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## PURCHASE MONEY WRAPAROUND MORTGAGE

THIS PURCHASE MONEY WRAPAROUND MORTGAGE, made as of this 1st day of November, 1985, between Midway Realty Associates, L.P. II, a Texas limited partnership having an office at Two Turtle Creek Village, Dallas, Texas 75219 (the "Mortgagor") and Commodore Resources Corporation, a Utah Corporation, having an office at 50 South Main Street, Salt Lake City, Utah (the "Mortgagee").

### W I T N E S S E T H :

WHEREAS, the Mortgagee has this date sold, or conveyed and transferred to the Mortgagor all the Mortgagee's right title and interest in and to the premises described below subject, among other things, to the mortgage described below; and

WHEREAS, in connection with the sale of the hereinafter defined Mortgaged Property, the Mortgagor is indebted to the Mortgagee in the principal amount of Three Million Five Hundred Twenty Thousand Dollars (\$3,520,000), which indebtedness is evidenced by a certain All-Inclusive Purchase Money Wraparound Note (the "Note") of even date herewith, which is hereby incorporated by referenced and made a part hereof; and

WHEREAS, this is an All-Inclusive Wraparound Mortgage which by its terms wraps around and restates the following prior mortgage liens and agreements and the notes secured thereby (the First and Second Mortgages are hereinafter collectively referred to as the "Underlying Mortgage");

Mortgage dated as of May 31, 1978 given by La Salle National Bank, as Trustee under Trust Agreement dated March 12, 1973 and known as Trust No. 40605, recorded in the Office of the Cook County Recorder of Deeds (the "Office") on August 10, 1978, as Document No. 24577663 securing a note in the amount of \$3,000,000 held by Chase Manhattan Bank, N.A. (the "Bank") (the "First Mortgage") and mortgage dated as of May 1, 1978 given by said Trustee under said Trust, recorded in the Office on October 3, 1978 as Document No. 24634485, securing a note in the amount of \$250,000 held by the Bank (the "Second Mortgage"); and

WHEREAS, the Mortgagor has agreed to repay said indebtedness, which is evidenced by the Note; and

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WHEREAS, Mortgagor intends by the execution and delivery of this Mortgage to secure the payment by Mortgagor of all of its obligations, debts and liabilities under or pursuant to the Note, and all other obligations and debts described herein, in accordance with the terms thereof and hereof (all of such obligations, debts and liabilities being sometimes referred to as the "Indebtedness"); and

WHEREAS, Mortgagor represents to Mortgagee that all acts and things necessary to constitute this instrument a valid mortgage for the security of the Indebtedness have been done.

NOW, THEREFORE, to secure the payment of the Indebtedness and the due performance of the covenants, agreements and provisions contained herein, the Mortgagor does hereby grant, bargain, convey, warrant, assign, transfer and mortgage unto the Mortgagee and its successors and assigns, all of the Mortgagor's right, title and interest in and to the following property (hereinafter referred to as the "Property" or "Mortgaged Property"):

(a) All of the buildings and improvements now and hereafter located on that certain plot, piece or parcel of land lying and being in the City of Alsip, County of Cook and State of Illinois more particularly described on Exhibit A annexed hereto and made part hereof, (collectively the "Buildings") but specifically excluding the land on which said buildings and improvements are located (the "Land");

(b) All and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion or reversions, remainder and remainders, and also all the estate, right, title benefit, privilege, interest, property, claim and demand whatsoever of the Mortgagor, of, in and to the same and of, in and to every part and parcel thereof;

(c) All rents, royalties and profits of the Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to the Mortgagor, however, so long as the Mortgagor is not in default hereunder beyond any applicable grace period, the right to receive and retain such rents, royalties and profits;

(d) All fixtures, materials, equipment, machinery, apparatus, furnishings, fittings, chattels, and all other property, real and personal, tangible or intangible (excluding cash), now or hereafter installed, attached or used on the Buildings and which are owned by Mortgagor and used in the operation and enjoyment of said improvements, or otherwise furnished to the tenants thereon or therein (and now owned by such tenants), including, but not limited to, all heating, lighting, plumbing, laundry, ventilating, incinerating, water

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heating, cooling, air conditioning and power equipment, machines, boilers, compressors, pumps, motors, dynamos, escalators, elevators, tanks, awnings, screens, ranges, stoves, cabinets, shades, storm doors and windows, blinds, carpets, draperies, furniture, floor covering, switchboards, plants, and other goods, chattels and personal property as are ever used or furnished in connection with the operation, use and enjoyment of the Buildings or the activities conducted therein, and all renewals, replacements and substitutions therefor and additions thereto. It is hereby agreed that to the extent permitted by law, all of the foregoing properties and fixtures are to be deemed and held to be a part of and affixed to the Buildings;

(e) All awards heretofore and hereafter made to the Mortgagor for taking by eminent domain or condemnation the whole or any part of said Property or any easement therein, including any awards for changes of grade of streets, which said awards are hereby assigned to the Mortgagee, who is hereby authorized to collect and receive the proceeds of such awards and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the Indebtedness, notwithstanding the fact that the amount owing thereon may not then be due and payable; and the said Mortgagor hereby agrees, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purposes of assigning said awards to the Mortgagee, free, clear and discharged of any encumbrances of any kind or nature whatsoever; and

(f) Mortgagor's interest as Lessee by assignment under a certain ground lease (the "Ground Lease") of even date herewith between Mid-Warehouses, Corp. as Lessor, and Mortgagee, as Lessee, covering the Land.

TO HAVE AND TO HOLD, free from all rights and benefits under and by virtue of the Homestead Exemption Law of the State of Illinois, which rights and benefits the Mortgagor hereby expressly waives and releases.

SUBJECT, HOWEVER, to the liens, encumbrances, restrictions, exceptions, reservations, easements and other matters set forth or referred to on Exhibit "B" attached hereto and made a part hereof for all purposes (hereinafter referred to collectively as the "Permitted Encumbrances").

AND IT IS AGREED AND UNDERSTOOD, that until default is made, the Mortgagor, its successors and assigns, may retain possession of the Mortgaged Property.

AS FURTHER SECURITY for payment of said indebtedness and performance of the Mortgagor's obligations, covenants and

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agreements herein contained, the Mortgagor hereby transfers, sets over and assigns to the Mortgagee:

All and singular the interest and right of Mortgagor, as lessor and landlord (or sublessor and sublandlord, as the case may be) in and to all leases, rental and occupancy agreements and tenancies, now existing or hereafter created, together with all rents, royalties, issues and profits of the Property from time to time accruing or arising from such leases, rental and occupancy agreements and tenancies and any and all extensions and renewals thereof; provided, however, that so long as there shall exist no Event of Default, as that term is hereinafter defined, Mortgagor shall have the right to collect, but not more than thirty (30) days in advance, all rents, royalties, issues and profits from the Mortgaged Property, and to retain, use and enjoy the same, it being the intention of Mortgagor and Mortgagee to create a severance of all such rents, royalties, issues and profits upon the occurrence of an Event of Default, whereupon all lessees, occupants and tenants of the Mortgaged Property, and all statutory trustees or other persons in possession of such rents, royalties, issues and profits, and all their successors and assigns are directed to pay and deliver the same to the Mortgagee secured hereby, to be applied upon any delinquency in the payment of the Indebtedness or the performance of the Mortgagor's obligations hereunder, and the Mortgagee is, upon the occurrence of any Event of Default, authorized to collect and receive the same by all lawful means and such persons are directed to continue such payments until notified in writing by the Mortgagee to discontinue same.

All of the above-described property (including the Property) shall also hereinafter be deemed part of and referred to as the "Mortgaged Property."

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee and unto its successors and assigns forever and Mortgagor does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND the Mortgaged Property, subject as aforesaid, unto Mortgagee and its successors and assigns against any and every person claiming the same or any part hereof, by, through or under Mortgagor, but not otherwise.

This Mortgage is made subject to the following covenants, obligations and agreements:

1. Compliance With Terms of Mortgage and Mortgagee's Obligations.

(a) The Mortgagor agrees to comply with all of the terms, covenants and conditions contained herein, in the Note or in any other instrument which may be held by Mortgagee

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as additional security for the Note, and not to suffer or permit any default to occur under this Mortgage, the Note or any other instrument which may be held by Mortgagee as additional security for the Note.

(b) The Mortgagor agrees to pay the Indebtedness as provided herein and in the Note.

(c) If Mortgagor shall pay or cause to be paid the Indebtedness or if Mortgagor shall pay Mortgagee the principal amount outstanding hereunder together with all accrued interest thereon in excess of the outstanding principal amount of the Underlying Mortgage, then Mortgagee, on demand of Mortgagor, shall duly execute, acknowledge and deliver to Mortgagor such instruments of satisfaction or release in respect of the Mortgaged Property and all other rights and interests covered hereby, as may be necessary or proper to discharge this Mortgage of record or shall assign this Mortgage to Mortgagor, at Mortgagor's option.

(d) The Mortgagee hereby agrees to pay to the holder of the Underlying Mortgage, eighty-five and 42/100 (85.42%) percent of the principal payments due thereunder, together with eighty-five and 42/100 (85.42%) percent of all interest thereon accruing thereunder as and when required by the terms of the Underlying Mortgage, that is, by paying such portion of the constant required installments of principal and interest due before the expiration of any applicable grace periods as are contained in the Underlying Mortgage.

(e) The Mortgagee hereby agrees to pay to the holder of the Underlying Mortgage any required payments for real estate taxes, insurance premiums and the like.

(f) With the sole exception of such payments of principal, the interest due thereon, and any required payments for real estate taxes, insurance premiums and the like, the Mortgagee does not hereby assume any of the obligations of the Mortgagor under the Underlying Mortgage. The obligation of the Mortgagee to make the aforesaid payments of principal and interest and any required payments for real estate taxes, insurance premiums and the like under the Underlying Mortgage shall be solely for the benefit of the Mortgagor hereunder or any subsequent owner of the Mortgaged Property and shall not inure to the benefit of, and shall be enforceable by, any third person or party, and specifically not to the benefit of and shall not be enforceable by the holder of the Underlying Mortgage.

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2. Insurance Coverage, Taxes, Special Assessments.

(a) The Mortgagor agrees to keep the Mortgaged Property insured for the benefit of the Mortgagee and to obtain and maintain the following coverage:

(i) Casualty insurance covering the buildings and improvements and contents thereof constituting the Mortgaged Property in an amount equal to the maximum insurance replacement value thereof, with a replacement cost endorsement. Such insurance shall provide coverage against loss or damage by fire or other hazards covered by a broad form of standard extended coverage, all risk, including without limitation, windstorm, hail, lightning, explosion, riot, civil commotion, vandalism, and malicious mischief endorsements.

(ii) Public liability and property damage insurance in such amounts as the Mortgagee may require but in no event less than One Million Dollars (\$1,000,000.00) single limit coverage.

(iii) Rental insurance in an amount equal to one year's rent income.

(iv) Worker's Compensation and employer's liability insurance in such amounts as the Mortgagee may require.

(v) Any other insurance the Mortgagee may require against any other risk insured against by prudent persons operating similar properties in similar locations or required by a holder of the Underlying Mortgage.

(b) The coverage shall be maintained at all times until the indebtedness is fully paid. The insurance policies shall be obtained from companies and be in form acceptable to the Mortgagee. The insurance policies shall be properly endorsed with the Illinois standard form of Mortgagee clause, with losses payable to the Mortgagee, without contribution and deposited with the Mortgagee. The insurance policies shall contain a provision that they shall not be cancelled until ten (10) days after written notice of cancellation to the Mortgagee. If duly executed original renewal policies and endorsements are not delivered to the Mortgagee twenty (20) days before the expiration date of the current policies, together with proof of payment of the

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premiums, or if the Mortgagor shall fail to maintain the required insurance coverage, the Mortgagee may, but is not obligated to, obtain such coverage and pay the required premiums. Any premiums paid, together with interest at the rate of eighteen percent (18%) per annum, shall be part of the Indebtedness secured by this Mortgage and shall be payable upon demand. The Mortgagee shall not be liable for any loss, damage or injury that may result from the failure to obtain insurance coverage. Notwithstanding the foregoing, if a holder of the Underlying Mortgage shall require the original policies and endorsements, the Mortgagor shall deliver to the Mortgagee certified copies of the policies and duly executed original endorsements in favor of Mortgagee.

(c) Subject to the rights of the holder of the Underlying Mortgage, and provided Mortgagor is not in default under this Wraparound Mortgage, (i) if any money is collected by the Mortgagor as result of any loss payable under the insurance policies, the money shall be retained and applied solely towards restoration, rebuilding or repair of the damaged Mortgaged Property, and (ii) if any money is paid over to the Mortgagee or directly to the Mortgagee by the insurer, the money shall be paid over to the Mortgagor solely for the purpose of restoration, rebuilding or repair of the damaged Mortgaged Property in accordance with Section 18. However, if Mortgagor is in default under the Wraparound Mortgage at the time of any loss payable under the insurance policies then, and in such event, Mortgagee may, at its sole discretion, and subject to the rights of the holder of the Underlying Mortgage, elect to have such insurance proceeds applied first to payment of the Indebtedness and, in this regard, may retain such proceeds for such purpose or, in the event said proceeds were paid directly by the insurer to Mortgagor, may direct Mortgagor to pay promptly over to Mortgagee such insurance proceeds for application toward payment of the Indebtedness.

(d) Subject to the rights of the holder of the Underlying Mortgage, the Mortgagor assigns to the Mortgagee all rights and interest the Mortgagor has under the insurance policies. The Mortgagor irrevocably authorizes the Mortgagee as its attorney-in-fact, coupled with an interest, to collect any money paid as a result of any loss or damage and together with the Mortgagor to adjust or compromise the amount of money to be paid as a result of any loss or damage under the insurance policies. The collection of any money or the application of any money shall not cure any default by the Mortgagor hereunder. Mortgagee shall not withhold its consent to the insurance settlement if the insurance proceeds to be received by Mortgagee are sufficient to pay in full all of the Indebtedness and if said proceeds are in fact so received or Mortgagor is entitled to the proceeds pursuant to Section 18 hereof to restore the Mortgaged Property.

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(e) In the event of a foreclosure of this Wraparound Mortgage the purchaser of the Mortgaged Property shall succeed to all the rights of the Mortgagor, including any right to unearned premiums, in and to all policies of insurance assigned and delivered to the Mortgagee pursuant to the provisions of this Section.

(f) Mortgagor agrees to pay when due (i.e., before any fine, penalty, interest or other cost may be added thereto for non-payment thereof), all taxes, assessments (including without limitation all assessments for public improvement or benefit) water and sewer taxes, rents, rates and charges for public utilities, excises, levies, license and permit fees, and other governmental charges, and any other liens or charges, general and special, ordinary and extraordinary, foreseen and unforeseen, local or otherwise, of any kind and nature whatsoever, which at any time during the term of this Mortgage may have been or may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of or become a lien on, the Mortgaged Property or any part thereof or any appurtenance thereof (all of which are hereinafter collectively referred to as "Imposition[s]"). However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Mortgagor may, so long as no Event of Default, as hereinafter defined, shall exist under this Mortgage, subject to the terms of the Underlying Mortgage, exercise the option to pay the same (any any accrued interest on the unpaid balance of such Imposition) in installments and, in such event, shall pay such installments as may become due during and before any fine, penalty, further interest or cost may be added thereto.

(g) Nothing herein contained shall require Mortgagor to pay income taxes assessed against Mortgagee, or any capital levy, corporation franchise, excess profits, estate, succession, inheritance or transfer taxes of Mortgagee.

(h) Mortgagor shall furnish to Mortgagee, prior to the date on which any Imposition would become delinquent, an official receipt of the appropriate taxing authority or other evidence satisfactory to Mortgagee, evidencing the payment thereof.

(i) Mortgagor shall have the right to contest the amount or validity, in whole or in part, of any Imposition, or to seek a reduction in the valuation of the Mortgaged Property as assessed for real estate tax purposes by appropriate proceedings diligently conducted in good faith, provided that: (aa) such contest will not place the Mortgaged Property in jeopardy of foreclosure of any lien resulting from

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any Imposition and (bb) Mortgagor pays the pertinent Imposition as provided in this Section in full when due.

### 3. Indebtedness Callable under Certain Circumstances.

The entire Indebtedness shall become due and payable immediately after thirty (30) days notice from the Mortgagee to the Mortgagor in the event of the passage of any order, judgment, law or ordinance deducting from the value of real estate for the purpose of taxation any lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages or the manner of the collection of any such taxes, unless the Mortgagor shall pay, as of right, any tax, assessment, or other Imposition together with interest or penalties imposed in connection therewith.

### 4. Mortgagor's General Compliance.

(a) The Mortgagor:

(i) Will not remove or demolish or materially or structurally alter any buildings, structures or improvements now or hereafter erected upon the Property without first obtaining the written consent of the Mortgagee, provided no other agreement, law, rule or regulation prohibits same; except that the Mortgagor shall have the right, subject to the right of the holders of the Underlying Mortgage, without the Mortgagee's consent, to remove and dispose of, free from the lien of this Mortgage, such personal property as from time to time may become worn or obsolete, provided that simultaneously with or prior to such removal any such personal property shall be replaced with other personal property of a value at least equal to that of the replaced personal property and by such removal or replacement, Mortgagor shall be deemed to have subjected such new personal property to the lien of this Mortgage; and any net cash disposition shall be paid to the Mortgagee to be applied to payment of the Indebtedness.

(ii) Will maintain the Mortgaged Property in good condition and repair and promptly repair, restore, replace or rebuild any part thereof which may be damaged or destroyed by any casualty whatsoever or which may be affected by any taking by eminent domain or condemnation whether or not there shall be

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any or adequate insurance proceeds or condemnation awards in respect of such casualty or taking.

- (iii) Will make all necessary repairs, replacements and restorations so that the efficiency and utility of the Mortgaged Property shall be maintained at all times.
- (iv) Will not commit or suffer, waste, damage, disfigurement or injury thereof.
- (v) Will comply with or cause to be complied with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Mortgaged Property, and will not suffer or permit any violations thereof.
- (vi) Will not join in or consent to any change in any restrictive covenant, zoning ordinance, corporate by-law, or other public or private restriction limiting or defining the use which may be made of the Mortgaged Property or any part thereof without the written consent of the Mortgagee.
- (vii) Will perform all of its obligations under the Ground Lease.

(b) The Mortgagor agrees to comply with all of the terms, covenants, and conditions of the Underlying Mortgage on the part of the Mortgagor to be performed or observed, other than with respect to the payment of the monthly payments of principal and interest and payments for real estate taxes, insurance premiums and the like due under the Underlying Mortgage.

## 5. Performance by Mortgagee Upon General Default Hereunder.

If, after the expiration of any applicable grace period, the Mortgagor fails to perform any act or to take any action which the Mortgagor is required to perform or take hereunder or to pay any money which the Mortgagor is required to pay hereunder, the Mortgagee, in the Mortgagor's name or in its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money. Any expenses so incurred by the Mortgagee and any money so paid by the Mortgagee shall be a demand obligation owing by the Mortgagor and shall bear interest from the date of the making of such payment until paid at the rate of eighteen percent (18%) per annum and shall be a part of the Indebtedness

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secured hereby, and the Mortgagee, upon making such payment, shall be subrogated to all the rights of the person or body politic receiving such payment.

## 6. Mortgagor's Remedies Re: Claim, Lien or Encumbrance, Etc.

If, prior to the expiration of any applicable grace period, the Mortgagor fails to pay any claim, lien or encumbrance except those which are Permitted Encumbrances, or any tax or assessment or insurance premium, or to keep the Mortgaged Property in repair, or shall commit or permit waste, or if there be commenced any action or the proceeding affecting the Mortgaged Property or the title thereto, then the Mortgagee, at its option, may pay said claim, lien, encumbrance, tax assessment or premium, with right of subrogation thereunder, may procure such abstracts or other evidence of title as it deems necessary, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action or proceeding and retain counsel therein, and take such action as the Mortgagee deems advisable, and for any of said purposes, the Mortgagee may advance for the account of the Mortgagor such sums of money as Mortgagee deems necessary.

## 7. Attorneys' Fees and Costs.

Without limitation of any other provisions of this Mortgage, if Mortgagee shall incur or expend any sums, including without limitation all reasonable attorneys' fees, appraiser's fees, receiver's costs and expenses, insurance, Impositions, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication costs and costs of securing abstracts, title searches and examinations, guarantee policies and similar data and assurances with respect to title, whether in connection with any action or proceeding or otherwise, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of Mortgagee's rights hereunder, or to recover any of the Indebtedness secured hereby, all such sums shall become a demand obligation hereunder, with interest payable at eighteen percent (18%) per annum. All such sums shall be secured by this Mortgage and shall be a lien on the Mortgaged Premises prior to any right, title, interest or claim, in, to or upon the Mortgaged Premises attaching or accruing subsequent to the lien of this Mortgage.

## 8. Specific Defaults/Grace Periods.

If (a) default, for ten (10) days after notice and demand, be made in payment of any installment or principal, interest, or premium, if any, on the Note or any part thereof

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when due, or in payment, when due, of any other sum secured hereby or due under the Note; (b) default, for twenty (20) days after notice and demand be made in the payment of any Imposition or the payment of any monthly escrow thereof, if any; or (c) default for twenty (20) days after notice and demand be made in procuring and delivering the policies of insurance herein described or referred to or renewals or endorsements thereof, or reimbursing the Mortgagee for premiums paid on such insurance, as herein provided; or (d) default, for thirty (30) days, be made after the period permitted with respect to the furnishing of a statement of the amount due on this Mortgage and whether any offsets or defenses exist against the Indebtedness, as hereinafter provided; or (e) default, for twenty (20) days after notice, be made in keeping in force the insurance required hereunder; or (h) the Mortgagor hereafter assigns all or any part of the rents, income or profits arising from the Mortgaged Property (except in connection with a mortgage subordinate hereto), or collects any part of the rents due from tenants or other occupants more than one (1) month in advance, without the written consent of the Mortgagee; or (i) default be made, for thirty (30) days after notice and demand, in the removal (by payment, bonding or otherwise) of any Federal tax lien on the Mortgaged Property; or (j) default be made, for thirty (30) days after notice and demand, in the observance or performance of any other covenants or agreements of the Mortgagor hereunder or under the Note or, in the case of a default susceptible of being cured which cannot reasonably be cured within said thirty (30) day period, the Mortgagor shall fail to take steps to remedy the same within said thirty (30) day period or shall fail thereafter to proceed diligently to remedy the same; or (k) any material representation or warranty of the Mortgagor in the Mortgage shall prove to be incorrect or misleading in any material respect as of the time when the same shall have been made; or (l) final judgment for the payment of money in excess of Thirty Thousand Dollars (\$30,000.00) shall be rendered against the Mortgagor, which judgment is not payable by insurance coverage, and the Mortgagor shall not discharge said judgment or cause it to be discharged within thirty (30) days from the entry thereof by payment, by bonding or otherwise or, if the Mortgagor shall appeal from such judgment or from the order, decree or process upon which or pursuant to which such judgment was entered and shall secure a stay of execution pending such appeal, within thirty (30) days after such appeal shall be decided or such stay be removed; or (m) any default shall exist after the expiration of any applicable grace period under the Ground Lease or under any mortgage or security interest affecting the Mortgaged Property or any action is commenced either to foreclose such mortgage or terminate the Ground Lease or sell any Mortgaged Property or to accelerate the maturity of the note secured thereby; or (n) if by order of a Court of competent jurisdiction, a trustee,

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receiver or liquidator of the Mortgaged Property, or any part thereof, or of the Mortgagor shall be appointed or if any of the creditors of the Mortgagor shall file a petition in bankruptcy against the Mortgagor or for an arrangement or reorganization of the Mortgagor pursuant to any Federal bankruptcy law or rule or any similar Federal or state law or rule, whether now or hereafter in effect, and such order or petition shall not be discharged or dismissed within ninety (90) days after the date thereof; or (o) if the Mortgagor shall file a petition in bankruptcy or for an arrangement or reorganization pursuant to a Federal bankruptcy law or rule or any similar Federal or state law or rule, whether now or hereafter in effect, or the Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a trustee, receiver or liquidator for all or any part of the Mortgaged Property or (p) if any claim of priority (except a claim based upon the Permitted Encumbrances) to this Mortgage by title, lien or otherwise shall be upheld by any Court of competent jurisdiction (and the time within which to appeal such determination has expired) or consented to by the Mortgagor; then in such event:

- (i) All or any part of the Indebtedness secured hereby shall become and be immediately due and payable at the option of the Mortgagee, without notice or demand, which are hereby expressly waived, and it shall be lawful for and the Mortgagor does hereby authorize the Mortgagee to cause the lien of this Mortgage to be foreclosed in accordance with the laws of the State of Illinois;
- (ii) Mortgagor may immediately foreclose this Mortgage.
- (iii) In case of a foreclosure sale, the Mortgaged Property, or so much thereof as may be affected by this Mortgage, may be sold in one parcel.
- (iv) In any foreclosure of this Mortgage, there shall be allowed and included in the judgment, to be paid out of any rents and other income received by Mortgagee and the proceeds of the foreclosure sale:
  - (aa) Any costs or expenses incurred by the Mortgagee in connection with any actions or proceedings to which Mortgagee shall be a party, either as plaintiff, claimant, or

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defendant by reason of the foreclosure of this Mortgage, including without limitation attorneys' fees, appraiser's fees, receiver's costs and expenses, insurance, Impositions, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such action or proceeding or to evidence to bidders at any sale which may be had pursuant to the decree for sale the true condition of the title to or value of the Mortgaged Premises or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the decree for sale is entered may be estimated and the amount of such estimate shall be allowed. All such expenses shall become additional Indebtedness secured hereby and shall become due and payable on demand when paid or incurred by Mortgagee in connection with any actions or proceedings, including bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant or defendant by reason of the foreclosure of this Mortgage.

(bb) All interest on all remaining Indebtedness due and payable and remaining unpaid.

(cc) All Indebtedness due and payable and remaining unpaid.

The proceeds of any foreclosure sale shall be distributed and applied to the items described in subparagraphs (aa), (bb), and (cc) of this Section, in the order of their listing, and any surplus of the proceeds of such sale shall be paid to the Mortgagor.

(v) In the event of an insured loss after a foreclosure action or proceeding has been instituted, the proceeds of any insurance policy or policies, if not applied to rebuilding or restoring the buildings or

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improvements, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such action or proceeding and the balance, if any, shall be paid as the Court may direct. In the case of foreclosure of this Mortgage, the Court, in its decree, may provide that Mortgagee's loss payable clause attached to each of the casualty insurance policies may be cancelled and that the creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said creditors and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redemption may cause the preceding loss payable clause attached to each casualty insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redepton. Upon any foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to Mortgagor for prepaid premiums thereon.

- (vi) Mortgagor agrees that after any foreclosure sale hereunder, Mortgagor and all parties occupying the Mortgaged Property, or any part thereof, shall be mere tenants at the will and sufference of the purchaser(s) at such sale or sales, and that such purchaser(s) shall be entitled to immediate possession thereof, and that if Mortgagor or any such tenant or tenants fail to vacate the Mortgaged Property, or any part thereof, immediately, such purchaser(s) may, and shall have the right to, file or institute any action or proceeding or exercise any other rights or remedies given landlords under any statute or law.

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- (vii) Irrespective of whether the Mortgagee accelerates the maturity of all or any part of the Indebtedness secured hereby, or institutes foreclosure proceedings, the Mortgagee, at its option, may have a receiver appointed by the Court to take possession of the Mortgaged Property and to manage, operate and conserve the value thereof and collect the rents, issues and profits thereof. Such receiver may also take possession of, and for these purposes use, any and all personal property contained in the Mortgaged Property and used by the Mortgagor in the operation, rental or leasing thereof or any part thereof. The right to enter and take possession of the Mortgaged Property and use any personal property therein to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of the Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. After paying costs of collection and any and all other expenses incurred, the proceeds shall be applied first to the payment of the interest on the Indebtedness and then the Indebtedness secured hereby and the Mortgagee shall not be liable to account to the Mortgagor for any action taken pursuant thereto other than to account for any rents or other income actually received by the Mortgagee.
- (viii) In addition to the other rights and remedies hereunder and without in any way affecting the lien hereof or the priority of the lien hereof, or any other right of the Mortgagee and subject at all times to the rights of the holder of the Underlying Mortgage, Mortgagee, by its agents or attorneys may, but shall not be obligated so to do, (aa) enter into and upon all or any part of the Mortgaged Property and exclude Mortgagor, Mortgagor's agents, servants and lessees wholly therefrom and, having and holding the same, (bb) use, operate, manage and control the Mortgaged Property or any part thereof, and upon every such entry and in any such case the Mortgagee shall have the right to manage the Mortgaged Property, to carry on

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the business thereof and to exercise all rights and powers of the Mortgagor with respect to the same, in such manner as the Mortgagee may seem proper, and the Mortgagee shall be entitled to collect and receive all earnings, income, rents, issues and profits of the same and every part thereof; applying the net proceeds so derived, first, to the cost of maintenance and operation of the Mortgaged Property and, second, to the payment of all the Indebtedness, principal and interest, application to be made first to interest, then to principal, and the balance thereof, if any, shall be paid to the Mortgagor. Upon the payment of the aforesaid costs and Indebtedness, the Mortgaged Property shall be returned to Mortgagor in its then condition and the Mortgagee shall not be liable to Mortgagor for any damage to or injury of the Mortgaged Property, except such as may be caused through its or their willful misconduct.

9. Note Not Transferable Separately From This Mortgage.

The Mortgagee agrees that the Note shall not be transferable separately from this Wraparound Mortgage.

10. Application of Funds From Eminent Domain, Etc.

(a) Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, the Mortgagor shall continue to pay interest on the entire Indebtedness until any such award or payment shall have been actually received by the Mortgagee. Any reduction in the Indebtedness resulting from the application by the Mortgagee of such award or payment (as hereinafter set forth) shall be deemed to take effect on the date of such receipt provided the Mortgagee shall elect to apply any such award or payment in reduction of the Indebtedness secured hereby, subject to the rights of the holder of the Underlying Mortgage, if any.

(b) Said award or payment may at the option of the Mortgagee, be retained and applied by the Mortgagee toward payment of the Indebtedness, or be paid over wholly or in part by the Mortgagee pursuant to Section 18 for the purpose of restoring or rebuilding any part of the Mortgaged Property which may have been altered, damaged or destroyed as a result of any such taking, alteration of grade, or other injury to the

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Mortgaged Property, (provided, however, that, if the holder of the Underlying Mortgage shall agree that any such award or payment payable to it may be applied to the rebuilding or restoring of the damaged premises, then the Mortgagee agrees to such application of the award or payment), but the Mortgagee shall not be obligated to see to the application of any amount paid over to the Mortgagor. Any balance of any award or payment not paid to the Mortgagor pursuant to Section 18, shall (subject to the rights of the holder of the Underlying Mortgage) be retained by the Mortgagee, subject only to the Mortgagee's obligation to apply any balance to reduction of the Indebtedness.

(c) Notwithstanding anything contained in this Section, (i) so long as an Event of Default shall exist hereunder and remain uncured, Mortgagor shall not be entitled to receive any sum of money which it otherwise would have been entitled to receive pursuant to this Section were it not for such uncured Event of Default until all Events of Default have been cured and all sums to which Mortgagee may be entitled under this Mortgage shall have been actually received by Mortgagee; and (ii) if this Mortgage shall be foreclosed upon by reason of any such Event of Default prior to the payment to Mortgagor of any sum which it would otherwise have been entitled to receive hereunder, then Mortgagor shall not, in any event, be entitled to receive any such sum.

(d) If prior to the receipt by the Mortgagee of such award or payment, the Mortgaged Property shall have been sold pursuant to this Wraparound Mortgage, the Mortgagee shall have the right to receive said award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Wraparound Mortgage shall have been sought or recovered or denied, and to the extent of reasonable counsel fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment.

## 11. Mortgagee's Inspection Rights.

The Mortgagee and any persons authorized by the Mortgagee shall have the right to enter and inspect the Mortgaged Property at all reasonable times upon reasonable notice; and if, at any time after default by the Mortgagor in the performance of any of the terms, covenants or provisions of this Wraparound Mortgage or the Note, beyond applicable grace periods, the management or maintenance of the Property shall be determined by the Mortgagee to be unsatisfactory, the Mortgagor shall employ, for the duration of such default, as managing agent of the Mortgaged Property, any person from time to time designated by the Mortgagee.

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## 12. Statements and Records.

Mortgagor will keep proper books and records with respect to the Mortgaged Premises and operations thereof in accordance with generally accepted accounting principles consistently applied. Mortgagee shall have the right to examine said books and records at such reasonable times and intervals as Mortgagee may elect but not more often than twice in any one year. Upon request by Mortgagee, Mortgagor will furnish to Mortgagee within ninety (90) days after the end of each calendar year:

(a) A statement of income and expenses for such calendar year with respect to the Mortgaged Premises and the operations thereof, in reasonable detail and stating in comparative form the figures as of the end of and for the previous calendar year certified by such persons and entities and in such form, substance and execution as may be acceptable to Mortgagee.

(b) Upon request by Mortgagee, a statement in such reasonable detail as the Mortgagee may request, certified by the Mortgagor concerning lease, rental and occupancy agreements affecting the Mortgaged Property.

## 13. Intentionally Omitted.

## 14. Recorded Instruments.

Mortgagor will promptly perform and observe all of the agreements, obligations, terms, provisions and conditions of all agreements, obligations, terms, provisions and conditions of all instruments of record affecting the Mortgaged Property, noncompliance with which might affect the security of this Mortgage or impose any duty or obligation upon Mortgagor or upon any owner, lessee or occupant of the Mortgaged Property, or any part thereof, and Mortgagor shall do all things necessary to preserve intact and unimpaired any and all easements, appurtenances and their interests and rights in favor of or constituting any portion of the Mortgaged Property.

## 15. Specific Mortgagor Covenants.

So long as the Indebtedness secured hereby or any part thereof remains unpaid, the Mortgagor and Mortgagee covenant and agree as follows:

(a) The Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained pursuant to this Mortgage unless the Mortgagee is included thereon as a named insured with loss payable to the Mortgagee as provided herein.

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The Mortgagor shall immediately notify the Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to the Mortgagee a duplicate original of the policy of such insurance or a copy thereof certified by the insurer.

(b) Immediately upon service of process with respect to any proceedings that may affect the Mortgaged Property or any portion thereof, the Mortgagor will forthwith notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings, and the Mortgagor shall from time to time deliver to the Mortgagee all instruments requested by it to permit such participation. The Mortgagor shall, at its expense, diligently prosecute or defend any such proceeding, take such action as may be necessary to preserve the interests of the Mortgagor and the Mortgagee in the Mortgaged Property, and shall consult with the Mortgagee, its attorneys and experts and cooperate with them in any prosecution or defense of any such proceedings.

(c) The Mortgagor will, at its cost and expense, do, execute, acknowledge and deliver all such further acts, deeds, conveyances, assignments, transfer and assurances as the Mortgagee shall from time to time require for the better granting, bargaining, selling, assigning and conveying to the Mortgagee the Mortgaged Property and rights which were hereby conveyed or intended now or hereafter to be conveyed or which the Mortgagor may be or may hereafter become bound to convey to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for recording this Mortgage and, on demand, will execute and deliver, and hereby irrevocably authorizes the Mortgagee to execute in the name of the Mortgagor, to the extent it may lawfully do so, as its attorney-in-fact, coupled with an interest, one or more financing statements and continuation statements if required by law to perfect or continue the lien hereof upon the Mortgaged Property and rights conveyed hereby. Such cost and expenses shall include without limitation, all mortgage recording or filing of stamp taxes or other taxes legally due upon such recording and filing of the Mortgage or the issuing of the Note and all other Indebtedness, and all recording and filing fees for any financing and continuation statements. Forthwith upon the execution and delivery of this Mortgage and thereafter from time to time, the Mortgagor, at the expenses of the Mortgagor, will cause this Mortgage and any financing statement or continuation statement required by law to perfect or continue the lien hereof with respect to the Mortgaged Property and rights conveyed hereby and each instrument of further assurance to be filed or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and to protect fully the lien hereof upon, and the security and other interest of the Mortgagee in, the Mortgaged Property. If the validity or

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priority of this Mortgage or of any rights, liens, or interests created or evidenced hereby with respect to the Mortgaged Property or any part thereof shall be endangered or questioned or shall be attached directly or indirectly or if any legal proceedings are instituted against the Mortgagor with respect thereto, the Mortgagor will give immediate written notice thereof to the Mortgagee and at the Mortgagor's own cost and expense will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such legal proceedings, including but not limited to the employment of counsel, the prosecution or defense of litigation and the release or discharge of all adverse claims, and the Mortgagee (whether or not named as a party to legal proceedings with respect thereto) is hereby authorized and empowered to take such additional steps as in its judgment and discretion may be necessary or proper for the prosecution or defense of any such legal proceedings, including but not limited to the employment of independent counsel, the prosecution or defense of of litigation and the compromise or discharge of any adverse claims made with respect to the Mortgaged Property, and all expenses so incurred of every kind and character shall be a demand obligation owing by the Mortgagor and shall bear interest from the date of expenditure until paid at the rate of eighteen percent (18%) per annum and shall be secured by the lien of this Mortgage, and the Mortgagee shall be subrogated to all rights of the person receiving such payment.

(d) Except as otherwise provided in this Mortgage, the Mortgagor will not, without the prior written consent of the Mortgagee, suffer or permit any lien, encumbrance or security interest (other than the lien for an Imposition which is not delinquent) to be hereafter claimed or created on the Mortgaged Property, or any part thereof, and should a lien, encumbrance or security interest become attached hereafter in any manner to the Mortgaged Property or any part thereof, then the Mortgagor will cause such lien, encumbrance or security interest to be promptly discharged by payment, bonding or otherwise.

(e) The Mortgagor and Mortgagee will promptly furnish the other with copies of all communications between the Mortgagor and the holder of any other lien, encumbrance or security interest in the Mortgaged Property or any portion thereof, and the Lessor under the Ground Lease, with respect to notices of default or potential defaults under the applicable mortgage, security agreement or Ground Lease within three (3) days of its receipt of such notices.

(f) The Mortgagor will not modify or allow to be modified any mortgage or security agreement affecting the Mortgaged Property or any portion thereof, or the Ground Lease

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without the prior written consent of the Mortgagee in each instance which consent shall not be unreasonably withheld.

(g) The Mortgagor may not sell, transfer, convey or mortgage all or any part of the Mortgaged Property or any interest therein without the consent of the Mortgagee.

(h) Each party will, on request of the other, promptly correct any defect, error or omission, which may be discovered in the contents of this Mortgage or in the execution or acknowledgment thereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument, and will execute and deliver any and all additional instruments as may be requested to correct such defect, error or omission or to identify any additional properties which are or become subject to this Mortgage or such other instrument.

(i) The Mortgagor and Mortgagee will indemnify and hold the other harmless from and against all claims, demands, liabilities and causes of action asserted against on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Mortgaged Property or with this Mortgage or any of the indebtedness secured hereby, save and except for claims, demands, liabilities or causes of action arising out of the other party's misconduct or negligence.

(j) The Mortgagor shall perform every obligation of the lessor, and shall enforce to the extent such enforcement would be reasonably prudent under the circumstances, every obligation of the lessee, under every lease affecting the Property. The Mortgagor shall not require prepayments of rent (other than reasonable security deposits) due under any leases other than for the current month or accept any such prepayments for a period in excess of one (1) month and shall pay to the Mortgagee promptly upon a default hereunder all amounts held by the Mortgagor at such time in respect of prepaid rent or security deposits, which will be held by the Mortgagee subject to the terms of such lease; provided, however, that the Mortgagee, by requiring such amounts from the Mortgagor, shall in no way be deemed to have assumed any responsibility with respect to the collection or proper application of such funds. The Mortgagor shall also pay to the Mortgagee upon such default all charges for services or facilities which were paid pursuant to any such lease and which are allocable to any period after such default.

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(k) The Mortgagor, so long as it is owner of the Mortgaged Property, will do all things necessary to preserve its status as a limited partnership organized under the laws of New York and authorized to transact business in the State of Illinois and will comply with all laws, regulations, rules, ordinances and other valid governmental requirements affecting the Mortgagor or the Mortgaged Property.

## 16. No Usury.

In spite of any contrary provisions contained herein or in the Note or in any other instrument evidencing or relating to any part of the Indebtedness secured hereby, the Mortgagee shall not be entitled to receive or collect, nor shall the Mortgagor be obligated to pay, interest on any of the Indebtedness secured hereby in excess of the maximum rate of interest permitted by the laws of the State of New York determined to be applicable thereto that operate to limit the amount of interest that may be payable on the Note, and, if any provision of the Note or of any other such instrument shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by the laws of the State of New York, the provisions of this Section 16 shall control and shall override any contrary or inconsistent provision of the Note or other instrument.

## 17. Specific Recital of Terms of Underlying Mortgage.

The Mortgagee covenants and agrees with the Mortgagor to pay to the holder of the Underlying Mortgage 85.42% of the unpaid principal balance due thereunder together with all interest thereon accruing in accordance with the tenor of the Underlying Mortgage, as the case may be, and the notes evidencing the indebtedness secured thereby. It is the understanding and intent of the parties hereto that the Mortgagor has purchased the Property on a gross basis without a credit for the Underlying Mortgage and is indebted solely to Mortgagee to the extent of the total Indebtedness secured by this Mortgage.

## 18. Rebuilding or Repair.

If there is a taking of the Mortgaged Property as described in Section 10 or a loss payable under the insurance policies described in Section 2, and the award, payment or proceeds, as the case may be, are paid over to the Mortgagor solely for the purpose of restoring, rebuilding or repairing the damaged Mortgaged Property, the restoration, rebuilding or repair and the use of the money paid over will be governed by this Section.

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(a) The Mortgagor shall restore, rebuild and repair the Mortgaged Property so that upon completion the Mortgaged Property shall be at least equal in value, and of substantially the same character, as prior to the damage or destruction.

(b) If a building or alteration permit is required to effect the restoration, rebuilding or repair, or in any event if the money paid over exceeds Fifteen Thousand Dollars (\$15,000), the Mortgagor shall promptly submit building plans and specifications to the Mortgagee, for approval, prior to commencing the restoration, rebuilding or repair. The Mortgagor shall promptly approve or disapprove the building plans and specifications. The approval of the Mortgagee will not be unreasonably withheld.

(c) The Mortgagor shall promptly commence and diligently pursue the restoration, rebuilding or repair of the Mortgaged Property, in compliance with any building plans and specifications approved by the Mortgagee.

(d) The Mortgagor shall be solely responsible for all costs of restoration, rebuilding or repair in excess of the money paid over by the Mortgagee.

(e) The money paid over by the Mortgagee shall be held by the Mortgagor as trust funds for the benefit of the Mortgagee to be used solely for paying the actual and direct costs of restoration, rebuilding or repair. The proceeds shall not be comingled with any other monies. The money shall be held in a special, segregated escrow account in a bank. No money shall be disbursed from such account until the Mortgagor presents the Mortgagee with satisfactory proof:

- (i) Of the estimated cost of completion of the restoration, rebuilding or repair;
- (ii) The Mortgagor has sufficient funds in addition to the money paid over by the Mortgagee to cover the entire cost of restoration, rebuilding or repair;
- (iii) Of the actual cost, payment and performance of restoration, rebuilding or repair, in the form of architect's certificates, waivers of lien, contractor's affidavits, title insurance endorsements and/or such other proof as the Mortgagee may reasonably require.

Disbursements shall not be sought more often than once each month. Satisfactory proof shall be submitted prior to each

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disbursement. No payment made prior to final completion of restoration, rebuilding or repair shall exceed 90% of the value of the work for which the disbursement is sought. The Mortgagee may retain an architect or engineer to assist the Mortgagee and assure compliance by the Mortgagor with the provisions of this Section. The expense of retaining an architect or engineer shall be a demand obligation of the Mortgagor secured by this Mortgage.

(f) At all times any required Mortgagor's funds shall be disbursed to pay the cost of the restoration rebuilding or repair prior to disbursement of insurance proceeds. At all times the undisbursed balance of such insurance proceeds remaining in the hands of the Mortgagor, together with funds deposited for that purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the restoration, rebuilding or repair free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by the Mortgagee after payment of such costs of restoration, rebuilding or repair shall, at the option of Mortgagee and subject to the rights of the holder of the Underlying Mortgage be applied on account of the Indebtedness hereby secured, or be paid to any other party entitled thereto.

## 19. UCC Security Interest

Without limiting any of the provisions of this Mortgage, Mortgagor as "debtor" within the meaning of the Uniform Commercial code of Illinois (the "Code") grants to the Mortgagee, as "secured party" within the meaning of the Code, a security interest in all goods, trade names, warranties, guaranties, contract rights, leases, furniture and furnishings, equipment, inventory, materials, apparatus, property and fixtures owned by the debtor and located on or constituting Mortgaged Property and used in the operation or enjoyment of the Mortgaged Property, or otherwise furnished to any tenants or other occupants (all of which are hereafter referred to as the "Collateral"). The security interest granted covers that Collateral which exists now and that which exists at any time hereafter, whether tangible or intangible (excluding cash), to the full extent permitted by the Code. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Mortgaged Property; and the following provisions of this Section shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto. Mortgagor covenants as follows:

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(a) Mortgagor is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof and the lien of the Underlying Mortgage.

(b) The Collateral is to be used by Mortgagor solely for business purposes, being installed upon the Mortgaged Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Mortgaged Property.

(c) The Collateral will be kept on the Mortgaged Property, and will not be removed therefrom by Mortgagor or any other person without the consent of Mortgagee; the Collateral may be affixed to such real property but will not be affixed to any other real property. Mortgagor shall have the right to substitute Collateral with Collateral of like kind and equal value and utility.

(d) The only persons having any interest in the Mortgaged Premises are Mortgagor, Mortgagee, permitted tenants and users thereof and the holders of the Underlying Mortgage.

(e) Mortgagor will, at its own cost and expense, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts and things as Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral, subordinate only to that of the Underlying Mortgage, as security for the indebtedness secured hereby, subject to no adverse liens or encumbrances, and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed necessary by Mortgagee to be necessary or desirable.

(f) The Mortgagor irrevocably authorizes the Mortgagee as its attorney-in-fact, coupled with an interest, to sign in the name of and on behalf of the Mortgagor, and file and record, any additional financing statements, agreements or documents, that are deemed necessary by Mortgagee to create, perfect continue or defend the security interest that is given to the Mortgage in this Section.

(g) The Collateral shall be deemed Mortgaged Property to the extent any part of the Collateral may not technically constitute Mortgaged Property.

(h) Upon the occurrence of an Event of Default as provided in Section 8 of this Mortgage which shall continue

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after the expiration of any applicable grace period and at any time thereafter, in addition to all other rights and remedies which Secured Party may then have hereunder and under the Code, or otherwise, Secured Party at its option may:

- (i) Reduce its claim to judgment, foreclosure or otherwise enforce its security interest in all or any part of the Collateral by any available judicial procedure;
  - (ii) After notification, hereafter provided, sell or otherwise dispose of, at its office, or elsewhere, as chosen by Secured Party, all or any part of the Collateral, and any such sale or other disposition may be as a unit or in parcels, by public or private proceedings, and by way of one or more contracts (it being agreed that the sale of any part of the Collateral shall not exhaust Secured Party's power of sale, but sales may be made from time to time until all of the Collateral has been sold or until the Indebtedness has been paid in full), and at any such sale it shall not be necessary to exhibit the Collateral;
  - (iii) At its discretion, retain the Collateral in satisfaction of the Indebtedness whenever the circumstances are such that Secured Party is entitled to do so under the Code;
  - (iv) Apply by appropriate judicial proceedings for appointment of a receiver for the Collateral, or any part thereof, and Debtor hereby consents to any such appointment;
  - (v) Buy the Collateral at any public sale; and
  - (vi) Buy the Collateral at any private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations.
- (i) Secured Party shall be entitled to apply the proceeds of any sale or other disposition of the collateral in the following order:
- (i) All court costs and attorneys' fees incurred by Secured Party in connection with the foreclosure proceedings. All such expenses shall become additional indebtedness secured

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hereby and shall immediately become due and payable when paid or incurred by Secured Party in connection with any proceedings, including bankruptcy proceedings, to which Secured Party shall be a party, either as plaintiff, claimant or defendant by reason of the foreclosure under this Section.

(ii) All other items advanced or paid by Secured Party pursuant to this Paragraph; and

(iii) All Indebtedness due and payable and remaining unpaid and secured hereby, first to the payment of interest, second to the payment of principal.

Secured Party shall account to Debtor for any surplus. Reasonable notification of the time and place of any public sale of the Collateral, or reasonable notification of the time after which any private sale or other intended disposition of the Collateral is to be made, shall be sent to Debtor and to any other person entitled under the Code to notice. It is agreed that notice sent or given not less than twenty-one (21) calendar days prior to the taking of the action to which the notice relates is reasonable notification for the purpose of this Section.

(j) If an Event of Default occurs, and without limitation of any other of its rights, Secured Party shall have the right to take possession of the Collateral and to enter upon any premises where same may be situated for such purpose without being deemed guilty of trespass and without liability for damages thereby occasioned, and to take any action deemed necessary or appropriate or desirable by Secured Party, at its option and in its discretion, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition as herein authorized.

(k) All recitals in any other instrument executed by Secured Party incident to sale, transfer, assignment, lease or other disposition or utilization of the collateral or any part thereof hereunder shall be full proof of the matters stated therein, no other proof shall be required to establish full legal propriety of the sale or other action or of any fact, condition or thing incident thereto, and all prerequisites of such sale or other action and of any fact, condition or thing incident thereto shall be presumed conclusively to have been performed or to have occurred.

(l) Secured Party may require Debtor to assemble the Collateral and make it available to Secured Party at the Mortgaged Property. All expenses of retaking, holding,

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preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the Collateral and the like which are incurred or paid by Secured Party as authorized or permitted hereunder, including also all attorneys' fees, legal expenses and costs, shall be added to the Indebtedness and Debtor shall be liable therefor.

(m) Secured Party may, at its option, dispose of or have disposed of the Collateral in accordance with Secured Party's rights and remedies in respect of the Mortgaged Property as elsewhere set forth in this Mortgage, all without limiting any rights or privileges herein granted to Secured Party.

(n) The terms and provisions contained in this Section shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

(o) This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Collateral on the goods described at the beginning of this Mortgage which goods are or are to become fixtures relating to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth in Section 44 hereof. This Mortgage is to be filed for recording with recording office in the county or counties where the Mortgaged Property is located. Mortgagor is the record owner of the Mortgaged Property.

## 20. Reductions of Underlying Mortgage(s) -- Insurance Proceeds, Condemnation Awards, Etc.

In the event the unpaid principal balance of the Underlying Mortgage is reduced (the "Reduction") by reason of the application of any insurance proceeds, condemnation awards, or like sums thereto, then, the Mortgagee's obligation to pay the principal sum due under such Underlying Mortgage shall be reduced pro tanto to the same extent that the obligation to pay such principal amount is reduced under such Underlying Mortgage. Any such payments are deemed payments to the Mortgagee and the Mortgagee, therefore, agrees that the principal amount due under this Wraparound Mortgage shall be likewise reduced by application of an equivalent amount to the principal due under the Note.

## 21. Prepayment Privilege.

(a) The Mortgagor shall have the right to prepay all or any portion of the unpaid principal balance evidenced by the Note, together with accrued interest thereof, at any time without penalty or premium on thirty (30) days prior written

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notice to Mortgagee, subject to the terms of this Agreement and those contained in the Underlying Mortgage.

(b) In the event the Mortgagor exercises its right to prepay by a writing duly acknowledged by the Mortgagor, the Mortgagor shall pay any and all prepayment penalties due under the Underlying Mortgage. Upon prepayment in full of this Wraparound Mortgage, the Mortgagee shall deliver or cause to be delivered to the Mortgagor satisfactions, or at the option of the Mortgagor, assignments to the designee of the Mortgagor, of the Underlying Mortgage.

(c) The Mortgagor shall not acquire or purchase all or any portion of the Underlying Mortgage without first obtaining the prior written consent of the Mortgagee.

(d) The Mortgagor shall pay, or shall reimburse the Mortgagee for, all reasonable costs and expenses (including attorneys' fees) incurred by the Mortgagee in connection with any prepayment hereunder.

## 22. Early Payment by Mortgagor.

The Mortgagor agrees to pay to the Mortgagee, without notice or demand, any and all sums required to be paid to the holder of the Underlying Mortgage (other than debt service and payments of real estate taxes, insurance premiums and the like thereunder) at least five (5) days prior to the date upon which sums are due and payable to such holder unless such sums are sooner paid to such holder.

## 23. Principal Payments to Holder of Underlying Mortgage.

The Mortgagor agrees that, to the extent of principal payments made to the holder of the Underlying Mortgage by Mortgagee, the Mortgagee shall be subrogated to and have the rights of such holder of the Underlying Mortgage. The Mortgagor further agrees that, to the extent the Mortgagee shall prepay the Underlying Mortgage or shall pay or otherwise satisfy any amounts which become due thereunder, by acceleration or otherwise, including the payment of any premium or penalty thereunder, the Mortgagee shall become subrogated to and have the rights of the holder of the Underlying Mortgage, as the case may be, with respect thereto to the extent of the amounts so paid and as fully as if the rights of such holder in respect to such amounts had been assigned by such holder to the Mortgagee.

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## 24. Mortgagee Default.

(a) Mortgagee agrees that:

(i) in the event Mortgagee receives any notice of default under the Underlying Mortgage, to forthwith provide Mortgagor with a copy thereof.

(ii) within ten (10) days after written request therefore from Mortgagor, to furnish to Mortgagor evidence that payment of each installment of principal and/or interest required by the Underlying Mortgage was made.

(b) In event of any default by Mortgagee in making any payment of principal, interest or other charge which Mortgagee is obligated to make hereunder to the holder of the Underlying Mortgage, Mortgagor shall have the right, but not the obligation, to make any payment necessary to cure such default under the Underlying Mortgage, including any penalties, charges or expenses thereon. In the event Mortgagor makes any payment pursuant to the terms of this Subsection (b), then in addition to, and not in limitation of, any and all other rights and remedies which Mortgagor may have or may acquire under this Mortgage or as a matter of law, if Mortgagor is not in default of its obligations hereunder, Mortgagor shall be entitled to and shall receive an offset against the next succeeding installment(s) of principal and/or interest (in whatever proportion Mortgagor shall designate) due on the Note which this Mortgage secures.

(c) In lieu of an offset, Mortgagor may by notice elect that Mortgagee shall be obligated to pay Mortgagor for the total amount of any offset earned by Mortgagor under the provisions of Subsection (b). Notwithstanding the foregoing, Mortgagor shall not be obligated to make any such payments or cure any such defaults, and any such payment(s) made by Mortgagor shall not relieve Mortgagee from Mortgagee's obligations to make all such payments which are due after the date of any such payment by Mortgagor nor shall any such payment by Mortgagor obligate Mortgagor to make any other such payment(s).

(d) All sums advanced hereunder by Mortgagor in the event of Mortgagee's failure to pay the same when due shall bear interest at the higher of 15% per annum or 2% above the prime rate then in effect at Citibank, N.A. from the date on which such sums are advanced to the date on which Mortgagee pays the same to Mortgagor (or the date on which Mortgagor receives any applicable offset).

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(e) Provided that Mortgagor is not in default hereunder, if Mortgagee defaults in any of its obligations to make any payments required to be made hereunder to the holder of the Underlying Mortgage within the time periods provided for in the Underlying Mortgage, whether at maturity or otherwise, Mortgagee shall, at the option of Mortgagor, forfeit all rights under this Mortgage and this Mortgage shall be deemed null and void and Mortgagee shall discharge the same of record.

## 25. Delivery of Mortgage Satisfaction or Assignment.

Upon the prepayment of the unpaid Indebtedness, or the amount thereof in excess of the balance of the Underlying Mortgage, with all accrued interest, or the satisfaction hereof at maturity, the Mortgagor shall be released from any and all further obligation hereunder and this Wraparound Mortgage shall be void; the Mortgagee shall execute and deliver to the Mortgagor an appropriate instrument in recordable form acknowledging such release and the Mortgagee shall surrender to the Mortgagor the Note marked "Paid in Full"; or at the option of the Mortgagor, the Mortgagee shall assign this Mortgage to the Mortgagor.

## 26. Certain Releases, Substitutions of Collateral, Etc.

Without affecting the liability of the Mortgagor or any other person (except any person expressly released in writing by the Mortgagee) for payment of any or all of the Indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of the Mortgagee with respect to any security not expressly released in writing, the Mortgagee may, at any time and from time to time, either before or after the maturity of the Note, and without notice or consent:

(a) Release, if applicable, any person liable for payment of all or any part of the Indebtedness or for performance of any obligation.

(b) Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation or subordinating, modifying or otherwise dealing with the lien or charge hereof.

(c) Exercise or refrain from exercising or waiving any right the Mortgagee may have.

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(d) Accept additional or substitute security of any kind.

(e) Release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Mortgaged Property.

## 27. Estoppel Certificates.

(a) Mortgagor agrees at any time and from time to time, upon not less than ten (10) days written notice by Mortgagee to execute, duly acknowledge and deliver, without charge, to Mortgagee or to any person designated by Mortgagee, a statement in writing certifying that this Mortgage is unmodified (or if there have been modifications, identifying the same by the date hereof), that Mortgagor has not received any notice of Default (or if Mortgagor has received such a notice, that it has been revoked, if such be the case), that to the knowledge of Mortgagor no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same).

(b) Mortgagee agrees at any time and from time to time but not more than twice in any calendar year, upon not less than ten (10) days' prior written notice by Mortgagor, to execute, duly acknowledge and deliver, without charge, to Mortgagor, or to any person designated by Mortgagor, a statement in writing stating that no notice of default has been served on Mortgagor (or if Mortgagee has served such notice, that the same has been revoked, if such be the case), that to Mortgagee's knowledge no Event of Default exists under this Mortgage or the Note (or if any such Event of Default does exist, specifying the same), and a statement setting forth the unpaid principal balance of the Note and the date through which interest has been paid.

## 28. No Personal Liability of Mortgagor.

Anything contained in the Mortgage or in the Note to the contrary notwithstanding, the Mortgagee agrees that (a) in any action or proceeding to foreclose this Mortgage, the Mortgagor or any person disclosed or undisclosed shall not be liable for any deficiency between the Indebtedness secured by this Mortgage and the proceeds of the foreclosure sale, and no deficiency judgment will be sought against the Mortgagor or any person disclosed or undisclosed in such foreclosure action or proceeding and (b) no action or proceeding shall be brought against the Mortgagor (or any assignee of the Mortgagor) or any person disclosed or undisclosed for payment of the Indebtedness or for the performance of any of the terms, covenants or conditions of this Mortgage; provided, however, that nothing

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contained in this Section shall impair the validity of the Indebtedness secured hereby, or in any way affect or impair the lien of this Mortgage or the right of the Mortgagee to foreclose on this Mortgage following default by the Mortgagor in the making of any payments herein required to be made or in the performance of any of the terms, covenants or conditions of this Mortgage, or any other agreement held as security for the Note. The foregoing shall apply to any future owner of the Mortgaged Property.

## 29. Monthly Deposits.

Anything hereinbefore set forth to the contrary notwithstanding, the Mortgagor shall deposit with the Mortgagee, monthly commencing one month from the date hereof, one-twelfth (1/12th) of the ground or other rent, if any, insurance premiums and all real estate taxes, assessments, water and other charges which might become a lien upon the premises and any other periodic payments required to be made hereunder by the Mortgagor, and shall simultaneously herewith deposit with the Mortgagee a sum of money which, together with the monthly installments aforementioned, will be sufficient to make each of the payments aforementioned at least thirty (30) days prior to the date such payments first become payable. Should the said charges not be ascertainable at the time any deposit is required to be made with the Mortgagee, the deposit shall be made on the basis of the estimate of the Mortgagee and, upon the charges being fixed for the then current year, the Mortgagor shall deposit any deficiency with the Mortgagee. The funds so deposited with the Mortgagee shall be held by it in a Federally insured account in a commercial bank or other institution acceptable to Mortgagor and, provided the Mortgagor shall not be in default in the performance of its obligations hereunder, shall be applied in payment of the charges aforementioned when and as payable, to the extent the Mortgagee shall have such funds on hand. Interest earned, if any, shall be paid to Mortgagor upon payment of the entire Indebtedness. In the event of any default in the performance of any of the obligations of the Mortgagor, the funds deposited with the Mortgagee as aforementioned, may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Indebtedness or any other charges affecting the security of the Mortgagee, as the Mortgagee sees fit, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by the Mortgagee as herein provided. The Mortgagor shall furnish the Mortgagee with bills for the charges for which such deposits are required to be made hereunder and/or such other documents necessary for the payment of same, at least fifteen (15) days prior to the date such charges become payable.

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## 30. Credits and Offsets.

Mortgagor shall have a right of credit and offset against payment of the Indebtedness hereunder in an amount equal to all damages and expenses incurred by reason of a breach of any of the representations, warranties, agreements and obligations of the Mortgagee pertaining to the Underlying Mortgage and/or the Mortgaged Property. The right of credit and offset may be exercised by Mortgagor to current and future payments required hereunder in any order the Mortgagor deems appropriate. The right of credit and offset may be asserted as a claim, cause of action, cross-claim or counterclaim, in any action or proceedings.

## 31. Late Charges.

If any payment of interest, principal or other sum payable hereunder shall not be paid within ten (10) days after the date due, the Mortgagor agrees to pay to the Mortgagee a "Late Charge" in an amount equal to four percent (4%) of the amount of such overdue payment, or portion thereof. Such Late Charge shall be due and payable on the earlier of: (a) the payment of such overdue payment to which it relates or (b) within three (3) days after demand for the payment thereof to the Mortgagee.

## 32. Additional Interest.

The time of the repayment, accelerated or otherwise, of the Indebtedness is of unique and specific importance and financial necessity to the Mortgagee and is hereby made of the essence. Should all sums due and payable under the Mortgage at maturity, stated or accelerated, under any written extension, postponement of the due date or renewal thereof, not be promptly paid in full on or before the due date, stated or accelerated as a result of default, the Mortgagor shall pay to the Mortgagee additional interest at the rate of two (2%) percent per month on the unpaid principal balance for each and every month, or any fraction thereof, computed from said date of maturity to the date of actual repayment; said interest shall become due and payable at the same time that interest payments are due under this Wraparound Mortgage and shall be secured by and collected hereunder. This provision does not constitute a consent or agreement on the part of the Mortgagee to extend or postpone the time of such payment beyond the present date of maturity thereof.

## 33. Non-Disturbance Agreements.

Mortgagee, within fifteen (15) days after request by Mortgagor, shall execute and deliver to Mortgagor, an agreement

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in recordable form, agreeing not to disturb tenant leases and attorning by the tenants in the event Mortgagee, its successors or assigns, becomes in possession and/or owner of the Mortgaged Property by reason of default and/or foreclosure, as long as the tenants are not in default under their leases, but such agreements of non-disturbance and attornment, or subordination if required by a tenant, shall be given only with respect to tenants which are not related, directly or indirectly to Mortgagor, and with respect to bona fide leases containing provisions for (i) rentals at the then fair market values, (ii) increases in rentals contained in comparable leases for similar properties, (iii) reasonable expenses and contributions contained in comparable leases affecting the Mortgaged Property or similar properties and provided the holder(s) of the Underlying Mortgage gives similar agreements.

#### 34. No Waiver/Cumulative Remedies.

No delay or omission to exercise any right or remedy accruing upon the occurrence of any Event of Default or any other right or remedy hereunder shall impair any such right or remedy or shall be construed to be a waiver of any such default or acquiescence therein; and every such right and remedy may be exercised from time to time as the same may be deemed expedient.

#### 35. No Manner of Exhaustion of Remedies.

The Mortgagee may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of any of the Indebtedness, in whole or in part, and in such portions and in such order as may seem best to the Mortgagee in its sole and uncontrolled discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or liens created hereby. No remedy herein conferred upon or reserved to Mortgagee hereby is intended to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute.

#### 36. Modification/Waiver.

No provision can be modified or waived except by an agreement in writing duly acknowledged by the party against whom enforcement of the modification or waiver is sought.

#### 37. Action No Election/Waivers in Action.

No action or proceeding commenced, judgment entered or other action taken by Mortgagee upon the Indebtedness secured

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hereby shall be considered to be a release of, or an election to waive the security of this Mortgage, or of the right to hold, to enforce or to foreclose the sale, or to take any other action herein provided, or permitted by law, for the collection of the full amount remaining unpaid on such Indebtedness or on any judgment entered thereon, with interest and all other charges, attorneys' fees and costs of any suit or action and also any payments of sums due under the terms hereof. With respect to any such action or proceeding Mortgagor hereby expressly waives the benefit of any stay, restraint, exemption or right to the credit against the amount of the Indebtedness secured hereby or upon any judgment entered thereon, of the fair market value of the Mortgaged Property or to any credit other than the price bid at any foreclosure sale, or to any stay, restraint or withholding of confirmation of such sale in default of any such credit, under any existing or future law, statutory or otherwise, and further particularly agrees that the price at which the Mortgaged Property shall be bid in at any public or judicial sale hereunder and in enforcement hereof shall be final and conclusive evidence of the value of the Mortgaged Property insofar as the right to any credit is concerned, whether such price shall be a nominal amount or not, or whether there shall be competitive bidding at such sale or not, or whether economic conditions shall adversely affect such bidding or not, or whether Mortgagor or any of them if more than one, shall be financially able to protect himself, herself, itself or themselves and the Mortgaged Property at such sale or not, excepting only in the event of actual and not constructive, fraud or collusive action by the Mortgagee, preventing free competitive bidding at such sale.

## 38. Invalidity of Provision(s).

If any term or provision of this Mortgage or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Mortgage, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Mortgage shall be valid and enforceable to the fullest extent permitted by law.

## 39. Warranty of Title.

The Mortgagor covenants that it will warrant its right in and to the Mortgaged Property, this Mortgage or any other mortgage, encumbrance, lien or security interest consented to by the Mortgagee and that it shall execute such further assurances as may be requisite.

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## 40. Governing Law.

The Note and this Mortgage and all matters relating to or pertaining to this transaction shall be governed, construed by and enforced under the laws of the State of Illinois without regard to where this Mortgage may be executed or delivered or the payment of the Note made.

## 41. Meaning of Terms.

As used herein, the term "Mortgagor" shall include the present Mortgagor, its successors and assigns, including without limitation all subsequent owners of the Mortgaged Property and the term "Mortgagee" shall include the present Mortgagee, its successors and assigns. This Mortgage shall inure to the benefit of and shall bind all successors and assigns of the parties hereto. Whenever used herein, the singular shall include the plural and the plural, the singular and the use of any gender shall be applicable to all genders. The term "person" shall include any individual, legal entity or unincorporated association.

## 42. Communications.

All notices, demands, requests or other communications which may be or are required to be given, served or sent by either the Mortgagor or the Mortgagee to the other shall be in writing and shall be deemed to have been properly given or sent (a) if personally served upon the other, or (b) if mailed in the continental United States by registered or certified mail with postage prepaid, return receipt requested, addressed to the other at the addresses first set forth above.

Either party may designate by notice or writing as aforesaid a new address to which any notice, demand, request or communication should thereafter be so given, served or sent. Each notice, demand, request or communication shall be deemed sufficiently given, served or sent for all purposes hereunder at the time such notice, demand, request or communication shall be mailed.

## 43. Mortgagor Approval.

The execution of this Mortgage has been duly authorized by the general partners of the Mortgagor, pursuant to the authority conferred by its partnership agreement.

## 44. Covenants Run With Land.

The covenants contained in this Mortgage shall run with the land and bind the Mortgagor, the successors and

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assigns of the Mortgagor and all subsequent owners, encumbrances, tenants and subtenants of the Mortgaged Property and shall inure to the benefit of the Mortgagee, the successors and assigns of the Mortgagee and all subsequent holders of this Mortgage.

## 45. Purchase Money Mortgage; Passage of Title.

This Mortgage constitutes a purchase money mortgage given to secure a portion of the purchase price paid by the Mortgagor in acquiring title to the Mortgaged Property.

## 46. Incorporation of Note Terms.

The terms of the Note, which this Mortgage secures, are hereby incorporated herein so that a default thereunder constitutes a default under this Mortgage; a default under this Mortgage also constitutes a default under the Note.

## 47. Headings.

The Section headings used in this Mortgage are for reference and convenience only, and shall not be considered in the construction or interpretation of any provision of this Mortgage.

## 48. Subordinate Mortgage.

Notwithstanding anything contained herein to the contrary, it is expressly agreed by Mortgagor and Mortgagee that the rights and remedies of all parties set forth herein are expressly subject and subordinate to the provisions of the Underlying Mortgage and to a certain mortgage dated October 29, 1985 between Seller and Mid-Warehouses, Corp., as mortgagors, and Main Street Investments Corp. in the original principal sum of \$234,033.

## 49. Use of Proceeds.

Mortgagor represents and agrees that the proceeds of the Note secured by this Mortgage will be used for the purposes specified in Paragraph 4(1)(c) of Chapter 17 of the Illinois Revised Statutes, and the principal obligation secured hereby constitutes a business loan which comes within the purview of said Paragraph 4(1)(c).

## 50. Release and Waiver of Homestead and Equity of Redemption.

Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever

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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, nor claim, take or insist upon any benefit or advantage of or from any law now or 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 pursuant to 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 all or any part of the property so sold or relating to the marshalling thereof upon foreclosure sale or other enforcement hereof. Mortgagor hereby expressly releases and waives any and all rights under and by virtue of the homestead exemption laws with respect to the Mortgaged Premises after an Event of Default, and any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any sale or statute or order, decree, or judgment of any court, on behalf of itself, the trust estate and all persons beneficially interested therein, and each and every person acquiring an interest in or title to the Mortgaged Premises or any portion thereof subsequent to the date hereof, except decree and judgment creditors of Mortgagor. Mortgage will not hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, or invoke or utilize any law or laws which will accomplish same, but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws have been made or enacted. Mortgagor represents and warrants that no person has any rights of homestead exemption under the laws of the State of Illinois which would affect the enforcement of Mortgagee's remedies hereunder. Mortgagor represents that it is authorized and empowered to execute the foregoing waivers and releases.

## 51. Offsets

Mortgagor shall have the right to offset any payments of principal or interest required hereunder in excess of any amounts due under the Underlying Mortgage against any payments due and owing to Mortgagor from Mortgagee under a Guarantee of Rents and a Guarantee of Repairs and Maintenance of even date herewith from Mortgagee to Mortgagor. Any such amounts shall bear interest at the higher of 15% per annum or 2% above the prime rate in effect at Citibank, N.A. from time to time from the date on which any payment under said Guarantees is due and unpaid to the date on which such sums are paid to Mortgagor, by way of offset or in cash from Mortgagee. Mortgagee shall pay such interest to Mortgagor on demand, and if not paid upon

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demand, Mortgagor shall have the right to offset such sums or any payments due hereunder as aforesaid.

IN WITNESS WHEREOF:, Mortgagor and Mortgagee have caused this Mortgage to be executed as of this 1st day of November 1985.

MORTGAGOR:

MIDWAY REALTY ASSOCIATES L.P. II

By: MIIGP ASSOCIATES L. P.

WITNESS:

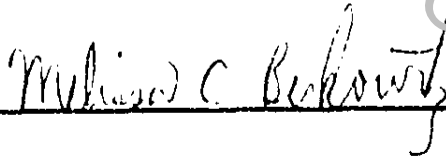
  
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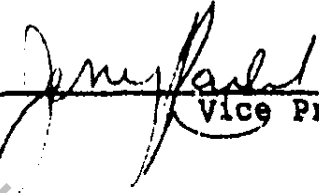
By:   
\_\_\_\_\_, General Partner

MORTGAGEE:

COMMODORE RESOURCES CORPORATION

ATTEST:

  
\_\_\_\_\_

By:   
\_\_\_\_\_, Vice President

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STATE OF NEW YORK )  
 )  
 ) ss.:  
COUNTY OF NEW YORK )

Before me, a Notary Public, in and for said County and State, personally appeared the above-named Commodore Resources Corp., by Jerry Karlik, who acknowledged he did sign the foregoing instrument and that the same is his free act and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 30<sup>th</sup> day of December, 1985

*Carol A Meyer*  
\_\_\_\_\_  
Notary Public

[SEAL] CAROL A. MEYER  
Notary Public, State of New York  
No. 4787678  
Qualified in New York County  
Commission Expires March 30, 1987  
My Commission Expires: \_\_\_\_\_

STATE OF NEW YORK )  
 )  
 ) ss.:  
COUNTY OF NEW YORK )

Before me, a Notary Public, in and for said County and State, personally appeared the above-named Midway Realty Associates L. P. II, by MIIGP Associates L. P., its general partner, by Marshall Bernstein, its general partner, who acknowledged he did sign the foregoing instrument and that the same is his free act and the free act and deed of said Midway Realty Associates L. P. II.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 30<sup>th</sup> day of December, 1985.

*Carol A Meyer*  
\_\_\_\_\_  
Notary Public

[SEAL] CAROL A. MEYER  
Notary Public, State of New York  
No. 4787678  
Qualified in New York County  
Commission Expires March 30, 1987  
My Commission Expires: \_\_\_\_\_

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Commission Expires March 30, 19  
Qualified in New York County  
No. 12345678  
Notary Public, State of New York  
CAROL A. MEYER

Commission Expires March 30, 19  
Qualified in New York County  
No. 12345678  
Notary Public, State of New York  
CAROL A. MEYER

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EXHIBIT A

That part of the West two-thirds of the Southwest Quarter of Section 21, Township 37 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois, bounded and described as follows:

Beginning at the point of intersection of the East line of the West 33.00 feet of said Southwest Quarter of Section 21, with a line which is 1766.00 feet South from and parallel with the North line of said Southwest Quarter, and running

Thence South along said East line of the West 33.00 feet of the Southwest Quarter of Section 21, a distance of 373.00 feet to an intersection with a line which is 2139.00 feet South from and parallel with the North line of said Southwest Quarter of Section 21;

Thence East along said parallel line, a distance of 1137.78 feet to a point which is 599.85 feet, measured along said parallel line, West from the East line of said West two-thirds of the Southwest Quarter of Section 21;

Thence southeastwardly along the arc of a circle, convex to the Northeast, Tangent to said parallel line, and having a radius of 420.0 feet, measured perpendicularly, West from and parallel with the East line of the West two-thirds of the Southwest Quarter of Section 21, which point of intersection is 2430.79 feet, measured along said parallel line, South from the North line of said Southwest Quarter of Section 21;

Thence North along said last described parallel line, a distance of 373.00 feet;

Thence Northeastwardly along the arc of a circle, convex to the Northeast and having a radius of 420.00 feet, a distance of 529.45 feet to a point which is 1766 feet South from the North line of said Southwest Quarter of Section 21, and 599.85 feet, measured parallel with said North line of the Southwest Quarter, West from the East line of said West two-thirds of said Southwest Quarter; and

Thence West along a line which is 1766.00 feet South from and parallel with the North line of said Southwest Quarter (said parallel line being tangent to said last described circle) a distance of 1137.70 feet to the point of beginning.

24-21-300-022 P.P.

11603 S. CENTRAL

PLSIT, IL

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## EXHIBIT B

### PERMITTED ENCUMBRANCES

1. The Underlying Mortgage and all other fee mortgages of record.
2. Any state of facts which an accurate survey or inspection of the Land or Building would show.
3. All other liens and encumbrances of record, if any.
4. All laws, agreements, restrictions, rights of way, easements and other instruments of record, if any.
5. All easements, rights of way or rights of use in favor of any utility company or any other person.
6. The Ground Lease.

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DEPT-01 RECORDING \$53.00  
TRAN 5210 10/21/06 16:20:00  
#4123 # 4-90-490639  
COOK COUNTY RECORDER

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BOX 334