(a) **Events of Default.** Each of the following shall constitute an "Event of Default" under this Mortgage:

(i) Borrower fails to pay, when due, any interest or installment of principal on the Note and such failure continues for a period of five (5) days after notice thereof from Lender; or

(ii) Borrower fails to pay, when due, any amount payable under this Mortgage other than principal or interest, and such failure continues for a period of 10 Business Days after notice thereof from Lender to Borrower; or

(iii) Borrower fails to keep or perform any of the agreements, undertakings, obligations, covenants or conditions under this Mortgage not expressly referred to in another clause of this Section and (A) such failure continues for a period of 30 days after notice thereof from Lender to Borrower, or (B) if such failure cannot, because of its nature, be cured within said 30-day period, then, if Borrower commences curing such failure within said 30-day period and diligently continues such cure, such failure continues for an additional 90-day period after an additional notice; or

(iv) any "Event of Default" occurs beyond any applicable grace period, as defined under any of the Loan Documents, including without limitation, the Loan Agreement; or

(v) any representation, warranty or certification made in this Mortgage by Borrower or otherwise made in writing in connection with or as contemplated by this Mortgage or any of the other Loan Documents by Borrower proves to be materially incorrect or false when made on the Effective Date, or any material representation to Lender by Borrower as to the financial condition or credit standing of Borrower proves to be false or misleading in any material respect when made on the Effective Date; or

(vi) except as permitted under the Loan Documents, the recording of any claim of lien against any portion of the Mortgaged Property and the continuance of such claim of lien for 20 days without discharge, satisfaction or provision for payment being made by Borrower in a manner satisfactory to Lender, provided that the foregoing shall not be deemed to be an Event of Default to the extent Borrower is diligently contesting any such lien or claim of lien in good faith and Borrower has deposited security with Lender which is acceptable to Lender in Lender's sole and absolute discretion; or the sequestration or attachment of, or any levy or execution upon any portion of the Mortgaged Property, any other collateral provided by Borrower under any of the Loan Documents, or any substantial portion of the other assets of Borrower, which sequestration, attachment, levy or execution is not released, expunged or dismissed prior to the earlier of 30 days or the sale of the assets affected thereby, provided that the foregoing shall not be deemed to be an Event of Default to the extent Borrower is diligently contesting any such sequestration, attachment, levy or execution in good faith and Borrower has deposited security with Lender acceptable to Lender in Lender's sole and absolute discretion; or

(vii) the filing of a petition by Borrower for relief under the Bankruptcy Reform Act of 1978 (11 USC §§ 101-1330), as hereafter amended or recodified (the "Bankruptcy Code"), or under

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any other present or future state or federal law regarding bankruptcy, reorganization or other debtor relief law; the filing of any pleading or an answer by Borrower in any involuntary proceeding under the Bankruptcy Code or other debtor relief law which admits the jurisdiction of the court or the petition's material allegations regarding Borrower's insolvency; a general assignment by Borrower for the benefit of creditors; or Borrower applying for, or the appointment of, a receiver, trustee, custodian or liquidator of Borrower or any property of Borrower; or

(viii) the failure of Borrower to effect a full dismissal of any involuntary petition under the Bankruptcy Code or any other debtor relief law that is filed against Borrower or in any way restrains or limits Borrower or Lender regarding the Loan, or all or any portion of the Mortgaged Property, prior to the earlier of the entry of any court order granting relief sought in such involuntary petition, or 90 days after the date of filing of such involuntary petition; or

(ix) the failure at any time of the Mortgage to be a valid first lien upon the Mortgaged Property or any portion thereof, subject only to Permitted Liens, other than as a result of any release or reconveyance of the Mortgage with respect to all or any portion of the Mortgaged Property pursuant to the terms and conditions of the Loan Documents or due to Lender's act or omission; or

(x) other than the sale of inventory or the replacement of furniture, fixtures or equipment, the Mortgaged Property or any part thereof is sold, conveyed, transferred, assigned, disposed of, or is further encumbered, or an agreement for any of the foregoing is entered into, without the prior written consent of Lender; or

(xi) other than equipment financing arrangements which evidence an aggregate indebtedness not greater than \$1,000,000, Borrower enters into any secondary or additional financing agreements or arrangements of any kind whatsoever (other than Permitted Liens) secured, in whole or in part, by all or any part of or interest in the Mortgaged Property; or

(xii) any order or decree is entered by any court of competent jurisdiction directly or indirectly enjoining or prohibiting Lender or Borrower from performing any of their material obligations under this Mortgage or any of the Loan Documents, and such order or decree is not vacated, and the proceedings out of which such order or decree arose are not dismissed, within 30 days after the granting of such decree or order.

(b) **Lender's Remedies.** Upon the happening of any Event of Default, Lender shall have the right, if such Event of Default shall then be continuing, in addition to all the remedies conferred upon Lender by law or equity or the terms of the Loan Agreement or any Loan Document, to the extent permitted by law, to do any or all of the following, concurrently or successively, without notice to Borrower:

(i) declare the Note to be, and it shall thereupon become, immediately due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding; or

(ii) terminate Lender's obligations under the Note or other Loan Documents to extend credit of any kind or to make any disbursement, whereupon the commitment and obligation of Lender to extend credit or to make disbursements shall terminate; or

(iii) enter upon and take possession of the Mortgaged Property and do anything necessary or desirable to complete construction of the improvements contemplated by the Loan Documents, to fulfill the obligations of Borrower under the Loan Documents and to sell, manage,

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maintain, repair and protect the Mortgaged Property, and, without restricting the generality of the foregoing and for the purposes aforesaid, Borrower hereby authorizes Lender (A) to pay, settle or compromise all existing bills and claims which may be liens or security interests, or to avoid such bills and claims becoming liens or security interests against the Mortgaged Property or as may be necessary or desirable for the clearance of title or otherwise, (B) to make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty or other property, (C) to insure or keep the Mortgaged Property insured, (D) to manage and operate the Mortgaged Property and exercise all the rights and powers of Borrower to the same extent as Borrower could in the name of Borrower or otherwise with respect to the same, (E) to do any and every act which Borrower might do, including, without limitation, to enter into leases of any portion of the Mortgaged Property and to enter into contracts for the sale of, and to sell and convey title to, the Mortgaged Property or any portion thereof and Borrower agrees to execute and deliver such contracts, deeds, leases and other instrument as may be required by Lender or Lender's title company to carry out the intent of this Section, (F) to prosecute or defend any and all actions or proceedings involving the Mortgaged Property or any fixtures, equipment or other installations thereon, (G) to exclude Borrower and the representatives of Borrower from the Mortgaged Property or any portion thereof, and (H) to take possession of, assemble, collect and carry away any of the personalty, and Lender shall have joint access with Borrower to the books and accounts of Borrower; furthermore, in connection with an exercise by Lender of the foregoing remedy:

- (1) Lender and its representatives shall be entitled to the entry, possession and use contemplated herein upon demand and without the consent of any party and without any legal process or other condition precedent whatsoever; however, if Borrower shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring the delivery of immediate possession of all or part of the Mortgaged Property to Lender, and Borrower hereby specifically consents to the entry of such judgment or decree;
- (2) Borrower acknowledges that any denial of such entry, possession and use by Lender will cause irreparable injury and damage to Lender and agrees that Lender may forthwith sue for any remedy to enforce the immediate enjoyment of such right, and Borrower hereby waives the posting of any bond as a condition for granting such remedy;
- (3) Upon request, Borrower shall, at Borrower's sole cost and expense, assemble all or any of the Personalty and make it available at a place Lender designates to allow Lender to take possession or dispose of same; and
- (4) Borrower shall pay to Lender, upon demand, all expenses (including, without limitation, attorneys' fees and expenses) of obtaining such judgment or decree or of otherwise seeking to enforce its rights under this Mortgage or any of the other Loan Documents; and all such expenses shall, until paid, be secured by the Loan Documents and shall bear interest at the Default Rate; or

(iv) offset and apply any indebtedness now or hereafter owing from Lender to Borrower (including, without limitation, any amounts on deposit in any demand, time, savings, passbook,

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certificate of deposit or like account maintained by Borrower with Lender or any affiliate of Lender) against any and all amounts due from Borrower to Lender hereunder or under the other Loan Documents; or

(v) collect and receive all the rents, issues, profits and revenues of the Mortgaged Property, including those past due as well as those accruing thereafter, after deducting therefrom (A) all expenses of taking, holding, managing and operating the Mortgaged Property (including, without limitation, compensation for the services of all persons employed for such purposes), (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, (C) the cost of such insurance, (D) such taxes, assessments and other similar charges as Lender may determine to pay, (E) other proper charges upon the Mortgaged Property or any part thereof, and (F) Lender's attorneys' fee and expenses; or

(vi) commence foreclosure proceedings against the Mortgaged Property through judicial proceedings or by advertisement, at the option of Lender, pursuant to applicable law. The commencement by Lender of foreclosure proceedings shall be deemed an exercise by Lender of its option to accelerate the indebtedness evidenced by the Note, unless such proceedings on their face specifically indicate otherwise. Borrower hereby grants the power to Lender to sell the Mortgaged Property or to cause the same to be sold at public sale, and to convey the same to the purchaser, in accordance with applicable statutes in a single parcel or in several parcels at the option of Lender.

4.2 **Protective Advances.** If an Event of Default occurs, Lender may (but shall in no event be required to) cure any such Event of Default and any amounts expended by Lender in so doing, including, without limitation, all funds furnished by Lender pursuant to Section 4.1(b)(iii) above, shall (i) be deemed advanced by Lender under an obligation to do so regardless of the identity of the person or persons to whom such funds are furnished, (ii) constitute additional advances hereunder, the payment of which is additional indebtedness evidenced by the Note and (iii) become due and owing, at Lender's demand, with interest accruing from the date of disbursement thereof until fully paid at the Default Rate.

4.3 **Other Remedies.** If any Event of Default shall occur and be continuing, Lender may, in addition to any other rights and remedies hereunder, exercise any and all remedies provided in any of the other Loan Documents.

4.4 **No Lender Liability.** To the extent permitted by law, Lender shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission by it, or any of its representatives, which was taken, omitted or made in good faith except losses, damages, injuries, costs or expenses resulting from Lender's gross negligence or willful misconduct.

4.5 **Lender's Attorneys' Fees.** In case of any Event of Default hereunder, Borrower shall pay Lender's reasonable attorneys' fees and expenses in connection with the enforcement of this Mortgage or any of the other Loan Documents.

4.6 **Receiver.** If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the occupancy or value of any security for the indebtedness or the insolvency of any party bound for its payment to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits, revenues, awards and other benefits thereof. The receiver shall have all of the rights and powers to the fullest extent permitted by law. Borrower shall pay to Lender upon demand all of Lender's costs and expenses, including, without limitation, receiver's fees and expenses and attorneys' fees and expenses, incurred pursuant to this Section plus interest thereon accruing at the Default Rate, and all such amounts shall be additional

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indebtedness secured hereby.

4.7 **Lender's Power of Enforcement.** If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term, covenant, condition or agreement of this Mortgage or any other right, (ii) to foreclose this Mortgage and to sell the Mortgaged Property as an entirety or otherwise, as Lender may determine, and (iii) to pursue any other remedy available to it, including, without limitation, any remedy available to it under any of the Loan Documents, all as Lender shall deem most effectual for such purposes. Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine. Lender may elect to pursue any one or more or all of the foregoing.

4.8 **Purchase by Lender.** Upon any foreclosure sale, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit to the purchase price.

4.9 **Fees and Expenses; Application of Proceeds of Sale.** In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness secured hereby in the decree for sale, to the extent permitted by law, all costs and expenses which may be paid or incurred by or on behalf of Lender or the holder of the Note for reasonable attorneys' fees and expenses, appraiser's fees and expenses, receiver's fees and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication cost and costs of procuring all abstracts of title, title searches and examinations, and similar data and assurances with respect to title as Lender or the holder of the Note may deem to be necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Mortgaged Property, or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the decree for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby in the decree for sale. In the event of a foreclosure sale of the Mortgaged Property, the proceeds of said sale shall be applied first to the expenses of such sale and of all proceedings in connection therewith, including, without limitation, attorneys' fees and expenses, then to insurance premiums, liens, assessments, taxes and charges, including, without limitation, utility charges, then to payment of the outstanding principal balance of the indebtedness secured hereby, then to the accrued interest on all of the foregoing, and, finally, the remainder, if any, shall be paid to Borrower.

4.10 **Waiver of Appraisalment, Valuation, Stay, Extension and Redemption Laws.** Borrower agrees, to the fullest extent permitted by law, that if an Event of Default occurs hereunder, neither Borrower nor anyone claiming through or under Borrower shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension, homestead or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Property hereby conveyed, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Borrower, for itself and all who may at any time claim by, through or under it, hereby waives and releases, to the fullest extent permitted by law, the benefit of all such laws and any and all rights to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

4.11 **Leases.** Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the sums secured hereby, or any deficiency

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remaining unpaid after the foreclosure sale of the Mortgaged Property.

4.12 **Discontinuance of Proceedings and Restoration of the Parties.** In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken.

4.13 **Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

4.14 **Suit to Protect the Mortgaged Property.** Upon the occurrence and during the continuance of an Event of Default hereunder, Lender shall have the power (i) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (ii) to preserve or protect its interest in the Mortgaged Property and in the rents, issues, profits, revenues, awards and other benefits arising therefrom; and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, regulation, rule, order or other requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, regulation, rule, order or other requirement would impair the security hereunder or be prejudicial to the interest of Lender, and all costs and expenses incurred by Lender in connection therewith (including, without limitation, attorneys' fees and expenses) shall be paid by Borrower to Lender on demand with interest at the Default Rate, and all such amounts shall be additional indebtedness secured hereby.

4.15 **Lender May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

ARTICLE 5

MISCELLANEOUS

5.1 **Time of the Essence.** Time is of the essence of this Mortgage.

5.2 **Severability.** Any provision of this Mortgage which is unenforceable or invalid or contrary to law, or the inclusion of which would adversely affect the validity, legality or enforcement of this Mortgage, shall be of no effect and, in such case, all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage the same as though any such invalid portion had never been included herein. Notwithstanding any of the foregoing to the contrary, if any provisions of this Mortgage or the application thereof are held invalid or unenforceable only as to particular persons or situations, the remainder of this Mortgage, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law.

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5.3 **Notices.** Any notice which either party hereto may be required or may desire to give hereunder shall be deemed to have been given if in writing and if delivered personally, or if mailed, postage prepaid, by United States registered or certified mail, return receipt requested, or if delivered by a responsible overnight courier, or if sent by facsimile, addressed:

if to Borrower: North Star Trust Company
500 West Madison St., Suite 3150
Chicago, Illinois 60661

Lifegate Realty II, LLC

with a copy to: Law Offices of Peter F. LoMonaco
1580 S. Milwaukee Avenue, Suite 220
Libertyville, IL 60048
Fax: (847) 247-8360

in the case of Lender to: U.S. Bank National Association
209 South LaSalle, Suite 410
Mail Code: MW-IL-RY4Q
Chicago, Illinois 60604
Attn: Mr. Emad Murrar
Fax: (312) 325-8852

and a copy to: Keith L. Moore, Esq.
806 Greenwood Street, Suite 201
Evanston, Illinois 60201
Fax: (847) 332-0103

or to such other address or addresses as the party to be given notice may have furnished in writing to the party seeking or desiring to give notice, as a place for the giving of notice, provided that no change in address shall be effective until 7 days after being given to the other party in the manner provided for above. Any notice given in accordance with the foregoing shall be deemed given when delivered personally or, if mailed, 3 business days after it shall have been deposited in the United States mails as aforesaid or, if sent by overnight courier, the business day following the date of delivery to such courier or, if sent by facsimile, when sent and receipt has been confirmed.

5.4 **Documentation.** All documents and other matters required by any of the provisions of this Mortgage to be submitted or furnished to Lender shall be in form and substance satisfactory to Lender.

5.5 **Additional Assurances.** Borrower agrees that, at any time or from time to time, upon the written request of Lender, Borrower will execute all such further documents and do all such other acts and things as Lender may request to effectuate the transaction herein contemplated.

5.6 **Choice of Law.** This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois. Nothing herein shall be deemed to limit any rights, powers or privileges which Lender may have pursuant to any law of the United States of America or any rule, regulation or order of any department or agency thereof and nothing herein shall be deemed to make unlawful any transaction or conduct by Lender which is lawful pursuant to, or which is permitted by, any of the foregoing.

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5.7 **No Third Party Beneficiary.** This Mortgage is made for the sole benefit of Borrower and Lender, and no other person shall be deemed to have any privity of contract hereunder nor any right to rely hereon to any extent or for any purpose whatsoever, nor shall any other person have any right of action of any kind hereon or be deemed to be a third party beneficiary hereunder.

5.8 **Interpretation.** All references herein to a party's best knowledge shall be deemed to mean the actual knowledge of an Executive Officer after commercially reasonable inquiry of the appropriate employees of Borrower and the Management Company. Unless specified to the contrary herein, all references herein to an exercise of discretion or judgment by Lender, to the making of a determination or designation by Lender, to the application of Lender's discretion or opinion, to the granting or withholding of Lender's consent or approval, to the consideration of whether a matter or thing is satisfactory or acceptable to Lender, or otherwise involving the decision making of Lender, shall be deemed to mean that Lender shall decide unilaterally using its sole and absolute discretion or judgment. The terms "herein," "hereof," "hereunder" and any other similar terms used herein shall be deemed to refer to this Agreement in its entirety. Any reference contained herein to attorneys' fees and expenses shall be deemed to be to reasonable fees and expenses.

5.9 **No Waiver**

(a) **General Waiver Provisions.** No waiver of any term, provision, condition, covenant or agreement herein contained shall be effective unless set forth in a writing signed by Lender, and any such waiver shall be effective only to the extent set forth in such writing. No failure by Lender to exercise or delay by Lender in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right or remedy provided by law. The rights and remedies provided in this Agreement are cumulative and not exclusive of any right or remedy provided by law or equity. No notice or demand on Borrower in any case shall, in itself, entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lender to any other or further action in any circumstances without notice or demand.

(b) **Specific Waiver Provisions.** If Lender (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein or in the Note or in any other document or instrument securing the Note; (iv) releases with or without consideration any of the Mortgaged Property from the lien of this Mortgage or any other security for the payment of the indebtedness secured hereby; (v) changes any of the terms, covenants, conditions or agreements of the Note or this Mortgage or in any other document or instrument securing the Note; (vi) consents to the filing of any map, plat or replat or condominium declaration affecting the Mortgaged Property; (vii) consents to the granting of any easement or other right affecting the Mortgaged Property; or (viii) makes or consents to any agreement subordinating the lien hereof; any such act or omission shall not release, discharge, modify, change or affect (except to the extent of the changes referred to in clause (v) above) the original liability under the Note, this Mortgage or any other obligation of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted upon the occurrence of an Event of Default then made or of any subsequent Event of Default, except to the extent expressly agreed to in writing by Lender, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage or the priority thereof be altered thereby, whether or not there are junior lienors and whether or not they consent to any of the foregoing.

(c) **Sale or Transfer.** In the event of the sale, assignment or other transfer, by operation of

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law or otherwise, of all or any part of this Mortgage, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings. The foregoing shall not limit the prohibition against transfer set forth in Section 1.19 hereof.

(d) **Partial Releases.** Without limitation of the foregoing, Lender hereby reserves the right to make partial release or releases of the Mortgaged Property, or of any other security held by Lender with respect to all or any part of the indebtedness secured hereby, without notice to, or the consent, approval or agreements of, other parties in interest, including junior lienors, which partial release or releases shall not impair in any manner the validity or priority of this Mortgage on the portion of said property not so released.

5.10 **Security Agreement.** This Mortgage shall be construed as a "Security Agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted in Illinois, with respect to any part of the Mortgaged Property which constitutes fixtures or personal property. Lender shall have the rights with respect to such fixtures and personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Lender by this Mortgage or any of the other Loan Documents.

5.11 **No Merger.** It being the desire and the intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereunder understood and agreed that, should Lender acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary interest is manifested by Lender as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, such that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

5.12 **Delivery of Summons, Etc.** If any action or proceeding shall be instituted which (i) is intended to evict Borrower or recover possession of the Mortgaged Property or any part thereof, or (ii) could result in a money judgment in excess of \$25,000 for failure to pay any obligation relating to the Mortgaged Property or this Mortgage (which judgment would not be covered and fully paid by applicable insurance), Borrower, to the extent required under the Loan Documents, shall immediately, upon service thereof on or by Borrower, deliver to Lender a true copy of each petition, summons, complaint, notice of motion, order to show cause and all other process, pleadings and papers, however designated, served in any such action or proceeding.

5.13 **Successors and Assigns.** This Mortgage shall be binding upon the Borrower and its legal representatives, successors and assigns.

5.14 **Future Advances.** It is acknowledged and agreed that this Mortgage secures not only the initial advances under the Note but also all future advances and all other additional indebtedness, whether direct, indirect, future, contingent or otherwise, connected with or arising out of the Loan Documents.

5.15 **Construction Loan; Future Advances.** The Note evidences a debt created by one or more disbursements made by Mortgagee to Borrower to refinance the Premises, as well as finance the cost of the construction upon the Premises in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-313(1)(c) of the Code. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan

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Agreement shall constitute an Event of Default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the Indebtedness Hereby Secured immediately due and payable, or complete the renovation of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness Hereby Secured and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage. This Mortgage secures future advances that may be made from time to time under the terms of the Loan Agreement. Each advance shall have, to the fullest extent allowed by law, the same priority as if made at the original date hereof, provided that such disbursement is made within twenty (20) years from the date hereof. All advances made under the terms of the Loan Agreement shall be deemed to be obligatory advances, including those made for the purpose of completing the renovations on the Premises and those made for the purpose of protecting Mortgagee's collateral or for other costs and expenses and purposes allowed under the terms of this Mortgage, the Loan Agreement or the other Loan Documents.

All advances, disbursements and expenditures (collectively "**Protective Advances**") made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Property; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due, installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due, installments of Taxes and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(f) advances of any amount required to make up a deficiency in deposits for installments of Taxes and insurance premiums as may be authorized by this Mortgage;

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(g) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act;

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Premises imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vii) costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be; (viii) pursuant to any lease or other agreement for occupancy of the Premises; and (ix) if this Mortgage is insured, payments of FHA or private mortgage insurance.

All Protective Advances shall be so much additional Indebtedness Hereby Secured, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after a default under the terms of the Loan Agreement.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(1) the determination of the amount of the Indebtedness Secured Hereby secured by this Mortgage at any time;

(2) the obligations found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional Indebtedness Hereby Secured becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(3) if the right of redemption has not been waived by this Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;

(4) the determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(5) the application of income in the hands of any receiver or lender in possession; and

(6) the computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

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The maximum amount of indebtedness secured by this Mortgage is **THREE MILLION DOLLARS (\$3,000,000.00)**, plus interest, plus any disbursements for the payment of taxes and insurance on the Premises, together with interest thereon, plus the amount of any other Protective Advances, together with interest thereon.

5.16 **Legal Tender of United States.** All payments hereunder shall be made in coin or currency which at the time of payment is legal tender in the United States of America for public and private debts.

5.17 **Definitions: Captions.** With respect to any reference in this Mortgage to any defined term, (i) if such defined term refers to a person, or a trust, corporation, partnership or other entity, then it shall also mean all heirs, personal representatives, successors and assigns of such person or entity, and (ii) if such defined term refers to a document, instrument or agreement, then it shall also include any replacement, extension or other modification thereof. Captions contained in this Mortgage in no way define, limit or extend the scope or intent of their respective provisions.

5.18 **WAIVER OF RIGHT TO JURY TRIAL.** BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT BORROWER MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, ANY OF THE OTHER LOAN DOCUMENTS OR ANY OTHER STATEMENTS OR ACTIONS OF LENDER. BORROWER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THE LOAN DOCUMENTS AND EACH OF THE OTHER LOAN DOCUMENTS IT EXECUTES, AND THAT THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF THE OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

5.19 **Collateral Protection Act.** Pursuant to the requirements of the Illinois Collateral Protection Act, Borrower is hereby notified as follows:

Unless Borrower provides with evidence of the insurance coverage required by this Mortgage or any of the other Loan Documents, Lender may purchase insurance at Borrower's expense to protect Lender's interests in the Mortgaged Property or any other collateral for the Obligations. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Mortgaged Property or any other collateral for the Obligations. Borrower may later cancel any insurance purchased by Lender but only after providing Lender with evidence that Borrower has obtained insurance as required by this Mortgage or any of the other Loan Documents. If Lender purchases insurance for the Mortgaged Property or any other collateral for the Obligations, Borrower will be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total outstanding Obligations. The costs of the insurance obtained by Lender may be more than the cost of insurance that Borrower may be able to obtain on its own.

5.20 **Limitation on Liability of Land Trust.** This instrument is executed by North Star Trust Company, not personally, but solely as Trustee as aforesaid, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such personal liability, if any, being expressly waived by all parties hereunder and by every person now or hereafter claiming any right hereunder. The Trustee has no knowledge of the factual

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matters herein contained and all agreements, conditions, representations, warranties, covenants and acknowledgments are made solely upon the direction or on behalf of the beneficiary or beneficiaries of the Trust, and no personal liability shall be asserted or be enforceable against Trustee, all such personal liability, if any, being expressly waived and released.

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IN WITNESS WHEREOF, the undersigned has caused these presents to be signed by its duly authorized representatives as of the date first above written.

BORROWER:

NORTH STAR TRUST COMPANY
as Trustee under Trust Number 01-3690
and not individually

By: *Martiza Castillo*
Name: **Martiza Castillo**
Title: **TRUST OFFICER**

Laurel D. Thorpe
Laurel D. Thorpe Trust Officer

LIFEGATE REALTY II,
an Illinois limited liability company

By: *Lee Olafsky*
Name:
Title: **MEMBER, MANAGER**

PROPERTY OF COOK COUNTY CLERK'S OFFICE

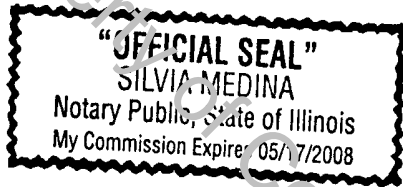
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STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Maritza Castillo AND the TRUST OFFICER of NORTH STAR TRUST COMPANY, the party to the foregoing instrument, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such president, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, on behalf of said limited liability company, for the uses and purposes therein set forth.

+ Laurel D. Thompson Trust Officer

GIVEN under my hand and Notarial Seal this 29th day of August, 2007.



(SEAL)

Silvia Medina

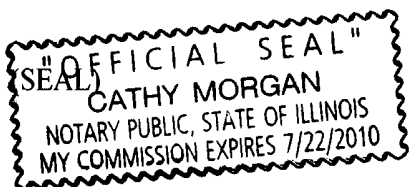
Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF DUPAGE)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Les Diefsky the Member of LIFEGATE REALTY II, LLC, the party to the foregoing instrument, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such president, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation, on behalf of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 29th day of August, 2007.



Cathy Morgan

Notary Public

My Commission Expires: 7/22/2010

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EXHIBIT A

Legal Description of the Property

PARCEL 1:

THAT PART OF LOT 2 IN THE FINAL PLAT OF MITSUWA RESUBDIVISION, BEING A RESUBDIVISION OF THE FINAL PLAT OF YAOHAN RESUBDIVISION, IN PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 26, 2001 AS DOCUMENT NUMBER 0011005775, THAT PART OF SAID LOT 2 BEING BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY LINE OF SAID LOT 2 (BEING ALSO THE EASTERLY LINE OF ARLINGTON HEIGHTS ROAD AS DEFINED BY SAID FINAL PLAT OF MITSUWA RESUBDIVISION AND HAVING A BEARING OF SOUTH 07 DEGREES, 41 MINUTES, 37 SECONDS WEST IN ACCORDANCE WITH SAID FINAL PLAT) WHICH POINT IS 209.28 FEET, AS MEASURED ALONG SAID WESTERLY LINE, SOUTH OF THE NORTHWESTERLY CORNER OF SAID LOT 2 AND RUNNING THENCE SOUTH 59 DEGREES, 02 MINUTES, 13 SECONDS EAST, (THIS COURSE AND ALL OF THE FOLLOWING COURSES AND DISTANCES BASED UPON SAID FINAL PLAT OF MITSUWA RESUBDIVISION) A DISTANCE OF 117.35 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTWARDLY AND EASTWARDLY ALONG A CURVED LINE, BEING AN ARC OF A CIRCLE, CONVEX TO SOUTHWEST, HAVING A RADIUS OF 85.00 FEET AND TANGENT TO THE LAST DESCRIBED LINE, AN ARC DISTANCE OF 44.29 FEET TO A POINT OF TANGENCY; THENCE SOUTH 88 DEGREES, 53 MINUTES, 27 SECONDS EAST, A DISTANCE OF 239.16 FEET TO AN INTERSECTION WITH THE MOST EASTERLY LINE OF SAID LOT 2, SAID POINT OF INTERSECTION BEING 5.28 FEET, AS MEASURED ALONG SAID MOST EASTERLY LINE, SOUTH OF THE ANGLE POINT IN SAID MOST EASTERLY LINE; THENCE NORTH 00 DEGREES, 00 MINUTES, 03 SECONDS EAST, ALONG SAID MOST EASTERLY LINE, A DISTANCE OF 5.28 FEET TO SAID ANGLE POINT; THENCE CONTINUING ALONG SAID EASTERLY LINE OF LOT 2, HAVING A BEARING OF NORTH 74 DEGREES, 01 MINUTES, 50 SECONDS WEST, A DISTANCE OF 13.95 FEET TO ANOTHER ANGLE POINT IN SAID EASTERLY LINE OF LOT 2; THENCE NORTH 00 DEGREES, 00 MINUTES, 03 SECONDS EAST, CONTINUING ALONG SAID EASTERLY LINE, A DISTANCE 267.14 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 2; THENCE NORTH 88 DEGREES, 47 MINUTES, 54 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 240.75 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE NORTH 88 DEGREES, 10 MINUTES, 00 SECONDS WEST, ALONG SAID NORTH LINE, A DISTANCE OF 99.76 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 2; THENCE SOUTH 07 DEGREES, 41 MINUTES, 37 SECONDS WEST ALONG SAID WESTERLY LINE OF SAID LOT 2, A DISTANCE OF 209.28 FEET TO THE POINT OF BEGINNING, IN THE VILLAGE OF ARLINGTON HEIGHTS, COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF LOT 2 OF THE MITSUWA RESUBDIVISION AS SHOWN ON THAT CERTAIN PLAT RECORDED IN THE COOK COUNTY RECORDER'S OFFICE ON 10-26-01, AS DOCUMENT NUMBER 0011005775 AND KNOWN AS THE FINAL PLAT OF MITSUWA RESUBDIVISION, BEING A RESUBDIVISION OF THE FINAL PLAT OF YAOHAN RESUBDIVISION LOCATED IN PART OF THE NORTHEAST QUARTER AND SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF ARLINGTON HEIGHTS, COOK COUNTY, ILLINOIS, SAID PART OF LOT 2 BEING BOUNDED AND DESCRIBED AS FOLLOWS:

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BEGINNING AT A POINT ON THE WESTERLY LINE OF SAID LOT 2 (BEING ALSO THE EASTERLY LINE OF ARLINGTON HEIGHTS ROAD AS DEFINED BY SAID FINAL PLAT OF MITSUWA RESUBDIVISION AND HAVING A BEARING OF SOUTH 07 DEGREES, 41 MINUTES, 37 SECONDS WEST IN ACCORDANCE WITH SAID FINAL PLAT) WHICH POINT IS 209.28 FEET, AS MEASURED ALONG SAID WESTERLY LINE, SOUTH OF THE NORTHWESTERLY CORNER OF SAID LOT 2 AND RUNNING THENCE SOUTH 59 DEGREES, 02 MINUTES, 13 SECONDS EAST, (THIS COURSE AND ALL OF THE FOLLOWING COURSES AND DISTANCE ARE BASED UPON SAID FINAL PLAT OF MITSUWA RESUBDIVISION) A DISTANCE OF 117.35 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTWARDLY AND EASTWARDLY ALONG A CURVED LINE, BEING AN ARC OR A CIRCLE, CONVEX TO SOUTHWEST, HAVING A RADIUS OF 85.00 FEET AND TANGENT TO THE LAST DESCRIBED LINE, AN ARC DISTANCE OF 44.29 FEET TO A POINT OF TANGENCY; THENCE SOUTH 88 DEGREES, 53 MINUTES, 27 SECONDS EAST, A DISTANCE OF 239.16 FEET TO AN INTERSECTION WITH THE MOST EASTERLY LINE OF SAID LOT 2, SAID POINT OF INTERSECTION BEING 5.28 FEET, AS MEASURED ALONG SAID MOST EASTERLY LINE, SOUTH OF THE ANGLE POINT IN SAID MOST EASTERLY LINE; THENCE SOUTH 00 DEGREES, 00 MINUTES, 03 SECONDS WEST, ALONG SAID MOST EASTERLY LINE, A DISTANCE OF 149.02 FEET TO THE SOUTHEASTERLY CORNER OF SAID LOT 2; THENCE NORTH 88 DEGREES, 14 MINUTES, 18 SECONDS WEST ALONG THE MOST SOUTHERLY LINE OF SAID LOT 2 A DISTANCE OF 41.16 FEET; THENCE NORTH 62 DEGREES, 48 MINUTES, 40 SECONDS WEST ALONG THE SOUTHWESTERLY LINE OF SAID LOT 2, BEING ALSO THE NORTHEASTERLY LINE OF LOT 2 IN THE VILLAGE AT LINCOLN SQUARE, RECORDED NOVEMBER 15, 1995 AS DOCUMENT 85283924) A DISTANCE OF 336.98 FEET TO AN ANGLE POINT IN SAID SOUTHWESTERLY LINE; THENCE NORTH 87 DEGREES, 44 MINUTES, 07 SECONDS WEST, ALONG SAID SOUTHWESTERLY LINE, A DISTANCE OF 55.22 FEET TO AN INTERSECTION WITH SAID WESTERLY LINE OF LOT 2; THENCE NORTH 07 DEGREES, 41 MINUTES, 37 SECONDS EAST ALONG SAID WESTERLY LINE, A DISTANCE OF 68.80 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY RECIPROCAL EASEMENT AND USE RESTRICTION AGREEMENT DATED OCTOBER 26, 2001 AND RECORDED OCTOBER 26, 2001 AS DOCUMENT 0011005781, BY AND BETWEEN YAH!, LLC, NORTH STAR TRUST COMPANY, AS TRUSTEE UNDER TRUST NUMBER 01-3690, LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER TRUST NUMBER 122143, ET AL, FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS, PARKING, SIGN, SEWER MAINS AND STORM WATER DETENTION OVER THOSE PARTS OF THE FOLLOWING DESCRIBED LAND AS SHOWN ON EXHIBIT'D' ATTACHED THERETO:

LOT 2 (EXCEPT THAT PART CONDEMNED FOR THE WIDENING OF ARLINGTON HEIGHTS ROAD IN CASE NO. 94L50253 BEING DESCRIBED AS BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2; THENCE ON AN ASSUMED BEARING OF NORTH 61 DEGREES 01 MINUTE 42 SECONDS WEST ALONG THE SOUTHERLY LINE OF SAID LOT 2, A DISTANCE OF 126.44 FEET; THENCE SOUTH 63 DEGREES 25 MINUTES 25 SECONDS EAST, 126.33 FEET TO THE EASTERLY LINE OF SAID LOT 2; THENCE SOUTH 26 DEGREES 32 MINUTES 14 SECONDS WEST ALONG THE SAID EASTERLY LINE OF LOT 2, A DISTANCE OF 5.28 FEET TO THE POINT OF BEGINNING) IN THE VILLAGE AT LINCOLN SQUARE, BEING A SUBDIVISION IN THE EAST 1/2 OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 15, 1985 AS DOCUMENT 85283924, IN COOK COUNTY, ILLINOIS.

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Address: 2201 Arlington Heights Road, Arlington Heights, Illinois

PIN: 08-16-202-029-0000 and 08-16-202-030-0000

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EXHIBIT B

INSURANCE REQUIREMENTS

I. PROPERTY INSURANCE

A. DURING CONSTRUCTION

An ORIGINAL Certificate of Insurance relating to a Builder's All-Risk, Completed Value, Non-Reporting Form Policy naming the borrowing entity as an insured, reflecting coverage of 100% of the replacement cost, and written by a carrier approved by Lender with a current Best's Insurance Guide Rating of at least A-IX (which is authorized to do business in the state in which the property is located) that includes:

1. Mortgagee Clause naming U.S. Bank National Association as Mortgagee with a 30-day notice to Lender in the event of cancellation, non-renewal or material change
2. Replacement Cost Endorsement
3. No Coinsurance Clause
4. Flood Insurance, if applicable
5. Collapse and Earthquake Coverage, if applicable
6. Vandalism and Malicious Mischief Coverage
7. Boiler and Machinery Coverage
8. Demolition, Increased Cost of Construction Coverage
9. No exclusion for terrorism

B. UPON COMPLETION

An ORIGINAL Certificate of Insurance relating to an All-Risk Hazard Insurance Policy naming the borrowing entity as an insured, reflecting coverage of 100% of the replacement cost, and written by a carrier approved by Lender with a current Best's Insurance Guide Rating of at least A-IX (which is authorized to do business in the state in which the property is located) that includes:

1. Lender's Loss Payable Endorsement with a Severability of Interest Clause with a 30-day notice to Lender in the event of cancellation, non-renewal or material change
2. Replacement Cost Endorsement
3. No Coinsurance Clause
4. Boiler and Machinery Coverage
5. Sprinkler Leakage Coverage

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6. Vandalism and Malicious Mischief Coverage
7. Flood Insurance, if applicable
8. Loss of Rents Insurance in an amount of not less than 100% of one year's Rental Value of the Project. "Rental Value" shall include:
 - a) The total projected gross rental income from tenant occupancy of the Project as set forth in the Budget,
 - b) The amount of all charges which are the legal obligation of tenants and which would otherwise be the obligation of Borrower, and
 - c) The fair rental value of any portion of the Project which is occupied by Borrower.
9. One year's business interruption insurance in an amount reasonably acceptable to Lender
10. Collapse and Earthquake Coverage, if applicable
11. Extra Expense Coverage
12. No exclusion for terrorism

II. LIABILITY INSURANCE

An ORIGINAL Certificate of General Comprehensive Liability Insurance naming the borrowing entity as an insured, and written by a carrier approved by Lender with a current Best's Insurance Guide Rating of at least A- IX (which is authorized to do business in the state in which the property is located) that includes:

1. \$2,000,000 property damage
2. \$3,000,000 bodily damage
3. \$5,000,000 aggregate limit
4. \$2,000,000 excess or umbrella liability coverage

Additional Insured Endorsement naming U.S. Bank National Association, as an additional insured with a 30-day notice to Lender in the event of cancellation, non-renewal or material change, and no exclusion for terrorism.

III. WORKER'S COMPENSATION

An ORIGINAL Certificate of Insurance relating to Worker's Compensation coverage in the statutory amount, naming any general contractor for any Improvements and written by a carrier reasonably approved by Lender.