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Illinois Anti-Predatory
Lending Database
Program

Certificate of Exemption



Doc#: 0830329059 Fee: \$114.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/29/2008 12:12 PM Pg: 1 of 40

Property of Cook County Clerk's Office

The property identified as: **PIN:** 03-14-407-006-0000

Address:

Street: 5110-6360 Capital Drive

Street line 2:

City: Wheeling

State: IL

ZIP Code: 60090

40

Lender: Home National Bank

Borrower: Sun Capitol, LLC

Loan / Mortgage Amount: \$3,965,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 777/70 et seq. because it is commercial property.

Certificate number: 5E3CE1C6-0E54-4456-9057-3DFD8B5C8EF6

Execution date: 10/21/2008

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Execution Version

Property of Cook County Clerk's Office

First American Title Order # NCS 361098 2 of 4

This Instrument Was Prepared By:

Michael S. Laird, Esq.
Crowe & Dunlevy, PC
Suite 1800
20 North Broadway Avenue
Oklahoma City, Oklahoma 73102

THIS INSTRUMENT SECURES INDEBTEDNESS EVIDENCED BY A PROMISSORY NOTE DATED OCTOBER 21, 2008 FROM MORTGAGOR, PAYABLE TO THE ORDER OF MORTGAGEE, IN THE FACE PRINCIPAL AMOUNT OF THREE MILLION NINE HUNDRED SIXTY-FIVE THOUSAND AND NO/100 DOLLARS (\$3,965,000.00), SAID NOTE MATURING BY ITS TERMS ON OCTOBER 20, 2015.

MORTGAGE AND SECURITY AGREEMENT

(Village of Wheeling, Cook County, Illinois)

THIS MORTGAGE AND SECURITY AGREEMENT ("Security Instrument") is made as of this 21st day of October, 2008, by **SUN CAPITOL, LLC**, an Illinois limited liability company ("Mortgagor"), having an address at 1400 E. Southern Ave., Suite 225, Tempe, Arizona 85282 in favor of Home National Bank, a nationally chartered bank ("Mortgagee"), having an address at 15005 N. Northsight Blvd., Scottsdale, Arizona 85260.

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RECITALS:

A. Mortgagor is the owner in fee simple of certain real property located in the Village of Wheeling, Cook County, Illinois, as more particularly described on Exhibit "A" attached hereto (the "Premises").

B. Mortgagee has made a loan to Mortgagor (the "Loan") in the amount of THREE MILLION NINE HUNDRED SIXTY-FIVE THOUSAND AND NO/100 DOLLARS (\$3,965,000.00) (the "Loan Amount"), in accordance with a Mortgage Loan Agreement of even date herewith between Mortgagor and Mortgagee (as the same may be amended from time to time, with all replacements thereof and substitutions therefor, the "Loan Agreement") and Mortgagor has executed and delivered a certain Promissory Note of even date herewith, in the principal sum of the Loan Amount made payable to the order of Mortgagee which has a Maturity Date as set forth therein of October 20, 2015 (the "Note"); and

C. Mortgagor is required to execute and deliver this Security Instrument as a condition to obtaining the Loan.

NOW, THEREFORE, in consideration of the Loan and the sum of Ten Dollars (\$10.00) and other good, valuable and lawful consideration, the receipt and sufficiency of which are hereby acknowledged, MORTGAGOR COVENANTS AND AGREES AS FOLLOWS:

1. Granting Clause. For and in consideration of the sum of \$10.00 and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the indebtedness described herein up to a maximum principal amount of \$3,965,000.00 and any other obligations of Mortgagor hereinafter set forth, Mortgagor does hereby grant, bargain, sell, mortgage, convey, assign, transfer, warrant, release, pledge and set over unto Mortgagee, its successors and assigns, and has by these presents GRANTED, BARGAINED, SOLD, MORTGAGED, CONVEYED, ASSIGNED, TRANSFERRED, WARRANTED, RELEASED, PLEDGED AND SET OVER to Mortgagee, its successors and assigns, and grants to Mortgagee, its successors and assigns, a security interest in, the Premises, and all of Mortgagor's estate, right, title and interest therein, whether now or after acquired, including any greater estate hereafter acquired therein by Mortgagor, together with the following:

TOGETHER with all right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the ways, easements, streets, alleys, passages, water, water courses, riparian rights, oil, gas and other mineral rights, gaps, gores, rights, hereditaments, liberties and privileges thereof, if any, and in any way appertaining to the Premises;

TOGETHER with all rents, income, royalties, issues, receipts, revenues, proceeds and profits accruing and to accrue under present or future leases of or otherwise from the Premises or any part thereof or any other portion of the Mortgaged Property (as hereinafter defined), including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance, operation, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents and liquidated damages following an Event of Default (as hereinafter defined), royalties, the premium payable by any lessee upon the exercise of a cancellation, privilege originally provided in any leases, and, except

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as may be otherwise provided for in the Loan Documents (as defined in the Loan Agreement), all proceeds payable under any policy of insurance for loss of rents, together with any and all rights and claims of any kind which Mortgagor may have against any lessee under such leases or any subtenants or occupants of the Premises (the "Rents"), together with any and all security deposits, guaranties, letters of credit and other assurances of the tenants' performance under such leases (the "Assurances");

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed on the Premises, including, without limitation all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Premises, and all fixtures and articles of personal property now or hereafter attached to or contained in or used in connection with the Premises, including, without limitation, all furniture, apparatus, machinery, equipment, motors, elevators, fittings, radiators, furnaces, stoves, microwave ovens, awnings, shades, screens, blinds, office equipment, trash and garbage removal equipment, carpeting and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning, conveyor, security, sprinkler and other equipment, and all fixtures and appurtenances thereof, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to such improvements in any manner; it being intended that all the above-described property shall, so far as permitted by law, be deemed to be a part of the realty, and security for the indebtedness of Mortgagor to Mortgagee hereinafter described and secured by this Security Instrument, and as to the balance of the above-described property as well as the portion thereof constituting fixtures, this Security Instrument is hereby deemed to be as well a security agreement for the purpose of creating hereby a security interest in such property, under the Uniform Commercial Code as adopted in Illinois, as amended, revised or replaced from time to time, or any other statute which may hereafter be substituted in place of it (the "UCC"), securing such indebtedness, for the benefit of Mortgagee; all of the property described in this paragraph is hereinafter sometimes collectively called the "Improvements";

TOGETHER with any and all existing and future warranty claims, maintenance contracts, leases and other contract rights, instruments, documents, chattel papers, accounts and general intangibles with respect to or arising from the Premises, the Improvements, or any other portion of the Mortgaged Property, and all cash and non-cash proceeds and products thereof, and

TOGETHER with all payments, awards and other compensation, heretofore or hereafter to be made with respect to any of the Mortgaged Property as a result of (i) any taking by eminent domain, either permanent or temporary (a "Taking"), including severance and consequential damage and change in grade of streets (collectively, "Taking Proceeds"), (ii) any loss or damage to any Improvements, (iii) any other injury to or decrease in the value of the Mortgaged Property or (iv) any and all refunds of impositions or other charges relating to the Mortgaged Property or the indebtedness secured by this Security Instrument.

TOGETHER with all rights, title and interest of Mortgagor in and to all options or contracts to purchase or lease the property or any portion of, or any interest in, the Mortgaged

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Property, now owned or subsequently acquired and any greater estate in the Premises owned or subsequently acquired,

TOGETHER with all of Mortgagor's interest in and to all operating accounts, rent deposit and lockbox accounts, escrow accounts, tenant security deposit accounts, capital improvement reserves and impounds, and any other bank accounts or deposit accounts of Mortgagor;

TOGETHER with all books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory;

TOGETHER with all proceeds and products or, additions and accretions to, substitutions and replacements for, and changes in any of the property described in the foregoing clauses, including personal property acquired with cash proceeds.

(The property described in the foregoing "Together With" clauses above is hereafter called the "Collateral." The Premises and the Collateral are hereafter collectively called the "Mortgaged Property.")

TO HAVE AND TO HOLD all the Mortgaged Property to the use, benefit and behoof of Mortgagee, its successors and assigns, FOREVER, in FEE SIMPLE subject to all of the terms, conditions, covenants and agreements herein set forth, for the security and benefit of Mortgagee, its successors and assigns.

2. Liens and Encumbrances. Mortgagor does hereby warrant and represent to Mortgagee, its successors and assigns, that Mortgagor owns good and marketable indefeasible fee simple title to the Premises and good and marketable title to the Collateral, and has the right, power and authority to grant a security title to, lien on and a security interest in the Mortgaged Property in the manner and form as above written; that title to the Mortgaged Property is free and clear of all defects, liens and encumbrances except for the security title, lien and security interest created hereby and the matters identified in a schedule of exceptions to coverage in the title insurance policy insuring Mortgagee's interest in the Premises (the "Permitted Exceptions"). Mortgagor agrees that it shall maintain this Security Instrument as a first priority security title, security interest and lien and shall not create or grant any other lien or encumbrance against the Mortgaged Property which purports to take priority over the interests created under this Security Instrument, without the prior written consent of Mortgagee. Mortgagor acknowledges that Mortgagee and its successors and assigns are intended to have and to hold the Mortgaged Property and all parts, rights, members and appurtenances thereof, to the use, benefit and behoove of Mortgagee and its successors and assigns, in fee simple forever; and Mortgagor covenants that Mortgagor is lawfully seized and possessed of the Mortgaged Property, and has good right to convey the same.

3. Security for Payment of Indebtedness, Including Future Advances. This Security Instrument is made under the laws of the State of Illinois relating to mortgages, and is also a security agreement granting a present and continuing security interest in and security title to the

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Collateral, and is given to secure the following, including all of the following which constitute future advances:

- (a) Payment of principal, interest and all other charges under the Note, as the same may be amended, extended, supplemented, modified and/or renewed, and all replacements and substitutions therefor, together with interest thereon at a rate or rates which may vary from time to time as specified in the Note;
- (b) payment of any and all amounts or charges required to be paid by Mortgagor pursuant to this Security Instrument or any of the other Loan Documents;
- (c) payment by Mortgagor to Mortgagee of all sums now or hereafter expended or advanced by Mortgagee pursuant to this Security Instrument or any of the other Loan Documents;
- (d) payment of any and all amounts advanced by Mortgagee with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums or costs incurred in the protection and/or maintenance of the Mortgaged Property;
- (e) performance and observance of each covenant and agreement of Mortgagor contained herein or in any of the other Loan Documents;
- (f) payment by Mortgagor to Mortgagee of any and all other liabilities and indebtedness of Mortgagor to Mortgagee, direct or contingent, now or hereafter owing by Mortgagor to Mortgagee, including all future advances made by Mortgagee, other than as provided in subparagraphs (a) through (e) above;
- (g) payment of any and all renewals, substitutions, modifications and extensions of the Note or any other of the foregoing obligations secured hereby.

Mortgagor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the Permitted Exceptions; PROVIDED, HOWEVER, that if Mortgagor shall pay or cause to be paid to Mortgagee the principal, interest and all other charges under the Note and other Loan Documents on or before the Maturity Date in accordance with the terms of the Note, and in the manner stipulated therein and herein, all without deduction or credit for taxes or other charges paid by Mortgagor, and if Mortgagor shall have kept, performed and observed all of the covenants and conditions contained in this Security Instrument and all of the other Loan Documents, then this Security Instrument shall be canceled and surrendered and Mortgagee shall execute and deliver to Mortgagor a discharge of this Security Instrument.

4. Mortgagor's Covenants. Mortgagor further covenants and agrees as follows:

4.1 Payment of Indebtedness. Mortgagor shall pay promptly the indebtedness evidenced by the Note at the time and in the manner provided herein and in the Note, the terms and provisions of which are incorporated herein by reference as if fully set forth

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herein, and all other sums and charges payable when due by Mortgagor and pursuant to the Note, this Security Instrument or any of the other Loan Documents.

4.2 Tax and Insurance Escrows.

(a) Subject to the terms and conditions of subsection 4.2(c) below, Mortgagor shall pay to Mortgagee, in addition to the monthly payments under the Note and concurrently therewith in a single payment monthly until the Note is fully paid, a sum equal to annual real estate taxes, general and special assessments and premiums for insurance required hereunder (all as estimated by Mortgagee) less all sums previously paid therefor, divided by the number of full calendar months to elapse before the date which is one (1) month prior to the date when such taxes and assessments and insurance premiums will become due. If one month prior to the due date of any such taxes, assessments or insurance premiums any sums then held by Mortgagee pursuant to this subparagraph (a) shall be insufficient to fully pay any such taxes, assessments or insurance premiums, Mortgagor shall, within ten (10) days after written notice from Mortgagee, pay to Mortgagee the amount of such deficiency. Such sums shall be held by Mortgagee for payment of such taxes and assessments and insurance premiums as and when due; provided, however, that upon the occurrence of an Event of Default, Mortgagee may apply all or any portion of such sums to the reduction of the indebtedness secured hereby, in such manner as Mortgagee shall determine. Mortgagee shall have the right to commingle and hold such sums with its general funds, no interest shall accrue thereon in favor of Mortgagor, and such funds shall not be, nor be deemed to be, trust funds.

(b) Without limiting the rights of Mortgagee hereunder, including, without limitation, those provided in Paragraph 7 hereof, in the event of a sale of the Premises or any other part of the Mortgaged Property, any funds then on deposit with the Mortgagee shall, at Mortgagee's option, and thereupon automatically and without the necessity of further notice or written assignment be transferred to and held thereafter for the account of the new owner, to be applied in accordance with the foregoing.

(c) Mortgagee hereby waives the requirement for deposit by Mortgagor of the sums described in subsection 4.2(a) above, for so long as (i) no Event of Default has occurred, and no event has occurred which, with the giving of notice, passage of time or both, would constitute an Event of Default, and (ii) Mortgagor delivers to Mortgagee, no later than five (5) days prior to the last day for payment of such sums without penalty or interest (or in the case of an insurance premium five (5) days prior to the date payment of such insurance premium is due), evidence satisfactory to Mortgagee in Mortgagee's sole and absolute discretion, that all sums described in subsection 4.2(a) above have been paid in full. Upon failure of either of the foregoing conditions, the waiver set forth in this subsection 4.2(c) shall immediately and automatically become null and void, without notice from Mortgagee to Mortgagor.

(d) The failure of Mortgagor to pay any taxes or assessments assessed against the Mortgaged Property, or any installment thereof, or any premiums payable with respect to any insurance policy covering the Mortgaged Property, shall constitute waste.

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4.3 Protection Against Charges. Except for the Permitted Exceptions, Mortgagor shall keep the Mortgaged Property free from liens of every kind, except only for real estate taxes and general and special assessments which are not yet due and payable, and mortgage, intangible or similar taxes, if any, as provided in Paragraph 4.7 hereof, and shall pay, before delinquency and before any penalty for non-payment attaches thereto, all taxes, assessments, and other governmental or municipal or public dues, charges, fines or impositions which are or hereafter may be levied against the Mortgaged Property or any part thereof. Mortgagor shall promptly deliver to Mortgagee receipted bills evidencing each such payment, together with any other evidence of payment required by Mortgagee in its sole and absolute discretion, no later than five (5) days prior to the last day upon which such payment can be made without penalty or interest.

4.4 Insurance and Casualty Damage.

(a) Mortgagor shall keep, or cause to be kept, all of the following insurance policies with respect to the Mortgaged Property in companies, forms, amounts and coverage satisfactory to Mortgagee, containing waiver of subrogation and first Mortgagee clauses in favor of Mortgagee and providing for thirty (30) days written notice to Mortgagee in advance of cancellation of said policies for nonpayment of premiums or any other reason or for material modification of said policies, and ten (10) days written notice to Mortgagee in advance of payment of any insurance claims under said policies to any person:

(i) insurance against loss or damage by fire and such other hazards, casualties and contingencies (including, without limitation, so-called all risk coverages) as Mortgagee reasonably may require, in an amount equal to the full replacement cost of the Mortgaged Property, with a replacement cost endorsement and in such amounts so as to avoid the operation of any coinsurance clause, for such periods and otherwise as Mortgagee reasonably may require from time to time.

(ii) comprehensive general public liability, property damage and indemnity insurance, including, without limitation, water damage, so-called assumed and contractual liability coverage and claims for bodily injury, death or property damage, naming Mortgagee as an additional insured, in such amounts as Mortgagee reasonably may from time to time require,

(iii) insurance against rent loss or abatement of rent, covering payment of rent and like charges from the Mortgaged Property over a term of not less than twelve (12) months, in an amount at least equal to the aggregate annual amount payable from time to time under the Note.

(iv) if the Mortgaged Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the Act), as amended, the Mortgagor will keep the

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Mortgaged Property covered by flood insurance up to the maximum limit of coverage available under the Act, but not in excess of the amount of the Note.

(v) Mortgagor shall deliver renewal certificates of all insurance required above, together with written evidence of full payment of the annual premiums therefor at least thirty (30) days prior to the expiration of the existing insurance. Any such insurance may be provided under so called "blanket" policies, so long as the amounts and coverages thereunder will, in Mortgagee's sole judgment, provide protection equivalent to that provided under a single policy meeting the requirements hereinabove.

(b) Notice. In case of any material damage or destruction of the Mortgaged Property or any part thereof, or any interest therein or right accruing thereto, Mortgagor shall promptly give to the insurance carrier and Mortgagee written notice generally describing the nature and extent of such damage or destruction which has resulted or which may result therefrom. Mortgagee may make proof of loss if not made promptly by Mortgagor. Mortgagee may appear in any such proceedings and negotiations and Mortgagor shall promptly deliver to Mortgagee copies of all notices and pleadings in any such proceedings. Mortgagor will in good faith, file and prosecute all claims necessary for any award or payment resulting from such damage or destruction. All costs and expenses incurred by Mortgagee in exercising its rights under this section shall constitute indebtedness secured by this Security Instrument.

(c) Application of Insurance Proceeds. Upon occurrence of any loss or damage to all or any portion of the Mortgaged Property resulting from fire, vandalism, malicious mischief or any other casualty or physical harm (a "Casualty"), Mortgagee hereby agrees to allow the proceeds of any insurance policies collected or claimed as a result of such Casualty to be used for the restoration of the Mortgaged Property (the "Restoration") and to release such insurance proceeds to Mortgagor as such Restoration progresses, provided:

(i) Mortgagor is not in default under any of the terms, covenants and conditions of this Security Instrument;

(ii) The plans and specifications for the Restoration are approved in writing by Mortgagee and a building permit is issued for the Restoration;

(iii) At all times during the Restoration, Mortgagor has deposited with Mortgagee, cash, letters of credit, surety bonds or equivalent assurances of the availability of funds which, when added to such insurance proceeds, are sufficient to complete the Restoration, and further, that the sufficiency of such funds is certified to Mortgagee by Mortgagee's inspecting architect/engineer;

(iv) Mortgagor provides builders' all risk insurance for the Restoration in form and amount acceptable to Mortgagee;

(v) The insurance proceeds held by Mortgagee shall be disbursed no more often than once per month. Mortgagee's obligation to make any such

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disbursement shall be conditioned upon Mortgagee's receipt of written certification from Mortgagee's inspecting architect/engineer that all construction and work for which such disbursement is requested has been completed in accordance with the approved plans and specifications and, further, that Mortgagor has deposited with Mortgagee sufficient funds to complete the Restoration in accordance with subparagraph (iii) above;

(vi) Mortgagee shall have the option, upon completion of the Restoration to apply any surplus insurance proceeds remaining after the completion of such Restoration, at par, to the reduction of the indebtedness secured by the Security Instrument to Mortgagee; notwithstanding the fact that the amount owing thereon may not then be due and payable or that said indebtedness is otherwise adequately secured; and

(vii) Mortgagee shall be entitled to require and to impose such other conditions to the release of such insurance proceeds for the Restoration as would be customarily or reasonably required and imposed by a construction lender for a project of similar nature and cost.

4.5 Maintenance of Mortgaged Property.

(a) No part of the mortgaged Property shall be structurally or otherwise materially altered, removed or demolished, nor shall any fixtures or any portion of the Collateral on, in or about the Premises be severed, removed, sold, mortgaged or otherwise encumbered, without the prior written consent of Mortgagee in each case; except, however, that Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Security Instrument such Collateral as from time to time may become worn out or obsolete, provided that simultaneously with or prior to such removal, such Collateral shall be replaced with other new Collateral of like kind and quality, and by such removal, the Mortgagor shall be deemed to have subjected the replacement Collateral to the lien and security interest of this Security Instrument. Any improvements or any of the Collateral which are demolished or destroyed in whole or in part shall be replaced promptly by similar Improvements and articles of personal property of comparable quality, condition and value as those demolished or destroyed, thereupon becoming part of the Mortgaged Property free from any other lien or security interest or encumbrance on or reservation of title to such property. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof and shall keep and maintain (or cause to be kept and maintained) the same in good repair and condition. Mortgagor shall make (or cause to be made) all necessary and proper repairs and replacements so that all components of the Mortgaged Property will, at all times, be in good condition, fit and proper for the respective purposes for which they were erected or installed, other than for matters of health and safety prior to the demolition thereof. In the event that Mortgagor shall fail fully to comply with any of the requirements of this Paragraph 4.5, without prejudice to any other right or remedy that may be available to Mortgagee in such event, Mortgagee shall have the right to recover, as damages for such failure, an amount equivalent to the cost required to restore the Mortgaged Property to the condition hereby required.

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(b) In its reasonable discretion, Mortgagor hereby grants to Mortgagee and its agents, the right but not the obligation, to enter upon the Premises at any time for the purpose of inspecting and appraising the Mortgaged Property and conducting tests and surveys thereof.

(c) Mortgagor hereby covenants and agrees to comply with, and to cause all occupants of all or any portion of the Mortgaged Property to comply with, all applicable zoning, building, use and environmental restrictions and all laws, rules, statutes, ordinances, regulations, orders and requirements, including, without limitation, environmental matters and notices of violation of all governmental authorities having jurisdiction over the Mortgaged Property or the maintenance, use or operation thereof, and all applicable restrictions, agreements and requirements, whether or not of record, including but not limited to the requirements of the National Fire Protection Association or any successor thereto, or any other similar body exercising similar functions (collectively, "Laws"). Mortgagor shall not initiate, join in or consent to any change in any private restriction, covenant, zoning ordinance or other public or private restrictions affecting the Mortgaged Property, without the prior written consent of Mortgagee, which shall not be unreasonably withheld. Mortgagor will deliver to Mortgagee within ten (10) days after receipt thereof any permits, licenses or other governmental approvals, authorizations or renewals in or of, issued and, approved or disapproved with respect to the Mortgaged Property. Mortgagor hereby indemnifies Mortgagee and its officers, directors, shareholders, employees, agents, partners and their respective heirs, personal representatives, successors and assigns (collectively, "Indemnified Parties") and agrees to defend and hold the Indemnified Parties harmless from and against any and all claims, demands, losses, costs, damages, liabilities or expenses, including but not limited to attorneys' fees, incurred or suffered by the Indemnified Parties arising from any failure of the Mortgaged Property or the maintenance, use or operation thereof to comply with Laws, or from any failure of Mortgagor to obtain, maintain or renew, or to have obtained, maintained or renewed, any permit or approval required with respect to the Mortgaged Property or the maintenance, use or operation thereof. The foregoing indemnification and agreement shall survive the discharge of this Security Instrument and the payment or other satisfaction of the indebtedness secured hereby.

Mortgagor shall not make, suffer or permit any use of the Mortgaged Property, or any part thereof, for any purposes other than that for which the same are not used or intended to be used, without the prior written consent of Mortgagee.

4.6 Hazardous Materials and Wetlands.

(a) Without limiting the generality of any provision herein or in any of the Loan Documents, Mortgagor hereby represents and warrants to Mortgagee that neither Mortgagor nor, to the best knowledge and belief of Mortgagor, any previous owner or user of the Mortgaged Property has used, generated, stored or disposed of, discharged or emitted in, on, under, around or above the Mortgaged Property any Hazardous Materials except as such may be required to be used, stored, or transported in connection with the permitted uses of the Mortgaged Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor, and that to the best knowledge

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and belief of Mortgagor, the Mortgaged Property is not currently in violation of any Environmental Laws (as hereinafter defined). Mortgagor shall cause all employees, agents, contractors and subcontractors of Mortgagor and any other persons present on or occupying the Mortgaged Property to, (i) keep and maintain the Mortgaged Property, including, without limitation, the soil and ground water thereof, in compliance with all federal, state and local laws, ordinances and regulations relating to industrial hygiene or to the environmental conditions thereon (including but not limited to any Environmental Laws), and (ii) not cause or knowingly permit the Mortgaged Property, including the soil and groundwater thereof, to be in violation of any such laws, ordinances or regulations. Neither Mortgagor nor any employees, agents, contractors or subcontractors of Mortgagor or any other persons occupying or present on the Mortgaged Property shall (A) use, generate, manufacture, store or dispose of, discharge or emit on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" or which are otherwise regulated under any Environmental Laws (collectively referred to hereinafter as "Hazardous Materials"), except as such may be required to be used, stored, or transported in connection with the permitted uses of the Mortgaged Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor; or (B) perform, cause to be performed or permit any fill activities or other acts which would in any way destroy, eliminate, alter, obstruct, interfere with, or otherwise affect any Wetlands, as defined in 33 C.F.R. § 328.3 or in any comparable state and/or local law, statute, ordinance, rule or regulation ("Wetlands"), in violation of any Environmental Laws.

(b) Mortgagor shall immediately advise Mortgagee in writing of: (i) any notices (whether such notices are received from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of any violation or potential violation which are received by Mortgagor of any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials (collectively, "Environmental Laws") including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act and the Clean Air Act, Emergency Planning and Community Right-to-Know Act, the Illinois Environmental Protection Act, the Illinois Solid Waste Management Act, the Illinois Water Pollutant Discharge Act, the Illinois Groundwater Protection Act, the Uniform Hazardous Substances Act of Illinois; (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Environmental Laws; (iii) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials or Wetlands (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "Environmental Claims"); and (iv) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be classified as in violation of the provisions of any Environmental Laws, or to be

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otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Environmental Laws.

(c) Mortgagee shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental Claims and to have its reasonable attorneys' and consultants' fees in connection therewith paid by Mortgagor upon demand.

(d) Mortgagor shall be solely responsible for and shall indemnify and hold harmless Mortgagee, its directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability, including but not limited to reasonable attorneys' fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, emission, disposal, or presence (whether prior to, on or after the date hereof) of Hazardous Materials or Wetlands on, under or about the Mortgaged Property (whether such use, generation, storage, release, threatened release, discharge, emission, disposal or presence is by or caused by Mortgagor or any of its employees, agents, contractors or subcontractors or any other person or entity), including, without limitation: (i) all consequential damages; (ii) the cost of any required or necessary repair, cleanup or detoxification of the Mortgaged Property, including the soil and ground water thereof, and the preparation and implementation of any closure, remedial or other required plans; (iii) damage to any Wetlands or natural resources; and (iv) all reasonable costs and expenses incurred by Mortgagee in connection with clauses (i), (ii) and (iii), including, but not limited to reasonable attorney's fees and consultant's fees; provided, however, that nothing contained in this paragraph shall be deemed to (x) create or give any rights to any person other than Mortgagee and its successors and assigns, it being intended that there shall be no third party beneficiary of such provisions, or (y) preclude Mortgagor from seeking indemnification from, or otherwise proceeding against, any third party, including but not limited to any tenant or predecessor in title to the Mortgaged Property. Notwithstanding the foregoing, Mortgagor shall not be responsible for or be liable to indemnify or hold harmless Mortgagee or any of its directors, officers, employees, agents, successors or assigns from and against any loss, damage, cost, expense or liability which arises out of the use, generation, storage, release, threatened release, discharge, emission, disposal or presence of any Hazardous Materials which are first introduced on, under or about the Mortgaged Property by the Mortgagee subsequent to the date Mortgagee has received possession of the Mortgaged Property following the foreclosure of this Security Instrument or a deed in lieu of foreclosure of this Security Instrument.

(e) Any costs or expenses reasonably incurred by Mortgagee for which Mortgagor is responsible or for which Mortgagor has indemnified Mortgagee shall be paid to Mortgagee on demand, and failing prompt reimbursement, shall be added to the indebtedness secured by this Security Instrument and earn interest at the Default Rate (as defined in the Note) until paid in full.

(f) Mortgagor shall take any and all remedial action in response to the presence of any Hazardous Materials or Wetlands on, under, or about the Mortgaged Property required pursuant to any settlement agreement, consent decree or other

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governmental proceeding or any Environmental Laws; provided, however, that Mortgagor shall take such additional steps as may be necessary to preserve the value of Mortgagee's security under the Loan Documents.

(g) Upon Mortgagee's reasonable request, Mortgagor shall retain, at Mortgagor's sole cost and expense, a licensed geologist, industrial hygienist or an environmental consultant ("Consultant") reasonably acceptable to Mortgagee to conduct a Phase I, Phase II investigation and or any additional investigation desired to complete a Baseline Environmental Report of the Mortgaged Property for the presence of Hazardous Materials or Wetlands ("Environmental Audit"). The Environmental Audit shall be performed in a manner reasonably calculated to discover the presence of Hazardous Materials contamination or Wetlands; provided, however, such investigation shall be of a scope and intensity no greater than a Phase I, Phase II investigation and or any additional investigation desired to complete a Baseline Environmental Report whichever is applicable, taking into consideration the known uses of the Mortgaged Property and property in the vicinity of the Mortgaged Property and any factors unique to the Mortgaged Property. The Consultant shall concurrently deliver the results of any such investigation in writing directly to Mortgagor and Mortgagee. Such results shall be kept confidential by both Mortgagor and Mortgagee unless legally compelled or required to disclose such results, or disclosure is reasonably required in order to pursue rights or remedies provided under this Security Instrument or any of the other Loan Documents or at law or in equity.

(h) If Mortgagor fails to pay for or obtain an Environmental Audit as provided for herein, Mortgagee may, but shall not be obligated to, obtain the Environmental Audit, and either demand reimbursement from Mortgagor or add the cost thereof to the indebtedness secured by this Security Instrument, in which case interest shall accrue on such sum at the Default Rate.

(i) Mortgagor covenants to reasonably cooperate with the Consultant and to allow entry and reasonable access to all portions of the Mortgaged Property for the purpose of the Consultant's investigation. Mortgagor covenants to comply, at its sole cost and expense, with all recommendations contained in the Environmental Audit reasonably required to bring the Mortgaged Property into compliance with all Environmental Laws, including any reasonable recommendation for additional testing and studies to detect the quantity and types of Hazardous Materials or Wetlands present, if Mortgagee requires the implementation of same.

4.7 Mortgage or Intangible Tax. If at any time any governmental authority, whether federal, state or municipal, or any agency or subdivision of any of them, shall require Internal Revenue or other documentary stamps or intangibles or recording taxes on the Note, this Security Instrument or any of the other Loan Documents, or upon the passage of any law of the State of Illinois deducting from the value of land for the purposes of real estate taxation the amount of any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for federal, state or local purposes, or the manner of the collection of any such taxes so as to impose, in any such event, a tax (other than an income tax) upon or otherwise to substantially and

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adversely affect the value of this Security Instrument, then all indebtedness secured hereby shall become due and payable at the election of Mortgagee thirty (30) days after the mailing of notice of such election to Mortgagor; provided, however, this Security Instrument, the Note and the other Loan Documents shall be and remain in effect if Mortgagor lawfully may pay, and does in fact pay, when payable, for such stamps and taxes, including interest and penalties thereon, to or for Mortgagee. Mortgagor further agrees to deliver to Mortgagee, at any time, upon demand, such evidence as may be required by any government agency having jurisdiction in order to determine whether the obligation secured hereby is subject to or exempt from any such tax.

4.8 Indemnification for Costs. Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against all costs, liabilities and expenses, including but not limited to attorneys' fees and expenses to the fullest extent not then prohibited by applicable law, and costs of any Environmental Audit, title search, continuation of abstract and preparation of survey, incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body, including an action to foreclose or to collect any indebtedness or obligation secured hereby, or incurred in connection with any extra-judicial collection procedure, in and to which Mortgagee may be or become a party by reason hereof, including, without limitation, any Taking, bankruptcy, probate and administration proceedings, as well as any other proceeding wherein proof of claims are required to be filed by law or in which it becomes necessary to defend or uphold the terms of, or any lien or security interest created by, this Security Instrument or any of the other Loan Documents.

4.9 Taking.

(a) In the event all or any part of the Mortgaged Property shall be damaged or taken as a result of a Taking, either temporarily or permanently, Mortgagor shall assign, transfer and set over unto Mortgagee the Taking Proceeds or any claim for damages for any of the Premises taken or damaged under the power of eminent domain, and agrees that in the event the whole or any part of the Premises is taken by eminent domain proceedings, then all sums awarded as damages for the Taking shall be applied in reduction of the indebtedness secured by this Security Instrument. Any and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses to the fullest extent not then prohibited by applicable law, incurred by Mortgagee by reason of any condemnation, threatened condemnation or proceedings thereunder shall be secured hereby and Mortgagor shall reimburse Mortgagee therefor immediately, or Mortgagee shall have the right, at its option, to deduct such costs and expenses from any Taking Proceeds paid to Mortgagee hereunder. In the event that the Premises is wholly condemned, and the indebtedness secured hereby is not fully discharged by the application of the Taking Proceeds, the balance of the indebtedness secured hereby which remains unpaid after the application of the Taking Proceeds shall become immediately due and payable, without execution or other process and without notice or demand, all of which are hereby waived. Thereafter, the unpaid principal balance secured by this Security Instrument shall, at the option of the Mortgagee, bear interest at the Default Rate, payable on demand.

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(b) Subject to paragraph (a) of this Section, Mortgagor will immediately notify Mortgagee of the actual or threatened commencement of any Taking proceedings affecting all or any part of the Premises, including any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further covenants and agrees to make, execute and deliver to Mortgagee, from time to time upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments or other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning the Taking Proceeds and all other awards and compensation heretofore and hereafter to be made to Mortgagor, including the assignment of any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof, for any Taking, either permanent or temporary, under any such proceedings. In the event of a Taking, Mortgagee shall not be limited to the rate of interest paid on the award by the condemning authority but shall be entitled to receive out of the Taking Proceeds interest on the entire unpaid principal sum under the Note and the other Loan Documents at the applicable rate(s) provided therein.

(c) Subject to paragraph (a) of this Section, Mortgagor hereby irrevocably authorizes and appoints Mortgagee its attorney-in-fact, said appointment being coupled with an interest and being irrevocable by death or otherwise, to collect and receive any such Taking Proceeds from the authorities making the same, to appear in any proceeding therefor, to give receipts and acquittances therefor, to settle and compromise all claims relating to a Taking and to apply all Taking Proceeds to payment on account of the indebtedness secured hereby whether then matured or not. Mortgagor shall execute and deliver to Mortgagee on demand such assignments and other instruments as Mortgagee may require for such purposes.

(d) However nothing contained herein shall be deemed to deprive the Mortgagor of the right to contest the necessity of any condemnation proceedings, the exercise of the right of eminent domain or the value placed upon the Mortgaged Property in connection with such proceedings. Mortgagee may deduct from the amount of any Taking Proceeds all costs and expenses incurred by Mortgagee in connection with the adjustment or collection thereof and the balance of the Taking Proceeds may, in Mortgagee's sole discretion be applied by Mortgagee to repairing any damage to the Mortgaged Property, or any remaining portion thereof, resulting from any taking, conveyance or injury. Any application of Taking Proceeds upon the indebtedness shall not operate to cure or waive any Event of Default.

4.10 Estoppel Certificate. Within ten (10) business days after request by Mortgagee, Mortgagor shall furnish to Mortgagee a written statement, duly acknowledged, of the aggregate amount of indebtedness secured by this Security Instrument, confirming (to the extent true) that no right of offset exists under the Loan Documents or otherwise, and stating either that no defenses exist against the indebtedness secured hereby, or, if such defenses are alleged to exist, the nature thereof, and any other information which Mortgagee may reasonably request.

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4.11 Title Warranty; Title Evidence. Mortgagor hereby confirms the warranties and representations as to title to the Mortgaged Property made in the granting clause of this Security Instrument, and agrees to pay the costs of title evidence satisfactory to Mortgagee showing title to the Mortgaged Property to be as herein warranted. In the event of any subsequent change in title to the Mortgaged Property, other than a change expressly permitted by the Loan Documents, Mortgagor agrees to pay the cost of (i) an extension or endorsement to such title evidence showing such change in title, and (ii) changing any and all insurance and other records in connection with the servicing of the Loan made necessary by such change in title.

4.12 ERISA. Mortgagor is not and will not be an “employee benefit plan” as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA; (ii) the assets of Mortgagor do not and will not constitute “plan assets” of one or more such plans for purposes of Title I of ERISA; (iii) Mortgagor is not and will not be a “governmental plan” within the meaning of Section 3(32) of ERISA; and (iv) transactions by or with Mortgagor are not and will not be subject to state statutes applicable to Mortgagor regulating investments of and fiduciary obligations with respect to governmental plans. Mortgagor shall deliver to Mortgagee such certifications or other evidence as requested by Mortgagee from time to time of Mortgagor's compliance with the foregoing covenant.

4.13 Patriot Act.

(a) None of the funds or other assets of Mortgagor or of any affiliate of Mortgagor constitute property of, or are beneficially owned, directly or indirectly, by, any person subject to trade restrictions under the laws of the United States, including those who are covered by the International Emergency Economic Powers Act, 50 U.S.C. §§1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any executive orders or regulations promulgated thereunder, (an “Embargoed Person”) with the result that Mortgagee Exposure (as hereinafter defined) will occur; (ii) no Embargoed Person has any interest of any nature whatsoever (whether directly or indirectly) in Mortgagor with the result that Mortgagee Exposure will occur; and (iii) none of the funds of Mortgagor have been derived from any unlawful activity with the result that Mortgagee Exposure will occur. For the purposes hereof, “Mortgagee Exposure” shall mean any one or more of the following: (w) the Loan is in violation of applicable law, or (x) the Mortgaged Property or any other collateral for the Loan or any portion thereof is subject to forfeiture or to being frozen, seized, sequestered or otherwise impaired by any governmental authority, or (y) the Loan or any payments made or to be made in respect thereof (including, without limitation, principal and interest) is subject to forfeiture or to being frozen, seized, sequestered or otherwise impaired by a governmental authority or Mortgagee or any of Mortgagee's collateral for the Loan or the lien priority thereof or any of Mortgagees' rights or remedies in respect of the Loan or the collateral therefor is otherwise impaired or adversely affected, or (z) Mortgagee is subject to criminal or civil liability or penalty.

(b) Neither Mortgagor nor any of its direct or indirect owners is in violation of the U.S. Federal Bank Secrecy Act, as amended, and its implementing regulations (31 CFR part 103), the Uniting and Strengthening America by Providing Appropriate Tools

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Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 and the regulations promulgated thereunder (collectively, the "Patriot Act"), any order issued with respect to anti-money laundering by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), or any other anti-money laundering law with the result that Mortgagee Exposure will occur.

(c) Neither Mortgagor nor any of its direct or indirect owners is a person with whom people of the United States are restricted from doing business with under (a) regulations issued by OFAC (including those persons and entities named on OFAC's Specially Designated Nationals and Blocked persons list) or under any law of the United States (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) or (b) any other law, if, with respect to either clause (a) or (b), Mortgagee Exposure will occur. Without limiting the foregoing, Mortgagor is not presently funding Mortgagor's obligations hereunder with funds from any of the persons referred to in this paragraph (c) if Mortgagee Exposure will occur.

4.14 Investment Company Act; Public Utility Holding Company Act. The Mortgagor is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and the Mortgagor is not a "holding company", a "subsidiary company" thereof or an "affiliate" of a "holding company" or of such a "subsidiary company", each within the meaning of the Public Utility Holding Company Act of 1935, as amended.

4.15 Single-Purpose Entity. Mortgagor has not and shall not: (a) engage in any business or activity other than the ownership, operation and maintenance of the Mortgaged Property, and activities incidental thereto; (b) acquire or own any material assets other than (i) the Mortgaged Property, and (ii) such incidental personal property as may be necessary for the operation of the Mortgaged Property; (c) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets, without in each case Mortgagee's consent; which shall not be unreasonably withheld (d) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Mortgagee, which shall not be unreasonably withheld, amend, modify, terminate or fail to comply with the provisions of Mortgagor's partnership agreement, articles or certificate of incorporation, articles of organization, operating agreement, or similar organizational documents, as the case may be, as same may be further amended or supplemented, if such amendment, modification, termination or failure to comply would adversely affect the ability of Mortgagor to perform its obligations hereunder, under the Note or under the other Loan Documents; (e) own any subsidiary or make any investment in, any person or entity without the consent of Mortgagee; (f) commingle its assets with the assets of any of its general partners, managing members, shareholders, affiliates, principals or of any other person or entity; (g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan, except with respect to trade payables incurred in the ordinary course of its business of owning and operating the Mortgaged Property,

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provided that such debt is paid when due; (h) fail to maintain its records, books of account and bank accounts separate and apart from those of the general partners, managing members, shareholders, principals and affiliates of Mortgagor, the affiliates of a general partner or managing member of Mortgagor, and any other person or entity; (i) enter into any contract or agreement with any general partner, managing member, shareholder, principal or affiliate of Mortgagor, or any general partner, managing member, shareholder, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms length basis with third parties other than any general partner, managing member, shareholder, principal or affiliate of Mortgagor, or any general partner, managing member, shareholder, principal or affiliate thereof; (j) seek the dissolution or winding up in whole or in part, of Mortgagor; (k) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any general partner, managing member, shareholder, principal or affiliate of Mortgagor, or any general partner, managing member, shareholder, principal or affiliate thereof or any other person; (l) hold itself out to be responsible for the debts of another person; (m) make any loans to any third party; (n) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that Mortgagor is responsible for the debts of any third party (including any general partner, managing member, shareholder, principal or affiliate of Mortgagor, or any general partner, managing member, shareholder, principal or affiliate thereof); (o) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; or (p) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors. Provided however, notwithstanding anything to the contrary, upon notice to Lender, the owner of the interest in the SPE shall be permitted to transfer, and such transfer shall not constitute an Event of Default hereunder, its ownership interest in the SPE for estate and tax planning purposes. The SPE shall provide Lender with copies of all documentation relating to such transfer.

5. Mortgagee's Reliance. Mortgagee, in advancing any payment relating to taxes, assessments and other governmental or municipal charges, fines, impositions or liens asserted against the Mortgaged Property, shall have the right to do so according to any bill, statement, invoice or estimate procured from the appropriate public office without inquiry into the accuracy or validity thereof. Mortgagee shall have the right to make any such payment whenever Mortgagee, in its sole discretion, shall deem such payment to be necessary or desirable to protect the security intended to be created by this Security Instrument. In connection with any such advance, Mortgagee, at its option, shall have the right to and is hereby authorized to obtain, at Mortgagor's sole cost and expense, a down-date endorsement to the title insurance policy issued in favor of the Mortgagee in connection with the Loan.

6. Event of Default. An Event of Default under the Loan Agreement will also constitute and be defined and referred to as an "Event of Default" under this Security Instrument. Upon the occurrence of an Event of Default, the entire amount of the indebtedness hereby

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secured, shall, at the option of Mortgagee, become immediately due and payable, without execution or other process and without further notice or demand, all of which are hereby expressly waived, and time being of the essence. Thereafter, the unpaid principal balance secured shall, at the option of Mortgagee, bear interest at the Default Rate, payable on demand. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity, nor extend or affect the grace period, if any.

7. Additional Rights upon Event of Default. Without limiting the generality of the foregoing and after expiration of any applicable cure periods provided in the Loan Agreement, Mortgagee shall have the following additional rights during the continuance of any Event of Default:

(a) Mortgagee shall have the immediate right to collect and receive, personally or through a receiver, so long as such Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, as the same becomes due, any and all unearned insurance premiums or refunds of insurance premiums, due or to become due, and all proceeds and other benefits to be received under insurance policies of every nature affecting or covering the Mortgaged Property, any and all refunds of taxes, assessments and other charges heretofore or hereafter paid on or with respect to the Mortgaged Property, together with all Rents and Assurances, all of which having been hereby assigned to Mortgagee. Mortgagor agrees to consent to a receiver if this is believed necessary or desirable by Mortgagee to enforce its right to collect and receive the Rents, Assurances and other sums described in the preceding sentence. In addition, Mortgagee shall have the right, but shall not be obligated, without notice or demand, without the appointment of a receiver, or an application therefor, to enter immediately upon and take possession of the Mortgaged Property, together with all documents, books, records, papers and accounts of Mortgagor relating to the Mortgaged Property or any portion thereof without further consent or assignment by Mortgagor and shall have the right to cause to be conducted environmental investigations and analyses, to operate, manage, lease and control the Mortgaged Property and conduct the business thereof, if any, either personally or by its agents, and terminate any management agreements, contracts, agents or managers responsible for the management of the Mortgaged Property, and with full power to use such measures, legal or equitable, as Mortgagee may deem proper or necessary to enforce the payment of Rents and Assurances. In addition, the Mortgagee shall have the right, but shall not be obligated, to exclude Mortgagor and its agents and employees wholly from the Mortgaged Property, and to employ a managing agent of the Mortgaged Property.

(b) Mortgagor hereby grants full power and authority to Mortgagee as follows: to exercise each and every one of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor and without incurring any obligation so to continue to do or releasing the Mortgagor from any obligation and without thereby waiving or curing any default or Event of Default; to make all alterations, additions, improvements, renovations, replacements and repairs as Mortgagee may deem proper; to demolish any part or all of the Improvements which, in the

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judgment of Mortgagee, may be in an unsafe condition and dangerous to life or property; to remodel any or all of the Improvements so as to make the same available in whole or in part for business, commercial, retail, multiple dwelling or other purposes; to lease the Mortgaged Property, or any part thereof to Mortgagor or any other person or persons, on such terms and for such periods of time as Mortgagee may deem proper, and the provisions of any lease made by Mortgagee pursuant hereto shall be valid and binding upon Mortgagor, notwithstanding the fact that Mortgagee's right of possession may terminate or this Security Instrument may be satisfied of record prior to the expiration of the term of such lease; and to collect and receive all of the Rents and Assurances and to apply the same in such order of priority as Mortgagee may determine to all (i) charges and expenses arising in connection with the Mortgaged Property (including but not limited to taxes, water charges and assessments, and insurance premiums), (ii) a reserve for repairs and replacements, (iii) advances made by Mortgagee for improvements, alterations or repairs or otherwise pursuant to this Security Instrument or on account of the indebtedness hereby secured, (iv) costs and expenses incurred by Mortgagee in exercising any rights or remedies available to Mortgagee under this Security Instrument or any of the other Loan Documents or at law or in equity, including but not limited to all expenses incurred by Mortgagee in entering, taking possession of, managing or operating the Mortgaged Property or collecting and receiving the Rents and Assurances, including but not limited to management, brokerage and attorney's fees, and (v) interest, principal, whether matured or not and other indebtedness secured hereby. Mortgagee shall be the sole judge of the necessity for any such actions and the amount to be paid. Neither the taking of possession, nor the collection of Rents and Assurances by Mortgagee as described above shall be construed to be an affirmation of any lease of the Mortgaged Property or any part thereof, and Mortgagee or any other purchaser at any foreclosure sale shall have the right to exercise the right to terminate any such lease as though such taking of possession and collection of rents had not occurred, subject, however, to the terms of any subordination, nondisturbance and attornment agreement which may be in effect from time to time with respect to any part of the Mortgaged Property.

(c) If the maturity of the secured indebtedness has been accelerated and is due and payable in full, Mortgagee may, at its option, sell the Mortgaged Property or any part of the Mortgaged Property, as an entirety or in parcels and in such manner or order as Mortgagor may elect, at one or more public sale or sales at the usual place for conducting sales in the county in which the Premises or any part of the such is situated, to the highest bidder for cash, in order to pay the indebtedness secured hereby, and all expenses of sale and of all proceedings in connection therewith, including reasonable attorney's fees, after advertising the time, place and terms of sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which sheriff's sales are advertised in said county, ALL OTHER NOTICE BEING HEREBY WAIVED BY MORTGAGOR. At any such public sale, Mortgagee may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property in fee simple, with full warranties of title, and to this end Mortgagor hereby constitutes and appoints Mortgagee the agent and attorney-in-fact of Mortgagor to make such sale and conveyance, and thereby to divest Mortgagor of all right, title and equity that Mortgagor may have in and to the Mortgaged Property and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent

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and attorney-in-fact are hereby ratified and confirmed, and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon Mortgagor. The aforesaid power of attorney is coupled with an interest and is irrevocable by death or otherwise. The power of sale granted herein shall not be exhausted by one exercise thereof but may be exercised until full payment of all of the indebtedness secured hereby. In the event of any sale under this Security Instrument by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels and in such manner or order as Mortgagee in its discretion may elect, and if Mortgagee so elects, Mortgagee may sell the personal property covered by this Security Instrument concurrently with the real property covered hereby or at one or more separate sales in any manner permitted by the UCC, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire demised premises are sold or the indebtedness secured hereby is paid in full. Mortgagee may, at its option, sell the Mortgaged Property subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties to any foreclosure proceedings and to foreclose their rights will not be asserted by Mortgagor to be a defense to any proceedings instituted by Mortgagee to collect the indebtedness secured hereby. If the indebtedness secured hereby is now or hereafter further secured by any chattel mortgages, pledges, contracts or guaranty, assignments of lease or other security instruments, Mortgagee may at its option exhaust the remedies granted under any of said security either concurrently or independently, and in such order as Mortgagee may determine in its discretion. Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit to the purchase price. In the event of any such foreclosure sale by Mortgagee, Mortgagor shall be deemed a tenant at sufferance and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants at sufferance. In case Mortgagee shall have proceeded to enforce any right, power or remedy under this Security Instrument foreclosure, entry or otherwise or in the event Mortgagee commences advertising of the intended exercise of the sale under power provided hereunder, and such proceeding or advertisement shall have been withdrawn, discontinued or abandoned for any reason, then in every such case (i) Mortgagor and Mortgagee shall be restored to their former positions and rights, (ii) all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken, (iii) each and every default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall be deemed to be a continuing default, and (iv) neither this Security Instrument, nor the Note, nor the indebtedness secured hereby, nor any other Loan Document shall be or shall be deemed to have been reinstated or otherwise affected by such withdrawal, discontinuance or abandonment; and Mortgagor hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with this sentence.

(d) Without limiting the foregoing, Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact, coupled with an interest and irrevocable by death or otherwise, exercisable upon an Event of Default, to institute summary proceedings

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against any lessee of the Mortgaged Property who fails to comply with the provisions of such lessee's lease. If Mortgagor is occupying all or any part of the Mortgaged Property upon an Event of Default, it is hereby agreed that Mortgagor will either (i) immediately surrender possession of the Mortgaged Property to Mortgagee and vacate the Mortgaged Property so occupied by Mortgagor, or (ii) pay a reasonable rental, determined by Mortgagee, for the use thereof, monthly in advance, to Mortgagee, and, in default of so doing, may be dispossessed by summary proceedings or otherwise.

(e) To the extent permitted by law, Mortgagee shall be entitled to the appointment of a receiver of the Mortgaged Property as a matter of right and without regard to the solvency of any party bound for its payment and without notice which is hereby expressly waived, with power to collect and receive the Rents and Assurances without regard to the value of the Mortgaged Property and regardless of whether Mortgagee has an adequate remedy at law. Mortgagor, for itself and its successors and assigns, hereby waives any and all defenses to the application for a receiver as set forth above and hereby specifically consents to such appointment without notice, but nothing herein contained is to be construed to deprive Mortgagee of any other right, remedy or privilege it may now have, or may hereafter obtain, to have a receiver appointed.

(f) Mortgagee may, at its sole option and without notice, exercise any and all rights and remedies afforded to Mortgagee by law or equity, in addition to any and all rights and remedies afforded to Mortgagee under the Note, this Security Instrument or any of the other Loan Documents. All of the aforesaid rights and remedies shall be considered cumulative and the exercise of any one of these rights or remedies shall not preclude Mortgagee from exercising any of its other rights or remedies.

8. Right of Mortgagee to Perform Obligations of Mortgagor. If Mortgagor shall fail to pay, perform or observe any of its obligations or covenants under this Security Instrument or any of the other Loan Documents, Mortgagee may, at its sole option, in addition to and not in lieu of or substitution of all other rights and remedies provided under this Security Instrument or any of the other Loan Documents or at law or in equity, without notice, pay, perform or observe such obligation or covenant and pay any sums in any manner and to any extent as Mortgagee in its sole discretion deems advisable, without incurring any obligation so to continue to do or releasing Mortgagor from any obligation or covenant and without thereby waiving or curing Mortgagor's failure to pay, perform or observe such obligation or covenant; and in this event Mortgagee shall be entitled to subrogation in any claim or security held by the party to whom performance is made. All expenditures made by Mortgagee pursuant to this Paragraph 8 shall be secured by this Security Instrument and shall bear interest at the Default Rate from the date such expenditure is incurred to the date of repayment. Mortgagor shall, without demand by Mortgagee, immediately reimburse Mortgagee for all such expenditures, together with interest thereon as provided above. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such obligations or covenants without thereby becoming liable to Mortgagor or any person in possession holding under the Mortgagor. Mortgagor hereby acknowledges and agrees that the remedies set forth in this Paragraph 8 shall be exercisable by Mortgagee, and all expenditures incurred by Mortgagee in connection therewith shall be secured hereby and shall be repaid by Mortgagor as provided above, notwithstanding the fact that such remedies were

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exercised and such payments made and costs incurred by Mortgagee after the filing by Mortgagor of a voluntary case or the filing against Mortgagor of an involuntary case pursuant to or within the meaning of the Bankruptcy Code, Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Mortgagor, Mortgagee, the indebtedness secured hereby or any of the Loan Documents.

9. Waiver. Mortgagor shall not, and anyone claiming through or under Mortgagor shall not, set up, claim or seek to take advantage of any appraisal, valuation, minimum bid or upset price, stay, extension or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, or the final and absolute sale of the Mortgaged Property, or the final and absolute placing into possession thereof, immediately after such sale, of the purchaser or purchasers thereof, and Mortgagor, for itself and all who may claim through or under it, waive, if and to the fullest extent not prohibited by applicable law, all benefits and protections under such appraisal, valuation, stay, extension and redemption laws.

10. Marshalling of Assets. Mortgagor hereby waives for itself and, to the fullest extent not prohibited by applicable law, for any subsequent lien or, any right to apply for an order, decree, judgment, or ruling requiring or providing for a marshaling of assets which would require Mortgagee to proceed against certain of the Mortgaged Property before proceeding against any of the other Mortgaged Property. Mortgagee shall have the right to proceed, in its sole discretion, against the Mortgaged Property in such order and in such portions as Mortgagee may determine, without regard to the adequacy of value or other liens on any such Mortgaged Property. No such action shall in any way be considered as a waiver of any of the rights, benefits, liens or security interests created hereby or by any of the Loan Documents.

11. Subrogation. If the indebtedness hereby secured or any part thereof, including any amounts advanced by Mortgagee, are used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Mortgagee shall be subrogated to such other liens or encumbrances and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same, whether or not any such lien, encumbrance or additional security is discharged upon such payment or advancement or otherwise, and in addition to the security afforded by this Security Instrument and the other Loan Documents.

12. Sale or Transfer. Mortgagor, without the prior written consent of Mortgagee, shall not create, effect, consent to, attempt, contract for, agree to make, suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, encumbrance, mortgage, security interest or alienation of all or any portion of, or any interest in, the Mortgaged Property or the Mortgagor, whether effected directly, indirectly, voluntarily, involuntarily, by operation of law or otherwise. If any of the foregoing shall occur without Mortgagee's prior written consent, then the same shall immediately constitute an Event of Default hereunder. Notwithstanding anything herein to the contrary, the Mortgagor is permitted to transfer tenant in common interests in the Premises to special purpose entities formed by individual investors (an "SPE"), subject to Mortgagee's prior receipt and approval of (i) an Assignment and Assumption Agreement signed by Mortgagor and each such SPE, (ii) a copy of the deed transferring such interest to the SPE, (iii) a copy of the

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Tenant in Common Agreement, Purchase Agreement and Management Agreement signed by each SPE, (iv) a copy of the organizational documents of the SPE, and (v) such additional information concerning the investor as Mortgagee may request. Once a tenant in common interest is transferred to an SPE, the SPE will be prohibited from encumbering its tenant in common interest. The SPE also will be prohibited from transferring its tenant in common interest without Mortgagee's consent, which consent will not be withheld unreasonably provided that the financial condition of the transferee is satisfactory to Mortgagee.

13. Mortgagee's Cost of Collection or Performance. If any action or proceeding is commenced by or against Mortgagee, including, without limitation, condemnation proceedings, proceedings involving the foreclosure of this Security Instrument or of any other liens or encumbrances, the enforcement or interpretation of contracts, leases or other documents relating to the Mortgaged Property, or any other proceeding of any nature, legal or otherwise, affecting the Mortgaged Property or any part thereof, or the title thereto, or the validity or priority of the lien of this Security Instrument, Mortgagee shall have the right to appear, defend, prosecute, retain counsel, and take such action as Mortgagee shall determine. Mortgagor shall pay to Mortgagee, promptly upon demand, all reasonable costs, including, without limitation, "late charges" payable under the Note, out-of-pocket expenses and attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and the costs of any environmental examination and analysis, title examination and supplemental examination of title or title insurance, that may be incurred by Mortgagee in connection with any proceedings affecting the Mortgaged Property, or any part thereof, or exercising any rights or remedies available to Mortgagor under this Security Instrument or any of the other Loan Documents or at law or in equity (regardless of whether any action or proceeding is instituted), or that may otherwise be incurred by Mortgagee in the performance of any other action by Mortgagee authorized by this Security Instrument. All such costs, expenses and attorneys' fees and expenses, and any other moneys advanced by Mortgagee to protect and maintain the Mortgaged Property shall, to the fullest extent not prohibited by applicable law, bear interest from the date of payment thereof at the Default Rate until repaid by Mortgagor, and shall be repaid by Mortgagor to Mortgagee immediately upon demand. Notwithstanding that the indebtedness secured hereby shall not have been declared due and payable upon any Event of Default, Mortgagor hereby agrees that if a default is made in the payment of the indebtedness secured hereby when due, pursuant to the terms hereof, Mortgagee shall be entitled to receive interest on the unpaid principal balance of the indebtedness secured hereby at the Default Rate, to be computed from the due date through actual receipt and collection of the amount then in default. The preceding sentence shall not be construed as an agreement or privilege to extend the time for performance of any obligation under the Security Instrument or any of the other Loan Documents, nor as a waiver of any other right or remedy accruing to Mortgagee by reason of any such default.

14. Partial Release. Mortgagee, without notice, and without regard to any consideration paid therefor, and notwithstanding the existence at the time of any inferior liens thereon, shall have the right to release (a) any part of the security for the indebtedness secured hereby, including, without limitation, the lien and security interest created pursuant to this Security Instrument in and to any of the Mortgaged Property, or (b) any person liable for any indebtedness secured hereby, without affecting the priority of any part of the security and the obligations of any person not expressly released, and shall have the right to agree with any party remaining liable for such indebtedness or having any interest therein to extend the time for

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payment of any part or all of the indebtedness secured hereby. Such agreement shall not in any way release or impair the lien hereof, but shall extend the lien hereof as against all parties having any interest in such security.

15. Non-Waiver. In the event Mortgagee (a) releases, as aforesaid, any part of such security or any person liable for any indebtedness secured hereby; (b) grants an extension of time for any payments of the indebtedness secured hereby; (c) takes other or additional security for the payment thereof, (d) accepts partial payments; or (e) otherwise exercises or waives or fails to exercise any right granted herein or in any of the other Loan Documents, no such act or omission shall constitute a waiver of any default, or extend or affect the grace period, if any, release Mortgagor, subsequent owners of the Mortgaged Property or any part thereof, or makers or guarantors of the Note, this Security Instrument, or any of the other Loan Documents, or preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted for any Event of Default.

16. No Merger of Estates. There shall be no merger of the lien, security interest or other estate or interest created by this Security Instrument with the fee estate in the Mortgaged Property by reason that any such lien, security or other estate or interest created by this Security Instrument may be held, directly or indirectly, by or for the account of any person who shall own the fee estate or any other interest in the Mortgaged Property. No such merger shall occur unless and until all persons at the time having such concurrent interests shall join in a written instrument effecting such merger, and such instrument shall be duly recorded.

17. Further Assurances. Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver to Mortgagee, in form satisfactory to Mortgagee, financing statements covering as Collateral any personal property owned by the Mortgagor, which, in the sole opinion of Mortgagee, is essential to the operation of any of the Mortgaged Property, and any supplemental mortgage, security agreement, financing statement, assignment of leases, rents, income and profits from the Mortgaged Property, affidavit, continuation statement or certification as Mortgagee may request in order to protect, preserve, maintain, continue and extend the lien and security interest hereunder or the priority hereof. Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact, said appointment being coupled with an interest and irrevocable by death or otherwise, and authorizes, directs and empowers such attorney, at its option, to execute, acknowledge and deliver on behalf of Mortgagor, its successors and assigns, any such documents if Mortgagor shall fail to do so within five (5) days after the request by Mortgagee. Mortgagor shall pay to Mortgagee on demand, all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording and filing of any such documents.

18. Application of Proceeds. All payments made by Mortgagor under the Note, this Security Instrument or any of the other Loan Documents and received by Mortgagee shall be applied by Mortgagee to the following items and in such order as Mortgagee may determine in its sole discretion: (a) advances by Mortgagee for payment of taxes, assessments, insurance premiums and other costs and expenses, as set forth in this Security Instrument, the Note or any of the other Loan Documents; (b) any amounts which may be overdue under the Note, this Security Instrument or any of the other Loan Documents; (c) interest on the indebtedness secured

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hereby; (d) outstanding principal under the Note; and (e) any other indebtedness secured by this Security Instrument.

19. Mortgagee's Subordination Right. At the option of Mortgagee, this Security Instrument shall become subject and subordinate, but not with respect to the priority of entitlement to or application of Casualty Proceeds or any Taking Proceeds, to any and all leases of all or any part of the Mortgaged Property, upon the execution by Mortgagee and recording of a unilateral declaration to that effect at any time hereafter, with the Register of Deeds of the county in which the Premises is located.

20. UCC Security Agreement. This Security Instrument is intended to be a security agreement pursuant to the UCC. As additional security for the indebtedness, Mortgagor hereby grants and creates a security interest in and to all of the following property now existing or hereafter arising:

- (a) all of the Mortgaged Property;
- (b) all monies and funds now or hereafter on deposit in any account consisting of or relating to the Mortgaged Property maintained at the banking offices of Mortgagee by or for the benefit of Mortgagor;
- (c) any and all "goods" and "equipment" (as such term is defined in the UCC) of Mortgagor used or intended to be used in connection with operation or maintenance of all or any part of the Mortgaged Property or all or any part of the Improvements, and all other articles of personal property now or hereafter located in or upon, attached to or used or intended to be used in connection with all or any part of the Mortgaged Property or all or any part of the Improvements, and all replacements thereof;
- (d) all "accounts" and "general intangibles" (as such terms are defined in the UCC) of Mortgagor arising from the operation of the all or any part of the Real Estate or all or any part of the Improvements;
- (e) all construction contracts, architectural contracts, plans and specifications, and building permits and licenses for any Improvements, now existing or hereafter arising, and all "goods" (as such term is defined in the UCC), including without limitation building materials, inventory, and supplies now owned or hereafter acquired by Mortgagor to be incorporated in or used or intended to be used in connection with the construction of any Improvements;
- (f) all additions, substitutions and "proceeds" (as such term is defined in the UCC) of any and all of the foregoing.

Without derogating any of the provisions of this instrument, Mortgagor to the extent permitted by law hereby:

- (a) grants to Mortgagee a security interest in and to all Collateral, including without limitation the items referred to above, together with all additions, accessions and substitutions and all similar property hereafter acquired and used or obtained for use on

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or in connection with the Mortgaged Property. The proceeds of the Collateral are intended to be secured hereby; however, such intent shall never constitute an expressed or implied consent on the part of Mortgagee to the sale of any or all Collateral;

(b) agrees that the security interest hereby granted shall secure the payment of the indebtedness specifically described herein together with payment of any future debt or advancement owing by Mortgagor to Mortgagee with respect to the Mortgaged Property;

(c) except as otherwise provided herein, agrees not to remove from the Mortgaged Property, sell, convey, mortgage or grant a security interest in, or otherwise dispose of or encumber, any of the Collateral or any of the Mortgagor's right, title or interest therein, without first obtaining Mortgagee's written consent; Mortgagee shall have the right, at its sole option, to require Mortgagor to apply the proceeds from the disposition of Collateral in reduction of the indebtedness secured hereby;

(d) agrees that if Mortgagor's rights in the Collateral are voluntarily or involuntarily transferred, whether by sale, creation of a security interest, attachment, levy, garnishment or other judicial process, without the prior written consent of Mortgagee, such transfer shall constitute an Event of Default hereunder;

(e) agrees that upon or after the occurrence of any Event of Default, Mortgagee shall have all rights and remedies contemplated hereunder and under the UCC, including, without limitation, the right to take possession of the Collateral, and for this purpose Mortgagee shall have the right to enter upon any premises on which any or all of the Collateral is situated without being deemed guilty of trespass and without liability for damages thereby occasioned, and take possession of and operate the Collateral or remove it therefrom. Mortgagor shall, upon demand by Mortgagee, assemble and deliver to Mortgagee at a reasonably convenient place designated by Mortgagee all or such portion of the Collateral as Mortgagee may designate. Mortgagee shall have the further right, as Mortgagee may determine, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition, and to sell at public or private sale or otherwise dispose of, lease or utilize the Collateral and any part thereof in any manner authorized or permitted by law and to apply the proceeds thereof toward payment of any costs and expenses incurred by Mortgagee including, to the fullest extent not prohibited by applicable law, attorneys' fees and expenses, and toward payment of the indebtedness secured hereby, in such order and manner as Mortgagee may determine. To the fullest extent not prohibited by applicable law, Mortgagor expressly waives any notice of sale or other disposition of the Collateral and any other rights or remedies of a debtor or formalities prescribed by law relative to a sale or disposition of the Collateral or to exercise any other right or remedy existing after an Event of Default. To the extent any notice is required and cannot be waived, Mortgagor agrees that if such notice is deposited for mailing, postage prepaid, certified or registered mail, to the owner of record of the Mortgaged Property, directed to the such owner at the last address actually furnished to Mortgagee at least five (5) days before the time of sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirements for giving of such notice;

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(f) agrees, to the extent not prohibited by law and without limiting any rights and privileges herein granted to Mortgagee, that Mortgagee shall have the right to dispose of any or all of the Collateral at the same time and place upon giving the same notice and in the same manner as a nonjudicial foreclosure sale pursuant to this Security Instrument;

(g) authorizes Mortgagee to file, in the jurisdiction where this agreement will be given effect, financing statements covering the Collateral and the proceeds of the Collateral. At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more such financing statements and renewals thereof pursuant to this Security Instrument. To the extent permitted by law, a carbon, photographic or other reproduction of this instrument or any financing statement executed in accordance herewith shall be sufficient as a financing statement. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact to prepare, sign and file any continuation statements necessary to continue the perfection of all financing statements filed to perfect this grant of security interest. At the expense of Mortgagor, Mortgagee may cause the statements and assurances to be recorded and re-recorded, or filed and re-filed, at the times and places as may be required or permitted by law to so create, perfect and to continue the perfection of the security interest; and

(h) represents and warrants to Mortgagee that Mortgagor's address is at 1400 E. Southern Ave., Suite 225, Tempe, Arizona 85282 and that Mortgagor shall not relocate the same without giving Mortgagee at least sixty (60) days prior written notice thereof.

21. Management. Mortgagee shall have the right to give or withhold its prior consent to any contract or other arrangement for the management of all or any part of the Mortgaged Property. Mortgagee shall have the right, exercisable at its option upon an Event of Default or an event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default, to terminate the rights of any party engaged to manage the Mortgaged Property and any and all other agreements or contracts relating to the operation or management of the Mortgaged Property, if, in Mortgagee's sole discretion, the management and/or operation of the Mortgaged Property is unsatisfactory.

22. 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 and shall be deemed to have been properly given if hand delivered, or if sent by telecopy, effective upon receipt, or (ii) if delivered by overnight courier service, effective on the day following delivery to such courier service or (iii) if mailed by United States registered or certified mail, postage prepaid, return receipt requested, (effective two (2) days after deposit in the United States mails) addressed as follows:

If to Mortgagor:

Sun Capitol, LLC
1400 E. Southern Ave.
Suite 225
Tempe, Arizona 85282

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With a copy to:

Thomas J. Schetelich, Esq.
Ferguson, Schetelich & Ballew, PA
1401 Bank of America Center
100 S. Charles Street
Baltimore, MD 21201

If to Mortgagee:

Home National Bank
15005 N. Northsight Blvd.
Scottsdale, Arizona 85260

With a copy to:

Michael S. Laird, Esq.
Crowe & Dunlevy
20 N. Broadway
Suite 1800
Oklahoma City, Oklahoma 73102

or at such other address or to such other addressee 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.

23. Anti-Forfeiture. Mortgagor hereby further expressly represents and warrants to Mortgagee that to the best of Mortgagor's knowledge there has not been committed by Mortgagor or any other person involved with the Mortgaged Property or the Mortgagor any act or omission affording the federal government or any state or local government the right and/or remedy of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of its obligations under the Note or under any of the other Loan Documents, and Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right and/or remedy of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or other injury, including without limitation, attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by Mortgagee in preserving its lien, security interest and other rights and interests in the Mortgaged Property and any additional collateral under any of the Loan Documents in any proceeding or other governmental action asserting forfeiture thereof, by reason of, or in any manner resulting from, the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor, Mortgagee, any guarantor, any additional collateral under any of the Loan Documents or all or any part of the Mortgaged Property under any federal, state or local laws, ordinances or regulations in respect of which forfeiture of the Mortgaged Property or any part thereof or of any

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monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result shall, at the election of the Mortgagee in its absolute discretion, constitute an Event of Default hereunder without notice or, opportunity to cure.

24. Excessive Interest. Notwithstanding any provisions in the Note, this Security Instrument or any other Loan Documents, in no event shall the amount of interest reserved, contracted for, paid or agreed to be paid to Mortgagee exceed an amount computed at the highest lawful rate of interest permissible under applicable law (the "Maximum Rate"). If, from any circumstances whatsoever, fulfillment of any provision of the Note, this Security Instrument, or any other Loan Documents, at the time performance of such provision shall be due, shall involve exceeding the Maximum Rate, then the interest rate provided for in such instrument shall be reduced to the Maximum Rate for such period during which such interest rate would have exceeded such Maximum Rate; provided, however, that in the event of a subsequent adjustment of the interest rate provided for in any such instrument, the calculation shall be based upon such interest rate before reduction to the Maximum Rate. If for any reason whatsoever the Mortgagee shall ever receive as interest an amount which would be deemed unlawful under such applicable law, such interest shall be automatically applied to the payment of the unpaid principal amount secured hereby, whether or not then due and payable, and not to the payment of interest, or, if the principal amount secured hereby has been paid in full, shall be refunded to the Mortgagor.

25. Books and Records. With respect to the Mortgaged Property and the operations thereof, Mortgagor shall keep or cause to be kept proper books of record and account in accordance with generally accepted accounting principles consistently applied. Leases for the Mortgaged Property shall be subject to and submitted for Mortgagee's review and approval. Additionally, Mortgagee shall have the right to examine the books of record and account at reasonable times and intervals such as Mortgagee may elect.

26. Limitation. In the event of any breach of the Loan Documents by Mortgagee, Mortgagor's sole remedy shall be limited to an action at law for actual, compensatory damages and shall not include any claim for consequential, exemplary or punitive damages. Mortgagor further acknowledges, understands and agrees that Mortgagor shall not be entitled to equitable or injunctive relief of any kind or nature.

27. No Partnership or Third Party Beneficiary. This Security Instrument and the other Loan Documents are entitled only to benefit the parties thereto and are not entitled to create third party beneficiary rights on the part of any person or entity which is not a party hereto. The relationship between Mortgagor and Mortgagee is that of debtor and creditor. Nothing contained herein or in any of the other Loan Documents will be deemed to create a partnership or joint venture between Mortgagee or Mortgagor, or to cause Mortgagee to be liable or responsible in any way for the actions, liabilities, debts or obligations of Mortgagor.

28. Non-recourse Provision.

(a) Except to the extent provided in this paragraph, neither the Mortgagor nor any of its members (collectively the "Exculpated Parties") shall be personally liable for any of the indebtedness or for the performance of the obligations hereunder or under the Loan Documents; and in any proceedings to enforce this Security Instrument or the Loan

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Documents, no deficiency or other judgment shall be enforced against the Exculpated Parties personally; provided, however, that nothing in this paragraph or in any Loan Document shall limit or otherwise affect the personal liability of the Exculpated Parties or relieve the Mortgagor of personal liability and responsibility for holding Mortgagee harmless from and against Mortgagee's costs, expenses (including reasonable attorneys' fees), losses and damages incurred by Mortgagee to the extent caused by:

(i) waste committed by Mortgagor (not including ordinary wear and tear, unless Mortgagor fails to exercise ordinary care in maintaining the Mortgaged Property);

(ii) fraud committed by Mortgagor;

(iii) written material misrepresentation by Mortgagor;

(iv) failure to pay taxes, assessments, or any other lienable impositions as required under any of the Loan Documents; however, if they are paid current at the time of an Event of Default and Mortgagee has exercised its rights under the Assignment of Leases and Rents, then neither Mortgagor nor the Exculpated Parties shall have any further obligations under this section (iv);

(v) misapplication of tenant security deposits, condemnation awards or insurance proceeds to the extent of the misapplied deposits, awards or proceeds;

(vi) failure while in default, and after receipt of notice of such default to pay to Mortgagee all rents, income, and profits, net of reasonable and customary operating expenses;

(vii) the breach of any covenant hereunder or under the Loan Documents relating to environmental matters or failure to perform any related indemnification;

(viii) the willful destruction or removal of any of the personal property constituting part of and necessary to operate the Mortgaged Property to the extent not replaced by comparable items of equal or greater value;

(ix) the termination by Mortgagor, amendment or execution and delivery of any lease of all or any part of the Mortgaged Property if not permitted hereunder or under the Loan Documents;

(x) violation of any law, statute, ordinance, rule, regulation, order or other requirement applicable to all or any portion of the Mortgaged Property or the ownership or operation of all of any portion of the Mortgaged Property; or

(xi) breach of paragraph 12 of this Security Instrument (a breach of this provision creating recourse to Mortgagor in an amount equal to the unpaid principal balance under the Note, including any prepayment penalty, plus accrued and unpaid interest and cost, including attorneys fees).

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(b) Any of the foregoing to the contrary notwithstanding, nothing herein shall in any way:

(i) Impair the right of Mortgagee to accelerate the maturity of the Note or to avail itself of any of the other rights and remedies of Mortgagee upon the occurrence of an Event of Default, including, without limitation foreclosure of this Security Instrument by judicial process or by advertisement; or

(ii) Release indemnitors under the Environmental Indemnity (which is one of the Loan Documents) of any liability under the Environmental Indemnity; or

(iii) Release Mortgagor of any of the covenants or obligations set forth herein or in the Loan Documents which are not inconsistent with this paragraph.

29. Definitions. All capitalized terms used in this Security Instrument and not otherwise defined are defined in the Loan Agreement.

30. Applicable Law, Jurisdiction and Ambiguities. The Mortgaged Property is located in the State of Illinois, and this Security Instrument (but not any of the related loan documents, unless expressly provided so therein) shall, without regard to the place of contract or payment, be construed and enforced according to the laws of Illinois, without reference to conflict of law principles. Nothing herein contained nor any transaction related hereto shall be construed or so operate as to require Mortgagor to do any act contrary to law.

31. Invalidity of Provisions. If any clauses or provisions herein contained operate or would prospectively operate to invalidate this Security Instrument, in whole or in part, or any of the Mortgagor's obligations hereunder, such clauses and provisions only shall be held void and of no force or effect as though not herein contained, and the remainder of this Security Instrument shall remain operative and in full force and effect.

32. Ambiguity. In the event any provision hereof is deemed to be ambiguous by any court of competent jurisdiction, then it is the intent of the Mortgagor and Mortgagee that the provision shall be construed by that court in the manner that will best preserve the security of Mortgagee under the Security Instrument.

33. Successors and Assigns. All of the obligations, rights and covenants herein contained shall run with the land, and shall bind and inure to the benefit of Mortgagor, respective heirs, personal representatives, executors, administrators, its successors and permitted assigns, and Mortgagee and any subsequent holder of the Note.

34. Numbers and Captions. Whenever used, the singular number shall include the plural and the plural numbers shall include the singular, and the use of any gender shall include all genders, all as the context may reasonably require.

35. Jury Waiver. **TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, MORTGAGOR HEREBY, AND MORTGAGEE BY ITS ACCEPTANCE HEREOF, EACH WAIVES THE RIGHT OF A JURY TRIAL IN EACH**

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AND EVERY ACTION ON THIS SECURITY INSTRUMENT OR ANY OF THE OTHER LOAN DOCUMENTS, IT BEING ACKNOWLEDGED AND AGREED THAT ANY ISSUES OF FACT IN ANY SUCH ACTION ARE MORE APPROPRIATELY DETERMINED BY THE COURTS; FURTHER, MORTGAGOR HEREBY CONSENTS AND SUBJECTS ITSELF TO THE JURISDICTION OF COURTS OF THE STATE OF OKLAHOMA, PROVIDED HOWEVER THAT ANY ACTION TO ENFORCE THIS SECURITY INSTRUMENT MAY BE BROUGHT AT MORTGAGEE'S OPTION IN THE STATE OF ILLINOIS AND, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE VENUE OF SUCH COURTS IN THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS LOCATED.

36. Survival. The covenants, agreements, indemnifications and warranties in this Security Instrument will survive the release hereof and shall remain in full force and effect as between Mortgagee and Mortgagor.

37. Joint and Several Liability; Multiple Mortgagors; Counterparts. The obligations of each person and entity comprising Mortgagor shall be joint and several. Where more than one person or entity comprises "Mortgagor", references to Mortgagor shall also include a reference to any Mortgagor, separately, as well as all persons and/or entities comprising Mortgagor, together. This Security Instrument and all modifications hereof may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one agreement.

38. Time of Essence. Time is of the essence as to Mortgagor's performance of each provision of this Security Instrument, the Note and the other Loan Documents. Mortgagor agrees that where, by the terms of this Security Instrument, the Note or any other Loan Document, a day is named or a time is fixed for the payment of any sum of money or the performance of any obligation by Mortgagor, the day and/or time stated enters into the consideration and is of the essence of the whole contract.

39. WAIVER. MORTGAGOR HEREBY WAIVES ANY RIGHT MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OR THE LAWS OF THE STATE OF ILLINOIS OR THE CONSTITUTION OR THE LAWS OF THE UNITED STATES OF AMERICA TO NOTICE, OTHER THAN EXPRESSLY PROVIDED FOR IN THIS SECURITY INSTRUMENT, OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS SECURITY INSTRUMENT TO MORTGAGEE AND MORTGAGOR WAIVES MORTGAGOR'S RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS OF THIS SECURITY INSTRUMENT ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. ALL WAIVERS BY MORTGAGOR IN THIS PARAGRAPH HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY, AFTER MORTGAGOR HAS BY MORTGAGOR'S ATTORNEY BEEN FIRST APPRISED OF AND COUNSELED WITH RESPECT TO MORTGAGOR'S POSSIBLE ALTERNATIVE RIGHTS.

40. Illinois Law Provisions. If any conflict or inconsistency exists between this Section 40 and the remainder of this Security Instrument, this Section 40 shall govern.

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(a) Protective Advances. Without limitation on anything contained in this Security Instrument, all advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after a judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Security Instrument or by the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101 et seq. (the "Act"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act referred to below (collectively, "Protective Advances"):

(i) all advances made by Mortgagee in accordance with the terms of this Security Instrument to: (A) preserve or maintain, repair, restore or rebuild any improvements upon the Premises; (B) preserve the lien of this Security Instrument or the priority thereof; or (C) enforce this Security Instrument, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(ii) payments made by Mortgagee of: (A) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance on the Mortgaged Property; (B) when due installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Security Instrument; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the Act;

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

(iv) reasonable attorneys' fees and other expenses incurred: (A) in connection with the foreclosure of this Security Instrument as referred to in Section 15-1504(d)(2) and 15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Security Instrument or arising from the interest of Mortgagee hereunder; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

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

(vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act; and

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(vii) reasonable, out-of-pocket expenses incurred and expenditures made by Mortgagee with respect to the Mortgaged Property for any one or more of the following: (A) if all or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (B) if any interest in the Mortgaged Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (C) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining existing insurance in effect at the time any receiver or mortgagee takes possession of the Mortgaged Property as imposed by subsection (c)(1) of Section 15-1704 of the Act; (D) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (E) payments required or reasonably deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the owner of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (F) shared or common expense assessments payable to any association or corporation in which the owner of the Mortgaged Property is a member if in any way affecting the Mortgaged Property; (G) costs incurred by Mortgagee for demolition, preparation for and completion of construction; and (H) pursuant to any lease or other agreement, for occupancy of the Mortgaged Property.

All Protective Advances shall be additional indebtedness secured by this Security Instrument and shall become due and payable within ten (10) days after written request therefor from Mortgagee and with interest thereon from the date of the advance until paid at the applicable rate set forth in the Loan Agreement. This Security Instrument shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to subsection (b)(1) of Section 15-1302 of the Act. All Protective Advances shall, except to the extent, if any, that any of the same are clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in: (A) determination of the amount of indebtedness secured by this Security Instrument at any time; (B) the amount of the indebtedness found due and owing to Mortgagee in a judgment of foreclosure and any subsequent, supplemental judgments, orders, adjudications or findings by any court of any additional indebtedness becoming due after such entry of judgment (it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose); (C) if right of redemption is deemed not to be waived by this Security Instrument, computation of any amounts required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5-1603 of the Act; (D) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the Act; (E) application of income in the hands of any receiver or Mortgagee in possession; and (F) computation of any deficiency judgment pursuant to subsections (b)(2) and (e) of Section 15-1508 and Section 15-1511 of the Act.

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(b) Waiver of Right of Redemption and Reinstatement. Without limiting the generality of Sections 7 or 9 of this Security Instrument, the waiver by Mortgagor of its rights of redemption and reinstatement in such Section, include the waivers of such rights provided under 735 ILCS 5/15-1601 and 735 ILCS 5/15-1602.

(c) Business Loan Recital/Statutory Exemption. (i) Mortgagor acknowledges and agrees that (A) the proceeds of the indebtedness secured hereby will be used in conformance with subparagraph (1)(c) of Section 4 of the Illinois Interest Act, as amended (815 ILCS 205/4(1)(c)); (B) the indebtedness secured hereby has been incurred solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said Section 4; (C) the indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (D) the secured indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 et. seq. has been entered into solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said section. Without limiting the generality of anything contained herein, Mortgagor acknowledges and agrees that the transaction of which this Security Instrument is a part is a transaction which does not include either agricultural real estate (as defined in 735 ILCS 5/15-1201) or residential real estate (as defined in 735 5/15-1219).

(d) Maximum Indebtedness. This Security Instrument shall secure the payment of any amounts advanced from time to time under the Loan Documents, or under other documents stating that such advances are secured hereby. This Security Instrument also secures any and all future obligations and indebtedness arising under or in connection with this Security Instrument or the other Loan Documents, which future obligations and indebtedness shall have the same priority as if all such future obligations and indebtedness were made on the date of execution hereof. Nothing in this Section or in any other provision of this Security Instrument shall be deemed an obligation on the part of Mortgagee to make any future advances of any sort. At all times, regardless of whether any loan proceeds have been disbursed, this Security Instrument shall secure (in addition to any loan proceeds disbursed from time to time) the payment of any and all reasonable out-of-pocket expenses and advances due to or incurred by Mortgagee in connection with the indebtedness to be secured hereby and which are to be reimbursed by Mortgagor under the terms of this Security Instrument; provided, however, that at no time shall the amount of the indebtedness secured by this Security Instrument exceed \$7,930,000.00 plus interest thereon.

(e) Illinois Mortgage Foreclosure Act. It is the express intention of Mortgagee and Mortgagor that the rights, remedies, powers and authorities conferred upon Mortgagee pursuant to this Security Instrument shall include all rights, remedies, powers and authorities that a mortgagor may confer upon a mortgagee under the Act and/or as otherwise permitted by applicable law, as if they were expressly provided for herein. In the event that any provision in this Security Instrument is deemed inconsistent with any provision in the Act, the provisions of the Act shall take precedence over the provisions of this Security Instrument, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act.

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(f) Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

Unless Mortgagor provides Mortgagee with evidence of the insurance coverage required by this Security Instrument or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Mortgaged Property or any other collateral for indebtedness. This insurance may, but need not protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the indebtedness. Mortgagee may later cancel any insurance purchased by Mortgagee but only after Mortgagor provides to Mortgagee evidence that Mortgagor has obtained insurance as required by this Security Instrument or any of the other Loan Documents. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the indebtedness, Mortgagor will be responsible for the costs of that insurance, including reasonable, out-of-pocket expenses of Mortgagee that Mortgagee may lawfully impose in connect 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 more than the cost of insurance that Mortgagor may be able to obtain on its own.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage and Security Agreement under seal as of the day and year first above written.

MORTGAGOR:

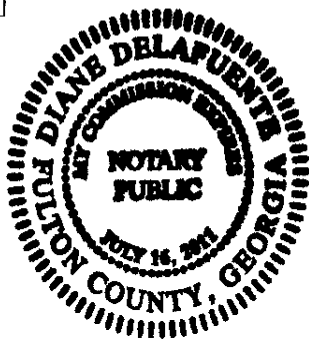
SUN CAPITOL, LLC,
An Illinois Limited Liability Company

Diane Delapuenta
Notary Public

My Commission Expires: _____

By: *Shawn Coleman*
Name: Shawn Coleman
Its: Manager

[NOTARIAL SEAL]



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EXHIBIT "A"

Legal Description

Lot 1 in Fresh-N-Go Subdivision being a subdivision in the Southeast Quarter of Section 14, Township 42 North, Range 11 East of the Third Principal Meridian, according to the plat thereof recorded May 7, 2002, as Document Number 0020519803 in Cook County.

Property of Cook County Clerk's Office

Common Address of Property: 5110-6360 Capitol Drive, Wheeling, Illinois 60090
PIN: 03-14-407-006-0000

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Exhibit B

Permitted Exceptions

1. General taxes for the year 2008 and subsequent years.
2. Building lines as shown on the plat of subdivision recorded as document 0020519803.
3. Sanitary Sewer Easement as contained in the Plat of Freed & Grais Subdivision recorded as Document 87003341, and the Plat of Subdivision of Fresh-N-Go Subdivision recorded as Document 0020519803.
4. Water Main Easement as contained in the Plat of Freed & Grais Subdivision recorded as Document 87003341, and the Plat of Subdivision of Fresh-N-Go Subdivision recorded as Document 0020519803.
5. Blanket easement in favor of the Village of Wheeling to maintain, repair and replace storm water drainage lines and sanitary sewer and potable water transmission lines and related facilities, as contained in Grant recorded as Document 87545880, as partially vacated by Resolution recorded as Document 99622581, and further disclosed by Plat of Fresh-N-Go Subdivision recorded as Document 0020519803.
6. Easement in favor of the Village of Wheeling to maintain, repair and replace storm water drainage lines and sanitary sewer and potable water transmission lines and related equipment and facilities, as contained in Grant recorded as Document 87003342.
7. Notation on the Plat of Subdivision of Fresh-N-Go Subdivision recorded as document 0020519803, as follows:

Detention, retention and drainage facilities shall be maintained by a land owner's association created pursuant to recorded Declaration of Protective Covenants recorded as Document 97339604.
8. Easement in favor of Commonwealth Edison Company for pole lines, conduits and maintenance purposes granted by Document 00305074, recorded on May 2, 2000.
9. Covenants, conditions and restrictions contained in Declaration of Protective Covenants for Capitol Commerce Center recorded May 14, 1997 as Document 97333604.

First Amendment to Declaration of Protective Covenants for Capitol Commerce Center recorded December 15, 1997 as Document 97940242.

Second Amendment to Declaration of Protective Covenants for Capitol Commerce Center recorded July 3, 2002 as Document 0020738304.