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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 0836526004 Fee: \$120.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/30/2008 08:12 AM Pg: 1 of 43

✓ 2 of 5
ST510784

The property identified as: **PIN:** 04-28-400-006-0000

Address:

Street: 3111 WEST LAKE ST

Street line 2:

City: GLENVIEW

State: IL

ZIP Code: 60025

Lender: AMERICAN CHARTERED BANK

Borrower: ATG TRUST NUMBER L008182 & VILLAS OF GLEN PARK L.L.C.

Loan / Mortgage Amount: \$961,000.00

This property is located within Cook County and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

432C

Certificate number: 5B2DC374-F4FD-464E-AE6E-FEF56C4384A6

Execution date: 12/19/2008

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of 2 of 5
85107844

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

Dated as of December 19, 2008

From

ATG Trust Company,
as Trustee under Trust Agreement dated October 29, 2008
known as Trust Number L 0081842 (the "*Land Trust*")

And

Villas of Glen Park, L.L.C.,
an Illinois limited liability company (the "*Beneficiary*")

To

AMERICAN CHARTERED BANK
(the "*Mortgagee*")

3111 West Lake Street
Village of Glenview
County of Cook
State of Illinois

This instrument was
prepared by and when recorded
return to:
Mary Ann Murray, Esq.
Burke Burns & Pinelli, Ltd.
Suite 4300
70 West Madison Street
Chicago, Illinois 60602

2008 DEC 23 333-CT1

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ATTACHMENTS TO MORTGAGE:		
EXHIBIT A	—	Legal Description of Real Property
Exhibit B		Permitted Liens

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MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING dated as of December 19, 2008 (the "*Mortgage*"), from **ATG Trust Company**, not individually or personally, but solely as Trustee under Trust Agreement dated October 29, 2008 known as Trust Number L 0081872 (the "*Land Trust*") and the **Villas of Glen Park, L.L.C.**, an Illinois limited liability company (the "*Beneficiary*") and together with the Land Trust being collectively referred to herein as the "*Mortgagor*"), having its principal office at 1865 Admiral Court, Glenview, IL 60026, to **AMERICAN CHARTERED BANK** (the "*Mortgagee*"), whose address is 932 W. Randolph Street, Chicago, Illinois 60607.

This Mortgage is also a Security Agreement and financing statement under the Uniform Commercial Code of the State of Illinois and in compliance therewith the following information is set forth:

1. The names and addresses of the Debtor and Secured Party are:

Debtor: ATG Trust Company
c/o Villas of Glen Park, L.L.C.
1865 Admiral Court
Glenview, Illinois 60026
Attention: Peter / Kristin Canalia

Secured Party: American Chartered Bank
932 W. Randolph Street
Chicago, Illinois 60607
Attention: Jennifer Roths

Loan Amount: \$961,000.00 as evidenced by a promissory note bearing interest at a variable rate of interest.

2. The property covered by this Security Agreement and financing statement is described in the Granting Clauses hereof.

3. Some or all of the fixtures, equipment and other property described herein is or may become fixtures.

4. The Debtor is the record owner of the real estate described in Exhibit A attached hereto and made a part hereof.

RECITALS

A. WHEREAS, the Mortgagor has applied to the Mortgagee for financing to support its improvements on certain real estate commonly known as 3111 W. Lake Street, Glenview, Cook County, Illinois (the "*Property*"); and

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B. WHEREAS, the Bank has agreed to extend financial accommodation to Mortgagor subject to the terms and conditions set forth herein and in that certain Construction Loan Agreement entered into by and between the Mortgagor and the Mortgagee, dated as of December 19, 2008 (the "Loan Agreement"); and

C. WHEREAS, the Mortgagor desires to accept such financial accommodation subject to the terms and conditions set forth herein and in the Loan Agreement; and

D. WHEREAS, in order to secure the Mortgagor's obligations (the "*Obligations*") as set forth in the Loan Agreement, the Mortgagor has agreed to execute this Mortgage in favor of the Mortgagee; and

E. WHEREAS, the Obligations and all principal, premium, if any, and interest thereon and all additional amounts and other sums at any time due and owing from, and required to be paid by the Mortgagor under the terms of the Loan Agreement and this Mortgage are hereinafter sometimes referred to as the "*Indebtedness Hereby Secured*"; and

F. WHEREAS, the Mortgagor is duly authorized under all applicable provisions of law and its Organizational Documents to execute and deliver this Mortgage and to mortgage, convey and assign the Mortgaged Property (defined below) to the Mortgagee as security for the Obligations and all action and all consents, approvals and other authorizations and all other acts and things necessary to make this Mortgage the valid, binding and legal instrument for the security of the Obligations have been done and performed.

G. NOW, THEREFORE, THIS MORTGAGE WITNESSETH: That the Mortgagor, in consideration of the premises, the extension of financial accommodation by the Mortgagee and of the sum of Ten Dollars received by the Mortgagor from the Mortgagee and other good and valuable consideration, receipt whereof is hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on the Obligations according to its tenor and effect, and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, agreements and conditions contained in or incorporated by reference into the Loan Agreement or this Mortgage, the Mortgagor does hereby grant, warrant, mortgage, assign, pledge, sell, demise, bargain, convey, transfer, set over and hypothecate unto the Mortgagee, its successors and assigns, forever, WITH POWER OF SALE, to the extent permitted by law, and grants to the Mortgagee, its successors and assigns, forever, a security interest in and to all and singular the following described properties, rights, interest and privileges and all of the Mortgagor's estate, right, title and interest therein, thereto and thereunder (all of which properties hereby mortgaged, assigned, pledged and hypothecated or intended so to be are hereinafter collectively referred to as the "*Mortgaged Property*");

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GRANTING CLAUSE FIRST

THE PROPERTY

The parcel of land in County of Cook, State of Illinois, described in Exhibit A attached hereto and made a part hereof, together with the entire interest of the Mortgagor in and to all buildings, structures, improvements and appurtenances now standing, or at any time hereafter constructed or placed, upon such land, including all right, title and interest of the Mortgagor, if any, in and to all building material, building equipment and fixtures of every kind and nature whatsoever on said land or in any building, structure or improvement now or hereafter standing on said land which are classified as fixtures under applicable law and which are used in connection with the operation, maintenance or protection of said buildings, structures and improvements as such (including, without limitation, all boilers, air conditioning, ventilating, plumbing, heating, lighting and electrical systems and apparatus, all communications equipment and intercom systems and apparatus, all sprinkler equipment and apparatus and all elevators and escalators) and the reversion or reversions, remainder or remainders, in and to said land, and together with the entire interest of the Mortgagor in and to all and singular the tenements, hereditaments, easements, rights of way, rights, privileges and appurtenances to said land, belonging or in anywise appertaining thereto, including, without limitation, the entire right, title and interest of the Mortgagor in, to and under any streets, ways, alleys, gores or strips of land adjoining (excluding only Mortgagor's fee interest in adjoining lots commonly referred to as lots 1 & 3) said land, and all claims or demands whatsoever of the Mortgagor either in law or in equity, in possession or expectancy, of, in and to said land, it being the intention of the parties hereto that, so far as may be permitted by law, all property of the character hereinabove described, which is now owned or is hereafter acquired by the Mortgagor and is affixed or attached or annexed to said land, shall be and remain or become and constitute a portion of said land and the security covered by and subject to the lien of this Mortgage, together with all accessions, parts and appurtenances appertaining or attached thereto and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all thereof, and together with all rents, income, revenues, awards, issues and profits thereof, and the present and continuing right to make claim for, collect, receive and receipt for any and all of such rents, income, revenues, awards, issues and profits arising therefrom or in connection therewith.

GRANTING CLAUSE SECOND

THE LEASE AND RENTS

All of the Mortgagor's estate, right, title, interest, claim and demand as landlord in, to and under any lease of the Mortgaged Property (a "Lease"), including all extensions and renewals of the term thereof, and all existing or future amendments, supplements or modifications of the Lease (and to any short memorandum form of the Lease executed for recording purposes), together with all rights, powers, privileges, options and other benefits of the Mortgagor as landlord under the Lease, including, without limitation, (a) the immediate and continuing right (whether or not an Event of Default under this Mortgage shall have occurred and be continuing) to receive and collect all rents (whether as fixed rent, basic rent, percentage

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rent, additional rent or otherwise), income, revenues, issues, profits, insurance proceeds, condemnation awards, bankruptcy claims, liquidated damages, purchase price proceeds and other payments, tenders and security payable to or receivable by the landlord under the Lease; (b) the right to make all waivers, consents and agreements; (c) the right to give and receive copies of all notices and other instruments or communications; (d) the right to take such action upon the occurrence of an Event of Default under the Lease, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law; and (f) the right to do any and all other things whatsoever which the Mortgagor or any landlord is or may be entitled to do under the Lease.

GRANTING CLAUSE THIRD

CONDEMNATION AWARDS

All of the right, title and interest of the Mortgagor in and to any award or awards or settlements or payments heretofore made or hereafter to be made by any municipal, county, state or federal authorities to the present or any subsequent owners of the Mortgaged Property, including without limitation any award or awards, or settlements or payments, hereafter made resulting from (i) condemnation proceedings or the taking of the Mortgaged Property, or any part thereof, under the power of eminent domain, or (ii) the alteration of grade or the location or the discontinuance of any street adjoining the Mortgaged Property or any portion thereof, or (iii) any other injury to or decrease in value of the Mortgaged Property; and the Mortgagor hereby agrees to execute and deliver from time to time such further instruments as may be requested by the Mortgagee to confirm such assignment to Mortgagee of any such award, damage, payment or other compensation.

GRANTING CLAUSE FOURTH

PERSONAL PROPERTY

All tangible and intangible personal property now owned or at any time hereafter acquired by the Mortgagor of every nature and description, and used in any way in connection with the Mortgaged Property, or any other portion of the same, including, without limitation, all inventory; goods; materials; supplies; equipment; furnishings; fixtures; accounts; accounts receivable; chattel paper; documents; instruments; money; bank accounts (including, without limitation, any accounts or reserves held by Mortgagee); security deposits; claims to rebates, refunds or abatements of real estate taxes or any other taxes; contract rights, plans and specifications; permits, licenses, general intangibles; the rights of the Mortgagor under contracts, with respect to the Mortgaged Property or any portion thereof; signs, brochures, advertising and good will in connection with the Mortgaged Property.

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GRANTING CLAUSE FIFTH

OTHER AND AFTER-ACQUIRED PROPERTY

Any and all moneys and other property (including each amendment or supplement to any and all instruments included in the Mortgaged Property) which may from time to time, by delivery to the Mortgagee or by any instrument, including this Mortgage, be subjected to the lien hereof by the Mortgagor or by anyone on the behalf of the Mortgagor or with the consent of the Mortgagor, or which may come into the possession or be subject to the control of the Mortgagee pursuant to this Mortgage, or pursuant to any instrument included in the Mortgaged Property, it being the intention of the Mortgagor and the Mortgagee and it being hereby agreed by them that all property hereafter acquired by the Mortgagor and required to be subjected to the lien of this Mortgage or intended so to be shall forthwith upon the acquisition thereof by the Mortgagor be as fully embraced within the lien of this Mortgage as if such property were now owned by the Mortgagor and were specifically described in this Mortgage and granted hereby or pursuant hereto.

GRANTING CLAUSE SIXTH

PROCEEDS

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance and condemnation awards and payments and all products, additions, accessions, substitutions and replacements of any of the foregoing.

SUBJECT, HOWEVER, as to all property or rights in property at any time subject to the lien hereof (whether now owned or hereafter acquired), to the following:

(a) The agreement of the parties hereto that any and all trade fixtures, signs, furniture, furnishings, equipment, machinery or other tangible personal property located on the Mortgaged Property not owned by the Mortgagor, whether or not classified as fixtures under applicable law, are expressly excluded from the lien and security interest created by this Mortgage, and that the same shall in no instance be deemed to be encompassed within the term "*Mortgaged Property*"; and

(b) The Permitted Encumbrances, as defined in Section 1 hereof.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee and its successors and assigns, with the purpose of securing performance of each agreement, covenant and warranty of the Mortgagor contained in the Operative Agreements and payment of all Indebtedness Hereby Secured.

IN TRUST, NEVERTHELESS, WITH POWER OF SALE (to the extent permitted by law), upon the terms and trusts herein set forth for the benefit and security of all present and future holders of the Obligations in accordance with their terms and all other sums payable hereunder or under

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the Loan Agreement, and for the performance and observance of the Obligations and this Mortgage, all as herein set forth.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if the Mortgagor performs the covenants herein contained and pays to the Mortgagee, its successors or assigns, the full amount of all Indebtedness Hereby Secured and all other sums due or payable hereunder or under the Loan Agreement, the estate, right and interest of the Mortgagee in the property hereby conveyed shall cease and this Mortgage shall become null and void.

It is agreed and understood by the parties hereto that:

1. This Mortgage is intended to and shall constitute security for the Indebtedness Hereby Secured.

2. Any part of the security herein described, and any security described in any other mortgage, assignment of lease or other instrument now or hereafter given to secure the indebtedness which is secured by this Mortgage, may be released by the Mortgagee without affecting the lien hereof on the remainder.

3. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof, or to have the Mortgaged Property hereunder and the property covered by any other mortgage or assignment of lease securing the Obligations marshalled upon any foreclosure of any of said deeds of trust or assignments of leases, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety.

4. Upon the occurrence of an Event of Default hereunder, the Mortgagee has, among other things, the right to foreclose on the Mortgaged Property and dispose of the same. The Mortgagee's deed or other instrument of conveyance, transfer or release (which, if permitted by law, may be in the name of the Mortgagee or as attorney for the Mortgagor and the Mortgagee hereby is irrevocably appointed) shall be effective to convey and transfer to the grantee an indefeasible title to the property covered thereby, discharged of all rights of redemption by the Mortgagor or any person claiming under it, and to bar forever all claims by the Mortgagor or the said Mortgagee to the property covered thereby and no grantee from the Mortgagee shall be under any duty to inquire as to the authority of the Mortgagee to execute the same, or to see to the application of the purchase money.

5. The Mortgagor does hereby irrevocably constitute and appoint the Mortgagee, its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and give acceptance for any and all rents, income and other sums which are assigned under the Granting Clauses of this Mortgage with full power to settle, adjust or compromise any claim thereunder as surely as the Mortgagor could itself do and to endorse the name of the Mortgagor on all commercial paper given in payment or in part

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payment thereof, and in its discretion to file any claim or take any other action or proceedings either in its own name or in the name of the Mortgagor or otherwise, which the Mortgagee may reasonably deem necessary or appropriate to protect and preserve the right, title and interest of the Mortgagee in and to such rents and other sums and the security intended to be afforded by this Mortgage.

SECTION 1. DEFINITIONS.

The following terms shall have the following meanings for all purposes of this Mortgage (any capitalized terms not otherwise defined herein shall have the meanings set forth therefor in the Loan Agreement):

"Bankruptcy Claims" is defined in Section 2.18(a) of this Mortgage.

"Bankruptcy Code" is defined in Section 2.18(a) of this Mortgage.

"Default" shall mean any event which would constitute an Event of Default if any requirement in connection therewith for the giving of notice, or the lapse of time, or the happening of any further condition, event or action had been satisfied.

"Default Rate" shall mean that rate of interest per annum expressed hereunder or in the Operative Agreements, plus five percent (5.00%) per annum.

"Environmental Legal Requirement" provisions of law, statute, ordinances, rules, regulations, judgments, writs, injunctions, decrees, orders, awards and standards promulgated by the government of the United States of America or any foreign government or by any state, province, municipality or other political subdivision thereof or therein or by any court, agency, instrumentality, regulatory authority or commission of any of the foregoing concerning the protection of, storage or disposal of, or regulating the discharge of Hazardous Materials into, the environment.

"Event of Default" shall mean any events specified in Section 5 hereof after the expiration of any grace or cure periods set forth therein.

"Event of Loss" with respect to the Mortgaged Property shall mean any casualty or condemnation.

"Hazardous Substances" shall mean any hazardous, toxic or harmful chemical, substance, waste, material, byproduct, pollutant, contaminant, compound or product, including without limitation, asbestos, polychlorinated byphenyls, petroleum products (including crude oil or any fraction thereof), flammable explosives, radioactive materials, mold, mildew, infectious substances or raw materials which include hazardous constituents and any other substance or material the exposure, use, disposal or handling of which and the quantity of which is regulated by any Environmental Legal Requirement.

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"Indebtedness" of any Person shall mean, without duplication (a) all obligations of such Person for borrowed money or which have been incurred in connection with the acquisition of property or assets, (b) rents payable by such Person under all leases (whether or not capitalized on the books of such Person in accordance with generally accepted accounting principles) having a fixed term of one year or more from the original date or which are renewable or extendible by the lessee for a period or periods aggregating one year or more from the original date, (c) all indebtedness, obligations and liabilities secured by any lien existing on property owned by such Person subject to such lien, whether or not such indebtedness, obligations or liabilities have been assumed, and (d) all guarantees (whether by discount or otherwise), endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, or otherwise acquire, or become liable upon or in respect of, the indebtedness, obligations or liabilities of any Person or other entity whether or not reflected in the balance sheet of such Person.

"Indebtedness Hereby Secured" is defined in Recital D hereto.

"Investment Grade" shall mean a rating of "BBB" or better, as rated by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, or "Baa" or better, as rated by Moody's Investor Service, Inc.

"Loan" is defined in Recital A hereto.

"Loan Agreement" is defined in the Recitals hereto.

"Mortgaged Property" is defined in the Recitals hereto.

"Mortgagee" shall mean American Chartered Bank and its successors and assigns.

"Note" is defined in the Recitals hereto.

"Obligations" is defined in the Recitals hereto.

"Operative Agreements" shall mean, collectively, the Loan Agreement, this Mortgage, the Stock Pledge Agreement (as defined in the Loan Agreement) and the Note and any other agreements, instruments and documents, including without limitation, guaranties, mortgages, deeds of trust, notes, pledges, powers of attorney, consents, assignments, contracts, notices, security agreements, leases, financing statement and all other written matter heretofore, now and/or from time to time hereafter executed by and/or on behalf of the Mortgagee delivered to the Mortgagee.

"Organizational Documents" of any entity shall mean (a) in the case of a corporation, the Articles or Certificate of Incorporation (or the equivalent of such items under state law) and the By-laws of such corporation, (b) in the case of a limited liability company, the Certificate of Existence and the Operating Agreement of such limited liability company, (c) in the case of a limited partnership, the Certificate of Formation and Limited Partnership Agreement of such limited partnership and the Organizational Documents of the General Partner of such limited

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partnership, (d) in the case of a Joint Venture, the Certificate of Formation (if applicable) and the Organizational Documents of each joint venturer, and (e) any equivalent documents, to the foregoing under the State law where such entity was organized or formed.

"Permitted Encumbrances" shall mean the liens described in clauses (a) through (h) of Section 2.17 of this Mortgage.

"Person" shall mean an individual, partnership, limited liability company, corporation, trust or unincorporated organization.

"Rents" is defined in Section 2.18(a) of this Mortgage.

"Restoration" is defined in Section 4.1 of this Mortgage.

"Restoration Funds" is defined in Section 4.1 of this Mortgage.

"Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect in the State of Illinois, as amended.

SECTION 2. GENERAL COVENANTS AND WARRANTIES.

From and after December 19, 2008 (the "Closing Date") and continuing so long as any amount remains unpaid on the Indebtedness Hereby Secured, the Mortgagor covenants that:

Section 2.1. Office for Notices. The Mortgagor will keep an office at 1865 Admiral Court, Glenview, Illinois 60026, where notices, presentations and/or demands to or upon the Mortgagor in respect of said Loan Agreement or this Mortgage may be given or made, until such time as the Mortgagor shall so notify the Mortgagee of any change of location of such office.

Section 2.2. Maintenance of Existence, Rights. The Mortgagor will at all times preserve and keep in full force and effect its existence and will obtain and maintain in full force and effect all franchises, privileges, rights, licenses and permits and all other consents, approvals and authorizations of any governmental authority necessary for the ownership and efficient operation and maintenance of its business and property which failure to obtain and maintain would materially and adversely affect the properties, business, prospects, profits or condition of the Mortgagor.

Section 2.3. Negative Covenants. The Mortgagor will not:

- (a) without the Bank's prior written consent, engage in any business other than the ownership, development and operation of the Mortgaged Property and other

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real estate, and the financing thereof through the issuance of the Note, as expressly contemplated by the Operative Agreements to which the Mortgagor is a party;

(b) be or become liable in respect of any guaranty without the consent of the Bank;

(c) incur any Indebtedness other than (i) under Loan Agreement, the Note or the Operative Agreements, (ii) taxes and assessments not yet due and payable and items being contested in good faith pursuant to Section 2.16, (iii) trade payables incurred in the ordinary course of business, and (iv) obligations under the Lease;

(d) make, or permit to remain outstanding, any investment, loan or advance to, or own or acquire any stock or Securities of, any Person except that the Mortgagor may make any advance required to be made to satisfy its obligations under the Operative Agreements to which the Mortgagor is a party;

(e) pay or declare any dividend, or make any other distribution if, after giving effect thereto, a Default or Event of Default would exist;

(f) enter into any lease for a term greater than one year of any of the Mortgaged Property, whether as lessor or as lessee without the consent of the Mortgagee, which consent will not be unreasonably withheld or delayed;

(g) sell, transfer, exchange or otherwise dispose of the Mortgaged Property or any part or portion thereof, except as expressly permitted by this Mortgage or the Loan Agreement, or with the prior written consent of mortgagee, which consent should not be unreasonably withheld or delayed;

(h) permit any direct or indirect holder or owner of an equity, ownership, membership, partnership, or voting interest in the Mortgagor to sell, transfer, exchange or otherwise dispose of such interest in any transaction or series of transactions that would result in a different Person or entity holding or owning, directly or indirectly, a controlling interest in the Mortgagor than held or owned such controlling interest on the Closing Date;

(i) institute proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against it, or file a petition under state law relating to bankruptcy or insolvency, or consent to the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Mortgagor, or a substantial part of its property, or make any assignment for the benefit of creditors, or, except as required by law, admit in writing its inability to pay its debts generally as they become due, or take any Mortgagor action in furtherance of any such action;

(j) amend or modify any special purpose or separateness provisions in the Organizational Documents of the Mortgagor; or

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- (k) create, organize or establish any Subsidiary.

Section 2.4. Mergers and Consolidations. The Mortgagor will not consolidate with or be a party to a merger with any other Person.

Section 2.5. Financial Information and Reports. The Mortgagor will keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to the business and affairs of the Mortgagor in accordance with the accounting basis used for income tax purposes and will furnish to the Mortgagee:

- (a) As soon as available and in any event within 90 days after the close of each fiscal year of the Mortgagor, copies of:

(i) a balance sheet of the Mortgagor as of the close of such fiscal year, and

(ii) a statement of operating income, retained earnings and cash flows of the Mortgagor for such fiscal year,

in each case setting forth in comparative form the figures for the preceding fiscal year, all in reasonable detail and accompanied by a certificate of an officer of the Mortgagor to the effect that such financial statements have been prepared in accordance with the accounting basis used for tax purposes, are complete and correct and present fairly, in all material respects, the financial condition of the Mortgagor; *provided*, that if the financial statements required by this paragraph (a) shall be prepared by a firm of independent public accountants, then in lieu of a statement certified by an officer of the Mortgagor, copies of such statements shall be furnished to the Mortgagee at the times required by the preceding provisions of this paragraph (a).

(b) Within the periods provided in paragraph (a) above, the written statement of the Mortgagor, signed by an authorized officer of the Mortgagor, stating whether, to the best of his knowledge, there existed as of the date of such financial statements and on the date of the certificate any Default or Event of Default, and specifying the nature and period of existence thereof and the action the Mortgagor is taking and proposes to take with respect thereto; and

(c) Such additional information as the Mortgagee may reasonably request concerning the Mortgagor.

The Mortgagor will permit the Mortgagee (or such Persons as the Mortgagee may designate) to visit and inspect the Mortgaged Property under the Mortgagor's guidance, to examine all of its books of account, records, reports and other papers, to make copies and extracts therefrom and to discuss its affairs, finances and accounts with its officers, agents and representatives, all at such reasonable times and as often as any such holder may reasonably desire; *provided*, that at any time when an Event of Default shall have occurred and be then continuing, such visit and inspection shall be at the expense of the Mortgagor.

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Section 2.6. Notice of Default. The Mortgagor will, immediately upon an officer or member of the Mortgagor acquiring actual knowledge of a Default or Event or Default, furnish a written notice to the Mortgagee specifying the nature and period of existence of such condition or event and what action the Mortgagor is taking or proposes to take with respect thereto.

Section 2.7. Mortgage Title Insurance Policy. The Mortgagor will, within 60 days following the Closing Date, at its own cost and expense, procure and deliver to the Mortgagee or its counsel an ALTA Policy issued by a title insurance company acceptable to the Mortgagee which policy shall be not less than the principal amount of the Note executed and delivered on the Closing Date covering the Mortgaged Property showing marketable fee title to the Mortgaged Property to be in the Mortgagor, subject only to Permitted Encumbrances, which policy shall also insure the Mortgagee against all loss or damage sustained by reason of this Mortgage not being a first and paramount lien at the date of such policy upon title to the Mortgaged Property and which policy shall be dated the Closing Date and shall otherwise be in form and substance satisfactory to the Mortgagee.

Section 2.8. Payment of Certain Taxes. The Mortgagor covenants and agrees to pay all taxes, assessments and governmental charges or levies imposed upon this Mortgage or the Loan Agreement or any other Indebtedness Hereby Secured (other than income or franchise taxes imposed upon Mortgagee).

Section 2.9. Ownership of Mortgaged Property. The Mortgagor covenants and warrants that it has good and marketable title to the Mortgaged Property hereinbefore conveyed to the Mortgagee free and clear of all liens, charges and encumbrances whatever except Permitted Encumbrances, and the Mortgagor has full right, power and authority to grant, warrant, mortgage, pledge, assign, sell, demise, bargain, hypothecate, convey, grant a security interest in, transfer and set over the same to the Mortgagee for the uses and purposes in this Mortgage set forth; and the Mortgagor will warrant and defend the title to the Mortgaged Property against all claims and demands whatsoever. Without limiting the foregoing, the Mortgagor represents and warrants that the restrictions, exceptions, reservations, limitations, interests and other matters, if any, set forth immediately following the specific descriptions of the parcels of land in Exhibit A attached hereto, together with all other restrictions, exceptions, reservations, limitations, interests and other matters, if any, existing on the date of execution and delivery of this Mortgage, do not in the aggregate impair the value of the Mortgaged Property or materially adversely affect the utility, structural integrity or beneficial enjoyment of the Mortgaged Property for the uses to which the Mortgaged Property is being put.

Section 2.10. Further Assurances. The Mortgagor will, at its own expense, do, execute, acknowledge and deliver all and every further act, deed, conveyance, transfer and assurance necessary or proper for the better assuring, conveying, assigning and confirming unto the Mortgagee all of the Mortgaged Property, or property intended so to be, whether now owned or hereafter acquired *provided* such acts and assurances shall not operate to modify the terms of this Mortgage or the Loan Agreement.

Section 2.11. Reserved.

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Section 2.12. *Reserved.*

Section 2.13. *Reserved.*

Section 2.14. *Maintenance of Mortgaged Property, Other Liens, Compliance with Laws, Etc.*

(a) The Mortgagor shall (i) subject to Sections 3 and 4 hereof, promptly repair, restore or rebuild any buildings or improvements now or hereafter located on the Mortgaged Property which may become damaged or be destroyed, (ii) keep the Mortgaged Property in good condition and repair, ordinary wear and tear excepted, without waste, and free from all claims, liens, charges and encumbrances other than Permitted Encumbrances (except as otherwise permitted under the Loan Agreement), (iii) pay when due any indebtedness which may be secured by a lien or charge on the Mortgaged Property which does not constitute a Permitted Encumbrance, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee, (iv) comply with all requirements of law or municipal ordinances with respect to the Mortgaged Property and the use thereof (including, without limitation, any law or municipal ordinance with respect to environmental protection or hazardous wastes), failure to comply with which would result in any material interference with the use or operation of the Mortgaged Property by the Mortgagor, (v) promptly procure, maintain and comply with all permits, licenses and other authorizations required for the use of the Mortgaged Property or any erection, installation, operation and maintenance of the Mortgaged Property or any part thereof, and (vi) make no material alterations in said Mortgaged Property except as required by law or municipal ordinance or which do not impair the value of the Mortgaged Property.

(b) Notwithstanding clause (i) or (iv), of subsection 2.14(a) above, the Mortgagor may, (i) construct upon the Mortgaged Property additional buildings, structures and other improvements and (ii) install, assemble and place upon the Mortgaged Property any trade fixtures, signs, furniture, furnishings, equipment, machinery and other tangible personal property used or useful in the business of the Mortgagor, as the case may be, whether or not classified as fixtures under applicable law. All such buildings, structures and other improvements shall be and remain part of the realty and shall be subject to this Mortgage. Such trade fixtures, signs, furniture, furnishings, equipment, machinery and other tangible personal property shall be and remain the property of the Mortgagor, shall not be deemed part of the Mortgaged Property for purposes of condemnation or casualty, and the Mortgagor, may remove the same from the Mortgaged Property at any time prior to the expiration or earlier termination of this Mortgage, *provided* that the Mortgagor, at its expense, shall repair any damage to the Mortgaged Property resulting from such removal.

(c) Any repair, restoration, rebuilding, substitution, replacement, modification, alteration of or addition to the Mortgaged Property pursuant to this Section 2.14 must not (*provided* that to the extent any action is required by law or ordinance, the Mortgagor shall use best efforts to ensure that such action does not) impair the market value or usefulness of the Mortgaged Property for use in the ordinary course of business; shall be performed in a good and workmanlike manner and be expeditiously completed in compliance with all laws, ordinances, orders, rules, regulations and requirements applicable thereto, including to the extent necessary to maintain in full force and effect the policies of insurance required by Section 2.15 hereof. All costs and expenses of each such repair, restoration, rebuilding,

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substitution, replacement, the discharge of all liens filed against the Mortgaged Property arising out of the same, together with all costs and expenses necessary to obtain any permits or licenses required in connection therewith shall be promptly paid by the Mortgagor.

(d) The Mortgagor will only use and operate the Mortgaged Property, or permit the same to be used and operated, for any lawful purpose.

Section 2.15. *Insurance.* (a) The Mortgagor will continuously maintain, or will cause to be continuously maintained, the following-described insurance coverage:

(1) Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called "special form" form of casualty policy with replacement cost and agreed amount endorsements; *provided, however,* that the amount of such insurance with respect to the Mortgaged Property shall not at any time be less than 100% of the full insurable replacement value of the Mortgaged Property, exclusive of land, foundations and excavations, from time to time;

(2) Comprehensive public liability insurance on an "occurrence basis" or a "claims made basis" against claims for "personal injury" including without limitation bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, *provided* that such insurance shall afford immediate minimum protection to a limit of not less than \$2,000,000 per person and accident and not less than \$1,000,000 for property damage liability.

(b) Any insurance coverage maintained in accordance with Section 2.15(a) shall be written by insurance companies of recognized national standing and with a rating of A- or better by A.M. Best Mortgagor or an equivalent rating by a NAIC-approved rating organization and authorized to do business in the State of Illinois and (1) shall name the Mortgagor and the Mortgagee as additional insureds and lender's loss payee, as their interests may appear, (2) in the case of policies covering loss or damage to the Mortgaged Property, shall provide that such losses, if any, shall be payable solely to the Mortgagee or, at the direction of the Mortgagee, the depository under a standard mortgagee loss payable clause satisfactory to the Mortgagee, (3) shall provide that the Mortgagee's interest shall be insured regardless of any breach or violation by the Mortgagor of any warranties, declarations or conditions contained in such policies, (4) such insurance, as to the interest of the Mortgagee therein, shall not be invalidated by the use or operation of the Mortgaged Property for purposes which are not permitted by such policies, nor by any foreclosure or other proceedings relating to the Mortgaged Property, nor by change in title to or ownership of the Mortgaged Property, (5) the insurers shall waive any right of subrogation of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Mortgagor, (6) if any premium or installment is not paid when due, or if such insurance would lapse or be canceled, terminated or materially changed for any reason whatsoever, the insurers will promptly notify the Mortgagee and any such lapse, cancellation, termination or change shall not be effective as to the Mortgagee for 30 days after receipt of such notice, (7) appropriate

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certification shall be made to the Mortgagee by each insurer with respect thereto, and (8) shall provide for deductible in amounts not in excess of amounts as is customary for companies similarly situated and owning properties in the State of Illinois similar to the Mortgaged Property. Provided no Default or Event of Default has occurred or is continuing, the loss, if any, under any policy pertaining to loss by reason of damage to or destruction of any portion of the Mortgaged Property shall be adjusted with the insurance companies by the Mortgagor, subject to the reasonable approval of the Mortgagee if the loss exceeds \$50,000. The loss so adjusted shall be paid to the Mortgagee pursuant to said loss payable clause unless said loss is \$50,000 or less in which case said loss shall be paid directly to the Mortgagor, provided no Default or Event of Default has occurred and is continuing, in which event any such loss shall be paid to the Mortgagee.

(c) The Mortgagor shall furnish the Mortgagee with certificates or other satisfactory evidence of maintenance of the insurance required hereunder and with respect to any renewal policy or policies shall furnish certificates evidencing such renewal not less than 30 days prior to the expiration date of the original policy or renewal policies. All such policies shall provide that the same shall not be canceled without at least 30 days' prior written notice to each insured named therein.

Section 2.16. Payment of Taxes and Other Charges. The Mortgagor will pay and discharge before the same shall become delinquent, together with interest and penalties thereon, if any, (a) all taxes, assessments (including assessments for benefits from public works or improvements whenever begun or completed), levies, fees, water, sewer, electrical and other utility service rents and charges, and all other governmental charges, general and special, ordinary and extraordinary, and whether or not within the contemplation of the parties hereto, which are at any time levied upon or assessed against it or the Mortgaged Property or any part thereof or upon this Mortgage or the Indebtedness Secured Hereby, or upon the revenues, rents, issues, income and profits in respect of the Mortgaged Property, or arising in respect of the occupancy, use or possession thereof, which failure to pay would result in the creation of a lien upon the Mortgaged Property or any part thereof, or upon the revenues, rents, issues, income and profits of the Mortgaged Property or in the diminution thereof or would result in any material interference with the use or operation of the Mortgaged Property by the Mortgagor, (b) all franchise, excise and other taxes, fees and charges assessed, levied or imposed in respect of its corporate existence or its right to do business in any state, (c) all income, excess profits, excise, sales, franchise, gross receipts and other taxes, duties or imposts, whether of a like or different nature, assessed, levied or imposed by any governmental authority on it or the Mortgaged Property, or any portion thereof, or upon the revenues, rents, issues, income and profits of the Mortgaged Property if the failure to pay any such tax, duty or impost might result in the creation of a lien upon any asset of the Mortgagor or the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or in the diminution thereof, and whether or not any such tax, duty or impost is payable directly by the Mortgagor or is subject to withholding at the source and (d) all lawful claims and demands of mechanics, laborers, materialmen and others which, if unpaid, might result in the creation of a lien on the Mortgaged Property or upon the revenues, rents, issues, income and profits of the Mortgaged Property and, in general, will do or cause to be done everything necessary so that

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the lien hereof shall be fully preserved, at the cost of the Mortgagor, without expense to the Mortgagee.

Nothing in this Section 2.16 shall require the payment of any sum which is required to be paid by the Mortgagor pursuant to this Section 2.16 so long as the Mortgagor shall in good faith contest its obligation so to do by appropriate proceedings which will prevent the forfeiture or sale of any property of the Mortgagor or any material interference with the use or operation thereof by the Mortgagor, during the pendency of such proceedings and shall set up a reserve, reasonably adequate, in the opinion of any manager, any member, any partner, any shareholder, the President or any Vice President of the Mortgagor against any such payment.

Section 2.17. Limitation on Liens. The Mortgagor will not create or incur or suffer to be incurred or to exist, any mortgage, pledge, security interest, encumbrance, lien or charge of any kind upon the Mortgaged Property, whether now owned or hereafter acquired, or upon any income or proceeds therefrom, except the following:

(a) liens or encumbrances as set forth on Exhibit B attached hereto and made a part hereof;

(b) liens for property taxes and assessments or governmental charges or levies and liens securing claims or demands of mechanics and materialmen, *provided* that payment thereof is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings;

(c) liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Mortgagor shall at any time in good faith be prosecuting an appeal or proceeding for a review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;

(d) liens, charges, encumbrances and priority claims incidental to the conduct of business or the ownership of properties and assets (including warehousemen's and attorneys' liens and statutory landlords' liens) and deposits, pledges or liens to secure payment of premiums on insurance purchased in the usual course of business or in connection with self-insurance or in connection with workmen's compensation, unemployment insurance or social security legislation, or to secure the performance of bids, tenders or trade contracts, or to secure statutory obligations, surety or appeal bonds or other liens of like general nature incurred in the ordinary course of business and not in connection with the borrowing of money, *provided* in each case, the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings;

(e) minor survey exceptions or minor encumbrances, easements or reservations of, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties, which encumbrances, easements, reservations, rights and restrictions do not in the aggregate materially detract

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from the value of said properties or materially impair their use in the operation of the business of the Mortgagor;

- (f) the lien of this Mortgage;
- (g) the lien of any permitted lease to any Person, as lessee; *provided* that the lien thereof shall be subject to terms acceptable to the Mortgagee; and
- (h) easements, rights of way, reservations, restrictive agreements, servitudes and rights of others against the Mortgaged Property which are listed on Schedule B to the ALTA Title Insurance Policy delivered to the Mortgagee following the Loan by the Mortgagee.

Section 2.18. Assignment of Lease. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to further secure the payment and performance by Mortgagor of all obligations under the Loan Agreement, this Mortgage and the other Operative Agreements, the Mortgagor hereby absolutely and unconditionally assigns, transfers and grants to the Mortgagee the following property, rights, interests and estates, now owned, or hereafter acquired, by Mortgagor:

(a) *Leases.* All existing and future leases, affecting the use, enjoyment, or occupancy of all or any part of the Mortgaged Property, and the right, title and interest of Mortgagor, its successors and assigns, therein and thereunder.

(b) *Other Agreements.* All other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Mortgaged Property or any portion thereof now or hereafter made, together with any extension, renewal or replacement of the same, this assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment. The leases described in Section 2.18(a)(i) and the other agreements described in this Section 2.18(a)(ii), together with all other present and future leases and present and future agreements and any amendments, modifications, extensions or renewals thereof are collectively referred to as the "Leases."

(c) *Rents.* All rents, additional rents, revenues, income, proceeds, reimbursable amounts, issues and profits arising from the Leases and any cash or security deposited in connection therewith (including, without limitation, all oil and gas and other mineral royalties and bonuses) payable by any tenant under any of the Leases or otherwise, for or in connection with the use, enjoyment and occupancy of the Mortgaged Property (collectively, the "Rents").

(d) *Bankruptcy Claims.* All of Mortgagor's claims and rights (the "Bankruptcy Claims") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code, 11 U.S.C. §101 *et seq.*, as the same may be amended (the "Bankruptcy Code").

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(e) *Proceeds.* All proceeds from the sale or other disposition of the Leases, the Rents and the Bankruptcy Claims.

(f) *Other.* All rights, powers, privileges, options and other benefits of Mortgagor as lessor under the Leases, including without limitation, (i) the immediate and continuing right to make claims for, receive, collect and receipt for, all Rents payable or receivable under the Leases (and to apply the same to the payment of the Indebtedness Hereby Secured, and to do all other things which Mortgagor or any lessor is or may become entitled to do under the Leases; (ii) the right to pursue and collect any claim in bankruptcy proceedings of any tenant; (iii) the right to accept or reject any offer made by a tenant pursuant to its Lease to purchase the Property or any part thereof and any other property subject to a Lease and to perform all other necessary or appropriate acts with respect to such purchases; (iv) the right to make all waivers and agreements, to give and receive all notices, consents and releases, and to take such action upon the happening of a default beyond applicable cure periods, if any, under any Lease as Mortgagor shall have the right under any of the Leases or at law to take, including the right to commence, conduct and consummate eviction proceedings; (v) the right, at Mortgagee's option to enter upon the Property in person, by agent or by court-appointed receiver; and (vi) Mortgagor's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in this Mortgage and any or all other actions designated by Mortgagee for the proper management and preservation of the Mortgaged Property.

This assignment of Leases is a perfected present, absolute, direct and unconditional assignment and transfer of all Mortgagor's right, title and interest in and to, but not obligations under, the Leases and the Rents made in consideration of the loan by Mortgagee to Mortgagor and as additional security for the repayment of the Indebtedness Hereby Secured.

The assignment of leases and rents set forth in this Section 2.18 shall run with the land and be good and valid against the Mortgagor or those claiming by, under or through the Mortgagor, from the date hereof and such assignment shall continue to be operative during the foreclosure or any other proceeding taken to enforce this Mortgage. In the event of a sale or foreclosure which shall result in a deficiency, such assignment shall stand as security during the redemption period for the payment of such deficiency. The Mortgagee shall be permitted, at its sole option, to exercise remedies under such assignment separately from remedies exercised against other portions of the Mortgaged Property.

Section 2.19. Advances. If the Mortgagor shall fail to comply with the covenants contained herein or in the Loan Agreement and incorporated herein by reference, the Mortgagee, after five business days' prior written notice to the Mortgagor and without waiving or releasing any obligation or Default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of the Mortgagor, and may enter upon the Mortgaged Property or any part thereof for such purpose and take all such action thereon as, in the opinion of the Mortgagee, may be necessary or appropriate therefor. All sums so paid by the Mortgagee and all costs and expenses (including without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest

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thereon at the Default Rate from the date of payment or incurrence, shall be secured hereby in priority to the indebtedness evidenced by the Obligations and shall be paid by the Mortgagor to the Mortgagee on demand. The Mortgagee in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof.

Section 2.20. Recordation. The Mortgagor will, at its own expense, cause this Mortgage, all supplements hereto, and any financing statements and continuation statements required by law, including the Uniform Commercial Code, in respect hereof and thereof at all times to be kept recorded and filed at its own expense in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Mortgagee hereunder and thereunder, and will furnish to the Mortgagee promptly after the execution and delivery of this Mortgage, and supplement hereto an opinion of counsel stating that, in the opinion of such counsel, this Mortgage, or such supplement, as the case may be, has been properly recorded or filed for record so as to make effective of record the lien intended to be created hereby and/or thereby. Mortgagee hereby specifically consents to any financing statements and/or financing statements and continuation statements or other filings related to this Mortgage being made electronically, to the extent permitted by law. Mortgagor hereby authorizes Mortgagee to file, in the name of Mortgagor or otherwise, financing statements and continuation statements with regard to any filed financing statements. Mortgagor hereby irrevocably appoints Mortgagee, or any agent designated by Mortgagee, its true and lawful attorney-in-fact, which power is coupled with an interest and with full power of substitution, to execute, acknowledge and deliver financing statements in the name of Mortgagor if Mortgagor fails or refuses to do so.

Section 2.21. After-Acquired Property. Any and all property hereafter acquired which is of the kind or nature described in the Granting Clauses hereof and is or is intended to become a part thereof, shall ipso facto, and without any further conveyance, assignment or act on the part of the Mortgagor or the Mortgagee become and be, subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless the Mortgagor shall from time to time, if requested by the Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage any and all such property.

Section 2.22. Environmental Indemnity. The Mortgagor agrees to defend, indemnify and hold Mortgagee harmless from and against any and all costs, penalties, damages, expenses, and/or liabilities (including reasonable attorneys' fees) which Mortgagee may suffer as a result of a claim, suit, or action regarding the existence (or claimed existence) on or under the Mortgaged Property of any Hazardous Substances (whether caused by the Mortgagor or any other party), and/or regarding the removal, remediation and cleanup of same.

Section 2.23. Separate Identity. The Mortgagor will maintain books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party and the Mortgagor will file its own tax returns. The Mortgagor shall maintain its books, records,

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resolutions and agreements as official records. The Mortgagor will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of the Mortgagor or any constituent party of the Mortgagor, or any affiliate of any constituent party), and shall conduct business in its own name and shall maintain and utilize separate invoices and checks. The Mortgagor shall correct any known misunderstanding regarding its status as a separate entity and shall not identify itself or any of its affiliates as a division or part of the other. The Mortgagor will 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. Neither the Mortgagor nor any constituent party will seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of the Mortgagor. The Mortgagor will not commingle the funds and other assets of the Mortgagor with those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person. The Mortgagor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person. The Mortgagor does not and will not hold itself out to be responsible for the debts or obligations of any other person.

SECTION 3. POSSESSION, USE AND RELEASE OF PROPERTY.

Section 3.1. Mortgagor's Right of Possession. Provided no Event of Default has occurred and is continuing, the Mortgagor shall be suffered and permitted to remain in full possession, enjoyment and control of the Mortgaged Property subject always to the observance and performance of the terms of this Mortgage and the Loan Agreement.

Section 3.2. Release of Mortgaged Property - Event of Loss. Upon the occurrence of any Event of Loss in respect of the Mortgaged Property, the Mortgagor shall give the Mortgagee, within 60 days after the occurrence thereof, written notice of such Event of Loss, which notice shall specify (a) in the case of a casualty, whether the Mortgagor will repair or rebuild the Mortgaged Property as required thereunder, or (b) in the case of a condemnation, whether the Mortgagor will restore the Mortgaged Property. In the event such notice specifies that the Mortgagor will make such prepayment, then the Mortgagee shall execute a release in respect of the Mortgaged Property upon receipt of such prepayment in full and all other Indebtedness Hereby Secured.

Section 3.3. Eminent Domain. The Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, shall notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings, and the Mortgagor from time to time will deliver or cause to be delivered to the Mortgagee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, the award or compensation payable to the Mortgagor shall be paid to the Mortgagee, and such award or compensation shall be retained by the Mortgagee as part of the Mortgaged Property and applied in accordance with Section 4.1(a)(i) or (ii) hereof. The Mortgagee shall be under no obligation to question the amount of the award or compensation and the Mortgagee may accept any such award or compensation. In any such condemnation proceedings the Mortgagee may

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be represented by counsel, whose reasonable costs and disbursements shall be paid by the Mortgagor.

SECTION 4. APPLICATION OF INSURANCE AND CERTAIN OTHER MONEYS RECEIVED BY THE MORTGAGEE.

Section 4.1. Insurance Proceeds and Condemnation Awards. (a) The amounts received by or payable to the Mortgagee from time to time which constitute insurance proceeds in respect of any damage to or destruction or condemnation of the Mortgaged Property or any part thereof, condemnation awards or compensation covering the Mortgaged Property (less the actual costs, fees and expenses incurred in the collection thereof) shall be held by the Mortgagee as part of the Mortgaged Property and shall be applied by the Mortgagee as follows:

- (i) provided that the net proceeds from such insurance policy or condemnation award plus any funds to be contributed by Mortgagor are adequate to do so, make such net proceeds available to the Mortgagor for the restoration or repair of the Mortgaged Property; or
- (ii) at the election of the Mortgagee, require the Mortgagor to repair, rebuild or restore the Mortgaged Property, and all net proceeds resulting from such insurance policy or condemnation award resulting shall be paid over to the Mortgagor or as it may direct from time to time upon a written application of the Mortgagor and accompanied by such evidence in reasonable detail as may be satisfactory to the Mortgagee supporting such application for the purpose of paying, or reimbursing the Mortgagor for the payment of, the reasonable cost, as shown by such certificate, of repairing, rebuilding or restoring part or all of the Mortgaged Property damaged, destroyed or taken ("*Restoration*"), but only for and to the extent that the Mortgagor shows by such evidence of costs that the proceeds, award or compensation ("*Restoration Funds*") remaining on deposit with the Mortgagee, together with any additional funds irrevocably allocated or otherwise provided for in a manner satisfactory to the Mortgagee for such purpose, shall be sufficient to complete such Restoration and restore the Mortgaged Property (as nearly as practicable) at least to the market value and condition which existed immediately prior to the damage, destruction, condemnation or taking, as the case may be, free from liens or encumbrances except Permitted Encumbrances. The Mortgagor shall deliver to the Mortgagee any additional funds needed to complete the Restoration prior to the disbursement of any Restoration Funds. Every such application for the payment of such proceeds, award or compensation shall state that no Event of Default has occurred and is continuing. Any proceeds in excess of the amount needed for Restoration remaining after the Restoration has been completed shall be paid to the Mortgagor. The Mortgagee shall receive a supplement hereto sufficient, to grant a valid first lien in any additions to or substitutions for the Mortgaged Property to the Mortgagee, so as to perfect the lien and security interest in

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such additions or substitutions, if in Mortgagee's reasonable opinion such supplement is required for such purpose.

(b) Any appraisal or adjustment of such loss or any settlement or payment of indemnity therefor which shall be agreed upon between the Mortgagor and the relevant insurance company shall be accepted by the Mortgagee.

Section 4.2. Title Insurance. Any moneys received by the Mortgagee as payment for any loss under any policy of title insurance which was delivered by the Mortgagor shall become part of the Mortgaged Property and shall be paid and applied in the same manner contemplated by Section 5.3 hereof.

Section 4.3. Investment of Insurance Proceeds and Condemnation Awards or Compensation. All insurance proceeds, condemnation awards or compensation received by the Mortgagee as payment for any casualty occurrence or condemnation relating to the Mortgaged Property under any policy of insurance or as an award or compensation for the taking in condemnation or other eminent domain proceedings relating to the Mortgaged Property or any part thereof shall, at the written request of the Mortgagor, be invested or reinvested by the Mortgagee in (a) direct obligations of the United States of America maturing in not more than 90 days from the date of such investment, (b) commercial paper maturing within 270 days from the date of acquisition and rated in the highest rating classification by at least one national rating agency, or (c) certificates of deposit of commercial banks in the United States of America with capital and surplus of \$100,000,000 or more maturing in not more than five days from the date of such investment. Any amounts earned on such investments shall accrue to the benefit of the Mortgagor and shall be disbursed in accordance with the terms of Section 4.1 hereof. Upon a written request of the Mortgagor in accordance with the terms of this Mortgage, or at any time when the Mortgagee shall determine that cash is required pursuant to Section 4.1 hereof, the Mortgagee shall sell all or any designated part of such investments at the then market price therefor and shall pay and apply the proceeds in accordance with the terms of Section 4.1.

Section 4.4. Application If Event of Default Exists. If an Event of Default has occurred and is continuing to the knowledge of the Mortgagee, all amounts received by the Mortgagee under this Mortgage shall be applied in the manner provided for in Section 5 hereof in respect of proceeds and avails of the Mortgaged Property.

SECTION 5. DEFAULTS AND REMEDIES THEREFOR.

Section 5.1. Events of Default. Any one or more of the following shall constitute an Event of Default as the term is used herein:

- (a) Event of Default under the Loan Agreement;
- (b) Default in the payment of interest or principal or premium, if any, on the Note when the same shall have become due; or

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(c) Default shall occur in the observance and performance of any covenant or agreement contained in Sections 2.3 and 2.4 hereof; or

(d) Default shall occur in the observance or performance of any other provision of this Mortgage not specifically described in the foregoing subparagraphs of this Section 5.1 which is not remedied within 30 days (unless such default cannot reasonably be cured within 30 days and the Mortgagor proceeds diligently to cure such default to completion, then 60 days) after the earlier of (i) written notice thereof from the Mortgagee to the Mortgagor, or (ii) the first date on which an officer, member, partner, trustee or beneficial owner of the Mortgagor shall have actual knowledge of such a Default; or

(e) Default by the Mortgagor shall occur under any Lease and such default shall continue beyond the period of grace, if any, allowed with respect thereto; or

(f) If any representation or warranty made by the Mortgagor herein or in any other Operative Agreement, or made by the Mortgagor to the Mortgagee in any statement or certificate furnished by the Mortgagor in connection with the consummation of the issuance of the Note or furnished by the Mortgagor or any other Operative Agreement, proves untrue in any material respect as of the date of the issuance or making thereof; or

(g) If judgment for the payment of money which would, in the reasonable discretion of the Mortgagee, result in any Material Adverse Change (as defined in the Loan Agreement) and is not fully covered by insurance shall be rendered against the Mortgagor and the same shall remain unpaid, unstayed, unappealed or discharged for a period of sixty (60) consecutive days; or

(h) The Mortgagor or any general partner or managing member of the Mortgagor becomes insolvent or generally fails to pay or admits its inability to pay debts as they become due, if a petition under Title 11 of the United States Code or any similar law or regulation is filed by or against the Mortgagor and is not dismissed within ninety (90) days, if the Mortgagor shall make an assignment for the benefit of creditors, in any case or proceeding if filed by or against the Mortgagor for its dissolution or liquidation, if the Mortgagor is enjoined, restrained or in any way prevented by court order from conducting all or any material part of its business affairs; or

Section 5.2. Remedies. When any Event of Default described in subparagraph (g) of Section 5.1 has occurred, then the Obligations shall immediately become due and payable without presentment, demand or notice of any kind, and when any other Event of Default has occurred and is continuing after the expiration of any grace or cure periods described herein or in the applicable Operative Agreements referenced in Section 5.1, the Mortgagee may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute:

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(a) The Mortgagee may, by notice in writing to the Mortgagor declare the entire unpaid balance of the Obligations to be immediately due and payable; and thereupon all such unpaid balance, together with all accrued interest thereon and premium, if any, shall be and become immediately due and payable without any presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived. Upon the Obligations becoming due and payable as a result of any Event of Default as aforesaid, the Mortgagor will forthwith pay to the Mortgagee the entire balance of the Obligations. No course of dealing on the part of the Mortgagee nor any delay or failure on the part of the Mortgagee to exercise any right shall operate as a waiver of such right or otherwise prejudice the Mortgagee's rights, powers and remedies. The Mortgagor further agrees, to the extent permitted by law, to pay to the Mortgagee all costs and expenses incurred by it in the collection of the Obligations upon any default hereunder or thereon, including the reasonable compensation to the Mortgagee's attorneys for all services rendered in connection therewith.

(b) the Mortgagee personally or by agents or attorneys may, to the extent permitted by law (i) enter into and take possession of all or any part of the Mortgaged Property, and may forthwith use, operate, manage, insure, repair and improve the Mortgaged Property and take any other action which, in the Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Property, (ii) collect and receive all earnings, revenues, rents, issues, profits and income from the Mortgaged Property or any part thereof (and for such purpose the Mortgagor does hereby irrevocably constitute and appoint the Mortgagee its true and lawful attorney-in-fact for it and in its name, place and stead to receive collect and receipt for all of the foregoing, the Mortgagor irrevocably acknowledging that any payment made to the Mortgagee hereunder shall be a good receipt and acquittance against the Mortgagor to the extent so made), (iii) pay all principal charges including taxes and assessments levied thereon and operating and maintenance expenses and all disbursements and liabilities of the Mortgagor hereunder and (iv) apply the net proceeds arising from any such operation of the Mortgaged Property as provided in Section 5.3 hereof in respect of the proceeds of a sale of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of the Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which the Mortgagor promises to pay upon demand together with interest at the Default Rate. The Mortgagee shall not be liable to account to the Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by the Mortgagee. Without taking possession of the Mortgaged Property, the Mortgagee may, in the event the Mortgaged Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Indebtedness Hereby Secured payable upon demand with interest thereon at the Default Rate.

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(c) The Mortgagee may, if at the time such action may be lawful and always subject to compliance with any mandatory legal requirements, either with or without taking possession and either before or after taking possession, and without instituting any legal proceedings whatsoever, and having first given notice of such sale to the Mortgagor at least 30 days prior to the date of such sale and having given any other notice which may be required by law, sell and dispose of said Mortgaged Property or any part thereof at public auction or private sale to the highest bidder, which may be the Mortgagor in one lot as an entirety or in separate lots (the Mortgagor for itself and for all who may claim by, through or under it hereby expressly waiving and releasing all rights to have the Mortgaged Property marshalled to the extent permitted by law), and either for cash or on credit and on such terms as the Mortgagee may determine and at any place (whether or not it be the location of the Mortgaged Property or any part thereof) designated in the notice above referred to. Any such sale or sales may be adjourned from time to time by announcement at the time and place appointed for such sale or sales or for any such adjourned sale or sales, without further published notice.

(d) The Mortgagee may proceed to protect and enforce its rights by a suit or suits in equity or at law, or for the specific performance of any covenant or agreement contained herein or in the Loan Agreement, or in aid of the execution of any power herein or therein granted, or for the foreclosure of this Mortgage, or for the enforcement of any other appropriate legal or equitable remedy. Upon the bringing of any suit to foreclose this Mortgage or to enforce any other remedy available hereunder, the plaintiff shall be entitled as a matter of right, without notice and without giving bond to the Mortgagor or anyone claiming under, by or through it, and without regard to the solvency or insolvency of the Mortgagor or the then value of the premises, to apply to an appropriate court to have a receiver appointed of all the Mortgaged Property and of the earnings, income, rents, issues, profits and proceeds thereof, with such power as the court making such appointment shall confer and the Mortgagor does hereby irrevocably consent to such appointment.

(e) In case of any sale of the Mortgaged Property, or of any part thereof, pursuant to any judgment or decree of any court or otherwise in connection with the enforcement of any of the terms of this Mortgage, the Mortgagee may bid and become the purchaser, and the purchaser or purchasers, for the purpose of making settlement for or payment of the purchase price, shall be entitled to turn in and use the Loan Agreement and any claims for interest and premium matured and unpaid thereon, in order that there may be credited as paid on the purchase price the sum apportionable and applicable to the Loan Agreement, including principal and interest and premium thereof, out of the net proceeds of such sale after allowing for the proportion of the total purchase price required to be paid in actual cash. If at any foreclosure proceeding the Mortgaged Property shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the Mortgagee shall, subject to the limitations of Section 6.10, be entitled to the entry of a deficiency decree against the Mortgagor and against the property of the Mortgagor for the amount of such deficiency.

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(f) The Mortgagee shall have any and all rights and remedies (including, without limitation, extra judicial power of sale) provided to a secured party by the Uniform Commercial Code with respect to any and all parts of the Mortgaged Property which are and which are deemed to be governed by the Uniform Commercial Code. Without limiting the generality of the foregoing, the Mortgagee shall, with respect to any part of the Mortgaged Property constituting property of the type in respect of which realization on a Lien or security interest granted therein is governed by the Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Uniform Commercial Code, including, without limitation, the right to the possession of any such property, or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of said Uniform Commercial Code for reasonable notification shall be met by mailing written notice to the Mortgagor at its address set forth in Section 6.3 at least 30 days prior to the sale or other event for which such notice is required.

(g) The provisions of this Section 5.2 are subject to the condition that if at any time after the Obligations have been declared due and payable by reason of the occurrence of any Event of Default described in paragraphs (a) through (h), inclusive, of Section 5.1, then in every such case the Mortgagee may at its option by notice in writing sent to the Mortgagor, rescind and annul any such declaration and its consequences with respect to the Obligations and in any such event the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, respectively; *provided* that at the time such declaration is annulled and rescinded:

(i) no judgment or decree has been entered for the payment of any monies due pursuant to the Obligations of this Mortgage;

(ii) all arrears of interest upon the Obligations and all other sums payable under the Loan Agreement and under this Mortgage (except any principal, interest or premium on the Obligations which has become due and payable solely by reason of such declaration under Section 5.2) shall have been duly paid; and

(iii) each and every other Default and Event of Default shall have been made good, cured or waived pursuant to Section 5.1;

and *provided further*, that no such rescission and annulment shall extend to or affect any subsequent Default or Event of Default or impair any right consequent thereto.

Section 5.3. Application of Proceeds. The purchase money proceeds and/or avails of any sale of the Mortgaged Property, or any part thereof, and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) first, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and to the extent permitted by applicable law, the reasonable compensation of the Mortgagee, its agents, attorneys and counsel, and of all proper

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expenses, liability and advances incurred or made hereunder by the Mortgagee, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made; and

(b) second, to the amount then owing or unpaid on the Obligations for principal, premium, if any, and interest; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Obligations, then to the Mortgagee, with application on the Obligations to be made, first, to unpaid premium, if any, second, to the unpaid interest thereon, and third, to unpaid principal thereof; and

(c) third, to the payment of any other sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage, the Obligations or any other instrument given to secure the Obligations; and

(d) fourth, to the payment of the surplus, if any, to the Mortgagor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

Section 5.4. Waiver of Extension, Appraisement and Stay Laws. The Mortgagor covenants that, upon the occurrence of an Event of Default and the acceleration of the Obligations pursuant to Section 5.2 and to the extent that such rights may then be lawfully waived, it will not at any time thereafter insist upon or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension or moratorium law now or at any time hereafter in force, or claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisement of the Mortgaged Property or any part thereof prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction or, after confirmation of any such sale or sales claim or exercise any right under any statute now or hereafter made or enacted by any state or otherwise to redeem the property so sold or any part thereof, and hereby expressly waives for itself and on behalf of each and every person, all benefit and advantage of any such law or laws which would otherwise be available to any such person in connection with the enforcement of any of the Mortgagee's remedies hereunder; and covenants that it will not in connection with any such enforcement proceedings invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any power herein granted and delegated to the Mortgagee but will suffer and permit the execution of every such power as though no such law or laws had been made or enacted. The Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of the Mortgagor, and each and every Person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Mortgagor in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Mortgagor, its successors and assigns, and against

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any and all persons claiming the property sold or any part thereof under, by or through the Mortgagor, its successors or assigns.

Section 5.5. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereon there shall be allowed and included as additional Indebtedness Hereby Secured in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as the Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, all of which expenditures shall become so much additional Indebtedness Hereby Secured which the Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

Section 5.6. Delay or Omission Not a Waiver. No delay, failure or omission of the Mortgagee to exercise any right, power or remedy arising from any default on the part of the Mortgagor shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Mortgagee of any such default, whether such waiver be full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom, except as may be otherwise provided herein. No right, power or remedy hereunder is intended to be exclusive of any other right, power or remedy but each and every right, power and remedy shall be cumulative and in addition to any and every other right, power and remedy given hereunder or otherwise existing. Nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the Indebtedness Hereby Secured operate to prejudice, waive or affect the security of this Mortgage or any rights, powers or remedies hereunder; nor shall the Mortgagee be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

Section 5.7. Restoration of Positions. If the Mortgagee has instituted any proceeding to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise and such proceeding has been discontinued or abandoned for any reason or has been determined adversely to the Mortgagee, then and in every such case the Mortgagor and the Mortgagee shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Mortgagee shall continue as though no such proceedings had been instituted.

Section 5.8. Obligations to Become Due upon Sale. Upon any sale of the Mortgaged Property under or by virtue of this Mortgage, except as permitted under Section 2.3(g) hereof, whether pursuant to foreclosure, power of sale or otherwise, the entire unpaid amount of the Obligations shall, if not previously declared due and payable, immediately become due and payable, together with interest accrued thereon and premium, if any, and all other Indebtedness Hereby Secured, anything contrary in this Mortgage, the Loan Agreement or any other Operative Agreement to the contrary notwithstanding.

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SECTION 6. PROTECTIVE ADVANCES.

Section 6.1 Protective Advances. (a) All advances, disbursements and expenditures made by the Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage (the "Security Instrument") or by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (the "Act") (collectively, "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(i) all advances by the Mortgagee in accordance with the terms of this Security Instrument to: (a) preserve or maintain, repair, restore or rebuild the Mortgaged 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 5/15-1302 of the Act;

(ii) payments by the Mortgagee of: (a) when due, installments of principal, interest or other obligations in accordance with the terms of any mortgage or other prior lien or encumbrance; (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 5/15-1505 of the Act;

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

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

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

(vi) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Security Instrument;

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

(viii) expenses incurred and expenditures made by the Mortgagee for any one or more of the following: (a) if the Mortgaged Premises 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 Premises is a leasehold estate under a lease, rentals or other payments required to be made by the lessee under the terms of such lease; (c) premiums for casualty and liability insurance paid by the Mortgagee whether or not the Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Mortgaged Premises imposed by Subsection (c) (1) of Section 5/15-1704 of the Act; (d) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (e) payments required or deemed by the Mortgagee to be for the benefit of the Mortgaged Premises or required to be made by the owner of the Mortgaged Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining landowners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Premises; (f) shared or common expense assessment payable to any association or corporation in which the owner of the Mortgaged Premises is a member in any way affecting the Mortgaged Premises; (g) if the indebtedness hereby secured includes amounts advances as a construction loan, costs incurred by the Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment or loan agreement; and (n) pursuant to any lease or other agreement for occupancy of the Mortgaged Premises.

(b) All Protective Advances shall be so much additional indebtedness secured by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate applicable after an Event of Default.

(c) 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 5/15-1302 of the Act.

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

(i) the determination of the amount of indebtedness secured by this Security Instrument at any time;

(ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming

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due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

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

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

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

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

Section 6.2. Maximum Amount of Indebtedness. The maximum amount of indebtedness secured by this Security Instrument is two times the principal amount of the Note plus default interest, if any, plus any disbursements for the payment of taxes and insurance on the Mortgaged Property, plus interest thereon, and any other sums advanced in accordance with the terms hereof or any of the other Operative Agreements to protect the security of this Security Instrument or any of the other Operative Agreements plus default interest thereon, if any.

SECTION 7. MISCELLANEOUS.

Section 7.1. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, premises and agreements in this Mortgage contained by or on behalf of the Mortgagor, or by or on behalf of the Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

Section 7.2. Severability. The unenforceability or invalidity of any provision or provisions of this Mortgage shall not render any other provision or provisions herein contained unenforceable or invalid.

Section 7.3. Addresses for Notices and Demands. All notices and other communications provided for hereunder shall be in writing and shall be given (i) by first class or certified mail, postage prepaid; (ii) by facsimile transmission and confirmed by the sender's telephone call to the recipient and by mailing or delivering a copy as provided in clause (i), clause (iii) or clause (iv) hereof; (iii) by hand delivery or (iv) by courier service (including overnight courier service). Notices shall be directed as follows:

If to the Mortgagor: ATG Trust Company
c/o Villas of Glen Park, L.L.C.
1865 Admiral Court
Glenview, Illinois 60026
Attention: Peter/Kristin Canalia

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With a copy to: Law Offices of Peter B. Canalia
c/o Peter B. Canalia
18525 S. Torrence Ave.- Suite E2
Lansing, IL 60438-2871

If to the Mortgagee: AMERICAN CHARTERED BANK
932 West Randolph Street
Chicago, IL 60607
Attention: Jennifer Roths

With a copy to BURKE BURNS & PINELLI, LTD.
70 West Madison, Suite 4300
Chicago, IL 60602-4229
Attention: Mary Ann Murray

Notice given as provided in clause (i) hereof shall be effective five days from the date of mailing. Notice given as provided in clauses (ii) and (iii) hereof shall be effective on the day sent if sent by 4:00 p.m. (local time at Chicago, Illinois) on a Business Day and otherwise on the next Business Day following the day of sending. Notice given as provided in clause (iv) hereof shall be effective on the Business Day following the day of sending.

Section 7.4. Headings and Table of Contents. The headings of the sections of this Mortgage and the table of contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

Section 7.5. Release of Mortgage. The Mortgagee shall release this Mortgage and the lien hereof by proper instrument or instruments upon presentation of satisfactory evidence that all Indebtedness Hereby Secured has been fully paid or discharged.

Section 7.6. Counterparts. This Mortgage may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together only one Mortgage.

Section 7.7. Successor Mortgagee. The Mortgagee may, at any time, by instrument in writing, appoint a successor or successors to, or discharge and appoint a new Mortgagee in the place of, any Mortgagee named herein or acting hereunder, which instrument, executed and acknowledged by the Mortgagee, and recorded in the office of the County Recorder of the county wherein the Mortgaged Property is situated, shall be conclusive proof of the proper substitution of such successor or successors or new Mortgagee, who shall have all the estate powers, duties, rights and privileges of the predecessor Mortgagee.

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Section 7.8. Governing Law. This Mortgage should be construed in accordance with and governed by the laws of the State of Illinois, without regard to principles of conflict of laws.

Section 7.9. Time. Time shall be of the essence for this Mortgage.

Section 7.10. Limitations of Liability. Anything in this Mortgage and the Loan Agreement to the contrary notwithstanding, but subject to the qualifications set forth below, no recourse or relief for principal, interest, or other payment shall be had under any rule of law or equity, statute or constitution or by any enforcement or any assessments or penalties, or otherwise or based on or in respect of this Mortgage or the Loan Agreement (whether by breach of any obligation, monetary or non-monetary) against the Mortgagor or any shareholder, member, partner, owner, beneficiary, officer, director, agent or employee thereof or any predecessor or successor corporation (or other entity) of the Mortgagor, it being expressly understood that any obligations of the Mortgagor under or relating to this Mortgage and the Loan Agreement are solely obligations payable out of the Mortgaged Property and are compensable solely therefrom. Notwithstanding anything to the contrary set forth herein, recourse shall not be so limited in the event of and to the extent of loss, cost, damage and expense with respect to (i) misapplication of security deposits received or held by or for the Mortgagor; (ii) misapplication of rents received or held by or for the Mortgagor after an Event of Default; (iii) misapplication of rents prepaid more than one month in advance; (iv) condemnation awards and insurance proceeds not applied as required by this Mortgage; (v) the amounts required to be paid under Section 7.11 hereof; (vi) waste of the Property by the Mortgagor; (vii) failure to timely deliver to Tenant bills for real estate taxes or assessments; (viii) payment and performance of all obligations under this Mortgage and the Loan Agreement upon the occurrence of a voluntary bankruptcy, insolvency or similar debt relief proceedings initiated by the Mortgagor; (ix) the Mortgagor's own acts of gross negligence, fraud or misrepresentation, willful misconduct or bad faith which cause a material loss or damage to Mortgagee; (x) a breach of the Mortgagor's obligations under Section 2.22, 2.23 or Section 2.3(g) or (h) hereof; (xi) any amendment, modification, supplement, cancellation, termination or surrender of any of the Leases, or any waiver of any default by a tenant or guarantor thereunder, by the Mortgagor without the prior written consent of Mortgagee in each instance; (xii) any amendment of the special purpose provisions of the Mortgagor's organizational documents; (xiii) any violation by the Mortgagor or any Affiliate of the Mortgagor of any exclusive use provisions of the Lease; (xiv) enforcement of the Operative Agreements by the Mortgagee (except for uncontested foreclosure action); or (xv) failure to discharge or contest mechanic's liens and other monetary encumbrances and judgment liens against the Mortgaged Property in violation of this Mortgage and caused by the Mortgagor. Nothing in this Section 7.10 is intended to or shall in any way affect or invalidate any lien or security interest created by this Mortgage. This Section 7.10 shall not be construed to prohibit the joining of the Mortgagor in any foreclosure procedure involving the Mortgaged Property. This Section 7.10 shall not in any way affect the obligations of the Tenant under the Lease.

Section 7.11. Expenses, Stamp Tax Indemnity. Whether or not the Note is sold, the Mortgagor will pay all reasonable expenses relating to the Operative Agreements, including but not limited to: (i) the cost of reproducing the Operative Agreements; (ii) the reasonable fees and disbursements of Burke Burns & Pinelli, Ltd., special counsel for the Mortgagee; (iii) the

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Mortgagee's reasonable out-of-pocket expenses; (iv) all recording and filing fees and stamp taxes in connection with the recordation or filing and re-recordation or re-filing of the items referred to herein or in the Loan Agreement (v) all reasonable expenses relating to any amendments, waivers or consents pursuant to the provisions of any of the Operative Agreements, including without limitation, any amendments, waivers or consents resulting from any work-out, restructuring or similar proceedings relating to the performance by the Mortgagor of its obligations under any of the Operative Agreements or relating to the performance by the Tenant of its obligations under the Lease. The obligations of the Mortgagor under this Section 7.11 shall survive the payment or prepayment of the Obligations and the termination of any of the Operative Agreements.

Section 7.12. Construction Loan. The Note evidences a debt created by one or more disbursements made by Mortgagee to the Mortgagor to finance the cost of the construction of certain improvements upon the Mortgaged Property in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the Code. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a Default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the Indebtedness immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage.

Section 7.13. No Merger of Estates. There shall be no merger of any Lease or the leasehold estate created thereby with the fee estate in the Mortgaged Property or any part thereof by reason of the same person or entity acquiring or holding, directly or indirectly, any interest in the Lease or the leasehold estate created thereby as well as the fee estate in the Mortgaged Property.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed, all as of the day and year first above written.

MORTGAGOR:


ATG TRUST COMPANY, not individually or personally, but solely as Trustee under Trust Agreement dated October 29, 2008 known as Trust Number L 008182

Exoneration provision restricting any liability of ATG Trust Company either attached on the reverse side hereof or attached hereto, is incorporated herein.

By: 
Its: Trust Officer

BENEFICIARY:

VILLAS OF GLEN PARK, L.L.C.,
an Illinois limited liability company

By: 
Its: Manager

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against ATG Trust Company or any of the beneficiaries under said Trust Agreement, on account of this instrument or on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the said Trustee, whether or not in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

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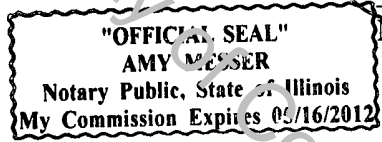
State of Illinois)
) ss.
County of Cook)

I, a Notary Public in and for said County and State aforesaid, Do HEREBY CERTIFY that Peter Canalia and _____ being manager of Villas of Glen Park, L.L.C., known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument pursuant to authority given by the members of said limited liability company, as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 19 day of Dec, 2008.

[Handwritten Signature]

Notary Public



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EXHIBIT A DESCRIPTION OF REAL PROPERTY

PARCEL 2: THE NORTH 384.0 FEET (EXCEPT THE WEST 879.25 FEET THEREOF AND EXCEPT THAT PART TAKEN FOR LAKE AVENUE) OF THE WEST 30 ACRES OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 28, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE VILLAGE OF GLENVIEW, COOK COUNTY, ILLINOIS, TAKEN AS A TRACT, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID TRACT: THENCE SOUTH 00 DEGREES 2 MINUTES 16 SECONDS EAST, ALONG THE WEST LINE OF SAID TRACT, A DISTANCE OF 116.56 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 89 DEGREES 52 MINUTES 45 SECONDS EAST ALONG A LINE BEING PARALLEL WITH THE NORTH LINE OF SAID TRACT, A DISTANCE OF 113 FEET; THENCE SOUTH 00 DEGREES 2 MINUTES 16 SECONDS EAST, ALONG THE EAST LINE OF SAID TRACT, A DISTANCE 91.35 FEET; THENCE NORTH 89 DEGREES 52 MINUTES 45 SECONDS WEST, ALONG A LINE BEING PARALLEL WITH THE NORTH LINE OF SAID TRACT, A DISTANCE OF 113 FEET; THENCE NORTH 00 DEGREES 2 MINUTES 16 SECONDS WEST, ALONG THE WEST LINE OF SAID TRACT, A DISTANCE OF 91.35 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

P.I.N.: 04-28-400-006-0000

C/K/A: 3111 West Lake Street, Glenview, Illinois 60026

EXHIBIT A-1
(to Mortgage)

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PERMITTED LIENS

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EXHIBIT B
(to Mortgage)