

Illinois Anti-Predatory
Lending Database
Program

Doc#: 2300641008 Fee: \$98.00
Karen A. Yarbrough
Cook County Clerk
Date: 01/06/2023 09:21 AM Pg: 1 of 27

Certificate of Exemption



Report Mortgage Fraud
844-768-1713

The property identified as: **PIN: 05-29-300-001-0000**

Address:

Street: 1200 Hibbard Road

Street line 2:

City: Wilmette

State: IL

ZIP Code: 60091

Lender: National Covenant Properties

Borrower: The Evangelical Covenant Church of Winnetka

Loan / Mortgage Amount: \$722,000.00

This property is located within the program area and is exempt from the requirements of 705 IL CS 77/70 et seq. because it is commercial property.

Certificate number: 4E6AAB50-7993-4C6B-B7FB-AF386F5FD9C3

Execution date: 12/29/2022

UNOFFICIAL COPY

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

BY AND BETWEEN

THE EVANGELICAL COVENANT CHURCH OF WINNETKA,

MORTGAGOR

And

NATIONAL COVENANT PROPERTIES,

AS LENDER

DATED AS OF DECEMBER 21, 2022

Mail to:
Peter A. Hedstrom
National Covenant Properties
8303 West Higgins Road
Chicago, IL 60631

This instrument was prepared by:
Christopher W. Cramer
Erickson Peterson Cramer
100 South Saunders Road, Suite 150
Lake Forest, IL 60045

UNOFFICIAL COPY

MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING (Secures future advances)

This MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING dated as of December 29, 2022 (the "Mortgage"), is executed by THE EVANGELICAL COVENANT CHURCH OF WINNETKA, an Illinois religious corporation (the "Mortgagor"), having its primary place of business located at 1200 Hibbard Road, Wilmette, Illinois 60091, to and for the benefit of National Covenant Properties, an Illinois not for profit corporation, having its primary place of business located at 8303 West Higgins Road, Chicago, Illinois 60631, its successors and assigns (the "Lender").

RECITALS:

A. This Mortgage is made by Mortgagor to secure certain loans and advances (the "Loans") made by Lender to Mortgagor pursuant to the terms and conditions of that certain Loan and Security Agreement dated as of even date herewith, as the same has been or may hereafter be amended, restated or replaced ("Loan Agreement") in the amount of SEVEN HUNDRED TWENTY-TWO and NO/100 DOLLARS (\$722,000.00) or so much as may be due and owing from Mortgagor to Lender under the Loan Agreement. The interest rate payable under some or all of the Loans is a variable rate. Initial capitalized terms not defined herein shall have the meaning provided in the Loan Agreement; and

B. A condition precedent to Lender's extension of the Loans to Mortgagor is Mortgagor's execution and delivery of this Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

AGREEMENTS:

Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Lender, its successors and assigns, and grants a security interest in, the following described property, rights and interests, whether now owned or hereafter acquired (referred to collectively herein as the "Mortgaged Property"):

(a) The real estate located in the County of Cook, State of Illinois, and legally described on Exhibit "A" attached hereto and made a part hereof (the "Real Property");

(b) All fixtures, machinery, equipment and other articles of personal or mixed property, belonging to Borrower, at any time now or hereafter installed in, attached to or situated in or upon the Real Property, or the buildings and improvements now or hereafter erected thereon (the "Improvements"), or used or intended to be used in connection with the Real Property, or in the operation of the buildings and improvements, plant, business or dwelling situated thereon, whether or not such property or mixed property is or shall be affixed thereto, and all replacements, substitutions and proceeds of the foregoing (collectively, the "Service Equipment"), including without limitation: (i) all appliances, furniture and furnishings; all articles of other decoration, floor, wall and window coverings; all office, kitchen and other fixtures, utensils, appliances and equipment; all supplies, tools and accessories; all storm and screen windows, shutters, doors, decorations, awnings, shades, blinds, signs, trees, shrubbery and other plantings; (ii) all building service fixtures, machinery and equipment of any kind whatsoever; all lighting, heating, ventilating, air conditioning, refrigerating, sprinkling, plumbing,

UNOFFICIAL COPY

security, irrigating, cleaning, incinerating, waste disposal, communications, alarm, fire prevention and extinguishing systems, fixtures, apparatus, machinery and equipment; all elevators, escalators, lifts, cranes, hoists and platforms; all pipes, conduit, pumps, boilers, tanks, motors, engines, furnaces and compressors; all dynamos, transformers and generators; (iii) all building materials, building machinery and building equipment delivered on site to the Property during the course of, or in connection with any construction or repair or renovation of any of the improvements; (iv) all parts, fittings, accessories, accessions, substitutions and replacements therefor and thereof; and (v) all files, books, ledgers, reports and records relating to any of the foregoing; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Real Property or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness;

(c) All easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Property, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

(d) All leases, subleases, tenancies, licenses, occupancy agreements or agreements to lease all or any portion of the Real Property, Improvements or Service Equipment and all extensions, renewals, amendments, modifications and replacements thereof, and any options, rights of first refusal or guarantees relating thereto (collectively, the "Leases"); all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits, awards and payments of any kind payable under the Leases or otherwise arising from the Real Property, Improvements or Service Equipment, including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance and deficiency rents, (collectively, the "Rents"); all of the following personal property (collectively, the "Contracts"): all accounts, general intangibles and contract rights (including any right to payment thereunder, whether or not earned by performance) or any nature relating to the Real Property, Improvement or Service Equipment, or the use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, franchise agreements, utility agreements and deposits, building service contracts, maintenance contracts, construction contracts and architect's agreements; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies, books of account and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Real Property, Improvements or Service Equipment; all reservations or sales contracts previously or hereafter entered into by Mortgagor with regard to the Real Property and any and all escrow deposits paid thereunder;

(e) All awards or payments, including interest thereon, made pursuant to condemnation or eminent domain proceedings with respect to the Real Property or other Collateral;

(f) All policies of property, hazard, rent loss, risk and all other types of insurance covering the Real Property or other Collateral and the items described in Paragraphs (a) through (e), above, together with any and all extensions and replacements thereof, and any and all rights thereunder, and any and all rights of subrogation provided by this Mortgage;

UNOFFICIAL COPY

(g) All proceeds of any of the items described in Paragraphs (a) through (f), above, which shall include whatever is received upon the use, lease, sale, exchange, transfer, collection or other utilization or any disposition or conversion of any of the Real Property, Improvements or Service Equipment, Leases, Rents and Contracts, voluntary or involuntary, whether cash or non-cash, including proceeds of insurance and condemnation awards, rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, equipment and inventory.

TO HAVE AND TO HOLD the Mortgaged Property constituting real property under the laws of the State, whether now owned or hereafter acquired, unto Lender, its successors and assigns, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, forever, and the Mortgaged Property not constituting real property under the laws of the State, whether now owned or hereafter acquired, unto Lender, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Mortgaged Property after the occurrence of any Event of Default; provided, however, that this Mortgage is upon the express condition that if the Mortgagor shall pay or cause to be paid all indebtedness secured hereby and shall keep, perform and observe all and singular the covenants and promises in the Loan Agreement, this Mortgage, and all other Loan Documents, as defined in the Loan Agreement, expressed to be kept, performed and observed by the Mortgagor, then this Mortgage and the rights hereby granted shall cease, determine and be void, otherwise to remain in full force and effect.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loans and all interest, late charges, prepayment premium, if any interest rate swap or hedge expenses (if any), reimbursement obligations, fees and other expenses for indebtedness issued by Lender and evidenced by or owing under the Note(s), the Loan Agreement and any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Mortgagor or any other obligor to or benefiting Lender which are evidenced or secured by or otherwise provided in the Note(s), the Loan Agreement, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement to Lender of any and all sums incurred, expended or advanced by Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, any of the other Loan Documents with interest thereon as provided herein or therein (collectively, the "Indebtedness").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title. Mortgagor represents, warrants and covenants that (a) Mortgagor is the holder of the fee simple title to the Mortgaged Property, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of Lender under this Mortgage and as otherwise described on Schedule B, Part II of the title insurance commitment number NCS-1138489-MPLS, dated July 8, 2022, and issued by the Title Insurer (the "Permitted Exceptions"); (b) the Mortgaged Property is not used, and shall not be used during the term of this Mortgage, principally or primarily for agriculture or farming purposes; and (c) Mortgagor has legal power and authority to mortgage and convey the Mortgaged Property.

2. Maintenance, Repair, Restoration, Prior Liens, Parking. Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, Mortgagor will:

(a) promptly repair, restore or rebuild any Improvements now or hereafter on the Mortgaged Property which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, regardless of whether proceeds of insurance are available or sufficient for the purpose;

UNOFFICIAL COPY

(b) keep the Mortgaged Property in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien, subject to Mortgagor's right to contest liens as permitted by the terms of this Mortgage;

(c) pay when due the Indebtedness in accordance with the terms of the Note and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Mortgagor under the Note, this Mortgage and the other Loan Documents;

(d) pay when due any indebtedness which may be secured by a permitted lien or charge on the Mortgaged Property on a parity with, superior to or inferior to the lien of this Mortgage, and upon request exhibit satisfactory evidence of the discharge of such lien to Lender (subject to Mortgagor's right to contest liens as permitted by the terms of Section 24 hereof);

(e) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Mortgaged Property;

(f) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Mortgaged Property and the use thereof;

(g) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage;

(h) make no material alterations in the Mortgaged Property or demolish any portion of the Mortgaged Property without Lender's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, except as required by law or municipal ordinance;

(i) suffer or permit no change in the use or general nature of the occupancy of the Mortgaged Property, without Lender's prior written consent;

(j) pay when due all operating costs of any kind or nature of or relating to the Mortgaged Property;

(k) not initiate or acquiesce in any zoning reclassification with respect to the Mortgaged Property, without Lender's prior written consent;

(l) provide and thereafter maintain adequate parking areas within the Mortgaged Property as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; and

(m) comply, and otherwise cause the Mortgaged Property at all times to be operated and maintained in compliance, with all applicable federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations, including, without limitation, complying with all applicable Environmental Laws and other laws and regulations, as amended, affecting Borrower or the Mortgaged Property, and not using or permitting the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

UNOFFICIAL COPY

3. Payment of Taxes and Assessments. Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against Mortgagor, if applicable, the Mortgaged Property or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to Mortgagor's right to contest the same, as provided by the terms of this Mortgage; and Mortgagor will, upon written request, furnish to Lender duplicate receipts therefor within ten (10) days after Lender's request.

4. Insurance.

(a) Mortgagor will obtain, keep in force and maintain the following insurance coverages at all times until this Mortgage is satisfied of record:

(i) Property Insurance. To the extent any Improvements are now or hereafter located on the Real Property, a standard property insurance policy on the "Special" or "all-risk" form, covering the Mortgaged Property, and providing coverage against such other risks as Lender may from time to time require, in the amount of the full replacement cost (insurable value) thereof, without reduction for depreciation, but in no event less than the maximum principal amount of the indebtedness as evidenced by the Note, as defined in the Loan Agreement. Property insurance policies shall include either an agreed amount endorsement or a waiver of any co-insurance provisions, sufficient to ensure that no co-insurance requirements apply.

(ii) Builder's Risk. During the period of any construction, renovation, demolition or alteration work on the Mortgaged Property, a completed value, "All Risk" Builders Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount approved by Lender, including without limitation such endorsements as Lender may require, insuring Lender against damage to the Mortgaged Property. Such policy shall also provide coverage for collapse and theft, and shall contain a "permission to occupy on completion" endorsement or equivalent.

(iii) Flood Insurance. If the Improvements or any part thereof are situated in an area now or subsequently designated by FEMA as a special flood hazard area, a policy of flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Indebtedness if replacement cost coverage is not available for the type of building insured); or (ii) the maximum insurance available under the appropriate National Flood Insurance program. The maximum deductible shall be \$3,000 per building or a higher minimum amount as required by FEMA or other applicable law.

(iv) Liability Insurance. A commercial general liability policy ("CGL Policy"), with coverage on an "occurrence" basis, in such form, amounts and with such companies as Lender may from time to time require, pursuant to the terms of this Mortgage. Such CGL Policy shall have a limit of liability of not less than \$1,000,000 per occurrence, \$3,000,000 in the aggregate. Additional coverages beyond those provided by the standard CGL Policy form shall be provided if Lender so requires. Lender shall be named as an additional insured with Mortgagor on all CGL Policies. Deductibles or self-insured retentions (as the case may be) under the liability policies shall be in such amounts as approved from time to time by Lender in its reasonable discretion. All policies required by this Section 4(a)(iv) shall name Lender as an additional insured under an endorsement satisfactory to Lender.

UNOFFICIAL COPY

(v) Pressure Fired Vessels. Boiler and machinery insurance coverage, if steam boilers or other pressure-fired vessels are in operation at the Mortgaged Property, or as otherwise required by Lender. Minimum liability coverage per accident must equal the replacement cost (insurable value) of the Improvements housing such boiler or pressure-fired machinery. If one or more large HVAC units is in operation at the Mortgaged Property, "Systems Breakdowns" coverage shall be required, as determined by Lender. Minimum liability coverage per accident must equal the value of such unit(s).

(vi) Business Income Insurance. Business income coverage with respect to the Mortgaged Property, covering loss of business income, and rents and "extra expense", if applicable, in an amount at least equal to the estimated aggregate business income (such estimate to be subject to Lender's approval) for a period of at least twelve months, and not less than the total debt service due under the Indebtedness in any fiscal year by Mortgagor plus all real estate taxes and insurance premiums due and payable during the same fiscal year of Mortgagor. All such coverage amounts required under this Section 4(a)(vi) shall be adjusted annually to reflect the anticipated business income payable in the following twelve months.

(vii) Workmen's Compensation. When required by any applicable law, ordinance or other regulation, Worker's Compensation and Employer's Liability Insurance covering all persons subject to the workers' compensation laws of the state in which the Mortgaged Property is located.

(viii) Other Insurance. Such other insurance with respect to the Mortgaged Property as may from time to time be required by Lender against other insurable hazards or casualties (including, without limitation, sinkhole, mine subsidence, war risk, terrorism risk, earthquake and environmental insurance, including, without limitation, insurance against contamination of the Mortgaged Property by third parties) which at the time are commonly insured against in the case of property similarly situated, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

(b) All policies of insurance required herein: (a) shall be issued by and maintained with insurance companies licensed to do business in the State in which the Mortgaged Property is situated, and having a rating of A-, VII or better by the A.M. Best Company; (b) shall contain the complete address (or legal description) of the Mortgaged Property; (c) shall be for terms of at least one year with premium prepaid; (d) shall be subject to the approval of Lender (not to be unreasonably withheld) as to insurance companies, amounts, content, forms of policies, method by which premiums are paid, expiration dates and all other respects; (e) shall include a provision naming Lender, its successors and assigns as their interests may appear: (1) as an additional insured under all liability insurance policies, (2) as the first mortgagee on all property insurance policies under a standard non-contributory mortgage clause (or lender's loss payable clause), and (3) as the lender's loss payee on all loss of rents or loss of business income insurance policies; (f) shall provide for at least thirty (30) days' prior written notice to Lender as a loss payee prior to any policy reduction or cancellation for any reason other than non-payment of a premium and at least ten (10) days' prior written notice to Lender prior to any cancellation due to non-payment of premium; (g) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Lender in accordance with the terms of such policy notwithstanding any act, omission or negligence of Mortgagor which might otherwise result in forfeiture of such insurance; and (h) shall waive all rights of subrogation against Lender. Such policies shall provide, among other things, that all proceeds of the policies are payable directly to Lender (and not to Lender and Mortgagor jointly). All policies must be satisfactory to Lender in all respects, and shall have such endorsements as may be required by Lender from time to time. Lender shall have the right to periodically review the coverage

UNOFFICIAL COPY

amounts of all insurance policies required hereunder, and to require an increase in such coverage amounts if Lender deems such an increase to be reasonably prudent under then existing circumstances.

(c) Lender, by approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, shall not incur any liability for the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment of lawsuits and expenses, and Mortgagor hereby expressly assumes full responsibility therefor and for any liability, if any, thereunder.

(d) In the event of foreclosure of this Mortgage, or other transfer of title to the Mortgaged Property in extinguishment of the Indebtedness, all right, title and interest of the Mortgagor in and to all proceeds of any insurance policies required hereby then in force shall pass to the purchaser or grantee.

(e) Mortgagor, as of the date hereof, shall deliver to Lender evidence that the insurance policies required hereby have been prepaid as required above and either duplicate originals of such policies, if required by Lender, or certified copies of such insurance policies and original certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance, and satisfactory to Lender. Mortgagor shall renew all such insurance and deliver to Lender certificates and policies evidencing such renewals at least thirty (30) days before any such insurance shall expire.

(f) Mortgagor shall not obtain insurance for the Mortgaged Property in addition to that required by Lender and contributing, in the event of loss, with any insurance required hereby, without the prior written consent of Lender, which consent will not be unreasonably withheld provided that: (i) Lender is a named insured or a first mortgagee-loss payee on such insurance, as applicable, (ii) Lender receives complete copies of all policies evidencing such insurance, and (iii) such insurance complies with all of the requirements set forth herein.

(g) If Mortgagor fails to at all required times maintain the insurance coverages required hereby, or fails to deliver to Lender the policies and evidences of insurance and renewals thereof required hereby, or if Lender receives notice that any insurance required hereby will be cancelled, Lender may purchase insurance at Mortgagor's expense to protect Lender's interests in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interests. The coverage that Lender purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Lender, but only after providing evidence that Mortgagor has obtained insurance as required by this Section 4. If Lender purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges Lender may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the principal amount of the Indebtedness. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

(h) If any damage, destruction or loss to or of any of the Mortgaged Property resulting from fire, any peril insured against, or any other cause, except Condemnation, defined below (collectively a "Casualty"), shall occur, Mortgagor shall promptly give written notice thereof to Lender describing the damage and the Casualty, and shall promptly commence and diligently pursue to completion (in accordance with plans and specifications approved by Lender) the restoration, repair and rebuilding of the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to the Casualty. If the Casualty is covered by insurance, Mortgagor shall immediately make proof of loss and collect all insurance proceeds available relating to such Casualty, provided, however, that all such insurance proceeds for losses of \$5,000 or more shall be payable to Lender or as Lender shall otherwise

UNOFFICIAL COPY

direct in writing. If an Event of Default shall be in existence, or if Mortgagor shall fail to provide notice to Lender of filing proof of loss, or if Mortgagor shall not be diligently proceeding, in Lender's discretion, to collect such insurance proceeds, then Lender may, but is not obligated to, make proof of loss, and is authorized, but is not obligated, to settle any claim with respect thereto, and to collect the proceeds thereof (and Mortgagor shall promptly reimburse Lender upon Lender's demand for all costs and expenses incurred by Lender in connection with the same). In connection therewith, Mortgagor does hereby irrevocably authorize, empower and appoint Lender as attorney in fact for Mortgagor (which appointment is coupled with an interest) to do any and all of the foregoing in the name and on behalf of Mortgagor. Mortgagor shall not accept any settlement of an insurance claim in excess of \$5,000 without Lender's prior written consent.

Lender shall make the net insurance proceeds received by it (after reimbursement of Lender's out-of-pocket costs of collecting and disbursing the same) from any Casualty occurring after Closing, as defined in the Loan Agreement, available to Mortgagor to pay the cost of restoration, repair and rebuilding of the Mortgaged Property, subject to the following conditions: (i) no Event of Default, and no event that with the giving of notice or the passage of time would be an Event of Default, shall be in existence at the time of the insured loss or of any disbursement of the insurance proceeds; (ii) Lender shall have determined, in its reasonable discretion, that the cost of restoration, repair and rebuilding is and will be equal to or less than the amount of insurance proceeds and other funds deposited by Mortgagor with Lender; (iii) Lender shall have determined, in its reasonable discretion, that the restoration, repair and rebuilding can be completed within 18 months following the date of receipt of the insurance proceeds in accordance with plans and specifications approved by Lender (such approval not to be unreasonably withheld), in accordance with codes and ordinances, and in any event not less than six months prior to the maturity date of the Indebtedness; (iv) all funds shall be disbursed, at Lender's option, in accordance with Lender's customary disbursement procedures for construction loans; (v) the Casualty shall have occurred more than 24 months prior to the maturity date of the Indebtedness; (vi) Lender shall have determined, in its reasonable discretion, that the fair market value of the Mortgaged Property following the Casualty and reconstruction will equal or exceed the fair market value of the Mortgaged Property on the date of this Mortgage. If any of the foregoing conditions shall not be satisfied, then Lender shall have the right to use the insurance proceeds to prepay the Indebtedness in such order of application as the Lender may determine. If any insurance proceeds shall remain after (a) prepayment of the Indebtedness; or (b) completion of the restoration, repair and rebuilding of the Mortgaged Property, such remaining balance of insurance proceeds shall be disbursed to Mortgagor, or at the Lender's discretion, used to prepay the Loan in such order of application as Lender may determine.

5. **Condemnation.** If all or any part of the Mortgaged Property are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to Lender, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Lender. Such award or monies shall be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable and, at any time from and after the taking Lender may declare the whole of the balance of the Indebtedness plus any Prepayment Premium to be due and payable. Notwithstanding the provisions of this section to the contrary, if any condemnation or taking of less than the entire Mortgaged Property occurs and provided that no Event of Default and no event or circumstance which with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and if such partial condemnation, in the reasonable discretion of Lender, has no material adverse effect on the operation or value of the Mortgaged Property, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by Mortgagor, and Lender hereby agrees that in such

UNOFFICIAL COPY

event it shall not declare the Indebtedness to be due and payable, if it is not otherwise then due and payable.

6. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, Mortgagor shall pay such tax in the manner required by any such law. Mortgagor further agrees to reimburse Lender for any sums which Lender may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Lender.

7. Assignment of Rents and Leases. The following provisions shall apply to the assignment of rents, leases and profits for the Mortgaged Property:

(a) To further secure the Indebtedness, Mortgagor hereby assigns unto Lender all of the rents, leases and income now or hereafter due under any Leases agreed to by Mortgagor or the agents of Mortgagor or which may be made or agreed to by Lender under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, rents and income thereunder, to Lender. Mortgagor represents that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents for any portion of the Mortgaged Property has been, or will be waived, reduced or otherwise discharged or compromised by Mortgagor. Mortgagor waives any rights of set-off against any person in possession of any portion of the Mortgaged Property. Mortgagor agrees that it will not assign any of the rents or profits of the Mortgaged Property, except to a purchaser or grantee of the Mortgaged Property. Nothing herein contained shall be construed as constituting Lender a Lender in possession in the absence of the taking of actual possession of the Mortgaged Property as permitted herein. Mortgagor expressly waives all liability of Lender in the exercise of the powers herein granted Lender. Mortgagor shall assign to Lender all future leases upon any part of the Mortgaged Property and shall execute and deliver, at the request of Lender, all such further assurances and assignments in the Mortgaged Property as Lender shall from time to time require. Although the assignment contained in this paragraph is a present assignment, Lender shall not exercise any of the rights or powers conferred upon it by this paragraph until an Event of Default shall exist under this Mortgage. Within thirty (30) days of Lender's written demand, Mortgagor will furnish Lender with executed copies of each of the Leases and with estoppel letters from each tenant in a form satisfactory to Lender. If Lender requires that Mortgagor execute and record a separate collateral assignment of rents or separate assignments of any of the Leases to Lender, the terms of those assignments shall control in the event of a conflict with the terms of this Mortgage.

(b) With respect to the Leases, Mortgagor represents and warrants to Lender that:

(i) Mortgagor is entitled to receive all rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

(ii) Mortgagor has the full right, power, and authority to enter into this Mortgage and to assign and convey all rights to rents and profits under the Leases to Lender.

(iii) Mortgagor has not previously assigned or conveyed the rents or profits under the Leases to any other person by any instrument now in force.

UNOFFICIAL COPY

(iv) Mortgagor will not sell, assign, encumber, or otherwise dispose of any of Mortgagor's rights in the Leases except as provided in this Mortgage.

(c) Lender shall have the right at any time, and after an Event of Default shall have occurred under this Mortgage, to collect and receive all rents pursuant to the Leases. For this purpose, Lender is hereby given and granted the following rights, powers and authority after and in conjunction with a continuing Event of Default:

(i) Lender may send notices to any and all tenants of the Mortgaged Property advising them of this assignment and directing all rents to be paid directly to Lender or Lender's agent.

(ii) Lender may enter upon and take possession of the Mortgaged Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the rents; institute and carry on all legal proceedings necessary for the protection of the Mortgaged Property, including such proceedings as may be necessary to recover possession of the Mortgaged Property; collect the rents and remove any tenant or tenants or other persons from the Mortgaged Property.

(iii) Lender may rent or lease the whole or any part of the Mortgaged Property for such term or terms and on such conditions as Lender may deem appropriate.

(iv) Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Mortgagor's name, to rent and manage the Mortgaged Property, including the collection and application of rents.

(d) Lender, in its sole discretion, shall determine the application of any and all rents received by it; however, any such rents received by Lender which are not applied to such and expenses under the Leases shall be applied to the Indebtedness. All expenditures made by Lender under this Mortgage and not reimbursed from the rents shall become a part of the Indebtedness secured by this Mortgage, and shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

8. Effect of Extensions of Time and Other Changes. If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property or having an interest in Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Lender, notwithstanding such extension, variation, release or change.

9. Lender's Performance of Defaulted Acts and Expenses Incurred by Lender. If an Event of Default has occurred, Lender may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Lender, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Property or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Mortgaged Property. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Lender in regard to any tax referred to in Section 6, above, or to

UNOFFICIAL COPY

protect the Mortgaged Property or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Loan Agreement). In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Lender in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Lender's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Mortgaged Property, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Mortgaged Property, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Lender, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this section shall be immediately due and payable by Mortgagor to Lender, and shall be additional Indebtedness evidenced by the Note and secured by this Mortgage. Lender's failure to act shall never be considered as a waiver of any right accruing to Lender on account of any Event of Default. Should any amount paid out or advanced by Lender hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Mortgaged Property or any part thereof, then Lender 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, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

10. Security Agreement. Mortgagor and Lender agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to the Fixtures. This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Mortgaged Property and the goods described herein, which goods are or may become fixtures relating to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Lender (Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording in the Official Records of the county or counties where the Mortgaged Property are located. Mortgagor is the record owner of the Mortgaged Property. Mortgagor represents and warrants that:

- (i) Mortgagor is the record owner of the Mortgaged Property;
- (ii) the name and address of Debtor are:

THE EVANGELICAL COVENANT CHURCH OF WINNETKA,
an Illinois religious corporation
1200 Hibbard Road
Wilmette, Illinois 60091

- (iii) the name and address of Secured Party are:

NATIONAL COVENANT PROPERTIES,
an Illinois not for profit corporation
8303 West Higgins Road
Chicago, Illinois 60631

11. Restrictions on Transfer. Mortgagor, without the prior written consent of Lender, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). A Prohibited Transfer is any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or

UNOFFICIAL COPY

any agreement to do any of the foregoing) of the Mortgaged Property or any part thereof or interest therein regardless of whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this section shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, or (iii) to leases permitted by the terms of the Loan Documents, if any.

12. Events of Default; Acceleration. Each of the following shall constitute an “Event of Default” for purposes of this Mortgage:

(a) Mortgagor fails to pay (i) any installment of principal or interest payable pursuant to the terms of the Note, or (ii) any other amount payable to Lender under the Note, this Mortgage or any of the other Loan Documents within five (5) days after the date when any such payment is due in accordance with the terms hereof or thereof;

(b) Mortgagor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under the Note, this Mortgage or any of the other Loan Documents; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Mortgaged Property, and the priority, validity and enforceability of the liens created by the Mortgage or any of the other Loan Documents and the value of the Mortgaged Property are not impaired, threatened or jeopardized, then Mortgagor shall have a period (the “Cure Period”) of thirty (30) days after Mortgagor receives written notice of the alleged default from Lender specifying the default and the cure for such default to cure the same or if such cure cannot be completed within such thirty (30) day period to undertake appropriate action to commence such cure within such thirty (30) day period and to thereafter diligently pursue completion of the cure, an Event of Default shall not be deemed to exist during the Cure Period. Notwithstanding anything to the contrary contained herein, there shall be no Cure Period applicable for the failure of Mortgagor to maintain insurance or perform the Environmental Obligations as set forth in this Mortgage;

(c) the existence of any inaccuracy or untruth in any material respect in any certification, representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to Lender by Mortgagor;

(d) Mortgagor files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Mortgagor or of all or any substantial part of the property of Mortgagor, the Mortgaged Property or all or a substantial part of the assets of Mortgagor are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within sixty (60) days;

(e) the commencement of any involuntary petition in bankruptcy against Mortgagor or the institution against Mortgagor of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceeding under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor which shall remain undismissed or undischarged for a period of sixty (60) days;

UNOFFICIAL COPY

- (f) the dissolution, termination or merger of Mortgagor without Lender's written consent;
- (g) the occurrence of a Prohibited Transfer;
- (h) the occurrence of an Event of Default under the Note(s), the Loan Agreement or any of the other Loan Documents.

If an Event of Default occurs, Lender may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to Mortgagor, with interest thereon accruing from the date of such Event of Default until paid at the Default Rate.

13. Foreclosure; Expense of Litigation.

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the foreclosure laws of the State of Illinois (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Lender is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this section and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Mortgaged Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Lender in any litigation or proceeding affecting this Mortgage, the Note, or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

14. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Lender may determine in its sole and absolute discretion.

15. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Lender, appoint a receiver for the Mortgaged Property in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Mortgaged Property or whether the

UNOFFICIAL COPY

same shall be then occupied as a homestead or not and Lender hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues, contributions and profits of Mortgagor and the Mortgaged Property (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property during said period, including, to the extent permitted by law, the right to lease all or any portion of the Mortgaged Property for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

16. Lender's Right of Possession in Case of Default. At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Lender, surrender to Lender possession of the Mortgaged Property. Lender, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Lender may then hold, operate, manage and control the Mortgaged Property, either personally or by its agents. Lender shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Mortgaged Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Lender shall have full power to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- (b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property as Lender deems are necessary;
- (e) insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof; and
- (f) receive all of such avails, rents, issues and profits.

UNOFFICIAL COPY

17. Application of Income Received by Lender. Lender, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Mortgaged Property to the payment of or on account of the following, in such order as Lender may determine:

(a) to the payment of the operating expenses of the Mortgaged Property, including cost of management and leasing thereof (which shall include compensation to Lender and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Mortgaged Property; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

18. Compliance with the Act

(a) If any provision in this Mortgage shall be inconsistent with any provision of the Act, 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.

(b) If any provision of this Mortgage shall grant to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Lender which are of the type referred to in the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall to the extent not prohibited by the Act or applicable law, be added to the Indebtedness and/or by the judgment of foreclosure.

19. Rights Cumulative. Each right, power and remedy herein conferred upon Lender is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Lender, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Lender in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

UNOFFICIAL COPY

20. Lender's Right of Inspection. Lender and its representatives shall have the right upon reasonable advance notice and at reasonable times to inspect the Mortgaged Property and the books and records with respect thereto and access thereto shall be permitted for that purpose.

21. Release Upon Payment and Discharge of Mortgagor's Obligations. Lender shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Lender in connection with the execution of such release.

22. Notices. Any notices, communications and waivers under this Mortgage shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by overnight express carrier, addressed in each case as follows:

To Lender
National Covenant Properties
8303 W. Higgins Rd.
Chicago, IL 60631
Attn: Peter A. Hedstrom

With a copy to:
Erickson Peterson Cramer
100 South Saunders Road, Suite 150
Lake Forest, IL 60045
Attn: Christopher W. Cramer

To Mortgagor:
The Evangelical Covenant Church of Winnetka
1200 Hubbard Road
Wilmette, IL 60091

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

23. Waiver of Rights. Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of the Act or other applicable law or replacement statutes;

(b) Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or

UNOFFICIAL COPY

delegated to Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(c) If Mortgagor is a trustee, Mortgagor represents that the provisions of this section (including the waiver of reinstatement and redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

24. Contests. Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Mortgaged Property or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Mortgaged Property (each, a "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

(a) Mortgagor shall forthwith give notice of any Contested Lien to Lender at the time the same shall be asserted;

(b) Mortgagor shall either pay under protest or deposit with Lender the full amount (the "Lien Amount") of such Contested Lien, together with such amount as Lender may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Lender a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Lender;

(c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Mortgaged Property, and shall permit Lender to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of Lender's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);

(d) Mortgagor shall pay each such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Lender if, in the opinion of Lender, and notwithstanding any such contest, the Mortgaged Property shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Lender may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of Lender to obtain the release and discharge of such liens; and any amount expended by Lender in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Lender may in such case use and apply monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

UNOFFICIAL COPY

25. Expenses Relating to Note and Mortgage.

(a) Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note(s), the Loan Agreement, this Mortgage or any of the other Loan Documents, including without limitation, Lender's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Lender), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note(s), the Loan Agreement and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Lender:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Lender shall be a party by reason of the Loan Documents or in which the Loan Documents or the Mortgaged Property are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Lender's taking possession of and managing the Mortgaged Property, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Mortgaged Property, the assumption of liability for any of the Indebtedness or the transfer of the Mortgaged Property in lieu of foreclosure; or

(vi) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Lender's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs and fees described in this section shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

26. Statement of Indebtedness. Mortgagor, within seven (7) days after being so requested by Lender, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

27. Further Instruments. Upon request of Lender, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such

UNOFFICIAL COPY

further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

28. Additional Indebtedness Secured. All persons and entities with any interest in the Mortgaged Property or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note, any of the other Loan Documents or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Lender to operate, manage or maintain the Mortgaged Property or to otherwise protect the Mortgaged Property or the lien of this Mortgage.

29. Indemnity. Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Lender in the exercise of the rights and powers granted to Lender in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability, except to the extent resulting from the acts or omissions of Lender. Mortgagor shall indemnify and save Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses, including reasonable attorneys' fees and court costs (collectively, "Claims"), of whatever kind or nature which may be imposed on, incurred by or asserted against Lender at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Lender may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Mortgaged Property; and (c) the ownership, leasing, use, operation or maintenance of the Mortgaged Property, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Mortgaged Property to Lender in accordance with the terms of this Mortgage; provided, however, that Mortgagor shall not be obligated to indemnify or hold Lender harmless from and against any Claims directly arising from the acts or omissions of Lender. All costs provided for herein and paid for by Lender shall be so much additional Indebtedness and shall become immediately due and payable upon demand by Lender and with interest thereon from the date incurred by Lender until paid at the Default Rate.

30. Compliance with Environmental Laws.

(a) Environmental Covenants. Mortgagor covenants and agrees that Mortgagor: (a) shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Mortgagor or tenants under leases at the Property in the ordinary course of their businesses and in compliance with all Environmental Laws); (b) shall not install or use any underground storage tanks, shall not itself engage in and shall expressly prohibit all tenants of space in the Improvements from engaging in the use, generation, handling, storage, production, processing or management of Hazardous Substances, except in the ordinary course of their businesses and in compliance with all Environmental Laws; (c) shall not itself cause or allow and shall expressly prohibit the release of Hazardous Substances at, on, under, or from the Property; shall itself comply and shall expressly require all tenants and any other persons who may come upon the Property to comply with all Environmental Laws; (d) shall keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Mortgagor or any other person or entity ("Environmental Liens"), provided that in the event any such lien or encumbrance is filed against the Property, Mortgagor shall be entitled to diligently contest the same in good faith and if such contest is lost, promptly act to pay for release of same; (e) shall comply and cause all occupants of the Property to comply with the recommendations of any qualified environmental engineer or other expert that apply or pertain to the Property, provided Mortgagor shall be entitled to obtain additional recommendations if desired and may rely on an alternative recommendation of any qualified

UNOFFICIAL COPY

environmental engineer; and (f) without limiting the generality of the foregoing, during the term of this Agreement, shall not use any construction materials which contain asbestos nor install in the Improvements on the Property, or permit to be installed in the Improvements on the Property, any materials which contain asbestos.

(b) Notice and Access. Mortgagor shall promptly notify the Indemnified Parties in writing if Mortgagor knows, suspects or believes there is or are (a) any Hazardous Substances, other than those used by Mortgagor or tenants under leases at the Property in the ordinary course of their businesses and in material compliance with all Environmental Laws, present on the Property; (b) any release of Hazardous Substances in, on, under, from or migrating towards the Property; (c) any material non-compliance with Environmental Laws related in any way to the Property; (d) any actual or potential Environmental Liens; (e) any investigation or action or claim whether threatened or pending, by any governmental agency or third party pertaining to the release of Hazardous Substances in, on, under, from, or migrating towards the Property; and/or (f) any installation of wells, piping, or other equipment at the Property to investigate, remediate or otherwise address any release of Hazardous Substances at, on, in or in the vicinity of the Property. Mortgagor shall promptly, at Mortgagor's sole cost and expense, take all reasonable actions with respect to any Hazardous Substances or other environmental condition at, on or under the Property or other affected property, including all investigative, monitoring, removal, containment and remedial actions in accordance with all applicable Environmental Laws, including the payment, at no expense to the Indemnified Parties, of all clean-up, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property in all instances as necessary to (i) comply with all applicable Environmental Laws; (ii) protect human health or the environment; (iii) allow continued use, occupation, or operation of the Property; and/or (iv) maintain the fair market value of the Property (collectively, the "Completion of the Clean-up"). In the event Mortgagor fails to do so, the Indemnified Parties may, but shall not be obligated or have any duty to, cause the Completion of the Clean-up of the Property. Each Mortgagor hereby grants to the Indemnified Parties and their agents and employees access to the Property as provided in sub-section (c), below, and a license to remove any items deemed by the Indemnified Parties to be Hazardous Substances and to do all things the Indemnified Parties shall deem necessary to cause the Completion of the Clean-up of the Property, in the event Mortgagor fails to do so within a reasonable time after notice by the Indemnified parties.

(c) Indemnification. Mortgagor covenants and agrees, at such Mortgagor's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to the Indemnified Parties), and hold the Indemnified Parties harmless from and against any and all liens, actual out of pocket damages (including, without limitation, consequential damages imposed against the Indemnified Parties), losses, liabilities, obligations, settlement payments, penalties, claims, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted against the Indemnified Parties or the Property, and arising directly or indirectly from or out of:

(i) the past, present or future presence, release or threat of release of any Hazardous Substances on, in, under or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of any Mortgagor;

UNOFFICIAL COPY

(ii) the past, present or future violation of any Environmental Laws, relating to or affecting the Property or Mortgagor's operations, whether or not caused by or within the control of any Mortgagor;

(iii) the failure by Mortgagor to comply fully with the terms and conditions of this Section 30;

(iv) any misrepresentation or inaccuracy in or the breach of any representation or warranty contained in this Agreement; or

(v) the enforcement of this Section 30, including any liabilities that arise as a result of the actions taken or caused to be taken by the Indemnified Parties under this Section 30, the cost of assessment, containment and/or removal of any and all Hazardous Substances from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, release or threat of release of any Hazardous Substances on, in, under or affecting any portion of the Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas. The Indemnified Parties' rights under this Section 30 shall survive payment in full of Mortgagor's obligations under the Loan Documents and shall be in addition to all other rights of the Indemnified Parties under the Mortgage, the Notes and the other Loan Documents. The foregoing notwithstanding, Mortgagor's obligations under this Section 30 with regard to any Post Transfer Indemnification Responsibilities (as hereinafter defined) shall be limited to such obligations directly or indirectly arising out of or resulting from any Hazardous Substances that were present or released in, on, or around any part of the Property, or in the soil, groundwater or soil vapor on or under the Property at any time before or while Mortgagor held title to or was in possession or control of the Property (the "Mortgagor's Continuing Responsibility"). "Post Transfer Indemnification Responsibilities" shall mean any obligations hereunder to indemnify, defend, and hold the Indemnified Parties harmless arising after the Indemnified Parties cease to hold a security interest in the Property or acquire title to the Property as a result of foreclosure, deed in lieu of foreclosure, other transfer of the Property.

31. Miscellaneous.

(a) Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Lender, its successors and assigns and any holder or holders, from time to time, of the Note(s).

(b) Invalidity of Provisions; Governing Law. In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois, which laws shall, without limitation, govern the enforceability, validity, and interpretations of this Mortgage, except to the

UNOFFICIAL COPY

extent that the creation or perfection of any security interest or enforcement of any remedy is governed by the State in which the Mortgaged Property is located.

(c) Municipal Requirements. Mortgagor shall not by act or omission permit any building or other improvement on Mortgaged Property not subject to the lien of this Mortgage to rely on the Mortgaged Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Lender any and all rights to give consent for all or any portion of the Mortgaged Property or any interest therein to be so used. Similarly, no building or other improvement on the Mortgaged Property shall rely on any Mortgaged Property not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subsection shall be void.

(d) Rights of Tenants. Lender shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Lender. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Mortgaged Property by Lender pursuant to this Mortgage.

(f) Relationship of Lender and Mortgagor. Lender shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Lender shall not be deemed to be such partner, joint venturer, agent or associate on account of Lender becoming a mortgagee-in-possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of Mortgagor and Lender hereunder is solely that of debtor/creditor.

(g) Time of the Essence. Time is of the essence of the payment by Mortgagor of all amounts due and owing to Lender under the Note and the other Loan Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

(h) No Merger. The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Mortgaged Property, and if Lender acquires any additional or other interest in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(i) Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the principal amount of the Loans included in the Indebtedness exceed an amount equal to SEVEN HUNDRED TWENTY-TWO THOUSAND and NO/100 DOLLARS (\$722,000.00) plus those expenses incurred by Lender in accordance with the Loan Documents;

UNOFFICIAL COPY

provided, however, in no event shall Lender be obligated to advance funds in excess of the face amount of the Note(s).

(j) **CONSENT TO JURISDICTION.** TO INDUCE LENDER TO ACCEPT THE NOTE, MORTGAGOR IRREVOCABLY AGREES THAT, CONSENTS TO, AND SUBMITS TO, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN THE STATE OF ILLINOIS AND THE STATE IN WHICH THE MORTGAGED PROPERTY IS LOCATED.

(k) **WAIVER OF JURY TRIAL.** MORTGAGOR AND LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

(l) **Complete Agreement.** This Mortgage, the Loan Agreement, the Note(s) and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof. No modification of this Mortgage shall be enforceable unless signed by Mortgagor and authorized in writing by Lender.

[SIGNATURE PAGE FOLLOWS]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing the day and year first above written.

THE EVANGELICAL COVENANT CHURCH OF WINNETKA, an Illinois religious corporation

By: [Signature]
Rob Thomas, Trustee Chair

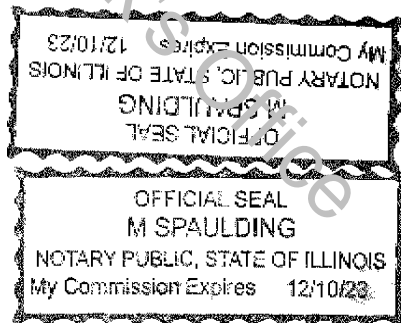
And: [Signature]
John Lindahl, Church Chair

STATE OF Illinois
COUNTY OF Cook, SS.

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DOES HEREBY CERTIFY that Rob Thomas, Trustee Chair, and John Lindahl, Church Chair, of THE EVANGELICAL COVENANT CHURCH OF WINNETKA, an Illinois religious corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29 day of December, 2022.

[Signature]
Notary Public



UNOFFICIAL COPY

EXHIBIT "A"
LEGAL DESCRIPTION OF REAL PROPERTY

That part of the West 14 acres of the North 64 acres of the West 1/2 of the Southwest 1/4 of Section 29, Township 42 North, Range 13 East of the Third Principal Meridian, lying North of Avoca Road, in Cook County, Illinois.

Property Address: 1200 Hibbard Road, Wilmette, Illinois 60091
Permanent Index No.: 05-29-300-001-0000

Property of Cook County Clerk's Office