

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



2028908008

Doc# 2028908008 Fee \$118.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 10/15/2020 10:21 AM PG: 1 OF 32

Doc# Fee \$4.00

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

The property identified as: **PIN: 08-26-300-026-0000** DATE: PG: 0

Address:

Street: 1800-1872 brummel ave

Street line 2:

City: ELK GROVE VILLAGE

State: IL

ZIP Code: 60007

Lender: canadian imperial bank of commerce

Borrower: ILLINOIS I & L LLC

Loan / Mortgage Amount: \$55,793,550.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: CBDA3974-761D-4A52-8A36-1391784AB756

Execution date: 10/1/2020

UNOFFICIAL COPY

**PREPARED BY, RECORDING
REQUESTED BY, AND WHEN
RECORDED MAIL TO:**

Morrison & Foerster LLP
250 West 55th Street
New York, New York 10019
Attention: Joshua Pierce, Esq.

(Space Above For Recording Use)

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

made by

ILLINOIS 18 LLL, LLC,
a Delaware limited liability company

as Mortgagor

for the benefit of

CANADIAN IMPERIAL BANK OF COMMERCE,
acting through its New York Branch

as Mortgagee

DATED: as of October 1, 2020

Property Location:

- 1800-1872 Brummel Avenue/501-565 Busse Road, Elk Grove, IL
- 821-891 Busse Road/1810-1860 Jarvis Avenue, Elk Grove, IL
- 901-985 Busse Road, Elk Grove, IL
- 870-898 Cambridge Drive, Elk Grove, IL
- 873-895 Cambridge Drive, Elk Grove, IL
- 901-1050 Cambridge Drive, Elk Grove, IL
- 1500 Higgins Road, Elk Grove, IL
- 1800 Landmeier Road, Elk Grove, IL

County: Cook

UNOFFICIAL COPY

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "**Mortgage**") is made as of the 1st day of October, 2020, by **ILLINOIS I&L LL, LLC**, a Delaware limited liability company, as mortgagor ("**Mortgagor**"), whose address is c/o Investcorp International Realty, Inc., 280 Park Avenue, New York, NY 10017, in favor of **CANADIAN IMPERIAL BANK OF COMMERCE**, acting through its New York Branch, as administrative agent for the Lenders (as hereinafter defined), as mortgagee (together with its successors and assigns in such capacity, "**Mortgagee**"), whose address is 120 South LaSalle Street, Chicago, Illinois 60603, Attention: Real Estate Group.

WITNESSETH:

WHEREAS, Mortgagor, the lenders party thereto (each a "**Lender**" and collectively, the "**Lenders**") and Mortgagee have entered into a Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated, replaced or supplemented from time to time, the "**Loan Agreement**"), pursuant to which the Lenders are making a secured loan to Mortgagor in the principal amount of up to \$55,793,550.00 (the "**Loan**"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement. The Loan is evidenced by a Promissory Note dated as of the date hereof made by Mortgagor to the order of each Lender in the aggregate principal amount of up to \$55,793,550.00 (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, extended, or supplemented from time to time, individually or collectively as the context requires, the "**Note**").

NOW THEREFORE, FOR THE PURPOSES OF SECURING:

1. The Loan evidenced by the Note, together with interest thereon;
2. The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein, in the Loan Agreement and in any other agreements, documents or instruments now or hereafter evidencing, guarantying, securing or otherwise relating to the indebtedness evidenced by the Note, whether executed or delivered by Mortgagor or by any indemnitor or guarantor with respect to any obligation of Mortgagor under the Loan Documents (subject to all applicable notice, grace and/or cure periods) (each, hereinafter, a "**Guarantor**") or jointly and severally (the Loan Agreement, Note, this Mortgage, and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, being hereinafter collectively referred to as the "**Loan Documents**"), including Additional Interest and the payment of all other sums covenanted in the Loan Documents to be paid (excluding only the obligations pursuant to that certain Hazardous Substances Indemnity Agreement of Mortgagor and Guarantor for the benefit of Mortgagee (for the benefit of the Lenders) and that certain Recourse Carve Out Guaranty by Guarantor for the benefit of Mortgagee (for the benefit of the Lenders));
3. Any and all additional advances made by Mortgagee and the Lenders, in each case as expressly set forth in (and in accordance and subject to the terms and conditions of) the Loan Documents, to protect or preserve the Property (as hereinafter defined) or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums or for performance of any of Mortgagor's obligations hereunder or under the other Loan

UNOFFICIAL COPY

Documents or for any other purpose expressly provided herein or in the other Loan Documents (whether or not the original Mortgagor remains the owner of the Property at the time of such advances) and any and all reasonable, out-of-pocket costs and expenses required to be paid or reimbursed by Mortgagor under the Loan Documents and incurred by Mortgagee and the Lenders hereunder in performing the obligations required to be performed by Mortgagor or otherwise incurred by Mortgagee and the Lenders pursuant to the terms of this Mortgage, the Loan Agreement or the other Loan Documents (except as otherwise set forth in the Loan Documents), together with interest on each such advance, cost or expense (which interest shall accrue at the Default Rate (as defined in the Loan Agreement)) at such times as more fully set forth in the Loan Agreement; and

4. Any and all other indebtedness now owing or which may hereafter be owing by Mortgagor to Mortgagee and the Lenders in connection with the Loan and pursuant to the Loan Documents, including, without limitation, all prepayment fees, breakage costs, and commitment, deferred commitment and exit fees, if any, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof, but in each case only as set forth in the Loan Documents;

(All of the sums referred to in the foregoing Paragraphs (1) through (4) are herein sometimes referred to collectively as the "**Debt**".)

and for and in consideration of the sum of Ten and no/100 Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, MORTGAGOR HEREBY IRREVOCABLY MORTGAGES, GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER AND ASSIGNS, AND GRANTS A SECURITY INTEREST, TO MORTGAGEE ON BEHALF OF THE LENDERS, AND THEIR SUCCESSORS AND ASSIGNS, WITH MORTGAGE COVENANTS, with the power of sale and right of entry and possession, all of Mortgagor's estate, right, title and interest in, to and under any and all of the following described property, rights and interests, to the extent assignable, including without limitation any security interest granted to Mortgagor pursuant to Section 26 of the Master Lease, in each case whether now owned or hereafter acquired (collectively, the "**Property**"):

A. All that certain real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Real Estate**"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim and demand whatsoever of Mortgagor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

B. All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate (the "**Improvements**");

C. All furniture, furnishings, fixtures, goods, equipment, inventory or personal property now or hereafter located on, attached to or used in and about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing,

UNOFFICIAL COPY

heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Mortgagor as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Real Estate or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor, to the full extent of Mortgagor's ownership interest therein, if any (exclusive of any of the foregoing owned or leased by Tenants (as hereinafter defined) of space in the Improvements);

D. All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, air rights and other development rights now or hereafter located on the Real Estate or under or above the same or any part or parcel thereof, and all estates, rights, claims, privileges, franchises, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Real Estate and/or Improvements or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;

E. All water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Real Estate or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

F. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Real Estate;

G. All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Mortgagee pursuant to the Loan Agreement or any other of the Loan Documents, including, without limitation, all funds now or hereafter on deposit in the Impound Account, the Reserves and the Cash Management Account, and all funds now or hereafter on deposit in the Clearing Account;

H. All leases (including, without limitation, oil, gas and mineral leases), subleases, licenses, concessions and occupancy agreements of all or any part of the Real Estate or the Improvements now or hereafter entered into and any guaranty thereof, including, without limitation, the Master Lease (each a "**Lease**" and collectively, the "**Leases**") and all rents, royalties, issues, profits, revenue, income, claims, judgments, awards, settlements and other benefits (collectively, the "**Rents and Profits**") of the Real Estate or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any present or future Lease or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities deposited to secure performance by the tenants, lessees, subtenants, sublessees or licensees, as applicable (each a "**Tenant**" and collectively, the "**Tenants**"), of their obligations under any such Leases, whether said cash or securities are to be held until the expiration of the terms of said Leases or applied to one or more of the installments of rent coming due prior to the expiration of said terms;

I. All contracts and agreements now or hereafter entered into relating to the ownership or operation or management of the Real Estate or the Improvements or any portion of

UNOFFICIAL COPY

them (each a “**Contract**” and collectively, the “**Contracts**”) and all revenue, income and other benefits thereof, including, without limitation, management agreements, franchise agreements, co-tenancy agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Real Estate or the Improvements (including plans, drawings, surveys, tests, reports, bonds and governmental approvals) or to the management or operation of any part of the Real Estate or the Improvements and any and all warranties and guaranties relating to the Real Estate or the Improvements or any fixtures, equipment or personal property owned by Mortgagor and located on and/or used in connection with the Property together with all revenue, income and other benefits thereof and all claims, judgments, awards and settlements arising thereunder;

I. All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Real Estate or the Improvements;

K. All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (as defined in the Uniform Commercial Code (the “**UCC**”) and including without limitation, trademarks, trade names, servicemarks and symbols now or hereafter used in connection with any part of the Real Estate or the Improvements, all names by which the Real Estate or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Mortgagor has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Real Estate or the Improvements) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Real Estate or the Improvements (collectively, the “**General Intangibles**”);

L. All water taps, sewer taps, certificates of occupancy, permits, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Real Estate or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Real Estate or the Improvements;

M. All building materials, supplies and equipment now or hereafter placed on the Real Estate or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Real Estate or the Improvements;

N. Any insurance policies or binders now or hereafter relating to the Property including any unearned premiums thereon;

O. All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards and proceeds of refunds of any Taxes or Other Charges with respect to any period from and after the date hereof until the Loan is indefeasibly paid or defeased in full;

P. All right, title, interest and claim of Mortgagor in, to, under or pursuant to the Interest Rate Protection Agreement and any replacements, amendments or supplements thereto,

UNOFFICIAL COPY

and all income and proceeds thereof, and all claims of Mortgagor for breach by the counterparty thereunder of any covenant, agreement, representation or warranty contained in the Interest Rate Protection Agreement; and

Q. All other or greater rights and interests of every nature in the Real Estate or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Mortgagor.

TO HAVE AND TO HOLD the Property unto Mortgagee, its successors and assigns forever, for the purpose of securing the Debt.

ARTICLE I COVENANTS OF MORTGAGOR

For the purpose of further securing the Debt and for the protection of the security of this Mortgage, for so long as the Debt or any part thereof remains unpaid, Mortgagor covenants and agrees as follows:

1.1 Covenants, Representations and Warranties of Mortgagor Concerning the Property. The representations of Mortgagor set forth in Section 4.1 of the Loan Agreement are hereby incorporated herein as if restated in full. The warranties contained in such Section 4.1 shall survive foreclosure of this Mortgage.

1.2 Restoration of Improvements. The covenants of Mortgagor set forth in Section 4.7 of the Loan Agreement are hereby incorporated herein as if restated in full.

1.3 Payment of Taxes. Mortgagor covenants and agrees to (or will cause Master Tenant to) pay all Property Taxes and Other Charges, in accordance with Section 4.5 of the Loan Agreement.

1.4 Tax Deposits. Mortgagor covenants and agrees to (or will cause Master Tenant to) make monthly deposits with respect to Property Taxes and Other Charges when and as required by Section 4.6 of the Loan Agreement.

1.5 Insurance. Mortgagor shall comply (or will cause Master Tenant to comply) with Mortgagee's requirements for, and maintain casualty, liability and other policies of insurance relating to the Property, as required by Section 4.4 of the Loan Agreement.

1.6 Mortgagee's Interest in and Use of Deposits. If an Event of Default (as hereinafter defined) has occurred and is continuing, then in addition to any and all other rights set forth herein, in the Loan Documents, or otherwise available to Mortgagee and the Lenders, Mortgagee may, at its option, without being required to do so, apply any moneys at the time on deposit (including, without limitation, the Reserves) pursuant to any provision of this Mortgage, the Loan Agreement or any other Loan Documents, as any one or more of the same may be applicable, to any of the Debt, in such order and manner as Mortgagee may elect. Such deposits are hereby pledged as additional security for the Debt and shall be held by Mortgagee to be irrevocably applied by the depository for the purposes for which made under the Loan Agreement and shall not be subject to the direction or control of Mortgagor; provided, however, that neither

UNOFFICIAL COPY

Mortgagee, any Lender nor said depository shall be liable for any failure to apply to the payment of Taxes and Other Charges any amount so deposited unless such failure shall have occurred after Mortgagee, while not in default hereunder, shall have requested said depository in writing to make application of such funds to the payment of the particular Taxes and Other Charges for payment of which they were deposited, accompanied by the bills for such Taxes and Other Charges and otherwise strictly complied with the conditions for any such application of such deposits provided in the Loan Agreement, and after the expiration of all time periods therefor.

1.7 Mortgagee's Right to Apply Condemnation or Insurance Proceeds to Indebtedness. The rights of Mortgagee to apply condemnation or insurance proceeds to the Debt, and any rights of Mortgagee or Master Tenant to apply condemnation or insurance proceeds to the restoration of the Improvements, shall be governed by Section 4.7 of the Loan Agreement.

1.8 Mortgagee's Obligation to Rebuild and Use of Proceeds Therefor. Mortgagee's obligation to rebuild in the event of any fire or other casualty to the Improvements or any condemnation of all or any part of the Property, and the use of condemnation or insurance proceeds therefor, shall be governed by Section 4.7 of the Loan Agreement, notwithstanding any contrary provision of any applicable law, whether now existing or hereinafter enacted.

1.9 Stamp Tax. If, by the law of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagee, Master Tenant or the Property, any tax (other than income, franchise or similar tax) is due or becomes due in respect of the issuance of the Note, or recording of this Mortgage, Mortgagee covenants and agrees to (and will cause Master Tenant to) pay such tax in the manner required and to the extent permitted by any such law, subject to the terms and provisions of the Loan Agreement. Mortgagee further covenants to hold harmless and agrees to indemnify Mortgagee, the Lenders and their respective officers, directors, employees, representatives, agents, successors and assigns against any liability actually incurred (excluding consequential, punitive and/or special damages) by reason of the imposition of any tax on the issuance of the Note, or recording of this Mortgage.

1.10 Effect of Extensions of Time. If the payment of the Debt or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Property, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Mortgagee and the Lenders, notwithstanding such extension, variation or release. Mortgagee acknowledges that this Mortgage shall secure all extensions and renewals of any of the Debt. Any Person taking a junior mortgage or other lien upon the Property or any interest therein, shall take said lien subject to the rights of Mortgagee (for the benefit of the Lenders) herein to amend, modify and supplement this Mortgage, the Loan Agreement, the Note, and any other Loan Documents and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Debt, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing contained in this Section 1.10 shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the Property, or any portion thereof, is sold, conveyed or encumbered unless expressly permitted by the Loan Agreement.

UNOFFICIAL COPY

1.11 Mortgagee's Performance of Defaulted Acts; Subrogation. In case Mortgagor fails to perform any of its covenants and agreements herein or in the Note, the Loan Agreement, or any other Loan Documents, and such failure shall constitute an Event of Default, Mortgagee may, but need not, make any payment or perform any act herein or therein required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and make payments of any rents due or to become due and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem the Property from any tax sale or forfeiture affecting the Property or contest any tax or assessment. All reasonable out-of-pocket moneys paid for any of the purposes herein authorized and all reasonable, out-of-pocket expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other reasonable, out-of-pocket moneys advanced by Mortgagee to protect the Property and the lien hereof, shall be, except as otherwise provided herein or in the Loan Agreement, so much additional indebtedness secured hereby, and shall become immediately due and payable within ten (10) Business Days of written demand and with interest thereon at the Default Rate from the date of demand. Inaction of Mortgagee or any Lender shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should any advance, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Property or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment. Mortgagee and any person designated by Mortgagee shall have the right, and is hereby granted the right, to enter upon the Property, subject to the rights of Tenants, for the foregoing purposes.

1.12 Performance of Debt. Mortgagor shall pay when due the principal of and the interest on and other amounts evidenced by the Note and shall also pay and perform all of the Debt as and when due, in each case on the terms and conditions more particularly set forth in the Loan Documents.

1.13 Assignment of Leases and Rents and Profits. As additional collateral and security for the payment and performance of the Debt and cumulative of any and all rights and remedies herein provided for, Mortgagor hereby absolutely and presently assigns to Mortgagee (for the benefit of the Lenders) all existing and future Leases, including, without limitation, Mortgagor's right, title and interest in (i) the Master Lease, and (ii) all Leases entered into between Master Tenant and sub-tenants with respect to the Property, and all existing and future Rents and Profits. Mortgagor hereby grants to Mortgagee the sole, exclusive and immediate right, without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Mortgagor does hereby irrevocably make, constitute and appoint Mortgagee its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any Debt is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Mortgagor and shall not be affected by any disability or incapacity suffered by Mortgagor subsequent to the date hereof). Mortgagee and the Lenders shall be without liability for any loss that may arise from a failure or inability to collect

UNOFFICIAL COPY

Rents and Profits, proceeds or other payments. However, so long as no Event of Default has occurred and is continuing under this Mortgage, Mortgagor and Master Tenant shall have a license to operate, administer, govern and enforce the Leases and to collect and receive the Rents and Profits when due and prepayments thereof for not more than one (1) month prior to the due date thereof. During the continuance of an Event of Default, Mortgagor's and Master Tenant's license shall automatically terminate without notice to Mortgagor or Master Tenant and Mortgagee may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. At such time as such Event of Default no longer exists, the license described above shall be automatically reinstated, subject to the terms of this paragraph. During the period of termination of such license, Mortgagor and Master Tenant shall be the agent of Mortgagee and the Lenders in collection of the Rents and Profits and all of the Rents and Profits so collected by Mortgagor or Master Tenant shall be held in trust by Mortgagor or Master Tenant, as applicable, for the sole and exclusive benefit of Mortgagee and the Lenders, and Mortgagor and Master Tenant shall, within three (3) Business Days after receipt of any Rents and Profits, pay the same to Mortgagee to be applied by Mortgagee as hereinafter set forth. Mortgagor hereby irrevocably agrees that any Tenant paying Rents and Profits as directed by Mortgagee (which direction shall only be given while an Event of Default exists) shall be deemed to have paid such amount in satisfaction of its obligation under such Tenant's Lease, and each Tenant may rely on such agreement by Mortgagor (or Master Tenant on behalf of Mortgagor). Neither the demand for or collection of Rents and Profits by Mortgagee, nor the exercise of Mortgagee's rights as assignee of the Leases, shall, in and of itself, constitute any assumption by Mortgagee or any Lender of any obligations under any Lease or other agreement relating thereto. Mortgagee is obligated to account only for such Rents and Profits as are actually collected or received by Mortgagee. Mortgagor irrevocably agrees and consents (and shall cause Master Tenant to agree and consent) that the respective payors of the Rents and Profits shall, upon written demand and notice from Mortgagee of an Event of Default hereunder, pay said Rents and Profits to Mortgagee without liability to determine the actual existence of any Event of Default claimed by Mortgagee. Mortgagor hereby waives any right, claim or demand which Mortgagor may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Mortgagee, and any such payment shall discharge such payor's obligation to make such payment to Mortgagor. All Rents and Profits collected or received by Mortgagee hereunder shall be applied against all actual, out-of-pocket expenses of collection, including, without limitation, reasonable attorneys' fees, against actual, out-of-pocket costs of operation and management of the Property and against the Debt, in whatever order or priority as to any of the items so mentioned as Mortgagee directs in its sole subjective discretion and without regard to the adequacy of its security, to the extent permitted by applicable law. Neither the exercise by Mortgagee of any rights under this Section 1.13 nor the application of any Rents and Profits to the Debt shall cure or be deemed a waiver of any Default or Event of Default hereunder. The assignment of Leases and of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property.

1.14 Leasing Limitations. All Leases entered into by Mortgagor or Master Tenant with respect to the Property, and all of Mortgagor's or Master Tenant's rights with respect to such Leases, and Mortgagor's or Master Tenant's actions in exercising (or not exercising) such rights, in each case shall conform with the requirements of the Loan Agreement.

UNOFFICIAL COPY

1.15 Alienation and Further Encumbrances. Solely to the extent prohibited by the Loan Agreement:

(a) Mortgagor shall not (and shall not permit Master Tenant to) sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Property or any part thereof, or suffer or permit any Transfer to occur, other than a Transfer which is expressly permitted under the Loan Agreement.

(b) Any Transfer made in contravention of this Section 1.15 shall be null and void and of no force and effect.

1.16 Use of Rents and Profits. All Rents and Profits generated by or derived from the Property shall be applied in accordance with the Loan Agreement.

1.17 Access Privileges and Inspections. Mortgagee and the agents, representatives and employees of Mortgagee shall, subject to the rights of Tenants, have full and free access to the Real Estate and the Improvements and any other location where books and records concerning the Property are kept (to the extent Mortgagor has access to same) at all reasonable times during business hours upon at least forty-eight (48) hours' notice to Mortgagor for the purposes of inspecting the Property and examining the books and records of Mortgagor relating to the Property. Mortgagor shall lend assistance to all such agents, representatives and employees of Mortgagee.

1.18 Further Documentation. The covenants of Mortgagor set forth in Section 4.17 of the Loan Agreement are hereby incorporated herein as if restated in full.

1.19 Security Interest and Security Agreement. This Mortgage is also a security agreement under the Uniform Commercial Code for any of the Property which, under applicable law, may be subject to a security interest under the Uniform Commercial Code, whether acquired now or in the future, including, without limitation, the Cash Management Account, the Clearing Account, the Reserves and all products, and cash and non-cash proceeds thereof (collectively, the "UCC Collateral"). Mortgagor hereby grants to Mortgagee (for the benefit of the Lenders) a security interest in the UCC Collateral. Mortgagor hereby authorizes Mortgagee to file and/or record such financing statements, continuation statements and amendments, in such form as Mortgagee may require, in order to perfect or continue the perfection of this security interest without signature of Mortgagor (and Mortgagor hereby agrees to execute and/or deliver to Mortgagee any such financing statements, continuation statements and amendments if requested by Mortgagee). Mortgagor shall pay all reasonable out-of-pocket costs of preparing and filing such statements, and all reasonable out-of-pocket costs and expenses of any record searches for financing statements that Mortgagee may require. Without the prior written consent of Mortgagee, Mortgagor shall not create or permit to exist any other lien or security interest in any of the UCC Collateral. The name and address of Mortgagor (as debtor under any applicable Uniform Commercial Code) and Mortgagee (as secured party under any applicable Uniform Commercial Code) are as set forth on Page 1 of this Mortgage.

1.20 Easements and Rights-of-Way. Mortgagor shall not (and shall not permit Master Tenant to) grant any easement or right-of-way with respect to all or any portion of the Real

UNOFFICIAL COPY

Estate or the Improvements, or amend any existing easements or rights of way, without the prior written consent of Mortgagee except to the extent expressly permitted under the Loan Agreement.

1.21 Additional Taxes. In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Mortgagee or any Lender the payment of the whole or any part of the Taxes or Other Charges herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of Mortgagee or secured party in the property covered thereby, or the manner of collection of such Taxes or Other Charges, so as to adversely affect this Mortgage or the Debt or Mortgagee or the Lenders, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such Taxes or Other Charges, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then and in either such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the Debt to be and become due and payable in full ninety (90) days from the giving of such notice.

1.22 Mortgagor's Waivers. To the full extent permitted by applicable law, Mortgagor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension. Mortgagor, for Mortgagor and Mortgagor's successors and assigns, and for any and all persons ever claiming any interest in the Property, to the full extent permitted by applicable law, hereby knowingly, intentionally and voluntarily with and upon the advice of competent counsel: (a) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, and notice of election or intention to mature or declare due the Debt (except such notices as are specifically provided for in the Loan Agreement); (b) waives, releases, relinquishes and forever forgoes all right to a marshalling of the assets of Mortgagor, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety. To the full extent permitted by applicable law, Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any federal, state or local law now or hereafter in effect, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Mortgagee or the Lenders under the terms of this Mortgage to a sale of the Property, for the collection of the Debt without any prior or different resort for collection, or the right of Mortgagee and the Lenders under the terms of this Mortgage to the payment of the Debt out of the proceeds of sale of the Property in preference to every other claimant whatever. Further, Mortgagor hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, releases, relinquishes and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Mortgage or to collect any of the Debt the fullest extent permitted by applicable law. Mortgagor covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Mortgagor, Mortgagor shall not seek a supplemental stay or otherwise shall not seek pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether

UNOFFICIAL COPY

statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Mortgagee or any Lender to enforce any rights of Mortgagee or such Lender against any Guarantor of the Debt or any other Person liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

1.23 Hazardous Waste and Other Substances. Mortgagor hereby covenants to comply with all of Mortgagor's requirements concerning Environmental Laws and Hazardous Substances as required by the Loan Agreement.

ARTICLE II EVENTS OF DEFAULT

2.1 Events of Default. The occurrence of an Event of Default under the Loan Agreement or under any other Loan Document or a breach of any covenant or agreement contained in this Mortgage, which Event of Default or breach shall not have been cured within the applicable notice and/or grace period provided therefor (including pursuant to Section 5.1 of the Loan Agreement) shall be deemed an event of default ("**Event of Default**") under this Mortgage.

ARTICLE III REMEDIES

3.1 Remedies Available. If an Event of Default under this Mortgage exists and is continuing, then the Property shall be subject to sale and this Mortgage shall be subject to foreclosure, all as provided by applicable law, and Mortgagee may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by applicable law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently:

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the Debt to be immediately due and payable without any presentment, demand, protest, notice, or action of any kind whatever (each of which is hereby expressly waived by Mortgagor unless required under applicable law), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note, the Loan Agreement or any other Loan Document shall then be immediately due and payable.

(b) Entry on the Property. Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, but subject to the rights of Tenants and other parties who derive rights to the Property through the Permitted Exceptions, enter upon and take possession of the Property, or any part thereof, without force or with such force as is permitted by applicable law and without notice or process or with such notice or process as is required by applicable law unless such notice and process is waivable, in which case Mortgagor hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Mortgagee's reasonable judgment to complete any unfinished construction on the Real Estate, to preserve the

UNOFFICIAL COPY

value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security thereof and all reasonable, out-of-pocket sums actually expended by Mortgagee therefor, shall be due and payable to Mortgagee by Mortgagor within ten (10) Business Days of Mortgagor's receipt of written demand therefor, together with interest thereon at the Default Rate from the date of demand until actually paid.

(c) Collect Rents and Profits. With or without taking possession of the Property, sue or otherwise collect the Rents and Profits, including those past due and unpaid.

(d) Appointment of Receiver. Upon, or at any time prior to or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Mortgagor and without regard to the adequacy of the Property for the repayment of the Debt or the solvency of Mortgagor or any person or persons liable for the payment of the Debt, and Mortgagor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment, but nothing herein is to be construed to deprive Mortgagee or the Lenders of any other right, remedy or privilege Mortgagee or the Lenders may now have under the law to have a receiver appointed; provided, however, that, the appointment of such receiver, trustee or other appointee by virtue of any court order statute or regulation shall not impair or in any manner prejudice the rights of Mortgagee to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in **Section 3.3** hereof. Such receivership shall, at the option of Mortgagee, continue until full payment of all of the Debt or until title to the Property shall have passed by foreclosure sale under this Mortgage or deed in lieu of foreclosure.

(e) Foreclosure. Immediately commence an action to foreclose this Mortgage in accordance with applicable law or to specifically enforce its provisions or any of the Debt pursuant to the statutes in such case made and provided and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Mortgagee.

(1) Without limiting any of the rights of Mortgagee or the Lenders (and the obligations of Mortgagor) under Section 3.7 hereof, in the event foreclosure proceedings are filed by Mortgagee, then to the extent permitted by applicable law, all actual out-of-pocket expenses incident to such proceedings, including, but not limited to, reasonable attorneys' fees and costs, shall be paid by Mortgagor and secured by this Mortgage and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The Debt and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Rate, any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), attorneys' fees and any other amounts due and unpaid to Mortgagee and the Lenders under the Loan Documents, may be bid by Mortgagee in the event of a foreclosure sale hereunder. In the event of a sheriff's sale pursuant to a

UNOFFICIAL COPY

foreclosure, whether by advertisement or by action, it is understood and agreed that Mortgagee or its assigns may become the purchaser of the Property or any part thereof.

(2) Mortgagee may, by following the procedures and satisfying the requirements prescribed by applicable law, foreclose on only a portion of the Property and, in such event, said foreclosure shall not affect the lien of this Mortgage on the remaining portion of the Property foreclosed.

(f) Rights under the Uniform Commercial Code. Exercise any or all of the remedies of a secured party under the Uniform Commercial Code against the UCC Collateral, either separately or together, and in any order, without in any way affecting the availability of Mortgagee's or the Lenders' other remedies. Furthermore, to the extent permitted by applicable law, in conjunction with, in addition to or in substitution for the rights and remedies available to Mortgagee or the Lenders pursuant to the Uniform Commercial Code, (i) in the event of a foreclosure sale with respect to the portions of the Property which are not UCC Collateral, the Property (including the UCC Collateral) may, at the option of Mortgagee and to the extent permitted by applicable law, be sold as a whole or in parts, as determined by Mortgagee in its sole discretion; and (ii) it shall not be necessary that (A) Mortgagee take possession of the UCC Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section 3.1 is conducted, or (B) the UCC Collateral, or any part thereof, be present at the location of such sale; and (iii) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee.

(g) Judicial Remedies. Proceed by suit or suits, at law or in equity, instituted by Mortgagee to enforce the payment of the indebtedness secured hereby or the other obligations of Mortgagor hereunder or pursuant to the Loan Documents, to foreclose the liens and security interests of this Mortgage as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other non-judicial remedies available to Mortgagee with respect to the Loan Documents. Proceeding with the request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Mortgagee.

(h) Other. Exercise any other applicable right or remedy available hereunder, under any of the other Loan Documents or at law or in equity or otherwise.

3.2 Application of Proceeds. To the fullest extent permitted by applicable law, the proceeds of any sale under this Mortgage or of other exercises by Mortgagee of its remedies shall be applied to the extent funds are so available to the following items in such order as Mortgagee in its discretion may determine:

(a) To payment of the reasonable, out-of-pocket costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Mortgagee's or the Lenders' rights and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, reasonable attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

UNOFFICIAL COPY

(b) To payment of all sums expended by Mortgagee and the Lenders under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Rate.

(c) To payment of the Debt and all other obligations secured by this Mortgage, including, without limitation, interest at the Default Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under any of the Loan Documents in order to prepay principal, in any order that Mortgagee chooses in its sole discretion.

The remainder, if any, of such funds shall be disbursed to Mortgagor or to the person or persons legally entitled thereto.

3.3 Right and Authority of Receiver or Mortgagee during the Continuance of an Event of Default Power of Attorney. Upon the occurrence and during the continuance of an Event of Default hereunder, and entry upon the Property pursuant to Section 3.1(b) hereof or appointment of a receiver pursuant to Section 3.1(d) hereof, and under such terms and conditions as may be permitted by applicable law and prudent and reasonable under the circumstances in Mortgagee's or the receiver's sole discretion, all at Mortgagor's expense, Mortgagee or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) subject to the rights of Tenants and other parties claiming through Permitted Exceptions, enter upon and take possession and control of any and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Mortgagor and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Mortgagee may in its reasonable discretion deem appropriate or desirable to place the Property in such condition as will, in Mortgagee's reasonable discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Mortgagee may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Mortgagee may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Mortgagee as attorney-in-fact and agent of Mortgagor or in its own name as Mortgagee, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter into such Leases, whether of real or personal property, under such terms and conditions as Mortgagee may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents and Profits from the Property; (m) eject Tenants or repossess personal property, as provided by applicable law and subject to the terms of the Leases, for breaches of the conditions of their Leases; (n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Mortgagor or Mortgagee; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent, to the extent permitted by applicable law and the applicable Lease; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to

UNOFFICIAL COPY

Mortgagee by this Mortgage to the extent permitted by the Loan Agreement; and (r) do any acts which Mortgagee in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Mortgagee may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Mortgage. This Mortgage shall constitute a direction to and full authority to any Tenant, lessee, or other Person who has heretofore dealt or contracted or may hereafter deal or contract with Mortgagor or Mortgagee, at the request of Mortgagee during the continuance of an Event of Default, to pay all amounts owing under any Lease, contract or other agreement to Mortgagee without proof of the Event of Default relied upon. Any such Tenant, lessee or other Person is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Mortgagor in so doing) any request, notice or demand by Mortgagee during the continuance of an Event of Default for the payment to Mortgagee of any Rents and Profits or other sums which may be or thereafter become due under its Lease, contract or other agreement, or for the performance of any undertakings under any such Lease, contract or other agreement, and shall have no right or duty to inquire whether any Event of Default under this Mortgage, or any default under any of the other Loan Documents, has actually occurred or is then existing. Mortgagor hereby constitutes and appoints Mortgagee, its assignees, successors, transferees and nominees, as Mortgagor's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Mortgagor's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any Debt is outstanding. Any money advanced by Mortgagee or any Lender in connection with any action taken under this Section 3.3, together with interest thereon at the Default Rate from the date of demand until actually paid by Mortgagor, shall be a demand obligation owing by Mortgagor to Mortgagee.

3.4 Occupancy After Foreclosure. Following the redemption period after a foreclosure sale hereunder, if Mortgagor or Mortgagor's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Mortgagor (except Tenants of space in the Improvements subject to Leases entered into prior to the date thereof to the extent not made subordinate to this Mortgage), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Mortgagee or the purchaser at such sale, as the case may be, immediately become the Tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or Tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the Tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Real Estate is located.

3.5 Notice to Account Debtors. Mortgagee may, at any time after an Event of Default hereunder, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness, to Mortgagor included in the Property to pay Mortgagee directly. Mortgagor shall at any time or from time to time upon the request of Mortgagee provide to Mortgagee a current list of all such account debtors and obligors and their addresses.

UNOFFICIAL COPY

3.6 Cumulative Remedies. All remedies contained in this Mortgage or in any other Loan Document are cumulative and Mortgagee and the Lenders shall also have all other remedies provided at law, in equity or otherwise. To the extent permitted by applicable law, such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Mortgagee and may be exercised in any order and as often as occasion therefor shall arise. No act of Mortgagee or any Lender shall be construed as an election to proceed under any particular provisions of this Mortgage to the exclusion of any other provision of this Mortgage or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Mortgagee or the Lenders. No delay or failure by Mortgagee or any Lender to exercise any right or remedy under this Mortgage shall be construed to be a waiver of that right or remedy or of any Event of Default hereunder. Mortgagee may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.7 Payment of Expenses. During the continuance of an Event of Default, Mortgagor shall pay on written demand all of Mortgagee's and the Lenders' reasonable, out-of-pocket expenses actually incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Mortgagee or the applicable Lender until actually paid by Mortgagor at the Default Rate. Furthermore, Mortgagor shall, and does hereby, indemnify Mortgagee and the Lenders for, and hold Mortgagee and the Lenders harmless from, any and all actual losses, reasonable, out-of-pocket costs and expenses, claims, actions, demands liabilities, actual loss or damage which may or might be incurred by Mortgagee and the Lenders under this Mortgage or by the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against Mortgagee or any Lender by reason of any alleged obligations or undertakings on Mortgagee's or the Lenders' part with respect to the Property except as expressly set forth in the Loan Documents, other than (x) consequential, punitive and/or special damages and (y) those finally determined to have resulted solely from the gross negligence, illegal acts, fraud or willful misconduct of Mortgagee or any Lender, in which case the party to whom the gross negligence, illegal acts, fraud or willful misconduct is attributable (but not any other party) shall not be entitled to the indemnification provided for hereunder to the extent of such gross negligence, illegal acts, fraud or willful misconduct. Mortgagor's obligation pursuant to the previous sentence shall include, without limitation, payment to (or reimbursement of) any compensation payable by the holder of the Loan to any servicing agent under a Secondary Market Transaction (as defined in the Loan Agreement) pursuant to the Securitization Documents (as defined in the Loan Agreement) if such payment becomes due solely by reason of the existence and continuance of any Event of Default. Should Mortgagee or such Lender incur any such liability, the amount thereof, including, without limitation, reasonable, out-of-pocket costs, expenses and attorneys' fees, together with interest thereon at the Default Rate from the date of demand until actually paid by Mortgagor, shall be immediately due and payable to Mortgagee from Mortgagor on demand.

3.8 No Election of Remedies; Release.

(a) Without limiting the terms of this Article III, and without limitation as to any other right or remedy provided to Mortgagee in this Mortgage or the other Loan Documents, in the case of an Event of Default which is continuing, to the extent permitted by law (i) Mortgagee

UNOFFICIAL COPY

shall have the right to pursue all of its rights and remedies under this Mortgage and the Loan Documents, at law and/or in equity, in one proceeding, or separately and independently in separate proceedings from time to time, as Mortgagee, in its sole and absolute discretion, shall determine from time to time, (ii) Mortgagee shall not be required to either marshal assets or sell the Property in any particular order of alienation (and may sell the same simultaneously and together or separately), or be subject to any "one action" or "election of remedies" law or rule with respect to the Property, (iii) the exercise by Mortgagee of any remedies against any one item of Property will not impede Mortgagee from subsequently or simultaneously exercising remedies against any other item of Property, (iv) all liens and other rights, remedies or privileges provided to Mortgagee herein shall remain in full force and effect until Mortgagee has exhausted all of its remedies against the Property and all Property has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt, and (v) Mortgagee may resort for the payment of the Debt to any security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect and Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage.

(b) Without notice to or consent of Mortgagor and without impairment of the lien and rights created by this Mortgage, Mortgagee may, at any time (in its sole and absolute discretion, but Mortgagee shall have no obligation to), execute and deliver to Mortgagor a written instrument releasing all or a portion of the lien of this Mortgage as security for any or all of the obligations of Mortgagor now existing or hereafter arising under or in respect of the Note, and each of the other Loan Documents, whereupon following the execution and delivery by Mortgagee to the Mortgagor of any such written instrument of release, this Mortgage shall no longer secure such obligations of Mortgagor so released.

ARTICLE IV INTENTIONALLY OMITTED

ARTICLE V MISCELLANEOUS TERMS AND CONDITIONS

5.1 Time of Essence. Time is of the essence with respect to all provisions of the Loan Documents.

5.2 Release of Mortgage. If all of the Debt is paid in full, then and in that event only, upon Mortgagor's request and at Mortgagor's expense, Mortgagee shall execute and deliver to Mortgagor or its designee a release in a form appropriate in Illinois and reasonably satisfactory to the Mortgagee and Mortgagor and such release shall be accompanied by the original Note (and any other evidence of debt) in order to effect such release, and in that event only, this Mortgage shall terminate and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Mortgagee in due form at Mortgagor's cost; provided that no release of this Mortgage or the lien hereof shall be valid unless executed by Mortgagee.

5.3 Certain Rights of Mortgagee. Without affecting Mortgagor's liability for the payment of any of the Debt, Mortgagee may (with the consent of the Lenders or the Required

UNOFFICIAL COPY

Lenders to the extent required under the Loan Agreement) from time to time and without notice to Mortgagor: (a) release any person liable for the payment of the Debt; (b) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the Debt; or (c) consent in writing to the making of any subdivision map or plat thereof.

5.4 Waiver of Certain Defenses. To the extent permitted under applicable law, no action for the enforcement of the lien hereof or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law or in equity upon the Note or any of the other Loan Documents.

5.5 Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be sent in the manner required by Section 8.5 of the Loan Agreement.

5.6 Successors and Assigns. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Mortgagor and the successors and assigns of Mortgagor, including all successors in interest of Mortgagor in and to all or any part of the Property, and shall inure to the benefit of Mortgagee, the Lenders and their respective permitted successors and assigns, and shall constitute covenants running with the land. All indemnities in this Mortgage for the benefit of Mortgagee and/or the Lenders shall inure to the benefit of Mortgagee and the Lenders and each of their respective directors, officers, shareholders, partners, members, managers, employees and agents (including, without limitation, any servicers retained by Mortgagee with respect to the Loan), and permitted pledgees and participants of the Debt, and their respective permitted successors and assigns. All references in this Mortgage to Mortgagor or Mortgagee shall be deemed to include each such party's successors and assigns. If Mortgagor consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of Mortgagor.

5.7 Severability. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

5.8 Interpretation. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires. The headings of the sections and paragraphs of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof. In the event of any inconsistency between the provisions hereof and the provisions in any of the other Loan Documents, it is intended that the provisions of this Mortgage shall be controlling, except for the Loan Agreement, it being understood that the provisions of the Loan Agreement shall control over any inconsistent provision in any other Loan Document.

5.9 Waiver; Discontinuance of Proceedings. Mortgagee may waive any single Event of Default by Mortgagor hereunder without waiving any other prior or subsequent Event of Default. Mortgagee may remedy any Event of Default by Mortgagor hereunder without waiving

UNOFFICIAL COPY

the Event of Default remedied. Neither the failure by Mortgagee to exercise, nor the delay by Mortgagee in exercising, any right, power or remedy upon any Event of Default by Mortgagor hereunder shall be construed as a waiver of such Event of Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof or consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be in writing and signed by Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to or demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Acceptance by Mortgagee of any payment in an amount less than the amount then due on any of the Debt shall be deemed an acceptance on account only and shall not in any way affect the existence of a Default or an Event of Default hereunder. In case Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under the other Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Mortgagee shall have the unqualified right to do so and, in such an event, Mortgagor and Mortgagee shall be restored to their former positions with respect to the Debt, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Mortgagee shall continue as if the same had never been invoked.

5.10 Governing Law. With respect to matters relating to the creation, perfection, priority and enforcement of the liens and security interests created pursuant to this Mortgage, this Mortgage shall be governed by, and construed in accordance with, the laws of the State of Illinois or, to the extent applicable, the Uniform Commercial Code of the State of Illinois (without regard to conflict of law provisions thereof), it being understood that, except as expressly set forth above in this Section 5.10 and to the fullest extent permitted by the law of the State of Illinois and pursuant to Section 5-1401 of the General Obligations Law of the State of New York, the law of the State of New York (without regard to conflict of law provisions thereof except for the provisions of Section 5-1401 of the General Obligations Law of the State of New York) shall govern all other matters relating to this Mortgage and the other Loan Documents and all of the indebtedness or obligations arising hereunder or thereunder. To the fullest extent permitted by law, each of the parties hereto hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs this Mortgage, and, except as provided above in this Section 5.10, this Mortgage (including all provisions of the Loan Documents incorporated herein by reference) and the other Loan Documents shall be governed by and construed in accordance with the Laws of the State of New York pursuant to Section 5-1401 of the New York General Obligations Law.

5.11 Counting of Days. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Real Estate is located, the period shall be deemed to end on the next succeeding Business Day.

5.12 Relationship of the Parties. The relationship between Mortgagor, Mortgagee and the Lenders is that of a borrower and a lender only and none of these parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

UNOFFICIAL COPY

5.13 Application of the Proceeds of the Note. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by the Lenders at Mortgagor's request and the Lenders shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

5.14 Unsecured Portion of Indebtedness. If any part of the Debt cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such Debt, then all payments made shall be applied on said Debt first in discharge of that portion thereof which is unsecured by this Mortgage.

5.15 Interest After Sale. In the event the Property or any part thereof shall be sold upon foreclosure as provided hereunder, to the extent permitted by applicable law, the sum for which the same shall have been sold shall, for purposes of redemption (pursuant to the laws of the state in which the Property is located), bear interest at the Default Rate.

5.16 Construction of this Document. This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, as determined by Mortgagee, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

5.17 No Merger. It is the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Property. It is hereby understood and agreed that should Mortgagee (for the benefit of the Lenders) acquire any additional or other interests in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in such other or additional interests in or to the Property, toward the end that this Mortgage may be foreclosed as if owned by a stranger to said other or additional interests.

5.18 Rights With Respect to Junior Liens. Any person or entity purporting to have or to take a junior mortgage or other lien upon the Property or any interest therein shall be subject to the rights of Mortgagee to amend, modify, increase, vary, alter or supplement this Mortgage, the Note or any of the other Loan Documents and to extend the maturity date of the Debt and to increase the amount of the Debt and to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for the Debt, in each and every case without obtaining the consent of the holder of such junior lien and, to the extent permitted by applicable law, without the lien or security interest of this Mortgage losing its priority over the rights of any such junior lien.

5.19 Fixture Filing. To the extent permitted under applicable law, this Mortgage shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which are or are to become fixtures. This Mortgage shall also be effective as a financing statement covering minerals or the like (including

UNOFFICIAL COPY

oil and gas) and is to be filed for record in the real estate records of the applicable recording office in the State of Illinois. The mailing address of Mortgagor, as debtor and the address of Mortgagee, as secured party, from which information concerning the security interests may be obtained are set forth above.

5.20 After-Acquired Property. All property acquired by Mortgagor after the date of this Mortgage which by the terms of this Mortgage would be property subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Mortgagor and without further mortgage, conveyance or assignment become subject to the lien and security interest created by this Mortgage. Nevertheless, Mortgagor shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further mortgages, security agreements, financing statements, assignments and assurances, as Mortgagee shall require for accomplishing the purposes of this Mortgage.

5.21 Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Mortgage may be detached from any counterpart of this Mortgage without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Mortgage identical in form hereto but having attached to it one or more additional signature pages.

5.22 Recording and Filing. Mortgagor will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Mortgagee shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges; provided, however, Mortgagor shall have no obligation to pay for any such actions to the extent same are being required solely in connection with a Secondary Market Transaction, Syndication, any component notes pursuant to Section 8.25 of the Loan Agreement, or any further documentation requested by Mortgagee pursuant to Section 4.17 of the Loan Agreement. Mortgagor shall reimburse Mortgagee, or its servicing agent, for the costs incurred in obtaining a tax service company to verify the status of payment of Taxes and Other Charges on the Property.

5.23 Entire Agreement and Modification. This Mortgage and the other Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated. This Mortgage and the other Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

5.24 Maximum Interest. The provisions of Section 2.2(i) of the Loan Agreement are incorporated in this Mortgage by reference as if more fully set forth herein.

5.25 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

UNOFFICIAL COPY

(a) EACH OF MORTGAGOR AND MORTGAGEE BY ACCEPTANCE HEREOF, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF ILLINOIS OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS MORTGAGE OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION OVER THE COUNTY IN WHICH THE REAL ESTATE IS LOCATED, (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS AND, (iv) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM. EACH OF MORTGAGOR AND MORTGAGEE FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE APPLICABLE PARTY AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 5.5 HEREOF, OR SUCCESSOR ADDRESSEE, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

(b) EACH OF MORTGAGOR, MORTGAGEE AND THE LENDERS BY ACCEPTANCE HEREOF, TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE DEBT OR ANY CONDUCT, ACT OR OMISSION OF MORTGAGOR, MORTGAGEE OR ANY LENDER OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH MORTGAGOR, MORTGAGEE OR ANY LENDER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

5.26 State-Specific Provisions. In the event of any inconsistency or disagreement between the terms and provisions set forth in this Section 5.26 and the other terms and provisions of this Mortgage, the terms and provisions of this Section 5.26 shall govern, control and supersede such other terms and provisions to the extent of such inconsistency or disagreement.

(a) Illinois Mortgage Foreclosure Law.

(1) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq. herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(2) Intentionally Omitted.

UNOFFICIAL COPY

(3) Without limiting the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the indebtedness.

(4) Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction that does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption to the extent allowed under Section 15-1610(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

(5) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto that may become effective from time to time after the date hereof. In the event any provision of the Act that is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) Waivers.

(1) Mortgagor agrees, to the fullest extent that Mortgagor may lawfully so agree, that Mortgagor will not at any time insist upon or plead or in any manner whatsoever claim the benefit of any valuation, stay, extension, or exemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but Mortgagor and any of Mortgagor's successors or assigns, so long as permitted by law now or hereafter, hereby waive the benefit of all such laws. Mortgagor, to the extent permitted by law, hereby waives any and all right to have the Property marshalled upon any foreclosure of this Mortgage, or sold in inverse order of alienation, and agrees that Mortgagee or any court having jurisdiction to foreclose this Mortgage may sell the Property as an entirety. If any law now or hereafter in force referred to in this Paragraph of which Mortgagor or Mortgagee's successors or assigns might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, and such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this Paragraph.

(2) In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of Mortgagee, its successors and assigns, and each and every person or entity they may legally bind acquiring any interest in or title to the Property subsequent to the date of this Mortgage: (a) expressly waives any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) reinstatement and redemption from sale under any order or decree of foreclosure of this Mortgage; and (b), to the extent permitted by applicable law, agrees that when sale is had

UNOFFICIAL COPY

under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to any purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

(c) Maximum Amount Secured. Notwithstanding any future advances or other advances referred to in this Section (c) or Section (f) below, or any other provision of this Mortgage to the contrary, the maximum principal indebtedness secured by this Mortgage shall not exceed two hundred percent (200%) of the face amount of the Notes. As of the date of this Mortgage, the principal amount secured by the Note is the sum of \$55,793,550.00.

(d) Collateral Protection Act. Pursuant to the requirements of the Illinois Collateral Protection Act, 815 ILCS 180/1 *et seq.*, Mortgagor is hereby notified as follows: Unless Mortgagor provides Mortgagee with evidence of the insurance required by this Mortgage or any other Loan Document, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property or any other collateral for the indebtedness secured hereby. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required under by this Mortgage or any other Loan Document. If Mortgagee purchases insurance for the Property or any other collateral for the indebtedness secured hereby, Mortgagee shall be responsible for the costs of that insurance, including interest and any other charges that may lawfully be imposed in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

(e) Fixture Filing. This Mortgage shall also constitute a "fixture filing" for the purposes of the UCC against all of the Property that is or is to become Fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) as set forth in the first paragraph of this Mortgage.

(f) Future Advances. This Mortgage secures not only present indebtedness but also future advances arising under or in connection with this Mortgage, the Note, the Loan Agreement and the Loan Documents, or under other documents stating that such advances are secured hereby, whether such future advances are obligatory or are to be made at the option of Mortgagee, or otherwise, and such future obligations shall have the same priority as if all such obligations were made on the date of execution hereof. The amount of indebtedness secured hereby may increase or decrease from time to time and the rate or rates of interest payable may vary from time to time. Nothing in this Section (f) or in any other provisions of this Mortgage shall be deemed an obligation on the part of Lender

UNOFFICIAL COPY

to make any future advances of any sort.

(g) Maturity Date. The maturity date of the indebtedness secured by this Mortgage, assuming exercise of all extension options under terms of the Loan Agreement, is October 8, 2025.

(h) Loan Made for Business Purposes. Mortgagor acknowledges and agrees that (a) the proceeds of the Loan will be used in conformance with subparagraph (1)(l) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1879, as amended (815 ILCS 205/4(1)(l)); (b) the indebtedness secured hereby has been incurred by Mortgagor solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said Section 4; (c) the indebtedness secured hereby constitutes a loan secured by real estate within the purview of and as contemplated by said Section 4; and (d) the secured indebtedness is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. Sec. 1601 et. seq. has been entered into solely for business purposes of Mortgagor and for Mortgagor's investment or profit, as contemplated by said section.

(i) Protective and Other Advances. Without limiting any of the other terms or provisions of this Mortgage or any other Loan Documents, all advances, disbursements and/or expenditures made by Mortgagee from time to time in accordance with the terms of this Mortgage and/or any other Loan Document(s), or otherwise authorized or contemplated by the Act (or other applicable law), whether made before, during or after a foreclosure of this Mortgage, before or after judgment of foreclosure therein, before or after any sale of the Property or before, during or after the pendency of any claims, demands, proceedings, causes of action or suits related to any of the foregoing, together with applicable interest thereon (as provided for in and/or contemplated by this Mortgage, any other Loan Document(s) or applicable law), shall be secured by this Mortgage (and shall constitute part of the obligations hereunder) and shall have the benefit of all applicable provisions of the Act (or other applicable law, as the case may be). Without in any way limiting the generality of the foregoing, any advances, disbursements or expenditures described in Section 15-1302(b) of the Act that are made by Lender from time to time shall have the benefit of the provisions of the Act applicable thereto, and any advances, disbursements or expenditures in the nature of "future advances", as described or defined in the Act or any other applicable Illinois law, that are made by Mortgagee from time to time shall have the benefit of the provisions of the Act or such other applicable law (as the case may be). Nothing contained in this Section (i) shall be deemed or construed to obligate Lender to make any advance, disbursement or expenditure of any kind.

(j) Variable Rate. This Mortgage secures the full and timely payment of Debt, including, among other things, the obligation to pay interest on the unpaid principal balance at a variable rate of interest to the extent provided in the Note and the Loan Agreement.

(k) Right to Collect Rents and Profits. Notwithstanding anything to the contrary contained in 765 ILCS 5/31.5, Mortgagor agrees that the mere recordation of the

UNOFFICIAL COPY

Mortgage entitles Mortgagee immediately to collect and receive Rents and Profits upon the occurrence and during the continuance of an Event of Default, without first taking any acts of enforcement under Applicable Law, including providing notice to Mortgagor, filing foreclosure proceedings, or seeking the appointment of a receiver. Further, Mortgagee's right to the Rents and Profits does not depend on whether or not Mortgagee takes possession of the Property as permitted under this Mortgage. Provided an Event of Default has occurred and is continuing, Administrative may choose, in Mortgagee's sole discretion, to collect Rents and Profits either with or without taking possession of the Property. It is the express intention of the Mortgagor and Mortgagee to "otherwise agree" as permitted in 765 ILCS 5/31.5 that after an Event of Default has occurred and during the continuance thereof, Mortgagee is entitled to immediately collect rents (and Mortgagor hereby agrees it will immediately pay all such rents to Mortgagee) without Mortgagee having to take any steps to enforce the assignment.

(1) Receiver. In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee has the right, in accordance with Sections 15-1701 and 15-1702 of the Act, as amended or recodified from time to time, to be placed in the possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, will have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties and provisions for in Sections 15-1701, 15-1703 and 15-1704 of the Act, as amended or recodified from time to time.

5.27 Exculpation. The provisions of Section 8.16 of the Loan Agreement are hereby incorporated by reference to the same extent and with the same force as if fully set forth herein.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF THE REAL ESTATE

PARCEL 1:

LOT 1 IN RBC TECH CENTER SUBDIVISION IN THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 26 TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 08-26-300-026-0000 (Affects Parcel 1)

PARCEL 2:

LOT 10 IN SDK SUBDIVISION NO. 2 OF PARTS OF LOTS 1 AND 2 IN EVERDING SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 26 TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 08-26-300-016-0000 (Affects Parcel 2)

PARCEL 3:

LOT 11 IN SDK SUBDIVISION NO. 2 OF PARTS OF LOTS 1 AND 2 IN EVERDING SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 26 TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 08-26-300-017-0000 (Affects Parcel 3)

PARCEL 4: LOT 1 IN RBC TECH CENTER SUBDIVISION UNIT 2, A RESUBDIVISION OF LOT 2 IN EVERDING SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 26 TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY TAKEN BY CONDEMNATION ORDER ENTERED IN CASE 02L50283: BEGINNING AT THE SOUTHWEST CORNER OF LOT 1 AFORESAID; THENCE ON AN ASSUMED BEARING OF NORTH 01 DEGREES 11 MINUTES 31 SECONDS WEST ALONG THE WEST LINE OF SAID LOT 1, A DISTANCE OF 25.00 FEET; THENCE SOUTH 46 DEGREES 17 MINUTES 46 SECONDS EAST, 35.29 FEET TO THE SOUTH LINE OF LOT 1 AFORESAID; THENCE SOUTH 88 DEGREES 36 MINUTES 00 SECONDS WEST ALONG SAID SOUTH LINE OF LOT 1, A DISTANCE OF 25.00 FEET TO THE POINT OF BEGINNING), IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 08-26-300-027-0000 (Affects Parcel 4)

UNOFFICIAL COPY

PARCEL 5:

LOT 2 IN THE RESUBDIVISION OF LOTS 12 TO 16, BOTH INCLUSIVE, IN SDK SUBDIVISION NO. 2 OF PARTS OF LOTS 1 AND 2 IN EVERDING SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 26 TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 08-26-300-024-0000 (Affects Parcel 5)

PARCEL 6:

LOT 1 IN REGENT BUSINESS CENTER PARCEL F, BEING A RESUBDIVISION OF LOTS 1 THROUGH 9, BOTH INCLUSIVE, IN SDK SUBDIVISION NO. 2 OF PARTS OF LOTS 1 AND 2 IN EVERDING SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 26 TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Permanent Index Number: 08-26-300-028-0000 (Affects Parcel 6)

PARCEL 7:

LOT 2 IN REGENT BUSINESS CENTER PARCEL F, BEING A RESUBDIVISION OF LOTS 1 THROUGH 9, BOTH INCLUSIVE, IN SDK SUBDIVISION NO. 2 OF PARTS OF LOTS 1 AND 2 IN EVERDING SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 26 TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 08-26-300-029-0000 (Affects Parcel 7)

PARCEL 8:

LOT 3 IN REGENT OFFICE CENTER-PHASE II, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 9:

EASEMENT FOR THE BENEFIT OF PARCEL 8 CREATED BY CROSS-EASEMENT AGREEMENT FOR INGRESS AND EGRESS RECORDED MAY 19, 1999 AS DOCUMENT 99485434 BETWEEN LASALLE BANK NATIONAL ASSOCIATION AS TRUSTEE UNDER TRUST NO. 51005 AND THE CHICAGO TRUST COMPANY AS TRUSTEE UNDER TRUST NO. 1107118 OVER THE HIGGINS DRIVEWAY AND THE PORTION OF THE ACCESS DRIVE LOCATED ON THE CHICAGO PROPERTY AS DEPICTED ON EXHIBIT C.

UNOFFICIAL COPY

Permanent Index Number: 08-22-403-015-0000 (Affects Parcel 8 & 9)

PARCEL 10:

THE SOUTH 920.24 FEET, AS MEASURED ALONG THE EAST LINE OF A 200.0 FOOT STRIP OF LAND CONVEYED TO THE COUNTY OF COOK BY DEED RECORDED JANUARY 12, 1939 AS DOCUMENT NO. 12259408, OF THAT PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 26, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN LYING SOUTHERLY AND WESTERLY OF THE CENTER LINE OF HIGGINS ROAD, EAST OF THE EAST LINE OF SAID 200.0 FOOT STRIP OF LAND AND LYING NORTHERLY OF A LINE DRAWN AT RIGHT ANGLES TO THE EAST LINE OF SAID 200 FOOT STRIP OF LAND FROM A POINT ON SAID EAST LINE OF SAID 200 FOOT STRIP OF LAND, 1957.80 FEET SOUTH, AS MEASURED ALONG THE EAST LINE OF SAID 200 FOOT STRIP OF LAND, OF THE NORTH LINE OF THE NORTHWEST 1/4 OF SAID SECTION 26, EXCEPTING THEREFROM THE EAST 30.0 FEET, MEASURED AS RIGHT ANGLES TO THE EAST LINE THEREOF, IN COOK COUNTY, ILLINOIS.

Permanent Index Number: 08-26-100-011-0000 (Affects Parcel 10)