

UNOFFICIAL COPY



0803739113

PREPARED BY AND)
 RECORDING REQUESTED)
 BY AND WHEN)
 RECORDED MAIL TO:)
)
 Greenberg Traurig, LLP)
 77 West Wacker Drive)
 Chicago, Illinois 60601)
 Attn: Ronald R. Dietrich)
)
)

Doc#: 0803739113 Fee: \$86.00
 Eugene "Gene" Moore RHSP Fee: \$10.00
 Cook County Recorder of Deeds
 Date: 02/06/2008 01:23 PM Pg: 1 of 32

Space Above for Recorder's Use



ND1071048 1 OF 3 - JL

**CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

from

ROYAL TALLAHASSEE III 2 (DE) LLC,
a Delaware limited liability company, as the Mortgagor

(the "**Mortgagor**")

to

NATIONAL ELECTRICAL BENEFIT FUND,
a District of Columbia trust, as the Lender

(the "**Lender**")

January 25, 2008

THIS MORTGAGE IS ALSO TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS AS A FIXTURE FILING IN ACCORDANCE WITH THE UNIFORM COMMERCIAL CODE OF THE STATE OF ILLINOIS. THIS MORTGAGE COVERS GOODS WHICH ARE OR ARE TO BECOME FIXTURES.

THE NAMES OF THE DEBTOR AND THE SECURED PARTY, THE MAILING ADDRESS OF THE SECURED PARTY FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED, THE MAILING ADDRESS OF THE DEBTOR AND A STATEMENT INDICATING THE TYPES, OR DESCRIBING THE ITEMS, OF COLLATERAL, ARE AS DESCRIBED IN SECTION 1, 4 AND 41 HEREOF.

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing*

UNOFFICIAL COPY

THIS CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage"), is made as of the 25th day of January, 2008, by **ROYAL TALLAHASSEE III 2 (DE) LLC**, a limited liability company, duly organized and validly existing and in good standing under the laws of the State of Delaware with a mailing address of c/o The John Buck Company, One North Wacker Drive, Suite 2400, Chicago, Illinois 60606, Attention: Mr. Robert Sotak (the "Mortgagor") to **NATIONAL ELECTRICAL BENEFIT FUND**, a District of Columbia Trust with a mailing address of 900 Seventh Street, N.W., Washington, D.C. 20001 (together with its successors and assigns, including each and every holder from time to time of the Note described below, to be referred to hereinafter as the "Lender").

BACKGROUND:

A. Pursuant to that certain Construction Loan Agreement (the "Loan Agreement"), dated of even date herewith, the Lender has agreed to make and the Mortgagor has agreed to accept a loan in the original principal amount of up to ONE HUNDRED SIXTEEN MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$116,200,000.00) (the "Loan"). Any capitalized term used, but not defined herein shall have the meaning ascribed to such term in the Loan Agreement.

B. The Loan is evidenced by that certain Promissory Note, dated of even date, in the original principal amount of the Loan made by the Mortgagor and payable to the Lender (the "Note").

C. The Mortgagor holds fee simple title to those certain parcels of real estate legally described on Exhibit A attached to and made a part of this Mortgage.

D. The Loan is being made in order to provide the Mortgagor with construction loan financing as more particularly described in the Loan Agreement.

E. As a condition precedent to the making of the Loan to the Mortgagor, the Lender has required, among other things, that the Mortgagor enter into this Mortgage and grant to the Lender a first priority lien and security interest in and to the Project and other collateral now or hereafter owned by the Mortgagor, subject only to the Permitted Exceptions, to secure all of the following (all of which may be referred to collectively as the "Obligations"): (i) payment of the principal amount of the Loan evidenced by the Note and any amendments, restatements, modifications and supplements thereof, together with the interest thereon at the rate specified in the Note, and all fees, charges, and prepayment fees, if any, as provided in the Note or the Loan Agreement, (ii) payment of all other monies or sums provided to be paid by the Mortgagor pursuant to the terms, provisions and conditions of the Loan Documents, including, without limitation, the Loan Agreement and this Mortgage, and (iii) performance by the Mortgagor of each and every obligation, agreement, promise, covenant, warranty, and representation now or hereafter due and owing, made or undertaken by the Mortgagor as set forth in the Loan Agreement, the Note, this Mortgage, the other Loan Documents, and all other documents or instruments given or made by the Mortgagor to evidence or to secure the Loan, and in any renewal, modification, restatement or extension of any of the foregoing.

UNOFFICIAL COPY

STATEMENT OF AGREEMENT:

NOW, THEREFORE, the Mortgagor agrees with the Lender as follows:

1. **Definitions**. As used in this Mortgage, the following terms shall have the meanings indicated below:

“Agreements” and **“Basic Agreements”** shall mean each of (a) the Organizational Documents, (b) the General Contractor’s Agreement, (c) the Architect’s Agreement, (d) the Kimpton Agreement, (e) the Sorrento Agreement, (f) the Development Management Agreement dated as of March 23, 2007 by and between Buck Development LLC and Mortgagor, (g) the Accounting Services Agreement dated as of March 23, 2007 by and between Royal Apartments USA, Inc. and Mortgagor, (h) the Lease Agreement between Bridgestreet Corporate Housing LLC and Mortgagor, (i) the Project Documents, (j) any development agreement, (k) all other Construction Contracts, (l) all other construction documents, (m) any brokerage agreement, (n) each Consultants’ agreement, (o) any Property Management Agreement, (p) intentionally omitted, (q) any contract for the sale of all or any portion of the Project, and (r) all other contracts, Sales Contracts, agreements, warranties, representations, service agreements, maintenance contracts and agreements relating to any portion of the Real Estate or the use, occupancy, operation, management, leasing, repair and service of the Real Estate or any part thereof, whether presently existing or entered into after the date hereof.

“Bankruptcy Code” shall mean Title 11 of the United States Code entitled **“Bankruptcy”** as now or hereafter in effect or any successor code thereto.

“Collateral” shall mean such of the Mortgaged Property which constitutes personal property under the Laws of the State, including the Intangibles and any and all proceeds of any and all of the foregoing, including, without limitation, any and all cash and non-cash consideration received from the sale, exchange, lease, collection or other disposition of any and all of the foregoing, any value received as a consequence of the possession of any of the foregoing, any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any of the foregoing, and all equipment, machinery, furniture, inventory, other goods, fixtures, general intangibles, instruments, chattel paper, documents, accounts and all other property of any kind or nature which are acquired with any proceeds of any of the foregoing.

“Fixtures” shall mean all furniture, furnishings, fixtures, appliances, machinery or equipment which are now or at anytime hereafter may be attached to or situated upon or affixed to the Land or the Improvements, including, but not limited to, all signs, artwork, office furnishings and equipment, all partitions, screens, awnings, shades, blinds, floor coverings, hall and lobby equipment, heating, lighting, plumbing, ventilating, refrigerating, incinerating, elevator, escalator, air conditioning and communication plants or systems with appurtenant fixtures, vacuum cleaning systems, call systems, security systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials; all equipment, manual, mechanical or motorized, for the construction, maintenance, repair and cleaning of, any parking areas, walks, underground ways, truck ways, driveways, common areas, roadways, highways and streets; and all other items of personal property now or hereafter owned by the Mortgagor located in or on

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 2*

UNOFFICIAL COPY

the Land or Improvements and used or useful in the present or future occupancy, operation, maintenance and leasing thereof (but excluding any of the foregoing that is not owned by the Mortgagor).

“Improvements” shall mean all buildings, structures and improvements to be constructed on the Land in accordance with the Plans, together with all related infrastructure and related facilities, all as more fully set forth in the Plans and all other buildings, structures, fixtures, personalty, appurtenances and improvements now or hereafter on the Land.

“Intangibles” shall mean all the records and books of account now or hereafter maintained by the Mortgagor in connection with the operation of the Real Estate or otherwise; all contract rights, rights to the payment of money including tax refund claims, insurance proceeds and tort claims, chattel paper, documents, instruments, general intangibles, together with all income therefrom, increases thereunder and proceeds thereof; and all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of any of the Real Estate or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to any of the Real Estate and proceeds of any sale, option or contract to sell the Real Estate or any portion thereof.

“Land” shall mean the land legally described in Exhibit A hereto, together with all easements, air rights, servitudes, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainder, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor, in and to the same.

“Laws” shall mean all federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations which have been duly authorized and are currently in effect and/or hereinafter enacted, including judicial opinions or precedential authority in the applicable jurisdiction, and including, without limitation, all environmental laws, all rules and regulations relating to life safety and the ADA.

“Leases” shall mean all leases, occupancy agreements, concession agreements and other agreements, whether or not in writing, for the use or occupancy of all or any portion of the Improvements, affecting the use, enjoyment or occupancy of the Real Estate or any portion thereof now or hereafter made, whether made before or after the filing by or against the Mortgagor of any petition for relief under Bankruptcy Code, together with any extension, renewal or replacement of the same.

“Mortgaged Property” shall mean all of the Mortgagor’s right, title and interest in and to all of the Land, the Improvements, the Fixtures, the Permits, the Intangibles, the Agreements (but excluding the Organizational Documents), the Plans, the Leases, and the Rents, together with any and all proceeds of any and all of the foregoing, including, without limitation, any and all cash and non-cash consideration received from the sale, exchange, lease, collection or other disposition of any and all of the foregoing, any value received as a consequence of the

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 3*

UNOFFICIAL COPY

possession of any of the foregoing, any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any of the foregoing, and all equipment, machinery, furniture, inventory, other goods, fixtures, general intangibles, instruments, chattel paper, documents, accounts and all other property of any kind or nature which are acquired with any proceeds of any of the foregoing. Mortgaged Property shall also include all renewals, substitutions, improvements, accessions, attachments, additions, remainders, reversions, replacements and all proceeds to or of each of the foregoing, any greater estate in the Real Estate or any portion thereof that may be acquired by the Mortgagor; and all conversions of the security constituted thereby so that, immediately upon such acquisition, construction, assemblage, placement or conversion, as the case may be, and in each such case, the foregoing shall be deemed a part of the Mortgaged Property and shall automatically become subject to the lien of this Mortgage as full and completely and with the same priority and effect as though now owned by the Mortgagor and specifically described herein, without any further mortgage, assignment or conveyance by the Mortgagor.

“Organizational Documents” shall mean all documents, instruments and other papers constituting the entire organizational documents of Borrower, all Borrower Entities, all Guarantors and any and all amendments thereto including without limitation, Borrower’s, each Borrower Entities’ and each Guarantor’s respective certificates of formation, incorporation or limited partnership, articles of organization or incorporation and such party’s respective partnership agreement, operating agreement, by laws, code of regulations or other governing documents.

“Permits” shall mean all building permits, certificates of occupancy and other assignable governmental permits, licenses and authorizations, including, without limitation, all state, county and local occupancy certificates, and other licenses, in any way applicable to the Real Estate or any part thereof or to the development, construction, ownership, use, occupancy, operation, maintenance, and leasing of the Real Estate.

“Plans” shall mean all plans and specifications relating to the development and construction of the Real Estate.

“Real Estate” shall mean the Land, the Improvements and such other of the Mortgaged Property as constitutes real property under the Laws of the State, together with any and all proceeds of any and all of the foregoing, including, without limitation, any and all cash and non-cash consideration received from the sale, exchange, lease, collection or other disposition of any and all of the foregoing, any value received as a consequence of the possession of any of the foregoing (including, without limiting the generality of the foregoing, any and all real estate tax abatements now or in the future accruing to the Real Estate), any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any of the foregoing, and all equipment, machinery, furniture, inventory, other goods, fixtures, general intangibles, instruments, chattel paper, documents, accounts and all other property of any kind or nature which are acquired with any proceeds of any of the foregoing.

UNOFFICIAL COPY

“**Rents**” shall mean absolutely and presently all rents, additional rents, revenues, sales proceeds, income, issues and profits arising from the Leases and the Sales Contracts and renewals and replacements thereof and any cash or security deposited in connection therewith, and together with all avails, rents, issues, cash collateral and profits arising from or accruing at anytime hereafter by virtue of any agreement for the use or occupancy of the Real Estate or any portion thereof, and together with all fees, charges and compensation for the use of parking stalls or other parking privileges, and all of the foregoing whether paid or accruing before or after the filing by or against the Mortgagor of any petition for relief under the Bankruptcy Code.

“**Sales Contracts**” shall mean the Kimpton Agreement, the Sorrento Agreement, and all other contracts for the sale of any part or portion of the Real Estate, the Improvements, the Hospitality Component or the Residential Component (each a “**Sales Contract**” and collectively, “**Sales Contracts**”).

“**State**” shall mean the State of Illinois.

“**Uniform Commercial Code**” shall mean the Uniform Commercial Code in effect in the State of Illinois.

2. **Grant.** As security for the Obligations, the Mortgagor does hereby irrevocably mortgage, sell, grant, bargain, pledge, assign, warrant, transfer and convey to the Lender, and grant a security interest to the Lender in and a lien upon, all of the Mortgagor’s right, title and interest in and to the Mortgaged Property. The present amount of the Loan secured hereby is ONE HUNDRED SIXTEEN MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$116,200,000.00); the maximum amount, including present and future Obligations, which may be secured hereby at any one time is THREE HUNDRED FORTY-EIGHT MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$348,600,000.00).

3. **Assignment of Leases and Rents.** The Mortgagor hereby absolutely and unconditionally sells, assigns and transfers unto the Lender and to the extent required to perfect a lien thereon, grants the Lender a security interest in, all the Rents, now due and which may hereafter become due under or by virtue of any of the Leases or Sales Contracts, whether written or verbal, or any letting of, or of any agreement, whether written or oral, for the use or occupancy of the Mortgaged Property or any part thereof, which may be hereafter made or agreed to by the Lender under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases and Sales Contracts, and all the Rents, to the Lender, and not merely the passing of a security interest. The Mortgagor hereby constitutes and appoints the Lender as its true and lawful attorney-in-fact, coupled with an interest, of the Mortgagor, empowered and authorized in the name, place and stead (with or without taking possession of the Mortgaged Property as provided in this Mortgage) of the Mortgagor, (i) to demand, sue for, attach, levy, recover, and receive all Rents and give proper receipts, releases, and acquittances therefor and after deducting expenses of collection, to the extent permitted by Law, to apply the net proceeds as a credit upon any portion of the Obligations selected by the Lender notwithstanding the fact that such portion of the Obligations may not then be due and payable or that such portion of the Obligations is otherwise adequately secured, and the Mortgagor does hereby authorize and direct any such lessee or purchaser to deliver such payment to the Lender and (ii) to rent, lease, let or sell all or any portion of the

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 5*

UNOFFICIAL COPY

Mortgaged Property to any party or parties at such rental or sale and upon such terms as the Lender shall, in its discretion, determine, and to collect all of said Rents arising from or accruing at any time hereafter, and now due or that may hereafter become due under each and every of the Leases, Sales Contracts, or otherwise, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession pursuant to the provisions of this Mortgage. The foregoing appointment is irrevocable and continuing and such rights, powers, and privileges shall be exclusive in the Lender, its successors and assigns. It is the intention of the Mortgagor and the Lender that the assignment contained in this Section 3 be a present, unconditional, irrevocable and absolute assignment; neither obtaining possession of the Rents nor the appointment of a receiver shall be required for perfection.

- (a) Nothing contained herein shall be construed as constituting the Lender a “mortgagee-in-possession” in the absence of the taking of actual possession of the Mortgaged Property by the Lender pursuant to this Mortgage. In the exercise of the powers herein granted the Lender, no liability shall be asserted or enforced against the Lender except in the event of gross negligence or willful misconduct, all such liability being expressly waived and released by the Mortgagor.
- (b) The Mortgagor further agrees to assign and transfer to the Lender all future Leases and Sales Contracts upon all or any part of the Mortgaged Property and to execute and deliver, at the request of the Lender, all such further assurances and assignments in the Mortgaged Property as the Lender shall from time to time reasonably require.
- (c) Although it is the intention of the parties that the assignment contained in this Section 3 shall be a present absolute assignment, it is expressly understood and agreed, anything contained herein to the contrary notwithstanding, that the Mortgagor shall have a license to collect such Rents (subject to application in accordance with the Loan Agreement and the other Loan Documents) until, and the Lender shall not exercise any of the rights or powers conferred upon it by this Section 3 until an Event of Default shall have occurred and be continuing under this Mortgage, the Guaranties, the Note, the other Loan Documents or any other instrument evidencing or securing the indebtedness secured hereby or delivered pursuant to any of the Loan Documents.

4. **Security Agreement.** This Mortgage is both a real property Mortgage and a “security agreement” within the meaning of the Uniform Commercial Code, and a “financing statement” within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of the Mortgagor in the Mortgaged Property. By executing and delivering this Mortgage, the Mortgagor hereby grants to the Lender, as security for the Obligations, a security interest in the Collateral to the full extent that the Collateral may be subject to the Uniform Commercial Code. The beneficial owner and holder of such security interest is the Lender, the Lender will be deemed the “secured party” with respect to such security interest for

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 6*

UNOFFICIAL COPY

all purposes of the Uniform Commercial Code and will be so identified on all financing statements filed in connection therewith, and the Lender shall be entitled upon the occurrence and continuation of an Event of Default to exercise all the remedies of a secured party under the Uniform Commercial Code as well as all other rights and remedies available at law or in equity. The information contained in this Section 4 is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code for mortgages to be effective as financing statements filed as a fixture filing. The name of the "debtor" is **ROYAL TALLAHASSEE III 2 (DE) LLC**, a Delaware limited liability company and the name of the "secured party" is **NATIONAL ELECTRICAL BENEFIT FUND**, a District of Columbia trust; the mailing address of the "secured party" from which information concerning the security interest may be obtained and the mailing address of the "debtor" are as set forth in Section 41 below. The types, or the items, of collateral covered hereby consist of the Collateral and all other items set forth herein above in Section 1 which constitute fixtures or personal property. the Mortgagor is the record owner of the Real Estate.

5. **Conditions to Grant.** TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto the Lender, and the successors and assigns of the Lender, forever; to secure performance of and payment to the Lender of the Obligations at the time and in the manner provided for its payment in the Note and in this Mortgage; PROVIDED, HOWEVER, these presents are upon the express condition that, if the Mortgagor shall well and truly pay to the Lender the Obligations (excluding those that are of an indemnity nature and are intended to survive the release of this Mortgage) at the time and in the manner provided in the Note, this Mortgage and the other Loan Documents, shall well and truly perform the Obligations (excluding those that are of an indemnity nature and are intended to survive the release of this Mortgage) as set forth in this Mortgage and the other Loan Documents and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note and the other Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void and upon the reasonable request of the Mortgagor, the Lender shall, at the Mortgagor's cost and expense, execute a reconveyance instrument in recordable form.

6. **Payment and Performance of Obligations.** The Mortgagor shall pay when due, and shall duly and punctually perform and observe, all of the Obligations, including without limitation, all terms, provisions, conditions, covenants and agreements on the Mortgagor's part to be performed or observed as provided in this Mortgage and in the other Loan Documents; and this Mortgage shall secure such payment, performance and observance.

7. **Title to Mortgaged Property and the Lien of this Mortgage.** The Mortgagor covenants and represents that: (a) the Mortgagor has indefeasible fee simple title to all of the Real Estate free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever, except the Permitted Exceptions (as defined below); (b) the Mortgagor is the sole owner with good and indefeasible title to all of the Collateral, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever, except the Permitted Exceptions; (c) the Mortgagor has lawful authority to sell, assign, convey and mortgage the Mortgaged Property, and does hereby warrant generally, and agrees to defend, the Mortgaged Property and the title thereto, whether now leased or hereafter acquired, against all claims of any Person; (d) this Mortgage constitutes a valid, subsisting, first lien against the Real Estate, and a valid, subsisting, first lien and security interest in and to the Collateral, subject only to the

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 7*

UNOFFICIAL COPY

Permitted Exceptions; and (e) all representations and warranties made by the Mortgagor under this Mortgage shall be true and correct in all material respects at all times during the Loan Term (as defined in the Note). As used herein the term "**Permitted Exceptions**" shall mean those matters listed in Exhibit B hereto to which the interest of the Mortgagor's interest in the Mortgaged Property may be subject as of the date hereof, and any such other title exceptions or objections, if any, as may be permitted under the Loan Agreement or as the Lender may approve in advance in writing.

8. **Maintenance, Repair and Restoration.** The Mortgagor shall place and thereafter keep the Mortgaged Property in good condition, order, repair and condition and as may be necessary to protect and preserve the value of the Mortgaged Property, causing all necessary repairs, alterations, renewals, replacement, additions, betterments and improvements to be made promptly thereto, reasonable wear and tear excepted. Subject to the terms of this Mortgage and Article VIII of the Loan Agreement, the Mortgagor shall promptly repair, restore or rebuild (or cause the same to be done) any of the Mortgaged Property which may become damaged or be destroyed from any cause whatsoever and pay when due all claims for labor performed and materials furnished therefor.

9. **Use Violations or Alterations.** The Mortgagor shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Mortgaged Property in any manner which (a) violates any Laws; (b) creates a reasonable likelihood of danger unless safeguarded as required by Laws; (c) constitutes a public or private nuisance; (d) will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof, or will wholly or partially invalidate any insurance coverage required to be carried hereunder. The Mortgagor shall not commit or permit any waste of the Mortgaged Property or any part thereof, whether commissive or permissive, and will not make or permit to be made any material alterations or additions to the Mortgaged Property except for the construction of the Improvements in accordance with the Loan Agreement. The Mortgagor shall not abandon the Mortgaged Property or leave the Mortgaged Property unprotected, unguarded, vacant or deserted, and shall not allow any of the Mortgaged Property to be misused, abused or wasted, or to deteriorate.

10. **Platting, Replatting, Subdivision and Resubdivision.** Except as permitted under the Loan Agreement, the Mortgagor shall not, without the consent of the Lender, impose any restrictions, agreements or covenants which run with the land upon the Real Estate or any part thereof, nor plat, replat, subdivide or resubdivide the Real Estate or any part thereof, except as permitted under the Loan Agreement.

11. **Permitted Exceptions; Compliance.** With respect to the Permitted Exceptions, the Mortgagor shall (a) timely observe and perform all covenants and obligations contained therein in all material respects; (b) not take any action or fail to take any action if the taking of such action or failure to take such action would cause a default by the Mortgagor thereunder, and (c) not exercise any rights or remedies under any Permitted Exception which would be adverse to the Lender's interests, without the prior written consent of the Lender.

12. **Real Estate Taxes.** Subject to Mortgagor's right to contest real estate taxes under certain circumstances, the Mortgagor shall pay, before any penalty, fine, interest or other cost for non-payment attaches, all real estate taxes.

UNOFFICIAL COPY

13. **Insurance Coverage.** The Mortgagor shall obtain or cause to be obtained, and shall maintain or cause to be maintained at all times during the term of the Loan, such all insurance required to be carried and maintained as set forth in the Loan Agreement. Pursuant to the Illinois Collateral Protection Act, 815 ILCS 180/1 *et seq.*, unless Mortgagor provides Lender with evidence of the insurance coverage required by the Loan Agreement, Lender may purchase insurance at Mortgagor's expense to protect Lender's interests in the collateral. This insurance may, but need not, protect Mortgagor's interests. The coverage that Lender purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the collateral. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required by the Loan Agreement. If Lender purchases insurance for the collateral, Mortgagor will be responsible for the costs of that insurance, including interest and any other charges Lender may 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 Mortgagor's total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

14. **Stamp Tax** If, by the Laws of the United States of America, or of any state, county, or municipality having jurisdiction over the Mortgagor or the Mortgaged Property or any part thereof, any tax is assessed or becomes due in respect of the issuance of the Note, or the granting or recording of this Mortgage or otherwise in connection with any of the other Loan Documents, the Mortgagor shall pay such tax in the manner required by such Law.

15. **Prepayment Privilege.** The Mortgagor may not prepay the Note, except to the extent expressly permitted by the terms of the Note and upon the payment of all prepayment charges, if any, applicable thereto as provided in the Note.

16. **Effect of Extensions of Time and Amendments on Junior Liens and Others.** If the payment of the Obligations, or any part thereof, be extended or varied, or if any part of the security therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property or any part thereof, shall be held to assent to such extension, variation or release; and their liability and the lien and all provisions hereof shall continue in full force and effect, the right of recourse against all such persons being expressly reserved by the Lender, notwithstanding any such extension, variation or release. Any Person who, upon consent by the Lender shall take a junior mortgage, or other junior lien upon the Mortgaged Property or any part thereof or any interest therein, shall take such lien subject to the rights of the Lender to supplement, amend, modify, restate and extend the Loan Documents or any of them, and to extend the maturity of the Obligations, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage or the lien of any other Loan Documents losing priority over the rights of any such junior lien.

17. **Inspection of Project.** The Lender, its employees and agents, shall have the right to inspect the Mortgaged Property and every part thereof, during normal business hours upon reasonable prior notice, and subject to customary safety precautions, and the Mortgagor will cooperate (and will use commercially reasonable efforts to cause its agents and independent contractors to cooperate) with the Lender in arranging the inspections of the Mortgaged Property or any part thereof or any of the other Collateral by the Lender and its agents and representatives,

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 9*

UNOFFICIAL COPY

at such times as the Lender shall determine in its reasonable discretion, during normal business hours upon reasonable prior notice. the Lender shall have the right to inspect and make copies of all books, records and documents relating to the Mortgaged Property and in possession or control of or available to the Mortgagor as the Lender shall determine in its reasonable discretion, during normal business hours upon reasonable prior notice.

18. **Uniform Commercial Code.** The Mortgagor (as debtor) and the Lender (as secured party) agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code with respect to the Collateral; (ii) that a security interest in and to the Collateral is hereby granted to the Lender; and (iii) that all of the Mortgagor's right, title and interest therein are hereby assigned to the Lender; all to secure payment of the Obligations and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

(a) Upon the occurrence and during the continuance of an Event of Default under this Mortgage, the Lender, pursuant to the appropriate provisions of the Uniform Commercial Code, shall have an option to proceed with respect to both the Real Estate and the Collateral in accordance with its rights, powers and remedies with respect to the Real Estate, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that if the Lender shall elect to proceed with respect to the Collateral separately from the Real Estate, the Lender shall have all remedies available to a secured party under the Uniform Commercial Code and ten (10) days notice of the sale of the Collateral shall be reasonable notice. Without limiting the foregoing, the Lender may require the Mortgagor to assemble the Collateral and make it available to the Lender at a place to be designated by the Lender. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Lender shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by the Lender. The Mortgagor agrees that the Mortgagor shall not, without the written consent of the Lender, dispose of, remove or permit to be removed from the Mortgaged Property any of the Collateral other than in the ordinary course of business or as may be reasonably necessary to correct, repair or replace any Collateral installed, constructed or affixed to the Land or the Improvements or any portions thereof in connection with the construction of the Project; provided, that such replacement collateral is of the same type and quality as the Collateral being replaced, and that all replacements for each and every item of Collateral shall be at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Lender shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof,

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 10*

UNOFFICIAL COPY

substitutions therefor or additions thereto, unless the Lender otherwise consents, shall be free and clear of liens, encumbrances, title retention devices and security interests of others except Permitted Exceptions.

- (b) The Mortgagor and the Lender agree, to the extent permitted by Law, that:
- (i) all of the goods described within the definition of the words “Improvements” and “Fixtures” herein are or are to become fixtures on the Land, (ii) this Mortgage constitutes a financing statement filed as a fixture filing under the Uniform Commercial Code, as amended or recodified from time to time, covering any Mortgaged Property which now is or later may become fixtures attached to the Land or Improvements; and (iii) the Mortgagor is the owner of the Land. The Mortgagor agrees that the filing of a financing statement in the records normally having to do with personal Mortgaged Property shall never be construed as in any way derogating from or impairing the express declaration and intention of the parties hereto, herein above stated, that everything used in connection with the production of income from the Mortgaged Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be regarded as part of the Real Estate irrespective of whether (i) any such item is physically attached to the Land or Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Lender, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the Mortgagor’s interest as lessor in any present or future Leases or subleases or rights to Rents growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of the Lender as determined by this instrument or impugning the priority of the Lender’s lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of the Lender in the event any court or judge shall at any time hold with respect to (1), (2) or (3) that notice of the Lender’s priority of interest to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivision or entity of the federal government, must be filed in the Uniform Commercial Code records.
- (c) The Mortgagor, upon the reasonable request by the Lender from time to time, shall execute, acknowledge and deliver to the Lender, a separate Security Agreement, Financing Statement or other similar security instruments, in form reasonably satisfactory to the Lender, covering all Mortgaged Property of any kind whatsoever owned by the Mortgagor which in the sole and exclusive opinion of the Lender is essential to the

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 11*

UNOFFICIAL COPY

operation of the Mortgaged Property and which constitutes goods within the meaning of the Uniform Commercial Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this Mortgage under the Laws of the State, and shall further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as the Lender may reasonably request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. The Mortgagor further agrees to pay to the Lender on demand all reasonable costs and expenses incurred by the Lender in connection with the preparation, execution, recording, filing and re-filing of any such documents. The Mortgagor shall from time to time, on the reasonable request of the Lender, deliver to the Lender an inventory of the Collateral in reasonable detail.

19. **Compliance With Mortgage Foreclosure Law.**

- (a) If any provision of this Mortgage is inconsistent with any applicable provision of the Act (as defined below), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.
- (b) Without in any way limiting or restricting any of the Lender's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers and authorities, the Lender shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Act, as the same may be amended from time to time. If any provision of this Mortgage shall grant to the Lender any rights, remedies, powers or authorities upon default of Mortgagor which are more limited than the rights that would otherwise be vested in the Lender under the Act in the absence of said provision, the Lender shall be vested with all of the rights, remedies, powers and authorities granted in the Act to the fullest extent permitted by law.
- (c) Without limiting the generality of the foregoing, all expenses incurred by the Lender, to the extent reimbursable, under Sections 5/15-1510, 5/15-1512, or any other provision of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the indebtedness secured by this Mortgage and by the judgment of foreclosure.
- (d) Mortgagor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Mortgaged Property, (b) all

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 12*

UNOFFICIAL COPY

rights of reinstatement, redemption, valuation, appraisal, homestead, moratorium, exemption, extension, stay of execution, notice of election to mature or declare due the whole of the Obligations in the event of foreclosure of the liens hereby created, (c) all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Illinois pertaining to the rights and remedies of sureties, (d) the right to assert any statute of limitations as a bar to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or any other Obligation, and (e) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in a particular order. Without limiting the generality of the preceding sentence, Mortgagor, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of reinstatement or redemption from sale or from or under any order, judgment or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Mortgaged Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshaled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness. The Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided herein. The Lender shall have the right to determine the order in which any or all portions of the Obligations are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, on behalf of itself and all persons now or hereafter interested in the Mortgaged Property, voluntarily and knowingly hereby: acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes Chapter 735, Section 5/15-1101 *et seq.*, herein the "Act"), or residential real estate (as defined in the Act).

20. **The Lender's Right of Possession in Case of Default.** Upon and during the continuance of an Event of Default in any case in which under the provisions of this Mortgage, whether before or after the entire Obligations are declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, the Mortgagor shall forthwith, upon demand of the Lender, surrender to the Lender and the Lender shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally, or by its agent or attorneys. In such event the Lender in its discretion may, with or without force and with or without process of Law, as permitted by Law, enter upon and take and maintain possession of all or any part of said Mortgaged Property,

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 13*

UNOFFICIAL COPY

together with all documents, books, records, papers and accounts of the Mortgagor or the then owner of the Mortgaged Property relating thereto, and may exclude the Mortgagor, and each of their agents or servants, wholly therefrom and may, as attorney in fact or agent of the Mortgagor, or in its own name as the Lender and under the powers herein granted, hold, operate, manage and control the Mortgaged Property 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 or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the Rents, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any Lease or Agreement for any cause or on any ground which would entitle the Mortgagor to cancel the same; (b) to elect to disaffirm any Lease or Agreement which is then subordinate to the lien hereof; (c) to extend or modify any then existing Leases and to make new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Obligations and beyond the date of 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 provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to enter into any management, leasing or brokerage agreements covering the Mortgaged Property; (e) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property as to it may reasonably seem judicious; (f) to insure and reinsure the same and all risks incidental to the Lender's possession, operation and management thereof; and (g) to receive all of such 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 the Mortgagor.

The 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 Leases or Agreements. The Mortgagor shall and does hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur by reason of its performance of any action authorized under this Section 20 and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of the Mortgagor except liability, loss and damage arising from the Lender's willful misconduct or gross negligence. Should the Lender incur any such liability, loss or damage, by its performance or nonperformance of actions authorized by this Section 20, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest on any such amount at the Default Rate shall be secured hereby, and the Mortgagor shall reimburse the Lender therefor immediately upon demand.

21. **Restrictions on Transfer.** The Mortgagor shall not create, effect, contract for, consent to or permit any conveyance, sale, assignment, transfer, pledge, mortgage, security interest or other voluntary lien, encumbrance or alienation of the Mortgaged Property or any part thereof or interest therein, whether any such conveyance, sale, contract, assignment, transfer, pledge, mortgage, security interest, or other voluntary lien, encumbrance or alienation is effected

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 14*

UNOFFICIAL COPY

directly or indirectly, except as expressly permitted by the terms and provisions of the Loan Agreement.

22. **Events of Default.** The occurrence of any one or more of the following shall constitute an "**Event of Default,**" as such term is used herein:

- (a) An Event of Default shall have occurred under the Loan Agreement, the Note or any of the other Loan Documents beyond applicable notice and cure periods; or
- (b) The Mortgagor shall violate any of the terms, covenants or provisions set forth in Section 21 of this Mortgage; or
- (c) The Mortgagor shall default in the performance of any other term, covenant or agreement contained in this Mortgage (other than those specified elsewhere in this Section 22) for thirty (30) days after written notice of such default has been given to the Mortgagor by the Lender; provided, however, that if such default is of a nature that it cannot be cured within such thirty (30) day period and the Mortgagor commences and diligently proceeds to cure such default, such cure period shall be extended for the extended cure Period in accordance with Section 9.1.24 of the Loan Agreement.
- (d) All notice and cure period provided herein or in the Note shall run concurrently with any notice or cure periods provided by law. Without limiting the foregoing, any other provision hereof to the contrary notwithstanding, the Lender shall be entitled to cause a notice of breach to be issued if any event occurs which with the giving of notice and/or passage of time, would constitute a default hereunder or an event of default under the Note or would entitle the Lender to accelerate the indebtedness secured hereby and the mailing to Mortgagor of such notice of breach and election to sell shall constitute notice of a failure to perform pursuant hereto and thereto.

23. **Remedies.** Upon the occurrence and during the continuance of any Event of Default, and in addition to such other rights, powers and remedies as may be available to the Lender under the Note or any of the other Loan Documents, or at law or in equity conferred:

- (a) the Lender may declare the Obligations, including, without limitation, all amounts due and owing under the Note and the other Loan Documents immediately due and payable without notice to the Mortgagor and without presentment, demand, protest or notice of protest or of dishonor, all of which the Mortgagor hereby waives.
- (b) the Lender may cause to be brought down to date an abstract or abstracts and tax histories of the Mortgaged Property, procure title insurance and title reports, or, if necessary, procure new abstracts and tax histories.

UNOFFICIAL COPY

- (c) the Lender may, either with or without process of law, forcibly or otherwise, enter upon and take immediate possession of the Mortgaged Property, expel and remove any persons, goods or chattels occupying or upon the same, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property as fully as the Mortgagor might do if in possession thereof, including, without limitation, the making of all repairs and replacements deemed reasonably necessary by the Lender and the leasing and sale of the Mortgaged Property, or any part thereof, from time to time, and, after deducting all reasonable attorneys' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to the Obligations or upon any deficiency decree entered in any foreclosure proceeding. At the option of the Lender, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon the Mortgagor at the address of the Mortgagor last appearing on the records of the Lender. The Mortgagor agrees to surrender possession of the Mortgaged Property to the Lender immediately upon the occurrence of an Event of Default. To the extent permitted by applicable laws, if the Mortgagor shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such Event of Default, such possession shall be as a tenant at sufferance of the Lender, and the Mortgagor agrees to pay to the Lender, or to any receiver appointed as provided below, after such default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by the Mortgagor, to be applied as provided above in the first sentence of this subparagraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, the Mortgagor may be dispossessed by summary proceedings. In the event the Mortgagor shall so remain in possession of all, or any part of, the Mortgaged Property, said monthly rental shall be in amounts established by the Lender in its sole discretion. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and irrespective of any application for, or appointment of, a receiver.
- (d) the Lender may file one or more suits at law or in equity for the foreclosure of this Mortgage or to collect the Mortgagor's Obligations. In the event of the commencement of any such suit by the Lender, the Lender shall have the right, either before or after sale, without notice and without being required to post a bond (notice and bond being hereby waived), without regard to the solvency or insolvency of the Mortgagor at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, as well as during any further times when the
- Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 16*

UNOFFICIAL COPY

Mortgagor, except for the intervention of such receiver, would be entitled to collect the rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in its hands in payment, in whole or in part, of the Obligations. In case of a sale pursuant to foreclosure, the Mortgaged Property may be sold as one parcel.

- (e) the Lender may exercise any other remedies or rights permitted or provided under or by the laws or decisions of the State of Illinois (including all rights of a secured party under the Uniform Commercial Code of the State of Illinois), accruing to a lender and/or secured party upon a default by a the Mortgagor and/or debtor or otherwise available at law or in equity or under the other Loan Documents.

24. **Waivers and Agreements Regarding Remedies.** To the full extent the Mortgagor may do so, the Mortgagor hereby:

- (a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, extension and notice of election to accelerate the Obligations.
- (b) waives all rights to a marshaling of the assets of the Mortgagor, including without limitation, the Mortgaged Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Mortgaged Property, and agrees not to assert any right under any Laws pertaining to the marshaling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever, to defeat, reduce or affect the right of the Lender under the terms of this Mortgage to a sale of the Mortgaged Property without any prior or different resort for collection, or the right of the Lender to the payment of the Obligations out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatsoever.
- (c) waives any right to bring or utilize any defense, counterclaim or setoff in any foreclosure action, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded or compulsory counterclaims. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based upon a claim which could be tried in an action for money damages, such defense, counterclaim or setoff may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate

UNOFFICIAL COPY

action for money damages shall not be deemed to afford any grounds for staying the foreclosure action.

- (d) waives and relinquishes any and all rights and remedies which the Mortgagor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

25. **Suits to Protect the Mortgaged Property.** The Lender shall have the power and authority (but not the duty) to institute and maintain any suits and proceedings as the Lender may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or which violate the terms of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, or (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to the Lender's interest.

26. **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding affecting the Mortgagor, or any constituent member of the Mortgagor, to the extent permitted by Law, the Lender shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claim allowed in such proceedings for the entire amount due and payable by the Mortgagor under the Loan Documents, at the date of the institution of such proceedings, and for any amounts which may become due and payable by the Mortgagor after such date.

27. **Discontinuance of Proceedings Position of Parties Restored.** If the Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to the Lender, then and in every such case the Lender and the Mortgagor shall be restored to their respective former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceedings had occurred or had been taken.

28. **Rights Cumulative.** Each right, power and remedy herein conferred upon the Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to the Lender and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein. No act of the Lender shall be construed as an election to proceed under any one provision of this Mortgage to the exclusion of any other provision. the Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as same shall become due, without regard to whether or not the balance of the Obligations shall then be due, and without prejudice to the right of the Lender thereafter to bring

UNOFFICIAL COPY

an action of foreclosure or any other action by reason of any other default or defaults by the Mortgagor existing at the time such earlier action was commenced.

29. **No Liability on the Lender.** Notwithstanding anything contained herein to the contrary, the Lender shall not be obligated to perform or discharge, any Obligation, duty or liability of the Mortgagor, whether under any of the Leases or otherwise, and the Mortgagor shall and does hereby agree to indemnify and hold the Lender harmless of and from any and all liability, claim, expense, loss or damage which the Lender may or might incur with respect to the Mortgaged Property, or under or by reason of its exercise of rights hereunder, and of and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligations or undertakings on its part to be performed or discharged except any liability, claim, expense, loss or damage arising solely and directly from the Lender's willful misconduct or gross negligence. Except at such time as the Lender is in actual possession, ownership or control of the Mortgaged Property, to the exclusion of the Mortgagor, the Lender shall not have responsibility for the control, care, management or repair of the Mortgaged Property, or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Unless otherwise provided for herein, no liability shall be enforced or asserted against the Lender in its exercise of the powers herein granted, and the Mortgagor expressly waives and releases any such liability. Should the Lender incur any such liability, loss or damage, under any of the Leases or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Lender immediately upon demand for the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest thereon from date of such payment at the interest rate set forth in the Note.

30. **Fixture Filing.** This Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County in which the Mortgaged Property is situated with respect to any and all fixtures included within the term "Mortgaged Property" as used herein, and with respect to any goods or other personal property that may now be or hereafter become such fixtures. For purposes of such financing statement, Mortgagor is the "debtor" and the Lender is the "secured party", and their respective mailing addresses are those set out in this Mortgage. Mortgagor grants to the Lender a security interest in all existing and future goods which are now or in the future become fixtures relating to the Mortgaged Property and the proceeds thereof. Mortgagor covenants and agrees that the filing of this Mortgage in the Official Records of the County where the Mortgaged Property is located shall also operate from the date of such filing as a fixture filing in accordance with Section 9-502 of the Illinois Uniform Commercial Code.

31. **No Property Manager Lien.** Any property management agreement for or relating to all or any part of the Mortgaged Property, whether now in effect or entered into hereafter by Mortgagor or on behalf of Mortgagor, shall contain a subordination provision whereby the property manager forever and unconditionally subordinates to the lien of this Mortgage and the Loan Documents any and all mechanic's lien rights and claims that it or anyone claiming through or under it may have at any time pursuant to any statute or law, including, without limitation, Illinois Compiled Statutes, Chapter 770, Section 60/1. Such property management agreement or a short form thereof, including such subordination, shall, at the Lender's request, be recorded with the office of the recorder of deeds for the county in which

UNOFFICIAL COPY

the Mortgaged Property is located. Mortgagor's failure to cause any of the foregoing to occur shall constitute an Event of Default under this Mortgage.

32. **Further Assurances.** The Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the better assuring, conveying, mortgaging, assigning and confirming unto the Lender, as the case may be, all Mortgaged Property mortgaged hereby or Mortgaged Property intended so to be, whether now owned by the Mortgagor or hereafter acquired. Upon any failure by the Mortgagor to do so after ten (10) days after written request therefor, the Lender may make, execute and record any and all such documents for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Lender its agent and attorney-in-fact for that purpose. The Mortgagor will reimburse the Lender for any and all reasonable sums expended by the Lender in making, executing and recording such documents.

33. **The Lender's Performance of the Mortgagor's Obligations.** Upon the occurrence and during the continuance of an Event of Default, or upon the occurrence and during the continuance of any emergency (which in the Lender's commercially reasonable opinion would or could endanger, impair or otherwise harm the Mortgaged Property or any part thereof and, in the Lender's reasonable opinion, is not adequately addressed by the Mortgagor), the Lender, either before or after acceleration of the Obligations or the foreclosure of this Mortgage and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Lender; and the Lender may, but shall not be required to, make full or partial payments with respect to any Permitted Exception and any other encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof or redeem from any tax sale or forfeiture affecting the Mortgaged Property or any part thereof or contest any tax or assessment, and may, but shall not be required to rent and operate the Mortgaged Property, and pay operating costs and expenses (including without limitation reasonable management fees) of every kind and nature in connection therewith, so that the Mortgaged Property shall be operational and usable for its intended purposes. All monies paid for any of the purposes herein authorized, and all reasonable expenses paid or incurred in connection therewith, including without limitation reasonable attorneys' fees and all costs of litigation through and including post judgment and appellate proceedings, if any, and other monies advanced by the Lender to protect the Mortgaged Property or any part thereof, and the interest created by this Mortgage, or to pay any operating costs and expenses thereof or to keep the Mortgaged Property operational and usable for its intended purpose shall be included within the term "**Obligations**" as used in this Mortgage, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate. All funds advanced by the Lender pursuant to this Section 33 or any other provision of this Mortgage for the performance of any obligation of the Mortgagor or to protect the Lender's security shall be deemed obligatory advances regardless of the Person to whom such funds are furnished. Inaction of the Lender shall never be considered as a waiver of any right accruing to it on account of any Event of Default on the part of the Mortgagor. The Lender, in making any payment hereby authorized (a) relating to real estate taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any real estate tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, payment, discharge, compromise or settlement of any other lien or Permitted Exception, may do so without inquiry as to the

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 20*

UNOFFICIAL COPY

validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the improvements or the Mortgaged Property or the rental, sale, marketing, operation or management of the Mortgaged Property or the payment of operating costs and expenses thereof, the Lender may do so in such amounts and to such persons as the Lender may deem appropriate and may enter into such contracts therefor as the Lender may deem appropriate or may perform the same itself.

34. **Commercial Loan.** The Mortgagor hereby represents and warrants that it is a business or commercial organization and further represents and warrants that the loan secured by this Mortgage was made and transacted solely for the purpose of carrying on or acquiring a business, professional, commercial or investment activity. Mortgagor stipulates, represents, warrants, affirms and agrees that each of the loans and other credit obligations secured hereby are constitute a "business loan" within the meaning of Sections 205/4(a) or (c) of Chapter 815 of the Illinois Compiled Statutes, as amended.

35. **Future Advances.** This Mortgage is given for the purpose of securing loan advances and other extensions of credit which the Lender has made and may make to or for the benefit of the Mortgagor pursuant and subject to the terms and provisions of the other Loan Documents. The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of loan advances and other extensions of credit made after this Mortgage is recorded, whether made pursuant to an obligation of the Lender or otherwise, and in such event, such advances shall be secured to the same extent as if such future advances were made on the date hereof, although there may be no advance made at the time of execution hereof, although there may be no indebtedness outstanding at the time any advance is made and although such advances may from time to time be repaid to a zero balance and thereafter readvanced. Such loan advances may or may not be evidenced by guarantees or notes executed pursuant to the other Loan Documents. This Mortgage secures all future advances made by the Lender with respect to the Mortgaged Property for the payment of Real Estate Taxes, insurance premiums, costs incurred for the protection of the Mortgaged Property and as otherwise provided in this Mortgage.

36. **The Mortgagor's Successors.** In the event that the ownership of Mortgaged Property, or any part thereof, becomes vested in a person or persons other than the Mortgagor, the Lender may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Obligations in the same manner as with the Mortgagor; provided, however, that nothing contained in this Section 36 shall modify, limit or otherwise abrogate the restrictions on transfer set forth in Section 21.

37. **Successors and Assigns.** This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of the Lender and its successors and assigns. Wherever herein the Lender is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not, and each such holder of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce each and every term and provision hereof as fully and to the same extent and with the same effect as if

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 21*

UNOFFICIAL COPY

such holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated the Lender.

38. **Provisions Severable.** If fulfillment of any provision of this Mortgage or any transaction related hereto shall at any time involve transcending the limit of validity prescribed by Law, then *ipso facto*, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained, other than the provisions requiring the Mortgagor to pay the Obligations, operates or would prospectively operate to invalidate this Mortgage in whole or in part, then such clause or provision only shall be void, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect; and if such clause or provision requires the Mortgagor to pay any of the Obligations, then at the sole option of the Lender, all of the Obligations shall become due and payable.

39. **Time of the Essence.** Time is of the essence of each covenant, condition and provision of this Mortgage to be performed by the Mortgagor.

40. **Captions and Pronouns.** The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

41. **Notices.** Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if hand delivered, if sent by reputable overnight courier (effective the business day following delivery to such courier) or if mailed (effective two business days after mailing) by United States registered or certified mail, postage prepaid, return receipt requested:

If to Mortgagor:

Royal TALLAHASSEE III 2 (DE) LLC
 c/o The John Buck Company
 One North Wacker Drive, Suite 2400
 Chicago, Illinois 60606
 Attention: Mr. Robert Sotak
 Facsimile: 312/993-4813

with a copy to:

Dykema Gossett PLLC
 10 South Wacker Drive, Suite 2300
 Chicago, Illinois 60601
 Attention: Mr. Michael F. Sexton
 Facsimile: 312/876-1155

UNOFFICIAL COPY

If to the Lender:

National Electrical Benefit Fund
900 Seventh Street, N.W.
Washington, D.C. 20001
Attention: John Hanley
Facsimile: 202/476-0903

with a copy to:

Greenberg Traurig, LLP
77 West Wacker Drive, Suite 2400
Chicago, Illinois 60601
Attention: Ronald R. Dietrich
Facsimile: 312/899-0378

with a copy to:

Potts-Dupre, Difede & Hawkins, Chartered
900 7th Street, NW, Suite 1020
Washington, D.C. 20001
Attention: James R. Difede
Facsimile: 202/223-3868

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Notices given in any other fashion shall be deemed effective only upon receipt.

42. **Parties Not Partners.** Nothing contained in this Mortgage shall constitute the Mortgagor and the Lender as joint venturers or partners with one another or agents for one another or render either of them liable for any debts or obligations of the other.

43. **Estoppel Letters.** The Mortgagor, upon ten (10) Business Days' prior written notice, shall furnish the Lender with a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Obligations, and stating whether, to the Mortgagor's best knowledge, any off-sets or defenses exist against such principal and interest, and, if so, the particulars thereof, and any other matters reasonably requested by the Lender.

44. **Indemnification**

- (a) In addition to all other indemnities in favor of the Lender specifically provided in any of the Loan Documents, the Mortgagor shall indemnify the Lender and save the Lender harmless from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims costs, charges, and expenses, including, without limitation, reasonable architect's, engineer's, attorneys' and accountant's fees and all reasonable disbursements which are imposed upon, incurred or asserted against the Lender by reason of: (i) any capital improvements, renovations or other work or thing done in, on or about the Mortgaged Property or any part thereof, (ii) any use, non-use, misuse, possession, occupation, alteration,

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 23*

UNOFFICIAL COPY

repair, condition, operation, maintenance or management of the Mortgaged Property or any part thereof or any street, drive, sidewalk, curb, passageway or space comprising a part thereof or adjacent thereto, (iii) any negligence on the part of either the Mortgagor or its agents, contractors, servants, employees, licensees or invitees, (iv) any accident, injury (including death) or damage to any person or Mortgaged Property occurring in, on or about the Mortgaged Property or any part thereof or in, on or about any street, drive, sidewalk, curb, passageway or space adjacent thereof, (v) any lien or claim which may be alleged to have arisen on or against the Mortgaged Property or any part thereof under the Laws of the local or State government or any other governmental or quasi-governmental authority or any liability asserted against the Lender with respect thereto, (vi) any tax attributable to the execution, delivery, filing or recording of this Mortgage, the Note, or any Loan Documents, or (vii) any contest permitted pursuant to the provisions of this Mortgage; provided that the Mortgagor shall have no obligation to indemnify or save the Lender harmless from any losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges or expenses arising solely and directly from the Lender's willful misconduct or gross negligence.

- (b) The obligations of the Mortgagor under this Section 44 shall not in any way be affected by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Project. If any claim, action or proceeding is made or brought against the Lender by reason of any event as to which the Mortgagor is obligated to indemnify, then upon demand by the Lender, the Mortgagor, at its sole cost and expense, shall resist or defend such claim, action or proceeding in the Lender's name, if necessary by the attorneys for the Mortgagor's insurance carrier (if such claim, action or proceeding is covered by insurance), otherwise by such attorneys as the Lender shall approve in writing (which approval shall not be unreasonably withheld). Notwithstanding the foregoing, the Lender may engage its own attorneys in its reasonable discretion to defend it or to assist in its defense and the Mortgagor shall pay the reasonable fees and disbursements of such attorneys.

45. **Non-Waiver By the Lender.** The failure of the Lender to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. The Mortgagor shall not be relieved of its obligation to pay the Obligations, as and when due, by reason of the Lender's failure to comply with any request of the Mortgagor to take any action to enforce any of the provisions of this Mortgage, the Note or any of the Loan Documents. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Mortgaged Property, the Lender may release any person or entity at any time liable for the payment of the Obligations or any portion thereof or any part of the security held therefor, without in any manner impairing or affecting the Note, Loan Documents or the lien thereof or the lien or priority of this Mortgage, as so extended and modified. The Lender may resort for the payment

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing 24*

UNOFFICIAL COPY

of the Obligations to any other security held by the Lender in such order and manner as the Lender, in its discretion, may elect. The Lender may take action to recover the Obligations, or any portion thereof, or to enforce any covenant of this Mortgage, without prejudice to the right of the Lender thereafter to foreclose this Mortgage.

46. **Law and Venue.** THIS MORTGAGE WAS NEGOTIATED IN THE STATE OF ILLINOIS AND THE PROCEEDS OF THE LOAN HAVE BEEN AND WILL BE DELIVERED IN THE STATE OF ILLINOIS, WHICH STATE MORTGAGOR AND LENDER AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (INCLUDING, WITHOUT LIMITATION, 735 ILCS SECTION 105/5-1 ET SEQ, BUT OTHERWISE WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS) OF THE STATE OF ILLINOIS.

47. **Waiver of Jury Trial.** LENDER AND MORTGAGOR EACH WAIVES ALL RIGHTS TO TRIAL BY JURY OF ANY SUITS, CLAIMS, COUNTERCLAIMS, AND ACTIONS OF ANY KIND ARISING UNDER OR RELATING TO THIS MORTGAGE. LENDER AND MORTGAGOR EACH ACKNOWLEDGE THAT THIS IS A WAIVER OF A LEGAL RIGHT AND REPRESENTS TO THE OTHER THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY. LENDER AND MORTGAGOR EACH AGREES THAT ALL SUCH SUITS, CLAIMS, COUNTERCLAIMS, AND ACTIONS SHALL BE TRIED BEFORE A JUDGE OF A COURT OF COMPETENT JURISDICTION, WITHOUT A JURY.

48. **Jurisdiction.**

- (a) WITH RESPECT TO ANY LEGAL OR EQUITABLE SUIT, ACTION, CLAIM OR PROCEEDING ARISING HEREUNDER OR UNDER THE OTHER LOAN DOCUMENTS, MORTGAGOR (I) IRREVOCABLY SUBMITS TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF ILLINOIS AND THE UNITED STATES DISTRICT COURT LOCATED IN CHICAGO, ILLINOIS (II) AGREES THAT ALL SUCH SUITS, ACTIONS, CLAIMS OR PROCEEDINGS MAY BE HEARD AND DETERMINED IN SUCH COURTS OF THE STATE OF ILLINOIS OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT AND (III) IRREVOCABLY WAIVES ANY (A) OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY SUIT, ACTION, CLAIM OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT BROUGHT IN ANY SUCH COURT AND (B) ANY CLAIM THAT ANY SUCH SUIT, ACTION, CLAIM OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

UNOFFICIAL COPY

(b) MORTGAGOR HEREBY AGREES THAT ANY LEGAL OR EQUITABLE SUIT, ACTION, CLAIM OR PROCEEDING BROUGHT BY MORTGAGOR AND/OR ANY AFFILIATE THEREOF AGAINST LENDER ARISING OUT OF OR RELATING TO THE LOAN, THIS NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS OR RELATING TO THE PROJECT SHALL ONLY BE INSTITUTED BY MORTGAGOR OR SUCH AFFILIATE IN COURTS OF THE STATE OF ILLINOIS LOCATED IN CHICAGO OR THE UNITED STATES DISTRICT COURT LOCATED IN CHICAGO, ILLINOIS. MORTGAGOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO BRING ANY SUCH SUIT, ACTION, CLAIM OR PROCEEDING AGAINST LENDER IN ANY OTHER COURT OR JURISDICTION.

49. **Reconveyance.** When all of the Obligations have been paid in full, the Lender shall release of record this Mortgage at the sole cost and expense of the Mortgagor, and shall surrender this Mortgage and all notes and instruments evidencing the Obligations to the Mortgagor.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;
THE SIGNATURE PAGE TO THIS MORTGAGE FOLLOWS.]

UNOFFICIAL COPY

SIGNATURE PAGE TO CONSTRUCTION MORTGAGE, ASSIGNMENT
OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

IN WITNESS WHEREOF, this Mortgage has been executed as of the date and year first set forth above.

MORTGAGOR:

ROYAL TALLAHASSEE III 2 (DE) LLC,
a Delaware limited liability company

By: Buck 505 Investors, LLC, a Delaware
limited liability company

Its: Administrative Member



By: Kent A. Swanson

Its: Manager

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)

COUNTY OF Cook)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Brent A. Anderson personally known to me to be the Vice President of ROYAL TALLAHASSEE III 2 (DE) LLC, a Delaware limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such he/she signed and delivered the said instrument pursuant to proper authority, as his/her free and voluntary acts, and as the free and voluntary act and deed, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25th day of Jan, 2008.

Mary Alice Flavin
Notary Public

My Commission Expires: _____



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

THAT PART OF LOTS 7 THROUGH 12, ALL INCLUSIVE, TOGETHER WITH THE EAST-WEST ALLEY VACATED BY ORDINANCE PASSED APRIL 13, 1984 AND RECORDED AUGUST 3, 1984 AS DOCUMENT NUMBER 27199505, LYING SOUTH OF AND ADJOINING LOTS 1 THROUGH 6 AND LYING NORTH OF AND ADJOINING SAID LOTS 7 THROUGH 12, IN BLOCK 15, IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF BLOCK 15 AFORESAID; THENCE SOUTH 0 DEGREES 06 MINUTES 53 SECONDS EAST, ALONG THE WEST LINE OF SAID BLOCK, 110.00 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 110.00 FEET OF BLOCK 15 AFORESAID, SAID POINT BEING ALSO THE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND; THENCE SOUTH 89 DEGREES 52 MINUTES 51 SECONDS EAST, ALONG SAID SOUTH LINE, 141.40 FEET; THENCE SOUTH 44 DEGREES 52 MINUTES 51 SECONDS EAST, 6.20 FEET TO A POINT ON THE SOUTH LINE OF THE NORTH 114.38 FEET OF BLOCK 15 AFORESAID; THENCE SOUTH 89 DEGREES 52 MINUTES 51 SECONDS EAST, ALONG SAID SOUTH LINE, 5.25 FEET; THENCE SOUTH 44 DEGREES 52 MINUTES 51 SECONDS EAST, 147.81 FEET TO A POINT ON THE SOUTH LINE OF BLOCK 15 AFORESAID, SAID POINT BEING 46.01 FEET (AS MEASURED ALONG SAID SOUTH LINE) WEST OF THE SOUTHEAST CORNER OF BLOCK 15 AFORESAID; THENCE NORTH 89 DEGREES 40 MINUTES 45 SECONDS WEST, ALONG THE SOUTH LINE OF SAID BLOCK, 255.11 FEET TO ITS SOUTHWEST CORNER THEREOF; THENCE NORTH 0 DEGREES 06 MINUTES 53 SECONDS WEST, ALONG THE WEST LINE OF BLOCK 15 AFORESAID, 108.01 FEET TO THE HEREINABOVE DESIGNATED POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENTS FOR INGRESS, EGRESS AND ACCESS, LOADING DOCK AREA, PLAZA EQUIPMENT, SERVICE CORRIDOR, UTILITIES, STRUCTURAL SUPPORT, COMMON WALLS, CEILINGS AND FLOORS, ENCROACHMENTS AND CONSTRUCTION CREATED BY AMENDED AND RESTATED RECIPROCAL EASEMENT AND OPERATING AGREEMENT BY 515 NORTH STATE STREET CHICAGO LP AND 505 VENTURE COMPANY, L.L.C. DATED JANUARY 29, 2004 AND RECORDED JANUARY 30, 2004 AS DOCUMENT NUMBER 0403027179, AND AS MORE FULLY DESCRIBED THEREIN.

PIN: 17-10-123-013

ADDRESS: 505 N. STATE, CHICAGO, IL

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing*

UNOFFICIAL COPY

EXHIBIT B

PERMITTED EXCEPTIONS

1. General real estate taxes for the years 2007 and 2008. Tax number 17-10-123-013-0000.

Note: Taxes for the years 2007 and 2008 are not yet due and payable.

Note: Affects the land and other property not now in question.

2. Conditions contained in ordinance dated and passed April 13, 1984 a copy of which was recorded August 3, 1984 as document number 27199505 that Chicago Title and Trust Company as Trustee, Trust number 43846 and Trust number 64278 agrees to accept and maintain as private sewers all existing sewers and appurtenances thereto, which are located in the public alley thereby vacated.

(Affects land and other property)

3. Terms, conditions, provisions and easements contained in Amended and Restated Reciprocal Easement and Operating Agreement dated January 29, 2004 and recorded January 30, 2004 as document number 0403027179, made by and between 515 North State Street Chicago, LP and 505 Venture Company, LLC.

(Affects the land and other property)

4. Rights of the adjoining owners to the concurrent use of the easement.

(Affects Parcel 2 only)

5. If any document referenced herein contains a covenant, condition or restriction violative of 42USC 3604(c), such covenant, condition or restriction to the extent of such violation is hereby deleted.

6. Matters disclosed on the survey prepared by National Survey Service, Inc. No. 127533 dated November 19, 2007 as follows:

(a) Encroachment by concrete steps into the Land at the Southeast corner;

(b) Adverse encroachment by the wooden fence over the North line of the Land by 4.00 feet;

(c) Adverse encroachment by the granite walk over the North line of the Land by 4.00 feet;

(d) Adverse encroachment by the overhead beam over the North line of the Land by an undisclosed distance; and

(e) Adverse encroachment by four (4) granite clad columns over the North line of the Land by an undisclosed distance.

7. Any lien, or right to a lien, for services, labor or material furnished after _____ (the contractor's statement date).

8. Rights of mechanics and material suppliers who are named on the contractor's statement made by _____ dated _____, and of mechanics and material suppliers claiming by, through or under them, to the extent, if any, that the amounts shown in said statement as being unpaid relate to services, labor and material actually in place on said land on the date covered by said statement.

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing*

UNOFFICIAL COPY

EXHIBIT B

9. Rights of Bridgestreet Corporate Housing LLC, as tenant only under existing unrecorded lease dated October 10, 2007 and of all parties claiming by through or under.
10. Unrecorded Subordination and Attornment Agreement dated as of December ____, 2007 made by National Electrical Benefit Fund, Bridgestreet Corporate Housing, LLC and Royal Tallahassee III 2 (DE) LLC.
11. Assignment of Leases and Rents dated as of December ____, 2007 and recorded _____ as document number _____ by Royal Tallahassee III 2 (DE) LLC, a Delaware limited liability company, to National Electric Benefit Fund, a District of Columbia trust.
12. Security interests of National Electrical Benefit Fund as described in financing statement naming Royal Tallahassee III 2 (DE) LLC, as debtor, recorded on _____ as document number _____.

*Construction Mortgage, Assignment of Leases and Rents
Security Agreement and Fixture Filing*