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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (**"Mortgage"**), made as of June 27, 1986, is made and executed by Devon Bank, not in its individual capacity but as Trustee under a Trust Agreement dated October 15, 1983 and known as Trust No. 4820, having its principal offices at 6445 N. Western Avenue, Chicago, Illinois 60645 (**"Mortgagor"**), in favor of Bank Leumi Le Israel - Chicago Branch, having an office at 100 N. LaSalle Street, Chicago, Illinois 60602 (**"Mortgagee"**).

RECITALS

I. Mortgagee and Westgate Center Condominium Associates, an Illinois limited partnership (**"Beneficiary"**), have entered into a letter agreement dated June 16, 1986 (the **"Loan Commitment"**) pursuant to which Mortgagee has agreed, subject to the terms and conditions thereof, to make a loan to Mortgagor in an amount not to exceed $3,200,000 (the **"Loan"**).

II. The Loan is governed by a Construction Loan Agreement of even date herewith (the **"Construction Loan Agreement"**) and is evidenced by a Note of even date herewith by Mortgagor in favor of Mortgagee in the original principal amount of $3,200,000 (the **"Note"**). A copy of the Note is attached hereto as Exhibit A. The terms and provisions of the Note are hereby incorporated, by reference, in this Mortgage.

III. The proceeds of the Loan are to be used to renovate the improvements located upon the Mortgaged Property (defined herein) as provided in the Construction Loan Agreement (the **"Project"**) into condominium units (the **"Units"**).

GRANTING CLAUSES

To secure the payment of the indebtedness evidenced by the Note and the payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Mortgage, the Note, the Loan Commitment, the Construction Loan Agreement, any and all other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit and any other documents and instruments now or hereafter executed and delivered to Mortgagee to evidence, secure or guarantee the payment of all or any portion of the indebtedness evidenced by the Note or otherwise in connection with the Loan and any and all renewals, extensions, amendments and replacements of this Mortgage, the Note, the Loan Commitment and any such other documents and instruments (the Note, the Loan Commitment, the Construction Loan Agreement, this Mortgage, such

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other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit, and any other documents and instruments now or hereafter executed and delivered in connection with the Loan, and any and all amendments, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the **"Loan Instruments"** and individually as a **"Loan Instrument"**) (all indebtedness and liabilities secured hereby being hereinafter sometimes referred to as **"Borrower's Liabilities"** which indebtedness and liabilities being secured hereby shall, in no event, exceed five times the aggregate face amount of the Note), Mortgagor does hereby convey, mortgage, assign, transfer, pledge and deliver to Mortgagee the following described property subject to the terms and conditions herein:

(A) The land located in Cook County, Illinois, legally described in attached Exhibit B (**"Land"**);

(B) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land; and, to the extent not owned by tenants of the Mortgaged Property, all machinery, appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Land, buildings, structures, improvements or fixtures now or hereafter located or to be located on the Land, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, improvements, substitutions and replacements to any of the foregoing (**"Improvements"**);

(C) All building materials and goods which are procured or to be procured for use on or in connection with the Improvements or the construction of additional Improvements, whether or not such materials and goods have been delivered to the Land (**"Materials"**);

(D) All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses of the Land or the Improvements, contracts for services to be rendered to Mortgagor, Beneficiary or otherwise in connection with the Improvements and all other property, contracts, reports, proposals and other materials now or hereafter existing in any way relating to the Land or the Improvements or the construction of additional Improvements;

(E) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate

or be appurtenant thereto, whether now owned or hereafter acquired ("**Appurtenances**");

(F) (i) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(ii) All compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage or taking, pursuant to the power of eminent domain, of the Land, Improvements, Appurtenances or Materials or any part thereof, (b) damage to all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances, Materials or of other property, or (c) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances, Materials or any part thereof; and, except as otherwise provided herein, Mortgagee is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as otherwise provided herein, to apply the same toward the payment of the indebtedness and other sums secured hereby;

(iii) All contract rights, general intangibles, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Land, Improvements, Appurtenances or Materials; and

(iv) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or Materials;

(G) All rents, issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the "**Rents**"); it being intended that this Granting Clause shall constitute an absolute and present assignment of the Rents, subject, however, to the conditional permission given to Mortgagor to collect and use the Rents as provided in this Mortgage;

(H) Any and all leases, licenses and other occupancy agreements now or hereafter affecting the Land, Improvements, Appurtenances or Materials, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor which contain evidence of payments made under the leases and all security given therefor (collectively, the "**Leases**"), subject, however, to the conditional permission given in this Mortgage to Mortgagor to collect the Rents arising under the Leases as provided in this Mortgage;

(I) Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding Granting Clauses; and

(J) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses;

All of the mortgaged property described in the Granting Clauses, together with all real and personal, tangible and intangible property pledged in, or to which a security interest attaches pursuant to, any of the Loan Instruments is sometimes referred to collectively as the **"Mortgaged Property"**. The Rents and Leases are pledged on a parity with the Land and Improvements and not secondarily.

ARTICLE ONE

COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Mortgagee as follows:

1.01 **Performance under Note, Mortgage and Other Instruments.** Mortgagor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner all provisions hereof and of the Note, every other Loan Instrument and every instrument evidencing or securing Borrower's Liabilities and will promptly pay or cause to be paid to Mortgagee when due the principal with interest thereon and all other sums required to be paid by Mortgagor pursuant to the Note, this Mortgage, every other Loan Instrument and every other instrument evidencing or securing Borrower's Liabilities.

1.02 **General Covenants and Representations.** Mortgagor covenants and represents that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is seized of an indefeasible estate in fee simple in that portion of the Mortgaged Property which is real property, and has good and absolute title to it and the balance of the Mortgaged Property free and clear of all liens, security interests, charges and encumbrances whatsoever except those described in Exhibit C, if any (the **"Permitted Encumbrances"**); (b) Mortgagor has good right, full power and lawful authority to mortgage and pledge the Mortgaged Property as provided herein; (c) upon the occurrence of an Event of Default, Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof; and (d) Mortgagor will maintain and preserve the lien of this Mortgage as a first and paramount lien on the Mortgaged Property subject only to the Permitted Encumbrances.

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1.03 **Compliance with Laws.** Mortgagor covenants and represents that the Land and the Improvements and the use thereof presently comply with, and will during the full term of this Mortgage continue to comply with, all applicable restrictive covenants, zoning and subdivision ordinances and building codes, licenses, health and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations. If any federal, state or other governmental body or any court issues any notice or order to the effect that the Mortgaged Property or any part thereof is not in compliance with any such covenant, ordinance, code, law or regulation, Mortgagor will promptly provide Mortgagee with a copy of such notice or order and will immediately commence and diligently perform all such actions as are necessary to comply therewith or otherwise correct such non-compliance. Mortgagor shall not, without the prior written consent of Mortgagee, petition for or otherwise seek any change in the zoning ordinances or other public or private restrictions applicable to the Mortgaged Property on the date hereof.

1.04 **Taxes and Other Charges.**

1.04.1 **Taxes and Assessments.** Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever, now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or Borrower's Liabilities or upon or against the interest of Mortgagee in the Mortgaged Property, as well as all taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality or other taxing authority upon or in respect of the Mortgaged Property or any part thereof; provided, however, that unless compliance with applicable laws requires that taxes, assessments or other charges must be paid as a condition to protesting or contesting the amount thereof, Mortgagor may in good faith, by appropriate proceedings commenced within ninety (90) days of the due date of such amounts and thereafter diligently pursued, contest the validity, applicability or amount of any asserted tax, assessment or other charge and pending such contest Mortgagor shall not be deemed in default hereunder if on or before the due date of the asserted tax or assessment, Mortgagor shall either (i) cause the lien of such asserted tax, assessment or other charge to be insured over by a title insurance company satisfactory to Mortgagee or (ii) deposit with Mortgagee a bond or other security satisfactory to Mortgagee in the amount of 175% of the amount of such tax or assessment. If Mortgagor shall have elected to deposit such bond or other security with Mortgagee, Mortgagor shall pay the disputed or contested tax, assessment or other charge and all interest and penalties due in respect thereof on or before the date any

adjudication of the validity or amount thereof becomes final and in any event no less than thirty (30) days prior to any forfeiture or sale of the Mortgaged Property by reason of such non-payment or Mortgagee may, at its option, satisfy and procure the discharge of such lien and any amounts so expended by Mortgagee shall constitute an Advance hereunder.

1.04.2 **Taxes Affecting Mortgagee's Interest.** If any state, federal, municipal or other governmental law, order, rule or regulation, which becomes effective subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes, so as to impose on Mortgagee a tax by reason of its ownership of any or all of the Loan Instruments or measured by the principal amount of the Note, require or have the practical effect of requiring Mortgagee to pay any portion of the real estate taxes levied in respect of the Mortgaged Property to pay any tax levied in whole or in part in substitution for real estate taxes or otherwise affects materially and adversely the rights of Mortgagee in respect of the Note, this Mortgage or the other Loan Instruments, Borrower's Liabilities and all interest accrued thereon shall, upon thirty (30) days' notice, become due and payable forthwith at the option of Mortgagee, whether or not there shall have occurred an Event of Default, provided, however, that, if Mortgagor may, without violating or causing a violation of such law, order, rule or regulation, pay such taxes or other sums as are necessary to eliminate such adverse effect upon the rights of Mortgagee and does pay such taxes or other sums when due, Mortgagee may not elect to declare due Borrower's Liabilities by reason of the provisions of this Paragraph 1.04.2.

1.04.3 **Tax Escrow.** Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Paragraph 1.04, but not in lieu of such obligations, deposit with Mortgagee an amount equal to one-twelfth (1/12) of the next maturing payment of annual ad valorem taxes, assessments and charges of the nature described in Paragraph 1.04.1 (as estimated by Mortgagee) for each month that has elapsed since the last date to which such taxes, assessments and charges were paid and thereafter deposit with Mortgagee in monthly installments the greater of one-twelfth (1/12) of said next maturing annual payment or sufficient funds (as estimated from time to time by Mortgagee) to permit Mortgagee to pay such taxes, assessments and charges at least thirty (30) days prior to the date or dates on which they shall become delinquent. The taxes, assessments and charges for purposes of this Paragraph 1.04.3 shall, if Mortgagee so elects, include, without limitation, water and sewer rents. Mortgagor shall procure and deliver to Mortgagee when issued all statements or bills for such obligations. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Mortgagee to pay such taxes, assessments and

similar charges thirty (30) days prior to the date they become delinquent. Mortgagee shall pay such taxes, assessments and other charges as they become due to the extent of the funds on deposit with Mortgagee from time to time and provided Mortgagor has delivered to Mortgagee the statements or bills therefor. In making any such payments, Mortgagee shall be entitled to rely on any bill issued in respect of any such taxes, assessments or charges without inquiry into the validity or amount thereof and whether delivered to Mortgagee by Mortgagor or otherwise obtained by Mortgagee. Any deposits received pursuant to this Paragraph 1.04.3 shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee and Mortgagee shall have no obligation to pay interest on amounts deposited with Mortgagee pursuant to this Paragraph 1.04.3. If any Event of Default occurs any part or all of the amounts then on deposit or thereafter deposited with Mortgagee under this Paragraph 1.04.3 may at Mortgagee's option be applied to payment of Borrower's Liabilities in such order as Mortgagee may determine.

1.04.4 **No Credit Against the Indebtedness Secured Hereby.** Mortgagor shall not claim, demand or be entitled to receive any credit against the principal or interest payable under the terms of the Note or on any of Borrower's Liabilities for any of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof or that are applicable to Borrower's Liabilities or to Mortgagee's interest in the Mortgaged Property.

1.05 **Mechanic's and Other Liens.** Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due) to be created upon or against the Mortgaged Property, provided, however, that Mortgagor shall not be deemed to be in default hereunder if Mortgagor shall, in good faith, by appropriate proceeding, contest the validity, applicability or amount of any asserted lien and, pending such contest, Mortgagor shall either (i) cause such lien or encumbrance to be insured over by a title insurance company satisfactory to Mortgagee or (ii) deposit with Mortgagee a bond or other security satisfactory to Mortgagee in the amount of 175% of the amount of such lien. If Mortgagor shall have elected to deposit such bond or other security with Mortgagee, Mortgagor shall pay the disputed amount and all interest and penalties due in respect thereof on or before the date any adjudication of the validity or amount thereof becomes final and, in any event, no less than thirty (30) days prior to any foreclosure sale of the Mortgaged Property or the exercise of any other remedy by such claimant against the Mortgaged Property or Mortgagee may, at its option, satisfy and procure the discharge of such lien or encumbrance and any amounts so expended shall constitute an Advance hereunder. In so satisfying any such lien or encum-

brance, Mortgagee need not inquire into the validity, applicability or amount of such lien or encumbrance.

1.06 **Insurance and Condemnation.**

1.06.1 **Hazard Insurance.** Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain in full force and effect for the benefit of Mortgagor and Mortgagee all policies of insurance as Mortgagee may require, in form and substance and issued by companies acceptable to Mortgagee. Without limitation of the foregoing, all such policies shall contain a non-contributory standard mortgagee's endorsement making losses payable to Mortgagee. No additional parties shall appear in the mortgage clause without Mortgagee's prior written consent. In the event of loss, Mortgagor will give immediate written notice to Mortgagee and Mortgagee may make proof of loss if not made promptly by Mortgagor (for which purpose Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact). In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in full or partial satisfaction of Borrower's Liabilities, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee. All such policies shall provide that they shall not be modified, cancelled or terminated without at least ten (10) days' prior written notice to Mortgagee from the insurer.

1.06.2 **Other Insurance.** Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain in full force and effect for the benefit of Mortgagee, liability, loss of rentals, business interruption and such other insurance policies relating to the Mortgaged Property, the construction of the Improvements and the use and operation thereof, in such amounts as may be reasonably required by Mortgagee, issued by companies and in such form and substance as may be acceptable to Mortgagee.

1.06.3 **Adjustment of Loss.** Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss of more than $25,000 under any insurance policies covering or relating to the Mortgaged Property or the Tangible Goods and to collect and receive the proceeds from any such policy or policies (and deposit such proceeds as provided in Paragraph 1.06.5). Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the purposes set forth in the preceding sentence. In so adjusting and compromising any such loss, Mortgagee will at all times act in a reasonable manner and will consult with Mortgagor. Each insurance company is hereby authorized and directed to make payment (i) of 100% of all such losses of more than $25,000 directly to Mortgagee alone and (ii) of 100% of all such losses of $25,000 or less directly to Mortgagor alone, and in no case to Mortgagor and Mortgagee jointly. After deducting from such insurance proceeds any expenses incurred by Mortgagee in the collection and settlement

thereof, including without limitation attorneys' and adjusters' fees and charges, Mortgagee shall apply the net proceeds as provided in Paragraph 1.06.5. Mortgagee shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

1.06.4 **Condemnation Awards.** Mortgagee shall be entitled to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Mortgaged Property or any part thereof, (ii) damage to the Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of other property or of a portion of the Mortgaged Property, or (iii) the alteration of the grade of any street or highway on or about the Mortgaged Property. Mortgagee is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the purposes set forth in the preceding sentence. Mortgagee after deducting from such compensation, awards, damages, claims, rights of action and proceeds all its expenses, including attorneys' fees, may apply such net proceeds (except as otherwise provided in Paragraph 1.06.5 of this Mortgage) to payment of Borrower's Liabilities in such order and manner as Mortgagee may elect. Mortgagor agrees to execute such further assignments of any compensation awards, damages, claims, rights of action and proceeds as Mortgagee may require.

1.06.5 **Repair; Proceeds of Casualty Insurance and Eminent Domain.** If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Paragraph 1.06.4, Mortgagor shall promptly and with all due diligence restore and repair the Mortgaged Property whether or not the proceeds, award or other compensation are sufficient to pay the cost of such restoration or repair. The proceeds of insurance (other than business interruption or rental insurance), award or other compensation, at Mortgagee's election, shall either (i) be applied to Borrower's Liabilities in such order and manner as Mortgagee may elect or (ii) be made available to Mortgagor on the terms and conditions set forth in this Paragraph 1.06.5 to finance the cost of restoration or repair with any excess to be applied to Borrower's Liabilities in such order and manner as Mortgagee may elect. Notwithstanding the foregoing, if no Event of Default shall have occurred and the cost of restoration or repair is $900,000 or less, and if Mortgagee determines, in its sole discretion, that the Completion (as defined in the Construction Loan Agreement) of the Project can and will occur on or before the date set forth in the Construction Loan Agreement for such Completion and sufficient funds, together with such proceeds, award or other compensa-

tion, remain in the Budget (as defined in the Construction Loan Agreement) or have been irrevocably committed to effect such repair and restoration, then such proceeds, award or other compensation shall be made available to Mortgagor for restoration and repair as provided herein. If the amount of proceeds to be made available to Mortgagor pursuant to this Paragraph 1.06.5 is less than the cost of the restoration or repair as estimated by Mortgagee, Mortgagor shall cause to be deposited with Mortgagee the amount of such deficiency and Mortgagor's deposited funds shall be disbursed prior to any such insurance proceeds. The amount of proceeds, award or compensation which is to be made available to Mortgagor, together with any deposits made by Mortgagor hereunder, shall be held by Mortgagee to be disbursed from time to time to pay the cost of repair or restoration either, at Mortgagee's option, to Mortgagor or directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Mortgagee may impose to assure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof. At the request of Mortgagor, such proceeds of insurance received by Mortgagee shall be invested in a certificate of deposit, with a maturity not to exceed thirty (30) days, bearing interest at the then prevailing rate, and shall be reinvested at maturity as provided herein until disbursement is required. So long as no Event of Default shall have occurred, all interest earned by such certificate of deposit shall be paid to Mortgagor. Notwithstanding anything to the contrary provided in the Note, for so long as any proceeds of insurance are so invested, the rate of interest chargeable under the Note and payable by Mortgagor shall not be less than the rate of interest payable under the certificate of deposit in which such proceeds are invested plus 1%. Notwithstanding any other provision of this Paragraph 1.06.5, if there shall have occurred an Event of Default, Mortgagee shall have the right to immediately apply all insurance proceeds (including any and all sums invested in one or more certificates of deposit), awards or compensation to the payment of Borrower's Liabilities in such order and manner as Mortgagee may determine or to apply such net proceeds to the cure of such Event of Default or to the performance of any obligations of Mortgagor under the Loan Instruments.

1.06.6 **Proceeds of Business Interruption and Rental Insurance.** The net proceeds of business interruption and rental insurance shall be paid to Mortgagee for application first to Borrower's Liabilities in such order and manner as Mortgagee may determine and then to the creation of reserves for future payments of Borrower's Liabilities in such amounts as Mortgagee deems necessary with the balance to be remitted to Mortgagor subject to such controls as Mortgagee may deem necessary to assure that said balance is used to discharge accrued and to be accrued expenses of operation and maintenance of the Mortgaged Property.

1.06.7 **Renewal of Policies.** At least ten (10) days prior to the expiration date of any policy evidencing insurance required under this Paragraph 1.06.7, a renewal thereof satisfactory to Mortgagee shall be delivered to Mortgagee or substitution therefor, receipts or other evidence of the payment of any premiums then due on such renewal policy or substitute policy.

1.07 **Non-Impairment of Mortgagee's Rights.** Nothing contained in this Mortgage shall be deemed to limit or otherwise affect any right or remedy of Mortgagee under any provision of this Mortgage or of any statute or rule of law to pay and, upon Mortgagor's failure to pay the same, Mortgagee may pay any amount required to be paid by Mortgagor under Paragraphs 1.04, 1.05 and 1.06. Mortgagor shall pay to Mortgagee on demand the amount so paid by Mortgagee together with interest at the Default Rate (as defined in the Note), and the amount so paid by Mortgagee shall be added to Borrower's Liabilities. The provisions of Paragraph 1.04.3 are solely for the added protection of Mortgagee and entail no responsibility on Mortgagee's part beyond the allowing of due credit as specifically provided therein. Upon assignment of this Mortgage, any funds on hand shall be turned over to the assignee and assignee shall assume Mortgagee's responsibilities with respect to such funds without Mortgagee's responsibilities therefor under the terms of any of the Loan Instruments having been discharged.

1.08 **Care of the Mortgaged Property.**

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good and first class condition and repair. Mortgagor shall not, without the prior written consent of Mortgagee, permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof.

(b) Except as provided in the Construction Loan Agreement, no part of the Mortgaged Property shall be removed, demolished or altered in any material manner without the prior written consent of Mortgagee.

1.09 **Transfer of the Mortgaged Property.** Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, transfer, mortgage, lease or encumbrance of, or any contract for any of the foregoing on an installment basis or otherwise pertaining to:

(a) the Mortgaged Property, any part thereof, or any interest therein;

(b) the beneficial interest in Mortgagor, in any other trust holding title to the Mortgaged Property, or any interest therein;

(c) any partnership interest in Beneficiary (provided, however, limited partnership interests in Beneficiary may be transferred as provided in Section 16.2 of the partnership agreement creating and governing Beneficiary); or

(d) any partnership interest in the sole general partner of Beneficiary,

whether by operation of law or otherwise, without the prior written consent of Mortgagee having been obtained to such sale, assignment, conveyance, mortgage, lease, option, encumbrance or other transfer, and to the form and substance of any instrument evidencing or contracting for any such sale, assignment, conveyance, mortgage, lease, option, encumbrance or other transfer. Mortgagor shall not, without the prior written consent of Mortgagee, further assign or permit to be assigned the rents from the Mortgaged Property, and any such assignment without the prior express written consent of Mortgagee shall be null and void. Mortgagor agrees that in the event the ownership of the Mortgaged Property, any interest therein or any part thereof, becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the Note, the Loan Instruments and Borrower's Liabilities without in any way vitiating or discharging Mortgagor's liability hereunder or Borrower's Liabilities. No sale of the Mortgaged Property, no forbearance to any person with respect to this Mortgage, and no extension to any person of the time for payment of the Note or any other Borrower's Liabilities given by Mortgagee shall operate to release, discharge, modify, change or affect the original liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by Mortgagee. Notwithstanding the foregoing, the Mortgaged Property may be sold to individual Unit purchasers pursuant to Unit sale contracts in the form approved by Mortgagee and providing for sales prices which are no less than the applicable minimum prices approved by Mortgagee in accordance with the Construction Loan Agreement.

1.10 **Further Assurances.** At any time and from time to time, upon Mortgagee's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Mortgagee, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and places as shall be deemed desirable by Mortgagee, any and all such further mortgages, security agreements, financing statements, instruments of further assurance, certificates and other documents as Mortgagee may consider necessary or desirable in order to effectuate or perfect, or to continue and preserve the obligations under, the Note, this Mortgage, any other Loan Instrument and any instrument evidencing or securing Borrower's Liabilities, and the lien of this Mortgage as a lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor, and unto all and every person or persons deriving

any estate, right, title or interest under this Mortgage. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, register, file, re-record, re-register or re-file any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

1.11 Security Agreement and Financing Statements.

(a) Mortgagor (as debtor) hereby grants to Mortgagee (as creditor and secured party) a security interest under the Uniform Commercial Code in all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever constituting part of the Mortgaged Property. Mortgagor shall execute any and all documents, including without limitation financing statements pursuant to the Uniform Commercial Code, as Mortgagee may request to preserve, maintain and perfect the priority of the first lien and security interest created hereby on property which may be deemed personal property or fixtures, and shall pay to Mortgagee on demand any expenses incurred by Mortgagee in connection with the preparation, execution and filing of any such documents. Mortgagor hereby authorizes and empowers Mortgagee and irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to execute and file, on Mortgagor's behalf, all financing statements and refilings and continuations thereof as Mortgagee deems necessary or advisable to create, preserve and protect such lien. When and if Mortgagor and Mortgagee shall respectively become the debtor and secured party in any Uniform Commercial Code financing statement affecting the Mortgaged Property (or Mortgagee takes possession of personal property delivered by Mortgagor where possession is the means of perfection of the security interest), then, at Mortgagee's sole election, this Mortgage shall be deemed a security agreement as defined in such Uniform Commercial Code, and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law, or, as to such part of the security which is also reflected in such financing statement, by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code.

(b) Without limitation of the foregoing, if an Event of Default occurs, Mortgagee shall be entitled immediately to exercise all remedies available to it under the Uniform Commercial Code and this Paragraph 1.11. Mortgagor shall, in such event and if Mortgagee so requests, assemble the tangible personal property at Mortgagor's expense, at a convenient place designated by Mortgagee. Mortgagor shall pay all expenses incurred by Mortgagee in the collection of such indebtedness, including reasonable attorneys' fees and legal expenses, and in the repair of any real estate or other property to which any of the tangible personal property may be affixed. If any notification of intended disposition of any of the personal property is required by law, such notification shall be deemed reasonable and proper if given

at least fifteen (15) days before such disposition. Any proceeds of the disposition of any of the personal property may be applied by Mortgagee to the payment of the reasonable expenses of retaking, holding, preparing for sale and selling the personal property, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds may be applied by Mortgagee toward the payment of such of Borrower's Liabilities, and in such order of application, as Mortgagee may from time to time elect. If an Event of Default occurs, Mortgagee shall have the right to exercise and shall automatically succeed to all rights of Mortgagor with respect to intangible personal property subject to the security interest granted herein. Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Mortgagee without the necessity of any further notice or action by Beneficiary. Mortgagee shall not by reason of this Mortgage or the exercise of any right granted hereby be obligated to perform any obligation of Mortgagor with respect to any portion of the personal property nor shall Mortgagee be responsible for any act committed by the Mortgagor, or any breach or failure to perform by the Mortgagor with respect to any portion of the personal property.

(c) Mortgagor and Mortgagee agree that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Mortgaged Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (i) any such item is physically attached to the Land or Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Mortgagee, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Mortgagee as determined by this instrument or adversely affecting the priority of Mortgagee's lien granted hereby or by any other recorded document. Any such mention in any such financing statement is declared to be for the protection of Mortgagee in the event any court or judge shall at any time hold with respect to clauses (1), (2) or (3) above, that notice of Mortgagee's priority of interest, to be effective against a particular class of persons,

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including, but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the Uniform Commercial Code records.

1.12 **Assignment of Rents.**

(a) The assignment of rents, income and other benefits contained in Paragraph (G) of this Mortgage shall be fully operative without any further action on the part of either party, and, specifically, Mortgagee shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to all rents, income and other benefits from the property described in Paragraphs (A), (B) and (E) of the Granting Clauses, whether or not Mortgagee takes possession of such property. Mortgagor hereby further grants to Mortgagee the right effective upon the occurrence of an Event of Default at Mortgagee's option, (i) to enter upon and take possession of the Mortgaged Property for the purpose of collecting the rents, income and other benefits, (ii) to dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Mortgagee, (iii) to lease the Mortgaged Property or any part thereof, and (iv) to apply the rents, income and other benefits, after payment of all necessary charges and expenses, on account of Borrower's Liabilities. Such assignment and grant shall continue in effect until Borrower's Liabilities are paid in full, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Mortgagee pursuant to such grant, whether or not foreclosure proceedings have been instituted. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, income or other benefits to payment of Borrower's Liabilities shall cure or waive any Event of Default or notice provided for hereunder, or invalidate any act done pursuant hereto or pursuant to any such notice, but shall be cumulative of all other rights and remedies. Mortgagor and Beneficiary have executed and delivered to Mortgagee an Assignment of Leases and Rents of even date herewith, and, to the extent that the provisions of this Paragraph 1.12 or Paragraph 1.14 are inconsistent with the provisions of said Assignment of Leases and Rents, the provisions of said Assignment of Leases and Rents shall control. Notwithstanding the foregoing, so long as no Event of Default has occurred or is continuing, Mortgagor shall have the right and authority to continue to collect the rents, income and other benefits from said property as they become due and payable but not more than thirty (30) days prior to the due date thereof. The existence or exercise of such right of Mortgagor to collect said rents, income and other benefits shall not operate to subordinate this assignment to any subsequent assignment of said rents, income or other benefits, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder.

(b) Mortgagor shall not permit any rent under any lease of the Mortgaged Property to be collected more than thirty (30) days in advance of the due date thereof and, upon any receiver, Mortgagee, anyone claiming by, through or under Mortgagee or any purchaser at a foreclosure sale coming into possession of the Mortgaged Property, no tenant shall be given credit for any rent paid more than thirty (30) days in advance of the due date thereof. Mortgagor shall act promptly to enforce all available remedies against any delinquent lessee so as to protect the interest of the lessor under the leases and to preserve the value of the Mortgaged Property.

1.13 **After-Acquired Property.** To the extent permitted by, and subject to, applicable law, the lien of this Mortgage, including without limitation the security interest created under Paragraph 1.11, shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof.

1.14 **Leases Affecting Mortgaged Property.** Mortgagor shall comply with and perform in a complete and timely manner all of its obligations as landlord under any leases affecting the Mortgaged Property or any part thereof. The assignment contained in Paragraph (H) of the Granting Clauses shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any lease, including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Mortgaged Property or any part thereof. Mortgagor hereby acknowledges and agrees that Mortgagor is and will remain liable under such leases to the same extent as though the assignment contained in Paragraph (H) of the Granting Clauses had not been made. Mortgagee disclaims any assumption of the obligations imposed upon Mortgagor under the leases, except as to such obligations which arise after such time as Mortgagee shall have exercised the rights and privileges conferred upon it by the assignment contained in Paragraph (H) of the Granting Clauses and assumed full and indefeasible ownership of the collateral thereby assigned.

1.15 **Management of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be managed at all times in accordance with sound business practice. Mortgagor shall cause the Mortgaged Property to be managed by a competent and reputable managing agent acceptable to Mortgagee pursuant to a management agreement approved by Mortgagee in writing in advance of execution thereof by Mortgagor, Beneficiary or anyone acting on behalf of either of them. Following such approval, Mortgagor shall not

permit the management agreement to be terminated (except for good cause after notice to Mortgagee), modified, amended or extended, or permit a change in the identity of the management agent, without Mortgagee's prior written consent.

1.16 **Execution of Leases.** Mortgagor shall not permit any leases to be made of the Mortgaged Property without the prior written consent of Mortgagee.

1.17 **Expenses.** Mortgagor shall pay when due and payable, and otherwise on demand made by Mortgagee, all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title insurance fees, escrow fees, attorneys' fees, court costs, documentary and expert evidence, fees of inspecting architects and engineers, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Mortgagee in connection with any of the following:

(a) The preparation, execution, delivery and performance of the Loan Instruments;

(b) The funding of the Loan;

(c) Any court or administrative proceeding involving the Mortgaged Property or the Loan Instruments to which Mortgagee is made a party by reason of its being a holder of any of the Loan Instruments, including without limitation bankruptcy, insolvency, reorganization, probate, eminent domain, condemnation, building code and zoning proceedings;

(d) Any court or administrative proceeding or other action undertaken by Mortgagee to enforce any remedy or to collect any indebtedness due under this Mortgage or any of the other Loan Instruments following a default thereunder, including without limitation a foreclosure of this mortgage or a public or private sale under the Uniform Commercial Code;

(e) Any remedy exercised by Mortgagee following an Event of Default including foreclosure of this Mortgage and actions in connection with taking possession of the Mortgaged Property or collecting rents assigned hereby and by the Assignment of Leases and Rents;

(f) Any activity in connection with any request by Mortgagor, Beneficiary or anyone acting on behalf of Mortgagor or Beneficiary that the Mortgagee consent to a proposed action which, pursuant to this Mortgage or any of the other Loan Instruments may be undertaken or

consummated only with the prior consent of Mortgagee, whether or not such consent is granted; or

(g) Any negotiation undertaken between Mortgagee and Mortgagor, Beneficiary or anyone acting on behalf of Mortgagor or Beneficiary pertaining to the existence or cure of any default under or the modification or extension of any of the Loan Instruments.

If, after receiving fifteen (15) days' prior written notice, Mortgagor fails to pay said costs and expenses as above provided, Mortgagee may elect, but shall not be obligated, to pay the costs and expenses described in this Paragraph 1.17, and if Mortgagee does so elect, then Mortgagor will, upon demand by Mortgagee, reimburse Mortgagee for all such expenses which have been or shall be paid or incurred by it. Any amount paid by Mortgagee in respect of such expenses, together with interest thereon at the Default Rate (as defined in the Note) from the date paid by Mortgagee until paid by Mortgagor, shall be added to Borrower's Liabilities, shall be referred to herein as **"Advance"** and shall be immediately due and payable and shall be secured by the lien of this Mortgage and the other Loan Instruments. In the event of foreclosure hereof, Mortgagee shall be entitled to add to the indebtedness found to be due by the court a reasonable estimate of such expenses to be incurred after entry of the decree of foreclosure. To the extent permitted by law, Mortgagor agrees to hold harmless Mortgagee against and from, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including without limitation attorneys' fees, which may be imposed upon, asserted against, or incurred or paid by it by reason of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever, or asserted against it 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, this Mortgage, the other Loan Instruments, any of the indebtedness evidenced by the Note or any of Borrower's Liabilities.

1.18 **Mortgagee's Performance of Mortgagor's Obligations.** If Mortgagor fails to pay any tax, assessment, encumbrance or other imposition, or to furnish insurance hereunder, or to perform any other covenant, condition or term in this Mortgage, the Note or any other Loan Instrument, Mortgagee may, but shall not be obligated to, pay, obtain or perform the same. All payments made, whether such payments are regular or accelerated payments, and costs and expenses incurred or paid by Mortgagee in connection therewith shall be due and payable immediately. The amounts so incurred or paid by Mortgagee, together with interest thereon at the Default Rate (as defined in the Note) from the date paid by Mortgagee until reimbursed by Mortgagor, shall be added to Borrower's Liabilities and secured by the lien of this Mortgage and the Loan Instruments. Mortgagee is hereby empowered

to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any covenant, condition or term that Mortgagor has failed to perform or observe, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Performance or payment by Mortgagee of any obligation of Mortgagor shall not relieve Mortgagor of said obligation or of the consequences of having failed to perform or pay the same and shall not effect the cure of any Event of Default.

1.19 **Payment of Superior Liens.** To the extent that Mortgagee, after the date hereof, pays any sum due under any provision of law or instrument or document creating any lien superior or equal in priority in whole or in part to the lien of this Mortgage, Mortgagee shall have and be entitled to a lien on the premises equal in parity with that discharged, and Mortgagee shall be subrogated to and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee to secure the Note and all obligations and liabilities secured hereby. Mortgagee shall be subrogated, notwithstanding their release of record, to mortgages, trust deeds, superior titles, vendors' liens, mechanics' and materialmen's liens, charges, encumbrances, rights and equities on the Mortgaged Property to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances under the Note or other indebtedness secured hereby.

1.20 **Books and Records.** Mortgagor shall cause Beneficiary to keep and maintain at all times complete, true and accurate books of account and records reflecting (i) the results of the operation of the Mortgaged Property and (ii) the financial condition of each of the guarantors of the Loan. Mortgagor shall cause Beneficiary to furnish to Mortgagee within ninety (90) days after the end of Beneficiary's fiscal year, financial statements pertaining to the Mortgaged Property, including a statement of income and expenses with respect to the Mortgaged Property for the fiscal year, and, within ninety (90) days following the end of the fiscal year of each of the guarantors of the Loan, financial statements pertaining to such guarantors of the Loan, all such statements to be prepared in accordance with generally accepted accounting principles consistently applied and certified by the accounting firm of Ostrow, Reisen, Berk & Abrams or other certified public accountant satisfactory to Mortgagee. All such statements shall be of "review" quality, except that Mortgagee shall accept statements "compiled" by such accountant as to The Eugene Matanky Trust and Gertrude Matanky. Mortgagor shall also cause Beneficiary to furnish such interim unaudited financial statements and other information pertaining to the Mortgaged Property and the operation thereof as Mortgagee may, from time to time, require. In the event that Mortgagor fails to comply with the requirements set forth above, Mortgagee shall have the right to have the books and records of Mortgagor, Beneficiary or any

guarantor of the Loan to be audited by an independent certified public accountant, and the cost of such audit shall be the obligation of Mortgagor; provided, however, Mortgagee shall not exercise such right to audit until Mortgagor shall have received ten (10) days' prior written notice. Mortgagee and its designated agents shall have the right to inspect Mortgagor's and Beneficiary's books and records with respect to the Mortgaged Property at all reasonable times. In the event of a foreclosure of this Mortgage, all of Mortgagor's and's books and records maintained in connection with the Mortgaged Property shall be made available to the successful bidder at the foreclosure sale for inspection and copying for a period of not less than three (3) years following said sale.

1.21 **Estoppel Affidavits.** Mortgagor, within ten (10) days after written request from Mortgagee, shall furnish a written statement executed by Mortgagor and Beneficiary setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses are claimed to exist against Mortgagee.

1.22 **Use of the Mortgaged Property.** Mortgagor shall not suffer or permit the Mortgaged Property, or any portion thereof, to be used by the public, as such, without restriction or in such manner as might reasonably tend to impair Mortgagor's title to the Mortgaged Property or any portion thereof, or in such manner as might reasonably make possible a claim or claims of easement by prescription or adverse possession by the public, as such, or of implied dedication of the Mortgaged Property or any portion thereof. Mortgagor shall not use or permit the use of the Mortgaged Property or any portion thereof for any unlawful purpose.

1.23 **Litigation Involving Mortgaged Property.** Mortgagor shall promptly notify Mortgagee of any litigation, administrative procedure or proposed legislative action initiated against Mortgagor, Beneficiary or the Mortgaged Property or in which the Mortgaged Property is directly or indirectly involved including any proceedings which seek to (i) enforce any lien against the Mortgaged Property, (ii) correct, change or prohibit any existing condition, feature or use of the Mortgaged Property, (iii) condemn or demolish the Mortgaged Property, (iv) take, by the power of eminent domain, any portion of the Mortgaged Property or any property which would damage the Mortgaged Property, (v) modify the zoning applicable to the Mortgaged Property, or (vi) otherwise adversely affect the Mortgaged Property. Mortgagor shall initiate or appear in any legal action or other appropriate proceedings when necessary to protect the Mortgaged Property from damage. Mortgagor shall, upon written request of Mortgagee, represent and defend the interests of Mortgagee in any proceedings described in this Paragraph 1.23 or, at Mortgagee's election, pay the fees and expenses of any counsel retained by Mortgagee to represent the interest of Mortgagee in any such proceedings.

ARTICLE TWO

DEFAULTS

2.01 **Event of Default.** The term **"Event of Default"**, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) If Mortgagor shall (i) fail to pay when due (A) any payment of principal when such payment shall become due and payable under the Note whether at maturity or otherwise; (B) any payment of interest under the Note when due and payable; (C) any deposit for taxes and assessments due hereunder within five (5) days after such deposit is due hereunder or (D) any other sums to be paid by Mortgagor hereunder within five (5) days after such payment is due hereunder; or (ii) fail to keep, perform or observe any other covenant, condition or agreement on the part of Mortgagor in this Mortgage and such failure shall continue for thirty (30) days following the delivery of notice of such failure to Mortgagor; provided, however, if such failure is not of the kind or nature which can reasonably be cured within a period of thirty (30) days, then if Mortgagor shall fail to commence to cure such failure within thirty (30) days following the delivery of notice of such failure to Mortgagor and thereafter diligently proceed to cure such failure until completion.

(b) If a default shall occur under any of the other Loan Instruments and the same is not cured within such cure, grace or other period, if any, provided in such Loan Instrument.

(c) If an Event of Default shall occur under and as defined in any of the other Loan Instruments.

(d) The untruth of any warranty or representation made herein or in any affidavit or certificate executed by Beneficiary in connection with the Loan or the disbursement thereof.

(e) An uninsured loss, damage, destruction or taking by eminent domain or other condemnation proceedings of any substantial portion of the Mortgaged Property or any part of the Mortgaged Property which materially impairs any of the intended uses of the Mortgaged Property.

(f) The appointment of a receiver, trustee or conservator of Mortgagor, Beneficiary, all or any part

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of the Mortgaged Property or Mortgagor's or Beneficiary's business pertaining to the operation of the Mortgaged Property.

(g) The occurrence of any of the following events:

(i) An admission in writing by Mortgagor or Beneficiary of its inability to pay debts as they become due;

(ii) The institution by Mortgagor or Beneficiary of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal bankruptcy statutes or any similar law (state or federal) now or hereafter existing;

(iii) The institution against Mortgagor or Beneficiary of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal bankruptcy statutes or any similar law (state or federal) now or hereafter existing which proceedings are not dismissed within forty-five (45) days of filing;

(iv) The making of a general assignment for the benefit of creditors by Mortgagor or Beneficiary;

(v) The declaration by any court, government or governmental agency of the bankruptcy or insolvency of Mortgagor or Beneficiary;

(vi) The entry of a final judgment against Mortgagor or Beneficiary for $25,000 or more which is not satisfied within forty-five (45) days of the date on which such judgment shall have become final and all stays of execution pending appeal or otherwise shall have expired; or

(vii) The issuance of a writ or warrant of attachment, levy, seizure or distraint or any similar process against Mortgagor or Beneficiary or all or a material part of the Mortgaged Property which is not stayed within forty-five (45) days of issuance or the lapse of any such stay.

(h) The filing of any lien or claim for lien against any portion of the Mortgaged Property and the failure of Mortgagor, within forty-five (45) days following the date of recording, to discharge such lien

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or to induce the title insurance company to commit to insure Mortgagee over such lien.

(i) Any amendment of the partnership agreement creating and governing Beneficiary, without the prior written consent of Mortgagee.

ARTICLE THREE

REMEDIES

3.01 **Acceleration of Maturity.** If an Event of Default shall have occurred, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon and any other of Borrower's Liabilities to be immediately due and payable, and upon such declaration such principal and interest and other Borrower's Liabilities declared due shall immediately become and be due and payable without further demand or notice.

3.02 **Mortgagee's Power of Enforcement.** If an Event of Default shall have occurred, Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, and without regard to whether or not Borrower's Liabilities shall be due and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (a) to enforce payment of the Note and/or any other of Borrower's Liabilities or the performance of any term hereof or any of the other Loan Instruments; (b) to foreclose this Mortgage and to have sold, as an entirety or in separate lots or parcels, the Mortgaged Property; and (c) to pursue any other remedy available to it. Mortgagee may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Mortgagee may determine.

3.03 **Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.**

(a) If an Event of Default shall have occurred, (i) Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee and cause Beneficiary to surrender to Mortgagee the actual possession of the Mortgaged Property, and if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, is hereby expressly authorized to enter and take possession of all or any portion of the Mortgaged Property and may exclude Mortgagor and its agents and employees wholly therefrom and shall have joint access with Mortgagor and Beneficiary to the books, papers and accounts of Mortgagor and Beneficiary; and (ii) notwithstanding the provisions of any lease or other agreement to the contrary, Mortgagor shall pay monthly in advance to Mortgagee, on Mortgagee's entry into possession, or

to any receiver appointed to collect the rents, income and other benefits of the Mortgaged Property, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Mortgagor or Beneficiary, or any entity affiliated with or controlled by Mortgagor or Beneficiary, and upon default in any such payment Mortgagor shall, and shall cause Beneficiary to, vacate and surrender possession of such part of the Mortgaged Property to Mortgagee or to such receiver, and in default thereof Mortgagor may be evicted by summary proceedings or otherwise.

(b) If Mortgagor or Beneficiary shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor and Beneficiary to deliver immediate possession of all or part of the Mortgaged Property to Mortgagee, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Mortgagee, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Mortgagee, to the extent permitted by law, may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

(i) perform such construction, make all necessary and proper maintenance, repairs, renewals, replacements, additions and improvements thereto and thereon, and purchase or otherwise acquire additional fixtures and personal property;

(ii) insure or keep the Mortgaged Property insured;

(iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor, on its behalf or otherwise, with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted Mortgagee, all as Mortgagee from time to time may determine; and Mortgagee may collect and receive all the rents, income and other benefits of the Mortgaged Property, including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee, in such priority as Mortgagee may determine, to (1) the payment of interest, principal and other payments due and payable on the Note or pursuant to this Mortgage or to any other Borrower's Liabilities, (2) deposits for

taxes and assessments, (3) the payment or creation of reserves for payment of insurance, taxes, assessments and other proper charges or liens or encumbrances upon the Mortgaged Property or any part thereof, and (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Mortgagee; and

(v) exercise such remedies as are available to Mortgagee under the Loan Instruments or at law or in equity.

Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor only when all amounts then due under any of the terms of this Mortgage shall have been paid and all other defaults have been cured. However, the same right to take possession shall exist if any subsequent Event of Default shall occur.

3.04 **Completion.** Without limitation of the foregoing, if an Event of Default shall have occurred and if the Project has not been completed, Mortgagee may, but shall be under no obligation to:

(a) Suspend or terminate Mortgagee's obligations under the Construction Loan Agreement without releasing or affecting Mortgagor's or Beneficiary's obligations or liabilities thereunder; and

(b) Enter upon the Mortgaged Property and complete the Project, or any portion thereof, with such changes as Mortgagee deems advisable, and in connection therewith, execute such contracts, employ such persons and incur such expenses in connection therewith, as Mortgagee deems appropriate. Mortgagee may, in its discretion, pay all expenses incurred under this Paragraph 3.04 either from the proceeds of the Loan or from its own funds, which payments from its own funds shall be and be treated as expenses paid by Mortgagee pursuant to Paragraph 1.17 of this Mortgage. Without limitation to the generality of the foregoing, Mortgagee may take any or all of the following actions in its own name or in the name of Mortgagor or Beneficiary:

(i) Modify the plans and specifications for the Project;

(ii) Amend or terminate contracts with and enter into new contracts with contractors, architects, engineers, attorneys and other persons;

(iii) Pay, settle or compromise all existing bills and claims which are or may be liens against

the Mortgaged Property or may be necessary or desirable for the completion of the Project;

(iv) Execute all applications and certificates that may be necessary or desirable in connection with the completion of the Project and operation of the Mortgaged Property;

(v) Employ watchmen and security services and take other actions to protect the Improvements from damage or injury; and

(vi) Take any other action which an absolute owner of the Mortgaged Property would have the power to take in connection with the completion or protection of the Improvements.

3.05 **Leases.** Mortgagee is authorized to foreclose this Mortgage subject to the rights, if any, of any or all tenants of the Mortgaged Property, even if the rights of any such tenants are or would be subordinate to the lien of this Mortgage. Mortgagee may elect to foreclose the rights of some subordinate tenants while foreclosing subject to the rights of other subordinate tenants. The failure to make any subordinate tenant a party defendant to any foreclosure proceedings and to foreclose its rights will not be, nor be asserted by Mortgagor, any junior lien holder, any tenant or any other party claiming by, through or under Mortgagor to be, a defense to any such foreclosure proceeding or any other proceedings instituted by Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property. Each lease entered into by Mortgagor subsequent to the date hereof shall provide that, and any such lease shall be subject to the following provisions whether or not such lease shall so provide, (i) Mortgagee, at its election, may execute and record an instrument which shall be deemed to cause such lease to be either prior or subordinate (whichever Mortgagee elects) to the lien of this Mortgage, (ii) upon any foreclosure hereof or the acceptance of a deed in lieu of foreclosure, the tenant under said lease (other than a lease which is subordinate to the lien hereof and which is foreclosed in such foreclosure proceedings) shall attorn to the grantee in the deed or other purchaser at the sale and (iii) the tenant thereunder shall execute and deliver any confirmatory instruments which Mortgagee may request in connection therewith, in default of which a default shall have occurred under such lease. Mortgagee shall be made, constituted and irrevocably appointed as such tenant's attorney-in-fact so to do in the event that tenant shall fail to do so within ten (10) days after written demand from Mortgagee. The omission of any such provision from any such lease or the failure to record any such instrument shall not affect Mortgagee's rights under this Paragraph 3.05.

3.06 **Purchase by Mortgagee.** Upon any foreclosure sale, Mortgagee may bid for and purchase all or any portion of the Mortgaged Property and, upon compliance with the terms of the sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

3.07 **Application of Foreclosure Sale Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property or any part thereof received by Mortgagee shall be applied by Mortgagee to the indebtedness secured hereby in such order and manner as Mortgagee may elect in a written notice to Mortgagor given on or before sixty (60) days following confirmation of the sale and in the absence of such election, then first to expenses of sale, then to expenses including attorneys' fees of the foreclosure proceeding, then to interest and then to principal.

3.08 **Application of Indebtedness Toward Purchase Price.** Upon any foreclosure sale, Mortgagee may apply any or all of the indebtedness and other sums due to Mortgagee under the Note, this Mortgage or any other Loan Instrument or any other Borrower's Liabilities, or any decree in lieu thereof, toward the purchase price.

3.09 **Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws.** Mortgagor agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisement, valuation, stay or extension laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. To the full extent permitted by law, Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf, on behalf of the trust estate and all persons beneficially interested therein, and on behalf of each and every person, except judgment creditors of Mortgagor in its representative capacity and of the trust estate, acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof.

3.10 **Receiver - Mortgagee in Possession.** If an Event of Default shall have occurred, Mortgagee, to the extent permitted by law and without regard to the value of the Mortgaged Property or the adequacy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right

and without any additional showing or proof, at Mortgagee's election, to either the appointment by the court of a receiver (without the necessity of Mortgagee posting a bond) to enter upon and take possession of the Mortgaged Property and to collect all rents, income and other benefits thereof and apply the same as the court may direct or to be placed by the court into possession of the Mortgaged Property as mortgagee in possession with the same power herein granted to a receiver and with all other rights and privileges of a mortgagee in possession under law. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect all rents, income and other benefits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, income and other benefits actually received by Mortgagee, whether received pursuant to this Paragraph 3.10 or Paragraph 3.03. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Mortgagee.

3.11 **Suits to Protect the Mortgaged Property.** Mortgagee shall have the power and authority (but not the duty) to institute and maintain any suits and proceedings as Mortgagee may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or which violate the terms of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, or (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

3.12 **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor or Beneficiary, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amounts due and payable under the Note, this Mortgage and any other Loan Instrument, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

3.13 **Mortgagor to Pay Borrower's Liabilities in Event of Default; Application of Monies by Mortgagee.**

(a) Upon occurrence of an Event of Default, Mortgagee shall be entitled to sue for and to recover judgment against

Mortgagor for Borrower's Liabilities due and unpaid together with costs and expenses, including, without limitation, the reasonable compensation, expenses and disbursements of Mortgagee's agents, attorneys and other representatives, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage; and the right of Mortgagee to recover such judgment shall not be affected by any taking possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of Borrower's Liabilities, Mortgagee shall be entitled to enforce all other rights and remedies under the Loan Instruments.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any judgment by Mortgagee under any of the Loan Instruments, and no attachment or levy of execution upon any of the Mortgaged Property or any other property of Mortgagor, shall (except as otherwise provided by law) in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Mortgagee hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before until Borrower's Liabilities are paid in full.

(d) Any monies collected or received by Mortgagee under this Paragraph 3.13 shall be applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Mortgagee, and the balance remaining shall be applied to the payment of Borrower's Liabilities in the inverse order of maturity and any surplus, after payment of all Borrower's Liabilities, shall be paid to Mortgagor.

3.14 **Delay or Omission.** No delay or omission of Mortgagee in the exercise of any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

3.15 **Waiver of Default.** No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies in respect thereof. If Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby, (b) takes other or additional security for the payment thereof, (c) waives or does not exercise any right granted in the Note, this Mortgage or any other Loan Instrument, (d) releases any part of the Mortgaged Property from the lien of

this Mortgage or any other Loan Instrument, (e) consents to the filing of any map, plat or replat of the Land, (f) consents to the granting of any easement on the Land, or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the lien of this Mortgage or any other Loan Instrument or the liability under the Note or other Loan Instruments of Mortgagor, any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee. Except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, no such act or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor shall the lien of this Mortgage be altered thereby, except to the extent of any releases as described in clause (d), above, of this Paragraph 3.15.

3.16 **Discontinuance of Proceedings; Position of Parties Restored.** If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceedings had occurred or had been taken.

3.17 **Remedies Cumulative.** No right, power or remedy conferred upon or reserved to the Mortgagee by the Note, this Mortgage or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities, or now or hereafter existing at law, in equity or by statute.

3.18 **Interest After Event of Default.** If an Event of Default shall have occurred, all sums outstanding and unpaid under the Note and all other Borrower's Liabilities shall, to the extent permitted by law, bear interest thereafter at the Default Rate (as defined in the Note) until such Event of Default is cured.

ARTICLE FOUR

MISCELLANEOUS PROVISIONS

4.01 **Successors and Assigns Included in Parties.** Whenever Mortgagor, Mortgagee or Beneficiary is named or referred to herein, successors and assigns of such entity shall be included, and all covenants and agreements contained in this Mortgage shall bind the successors and assigns of Mortgagor and Beneficiary, including any subsequent owner of all or any part of the Mortgaged Property, and shall inure to the benefit of the successors and assigns of Mortgagee. This Section 4.01 shall not be construed to permit an assignment, transfer, conveyance, encumbrance or other disposition prohibited by this Mortgage.

4.02 **Notices.** All notices, requests, reports demands or other instruments required or contemplated to be given or furnished under this Mortgage to Mortgagor or Mortgagee shall be directed to Mortgagor or Mortgagee as the case may be at the following addresses:

If to Mortgagee: Bank Leumi Le Israel -
Chicago Branch
100 N. LaSalle Street
Chicago, Illinois 60602
Attention: Mr. Dan Maeir

If to Mortgagor: Devon Bank, as Trustee under Trust
No. 1820
6445 North Western Avenue
Chicago, Illinois 60645

with a copy to: Westgate Center Condominium
Associates
c/o Matanky Realty Group, Inc.
1901 N. Halsted Street
Chicago, Illinois 60614
Attention: Mr. Barry Kreisler

and a copy to: Robert W. Matanky, Esq.
Matanky Realty Group, Inc.
1901 N. Halsted Street
Chicago, Illinois 60614

Any such notices, requests, reports, demands or other instruments shall be (i) personally delivered to the offices set forth above, in which case they shall be deemed delivered on the date of delivery to said offices, (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date of delivery set forth on the return receipt, unless delivery is not accepted, in which case they shall be deemed delivered three (3) business days after deposit in the U.S. mail, or (iii) sent by air courier (Federal Express or like service),

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in which case they shall be deemed delivered on the date of actual delivery. Either party may change the address to which any such notice, report, demand or other instrument is to be delivered by furnishing written notice of such change to the other party in compliance with the foregoing provisions.

4.03 **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

4.04 **Invalid Provisions.** In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or in any other Loan Instrument shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other Loan Instrument (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

4.05 **Changes.** Neither this Mortgage nor any term hereof may be released, changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

4.06 **Governing Law.** This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Illinois.

4.07 **Required Notices.** Mortgagor shall notify Mortgagee promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to the violation of any rule, regulation, law or ordinance, the enforcement of which would materially and adversely affect the Mortgaged Property; (ii) material default of any tenant leasing all or any portion of the Mortgaged Property or receipt of any notice from any such lessee claiming that a default by landlord has occurred under the lease; or (iii) commencement of any judicial or administrative proceedings by or against or otherwise adversely affecting Mortgagor, Beneficiary or the Mortgaged Property.

4.08 **Future Advances.** This Mortgage is given to secure not only existing indebtedness, but also future advances (whether such advances are obligatory or are to be made at the

option of Mortgagee, or otherwise) made by Mortgagee under the Note, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all indebtedness secured hereby shall, in no event, exceed five times the aggregate face amount of the Note.

4.09 **Release.** Upon full payment of Borrower's Liabilities, Mortgagee shall issue to Mortgagor an appropriate release of mortgage in recordable form. In respect of the sale or other conveyance or transfer of any Unit, Mortgagor shall pay to Lender an amount equal to the greater of (i) 85% of the gross proceeds arising from the sale of such Unit, unreduced by any fees, costs or expenses, or (ii) the Minimum Release Payment applicable to such Unit (as "Minimum Release Payment" is defined in the Construction Loan Agreement), and upon receipt thereof Mortgagee shall release such Unit from the lien of this Mortgage. Notwithstanding the foregoing, Lender shall be under no obligation to release any Unit if an Event of Default shall have occurred.

4.10 **Attorneys' Fees.** Whenever reference is made herein to the payment or reimbursement of attorneys' fees, such fees shall be deemed to include the fees of any attorneys engaged by Mortgagee.

4.11 **Construction Mortgage.** This Mortgage is a "Construction Mortgage" within the purview and operation of Section 9-313(1) (c) of the Uniform Commercial Code of the State of Illinois as amended. This Mortgage secures loans the proceeds of which will be disbursed to the Mortgagor to finance improvements which are to be constructed on the Land pursuant to and in accordance with the Construction Loan Agreement. Accordingly, the lien created by this Mortgage shall be a first lien against all fixtures, equipment and other personal property of every kind incorporated and to be incorporated in the Improvements to be constructed as aforesaid, and such lien shall take precedence over and be paramount and superior to any other lien, charge or security interest which any person may claim against such fixtures, equipment or personal property.

4.12 **Exculpatory Provision.** This Mortgage is executed by Devon Bank, not in its individual capacity, but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that nothing contained herein or in the Loan Instruments shall be construed as creating any liability on Devon Bank, in its individual capacity to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability in its individual capacity, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder. So far as

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Mortgagor and its successors and said Devon Bank personally are concerned, the legal holder of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided or by action to enforce the personal liability of any guarantors of said indebtedness, by action against the Beneficiary arising out of a breach of one or more of the other Loan Instruments to which the Beneficiary is a party or by the exercise of any remedy available under any of the other Loan Instruments.

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officers as of the day and year first above written.

DEVON BANK, not in its individual capacity but as Trustee under Trust Agreement dated October 15, 1983 and known as Trust No. 4820

ATTEST:

Gail A. Hanner
Its ASST. TRUST OFFICER

By [signature]
Its Trust Officer

THIS INSTRUMENT PREPARED BY,
AND AFTER RECORDING RETURN TO:

Carole K. Towne
Goldberg, Kohn, Bell, Black,
Rosenbloom & Moritz, Ltd.
55 East Monroe Street
Chicago, Illinois 60603

BOX 333-HV

B

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ACKNOWLEDGMENT 86 269366

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

I, ANN URBACH, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT SANFORD MEISELMAN and GAIL A. HAMM, TRUST OFFICER and ASST. TRUST OFFICER of Devon Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such TRUST OFFICER and ASST. TRUST OFFICER appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary acts and as the free and voluntary act of said bank; and the said ASST. TRUST OFFICER acknowledged that SHE, as custodian of the corporate seal of said bank, did affix said corporate seal to said instrument as HER own free and voluntary act and as the free and voluntary act of said bank for said uses and purposes.

GIVEN under my hand and notarial seal this 27th day of JUNE, 1986.

Ann Urbach
Notary Public

My Commission Expires:

5-31-88

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EXHIBIT B

LOTS 9 AND 10 (EXCEPT THE EAST 9 FEET OF SAID LOTS) IN BLOCK 19 IN DUNCAN'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE EAST 1/2 OF THE NORTH EAST 1/4 OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 331 S. Peoria Street
Chicago, Illinois

PIN: 17-17-227-006

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Exhibit C

PERMITTED ENCUMBRANCES

1. Taxes not yet due and payable

EXHIBIT A

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NOTE

THIS NOTE (**"Note"**) dated as of June 27, 1986, is made and executed in Chicago, Illinois by Devon Bank, not in its individual capacity but as Trustee under a Trust Agreement dated October 15, 1983 and known as Trust No. 4820 (**"Mortgagor"**), is in the original principal amount of $3,200,000, with interest as provided herein, and is payable to the order of Bank Leumi Le Israel - Chicago Branch, (**"Lender"**).

RECITALS

I. Lender has entered into a letter agreement dated June 16, 1986 (the **"Loan Commitment"**) pursuant to which Lender has agreed, subject to the terms and conditions thereof, to make a loan to Mortgagor in an amount not to exceed the principal amount hereof (the **"Loan"**). This Note evidences Mortgagor's unconditional obligation to repay the Loan.

II. The Loan is governed by a Construction Loan Agreement (the **"Construction Loan Agreement"**) and the payment of this Note is secured by (a) a Mortgage (the **"Mortgage"**) executed by Mortgagor on certain real estate in Cook County, Illinois (the **"Mortgaged Property"**); (b) an Assignment of Leases and Rents pertaining to the Mortgaged Property; (c) a Security Agreement relating to personal property on the Mortgaged Property and other property; and (d) a guaranty. This Note, together with the Loan Commitment, the Contruction Loan Agreement, any and all mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit and any other documents and instruments now or hereafter executed and delivered in connection with the Loan, and any and all amendments, renewals, extensions and replacements hereof and thereof, are hereafter collectively referred to herein as the **"Loan Instruments"**. The terms of the other Loan Instruments are hereby incorporated, by reference, in this Note.

III. The proceeds of the Loan are to be used to renovate the improvements located upon the Mortgaged Property as provided in the Construction Loan Agreement (the **"Project"**) into condominium units (the **"Units"**).

I

PAYMENT TERMS

1.1 **The Promise to Pay.** Mortgagor hereby promises to pay to the order of Lender the principal amount of $3,200,000 (or

[illegible]

[illegible] "Bank" [illegible] as of June 27, 1985, [illegible] made and [illegible] in Cook County, Illinois, [illegible] Bank, not in its individual [illegible] under a Trust Agreement dated [illegible] and known as Trust No. 4852 ("Mortgagor"), is in the original principal amount of [illegible] $3,500,000, with interest as provided herein, and in [illegible] the order of Bank bearing [illegible] Chicago Branch, ("Lender").

RECITALS

[illegible] Mortgagor [illegible] a lower appurtenant [illegible] loan [illegible] "Loan Commitment") pursuant to which Lender has agreed, [illegible] conditions thereof, to make a loan to Mortgagor, [illegible] to secure the principal amount [illegible] "Note" [illegible] Mortgagor's [illegible] the loan.

[illegible] in [illegible] a Construction Loan Agreement [illegible] "Construction Loan Agreement" and the payment of this Note is [illegible] "Mortgage") executed by Mortgagor [illegible] Cook County, Illinois (the "Mortgaged Property"), [illegible] of leases and [illegible] a security [illegible] the Mortgaged Property and other [illegible] together with the loan [illegible], any and all [illegible] of leases and rents, [illegible] documents and [illegible] and delivered in connection [illegible] mortgages, rents, [illegible] and thereof, are hereafter [illegible] "Loan Instruments". The [illegible] are hereby incorporated, by reference, [illegible].

[illegible] Mortgagor [illegible] to be used to [illegible] the Mortgaged Property as [illegible] in the [illegible] Loan Agreement (the "Project"), who [illegible] with the "Sales").

MATURITY TERMS

1.1 The Promise to Pay. Mortgagor hereby promises to pay to the order of Lender the principal amount of $3,500,000 (or

such lesser amount as shall have been advanced), together with interest thereon at a rate per annum equal to 1-1/2% plus the Designated Rate (defined below), in the following manner:

(a) After the date of the first disbursement of the proceeds of the Loan (the **"Disbursement Date"**), on the first day of the first calendar month following the Disbursement Date and on the first day of each calendar month thereafter until the Loan is repaid in full, interest accrued on the outstanding principal balance of the Loan and

(b) December 31, 1987 (the **"Maturity Date"**), the entire outstanding principal balance of the Loan and all accrued interest thereon, unless earlier due and payable by reason of the acceleration of the maturity of this Note.

The term **"Designated Rate"** means the rate of interest designated by Lender, and in effect from time to time, as Lender's **"Designated Rate"**, adjusted when Lender designates a new rate. The rate of interest charged in this Note shall change as and when the Designated Rate changes. By its execution hereof, Mortgagor acknowledges that the Designated Rate may not necessarily represent the lowest rate charged by Lender to its customers and, as of the date hereof, the Designated Rate is 8.5%. Notwithstanding the foregoing, in the event of the occurrence of a fire or other casualty at the Mortgaged Property and the proceeds of insurance are invested in a certificate of deposit as provided in Section 1.06.5 of the Mortgage, the rate of interest chargeable hereunder, for the period during which such proceeds are invested in such certificate of deposit, shall not be less than the rate of interest payable under such certificate of deposit plus 1%. All payments made in accordance with this Paragraph 1.1 shall be applied first to accrued interest and then to principal. All other payments made on the Loan shall be applied as provided in this Note, or, if not so provided, in such order and manner as Lender may elect. Interest shall be computed on the basis of a 360-day year and charged for the actual number of days elapsed.

1.2 **Extension Option.** At Mortgagor's option, the term of the Loan may be extended for one period of six (6) months, provided that:

(a) Notice of Mortgagor's election to exercise its option to extend the Maturity Date is delivered to Lender no later than sixty (60) days prior to the Maturity Date;

(b) Mortgagor pays to Lender, at the time of the exercise of the option, a fee equal to 1/2% of the then outstanding principal balance of the Loan; and

[illegible] together with [illegible] 1-1/23 plus the [illegible] following manner:

(a) After [illegible] of the disbursement of [illegible] "Disbursement Date"), on [illegible] monthly [illegible] following the disbursement date [illegible] each calendar month thereafter until [illegible] is repaid in full, interest [illegible] on the outstanding principal balance [illegible]

(b) [illegible] "Maturity Date"), the entire [illegible] of the loan and all [illegible] interest thereon, unless earlier demanded pursuant [illegible] of the maturity or this [illegible].

The term "Deferred Rate" [illegible] rate of interest designated by [illegible] Lender's "Designated Rate", [illegible] a new rate. The [illegible] Mortgagor [illegible] based, Mortgagor [illegible] not [illegible] the [illegible] 1-2. Notwithstanding [illegible] of a lien [illegible] the proceeds of [illegible] of deposits or proceeds is [illegible] of interest [illegible] are insured [illegible] the rate [illegible] of deposit plus 1%. [illegible] than to principal. All [illegible] provided in [illegible] and manner [illegible] required on the basis of a [illegible] of days elapsed.

1.2 Extension Option. At Mortgagor's option, the term of the loan may be extended for one period of six (6) months, provided that:

(a) Mortgagor's election to exercise its option to extend the maturity date is delivered to Lender no later than sixty (60) days prior to the Maturity Date;

(b) Mortgagor is in [illegible], at the time of the [illegible] of the [illegible] of the loan [illegible] and

(c) No default hereunder or under any of the other Loan Instruments has occurred prior to the date of delivery of such notice or shall occur prior to the Maturity Date and, without limitation of the foregoing, Mortgagor has Completed the Project by the date set forth in the Construction Loan Agreement for such Completion and otherwise has complied fully with all requirements provided in the Loan Instruments in respect of the Completion of the Project (as **"Completion"** is defined in the Construction Loan Agreement).

1.4 **Mandatory Prepayment.** Upon the sale or other conveyance or transfer of each Unit, Mortgagor shall pay to Lender an amount equal to the greater of (i) 85% of the gross proceeds arising from the sale of such Unit, unreduced by any fees, costs or expenses, or (ii) the Minimum Release Payment applicable to such Unit (as **"Minimum Release Payment"** is defined in the Construction Loan Agreement). All payments made under this Paragraph 1.4 shall be applied first to accrued interest and then to principal. No prepayment premium or penalty shall be payable in respect of any prepayment made under this Paragraph 1.4.

1.5 **Voluntary Prepayment.** Upon no less than thirty (30) days prior written notice to Lender, the Loan may be prepaid, in whole or in part, at any time, provided, however, that, in the event such prepayment occurs prior to Completion, Mortgagor shall pay to Lender a premium equal to 2% of the then outstanding principal balance of the Loan (the **"Premium"**). All payments made under this Paragraph 1.5 shall be applied first to accrued interest and then to principal. Notwithstanding anything to the contrary in this Note or any of the other Loan Instruments, the Premium shall be due and payable in connection with any repayment made following the acceleration of the maturity of this Note. Mortgagor and Lender hereby agree that such prepayment constitutes an evasion of the payment terms hereof.

1.6 **Place and Manner of Payment.** The payment of all amounts due under this Note and under the Mortgage shall be made in **"Federal Funds"** or other immediately available funds and shall be deemed received only when actually received by Lender in Chicago, Illinois. Payments received after 1:00 o'clock p.m. in said location shall be deemed received on the next day Lender is open for business. At Lender's option, Lender may accept payments by check or in form other than immediately available funds, but such payments shall be accepted subject to collection and, at Lender's option, shall be deemed received only when collected. Acceptance by Lender of payments in other than immediately available funds shall not constitute a waiver by Lender of its rights to insist that any subsequent payment be made in immediately available funds.

1.7 **Late Payment Fee.** In the event any payment due hereunder or any payment or deposit due under the Mortgage is not made within ten (10) days of the date due, Lender, at its option and in addition to any other remedy available to Lender, may impose a late payment fee, which Mortgagor covenants to pay upon demand, calculated at the rate of 4% of the amount of such delinquent payment or deposit for the first month or first partial month and 4% of the amount of such delinquent payment or deposit for each month or partial month thereafter until said delinquency is cured. Notwithstanding anything to the contrary herein or in the other Loan Instruments, any payment or deposit received by Lender may, at the option of Lender, be applied first to any outstanding late payment fee and then as otherwise provided in this Note or in any of the other Loan Instruments.

II

ADDITIONAL COVENANTS

2.1 **Acceleration.** If any payment due under this Note is not made when due, if an Event of Default shall occur under and as defined in any of the Loan Instruments, or if the right to foreclose the Mortgage shall accrue to the holder thereof, whether or not foreclosure proceedings have been commenced, then, at the election of the holder of this Note and without notice, the unpaid principal sum, together with accrued interest thereon, shall at once become due and payable and shall bear interest at a rate which is the greater of (i) 2% per month or (ii) the interest rate per annum which would otherwise be chargeable pursuant to this Note plus 5% (the **"Default Rate"**).

2.2 **Waivers.** Mortgagor and any other parties hereafter liable for the debt (including, without restricting the foregoing, any endorsers, sureties and guarantors) represented by this Note, hereby waive presentment for payment, notice of dishonor, protest and notice of protest, and agree that the time of payment of that debt or any part thereof may be extended from time to time without modifying or releasing the lien of the Loan Instruments or the liability of Mortgagor or any such other parties, the right of recourse against such parties being hereby reserved by the holder hereof.

2.3 **Collection.** In the event of a default in the payment of any amount due hereunder, the holder hereof may exercise any remedy or remedies, in any combination whatsoever, available by operation of law or under any instrument given as security for this Note and such holder shall be entitled to collect its reasonable costs of collection, including attorneys' fees, which shall be additional indebtedness hereunder.

2.4 **Governing Law.** This Note is executed and delivered in Chicago, Illinois and shall be governed by and construed in accordance with the law of the State of Illinois.

2.5 **Severability.** If any term, restriction or covenant of this instrument is deemed illegal or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstance is deemed illegal, the application of such term, restriction or covenant to other persons and circumstances shall remain unaffected to the extent permitted by law.

2.6 **Notices.** All notices, requests, reports, demands or other instruments required or contemplated to be given or furnished under this Note to Mortgagor or Lender shall be directed to Mortgagor or Lender as the case may be at the following addresses:

If to Lender: Bank Leumi Le Israel -
Chicago Branch
100 N. LaSalle Street
Chicago, IL 60602
Attention: Mr. Dan Maeir

If to Mortgagor: Devon Bank, as Trustee under Trust No. 4820
6445 North Western Avenue
Chicago, Illinois 60645

with a copy to: Westgate Center Condominium Associates
c/o Matanky Realty Group, Inc.
1901 North Halsted Street
Chicago, Illinois 60614
Attention: Mr. Barry B. Kreisler

and a copy to: Robert W. Matanky, Esq.
Matanky Realty Group, Inc.
1901 N. Halsted Street
Chicago, IL 60614

Notices shall be either: (i) personally delivered to the offices set forth above, in which case they shall be deemed delivered on the date of delivery to said offices, (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date of delivery set forth on the return receipt, unless delivery is not accepted, in which case they shall be deemed delivered three (3) business days after deposit in the U.S. mail, or (iii) sent by air courier (Federal Express or like service), in which case they shall be deemed delivered on

the date of actual delivery. Either party may change the address to which any such notice, report, demand or other instrument is to be delivered by furnishing written notice of such change to the other party in compliance with the foregoing provisions.

2.7 **Exculpatory Clause.** Devon Bank is a party to this instrument, not in its individual capacity but as trustee under a Trust Agreement dated October 15, 1983, and known as Trust No. 4820. Insofar as the liability of Mortgagor is concerned, this instrument is enforceable only against, and any claims hereon are payable only out of, any trust property which may be held thereunder, but this clause shall not affect Lender's remedies under any of the other Loan Instruments. Any and all liability of Devon Bank in its individual capacity is hereby expressly waived by Lender and its successors and assigns.

DEVON BANK, not in its individual capacity but as Trustee under a Trust Agreement dated October 15, 1983 and known as Trust No. 4820

ATTEST:

Gail A. Hamm
Its ASST. TRUST OFFICER

By Joseph Meisterman
Its Trust Officer

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ACKNOWLEDGEMENT

STATE OF)
)
COUNTY OF)

I, ANN URBACH, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT SANFORD MEISELMAN and GAIL A. HAMM, of Devon Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such TRUST OFFICER and ASST. TRUST OFFICER, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said bank; and the said ASST. TRUST OFFICER acknowledged that SHE, as custodian of the corporate seal of said did affix said corporate seal to said instrument as HER own free and voluntary act and as the free and voluntary act of said bank for said uses and purposes.

GIVEN under my hand and notarial seal this 11th day of JUNE, 198_.

Ann Urbach
Notary Public

My Commission Expires:

7-31-88

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