

FIRST MORTGAGE AND SECURITY AGREEMENT

THIS FIRST MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of this 9th day of May, 1989 by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally but as Trustee under Trust Agreement dated August 5, 1988 and known as Trust No. 106169-02 with its mailing address at 33 North LaSalle Street, Chicago, Illinois 60690 ("Mortgagor") and TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS, a retirement system established pursuant to the laws of the State of Illinois with its mailing address c/o Bennett & Kahnweiler Realty Advisors, Inc., as agent under power of attorney, 9700 West Bryn Mawr, Rosemont, Illinois 60018 ("Mortgagee").

WITNESSETH:

A. Pursuant to that certain Loan Agreement (the "Loan Agreement") of even date herewith by and between Mortgagee, Mortgagor and KINGSTON COURT LIMITED PARTNERSHIP, an Illinois limited partnership, the sole beneficiary of Mortgagor ("Beneficiary"), Mortgagee has agreed to lend to Mortgagor the principal amount of up to Four Million Two Hundred Ninety-Seven Thousand Eight Hundred and No/100ths Dollars (\$4,297,800.00) plus future advances that may be made by Mortgagee to Mortgagor from time to time as provided in the Loan Agreement in the aggregate principal amount not to exceed Two Million and No/100ths Dollars (\$2,000,000.00), with interest on the outstanding principal balance of each of the foregoing until paid (the "Loan").

B. The Loan shall be evidenced by (i) a certain Secured Promissory Note in the principal amount of Four Million Two Hundred Ninety-Seven Thousand Eight Hundred and No/100ths Dollars (\$4,297,800.00), of even date herewith, payable to the order of Mortgagee at its office set forth above, or at such other place as the holder thereof may designate in writing, with interest and principal payable as set forth therein (the "Note"), and (ii) various other secured promissory notes hereafter made by Mortgagor pursuant to the provisions of the Loan Agreement, payable to the order of Mortgagee in the aggregate principal amount not to exceed Two Million and No/100ths Dollars (\$2,000,000.00) (the "Future Notes") (the Note and the Future Notes, together with all amendments, renewals, extensions and/or modifications thereof and all notes issued in substitution or renewal thereof are herein collectively referred to as the "Notes").

C. THIS MORTGAGE IS FOR THE PURPOSE OF SECURING the payment and performance of "Mortgagor's Liabilities" and "Mortgagor's Obligations" (as each such term is hereinafter defined), which includes the repayment of the Notes.

I. DEFINITIONS

1.01 Wherever used in this Mortgage, "Mortgagor's Liabilities" means any and all of the following: (i) the payment of any and all monies, now and/or hereafter owed or to become owing by Mortgagor to Mortgagee under and/or pursuant to the terms

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THIS INSTRUMENT WAS PREPARED BY AND AFTER RECORDING SHOULD BE RETURNED TO: Ellen Kirschenbaum, Esq., Katten Muchin & Zavis, 525 West Monroe Street, Suite 1600, Chicago, Illinois 60606.

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and provisions of the Note, including, but not limited to, the payment, when due, of the principal sum thereof and interest thereon, together with any loan fees, additional interest and any other amounts set forth therein; (ii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of this Mortgage (including, without limitation, all advances made to protect and preserve the value of the "Property" [hereinafter defined] and the priority of Mortgagee's liens thereon); (iii) the payment of any and all monies, hereafter owed or to become owing by Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of the Future Notes, including, but not limited to, the payment when due on the principal sum thereof and interest thereon, together with any loan fees, additional interest and any other amount set forth therein; and (iv) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Mortgagor to Mortgagee (hereinafter referred to as "Future Advances") nowsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, and arising under and/or pursuant to the terms and provisions of any other agreements, security agreements, instruments and/or documents now and/or hereafter executed and delivered by or for Mortgagor to Mortgagee (all such agreements, instruments and documents are hereinafter referred to as the "Other Agreements"), it being contemplated that Mortgagor may hereafter become indebted to Mortgagee for Future Advances; provided, however, that the maximum amount of Mortgagor's Liabilities outstanding at any one time secured hereby shall not exceed two hundred percent (200%) of the aggregate principal amount of the Notes.

1.02 Wherever used in this Mortgage, "Mortgagor's Obligations" means the prompt, full and faithful performance, discharge, compliance and observance by Mortgagor of each and every term, condition, warranty, representation, agreement, undertaking, covenant and provision to be performed, discharged, observed or complied with by Mortgagor contained in this Mortgage, the Notes and/or in the Other Agreements, including, without limitation, in that certain Right of First Offer Agreement of even date herewith by and among Mortgagor, Mortgagee and Beneficiary (the "First Offer Agreement"), pursuant to which Mortgagor and Beneficiary shall grant Mortgagee the first right to grant permanent financing on the "Property" (as hereinafter defined) and to purchase the Property under the terms and conditions described therein.

1.03 Wherever used in this Mortgage, "Property" means any and all of the following: (i) all of Mortgagor's present and future estate, right, title and interest in and to the premises legally described in Exhibit A hereto and located in the Village of Mount Prospect, County of Cook, State of Illinois, together with all buildings, improvements, tenements, easements, hereditaments, and appurtenances now and/or at any time or times hereafter upon, belonging or otherwise appertaining to or situated on said real estate and all heretofore or hereafter acquired roads, alleys, streets, passages and other publicways abutting said real estate, whether before or after vacation thereof (hereinafter referred to as the "Premises"); (ii) all of Mortgagor's estate, right, title and interest in and to the

buildings and improvements now or hereafter located on the Premises (hereinafter referred to as the "Improvements"); (iii) all present and future rents, issues, avails, profits and proceeds of Mortgagor (hereinafter referred to as the "Rents") of or from the Premises, the Improvements, the "Leases" and/or the "Equipment" (both of which terms are hereinafter defined), howsoever occurring, existing, created or arising; (iv) all present and future leases, sub-leases, agreements, tenancies, licenses and franchises (hereinafter referred to as the "Leases") of or from the Premises, the Improvements and/or the Equipment or in any way, manner or respect required, existing, used or useable in connection with the Premises and/or the Equipment or the management, maintenance, operation or business thereof, and all deposits of money as advance rent or for security under any or all of the Leases and all guaranties of lessees' performances thereunder; (v) all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Improvements, the Equipment and/or the Leases, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereto; (vi) all present and future apparatus, machinery, equipment, fixtures and articles of personal property of any and every kind and nature whatsoever used, attached to, installed or located in or on the Premises, the Improvements, or required for use in or on or in connection with the Premises, the Improvements, or the management, maintenance, operation or business thereof and all replacements thereof and accessions thereto (hereinafter referred to as the "Equipment"), including, but not limited to, any such item of Equipment now or at any time or times hereafter situated on the Premises and/or the Improvements and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, recreation, laundry service and all other related or other such services (all of the immediately above-mentioned items of Equipment being deemed to be a part of the Premises, and/or the Improvements, whether physically attached thereto or not); (vii) all present and future insurance policies in force or effect insuring the Premises, the Improvements, the Rents, the Leases or the Equipment; (viii) all goodwill, trademarks, trade names, option rights, purchase contracts, permits, operating agreements, books and records and general intangibles now or hereafter acquired by Mortgagor; and (ix) all proceeds (including condemnation and insurance proceeds) of each and every of the foregoing.

1.04 Wherever used in this Mortgage, the term "and/or" means one or the other or both, or any one or all, of the things, events or persons or parties in connection with which the term is used.

## II. CONVEYANCE

2.01 To secure the payment by Mortgagor of Mortgagor's Liabilities and the performance by Mortgagor of Mortgagor's Obligations, Mortgagor hereby irrevocably GRANTS, BARGAINS, WARRANTS, GIVES, ASSIGNS, PLEDGES, SETS OVER, TRANSFERS, REMISES, RELEASES, SELLS AND CONVEYS to Mortgagee, its substitutes, successors and/or assigns hereunder forever, the Property. Mortgagee, its substitutes, successors and/or assigns, are to have and to hold said Property forever for the purposes and uses set forth in this Mortgage; provided, however, that if Mortgagor, its

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successors or assigns, shall satisfy, discharge or otherwise pay to Mortgagee, its successors or assigns, Mortgagor's Liabilities in full and keep and perform all of Mortgagor's Obligations, then this Mortgage shall become null and void and shall be released at Mortgagor's expense. Mortgagor hereby binds itself, its heirs, assigns, successors and legal representatives to warrant and forever defend all and every portion of the Property unto Mortgagee, its successors, nominees and/or assigns against every person or entity whomsoever lawfully claiming or to claim the same, or any part thereof, subject however, to the matters specifically set forth in Exhibit B hereto.

2.02 To secure the payment by Mortgagor of Mortgagor's Liabilities and the performance by Mortgagor of Mortgagor's Obligations, Mortgagor hereby grants to Mortgagee a security interest in that portion of the Property constituting personal property or interests in personal property, whether tangible or intangible, which are subject to the priority and perfection of security interest provisions of the Uniform Commercial Code or any similar and applicable law, statute, code or other governing body of law. This Mortgage shall operate as and constitute a security agreement with respect to such Property.

### III. COVENANTS, WARRANTIES AND REPRESENTATIONS

Mortgagor hereby covenants with and warrants and represents to Mortgagee that as of the date hereof and from and after the date hereof:

3.01 Mortgagor promptly will pay, or cause to be paid, when due or declared due, Mortgagor's Liabilities and promptly, fully and faithfully will perform, discharge, observe and comply with each and every of Mortgagor's Obligations.

3.02 Mortgagor promptly shall pay and discharge, as and when due and payable, before any penalty attaches, all charges, impositions, levies, assessments and taxes (whether general, special or otherwise), water charges, sewer service charges and all other municipal or governmental charges, impositions, levies, assessments and taxes of any kind or nature that may be at any time levied, assessed or imposed upon or against the Property, or any part thereof, and shall deliver to Mortgagee duplicate receipts evidencing payment thereof at least thirty (30) days before delinquency. To prevent default hereunder, Mortgagor may pay in full, under protest, and in the manner provided by statute, any charge, imposition, levy, assessment or tax which Mortgagor may desire to contest. If Mortgagee is required by legislative enactment or judicial decision to pay any charge, imposition, levy, tax or assessment, other than any income, franchise or excise taxes assessed on the income or operations of Mortgagee, in or to any state, municipality or government on the Property (or on any interest therein), this Mortgage, the Notes, the Other Agreements or Mortgagor's Liabilities, then all of Mortgagor's Liabilities shall become and be due and payable, at the election of Mortgagee, thirty (30) days after notice of such election to Mortgagor; provided, however, said election and right to elect will be unavailing and this Mortgage, the Notes and the Other Agreements will be and remain in full force and effect as though said law had not been enacted or said decision had not been rendered if, notwithstanding such law or decision, Mortgagor lawfully may pay such charge, imposition, assessment, levy or tax

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to or for Mortgagee and does, in fact, pay, when payable, so much thereof as, taken with interest as aforesaid, does not exceed the maximum amount of interest permitted by applicable law. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage, the Notes or the Other Agreements, Mortgagor will pay, if Mortgagor is not prohibited by law, for the same (or, if such law prohibits payment by Mortgagor and Mortgagee shall be required under such law to or shall otherwise pay the same, Mortgagor shall, unless prohibited by law, promptly reimburse Mortgagee after Mortgagee's demand therefor, for all such payments for the same), together with any interest or penalties imposed in connection therewith. Notwithstanding any provision contained herein to the contrary, Mortgagor, at Mortgagor's sole cost and expense, may contest any tax imposed, assessed, levied or due with respect to or from the Property, by instituting and diligently and in good faith prosecuting by appropriate judicial or administrative proceedings the validity or amount of a tax, charge, imposition or assessment (said tax, charge, imposition or assessment being hereinafter referred to in this Section as "impositions") if (i) the effect of such proceeding is to prevent or suspend the collection of any such impositions, (ii) Mortgagor promptly notifies and keeps Mortgagee informed at all times of the progress of said proceedings, (iii) the contest or decision relating thereto will not and cannot result in the forfeiture of the Property prior to or pending resolution of such contest and the invalidity, forfeiture, loss of priority or unenforceability of this Mortgage, the Notes or the Other Agreements will not and cannot result from such contest or failure to pay such impositions, (iv) Mortgagee will not as a result of such contest be subject to any penalty or criminal liability, (v) no "Event of Default" (as that term is hereinafter defined) shall exist hereunder, and (vi) prior to commencement of such proceeding, Mortgagor shall deposit with Mortgagee such security as Mortgagee may deem satisfactory to indemnify Mortgagee from and against all liabilities and expenses (including, without limitation, attorneys' fees, court costs and costs of appeal) on account of (a) Mortgagor's failure to pay such imposition and/or (b) Mortgagor's contest of the amount and/or validity thereof, unless said security has previously been deposited by Mortgagor with the appropriate tax authority, in which event Mortgagor shall submit to Mortgagee evidence thereof in lieu of depositing said security with Mortgagee. If, at any time during the continuance of the contest described in the preceding sentence, the Property or any part thereof is, or this Mortgage, the Notes or Other Agreements are in the sole and exclusive judgment of Mortgagee, reasonably determined, in danger of being forfeited, lost or rendered invalid or unenforceable or if Mortgagee, in its sole and exclusive judgment, reasonably determined, otherwise deems its security to be impaired by reason of such contest or if Mortgagor upon resolution of such contest does not promptly pay the impositions within the time periods required therefor, then, in any of said events, Mortgagee may use such security for the payment of such impositions and if such security is insufficient to pay in full the required payment, Mortgagor shall pay Mortgagee the amount of such insufficiency promptly after Mortgagee's demand therefor.

3.03 Mortgagor now has and hereafter shall maintain the standing, right, power and lawful authority to own the Property; to carry on the business of and operate the Property; to enter into, execute and deliver this Mortgage, the Notes and the Other Agreements to Mortgagee; to convey and assign the interests of

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Mortgagor in the Property described herein to Mortgagee; to encumber the Property to Mortgagee as provided herein and/or in the Other Agreements and to perform all of Mortgagor's Obligations and to consummate all of the transactions described in or contemplated by this Mortgage, the Notes and/or the Other Agreements.

3.04 Mortgagor and the Property possess and hold and shall maintain adequate properties, interest in properties, leases, licenses, franchises, rights and governmental and other permits, certificates, consents and approvals to conduct and operate the business of the Property. None of the foregoing contain or shall contain any term or condition that is materially burdensome to said business or materially different from those of the foregoing customarily possessed or held by other parties conducting or operating a similar business.

3.05 The location, existence and use of the Premises and the Equipment are and shall remain in compliance with all applicable laws, rules, ordinances and regulations, including, but not limited to, building and zoning laws, and all covenants and restrictions of record. No notice of violation of said laws, rules and/or ordinances has been received by Mortgagor which remains uncorrected and to the best knowledge of Mortgagor, no said notice of violation has been issued.

3.06 All of the Leases are and shall remain genuine, in all respects what they purport to be, free of set-offs or counterclaims and valid and enforceable in accordance with their terms. There are not now any material disputes under any Lease. Mortgagor, and to the best knowledge of Mortgagor, all other parties to the Leases have and shall have the capacity to contract thereunder. Except for security deposits provided for under the Leases, no payments have been or shall be made thereunder more than thirty (30) days in advance of the date provided in the Leases.

3.07 The various financial and operating statements relating to the Property and the operation and business thereof heretofore and from time to time hereafter delivered by or for Mortgagor to Mortgagee are and shall be correct, complete and accurate in all material respects, fairly present the financial conditions represented as of the dates and for the periods indicated, and have been and shall be prepared in accordance with accounting principles generally used in the real estate industry for property similar to the Property, which accounting principles are reasonably acceptable to Mortgagee. Mortgagor will keep or cause to be kept proper books and records with respect to the Property and the operation and business thereof prepared in accordance with accounting principals generally used in the real estate industry for property similar to the Property, which accounting principles are reasonably acceptable to Mortgagee. Mortgagee shall have the right to examine said books and records at any time or times hereafter upon demand.

3.08 Within sixty (60) days after the end of each fiscal year hereafter of the operation and business of the Property, Mortgagor shall deliver to Mortgagee an annual operating statement of income and expenses for the fiscal year just ended, and a year-end balance sheet of assets and liabilities of said operation and business prepared in accordance with accounting principles generally used in the real estate industry for property similar to

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the Property, which accounting principles are reasonably acceptable to Mortgagee, by an accountant satisfactory to Mortgagee, which statement must be signed and certified as true, correct and accurate by the managing general partner of Beneficiary. Within thirty (30) days after the end of each fiscal quarter hereafter of the operation and business of the Property, Mortgagor shall deliver to Mortgagee a rent roll, a quarterly operating statement of income and expenses for the quarterly period just ended and a balance sheet dated the end of such quarter of assets and liabilities of said operation and business, which statement must be signed and certified as true, correct and accurate in all respects by the general partner of Beneficiary.

3.09 The various data and information, specifically excluding however the financial and operating statements referred to in sections 3.07 and 3.08 above, relating to the Property and the operation and business thereof heretofore and from time to time hereafter delivered by or for Mortgagor to Mortgagee are and shall be correct, complete and accurate in all respects.

3.10 Mortgagor and/or Beneficiary has duly filed and shall continue timely to file all federal, state and other governmental tax and similar returns which Mortgagor and/or Beneficiary is required by law to file with respect to the Property and the operation and business thereof. Subject to the following sentence, all taxes and other sums which are shown to be payable under such returns have been and shall be timely and fully paid and Mortgagor shall maintain adequate reserves in an amount sufficient to pay fully all such liabilities which hereafter may accrue. Mortgagor shall be permitted to contest the taxes to which such returns relate if the taxes do not constitute a lien and if the effect of such contest will not result in the filing of any lien against the Property or any other assets of Mortgagor or Beneficiary.

3.11 (a) Neither Mortgagor nor, to the best of Mortgagor's knowledge, any other person, has caused or permitted any "Hazardous Material" (as hereinafter defined) to be placed, held, located or disposed of on, under or at the Property or any part thereof or into the atmosphere or any watercourse, body of water or wetlands, or any other real property legally or beneficially owned (or any interest or estate in which is owned) by Mortgagor and none of the Property, any part thereof, or any other real property legally or beneficially owned (or any interest or estate in which is owned) by Mortgagor has been used (whether by Mortgagor or, to the best knowledge of Mortgagor, by any other person) as a treatment, storage or disposal (whether permanent or temporary) site for any Hazardous Material. For purposes of this Mortgage, "Hazardous Material" means and includes any hazardous substance or any pollutant or contaminant defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, the Toxic Substances Control Act, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect (collectively, the "Statutes"), or any other hazardous, toxic or dangerous waste, substance or material.

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(b) In the event Mortgagor fails to comply with the requirements of any applicable Statutes, Mortgagee may at its election, but without the obligation so to do, give such notices or cause such work to be performed at, to or upon the Property or take any and all other actions as Mortgagee deems necessary, as shall cure said failure of compliance, and any amounts paid by Mortgagee as a direct or indirect result thereof, (including, without limitation, court costs and reasonable attorneys' fees), together with interest thereon from the date of payment at the default rate of interest set forth in the Notes, shall be immediately due and payable by Mortgagor to Mortgagee, and until paid shall be added to and become a part of Mortgagor's Liabilities; and Mortgagee, by the payment of any assessment, claim or charge, may, if it sees fit, be thereby subrogated to the rights of the federal, state or local governmental entity or agency otherwise entitled to such rights under the applicable Statutes, but no such advance shall be deemed to relieve Mortgagor from any default hereunder or impair any right or remedy consequent thereon.

(c) Mortgagor hereby agrees to defend, indemnify and hold harmless Mortgagee from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever (including, without limitation, court costs and attorneys' fees) which at any time or from time to time may be paid, incurred or suffered by, or asserted against, Mortgagee for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release from, the Property into or upon any land, the atmosphere, or any watercourse, body of water or wetland, of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Statutes); and the provisions of and undertakings and indemnification set out in this sentence shall survive the satisfaction and release of this Mortgage and the payment and satisfaction of Mortgagor's Liabilities, and shall continue to be the ~~personal~~ liability, obligation and indemnification of Mortgagor, binding upon Mortgagor, forever; provided, however, notwithstanding anything to the contrary in the foregoing, provided that (i) during the entire term of the Loan, Mortgagor paid all of Mortgagor's Liabilities when and as due and payable, subject to any grace periods therefor, and performed and satisfied all of Mortgagor's Obligations when and as to be performed and satisfied, subject to any grace periods therefor, and (ii) during the entire term of the Loan, the guarantors under that certain Joint and Several Guaranty of Lien-Free Completion of even date herewith made and delivered for the benefit of Mortgagee, have performed and satisfied all of their obligations thereunder, and (iii) during the entire term of the Loan, no Event of Default, whether or not waived, existed at any time under the Notes, this Mortgage or the Other Agreements, (iv) the Notes, this Mortgage and the Other Agreements have not at any time during the term of the Loan been modified or amended in such a way as to affect Mortgagee's obligations or right to perform in connection with the operation of the Property, and (v) during the entire term of the Loan, Mortgagee was not an "Owner" or "Operator" of the Property or any part thereof within the purview of the Statutes and otherwise had no liability under the Statutes, Mortgagor's indemnification hereunder shall terminate upon full repayment of the Loan and satisfaction and release of this Mortgage. Notwithstanding anything to the contrary contained herein, the indemnifications set forth herein

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shall not be applicable to any loss, liability, cost, injury, expense or damage arising out of the gross negligence or wilful misconduct of Mortgagee. The provisions of the preceding sentences shall govern and control over any other provision of the Notes, this Mortgage, and any of the Other Agreements.

3.12 The interests of Mortgagor in the Property are and shall remain free from all liens, liabilities, claims, debts, exceptions, security interests, assessments, levies, charges, impositions, taxes, liens and all other types of encumbrances (hereinafter referred to as the "Encumbrances"), except for (i) the Encumbrances of Mortgagee; (ii) the Encumbrances described in Exhibit B attached hereto and made a part hereof, and (iii) Leases to tenants in possession of portions of the Property (all of said permitted Encumbrances are hereinafter collectively referred to as the "Permitted Encumbrances"), and liens hereafter allowed, if any, pursuant to Section 3.13 below. Mortgagor warrants and will defend such title and the priority of the lien and interest of Mortgagee in and to the same against all claims and demands and will maintain and preserve the lien of this Mortgage thereon so long as any indebtedness secured by this Mortgage remains outstanding. Mortgagor shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and, promptly upon request by Mortgagee, shall deliver to Mortgagee evidence satisfactory to Mortgagee of the payment and discharge thereof. To prevent default hereunder, Mortgagor may indemnify Mortgagee, by suitable performance bond or title insurance endorsement or by another means determined solely by and acceptable to Mortgagee, against loss by reason of such an Encumbrance which Mortgagor may desire to contest. If, in accordance with the terms of this Mortgage, Mortgagee makes payment of any such Encumbrance, Mortgagee shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.

3.13 (a) Except as otherwise provided herein, neither Mortgagor, Beneficiary nor any partner of Beneficiary shall sell, transfer, exchange, convey, assign, mortgage, hypothecate, pledge or otherwise encumber or dispose of the Property, the beneficial interest in Mortgagor, or any of the partnership interests in Beneficiary, including, without limitation, any contract sale, installment sale or sale under articles of agreement for deed, or any portion of any thereof or legal or equitable interest therein, except as hereinafter provided.

(b) Notwithstanding anything to the contrary contained in this Paragraph, the provisions of this Paragraph shall not be applicable to a transfer of the partnership interests in Beneficiary to the following transferees, provided that at least one (1) of Dennis J. Hiffman and John E. Shaffer, who are the two (2) existing general partners of Beneficiary remains general partner of Beneficiary and retains control of Beneficiary, and at least two (2) of Dennis J. Hiffman, John E. Shaffer, E. Thomas Collins, Jr. and Daniel G. Anderson, who are four (4) of the existing partners of Beneficiary retain the right to receive in the aggregate at least fifty-one percent (51%) of the profits and losses of Beneficiary: (i) another partner of Beneficiary, (ii) the spouse, ancestor or lineal descendant of the transferor or (iii) the spouse, ancestor or lineal descendant of another partner of Beneficiary.

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(c) Mortgagee will permit Mortgagor to obtain construction financing on the Property and partially refinance the Loan with the proceeds thereof (and Mortgagee will subordinate the lien of this Mortgage on the portion of the Property on which the construction financing is to be placed to the lien of the construction lender, which subordination shall provide, among other things, that Mortgagee's lien shall not interfere with said construction lender's right to enforce its lien against said portion of the Property, subject to Mortgagee's right to cure defaults by Mortgagor under the construction loan documents and shall otherwise be acceptable to Mortgagee; provided, however, Mortgagee shall act reasonably and in good faith with said construction lender to facilitate the granting of said construction loan to Mortgagor) upon the following conditions:

(i) The portion of the Property on which the construction financing is to be placed shall have been improved with infrastructure and other site improvements necessary to construct and operate buildings thereon; provided, however, said requirement shall be waived by Mortgagee for the first two (2) buildings to be constructed on the Property if, in Mortgagee's reasonable determination, the incomplete infrastructure and other site improvements shall not prevent or delay the completion of the construction of said buildings and that said infrastructure and site improvements will be timely completed prior to the completion of the construction of said buildings;

(ii) No other buildings shall be under construction on the Property (other than tenant finish), and no more than one (1) of the other completed buildings located on the Property shall have any vacancy or unleased tenant space or have any leased tenant space without paying tenants therein; provided, however, said requirement shall not be applicable to the first two (2) buildings to be constructed on the Property and provided further said requirement shall not be applicable to any building built to suit a tenant which will occupy all the tenant space therein;

(iii) Mortgagor shall have provided Mortgagee with a copy of the construction loan documents relating to the construction loan and plans and specifications relating to the proposed construction project, which construction loan documents and plans and specifications shall be reviewed by Mortgagee in a reasonable period of time and shall be subject to Mortgagee's approval, which approval shall not be unreasonably withheld;

(iv) Mortgagee, in its discretion, shall have reasonably determined that the proceeds of the construction loan shall be sufficient to complete the proposed construction project on the portion of the Property on which the construction financing is to be placed and to pay all operating costs of the portion of the Property on which the construction financing is to be placed, including debt service, taxes and other carrying costs during the period of construction;

(v) Concurrently with the closing of the construction loan, Mortgagor shall pay Mortgagee to the extent proceeds from the construction financing are available after payment of closing costs, which costs shall include, without limitation, any "Loan Fee" (as defined in the Loan Agreement)

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due and payable to the construction lender not to exceed one percent (1%) of the construction loan, title charges, survey costs, escrow charges, recording and mortgage taxes and legal fees, but shall exclude all brokers' commissions in connection with the construction loan, (A) all then accrued and unpaid "Basic Interest" (as defined under the Note) under the Note, (B) all then accrued and unpaid "Deferred Amount" (as defined under the Note) under the Note, (C) all then accrued and unpaid "Additional Interest" (as defined under the Note) under the Note, (D) all then accrued and unpaid "Accrual Interest" (as defined under the Note) under the Note, and (E) the outstanding balance of the "Principal Amount" (as defined under the Note) under the Note (except no less than \$30,000.00 thereof, which upon the placement of any construction financing shall remain unpaid and outstanding and which shall be repaid as set forth hereinbelow). Any proceeds remaining from said construction financing after application as aforesaid shall be paid on an equal basis to (x) Mortgagee for the repayment of the unpaid principal balance, together with accrued and unpaid interest thereon, under the Future Notes, and (y) Mortgagor for the repayment of "Working Capital Contributions" (as defined under the Loan Agreement) made from time to time hereafter by Mortgagor pursuant to the provisions of the Loan Agreement, plus the accrued return thereon as provided in the Loan Agreement. The remaining \$30,000.00 or such greater outstanding balance of the Principal Amount after application of the construction loan proceeds as aforesaid shall be subject to the terms of the Note, shall be repaid on the "Maturity Date" (as defined under the Note) of the Note, together with all then accrued and unpaid Basic Interest, Deferred Amount, Additional Interest and Accrual Interest, and shall be secured by the lien of this Mortgage on the Property, and the remaining outstanding balance of the Future Notes, if any, after application of the construction loan proceeds as aforesaid shall be subject to and repaid in accordance with the terms of said Future Notes and shall be secured by the lien of this Mortgage on the Property; provided, however, the lien of this Mortgage on the portion of the Property on which the construction loan is placed shall be subordinated to the lien of the construction lender as aforesaid.

(d) Mortgagee will permit Mortgagor to refinance the Loan in part, but not in whole, with permanent financing (and Mortgagee will subordinate the lien of this Mortgage on the portion of the Property to be refinanced to the lien of the permanent lender, which subordination shall provide, among other things, that Mortgagee's lien shall not interfere with said permanent lender's right to enforce its lien against said portion of the Property, subject to Mortgagee's right to cure defaults by Mortgagor under the permanent loan documents and shall otherwise be acceptable to Mortgagee; provided, however, Mortgagee shall act reasonably and in good faith with said permanent lender to facilitate the granting of said permanent loan to Mortgagor) upon the following conditions:

(i) The portion of the Property to be refinanced shall have been improved with buildings, infrastructure and other site improvements necessary to operate said buildings;

(ii) Mortgagor shall have advised Mortgagee, in writing, of Mortgagor's intent to seek or apply for permanent financing in connection with the Property, including the major financial terms being sought and all available information regarding the proposed permanent financing on the Property. For fifteen (15) days after receipt of such notice, Mortgagor and Mortgagee shall negotiate in good faith regarding said permanent financing. In the event Mortgagor and Mortgagee agree on such terms and conditions within such time period, the parties shall execute a letter of intent and shall proceed to diligently and in good faith finalize the permanent financing transaction contemplated thereby. In the event Mortgagor and Mortgagee cannot agree to the major terms of the proposed transaction within said fifteen (15) day period, Mortgagor shall be free to negotiate with third parties in connection with said permanent financing and/or may elect to continue nonexclusive negotiations with Mortgagee; provided, however, in the event Mortgagor negotiates terms of permanent financing with any third party, which terms are less favorable to Mortgagor than the terms offered by Mortgagee to Mortgagor during the above-described fifteen (15) day period, Mortgagor shall advise Mortgagee, in writing, of the terms offered by said third party and thereafter Mortgagee shall have fifteen (15) days to accept said terms. In the event Mortgagee accepts said terms, Mortgagor and Mortgagee shall execute a letter of intent and shall proceed to diligently and in good faith finalize the permanent financing transaction contemplated thereby. In the event Mortgagee does not accept said terms, Mortgagor shall be permitted to enter into the permanent financing transaction with the third party lender provided that Mortgagor shall have provided Mortgagee with a copy of all of the permanent financing loan documents;

(iii) Concurrently with the closing of any said permanent refinancing, Mortgagor shall first repay any construction loan placed on the Property to be refinanced and then shall pay Mortgagee to the extent proceeds from the permanent refinancing are available after payment of closing costs, which costs shall include, without limitation, any Loan Fee due and payable to the permanent lender not to exceed one percent (1%) of the permanent loan, the "Financing Fee" (as defined in the Loan Agreement), not to exceed one percent (1%) of the permanent loan, title charges, survey costs, escrow charges, recording and mortgage taxes and legal fees, but shall exclude all brokers' commissions in connection with the permanent loan, and after payment of the unpaid deferred portion of the "Developer Fee" (as defined in the Loan Agreement), to Beneficiary to the extent said Developer Fee is related to said portion of the Mortgaged Property to be refinanced (A) all then accrued and unpaid Basic Interest under the Note, (B) all then accrued and unpaid Deferred Amount under the Note, (C) all then accrued and unpaid Additional Interest under the Note, (D) all then accrued and unpaid Accrual Interest under the Note, and (E) the outstanding balance of the Principal Amount under the Note (except no less than \$30,000.00 thereof, which upon the placement of any permanent refinancing shall remain unpaid and outstanding and which shall be repaid as set forth hereinbelow). Any proceeds remaining from said permanent financing after application as aforesaid shall be paid on an equal basis to (x) Mortgagee for the repayment of the unpaid

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principal balance, together with accrued and unpaid interest thereon, under the Future Notes and (y) Mortgagor for the repayment of Working Capital Contributions made from time to time hereafter by Mortgagor pursuant to the provisions of the Loan Agreement, plus the accrued return thereon as provided in the Loan Agreement. The remaining \$30,000.00 or such greater outstanding balance of the Principal Amount after application of the permanent financing proceeds as aforesaid shall be subject to the terms of the Note, shall be repaid on the Maturity Date of the Note together with all then accrued and unpaid Basic Interest, Deferred Amount, Additional Interest, and Accrual Interest, and shall be secured by the lien of this Mortgage on the Property, and the remaining outstanding balance of the Future Notes, if any, after application of the permanent financing proceeds as aforesaid shall be subject to and repaid in accordance with the terms of said Future Notes and shall be secured by the lien of this Mortgage on the Property; provided, however, the lien of this Mortgage on the portion of the Property on which the permanent loan is placed shall be subordinated to the lien of the permanent lender as aforesaid.

(e) Notwithstanding anything herein to the contrary, Mortgagee will permit the sale, exchange, assignment, conveyance or transfer of all or any portion of the Property (and will release the portion of the Property to be sold from the lien of this Mortgage) upon the following conditions:

(i) The portion of the Property to be sold shall have been improved with buildings, infrastructure and other site improvements necessary to operate said buildings and tenant improvements thereon shall have been completed;

(ii) At least ninety percent (90%) of the tenant space located in the building on the portion of the Property to be sold shall be leased and occupied by paying tenants or the proposed purchaser of the portion of the Property to be sold shall be the occupant of at least ninety percent (90%) of the tenant space located in the building thereon upon consummation of the sale;

(iii) Mortgagor shall have provided Mortgagee with a copy of the sale agreement (the "Sale Agreement") relating to the sale of the Property, which Sale Agreement shall be subject to Mortgagee's approval in its sole and absolute discretion reasonably exercised subject to the provisions of the Loan Agreement and the First Offer Agreement;

(iv) The portion of the Property to be sold must be sold on an all cash basis to a bona fide third party in the ordinary course of Mortgagor's business, subject to the right of the purchaser to assume any construction or permanent loan placed on the portion of the Property to be sold;

(v) On the closing date of the sale, the "Net Consideration" (as defined under the Note), from the sale shall be applied, to the extent available except as hereafter provided, as follows: (A) first, to the repayment of construction or permanent financing which is secured by a first lien on the portion of the Property to be sold to which Mortgagee's lien on the said portion of Property has been subordinated by Mortgagee, if any, (B) second, to the payment

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of all then accrued and unpaid Basic Interest under the Note payable to Mortgagee, (C) third, to the payment of all then accrued and unpaid Deferred Amount under the Note payable to Mortgagee, (D) fourth, to the payment of all accrued and unpaid Accrual Interest under the Note payable to Mortgagee, (E) fifth, to the payment of all then accrued and unpaid Additional Interest under the Note (not including any "Sale Interest" [as defined under the Note] under the Note due and payable to Mortgagee in connection with said sale), payable to Mortgagee, (F) sixth, to the repayment of the then outstanding balance of the Principal Amount under the Note payable to Mortgagee (except no less than \$30,000.00 thereof, which upon any partial sale of a portion of the Property shall remain unpaid and outstanding subject to the terms of this Note and which shall be repaid on the Maturity Date of the Note, together with all then accrued and unpaid Basic Interest, Deferred Amount, Accrual Interest and Additional Interest and any and all other amounts then due and payable under the Note, this Mortgage and the Other Agreements; provided, however, upon the sale of all of the remaining portions of the Property, the Principal Amount of the Note, together with all then accrued and unpaid Basic Interest, Deferred Amount, Accrual Interest and Additional Interest and any and all other amounts then due and payable under the Note, this Mortgage and the Other Agreements, shall be repaid in full); (G) seventh, to the repayment on an equal basis to (x) Mortgagee for the repayment of the unpaid principal balance, together with accrued and unpaid interest thereon, under the Future Notes, and (y) Mortgagor for the repayment of Working Capital Contributions made from time to time hereafter by Mortgagor pursuant to the provisions of the Loan Agreement, plus the accrued return thereon as provided in the Loan Agreement, (H) eighth, to the payment of a land profit fee equal to \$0.32 per gross square foot of the Property sold, payable to Mortgagor, and (I) ninth, the remainder shall be paid to Mortgagee and Mortgagor in such proportions so that Mortgagee receives an amount equal to the "Sale Interest Percentage" (as defined under the Note), multiplied by the remainder and Mortgagor receives an amount equal to the product of (A) one (1) minus the Sale Interest Percentage multiplied by (B) the remainder. Said portion of the remainder payable to Mortgagee shall constitute the Sale Interest due and payable to Mortgagee in connection with said sale; and

(vi) Mortgagor's right to enter into and consummate any sale of any portion of the Mortgaged Property shall be subject to Mortgagee's right of first option to purchase the same in accordance with the provisions of the Loan Agreement and the First Offer Agreement.

(f) In connection with any permitted construction financing of the Property described in Subparagraph (c) above and any permitted permanent refinancing described in Subparagraph (d) above, Mortgagee shall, within twenty (20) days of Mortgagor's written request, execute, acknowledge and deliver to Mortgagor a subordination of Mortgagee's lien on the portion of the Property on which the construction or permanent loan is to be placed, subject to the satisfaction of the provisions hereinabove and the following terms and conditions:

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(i) Mortgagor shall not be in default in any of the terms, covenants and conditions of the Notes, this Mortgage and the Other Agreements.

(ii) The payment set forth in Subparagraph (c)(v) or Subparagraph (d)(iii), as applicable, shall have been delivered to Mortgagee and applied against the indebtedness secured by this Mortgage as provided in Subparagraph (c) or Subparagraph (d) above, as applicable.

(iii) All subordination agreements shall be prepared by the attorneys for Mortgagee at Mortgagor's cost subject to the consent of the construction or permanent lender, as applicable.

(g) In connection with any permitted sale, exchange, assignment, conveyance, or transfer of the Property described in Subparagraph (e) above, Mortgagee shall, within twenty (20) days of Mortgagor's written request, execute, acknowledge and deliver to Mortgagor a release of the portion of the Property to be sold, subject to the satisfaction of the provisions hereinabove and the following terms and conditions:

(i) Mortgagor shall not be in default in any of the terms, covenants, and conditions of the Notes, this Mortgage or the Other Agreements.

(ii) The payment described in Subparagraph (e)(v) shall have been delivered to Mortgagee and applied against the indebtedness secured by this Mortgage as provided in Subparagraph (e) above.

(iii) Mortgagor shall supply to Mortgagee legal descriptions to be incorporated in each release, together with blueprints or copies of surveys showing the portions of the Property to be released at least twenty (20) days prior to the date requested for the execution of such release.

(iv) All releases shall be prepared at the expense of Mortgagor.

3.14 All present and future items of fixtures, equipment, furnishings or other tangible personal property of Mortgagor or Beneficiary (whether or not constituting a part of the Property) related or necessary to or used or usable in connection with any present or future building or other improvement on the Premises, or the operation or business thereof, are and will continue to be owned free and clear of all Encumbrances except the Permitted Encumbrances and liens hereafter allowed, if any, pursuant to Section 3.13 above, and Mortgagor will not acquire any such property subject to any Encumbrance except Permitted Encumbrances and liens hereafter allowed, if any, pursuant to Section 3.13 above. Within five (5) days after request by Mortgagee, Mortgagor will execute and deliver to Mortgagee an additional security agreement and a financing statement, in form and substance acceptable to Mortgagee, covering all such property.

3.15 The execution, delivery and performance by Mortgagor of and under this Mortgage, the Notes and the Other Agreements does not and will not constitute a violation of any applicable law and does not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising,

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existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, note, judgment, order, award, decree or other restriction to which Mortgagor or any of the Property is or hereafter shall become a party or by which Mortgagor or any of the Property is or hereafter shall become bound or any law or regulatory provision now or hereafter affecting Mortgagor or any of the Property.

3.16 There is no litigation, action, claim or proceeding pending or, to the best knowledge of Mortgagor, threatened which might, in any way, manner or respect, adversely affect the Property, the operation or the business thereof, Mortgagee's encumbrances thereon, the collectibility of the Notes, the ability of Mortgagor to repay the Notes or the financial condition of the Property or the operation or business thereof.

3.17 There does not exist any default or breach of or under any agreement, instrument or document for borrowed money by which Mortgagor or the Property is bound or obligated, and Mortgagor covenants that it shall not hereafter default under or cause a breach of any said agreement, instrument or document.

3.18 Mortgagor is and shall remain in peaceful possession of and will forever warrant and defend the Property from and against any and all claims thereon or thereto of any and all parties subject, as aforesaid, to the Permitted Encumbrances and subordinate liens hereafter allowed by Mortgagee, if any, pursuant to Section 3.13 above.

3.19 The Property is in the same condition as it was when Mortgagee last inspected it, ordinary wear and tear excepted. Subject to the provisions of Section 3.20 and Article IV below, Mortgagor will not change the use or character of or abandon the Property and at all times hereafter shall keep the Property in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements and renewals (including the replacement of any items of the Equipment) to the Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Mortgagor shall not remove any fixture (other than to replace same with those of equivalent or greater value or removal of fixtures in connection with Mortgagor's obligations under the Leases) or demolish any building or improvement located in or on the Premises. Mortgagor shall pay for and complete, within a reasonable time, any building or improvement at any time in the process of erection upon the Premises, refrain from impairing or diminishing the value of the Property, make no material alterations to the Property, promptly repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed, and permit Mortgagee, and its agents, upon demand, access to and to inspect the Property.

3.20 Notwithstanding the provisions of the foregoing Section 3.19, Mortgagor shall be permitted to remove items of Equipment if the Equipment so removed is obsolete or such removal occurs in connection with the normal course of Mortgagor's business if (i) no Event of Default or uncured default exists hereunder, under the Notes, or Other Agreements, (ii) the value of the Property is not, in Mortgagee's reasonable opinion, diminished by such removal, (iii) the Equipment so removed shall be immediately replaced by new Equipment of equivalent or better quality and any damage to the Property caused by such removal



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shall be promptly repaired, (iv) such act of removal does not violate the provisions of any Encumbrances or security agreements, (v) Mortgagee is promptly notified of such replacement, and (vi) Mortgagor shall execute Documents if requested by Mortgagee pursuant to Section 3.25 hereof to further evidence and/or secure Mortgagee's security interest in Equipment.

3.21 Mortgagor has been furnished with a true, correct, complete and accurate copy of this Mortgage.

3.22 Mortgagor has retained and has been represented continuously throughout the transaction contemplated by this Mortgage by legal counsel of its own choosing.

3.23 If Mortgagor, within thirty (30) days after receipt of written demand from Mortgagee (except in cases of emergency, when no demand shall be required), shall neglect or refuse to keep the Property in good operating condition and repair or to replace or maintain the same as herein agreed, to pay the premiums for the insurance which is required to be maintained hereunder, to pay and discharge all Encumbrances as herein agreed or otherwise defaults in the performance of Mortgagor's Obligations, Mortgagee, at its sole election, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such Obligations; provided, however, in the case of a nonmonetary default not susceptible to being cured within such thirty (30) day period, Mortgagee shall not cause such nonmonetary default to be cured so long as Mortgagor is diligently and continuously attempting to cure said default, provided said default is susceptible to being cured within the grace period granted hereunder, but in no event shall the grace period granted to Mortgagor herein be for more than ninety (90) days from the date Mortgagee first gives Mortgagor notice as provided above. Any amounts paid by Mortgagee in taking such action, together with interest thereon at the default rate specified in the Notes until repaid by Mortgagor to Mortgagee, shall be due and payable by Mortgagor to Mortgagee upon demand, and, until paid, shall constitute a part of Mortgagor's Liabilities secured by this Mortgage. Notwithstanding the foregoing such advances by Mortgagee shall not be deemed to relieve Mortgagor from any default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with Mortgagee and not obligatory upon Mortgagee and Mortgagee shall not in any case be liable to Mortgagor for failure or refusal to exercise any such rights. In making any payments pursuant to the exercise of any such right, Mortgagee may reasonably rely upon any bills delivered to it by Mortgagor or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

3.24 Mortgagor, within ten (10) days after request by Mortgagee therefor, will certify, in writing, to Mortgagee, or to any proposed assignee of this Mortgage, the amount of principal and interest then owing and unpaid under the Notes and whether Mortgagor has or asserts any offsets or defenses thereto.

3.25 Mortgagor, immediately upon the request by Mortgagee, at Mortgagor's sole expense, will make, execute and deliver and/or will cause to be made, executed and delivered to and/or for the benefit of Mortgagee, in form and substance reasonably acceptable to Mortgagee, all "Documents" (as hereinafter defined) that Mortgagee is advised are and/or reasonably deems necessary or

appropriate to evidence, document and/or conclude the transactions described in and/or contemplated by this Mortgage, the Notes and/or the Other Agreements or required to perfect or continue perfected, as valid encumbrances, the encumbrances granted herein or in the Other Agreements by Mortgagor to Mortgagee upon the Property. As used herein, "Documents" means: any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, security agreement, financing statement, assignment of insurance, loss payable clause, mortgage title insurance policy, letters of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, survey and any other similar such agreements, instruments or documents.

3.26 No part of the Property is used principally or primarily for agricultural or farm purposes.

3.27 The proceeds of the loan secured by this Mortgage will be used for the purposes specified in Section 6404 of Chapter 17 of the Illinois Revised Statutes (or any substitute amended or replacement statutes), and that the principal obligation secured hereby constitutes a "business loan" transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor which comes within the purview and operation of said paragraph.

3.28 Mortgagor covenants that the proceeds of the loan secured by this Mortgage will not be used for the purchase or carrying of registered equity securities within the purview and operation of Regulation G issued by the Board of Governors of the Federal Reserve System or for the purpose of releasing or retaining any indebtedness which was originally incurred for any such purpose.

3.29 The Property shall be managed at all times during the term hereof by a property management company acceptable to Mortgagee, pursuant to a management agreement acceptable to Mortgagee. Mortgagor shall not change such property management company or the terms of such management agreement without the prior written consent of Mortgagee which consent shall not be unreasonably withheld or delayed.

3.30 Mortgagor represents and warrants that to the best knowledge of Mortgagor, it has not invested in, does not have any ownership interest in property of, and has not transferred or extended funds or credit on the basis of an obligation to repay, or assumed or guaranteed the obligation of another to repay an extension of funds or credit to, and Mortgagor covenants that it shall use its best efforts to not, during the term of this Mortgage, invest in, acquire an ownership interest in property of, or transfer or extend funds or credit on the basis of an obligation to repay, or assume or guarantee the obligation of another to repay an extension of funds or credit to (i) the Republic of South Africa or any territory under the administration of the Republic of South Africa, (ii) a national corporation of or other corporation organized under the laws of the Republic of South Africa or any territory under the administration of the Republic of South Africa, or (iii) a company, firm, corporation, entity, agency, association or unit, group or collective trust, partnership or joint venture which makes new investments in the Republic of South Africa or any territory under the administration of the Republic of South Africa; provided, however, the foregoing

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covenant shall be in effect only until such time as the United Nations certifies that the system of racial discrimination, commonly known as apartheid, is abolished.

## IV. TAXES, INSURANCE AND CONDEMNATION

4.01 Mortgagor, at all times, shall keep and maintain the Property fully insured (without co-insurance) against loss or damage by fire and such other hazards, casualties and contingencies as Mortgagee, from time to time, may reasonably require in companies, form, amounts and for such periods as is reasonably satisfactory to Mortgagee, but, in any event, for not less than the full insurable value of the Property. All such policies (which may be blanket insurance policies) and renewals thereof (hereinafter referred to as the "policies") shall contain, in form and substance acceptable to Mortgagee, standard mortgagee loss payable clauses naming Mortgagee as "First Mortgagee," as well as a standard waiver of subrogation endorsement and shall be delivered, as issued, to Mortgagee, with premiums therefor paid in full by Mortgagor. All policies shall provide that they are non-cancellable by the insurer without first giving at least thirty (30) days' prior written notice to Mortgagee of any intended cancellation. Mortgagor will give prompt written notice to Mortgagee of any loss or damage to the Property caused by any casualty. In case of policies about to expire, Mortgagor will deliver to and deposit with Mortgagee copies of renewal policies not less than fifteen (15) days prior to the respective dates of expiration. Mortgagor will deliver and deposit with Mortgagee copies of receipts for the payment of the premiums on all policies. In the event of foreclosure of this Mortgage or assignment hereof by Mortgagee or transfer of title to the Property in extinguishment of Mortgagor's Liabilities, all right, title and interest of Mortgagor in and to any policies then in force with respect to the Property (other than liability policies of Mortgagor) shall pass to the purchaser, grantee or assignee.

4.02 Full power is hereby conferred by Mortgagor on Mortgagee:

(i) to settle and compromise all claims with respect to the Property under all policies;

(ii) to demand, receive and receipt for all monies becoming due and/or payable under all policies;

(iii) to execute, in the name of Mortgagor or in the name of Mortgagee, any proofs of loss, notices or other instruments in connection with all claims with respect to the Property under all policies; and

(iv) to assign all policies with respect to the Property and/or Mortgagor's rights thereunder to any holder of Mortgagor's Liabilities or to the grantee of the Property in the event of the foreclosure of this Mortgage or other transfer of title to the Property.

Notwithstanding anything to the contrary in the foregoing, for so long as there is no Event of Default hereunder, and no event which, with the passage of time and/or the giving of notice, would constitute an Event of Default hereunder, and provided further that any casualty loss to the Property as herein described shall

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not, in Mortgagee's reasonable determination, have a material adverse effect on the Property or on Mortgagee's liens and security interest in the Property or on Mortgagor's ability to conduct its business and operate the Property or on Mortgagor's ability to repay Mortgagor's Liabilities or to satisfy and discharge Mortgagor's Obligations, full power is hereby conferred on Mortgagor to settle and compromise with Mortgagee's approval, which approval shall not be unreasonably withheld, all claims under all policies for any casualty loss to the Property that will result in payment by the carrier insuring the Property of \$25,000.00 or less and such proceeds shall be applied by Mortgagor either to replace, repair, restore or operate the Property or to the payment of Mortgagor's Liabilities or to the satisfaction of any of Mortgagor's Obligations.

4.03 In the event of payment under any of the policies with respect to the Property, such proceeds of the policies shall be paid by the insurer to Mortgagee except as provided hereinafter. Upon receipt of such payment Mortgagee, in its sole and absolute discretion, reasonably exercised, may:

(i) apply such proceeds, wholly or partially, after deducting all costs of collection, including attorneys' fees, either:

(I) toward the alteration, reconstruction, repair or restoration of the Property or any portion thereof; or

(II) as a payment on account of Mortgagor's Liabilities whether or not then due or payable.

4.04 In the event Mortgagee elects to apply such proceeds in accordance with Section 4.03(i)(I) above, before commencing to repair, restore, replace or rebuild the Property (such repairing, restoring, replacing or rebuilding being hereinafter referred to as the "Work"), Mortgagor shall comply with the following requirements:

(i) Mortgagor shall furnish to Mortgagee complete plans and specifications for the Work (approval by all governmental authorities whose approval is required), which plans and specifications shall be subject to the reasonable approval of Mortgagee. Said plans and specifications shall bear the signed approval thereof by an architect satisfactory to Mortgagee (herein referred to as the "Architect") and shall be accompanied by the Architect's signed estimate of the entire cost of completing the Work or an estimate of the entire cost of completing the Work signed by a general contractor satisfactory to Mortgagee (herein referred to as the "GC");

(ii) Mortgagor shall furnish to Mortgagee certified or photostatic copies of all permits and approvals required by law in connection with the commencement and conduct of the Work;

(iii) Mortgagor shall furnish to Mortgagee a guaranty of, letter of credit or other security acceptable to Mortgagee for, completion of and payment for the Work, which guaranty, letter of credit or other reasonable security shall be in form reasonably satisfactory to Mortgagee and shall be signed by a guarantor or guarantors, or other party, or parties, as the case may be, who are reasonably acceptable to Mortgagee, and in an amount not less

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than the Architect's or GC's estimate of the entire cost of completing the Work, less the amount of insurance proceeds, if any, then held by Mortgagee; and

(iv) Mortgagor shall obtain and furnish to Mortgagee, evidence of the consent to the performance of the Work by any party of which the same may be required.

After Mortgagor has complied with said requirements, Mortgagor shall thereafter perform the Work diligently and in good faith in accordance with the plans and specifications referred to in Section 4.04(i) above and Mortgagee shall release the proceeds of such policies in accordance with Section 4.05 below.

4.05 In the event Mortgagee elects to apply such proceeds in accordance with Section 4.03(i)(I) above, Mortgagor has complied with the provisions of Section 4.04 above, and no Event of Default then exists hereunder, then so long as the Work is being diligently performed by Mortgagor in accordance with the provisions of this Mortgage, Mortgagee shall disburse any insurance proceeds held by Mortgagee to Mortgagor from time to time during the course of the Work in accordance with the following provisions. Mortgagee shall not be required to make disbursements more often than at thirty (30) day intervals. Mortgagor shall make a written request for each disbursement at least seven (7) days in advance and shall comply with the following requirements in connection with each disbursement:

(i) Mortgagor shall deliver to Mortgagee at the time of request for a disbursement, a certificate of the Architect or GC, in conjunction with the construction manager, dated not more than ten (10) days prior to the application for withdrawal of funds, setting forth the following:

(I) That the sum then requested to be withdrawn either has been paid by Mortgagor or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the Work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts so paid or due to each of said persons in respect thereof and stating the progress of the Work up to the date of said certificate;

(II) That the sum then requested to be withdrawn, plus all sums previously withdrawn, does not exceed the cost of the Work insofar as actually accomplished up to the date of such certificate;

(III) The remainder of the moneys held by Mortgagee will be sufficient to pay in full for the completion of the Work;

(IV) That no part of the cost of the services and materials described in the foregoing Section 4.05(i)(I) has been or is being made the basis of the withdrawal of any funds in any previous or then pending application; and

(V) That, except for the amounts, if any, specified in the foregoing Section 4.05(i)(I) to be due for services or materials, there is no outstanding indebtedness known, after due inquiry, which is then due and payable for work, labor,

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services or materials in connection with Work which, if unpaid might become the basis of a vendor's, mechanic's, laborer's or materialmen's statutory or other similar lien upon the Property or any part thereof.

(ii) Mortgagor shall deliver to Mortgagee satisfactory evidence that the Property and every part thereof, and all materials and all property described in the certificate furnished pursuant to Section 4.05(i)(I), are free and clear of all mortgages, liens, charges or encumbrances, except (I) encumbrances, if any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said certificate furnished pursuant to Section 4.05(i)(I), which encumbrances will be discharged upon disbursement of the funds then being requested, (II) this Mortgage and (III) the Permitted Encumbrances and liens hereafter allowed by Mortgagee, if any, pursuant to Section 3.13 above. Mortgagee shall accept as satisfactory evidence under this Section 4.05(ii) a certificate of a title insurance company acceptable to Mortgagee, dated as of the date of the making of the disbursement, confirming the foregoing.

Mortgagee at its option may waive any of the foregoing requirements.

Upon compliance by Mortgagor with the foregoing Sections 4.05(i), (ii) and (iii), (except for such requirements, if any, as Mortgagee at its option may have waived) Mortgagee, shall, to the extent of the insurance proceeds held by Mortgagee, pay to Mortgagor the amount stated in certificates furnished pursuant to Section 4.05(i).

If upon completion of the Work there shall be insurance proceeds held by Mortgagee over and above the amounts withdrawn pursuant to the foregoing provisions, then Mortgagee shall pay such proceeds to Mortgagor, except that if an Event of Default then exists hereunder, Mortgagee, at Mortgagee's option, may retain such proceeds and apply the same in reduction of the Mortgagor's Liabilities, interest or any other sum secured hereby.

4.06 Notwithstanding any prior election by Mortgagee, if an Event of Default then exists hereunder, then Mortgagee may apply all or any part of such insurance proceeds in reduction of Mortgagor's Liabilities, interest or any other amount secured hereby.

4.07 Notwithstanding the provisions of Sections 4.03 and 4.04, in the event the cost of the Work shall not exceed Twenty-Five Thousand and No/100ths Dollars (\$25,000.00), then if an Event of Default does not then exist hereunder, such insurance proceeds shall be paid to Mortgagor by Mortgagee upon Mortgagee's receiving from Mortgagor satisfactory proof of completion of and payment for the Work in accordance with all provisions of law, and satisfactory proof that there are no mechanic's or materialmen's liens affecting the Property other than encumbrances, if any, securing indebtedness due to persons (whose names and addresses and the general amounts due them shall be stated) specified in said certificate furnished pursuant to Section 4.05(i)(I), which encumbrances will be discharged upon disbursement of the funds then being requested. Mortgagee shall accept as satisfactory

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proof under this Section a certificate of a title insurance company, acceptable to Mortgagee, dated as of the date the request for the insurance proceeds confirming the foregoing.

4.08 If within ninety (90) days after the occurrence of any damage to, or taking of a part of, the Property, Mortgagor shall not have submitted to Mortgagee plans and specifications for the repair, replacement and/or rebuilding of the damaged improvements or shall not have obtained approval of such plans and specifications by all governmental authorities whose approval is required, or if, after such plans and specifications are approved by Mortgagee and all such governmental authorities, Mortgagor shall fail to commence promptly such repair, replacement and/or rebuilding, or if thereafter Mortgagor fails to perform diligently such repair, replacement and/or rebuilding or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with the Work, or if Mortgagor shall fail to repair, replace and/or rebuild promptly the damaged improvements, then, in addition to all other rights herein set forth, and after giving Mortgagor twenty (20) days notice of the nonfulfillment of one or more of the foregoing conditions and Mortgagor has failed to commence and diligently pursue the foregoing conditions, Mortgagee, or any lawfully appointed receiver of the Property, may at their respective options, perform or cause to be performed such repair, replacement and/or rebuilding and may take such other steps as they deem advisable to perform such repair, replacement and/or rebuilding, and may enter upon the Property for any of the foregoing purposes, and Mortgagor hereby waives, for Mortgagor and all others holding under Mortgagor, any claim against Mortgagee and such receiver arising out of anything done by Mortgagee or such receiver pursuant to this Section 4.08, and Mortgagee may apply insurance proceeds [without the need to fulfill the requirements of any portion of this Article IV] to reimburse Mortgagee and/or such receiver for all amounts expended or incurred by them, respectively, in connection with the performance of the Work, and any excess costs shall be paid by Mortgagor to Mortgagee upon demand and such payment shall be added to Mortgagor's Liabilities and secured by the lien of this Mortgage. The performance by Mortgagor of the obligations set forth in this Section shall be extended for a period equal to the time performance of said obligations is prevented by force majeure events, which events shall include and be limited to, acts of God, riots, strikes, lock outs or other civil unrest, fire, destruction, war, national emergency, inability beyond the control of Mortgagor to procure materials, fuel shortages, failure of power, and other similar matters beyond the control or influence of Mortgagor, as established by Mortgagor to the satisfaction of Mortgagee, acting reasonably.

4.09 Notwithstanding anything herein to the contrary, and provided that (a) an Event of Default is not then in existence under this Mortgage, (b) that Mortgagee is satisfied that the Work can be completed no later than six (6) months prior to the Maturity Date (as defined in the Notes), and (c) Mortgagee is satisfied that, upon the completion of such repair and restoration, the Mortgaged Property will be an economically viable project at least comparable to that which existed immediately prior to the fire or other casualty, Mortgagee shall apply such proceeds toward the alteration, reconstruction, repair or restoration of the Property or any portion thereof, in accordance with the terms and conditions of this Article IV.

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4.10 (a) Mortgagor shall deposit with Mortgagee on the first (1st) day of each month hereafter until Mortgagor's Liabilities are fully paid, a sum equal to one-twelfth (1/12) of (i) one hundred percent (100%) of the total annual impositions, levies, taxes and assessments arising with respect to the Property for the most recent ascertainable tax year (the "Tax Escrow"); and (ii) the total amount of annual premiums for all insurance policies required to be obtained and maintained by Mortgagor pursuant to this Mortgage with respect to the Property (the "Insurance Escrow"). Subject to the provisions of this Section and Paragraph 3.02 above, provided that Mortgagor is not then in default in the timely payment of any installment of principal, interest or other monies due or declared due and no Event of Default then exists under this Mortgage, Mortgagee shall pay, when and to whom due and payable under applicable contracts or law, to and including the date upon which the final installment payment of principal and interest on the Notes is due and payable, all of the aforesaid impositions, levies, taxes, assessments and premiums. Notwithstanding the foregoing, Mortgagee does not hereby assume any of Mortgagor's obligations under said contracts or laws to make such payments and nothing contained herein, the Notes or the Other Agreements shall require Mortgagee to perform any such obligations of Mortgagor except for the making of the aforesaid payments in accordance with and subject to the above specified terms. Upon occurrence of an Event of Default under the Notes or this Mortgage, Mortgagee shall not be obligated to make such payments, but, at its sole election and in its sole discretion, may make any or all of such payments.

(b) If the deposits required by Section 4.10(a) above are insufficient to pay the impositions, levies, taxes, assessments and/or premiums of which they are provided, on or before thirty (30) days before the same shall become due and payable Mortgagor shall deposit with Mortgagee such additional monies as are necessary to pay, in full, such obligations.

(c) Upon the occurrence of an Event of Default hereunder, Mortgagee, at its option and in its sole discretion, may apply any monies held pursuant to Section 4.10(a) above on account of any of Mortgagor's Liabilities, in such order or priority as Mortgagee may elect.

(d) Upon payment, in full, of Mortgagor's Liabilities, Mortgagee shall deliver any remaining of the aforesaid deposits to Mortgagor or the then owner.

(e) All of the aforesaid deposits hereby are pledged, as additional security for the payment of Mortgagor's Liabilities (and for such purpose, Mortgagor hereby grants to Mortgagee a security interest therein), to be applied by Mortgagee for the purposes hereinabove set forth and shall not be subject to the control of Mortgagor; provided, however, that Mortgagee shall not be liable for failure to pay, when due, any such impositions, levies, taxes, assessments or premiums unless Mortgagor, while no Event of Default exists, shall have requested Mortgagee, in writing, to pay the same and delivered to Mortgagee appropriate evidence of bills therefor.

4.11 (a) All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Mortgagor in any way, manner or respect affecting, arising from or relating to the Property, or any portion thereof, by virtue of an exercise of the



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right of eminent domain by such authority (including, but not limited to, any award for taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Property) hereby are assigned to Mortgagee as additional security for the payment of Mortgagor's Liabilities and for such purpose, Mortgagor hereby grants to Mortgagee a security interest therein.

(b) Mortgagee shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in Mortgagor's name, in Mortgagee's name or in both names), and may, in its sole and absolute discretion, use such proceeds for any one or more of the following purposes:

(i) to apply the same, or any part thereof, to Mortgagor's Liabilities, whether or not then matured and without affecting the amount or time of subsequent installment payments required to be made by Mortgagor to Mortgagee under the Notes;

(ii) to use the same, or any part thereof, to satisfy, perform or discharge any of Mortgagor's Obligations;

(iii) to use the same, or any part thereof, to replace, repair or restore any or all of the Property to a condition satisfactory to Mortgagee; or

(iv) to release the same to Mortgagor.

Notwithstanding anything to the contrary in the foregoing, for so long as there is no Event of Default hereunder, and no event which, with the passage of time and/or the giving of notice, would constitute an Event of Default hereunder, and provided further that any taking by eminent domain shall not, in Mortgagee's reasonable determination, have a material adverse effect on the Property or on Mortgagee's liens and security interest in the Property or on Mortgagor's ability to conduct its business and operate the Property or on Mortgagor's ability to repay Mortgagor's Liabilities or to satisfy and discharge Mortgagor's Obligations, full power is hereby conferred on Mortgagor to settle with Mortgagee's approval, which approval shall not be unreasonably withheld, any taking by eminent domain if said taking by eminent domain shall result in an award of \$25,000.00 or less, and all proceeds from said eminent domain award shall be applied by Mortgagor either to replace, repair, restore or operate the Property or to the payment of Mortgagor's Liabilities or to the satisfaction of any of Mortgagor's Obligations.

(c) Mortgagor, promptly upon request by Mortgagee, shall make, execute and deliver and/or cause to be made, executed and delivered to and/or for the benefit of Mortgagee any and all assignments and other instruments sufficient to assign, and cause the payment directly to Mortgagee of, all such awards, free and clear of all Encumbrances except Permitted Encumbrances and subordinate liens hereafter allowed, if any, pursuant to Section 3.13 above. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Property by any public or quasi-public authority or corporation, Mortgagor shall continue to pay all of Mortgagor's Liabilities, as and when due and payable, until any such award or payment shall have been actually received by Mortgagee, and any reduction in Mortgagor's Liabilities resulting

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from the application by Mortgagee of such award or payment as herein set forth shall be deemed to take effect only on the date of such receipt. If, prior to the receipt by Mortgagee of such award or payment, the Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and of the attorneys' fees, costs, expenses and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

## V. LEASES AND RENTS

5.01 So long as no Event of Default exists under this Mortgage, Mortgagor shall have the right to collect all of the Rents arising from the Leases, or renewals thereof, and shall hold the same to be applied to the payment of all impositions, levies, taxes, assessments and other charges upon the Property, the cost of the maintenance of insurance policies upon the Property required hereby, the maintenance and repairs required hereby, and to the payment of Mortgagor's Liabilities, before using any part of the Rents for any other purposes. Mortgagee shall have the right to approve each tenant and Lease, and shall receive executed copies, together with all exhibits thereto, of all Leases. However, unless and until an Event of Default occurs hereunder, Mortgagee shall not exercise its right to approve tenants and Leases if (i) the Lease is written on a standard form previously approved, in writing, by Mortgagee and (ii) the rental under the Lease is in compliance with the approved leasing guidelines previously approved, in writing, by Mortgagee. Prior to execution of any Lease require Mortgagee's approval, a copy of said Lease shall be delivered to Mortgagee for approval. The failure of Mortgagee to object within ten (10) days of delivery to Mortgagee of a copy of the proposed Lease together with such information as Mortgagee shall reasonably require concerning the financial solvency, business ability and creditworthiness of the proposed tenant, shall be deemed an approval of said Lease.

5.02 At all times, Mortgagee or any of Mortgagee's agents shall have the right to verify the validity, amount or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Mortgagee, Mortgagor, a nominee of Mortgagee or in any or all of said names.

5.03 Unless Mortgagee notifies Mortgagor thereof in writing that it dispenses with any one or more of the following requirements, Mortgagor shall: (i) immediately upon Mortgagor's receipt or learning thereof, inform Mortgagee, in writing, of any assertion of any material claims, offsets or counterclaims by any of the obligors of the Leases; and (ii) immediately upon Mortgagor's receipt or learning thereof, furnish to and inform Mortgagee of all adverse information relating to or affecting the financial condition of any obligor of the Leases.

5.04 Within fifteen (15) days after reasonable demand therefor by Mortgagee, Mortgagor shall deliver to Mortgagee, in form and substance acceptable to Mortgagee, a detailed certified rent roll of all the Leases and such other matters and information relating thereto as Mortgagee may reasonably request.

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5.05 Upon the occurrence of an Event of Default under this Mortgage:

(i) Promptly upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee the originals of the Leases, with appropriate endorsement and/or other specific evidence of assignment thereto to Mortgagee, which endorsement and/or assignment shall be in form and substance acceptable to Mortgagee.

(ii) Mortgagee, then or at any time or times thereafter, at Mortgagee's sole discretion, without notice thereof to Mortgagor, may notify any or all of the obligors of the Leases that the Leases have been assigned to Mortgagee and Mortgagee in the name of Mortgagee, Mortgagor or in both names, may direct said obligors thereafter to make all payments due from then under the Leases directly to Mortgagee.

(iii) Mortgagor, promptly upon demand by Mortgagee, shall direct all obligors of the Leases then and thereafter to make all payments then and thereafter due from them under the Leases directly to Mortgagee.

(iv) Mortgagee shall have the right at any time or times thereafter, at Mortgagee's sole election, without notice thereof to Mortgagor, to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of Mortgagor, Mortgagee, or in both names.

(v) Mortgagor, irrevocably, hereby designates, makes, constitutes and appoints Mortgagee (and all persons designated by Mortgagee) as Mortgagor's true and lawful attorney and agent-in-fact, with power, without notice thereof to Mortgagor and at such time or times after the occurrence of an Event of Default as Mortgagee, at its sole election, may determine, in the name of Mortgagor, Mortgagee or in both names: (I) to demand payment of the Rents and performance of the Leases; (II) to enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (III) to exercise any or all of Mortgagor's rights, interests and remedies in and under the Leases and to collect the Rents; (IV) to settle, adjust, compromise, extend or renew the Leases and/or the Rents; (V) to settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (VI) to take control, in any manner, of the Rents; (VII) to prepare, file and sign Mortgagor's name on any proof of claim in bankruptcy, or similar document in a similar proceeding, against obligors of the Leases; (VIII) to endorse the name of Mortgagor upon any payments or proceeds of the Rents and to deposit the same to the account of Mortgagee; and (IX) to do all acts and things necessary, in Mortgagee's sole discretion, to carry out any or all of the foregoing.

(vi) All of the foregoing payments and proceeds received by Mortgagee shall be utilized by Mortgagee, at its sole election and in its sole discretion, for any one or more of the following purposes: (I) to be held by Mortgagee as additional collateral for the payment of Mortgagor's Liabilities; (II) to be applied to Mortgagor's Liabilities, in such manner and fashion and to such portions thereof as Mortgagee, at its sole election, shall determine; (III) to be applied to such obligations of Mortgagor or the Property or the operations or business thereof as Mortgagee,

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at its sole election, shall determine appropriate or warranted under the then existing circumstances; or (IV) to be remitted to Mortgagor.

## VI. DEFAULT

6.01 The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(i) Failure of Mortgagor to pay within five (5) days after the date due or declared due any of Mortgagor's Liabilities.

(ii) Failure of Mortgagor, within thirty (30) days after notice and demand, promptly, fully and faithfully to satisfy, perform, discharge, observe and comply with each and every of Mortgagor's Obligations, other than those set forth in Section 6.01(i) above and Sections 6.01(iii) through 6.01(xii) below; provided, however, in the case of a nonmonetary default not susceptible to being cured within such thirty (30) day period, Mortgagee shall not declare an Event of Default so long as Mortgagor is diligently and continuously attempting to cure said default, provided said default is susceptible to being cured within the grace period granted hereunder, but in no event shall the grace period granted to Mortgagor herein be for more than ninety (90) days from the date Mortgagee first gives Mortgagor notice as provided above;

(iii) An Event of Default by Mortgagor and/or Beneficiary in the prompt, full and faithful performance or observance of any term, provision, covenant or agreement of or contained in the Notes, the Loan Agreement or any of the Other Agreements, which remains uncured beyond the applicable time period, if any, contained therein for curing such Event of Default:

(iv) A petition under any Section or Chapter of the Bankruptcy Reform Act of 1978 or any similar law or regulation is filed by or against Mortgagor or Beneficiary (and in the case of an involuntary petition in bankruptcy, such petition is not discharged within sixty (60) days of its filing), or a custodian, receiver or trustee for any of the Property is appointed, or if Mortgagor or Beneficiary makes an assignment for the benefit of creditors, or if Mortgagor or Beneficiary is adjudged insolvent by any state or federal court of competent jurisdiction, or an attachment or execution is levied against any of the Property;

(v) If Mortgagor is in default in the payment of indebtedness (other than Mortgagor's Liabilities) and such default is declared and is not cured within the time, if any, specified therefor in any agreement governing the same;

(vi) A notice of lien, levy or assessment is filed of record with respect to the Property or with respect to all or any of Mortgagor's assets by the United States or any department, agency or instrumentality thereof or by any state, county, municipal or other governmental agency, including, without limitation, the Environmental Protection Agency or, if any, taxes or debts or other obligation owing at any time or times hereafter to any one of them becomes a lien or encumbrance upon the Property or any other of Mortgagor's assets and the same is not released within thirty (30) days after the same becomes a lien or encumbrance; provided, however, if said lien or encumbrance is not

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susceptible to being removed or released within said thirty (30) day period, Mortgagee shall not declare an Event of Default so long as Mortgagor is diligently and continuously attempting to cure such default and, in addition, Mortgagor deposits with Mortgagee such security as Mortgagee may deem reasonably satisfactory to indemnify Mortgagor from and against said liens or encumbrances, provided said lien or encumbrance is susceptible to being removed or released within the grace period granted hereunder, but in no event shall the grace period granted to Mortgagor herein be for more than ninety (90) days from the date any of the foregoing becomes a lien or encumbrance;

(vii) If Mortgagor fails or is unable to comply with any requirement, ordinance, law, or statute relating to the Premises promulgated by any governmental authority (whether Federal, state, or municipal) having jurisdiction thereof within thirty (30) days after the promulgation of any such ordinance, law or statute, or within thirty (30) days after notice in writing of such requirement shall have been given to Mortgagor or within such further time not to exceed sixty (60) additional days, as is reasonable under the circumstances in the opinion of Mortgagee and so long as Mortgagor is proceeding diligently and continuously and in good faith to comply with such requirement;

(viii) A sale, assignment, conveyance (including any conveyance by foreclosure or in lieu of foreclosure), pledge, hypothecation or other transfer of legal or equitable title to all or part of the Property or the beneficial interests in Mortgagor without Mortgagee's prior written consent, except as otherwise provided herein;

(ix) If any material statement, report or certificate made or delivered by Mortgagor or Beneficiary or any of Beneficiary's employees or agents, or by any guarantor of the Loan, to Mortgagee is not true and correct;

(x) If Mortgagor or Beneficiary is enjoined, restrained or in any way prevented by court order from conducting all or any part of its business affairs and such injunction, restraint or petition is not dismissed or stayed within thirty (30) days after the entry or filing thereof;

(xi) If any representation and/or warranty made herein, or in the Notes, Other Agreements or any other instrument or documents executed in connection with the loan transactions contemplated hereby shall not be true and correct as of the period of time to which it relates;

(xii) The dissolution of Mortgagor or Beneficiary; or

(xiii) The death, insolvency or material adverse change in the financial position of any two (2) or more of John E. Shaffer, Dennis J. Hiffman, Daniel G. Anderson and E. Thomas Collins, Jr.

6.02 Upon the occurrence of an Event of Default, Mortgagee, after notice and demand insofar as required hereby, in its sole discretion and at its sole election, without notice of such election, and without further demand, may do any one or more of the following:

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(i) Declare all of Mortgagor's Liabilities immediately due and payable and collect the same at once by any means available hereunder or at law or equity, including, without limitation, by foreclosure of this instrument as a mortgage in any court of competent jurisdiction, without notice of broken covenant or condition (and in case of such default and the exercise of such option, Mortgagor's Liabilities shall bear interest, from the date of such default, at the rate after default as provided in the Notes).

(ii) Either with or without process of law, forcibly or otherwise, enter upon and take immediate possession of the Property, expel and remove any persons, goods and chattels occupying or upon the same, receive all Rents, and issue receipts therefor, manage, control and operate the Property as fully as Mortgagor might do if in possession thereof, including without limitation, the making of all repairs and replacements deemed necessary by Mortgagee and the leasing of the same, or any part thereof, from time to time, and, after deducting all attorneys' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Property, apply the remaining net income, if any, to Mortgagor's Liabilities or upon any deficiency decree entered in any foreclosure proceeding. At the option of Mortgagee, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to Mortgagor at the address of Mortgagor last appearing on the records of Mortgagee. Mortgagor agrees to surrender possession of the Property to Mortgagee immediately upon the occurrence of an Event of Default when requested by Mortgagee. If Mortgagor shall fail to surrender possession of the Property, or any part thereof, after any such default, such possession shall be as a tenant at sufferance of Mortgagee, and Mortgagor agrees to pay to Mortgagee, or to any receiver appointed as provided below, after such default, a monthly rental for the Property, or the part thereof so occupied by Mortgagor, to be applied as provided above in the first sentence of this sub-section, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall fail to surrender possession of all, or any part of, the Property, said monthly rental shall be in amounts established by Mortgagee in its sole reasonable discretion. This covenant shall be effective irrespective of whether any foreclosure of any application for, or appointment of, a receiver.

(iii) File one or more suits at law or in equity for the foreclosure of this Mortgage or to collect Mortgagor's Liabilities. In the event of the commencement of any such suit by Mortgagee, Mortgagee shall have the right, either before or after sale, without notice and without requiring bond (notice and bond being hereby waived), without regard to the solvency or insolvency of Mortgagor at the time of application and without regard to the then value of the Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession,

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control, management and operation of the Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of Mortgagor's Liabilities. In case of a sale pursuant to foreclosure, the Premises may be sold as one parcel.

(iv) Exercise any other remedies or rights permitted or provided under or by the laws or decisions of the State of Illinois (including all rights of a secured party under the Illinois Uniform Commercial Code), accruing to a mortgagee and/or secured party upon a default by a mortgagor and/or debtor, or otherwise available at equity or under the Other Agreements.

6.03 Upon any sale or sales made under or by virtue of Section 6.03, whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness or other sums secured by this Mortgage the net sales price after deducting therefrom the expenses of sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage, and, in such event, this Mortgage, the Notes and the documents evidencing expenditures secured hereby shall be presented to the person or persons conducting the sale in order that the amount so used or applied may be credited upon said indebtedness as having been paid.

6.04 After the occurrence of an Event of Default, Mortgagee, but without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof, may: make or do any payment or act which Mortgagor has failed to make or do hereunder, and to such extent as either may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Premises for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; subject to Mortgagor's right to contest as set forth hereinabove, pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or superior to the lien of this Mortgage; and in exercising any such powers, pay necessary expenses, employ counsel and pay his fee. All such sums and expenses so expended by Mortgagee shall be secured by this Mortgage and shall be immediately due and payable without demand or notice, with interest from the date of expenditure at the default rate set forth in the Notes.

6.05 Upon the occurrence of an Event of Default under this Mortgage, there will be added to and included as part of Mortgagor's Liabilities (and allowed in any sale or decree for sale of the Property or in any judgment rendered upon this Mortgage or the Notes) the following: all of the costs and expenses of taking possession of the Property and of the holding, using, leasing, maintaining, repairing, improving and selling the same, including without limitation, the costs, charges, expenses and attorneys' fees specified in Section 6.06 below; receiver's fees; any and all expenditures which may be paid or incurred by or on behalf of Mortgagee for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, costs of advertisement, Torrens certificates and similar data and assurances with respect to the title to the Property; all prepayment or like premiums, if any, provided for in the Notes;

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and all other fees, costs and expenses which Mortgagee deems necessary to prosecute any remedy it has under this Mortgage, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Property. All such costs, charges, expenses, fees and other expenditures (but only to the extent incurred by Mortgagee) shall be a part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the highest rate set forth in the Notes upon monies due after a default thereunder from the date of Mortgagee's payment thereof until repaid to Mortgagee and shall become a part of the amount required to be paid for redemption from any sale of the Property.

6.06 If foreclosure or sale proceedings are instituted upon this Mortgage, or if Mortgagee shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding relating to this Mortgage, the Notes, the Other Agreements, or Mortgagor's Liabilities, or if Mortgagee shall incur or pay any expenses, costs, charges or attorneys' fees by reason of the employment of counsel for advise with respect to this Mortgage, the Notes, the Other Agreements, or Mortgagor's Liabilities, and whether in court proceedings or otherwise, such expenses and all of Mortgagee's reasonable attorneys' fees shall be part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate provided for in the Notes upon monies due after a default thereunder from the date of Mortgagee's payment thereof until repaid to Mortgagee.

6.07 The proceeds of any foreclosure sale of the Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Section 6.05 above, secondly, to the balance of Mortgagor's Liabilities in such order as Lender shall, in its discretion, determine, and thirdly, the surplus, if any, to be distributed to Mortgagor or as otherwise required under applicable law.

6.08 Mortgagor, on behalf of itself, its successors and assigns, and each and every person it may legally bind acquiring any interest in or title to Property on or subsequent to the date of this Mortgage; (i) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension and (to the extent permitted by law) redemption from sale under any order or decree of foreclosure of this Mortgage; (ii) does hereby waive any equitable, statutory or other right available to it, in respect to marshalling of assets hereunder, so as to require the separate sales of interests in the Property before proceeding against any other interest in the Property; (iii) does hereby expressly consent to and authorize, at the option of Mortgagee, the sale, either separately or together, of any and all interests in the Property; and (iv) does hereby agree that in no event shall Mortgagee be required to allocate any proceeds received by Mortgagee from foreclosure sale or otherwise, to all or any interest in the Property; and (v) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to purchaser at such sale of deed conveyed the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

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6.09 Subject to the provisions of the Notes and in Paragraph 7.12 of this Mortgage regarding limitation of Mortgagor's liability, Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or any other sums required to be paid by or for the account of Mortgagor under the terms of this Mortgage or the Notes as the same become due under the Notes or this Mortgage, or for any other Mortgagor's Liabilities which shall become due, and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Mortgagor existing at the time such earlier action was commenced.

6.10 No right or remedy of Mortgagee hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and the holder of the Notes may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting or affecting or impairing the security or any right or remedy afforded this Mortgage. No delay in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of any default by Mortgagor hereunder, or acquiescence therein, nor will it affect any subsequent default hereunder by Mortgagor of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by Mortgagee. No term or conditions contained in this Mortgage or the Notes may be waived, altered or changed except as evidenced in writing signed by Mortgagor and Mortgagee.

6.11 Mortgagee shall release this Mortgage by proper instrument upon payment and discharge of all of Mortgagor's Liabilities, including all prepayment or like premiums, if any, provided for in the Notes and payment of all costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee for the preparation, execution and/or recording of such release.

6.12 Upon occurrence of an Event of Default and following acceleration by Mortgagee of the maturity of Mortgagor's Liabilities as provided herein, a tender of payment thereof by Mortgagor, or any other party, or a payment thereof received upon or on account of a foreclosure of this Mortgage or Mortgagee's exercise of any of its other rights or remedies under this Mortgage, the Notes, the Other Agreements or under any applicable law or in equity shall be deemed to be a voluntary prepayment made by Mortgagor of the Notes and, therefore, such payment must, to the extent permitted by law, include the premiums and other payments require under the prepayment privilege, if any, contained in the Notes.

6.13 (a) Any agreements between Mortgagor and Mortgagee are expressly limited so that, in no event whatsoever, whether by reason of disbursement of the proceeds of the loan evidenced by the Notes or otherwise, shall the amount paid or agreed to be paid to Mortgagee for the use, detention or forbearance of the Loan proceeds to be disbursed exceed the highest lawful rate permissible under any law which a court competent jurisdiction may deem applicable thereto.

(b) If fulfillment of any provision herein or in the Notes, at the time performance of such provision becomes due, involves exceeding such highest lawful rate, then ipso facto, the

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obligation to fulfill the same shall be reduced to such highest lawful rate. If by any circumstance Mortgagee shall ever receive as interest on an amount which would exceed such highest lawful rate, the amount which may be deemed excessive interest shall be applied to the principal of Mortgagor's Liabilities and not to interest, or the amount which may be deemed excessive interest may be waived or refunded, whichever is chosen by Mortgagee.

(c) The terms and provisions of this Section 6.13 shall control all other terms and provisions contained herein, in the Notes or in the Other Agreements.

6.14 Any failure of Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage, the Other Agreements or the Notes shall not be deemed to be a waiver of any of the terms and provisions thereof, and Mortgagee, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions thereof to be performed by Mortgagor. Neither Mortgagor, nor any other person now or hereafter obligated for the payment of the whole or any part of Mortgagor's Liabilities, shall be relieved of such obligation by reason of the sale, conveyance or other transfer of the Property or the failure of Mortgagee to comply with any request of Mortgagor, or of any other person, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, the Other Agreements or the Notes, or by reason of the release, regardless of consideration, of the whole or any part of the security held by Mortgagor's Liabilities, or by reason of any agreement or stipulation between any subsequent owner or owners of the Property and Mortgagee extending the time of payment or modifying the terms of the Notes, the Other Agreements or this Mortgage without first having obtained the consent of Mortgagor or such other person, and, in the latter event, Mortgagor, and all such other persons, shall continue to be liable on account of Mortgagor's Liabilities and to make such payments according to the terms of any such agreement extension or modification unless expressly released and discharged in writing by Mortgagee. Mortgagee, without notice, may release, regardless of consideration, any part of the security held for Mortgagor's Liabilities, without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Mortgagee may resort for the payment of Mortgagor's Liabilities to any other security thereof held by the Mortgagee in such order and manner as Mortgagee may elect.

6.15 In case Mortgagee shall have proceeded to enforce any right under this Mortgage by foreclosure, entry or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then, and in every such case, Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder in respect to the Property, and all rights, remedies, and powers of Mortgagee shall continue as though no such proceedings had been taken.

6.16 Upon the occurrence of an Event of Default hereunder, Mortgagor, in such case and in furtherance of, and not by way of limitation of the terms and conditions of Section 2.01 of this Mortgage, hereby bargains, sells, assigns and sets over to Mortgagee all Rents, issues and profits of the Property, which, whether before or after foreclosure or during the period of

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redemption, until the full and complete payment of Mortgagor's Liabilities and performance of all Mortgagor's Obligations shall accrue and be owing for the use and occupation of the Property, or of any part thereof. For the purpose aforesaid, Mortgagor does hereby constitute and appoint Mortgagee, its attorney in fact, irrevocably in its name, to receive, collect and receipt for all sums due or owing for such Rents and occupation, as the same may accrue; and out the amount so collected to pay and discharge all unpaid indebtedness secured hereby, all in accordance with the terms and provisions of Article V of this Mortgage. The right to enter and take possession of the Property and use any personal property therein, to manage, operate and conserve the same, and to collect the Rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expense (including any receivers' fees, reasonable counsel fees, consists and agents' compensation) incurred pursuant to the powers herein contained shall be secured hereby.

6.17 If Mortgagor's Liabilities are now or hereafter in whole or in part further secured by chattel mortgages, pledges, contracts or guaranties, assignments of leases, or other securities, Mortgagee may at its option exhaust any one or more of said securities and the security hereunder, either concurrently or independently, and in such order as it may determine.

## VII. MISCELLANEOUS

7.01 Every provision for notice, demand or request required in this Mortgage, the Notes or the Other Agreements or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (with proof of service endorsed thereon, or mailed to, as hereinafter provided) the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made certified or registered mail, return receipt requested, and deposited in the United States mail addressed to such party at its address set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the third (3rd) day following posting; or if sent by overnight express carrier, prepaid, such notice shall be deemed to have been made on the next day following deposit with such carrier. For the purposes herein, notices shall be sent to Mortgagor, and Mortgagee as follows:

To Mortgagor:

American National Bank and Trust  
Company of Chicago, as Trustee under  
Trust Agreement dated August 5, 1988  
and known as Trust No. 106169-02  
33 North LaSalle Street  
Chicago, Illinois 60690

with a copy to:

Kingston Court Limited Partnership  
c/o Hiffman Shaffer Anderson, Inc.  
118 South Clinton Street  
Chicago, Illinois 60606  
Attn.: John E. Shaffer

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E. Thomas Collins, Jr.

and a copy to:

Rudnick & Wolfe  
203 North LaSalle Street  
Suite 1800  
Chicago, Illinois 60601  
Attn: Bruce D. Loring

To Mortgagee:

Teachers' Retirement System of the State of  
Illinois  
c/o Bennett & Kahnweiler Realty  
Advisors, Inc.  
9700 W. Bryn Mawr  
Rosemont, Illinois 60018  
Attn.: James S. Smith

with a copy to:

Katten Muchin & Zavis  
525 West Monroe Street, Suite 1600  
Chicago, Illinois 60606  
Attn.: Arthur B. Muir, Esq.

7.02 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

7.03 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors and assigns of the Mortgagor and Mortgagee.

7.04 This Mortgage was executed and delivered in, and except as otherwise specifically stated in any given section or sub-section hereof, shall be governed as to validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois.

7.05 Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or is invalid or contrary to the law of such state, or the inclusion of which would affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage, the same as though no such invalid portion had ever been included herein.

7.06 All rights and remedies of Mortgagee under this Mortgage and any and all other instruments evidencing or securing the Mortgagor's Liabilities are cumulative and concurrent and may be exercised singularly, successively or concurrently and Mortgagee shall have all rights, remedies and recourse available at law or equity.

7.07 To the extent that any of Mortgagor's Liabilities represent funds utilized to satisfy any outstanding indebtedness or obligations secured by liens, rights or claims against the Property or any part thereof, Mortgagee shall be subrogated to any

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and all liens, rights, superior titles and equities owned or claimed by the holder of any such outstanding indebtedness or obligation so satisfied, however remote, regardless of whether said liens, rights, superior title and equities are by the holder(s) thereof assigned to Mortgagee or released.

7.08 Mortgagor will permit Mortgagee and its agents, representatives and employees to inspect the Property at all reasonable times upon reasonable notice.

7.09 Mortgagor will save and hold Mortgagee harmless of and from any and all damage, loss, cost and expense, including, but not limited to, reasonable attorneys' fees, costs and expenses, incurred by reason of or arising from or on account of or in connection with any suit or proceeding threatened, filed and/or pending brought by anyone other than Mortgagee or Mortgagor, in or to which Mortgagee is or may become or may have to become a party by reason of or arising from or on account of or in connection with Mortgagor's Liabilities, this Mortgage, the Notes or the Other Agreements; provided, however, the indemnification set forth herein shall not be applicable to any loss, liability, cost, injury, expense or damage arising out of the gross negligence or wilfull misconduct of Mortgagee.

7.10 Mortgagor agrees that all payments made by Mortgagor to Mortgagee of amounts due and payable under the Notes shall be allocated by Mortgagee among the amounts then due and payable under the Note and the Future Notes, in such order as Mortgagee shall, in its discretion, determine; provided, however, Mortgagee shall not apply such payments in a manner which will result in the occurrence of an Event of Default provided such payments are in amounts sufficient to pay the amounts then due and payable under the Note and the Future Notes.

7.11 This Mortgage is executed by American National Bank and Trust Company of Chicago, not personally but as trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee (and said trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on the part of said trustee personally to pay the indebtedness secured by this Mortgage 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 personal liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as said trustee is personally concerned, the legal holder or holders of this Mortgage and the owner or owners of any indebtedness accruing hereunder shall look to the Property or any other collateral securing the Notes for the payment thereof, by the enforcement against said Property or other collateral provided in the Notes, this Mortgage, and any of the Other Agreements.

7.12 Notwithstanding anything to the contrary which may be contained herein, Mortgagor and Beneficiary shall not be personally liable by reason of any default in the payment of the Notes, except that after monetary default under the Loan Documents or after acceleration of the indebtedness evidenced by the Notes, Beneficiary and its general partners shall be personally liable for the indebtedness evidenced by the Notes to the extent of all

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gross income collected after Mortgagee declares such a monetary default or so accelerates the Loan which is not applied in payment of the indebtedness evidenced by the Notes or expended in connection with the operation of the Property in the ordinary course of business, and Mortgagee agrees to look solely to the Property and to any other collateral heretofore, now or hereafter pledged to secure the Notes by Mortgagor or any other party for the payment of any amount due under the Notes; provided, however, that nothing contained in this Paragraph shall (i) limit or be construed to limit or impair the enforcement of Mortgagee's rights against the Property and/or any other security so mortgaged, deeded and/or pledged of any of the rights and remedies of Mortgagee under the Notes, this Mortgage or the other Loan Documents, or (ii) release Beneficiary or its general partners from any personal liability arising from fraud or breach of trust from misapplication of trust funds (such as insurance proceeds or condemnation awards) which may come into the possession of Mortgagor or Beneficiary, or (iii) release Beneficiary or its general partners from any personal liability arising under, or limit or be construed to limit the enforcement of the indemnification set forth in the Hazardous Substance Indemnification Agreement to be executed by and among Mortgagor and Beneficiary, as indemnitors, and Mortgagee, or arising from any breach of any covenant or warranty set forth in any provision of this Mortgage or any of the other Loan Documents pertaining to hazardous waste, or (iv) release Beneficiary or its general partners from any personal liability for the payment of all attorneys' fees and legal expenses incurred by Mortgagee in endeavoring to enforce any of the terms and provisions of clauses (i), (ii) and (iii) above or this clause (iv).

IN WITNESS WHEREOF, this First Mortgage and Security Agreement has been duly executed the day and year first above written.

ATTEST:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, not personally, but as Trustee as aforesaid

By: \_\_\_\_\_

Name: Peter Johnson ASSISTANT SECRETARY  
Its: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Its: Second Vice-President

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the property herein described and has no agents, employees or control over the management of the property and no knowledge of other factual matters except as represented to it by the beneficiary(ies) of the Trust. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument, all such liability being expressly waived by every person now or hereafter claiming any right or security hereunder; and the owner of any indebtedness or cause of action for breach of any warranty, indemnity, representation, covenant, undertaking or agreement accruing hereunder shall look solely to the Trust estate for the payment thereof.

The terms and conditions contained in this instrument to the contrary notwithstanding this instrument is subject to the provisions of the Trust and Beneficiary files attached hereto and made a part hereof.

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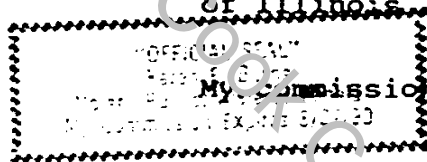
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

MAY 1 0 1989

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me, a Notary Public, in and for the State of Illinois, personally appeared \_\_\_\_\_ and Peter H. \_\_\_\_\_, to me known to be the Second Vice President and \_\_\_\_\_ of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said Bank as Trustee under Trust Agreement dated August 5, 1988 and known as Trust No. 106169-02 for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument, and that the seal affixed thereto is the corporate seal of said Bank.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

*[Signature]*  
NOTARY PUBLIC in and for the State of Illinois



My Commission expires: \_\_\_\_\_

County Clerk's Office

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EXHIBIT A  
TO FIRST MORTGAGE AND SECURITY AGREEMENT  
DATED MAY 9, 1989  
BY AND BETWEEN  
AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,  
TRUSTEE, AS MORTGAGOR  
AND  
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS,  
AS MORTGAGEE

## LEGAL DESCRIPTION

LOTS 1, 2, 3, 4, 5 AND 6 IN KENSINGTON CENTER RESUBDIVISION  
TWENTY-FIVE IN PART OF THE NORTH HALF OF SECTION 35, TOWNSHIP 42  
NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO  
PLAT FILED FOR RECORD FEBRUARY 1, 1989 IN THE OFFICE OF THE  
REGISTRAR OF TITLES AS DOCUMENT LR3770802, ALL IN COOK COUNTY,  
ILLINOIS.

PERMANENT TAX NUMBER: 03-35-200-036 VOLUME 235

Common Address: Kensington Center  
Mt. Prospect, Illinois

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EXHIBIT B  
TO FIRST MORTGAGE AND SECURITY AGREEMENT  
DATED MAY 9, 1989  
BY AND BETWEEN  
AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,  
TRUSTEE, AS MORTGAGOR  
AND  
TEACHERS' RETIREMENT SYSTEM OF THE STATE OF ILLINOIS,  
AS MORTGAGEE

## PERMITTED ENCUMBRANCES

GENERAL REAL ESTATE TAXES NOT YET LIENS NOT YET DUE AND PAYABLE.

Covenants, conditions and restrictions contained in Annexation Agreement dated May 2, 1980 and filed May 28, 1980 as Document LR 3162686 made by and between Village of Mount Prospect, an Illinois Municipal Corporation and American National Bank and Trust Company of Chicago, a National Banking Association, as Trustee under Trust Agreement dated February 10, 1979 and known as Trust Number 45771, Northern Illinois Gas Company and Rauenhorst Corporation, a Minnesota Corporation.

Said matter affects this and other property.

An easement for the purposes stated herein.  
For : Water main and incidental purposes  
Recorded: May 9, 1968  
Document: 20,484,407  
Affects : South 20 feet of Lots 3 and 4

This document was not filed in Torrens.

An easement for the purposes stated herein.  
In favor of: The Village of Mount Prospect  
For : 30 inch storm sewer and incidental purposes  
Recorded : April 9, 1984  
Document : LR 3364045  
Affects : South 25 feet of Lots 3 and 4

An easement for the purposes stated herein.  
In favor of: Central Telephone Company of Illinois, its successors and assigns  
For : Communication service systems and incidental purposes  
Recorded : January 30, 1981  
Document : 25,757,925  
Affects : The South 20 feet of Lot 3 and that part of Lot 4 falling within the West 924 feet of the Northeast 1/4 of Section 35 and the South 10 feet of that part of Lot 4 East of said West 924 feet of the Northeast 1/4

Terms, provisions, covenants and agreements contained in the Easement Agreement by and between American National Bank and Trust Company of Chicago, Trust No. 45771, Northern Illinois Gas Company and Rauenhorst Corporation, recorded and filed August 5, 1982 as Document 26,312,347 and LR 3269524, and amended by an Amendment recorded and filed November 1, 1984 as Document 27320443 and LR 3403051.

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Terms, agreements, provisions, conditions and easements as contained in the Drainage, Recreation and Access Easement Agreement by and between Opus Company, Alscor Investors Joint Venture, American National Bank and Trust Company, Trust No. 45771, Northern Illinois Gas Company and the Village of Mount Prospect, dated December 17, 1982, recorded March 7, 1983 as Document 26526919 and filed January 10, 1984 as Document LR 3349860.

Building lines as contained in the Plat of Subdivision filed February 1, 1989 as Document LR 3770802, being 50 feet North from the South line of the West 443.58 feet of Lot 3 and of the East 220.11 feet of Lot 4, and being 40 feet North from the South line of the East 177.32 feet of Lot 3 and of the West 219.89 feet of Lot 3.

And as contained in the prior subdivision recorded April 23, 1986 as Document 86,159,151 and filed March 21, 1986 as Document LR 3502998.

An easement for the purposes stated herein.

In favor of: Cablenet, Inc., its successors and assigns  
For : Transmission and distribution of cable television services  
Recorded : April 23, 1986 Document: 86,159,151  
Filed : March 21, 1986 Document: LR 3502998  
Affects : North 10 feet of Lots 1, 2 and 6, East 136.9 feet of the South 10 feet of Lot 4; South 20 feet of Lot 3 and 4 (except the East 136.9 feet of Lot 4)

An easement for the purposes stated herein.

In favor of: Cablenet, Inc., or cable television franchisee  
For : Transmission and distribution of cable television services  
Recorded : February 1, 1989  
Document : LR 3770802  
Affects : North 10 feet of Lots 1, 2 and 6, Easterly 10 feet of Lot 2, Easterly and Northerly 10 feet of Lot 3, Northwesterly 10 feet of Lot 4 and Westerly 10 feet of Lots 5 and 6

An easement in favor of the Commonwealth Edison Company and the Central Telephone Company for pole lines, conduits and incidental purposes.

Recorded: February 1, 1989  
Document: LR 3770802  
Affects : North 10 feet of Lots 1, 2 and 6, Easterly 10 feet of Lot 2, Easterly and Northerly 10 feet of Lot 3, Northwesterly 10 feet of Lot 4 and Westerly 10 feet of Lots 5 and 6

And as contained in part in the Plat of Subdivision recorded April 23, 1986 as Document 86159151 and filed March 21, 1986 as Document LR 3502998, as to the North 10 feet of Lots 1, 2 and 6.

An easement for the purposes stated herein.

For : Storm water detention ponds and incidental purposes  
Recorded: February 1, 1989  
Document: LR 3770802  
Affects : See document for particulars

And as declared and reserved in the Plat of Subdivision recorded April 23, 1986 as Document 86,159,151 and filed March 21, 1986 as Document LR 3502998.

An easement in favor of Northern Illinois Gas Company for the installation, relocation, renewal and removal of gas mains and appurtenances.

Recorded: February 1, 1989  
Document: LR 3770802  
Affects : Easterly 10 feet of Lot 2, Easterly and Northerly 10 feet of Lot 3, Northwesterly 10 feet of Lot 4 and Westerly 10 feet of Lots 5 and 6

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An easement for the purposes stated herein.  
In favor of: Village of Mount Prospect  
For : Water mains, storm sewers and swales, sanitary sewers and incidental purposes  
Recorded : February 1, 1989  
Document : LR 3770802  
Affects : East 10 feet of Lot 3, West 10 feet of Lots 1, 3 and 4, South 10 feet of Lot 2 and parts of Lots 1 and 5 and North 10 feet of part of Lots 3 and 4

Covenants, conditions, restrictions and reservations as shown on the Plat of Kensington Center-Phase Six, recorded April 23, 1986 as Document 86159151 and filed March 21, 1986 as Document LR 3502998.

Covenants, conditions restrictions and reservations contained in the Declaration of Industrial Standards and Protective Covenants made by Opus Corporation, recorded and filed July 31, 1986 as Documents 86328202 and LR 3536483, including but not limited to reservation to the Declarant of a permanent easement over, upon, across and under the easements "shown on the plat of the Premises" for utilities, water or sewage.

An easement for the purposes stated herein.  
In favor of: Central Telephone Company of Illinois, its successors and assigns  
For : (A) Underground transmission and distribution of electricity, sound and signals and incidental purposes (B) concrete pad  
Recorded : February 18, 1988  
Document : 88,071,168  
Affects : (A) East 35 feet of the west 40 feet of the North 20 feet of the South 40 feet of Lot 3  
(B) See document for particulars

This document was not filed in Torrens.

And as contained in the Plat of Subdivision filed February 1, 1989 as Document LR 3770802.

Reservation to Opus Corporation, as grantor in the Deed conveying the land, which was filed October 13, 1988 as Document LR 3746022, of certain rights with respect to development of the land, as contained in Paragraph 8 of the "Permitted Encumbrances" to said Deed.

Covenants, conditions and restrictions contained in Ordinance No. 3598 of the Village of Mount Prospect, Illinois, recorded March 5, 1986 as Document 86088532, relating to parking.

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DEPT-01 RECORDING

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T42222 TRAN 4687 05/11/89 12:48:00

#0743 # B \*-B9-213412  
COOK COUNTY RECORDER

Property of Cook County Clerk's Office

89213-112

FD  
1989 MAY 11 AM 11:57  
CAROL MORTENBY BEAVER  
REGISTRAR OF DEEDS  
IN DUPLICATE  
3793842

3793842

3793842

TRUSTEE'S DEDUCIBLE ON GRANT \$500 WITH PERMITS	TICOR
332	

TICOR TITLE INSURANCE  
69 3793842 ON STREET  
CHICAGO, ILL. 60601 50602  
BOX

249047