

UNOFFICIAL COPY



PREPARED BY,
AND RECORD AND RETURN TO:

Alvin J. Helfgot
Deutsch, Levy & Engel, Chtd.
225 West Washington Street
Suite 1700
Chicago, IL 60606
(312) 346-1460

Doc#: 0801034089 Fee: \$74.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 01/10/2008 11:23 AM Pg: 1 of 26

ADDRESSES OF PROPERTIES:

Parcel 1:
442 W. 44th Street
Chicago, Illinois

Parcel 2:
559 W. 42nd Place
Chicago, Illinois

For Recorder's Use Only

PIN: Parcel 1: 20-04-308-035-0000
Parcel 2: 20-04-129-001-0000

GNT File # 05-0029

MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE, made as of December 21, 2007 by RADDATZ CONSTRUCTION, INC., an Illinois corporation ("Grantor"), and COMMUNITY FIRST BANK - CHICAGO ("Lender"), witnesseth:

WITNESSETH:

THAT WHEREAS, Lender made a construction loan in the maximum principal amount of \$1,450,000.00 to the Grantor (the "Loan"), which Loan is evidenced by that certain \$1,450,000.00 Promissory Note dated April 26, 2006 (the "Note").

The Loan was increased to \$1,480,000.00 and the maturity of the Loan was extended to October 26, 2007 pursuant to a Change in Terms Agreement dated August 10, 2007.

Repayment of the Loan is secured by the property commonly known as 647-649 W. 43rd Street, Chicago, Illinois, pursuant to that certain Construction Mortgage and that certain Assignment of Rents, each dated April 26, 2006.

The Borrower has requested and the Lender has agreed to increase the Loan to \$1,565,000.00.

LC

UNOFFICIAL COPY

As a condition to increasing the Loan, the Lender has required additional collateral to secure repayment of the Loan. Grantor has offered to provide as additional collateral to secure repayment of the Loan, the properties commonly known as 442 W. 44th Street, Chicago Illinois and 559 W. 42nd Place, Chicago, Illinois (individually each is a "Property" and collectively, they are the "Properties").

The parties hereto desire to enter into this Modification Agreement for the purpose of modifying the Mortgage and Assignment to provide that repayment of the Loan, as modified, is secured by the Property.

NOW THEREFORE, the Grantor to secure the payment of the Indebtedness (as defined below), and all extensions, modifications, and renewals thereof, including any future advances which shall have the same priority as any advances made on the date hereof, together with interest and charges as therein provided, and the performance of the covenants and agreements herein contained, by the Grantor to be performed, and also in consideration of other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, do by these presents Mortgage and Warrant to the Lender, its successors and assigns, the following described Real Estate in the County of Cook and the State of Illinois, to wit:

See attached Exhibit "A"

which, with the property hereinafter described, is referred to herein as the "Premises", and owned by Grantor.

TOGETHER with all rights and easements now and/or hereafter created which are appurtenant to the estates and real property described in Exhibit A, including but not limited to those rights and easements more fully identified thereon, if any; and

TOGETHER with all and singular right, title and interest, including any after-acquired title or reversion, in and to any and all strips and gores of land adjacent to and used in connection with the Premises and in and to all other ways, easements, streets, alleys, passages, water, water courses, riparian rights, rights, liberties and privileges thereof, if any, and in any way appertaining thereto; and

TOGETHER with all rents, issues, proceeds, income, royalties, revenue, profits, "accounts," escrows, letter-of-credit rights (each as defined in the Code hereinafter defined) accruing and to accrue from said Premises (which are pledged primarily and on a parity with the real estate and not secondarily); and

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the property subject to this Mortgage, immediately upon the delivery thereof to the said Premises, and all fixtures and articles of personal property now or hereafter owned by Grantor and attached to, or

UNOFFICIAL COPY

located on, and used in the management or operation of the Premises, including but not limited to all furniture, furnishings, apparatus, machinery, motors, elevators, fittings, radiators, awnings, shades, blinds, office equipment, carpeting and other furnishings, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all renewals or replacements thereof, proceeds therefrom, or articles in substitution therefor, whether or not the same are or shall be attached to said building or buildings in any manner and all proceeds of any of the foregoing; it being mutually agreed that all the aforesaid property owned by the Grantor and placed by it on the Premises shall, so far as permitted by law, be deemed to be fixtures and a part of the realty, security for the said Indebtedness and covered by this Mortgage, and as to the balance of the property aforesaid to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as that term is used in the Uniform Commercial Code of the State of Illinois in effect from time to time ("Code")), this Mortgage is hereby deemed to be as well a Security Agreement for the purpose of creating hereby a security interest in said goods and other property as collateral in Lender as secured party and Grantor as debtor, all in accordance with the Code for the purpose of securing the said Indebtedness, for the benefit of the Lender; and

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the property subject to this Mortgage for any taking by eminent domain, either permanent or temporary, of all or any part of the said Premises or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, which said awards and compensation are hereby assigned to Lender; and

TOGETHER with all of Grantor's interest in all present and future leases, lettings and licenses of the land, improvements and personalty including, without limitation, cash or securities deposited thereunder to secure performance by Grantor's lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the expiration of such terms, as well as in and to all judgments, awards of damages and other proceeds relating to rent, tenancies, subtenancies and occupancies of the land, improvements and personalty, and in and to present and future remainders, rents, issues and profits thereof; and

TOGETHER with all of Grantor's right, title and interest in and to all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by Grantor insuring the Premises and in and to any and all proceeds payable under any one or more of said policies; and

TOGETHER with all of Grantor's interests in "general intangibles" including "payment intangibles" and "software" (each as defined in the Code) now owned or hereafter acquired and related to the Premises, including, without limitation, all of Grantor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Grantor is or may become a party and which relate to the Premises; (ii) all obligations and

UNOFFICIAL COPY

indebtedness owed to Grantor thereunder; (iii) all intellectual property related to the Premises; and (iv) all chose in action and causes of action relating to the Premises;

TOGETHER with all of Grantor's accounts now owned or hereafter created or acquired as they relate to the Premises, including, without limitation, all of the following now owned or hereafter created or acquired by Grantor: (i) accounts, contract rights, health-care-insurance receivables, book debts, Notes, drafts, and other obligations or indebtedness owing to the Grantor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Grantor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Grantor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Grantor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Grantor); (v) "securities", "investment property," "financial assets," and "securities entitlements" (each as defined in the Code), and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Grantor with respect to the Premises;

TOGETHER with all of Grantor's interest in all proceeds of any of the foregoing and any renewals, replacements, substitutions, extensions, improvements, betterments, appurtenances and additions to the improvements or personalty made or acquired by Grantor after the date hereof; and all licenses, permits and other like rights or interests now or hereafter held or acquired by Grantor and necessary or useful for the operation of the Premises.

It is also agreed that if any of the property herein mortgaged is of a nature so that a security interest therein can be perfected under the Code, this instrument shall constitute a Security Agreement, and Grantor authorizes Lender to execute, deliver and file or refile any financing statement, continuation statement, or other instruments Lender may require from time to time to perfect or renew such security interest under the Code. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Premises and is to be filed for record in the Office of the County Recorder where the Premises (including said fixtures) is situated.

The property hereinabove mentioned is hereinafter referred to as the "Real Property" to the extent that the same is realty, and as the "Collateral" to the extent that the same is personalty. The Real Property and the Collateral are collectively referred to herein as the "Premises", except where Real Property and Collateral are specifically referred to.

TO HAVE AND TO HOLD the above described Premises with the appurtenances and fixtures thereto appertaining or belonging unto the Lender, its successors and assigns, forever, for the purposes herein set forth and for the security of the said Indebtedness herein described, and interest thereon and free from all rights and benefits under and by

UNOFFICIAL COPY

virtue of the Homestead Exemption Laws of the State of Illinois, which said rights and benefits the said Grantor does hereby expressly release and waive.

The Grantor covenants with the Lender, that (i) the Grantor is the absolute owner in fee simple of the Premises and is well seized of the Premises and has a good and indefeasible estate in fee simple in the real property described in Exhibit A and has good right to bargain, sell and convey the same in manner and form as above written; (ii) the Grantor shall forever warrant and defend the Premises with the appurtenances thereunto belonging to the said Lender, its successors and assigns, forever against all lawful claims, and demands whatsoever; (iii) the Premises is free and clear of all liens and encumbrances except those liens and encumbrances in favor of Lender and as otherwise accepted by Lender as set forth in attached Exhibit "B" (the "Permitted Encumbrances"); (iv) the Premises and the intended use thereof by Grantor comply in all material respects with all applicable restrictive covenants, zoning ordinances and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other applicable laws, rules and regulations; and (v) the Grantor will execute, acknowledge and deliver all necessary assurances unto the Lender of the title to all and singular the Premises hereby conveyed and intended so to be, or which Grantor may be or shall become hereafter bound so to do.

The conditions of this Mortgage are such that whereas the Grantor has executed and delivered this Mortgage for the purpose of securing the performance of the covenants and agreements contained herein and in any agreement made with respect to any loan secured hereby, and to secure the payment when due, but not necessarily in the order set forth, of the following:

(a) any and all sums due or owing under the Note, as modified from time to time, including by that certain Amendment to Promissory Note of even date herewith;

(b) all sums expended or advanced by Lender pursuant to any term or provision of the Note, this Mortgage, the Construction Loan Agreement dated April 26, 2007, as amended or modified from time to time (the "Loan Agreement"), or any other instrument evidencing or securing the Indebtedness;

(c) all advances or disbursements of Lender with respect to the Premises for the payment of taxes, levies, assessments, insurance, insurance premiums or costs incurred in the protection of the Premises;

(all of such debts and obligations being collectively referred to herein as the "Indebtedness"), and as security for the payment of the Indebtedness, Grantor has granted to Lender hereunder a lien against the Premises. In accordance with the provisions of the Note, the whole of the principal sum thereof then unpaid may be declared and become due and payable upon the occurrence of an Event of Default hereunder, or thereunder. The maximum Indebtedness secured hereby, other than costs and expenses incurred in connection with actions to collect the Indebtedness,

UNOFFICIAL COPY

whether pursuant to a foreclosure of this Mortgage or otherwise, shall not exceed twice the principal amount of the Loan.

The Grantor and its successors and assigns, hereby covenants and agrees with the Lender, its successors and assigns, as follows:

1. Grantor shall pay or cause to be paid, before any penalty, interest or costs may be imposed, all real estate taxes, assessments, levies, water charges, sewer service charges, charges for public utilities and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time during the term of this Mortgage may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or become a lien on, the Premises or any part thereof or any appurtenance thereto (all such taxes, assessments, levies, water and sewer rents and charges, charges for public utilities, and other governmental charges being hereinafter referred to collectively as "Taxes", and any of the same being hereinafter referred to singularly as a "Tax"). Grantor shall however, have the right to contest in good faith any of such Taxes and assessments upon posting with Lender sufficient security, satisfactory to Lender, for the payment thereof, with interest, costs and penalties, under written agreement conditioning payment of such contested Taxes and assessments upon determination of such contest, or prior thereto if the continuance of such contest shall put the Premises in jeopardy of a tax sale or forfeiture. 2. Other than as stated in Paragraph 1 above, if at any time the United States or the State of Illinois or any of their subdivisions having jurisdiction shall levy, assess, or charge any tax, assessment or imposition upon this Mortgage or the credit or indebtedness secured hereby or the interest of Lender in the Premises or upon Lender by reason of or as holder of any of the foregoing, then the Indebtedness and the accrued interest thereon become due and payable at the election of the Lender ninety (90) days after the mailing of notice of such election to Grantor; provided however, said election and the right to elect shall be unavailing, if Grantor lawfully may pay for such assessments or tax including interest and penalties thereon to or for Lender and elects to pay and does, in fact, pay when payable, for all such assessments or such Tax, as the case may be, including interest and penalties thereon. In the event of default hereunder or in the event the Grantor does not pay the real estate taxes in a timely manner, Lender shall have the right, but not the obligation, to require the Grantor to establish a tax escrow with the Lender for the prompt payment of the real estate taxes.

3. Grantor shall keep the Premises free and clear from all mechanics liens and statutory liens of every kind other than Taxes and permitted assessments which may be a lien but not yet due and payable, and Grantor will not voluntarily create or permit to be created or filed against its interest in the Premises or suffer to exist, any mortgage lien or other lien or liens inferior or superior to the lien of this Mortgage (other than the lien or liens for real estate taxes and assessments not yet due and payable) or if filed, Grantor will have the same discharged of record either by payment, the bonding thereof or other lawful means for discharging any such lien, within sixty (60) days after notice of filing; provided, however, that Grantor shall have the right to contest in good faith any such mechanics' lien or statutory lien upon posting sufficient security, satisfactory to Lender, for the payment thereof, with interest, costs and penalties, under written agreement conditioning payment of such contested mechanics' lien or statutory lien upon determination of such contest, or

UNOFFICIAL COPY

prior thereto if the continuance of such contest or litigation shall put the Premises in jeopardy of foreclosure sale or forfeiture for such lien.

4. Grantor agrees that it shall not, other than as set forth in Exhibit B which is attached hereto and made a part hereof, (i) sell, encumber (including without limitation by means of subordinate mortgage or lien upon the Premises or any part thereof or interest therein), assign, lease (other than leases in the ordinary course of business) or dispose of the Premises or any part thereof or interest thereon, or (ii) enter into any contract or agreement to do anything prohibited by clause (i) of this subsection, expressly including without limitation any land contract, lease/purchase, lease/option or option agreement without, in each such case, first obtaining the written consent of Lender, which consent shall not be unreasonably withheld or delayed. Except as permitted above, any sale or lease not actually approved by Lender, shall, at the option of Lender, be null and void and shall not grant any rights in the Premises to the tenant named therein. In the event title to the Premises, or any part thereof or interest therein, becomes vested in a person or persons not approved by Lender, the Indebtedness secured hereby shall become due and payable in full at Lender's option. In the event ownership of the Premises, or any part thereof or interest therein, becomes vested in such person or persons other than the parties hereto, the Lender may, without notice to the Grantor, deal with such successor or successors in interest with reference to this Mortgage, and the said obligations in the same manner as with Grantor, without in any way releasing, discharging or otherwise affecting any liability hereunder, or the Indebtedness hereby secured. Any lease or sublease of the Premises or any part thereof or interest therein shall provide for the attornment by the subtenant thereof and of all subtenants or estates thereunder to the owner of the Premises after foreclosure or after a deed in lieu of foreclosure in the event the sublease would otherwise have been terminated because of the foreclosure.

5. Grantor covenants and represents that other than as previously discussed in writing to Lender:

(a) Grantor is not now in default under any instruments or obligations relating to the Premises and no party has asserted any claim of default against Grantor relating to the Premises.

(b) The execution and performance of this Mortgage and the consummation of the transactions hereby contemplated will not result in any breach of, or constitute a default under, any mortgage, lease, loan, or credit agreement, trust indenture, or other instrument to which Grantor is a party or by which it may be bound or affected; nor do any such instruments impose or contemplate any obligations which are or may be inconsistent with any other obligations imposed on Grantor under any other instrument(s) heretofore or hereafter delivered by Grantor.

(c) There are no actions, suits or proceedings (including, without limitation, any condemnation or bankruptcy proceedings) pending or, to the best of Grantor's knowledge, threatened against or affecting Grantor or the Premises, or which may adversely affect the validity or enforceability of this Mortgage, at law or in equity, or before or by any

UNOFFICIAL COPY

governmental authority and that Grantor is not in default with respect to any writ, injunction, decree or demand of any court or any governmental authority affecting the Premises.

6. (a) Grantor shall keep the improvements on the Premises insured by a policy or policies of All Risk Replacement Cost Insurance (with Agreed Amount Endorsement) against loss or damage by, or abatement of rental income resulting from fire, flood and such other hazards, casualties and contingencies (including, but not limited to, extended coverage, vandalism and malicious mischief), in an amount reasonably satisfactory to the Lender; however, such amount will be at least equal to the amount necessary so that none of the parties hereto shall be deemed a co-insurer of a loss, and for such length of time as shall be required by the Lender, for the benefit of said Lender, as its interests may appear, and shall place and keep the original policy of such insurance with said Lender or, at Lender's election, a copy thereof and an original certificate thereof. Grantor will also maintain Flood Insurance, if required, pursuant to a designation of the area in which the Premises are located as flood prone or a flood risk area, as defined by the Flood Disaster Protection Act of 1973, as amended, in an amount satisfactory to the Lender, however, such amount will be at least equal to the amount necessary so that none of the parties hereto shall be deemed a co-insurer of a loss, as well as comply with any additional requirements of the National Flood Insurance Program as set forth in said Act.

(b) Grantor shall maintain for the mutual benefit of Lender and Grantor general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Premises or any elevators therein and on, in or about the adjoining streets and passageways, such insurance to afford protection to the limits of not less than those then customarily carried with respect to premises similar in construction, general location, use and occupancy to the Premises, but in no event less than a single limit amount of \$1,000,000.00. All of such insurance shall be primary and non-contributing with any insurance which may be carried by Lender.

(c) All such insurance policies shall be paid in accordance with the terms of the policies currently in force. In the event such coverage is provided as part of a blanket policy, then in such event the amount of the coverage specifically applicable to the Premises shall be stated on the face of the policy. All insurance policies are to be held by and, to the extent of its interest, are to be for the benefit of and first payable in case of loss to the Lender as first Lender without contribution, and the Grantor shall deliver to the Lender a new policy of replacement insurance for any expiring policy, with evidence of advance premium payments, to Lender at its principal office in Chicago, Illinois, at least fifteen (15) days before the date of such expiration or at such other place or to such other party as the Lender may, from time to time, designate in writing.

(d) All amounts recoverable under any policy of casualty insurance are hereby assigned to the Lender. Lender is authorized and empowered, at its option to adjust or compromise any loss covered by any insurance policies on the Premises, subject to Grantor's consent which shall not be unreasonably withheld or delayed, and to collect and receive the proceeds from any such policy or policies. After deducting from said proceeds any reasonable expenses incurred by it in the collection or handling thereof, and provided

UNOFFICIAL COPY

that the Note has not matured or no Event of Default (as hereinafter defined) then exists, Grantor shall be allowed to use the insurance proceeds to restore and rebuild the Premises. To the extent the proceeds are not used to restore or rebuild the Premises, or if the Note has matured or an Event of Default then exists, the insurance proceeds shall be applied to the Indebtedness.

The Lender is hereby irrevocably appointed by the Grantor as attorney-in-fact for the Grantor to assign any policy to itself or its nominees in the event of the foreclosure of this Mortgage. This power as attorney-in-fact granted hereunder shall be a power coupled with an interest and cannot be revoked by Grantor. In the event of foreclosure of this Mortgage, or other transfer of title in lieu of foreclosure of the Premises, all right, title and interest of the Grantor in and to any insurance policies then in force, shall pass to the purchaser or grantee thereof.

7. Grantor will give Lender immediate notice of the actual or threatened commencement of any proceedings under eminent domain affecting all or any part of the Premises or any easement therein or appurtenance hereof, including severance and consequential damage and change in grade of streets, and will deliver to Lender copies of any and all papers served in connection with any such proceedings. Grantor agrees that all awards hereafter made by any public or quasi-public authority to the present and all subsequent owners of the Premises by virtue of an exercise of the right of eminent domain by such authority, including any award for taking of title, possession or right of access to a public way, or for any change of grade or street's affecting said Premises, are hereby assigned to the Lender and Lender at its option is hereby authorized, directed and empowered to settle or compromise, and to collect and receive the proceeds of any such award and awards from the authorities making the same and to give proper receipts therefore. After deducting from such proceeds any reasonable expenses incurred by Lender in the collection or handling thereof, and provided that the Note has not matured or no Event of Default then exists, and subject to Paragraph 8 below, Grantor shall be allowed to use such award or awards to restore and rebuild the Premises. To the extent the award or awards are not used to restore or rebuild the Premises, or if the Note has matured or an Event of Default then exists, the award or awards shall be applied to the Indebtedness.

The Grantor hereby covenants and agrees to and with the Lender upon request of the Lender to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning all such awards to the Lender, free and clear and discharged of any and all encumbrances of any kind or nature whatsoever except as above stated. Notwithstanding any taking under the power of eminent domain, alteration of the grade of any street, or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, Grantor shall continue to pay the Indebtedness and any reduction in the principal sum resulting from the application by the Lender of such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such receipt.

8. In the event that insurance proceeds or the proceeds of an eminent domain proceeding are to be applied to pay for the cost of rebuilding or restoration of the building

UNOFFICIAL COPY

and improvements on the Premises, such funds will be placed in an account at Lender and made available for disbursement by Lender.

In the event such proceeds are applied toward restoration or rebuilding, the buildings and improvements shall be so restored or rebuilt so that the Premises shall be of at least equal value and the buildings and improvement therein shall be of substantially the same character as prior to such damage or destruction. Such proceeds shall be made available, from time to time, upon the Lender being furnished with satisfactory evidence of the estimated cost of completion thereof and with all necessary architect's certificates, waivers of lien, contractor's sworn statements and other evidence of cost and of payments. All plans and specifications for such rebuilding or restoration shall be presented to and approved by Lender prior to the commencement of any such repair or rebuilding. At all times the undisbursed balance of said proceeds remaining in the hands of the Lender shall be at least sufficient to pay for the cost of completion of the work free and clear of liens.

9. Grantor hereby agrees that in the event Grantor shall fail to comply with any or all of the respective covenants, agreements, conditions and stipulations herein set forth, then the Lender, shall be and hereby is authorized and empowered at its option, but without legal obligation to do so, to pay, perform the same without waiver of any other remedy, any unpaid obligation secured by any lien on the premises, water rents, sewer rental charges and other governmental charges and rates and all or any part of the unpaid taxes, levies, assessments and reassessments; to effect insurance on the Premises in the amounts above named; and, subject to the rights of tenants, to enter or have its agents enter upon the Premises whenever necessary for the purpose of inspecting the premises and curing any default hereunder. The Grantor agrees that the Lender shall thereupon have a claim against the Grantor for all sums paid by Lender for such water charges, sewer service charges and other governmental or municipal charges and rates, taxes, levies, assessments and re-assessments, insurance and defaults cured, together with a lien upon the Premises for the sum so paid plus interest at the Default Rate.

10. Grantor shall not commit waste upon the Premises or suffer waste to be committed thereon. Grantor will keep the Premises in good order and repair and in material compliance with any law, regulation, ordinance, or contract applicable to the use and occupation of the Premises, and from time to time make all needful and proper replacements so that said buildings, fixtures, machinery and appurtenances will at all times, be in good condition, fit and proper for the respective purposes for which they were erected or installed. Grantor shall observe and comply with all conditions and requirements necessary to maintain any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Premises or which have been granted to or contracted for by Grantor in connection with any existing or presently contemplated use of the Premises and shall obtain and keep in full force and effect all required governmental and municipal approvals as may be required from time to time to comply with all environmental, ecological and other requirements and with any and all conditions attached to the insurance relating to the Premises and maintenance thereof, with all work that is outside the usual and ordinary course of Grantor's business being subject to prior

UNOFFICIAL COPY

written approval by Lender which Lender shall not unreasonably withhold. Grantor shall permit Lender or its agents, at all reasonable times, subject to the rights of tenants, to enter upon and inspect the Premises.

11. Grantor covenants and agrees that it will keep and maintain books and records of account, or cause books and records of account to be kept and maintained in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of Lender and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with a cash basis or other recognized comprehensive basis of accounting consistently applied.

12. (a) In the event an action shall be instituted to foreclose this Mortgage, or prior to foreclosure but after an Event of Default (as hereinafter defined), Lender shall be entitled to the appointment of a receiver of the rents, issues and profits of the Premises as a matter of right and without notice, with power to collect the rents, issues and profits of the Premises due and becoming due during the period of default and/or the pendency of such foreclosure suit to and including the date of confirmation of the sale under such foreclosure and during the redemption period, if any, after such confirmation, such rents and profits being hereby expressly assigned and pledged as security for the payment of the Indebtedness secured by this Mortgage without regard to the value of the Premises or the solvency of any person or persons liable for the payment of the Indebtedness and regardless of whether Lender has an adequate remedy at law. The Grantor for itself and for any subsequent owner hereby waives any and all defenses to the application for a receiver as above provided and hereby specifically consents to such appointment but nothing herein contained is to be construed to deprive the holder of the Mortgage of any other right or remedy or privilege it may now have under the law to have a receiver appointed. The provision for the appointment of a receiver and the assignment of such rents, issues and profits is made an express condition upon which the Indebtedness hereby secured is made. In such event, the court shall at once on application of the Lender or its attorney in such action, after notice, appoint a receiver to take immediate possession of, manage and control the Premises, for the benefit of the holder or holders of the Indebtedness and of any other parties in interest, with power to collect the rents and profits of said Premises during the pendency of such action, and to apply the same toward the payment of the several obligations herein mentioned and described, notwithstanding that the same or any part thereof is occupied by Grantor or any other person. The rights and remedies herein provided for shall be deemed to be cumulative and in addition to and not in limitation of, those provided by law and if there be no receiver so appointed, Lender itself may proceed to collect the rents, issues and profits from the Premises. From any said rents, issues and profits collected by the receiver or by the Lender prior to a foreclosure sale, there shall be deducted the cost of collection thereof and the expenses of operation of the Premises, including but not limited to real estate commissions, receiver's fee and the reasonable fees of its attorney, if any, and Lender's reasonable attorneys' fees, if permitted by law, and court costs; the remainder shall be applied against the Indebtedness hereby secured in such order and in such manner as Lender may elect. In

UNOFFICIAL COPY

the event the rental and other income is not adequate to pay all tax and other expenses of operation, the Lender may, but is not obligated to, advance to any receiver the amounts necessary to operate, maintain and repair, if necessary, the Premises and any such amounts so advanced, together with interest thereon at the Default Rate, shall be secured by this Mortgage and have the same priority of collection as the principal Indebtedness secured hereby.

(b) During the continuance of any Event of Default, which remains uncured after the expiration of any applicable cure period, Grantor shall forthwith upon demand of Lender surrender to Lender the possession of the Premises, and Lender shall be entitled to take actual possession of the Premises or any part thereof personally or by its agents or attorneys, as for condition broken, and Lender in its discretion may enter upon and take and maintain possession of all or any part of the Premises together with all documents, books, records, papers and accounts of the Grantor or the then owner of the Premises relating thereto, and may under the powers herein granted:

(i) perform such construction, make all necessary and proper maintenance, repairs, renewals, replacements, additions and improvements thereto and thereon, and purchase or otherwise acquire additional fixtures and personal property as may be necessary or appropriate;

(ii) insure or keep the Premises insured;

(iii) hold, operate, manage or control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion it deems proper or necessary to enforce the payment or security of the income, rents, issues and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rents, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Grantor;

(iv) enter into agreements with others to exercise the powers herein granted Lender, all as Lender from time to time may determine; and Lender may collect and receive all the proceeds from the rents, income and other benefits of the Premises, including those past due as well as those accruing thereafter;

(v) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Grantor to cancel the same;

(vi) extend or modify any then existing leases and make new leases, upon commercially reasonable terms and conditions, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such

UNOFFICIAL COPY

provisions to be contained therein, shall be binding upon Grantor and all persons whose interests in the Premises are subject to the lien hereof and shall be binding also upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser;

(vii) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as it may deem judicious, insure and reinsure the same and all risks incidental to Lender's possession, operation and management thereof, and receive all income, rents, issues and profits.

Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any lease, and the Grantor shall and does hereby agree to indemnify and to hold Lender harmless of and from all liability, loss or damage which it might incur under said leases or under or by reason of the assignment thereof, and or and from any and all claims or demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases except, to the extent any such liability, loss, damage, claim or demand is caused by the gross negligence or willful misconduct of Lender. Should Lender incur any such liability, loss or damage under any of said leases, or under or by reason of the assignment thereof, or in the defense of any claims or demands, unless the claims or demands are the result of Lender's gross negligence or willful misconduct, the amount thereof, including costs, expenses and reasonable attorneys' fees, including attorneys' fees on appeal, shall be secured hereby and Grantor shall reimburse Lender therefor immediately upon demand.

(c) Lender in the exercise of the rights and powers hereinabove conferred upon it shall have the full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Lender may determine:

(i) to the payment of the reasonable expenses of operating the Premises, including cost of management and leasing thereof (which shall include reasonable compensation to Lender's agent or agents if management is delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), establishing claims for damages, if any, and premiums on insurance as hereinabove authorized;

(ii) to the payment of Taxes and special assessments now due or which may hereafter become due on the Premises;

(iii) to the payment of all reasonable repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Premises and of placing the Premises in such condition as will in the judgment of Lender make it readily rentable or saleable;

UNOFFICIAL COPY

(iv) to the payment of any Indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

13. No sale of the Premises, no forbearance on the part of Lender, no extension of the time for the payment of the Indebtedness or any change in the terms thereof consented to by Lender shall in any way whatsoever operate to release, discharge, modify, change or affect the liability of Grantor herein, either in whole or in part. No waiver by Lender of any breach of any covenant of Grantor herein contained shall be construed as a waiver of any subsequent breach of the same or any other covenant herein contained. The failure of the Lender to exercise the option for acceleration of maturity and/or foreclosure following any default as aforesaid or to exercise any other option granted to the Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments hereunder shall not constitute a waiver of any such default, nor extend or affect the grace period, if any, but such option shall remain continuously in force with respect to any unremedied or uncured default. Acceleration of maturity once claimed hereunder by Lender may, at the option of Lender, be rescinded by written acknowledgment to that effect by the Lender, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity, or extend or affect the grace period, if any. Lender may pursue its rights without first exhausting its rights hereunder and all rights, powers and remedies conferred upon the Lender herein are in addition to each and every right which the Lender may have hereunder at law or equity, and may be enforced concurrently therewith.

14. If any action or proceeding be commenced, to which action or proceeding the Lender is made a party by reason of the execution of this Mortgage or the Indebtedness or in which it becomes necessary to defend or uphold the lien of this Mortgage, or the priority thereof or possession of the Premises, or otherwise to perfect the security herein under, or in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Indebtedness, this Mortgage, or the interest created herein, or the Premises, including, but not limited to, bankruptcy, probate and administration proceedings, foreclosure of this Mortgage or any condemnation action involving the Premises, other than actions or proceedings that result from Lender's gross negligence or willful misconduct, all sums paid by the Lender, including reasonable attorneys' fees, for the expense of any litigation to prosecute and defend the rights and liens created hereby shall be paid by the Grantor together with interest thereon from the date of payment at the rate of interest after Default, as set forth in the Note (the "Default Rate"). Any such sum and the interest thereon shall be immediately due and payable and be secured hereby, having the benefit of the lien hereby created, as a part hereof and its priority.

15. This Mortgage is hereby deemed to be a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of Grantor or held by the Lender (whether deposited by or on behalf of Grantor or anyone else) pursuant to any of the provisions of this Mortgage or the "Related Documents" (as such term is defined in the Loan Agreement), and (b) with respect to any personal property

UNOFFICIAL COPY

included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "supporting obligations" (as defined in the Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Lender, and the Collateral and all of Grantor's right, title and interest therein are hereby assigned to Lender, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto. Grantor by this Mortgage.

(a) grants to Lender a security interest in all of Grantor's right, title and interest in and to all Collateral, including, but not limited to, the items referred to above, together with all additions, accessions and substitutions and all similar property hereafter acquired and used or obtained for use on, or in connection with the Properties. The proceeds of the Collateral are intended to be secured hereby; however, such intent shall never constitute an expressed or implied consent on the part of the Lender to the sale of any or all Collateral;

(b) agrees that the security interest hereby granted by this Mortgage shall secure the payment of the Indebtedness;

(c) unless otherwise provided in the Related Documents, agrees not to sell, convey, mortgage or grant a security interest in, or otherwise dispose of (other than obsolete equipment) or encumber, any of the Collateral or any of the Grantor's right, title or interest therein;

(d) agrees that if any of Grantor's rights in the Collateral are voluntarily or involuntarily transferred, whether by sale, creation of a security interest, attachment, levy, garnishment or other judicial process, without the written consent of Lender, such transfer shall constitute an Event of Default by the Grantor under the terms of this Mortgage, however nothing stated herein shall preclude the right of the Grantor hereunder to substitute Collateral of approximately equal value in the ordinary course of operation of the Premises;

(e) agrees that upon or after the occurrence of any Event of Default hereunder or under the Note, the Loan Agreement or any of the Related Documents, which is not remedied within any applicable grace periods, Lender may, with or without notice to Grantor, exercise its rights to declare all Indebtedness secured by the security interest created hereby immediately due and payable, in which case Lender shall have all rights and remedies granted by law and more particularly the Uniform Commercial Code, including, but not limited to, the right to take possession of the Collateral, and for this

UNOFFICIAL COPY

purpose may enter upon any Premises on which any or all of the Collateral is situated without being deemed guilty of trespass and without liability for damages thereby occasioned, and take possession of and operate said Collateral or remove it therefrom. Lender shall have the further right to take any action it deems appropriate, necessary or desirable, at its option and in its discretion, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition, and to sell at public or private sales or otherwise dispose of, lease or utilize the Collateral and any part thereof in any manner authorized or permitted by law and to apply the proceeds thereof toward payment of any costs and expenses including reasonable attorneys' fees and legal expenses, to the extent permitted by law, incurred by Lender and toward payment of Grantor's obligations under the Note and all other Indebtedness described in this Mortgage, in such order and manner as Lender may elect. Any notice given by Lender depositing such notice for mailing, postage prepaid certified mail, to the Grantor at the address designated in the Loan Agreement at least ten (10) days before the time of sale or disposition, shall be deemed reasonable and shall fully satisfy any requirements for giving of said notice;

(f) agrees, to the extent permitted by law and without limiting any rights and privileges herein granted to Lender, that Lender may dispose of any or all of the Collateral at the same time and place upon giving the same notice provided for in this Mortgage, and in the same manner as the nonjudicial foreclosure sale provided under the terms and conditions of this Mortgage; and

(g) authorizes Lender to prepare and file, in the appropriate jurisdictions, financing statements covering the Collateral; Grantor will pay the cost of filing the same in all public offices at any time and from time to time wherever Lender deems filing or recording of any financing statements or of this instrument to be desirable or necessary.

(h) intends this to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located.

(i) to the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Grantor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Grantor, as lessor thereunder.

(j) Grantor agrees that:

(i) Where Collateral is in possession of a third party, Grantor will join with the Lender in notifying the third party of the Lender's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Lender; and

UNOFFICIAL COPY

(ii) Grantor will cooperate with the Lender in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper.

16. Each remedy or right of Lender shall not be exclusive of but shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or different nature. Every such remedy or right may be exercised concurrently or independently and when and as often as may be deemed expedient by Lender.

17. Grantor represents and warrants to the Lender that the Grantor has not used Hazardous Materials (as defined below), on, from or affecting the Premises in any manner which violates applicable federal, state or local laws, ordinances, rules or regulations governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials ("Environmental Laws") and, to the best of Grantor's knowledge, no prior owner of the Premises or any existing or prior tenant, or occupant has used Hazardous Materials on, from or affecting the Premises in any manner which violates Environmental Laws.

The Grantor agrees that in the event this Mortgage is foreclosed or the Grantor tenders a deed in lieu of foreclosure, the Grantor shall deliver the Premises to the Lender free of any and all Hazardous Materials which are then required to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises.

For purposes of this Mortgage, "Hazardous Materials", includes, without limitation, any flammable explosives, radioactive material, hazardous material, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et. seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et. seq.) and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule or regulation.

The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Grantor may have to the Lender under the Indebtedness, any loan document, and in common law, and shall survive

- (a) the repayment of all sums due for the Indebtedness;
- (b) the satisfaction of all of the other obligations of the Grantor in this Mortgage and under any loan document;

UNOFFICIAL COPY

(c) the discharge of this Mortgage; and

(d) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure. Notwithstanding anything to the contrary contained in this Mortgage, it is the intention of the Grantor and the Lender that the indemnity provisions of this paragraph shall only apply to an action commenced against any owner or operator of the Premises in which any interest of the Lender is threatened or any claim is made against the Lender for the payment of money.

18. If more than one property, lot, parcel, estate or interest is covered by this Mortgage, and if this Mortgage is foreclosed upon, or judgment is entered upon any obligation secured hereby, execution may be made upon any one or more of the properties, lots, estates, parcels or interests and not upon the others, or upon all of such properties or parcels, either together or separately, and at different times or at the same time, and execution sales may likewise be conducted separately or concurrently, in each case at Lender's election.

19. In case of foreclosure of this Mortgage in any court of law or equity, whether or not any order or decree shall have been entered therein, and to the extent permitted by law, a reasonable sum as aforesaid shall be allowed for attorneys' fees of the plaintiff in such proceedings, appraiser's fees, broker's commissions, stenographer's fees and for all moneys expended for documentary evidence and the cost of all abstracts of title, title searches and examinations and publication costs, such sums to be secured by the lien hereunder; and, to the extent permitted by law, there shall be included in any judgment or decree foreclosing this Mortgage and be paid out of said rents, issues and profits or out of the proceeds of any sale made in pursuance of any such judgment or decree: (a) all of the costs stated above; (b) all moneys advanced by Lender, if any, for any purpose authorized in this Mortgage with interest as herein provided; (c) all the accrued interest remaining unpaid on the Indebtedness; (d) the Indebtedness, and (e) the balance, if any, to Grantor or as directed by the court.

20. Lender, in making any payment herein, and as hereby authorized in the place and stead of the Grantor (i) relating to taxes, assessments, water rents, sewer rentals and other governmental or municipal charges, fines, impositions or liens asserted against the Premises, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the validity of any tax, assessment, sale forfeiture, tax lien or claim thereof, subject to the right to contest as otherwise provided herein; or (ii) relating to any adverse title, lien, statement of lien, encumbrance, claim or charge, shall in good faith determine the legality or validity of same; or (iii) otherwise relating to any purpose herein and hereby authorized, but not enumerated in this paragraph, may do so whenever in its good faith, judgment and discretion, such advance or advances shall seem necessary to protect the full security intended to be created by this instrument, and provided further that in connection with any advance, Lender, in the event of apparent or thereafter adverse title, lien or encumbrance, or foreclosure, by Lender or any other lien claimant, at its option, may and is hereby authorized to obtain a continuation

UNOFFICIAL COPY

report of title prepared by a title insurance company, the cost and expenses of which shall be repayable by the Grantor upon demand and shall be secured hereby.

21. Should the proceeds of the Indebtedness, the repayment of which is hereby secured, or any part thereof, or any amount paid out or advanced by the Lender, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then the Lender shall be subrogated to such other liens or encumbrances and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same.

22. Grantor agrees without affecting the liability of any person for payment of the Indebtedness secured hereby or affecting the lien of this Mortgage upon the Premises or any part thereof (other than persons or property explicitly released as a result of the exercise by Lender of its rights and privileges hereunder), that Lender, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release as to itself and this Mortgage any part of the security described herein or any person liable for any Indebtedness secured hereby, without in any way affecting the priority of the lien of this Mortgage to the full extent of the Indebtedness remaining unpaid hereunder upon any part of the security not expressly released, and may agree with any party obligated on the Indebtedness or having any interest in the security described herein to extend the time for payment of any part or all of the Indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien hereof, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to said lien. In the event the Lender: (a) releases, as aforesaid, any part of the security described herein or any person liable for any Indebtedness secured hereby, (b) grants an extension of time for any payments of the Indebtedness secured hereby, (c) takes other or additional security for the payment thereof, or (d) waives or fails to exercise any right granted herein, or in the Note, no such act or omission shall release the Grantor, subsequent purchasers of the Premises or any part thereof, or sureties or guarantors of this Mortgage or of the Indebtedness, under any covenant of this Mortgage or of the Indebtedness, or preclude the Lender from exercising any right, power of privilege herein granted or intended to be granted in the event of any other default then made or any subsequent default.

23. (a) To the extent permitted by law with respect to the Indebtedness secured hereby or any renewals or extensions thereof, Grantor waives and renounces any and all homestead and exemption rights, as well as the benefit of all valuation and appraisal privileges, and also moratoriums under or by virtue of the constitution and laws of the State of Illinois, or any other state or of the United States, now existing or hereafter enacted.

(b) To the fullest extent permitted by law, Grantor hereby waives any and all rights of redemption from the foreclosure, for itself, the trust estate, and all persons beneficially interested therein, and each and every person acquiring any interest in or title to the premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by Illinois law.

UNOFFICIAL COPY

24. If any provisions hereof are in conflict with any statute or rule of law of the State of Illinois or are otherwise unenforceable for any reason whatsoever, then such provision(s) shall be deemed null and void to the extent of such conflict or unenforceability, but shall be deemed separable from and shall not invalidate any other provisions of this Mortgage. All the covenants hereof shall run with the land. Nothing herein contained nor any transaction related hereto shall be construed or shall so operate, either presently or prospectively to require Grantor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate. Notwithstanding anything herein or in the Note to the contrary, no provision contained herein or in the Note which purports to obligate Grantor to pay any amount of interest or any fees, costs or expenses which are in excess of the maximum permitted by applicable law, shall be effective to the extent that it calls for the payment of any interest or other sums in excess of such maximum.

25. Except as otherwise provided herein, any notice required hereunder shall be in writing, and shall be deemed to have been validly served, given and received if delivered, mailed or faxed as provided for in the Loan Agreement.

26. Whenever used, the singular number shall include the plural, the plural the singular and the use of any gender shall include all genders. All of the covenants of "Grantor" herein contained are joint and several. All of the covenants and agreements herein contained shall bind the parties hereto and their respective successors, permitted assigns and transferees and the benefits and advantages thereof shall also inure to their respective successors, permitted assigns and transferees.

27. Any of the following occurrences or acts shall constitute an "Event of Default" under this Mortgage: (i) failure to pay all or any portion of the Indebtedness when due and such failure continues uncured for ten (10) days; (ii) Grantor (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, at law, in equity, or before any administrative tribunal, which have or might have the effect of preventing Grantor from complying with the terms of this Mortgage), shall fail to observe or perform any of Grantor's covenants, agreements or obligations under this Mortgage, and such failure continues for ten (10) days; (iii) the Premises are sold or conveyed, or title thereto or any person shall become vested in any person(s) other than Grantor, other than as a result of sales of condominium units in the ordinary course of business to unrelated third parties, as provided in the Note; (iv) a default or Event of Default shall occur under any of the Related Documents or instruments evidencing or securing the Loan Agreement, including, without limitation, any Event of Default as defined in either Note; or (v) a default or Event of Default shall occur under any document or instrument evidencing or securing any other indebtedness or obligation secured by the Premises.

28. Upon the occurrence of any Event of Default as set forth in Paragraph 27 above, the Indebtedness secured hereby, or any other instrument securing the Indebtedness then, in any of said events, at the option of the Lender, the whole Indebtedness secured hereby shall become immediately due and payable, although the period specified for the payment thereof may not have expired, anything hereinbefore

UNOFFICIAL COPY

contained to the contrary notwithstanding and thereupon or at any time during the existence of such default, the Lender may proceed to foreclose this Mortgage or otherwise pursue any other right or remedy herein or by law not prohibited.

29. Upon any such Event of Default being made and after the period, if any, for curing such Event of Default has expired, the Lender, its legal representatives, successors and assigns are hereby authorized and empowered to exercise any right or remedy available under this Mortgage, at law and in equity, including, but not limited to, the right, if and to the extent permitted by law, to sell or cause to be sold at public auction, independent of formal foreclosure proceedings, the Premises and to convey same by the execution and delivery to the purchaser at such sale of good and sufficient deeds of conveyance in law. In any suit to foreclose the lien hereof, and in any sale of the Premises, there shall be allowed and included as additional Indebtedness payable by Grantor to Lender and secured hereby all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorneys' fees, including reasonable attorneys' fees on appeal, appraisers' fees, expenditures for documentary and expert evidence, stenographer's charges, publication and advertising costs, survey costs and costs (which may be estimated as to items to be expended after the entry of any decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Lender deems reasonably necessary either to prosecute such suit or to consummate such sale or to evidence to bidders at any sale the true condition of the title to or the value of the Premises.

30. GRANTOR HEREBY CONSENTS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN COOK COUNTY, ILLINOIS AND WAIVES ANY OBJECTION WHICH GRANTOR MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING IN ANY SUCH COURT.

31. GRANTOR AND LENDER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE IRREVOCABLY THE RIGHT THEY MAY HAVE TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED HEREIN, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THE INDEBTEDNESS HEREBY SECURED, OR THE PREMISES, OR ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH LENDER AND GRANTOR ARE ADVERSE PARTIES. THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN GRANTING ANY FINANCIAL ACCOMMODATION TO GRANTOR.

32. The proceeds of any foreclosure sale, or other sale of the Premises in accordance with the terms hereof or as permitted by law shall be distributed and applied in the following order of priority: First, to the payment of all costs and expenses incident to the foreclosure and/or sale proceedings, including all items as are mentioned in any preceding or succeeding paragraph hereof; second, to the payment of all other items which under the terms hereof constitute secured indebtedness with interest thereon as herein

UNOFFICIAL COPY

provided; third, to the payment of all principal and accrued interest remaining unpaid on the Indebtedness, in such order and in such manner as Lender may elect; fourth, any overplus to the Grantor, its successors or assigns, as their rights may appear.

33. It is specifically agreed that time is of the essence of this Mortgage and that the waiver of the rights or options, or obligations secured hereby, shall not at any time thereafter be held to be an abandonment of such rights. Notice of the exercise of any right or option granted to the Lender herein, or in the Indebtedness secured hereby, is not required to be given.

34. In the event the Indebtedness and all other obligations hereby secured shall be punctually paid when due and owing, and if Grantor shall punctually perform all of Grantor's covenants and agreements herein contained, then this Mortgage shall be void and shall be released by the Lender, otherwise the same shall remain in full force and virtue in law.

Signature Page Follows.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

Legal Descriptions

Parcel 1: 442 W. 44th Street, Chicago, Illinois

Lot 35 in Block 6 on Louis Heintz Subdivision of 24 acres East and adjoining the West 10 acres of the North Half of the North Half of the South West Quarter of Section 4, Township 38 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2: 559 W. 42nd Place, Chicago, Illinois

Parcel A: The South 124.5 feet of Lot 72 in Duncan's Subdivision of Block 7 in Taylor Kreigh's Subdivision of the East half of the Northwest Quarter of Section 4, Township 38 North, Range 14, East of the Third Principal Meridian.

Parcel B: That part of a strip of land formerly marked drive (now vacated) on the plat of Duncan's Resubdivision of Block 7 in Taylor and Kreigh's subdivision aforesaid and the South Line of 42nd Street as now located through said block, all in Cook County, Illinois.

UNOFFICIAL COPY

EXHIBIT "B"

Permitted Encumbrances

1. Real Estate taxes not yet due and payable.
2. Unrecorded leases.
3. \$210,000 Mortgage to Community First Bank – Chicago (Parcel 1)
4. \$386,000 Mortgage to State Bank of Countryside (Parcel 1)
5. \$276,000 Mortgage to Community Bank – Wheaton/Glen Ellyn (Parcel 2)


Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Grantor has executed this Mortgage as of the date set forth above.

RADDATZ CONSTRUCTION, INC.

By:


Thomas P. Raddatz, President

Property of Cook County Clerk's Office