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This Instrument Was Prepared By
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HARRIS BANK ROSELLE
110 EAST IRVING PARK ROAD
ROSELLE, ILLINOIS 60172

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MORTGAGE AND SECURITY AGREEMENT
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COOK COUNTY RECORDER

RE: Terrestris Development Company

This MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), is made June 30, 1992 by Terrestris Development Company (the "Mortgagor"), with and granted to Harris Bank Roselle having its principal office at 110 East Irving Park Road, Roselle, Illinois 60172, its successors and/or assigns (the "Mortgagee").

WITNESSETH:

WHEREAS, the Mortgagor is justly indebted to the Mortgagee in the aggregate original principal sum of up to One Million Eight Hundred Fifty Five Thousand and 00/100 Dollars (\$1,855,000.00), as evidenced by two (2) Term Notes, one (1) Demand Note and one (1) Revolving Credit Note of even date herewith executed by the Mortgagor and made payable to the order of and delivered to the Mortgagee (individually and collectively the "Note"), whereby the Borrower promises to pay the said principal sum, together with interest thereon, as set forth therein.

WHEREAS, the Mortgagee requires the execution and delivery of certain documents and instruments by the Mortgagor and others as a part of this loan transaction, each of which may be individually referred to as a "Loan Document" or collectively referred to as the "Loan Documents" as more fully described and defined in a certain Loan Agreement of even date herewith executed by Borrower and others, the terms of which are incorporated herein by reference and made a part hereof.

WHEREAS, the Mortgagee requires that the Mortgagor execute and deliver this Mortgage to secure the payment and performance of the obligations and duties of the Mortgagor under the Note and the payment and performance by the Mortgagor and certain guarantors of the Loan Documents (individually and collectively referred to as the "Guarantor") of all other Loan Documents executed by or on behalf of the Mortgagor and/or Guarantor.

NOW, THEREFORE, to secure (i) the payment when and as due and payable of the principal sum of and interest on the Note and any extensions, refinancings, renewals or modifications thereof, and substitutes therefor, (ii) the payment of all other indebtedness which this Mortgage secures pursuant to its terms or which is payable under the terms of the Note, (iii) any

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Debt of the Mortgagor to the Mortgagee and any Debt of any Guarantor to the Mortgagee and (iv) the performance and observance of the representations, warranties, covenants and agreements contained in and the payment of all obligations and liabilities of the Mortgagor under this Mortgage, and of the Mortgagor and Guarantor under the Loan Documents and (v) any and all extensions, modifications, refinancings or renewals of any of the foregoing items (i), (ii), (iii) and/or (iv) (all of such indebtedness, obligations, agreements and liabilities identified in the foregoing clauses (i), (ii), (iii) and (iv), as extended, modified, refinanced, renewed or renewed by clause (v), being hereinafter referred to as the "Indebtedness Secured Hereby" or the "Secured Indebtedness"), the Mortgagor does by these presents grant, transfer, bargain, set over, remise, release, assign, alien, warrant, pledge, sell, convey, and mortgage unto the Mortgagee, its successors and assigns forever, the real estate described in Exhibit A attached hereto and made a part hereof (the "Real Estate") and all of the Mortgagor's estate, right, title, and interest therein situated in the County of DuPage and State of Illinois; DuPage
Cook *MW*

TOGETHER WITH:

(a) all estate, right, title, and interest of the Mortgagor and Borrower, if any, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, vaults, roadways, strips and gores, and alleys adjoining or within the boundaries of the Real Estate;

(b) all and singular tenements, hereditaments, easements, licenses, minerals, appurtenances, passages, waters, water courses, riparian, irrigation and drainage rights, and other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversion and reversions and remainder and remainders thereof;

(c) all property and rights, if any, which by the express provisions of this Mortgage are required to be subjected to the lien thereof and any additional property and rights that from time to time hereafter, by installation or writing of any kind, may be subjected to the lien hereof by the Mortgagor or by anyone on the Mortgagor's behalf;

(d) all rights in and to common areas and access roads on adjacent land heretofore or hereafter granted to the Mortgagor and any after-acquired title or reversion with respect thereto;

(e) all buildings, dwellings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Real Estate immediately upon the delivery thereof to the Real Estate, and all fixtures and personal property now or hereafter owned by the Mortgagor and attached to or contained in and used in connection with the Real Estate, including all heating air-conditioning, sprinklers, lighting, and generating equipment; engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing and plumbing fixtures; lifting, cleaning, fire prevention, fire extinguishing, ventilating and communications apparatus; alarm systems; boilers, ranges, furnaces; vacuum cleaning systems; elevators, escalators; shades; awnings, screens; storm doors and windows; stoves, refrigerators, cooking apparatus and mechanical equipment, gas and electrical fixtures; partitions, mantels, built-in mirrors, window shades, blinds, furniture of public spaces, halls and lobbies; attached cabinets, ducts and compressors; rugs and carpets; draperies;

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furniture and furnishings used in the operations of the Real Estate, building and improvements; and all additions thereto and renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said building(s) in any manner (the property described in this clause is referred to as the "Improvements"; the Real Estate and Improvements are collectively hereinafter referred to as the "Premises");

(f) all of the Mortgagor's interest and rights as lessor in and to all leases now or hereafter affecting the Premises or any part thereof, whether written or verbal, and all rents, amounts, issues, proceeds and profits accruing and to accrue from the Premises, whether payable pursuant to any present or future lease(s) or otherwise growing out of any letting of or any agreement for the sale, occupancy or use of the Premises or any portion thereof which may have been heretofore or hereafter made or agreed to by the Mortgagor;

(g) all judgments, awards, proceeds or sums payable in lieu of or as compensation for the loss of or damage to the Premises, all rights in and to all present and future fire and other insurance policies pertaining to the Premises, any and all sums at any time on deposit for the benefit of the Mortgagee or the Mortgagor or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage and all awards paid or to be paid in connection with or in lieu of any condemnation, eminent domain, change of grade or similar proceeding for the taking or for the degradation in the value of all or any part of the Premises;

(h) to the extent such general intangibles are assignable, all general intangibles relating to design, development, operation, construction upon, management, leasing, sale and use of the Premises, including (i) all names under which or by which the Premises may at any time be owned and operated, or any variation thereof, and all goodwill in any way relating to the Premises and all service marks and logo types used in connection therewith, (ii) all permits, licenses, authorizations, variances, land use entitlements, approvals, consents, clearances and rights obtained from governmental agencies or other governmental authorities issued or obtained in connection with the Premises, (iii) all permits, licenses, approvals, consents, authorizations, franchises and agreements issued or obtained in connection with the development, construction upon, use, occupation, leasing, sale or operation of the Premises, (iv) all materials prepared for filing or filed with any governmental agency or other governmental authority, (v) all plans, specifications, drawings, maps, surveys, studies, architectural, engineering and construction contracts, management and leasing contracts and other agreements and documents, of whatever kind or character, relating to the use, construction upon, occupation, leasing, sale or operation of the Premises, (vi) the books and records of the Mortgagor relating to design, development, construction, operation or management of the Premises, and (vii) all contracts and agreements (including management contracts and agreements) relating to the operation, maintenance and management of the Premises;

it being mutually agreed, intended, and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the Real Estate and for the purpose of this Mortgage to be real estate, and covered by this Mortgage, and as to any of the property aforesaid which does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed to be, and is, as well, a Security Agreement under the Uniform Commercial Code as enacted in the State of Illinois (the "Uniform Commercial Code") for the purpose of creating hereby a security interest in such property, which the Mortgagor hereby grants to the Mortgagee

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as Secured Party (as such term is defined in the Uniform Commercial Code), it being further understood and agreed that the provisions hereof shall not apply or attach to any trade fixtures or personal property of any lessee of the Premises;

TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth;

PROVIDED, HOWEVER, and subject to the additional provisions of Paragraph 44 hereof with respect to partial releases, that if the Mortgagor and/or Guarantor shall pay the principal sum of and all interest on the Note, and shall pay all other sums provided for herein, in the Note and the Loan Documents, and shall perform all of the covenants contained in this Mortgage, the Note and the other Loan Documents, then this Mortgage shall, so long as no Event of Default has occurred, upon payment by the Mortgagor to the Mortgagee of the Release Fee defined and described in the Construction Loan Agreement be released, otherwise to remain in full force and effect.

IN CONSIDERATION OF THE MORTGAGEE MAKING THE LOAN EVIDENCED BY THE NOTE, THE MORTGAGOR REPRESENTS, WARRANTS, COVENANTS AND AGREES WITH THE MORTGAGEE AS FOLLOWS:

1. **Payment of Principal and Interest.** The Mortgagor is pledging the Premises to secure the prompt payment, when and as due and payable, of the Indebtedness Secured Hereby.

2. **Taxes and Other Charges; Title Policy, Survey and Appraisal.**

(a) **Payment.** The Mortgagor shall pay, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, association charges, and all other charges of whatever kind, ordinary or extraordinary, whether public or private, which may be levied or imposed against the Premises, and shall furnish to the Mortgagee original, official receipts therefor within ten (10) days after payment thereof. The Mortgagor shall also pay when due all charges incurred for the benefit of the Premises for utilities, including energy, fuel, gas, electricity, water, sewer, and garbage removal, whether or not such charges are liens against the Premises.

(b) **Tax Deposits.** Upon the Mortgagor's failure to make any payment of any real estate tax installment when due, or any assessment or other charge when due, which would or could result in a lien upon the Premises, the Mortgagor covenants and agrees to deposit at such place as the Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of the Mortgagee, commencing on the first day of the first month after the first disbursement of the loan proceeds evidenced by the Note by the Mortgagee, and on the first day of each month thereafter until the Indebtedness Secured Hereby is fully paid, and all other obligations secured by this Mortgage are fully discharged, a sum equal to one-twelfth of the last total annual taxes and assessments for the last ascertainable year (general and special) on the Premises (unless said taxes are based upon assessments which exclude the Improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon the Mortgagee's estimate as to the amount of taxes and assessments to be levied and assessed). In addition, the Mortgagor shall, concurrently with the first disbursement of the loan proceeds evidenced by the Note and secured hereby, also deposit with the Mortgagee an

amount, based upon the taxes and assessments so ascertainable or so estimated by the Mortgagee, as the case may be, for taxes and assessments on the Premises, on an accrual basis, for the period from January 1 of the year of the first disbursement of the loan proceeds evidenced by the Note to and including the date of the first deposit required in this subparagraph. Such deposits are (i) to be held without any allowance of interest and need not to be kept separate and apart, (ii) pledged by Mortgagor to Mortgagee as additional collateral security, and (iii) are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) for any year when the same shall become due and payable, the Mortgagor shall, within ten (10) days after receipt of demand therefor, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on subsequent deposit or deposits.

3. Insurance.

(a) **Casualty.** The Mortgagor shall keep the Improvements now existing or hereafter erected on the Real Estate, all property (whether real, personal or mixed) incorporated therein and all materials and supplies delivered to the Premises for use in connection with the construction of any Improvements, together with all equipment used for that purpose, constantly insured against loss or damage under such types and forms of insurance policies and in such amounts and for such periods as the Mortgagee may from time to time require, and the Mortgagor shall pay promptly, when due, any premiums on such insurance. Unless the Mortgagee otherwise agrees, all such insurance shall provide "all risk" coverage and shall be carried with companies acceptable to the Mortgagee and shall have attached thereto standard noncontributing mortgage clauses in favor of the Mortgagee, as well as standard waiver of subrogation endorsements. The Improvements and all such property, materials, supplies and equipment shall be insured to an amount equal to one hundred percent (100%) of the full insurable value thereof (but in no event less than actual replacement value without deduction for depreciation) at all times against loss or damage by fire, lightning, wind storm, explosion, riot and civil commotion, vandalism and malicious mischief, theft and such other risks as are usually included under what is now known as broad form extended coverage. The Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of a change of ownership or of occupancy of the Premises (without implying or creating any waiver of the right of approval thereof by the Mortgagee), immediate notice thereof by mail shall be delivered to all insurers. In the event of any loss covered by such insurance, the Mortgagor shall immediately notify the Mortgagee in writing, and the Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly and solely to the Mortgagee (which may, but need not, make proof of loss) and the Mortgagee is hereby authorized to adjust, collect, and compromise in its reasonable discretion all claims under all policies and the Mortgagor shall sign, upon demand by the Mortgagee, all receipts, vouchers, and releases required by such insurance companies. After deducting any costs of collection, the Mortgagee may use or apply the proceeds, at its sole and reasonable discretion, (i) as a credit upon any portion of the Indebtedness Secured Hereby in which case the amount so credited shall be made available to the Borrower in the form of future disbursements subject to the terms of the Loan Documents provided no Event of Default exists which has not been cured (to the extent permitted) as required hereunder or under the Loan Documents, or (ii) to repairing and restoring the Improvements, in which event

the Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the Indebtedness Secured Hereby, or (iii) to deliver same to the Mortgagor. In the event such proceeds are applied to restoring the Improvements, such proceeds shall be made available, from time to time, upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of such restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as the Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the Indebtedness Secured Hereby, the Mortgagor shall furnish the Mortgagee with all plans and specifications for such rebuilding or restoration as the Mortgagee may require and approve. At all times the undisbursed balance of said proceeds remaining in the hands of the Mortgagee shall be at least sufficient to pay for the cost of completion of such work, free and clear of any liens. Mortgagee shall not be required to pay Mortgagor interest on any proceeds of insurance paid to and held by the Mortgagee. In the event of foreclosure of this Mortgage, or other transfer of title to the Premises in extinguishment of the Indebtedness Secured Hereby, all right, title, and interest of the Mortgagor, in and to any insurance policies then in force, and any claims or proceeds thereunder shall pass to the Mortgagee or any purchaser or grantee. In the event the Mortgagee, in its sole and reasonable discretion, determines that any insurance provided by the Mortgagor does not materially comply with the insurance requirements set forth herein, then the Mortgagee may, at any time and at its sole discretion, procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in such amount and carried by such company as it may determine, the cost of which shall be repaid to the Mortgagee by the Mortgagor ten (10) days after written demand. The Mortgagor shall furnish to the Mortgagee, upon its request, and without cost to the Mortgagee, estimates or appraisals of insurable value, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the Improvements and all other property, materials, supplies and equipment described in the first sentence of this subparagraph.

(b) **Liability.** The Mortgagor shall carry and maintain in full force at all times comprehensive public liability insurance as may be required from time to time by the Mortgagee in forms, amounts, and with companies satisfactory to the Mortgagee, and the Mortgagor will apply all insurance proceeds under such policies to the payment and discharge of the liabilities in respect of which such proceeds are collected. It is understood and agreed that the amounts of coverage shall be in amounts as appropriate or required by the Mortgagee and that the policy or policies shall name the Mortgagee as an additional insured party thereunder.

(c) [INTENTIONALLY DELETED]

(d) **Flood Insurance.** The Mortgagor shall carry and maintain in force at all times flood insurance in accordance with the provisions of the Flood Disaster Protection Act of 1973, as amended, if the area in which the Premises are situated is designated as "flood prone" or a "flood risk area," as defined in said act, in an amount satisfactory to the Mortgagee, and the Mortgagor shall comply with such other requirements of said act as are appropriate.

Notwithstanding anything herein to the contrary, the Mortgagor covenants and warrants and acknowledges that the Mortgagee is relying upon the representation that no portion of the Premises is located in either a "flood prone" or a "flood risk area", as defined in said act.

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(e) **Other Insurance.** The Mortgagor shall procure and maintain insurance against such other perils and risks (exclusive of the perils and risks insured against under the above subparagraphs) as the Mortgagee shall reasonably request and, without any such request, shall procure and maintain statutory worker's compensation and occupational disease insurance, insurance against statutory structural work act liability, war risk coverage and boiler and machinery insurance. All such insurance shall be maintained under policies containing such provisions and coverages and being in such amounts as are approved by the Mortgagee, which policies shall name the Mortgagee as an additional insured thereunder. The Mortgagor shall cause any architects and general contractors providing services to the Premises to procure professional liability insurance in such amounts and with such coverages as shall be satisfactory to the Mortgagee.

(f) **Policies.** Unless the Mortgagee otherwise agrees, all original policies of insurance required hereunder to be maintained by the Mortgagor, together with evidence that the premium therefor covering a period of not less than one (1) year has been prepaid, shall be deposited with the Mortgagee and shall provide for, among other things, the Mortgagee being named as loss payee thereunder, payment of losses notwithstanding any acts or omissions of the Mortgagor and giving written notice to the Mortgagee of their expiration or cancellation at least thirty (30) days prior to such event occurring, and ten (10) days written notice to the Mortgagee prior to issuing any payment for any loss. Not less than fifteen (15) days prior to the expiration of any such policy, the Mortgagor shall provide evidence of an appropriate renewal or replacement policy and evidence of the premium payment therefor, as aforesaid. All policies of insurance required hereunder shall include Mortgagee as an additional insured under the policies.

4. **Preservation, Restoration and Use of Premises.** The Mortgagor shall complete, within a commercially reasonable time, as determined in the Bank's reasonable discretion, any Improvements now or any time in the process of being constructed upon the Real Estate. No Improvement shall (except as required by applicable law) be altered, removed, or demolished nor shall any fixtures, appliances or other personal property subject to the lien hereof, on, in or about the Improvements be severed, removed, sold or mortgaged, without the prior written consent of the Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels, or articles or personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto. The Mortgagor shall promptly repair, restore, or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed; provided, however, that if the Mortgagee is permitted to apply insurance loss proceeds toward payment of the Secured Indebtedness as provided for herein, the provisions of this sentence shall not apply. If the Mortgagee applies insurance loss proceeds toward payment of the Secured Indebtedness, the amount so applied shall be made available to the Borrower in the form of future disbursements subject to the terms of the Loan Documents provided no Event of Default exists which has not been cured (to the extent permitted) as required hereunder or under the Loan Documents. The Improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. The Mortgagor shall not permit, commit, or suffer any waste, impairment, or deterioration of the Premises or any part or improvement thereof, and shall keep and maintain the Premises and every part thereof in good repair and condition and effect such

repairs as the Mortgagee may require, and, from time to time, make all needful and proper replacements and additions thereto so that the Improvements will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. The Mortgagor shall not suffer or permit the Premises to be abandoned or to be used for a purpose other than that for which the Premises are presently used, or represented to the Mortgagee to be used. Except as to the declaration of ownership and party wall rights and restrictions delivered to and approved by the Bank prior to recordation, the Mortgagor shall not subject the Premises to any use covenants or restrictions and shall not initiate, join in or consent to any change in any existing private restrictive covenant, zoning ordinance, or other public or private restriction limiting or defining the uses which may be made of or the kind of improvements which can be constructed or placed on the Premises or any part thereof, and shall promptly notify the Mortgagee of, and appear in and defend, at its sole cost and expense, any such proceedings seeking to effect any of the foregoing. The Mortgagor shall not re-subdivide the Real Estate and shall not subject the Premises to the provisions of the condominium laws of the state in which the Premises are situated. No improvement on the Real Estate shall be constructed unless plans and specifications therefor have been first submitted to the Mortgagee and approved by it as entailing no prejudice to the Security of the Indebtedness or the security therefor.

5. Compliance with Governmental, Insurance and Other Requirements. The Mortgagor shall comply with all statutes, ordinances, laws, orders, requirements, or decrees relating to the Premises or the use thereof of any federal, state, or municipal authority, and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance as required in this Mortgage and to preserve and extend any and all rights, consents, licenses, permits, privileges, franchises, and concessions (including, but not limited to, land and use development, landmark preservation, construction, access, water rights, use, noise, pollution zoning variances, special exceptions and nonconforming uses), which are applicable to the Premises or which have been granted to or contracted for by the Mortgagor in connection with any existing or presently contemplated use of the Premises. In the event that any Improvements must be altered or removed to enable the Mortgagor to comply with the foregoing provisions of this paragraph, the Mortgagor shall, except in case of emergency, not commence any such alterations or removals without the Mortgagee's prior approval of the need therefor and the plans and specifications pertaining thereto. After such approval, the Mortgagor, at its sole cost and expense, shall immediately effect the alterations or removal so required and approved by the Mortgagee. The Mortgagor shall not by act or omission permit any building or other improvement on land not subject to the lien of this Mortgage or not previously released from the lien of this Mortgage to encroach onto or otherwise rely upon the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and the Mortgagor hereby assigns to the Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, except as otherwise depicted upon or referred to in any plat of subdivision of planned unit development of which the Premises is a part delivered to and approved by the Bank, no Improvement shall encroach onto or otherwise rely upon any land not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by the Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void. The Mortgagor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the Premises.

6. Hazardous Material Regulations Compliance.

(a) The Mortgagor represents and warrants to the Mortgagee that:

i. The Mortgagor has not used Hazardous Materials (as defined below), on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and, to the best of the Mortgagor's knowledge, no prior owner of the Premises or any existing or prior tenant, or occupant has used Hazardous Materials on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials;

ii. The Mortgagor has never received any notice of any violations (and is not aware of any existing violations) of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials at the Premises and, to the best of the Mortgagor's knowledge, there have been no actions commenced or threatened by any party for noncompliance which affects the Premises;

iii. The Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials except to the extent that such Hazardous Materials are stored and/or used in compliance with all applicable federal, state and local laws and regulations; and, without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or occupant, a release, spill, leak or emission of Hazardous Materials onto the Premises or onto any other contiguous property;

iv. The Mortgagor shall conduct and complete all investigations, including a comprehensive environmental audit, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Premises as required by all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the satisfaction of the Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities. If the Mortgagor fails to conduct an environmental audit required by the Mortgagee, then the Mortgagee may at its option and at the expense of the Mortgagor, conduct such audit.

(b) Indemnification. Subject to the limitations set forth below, the Mortgagor shall defend, indemnify and hold harmless the Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, attorney's and consultant's fees, investigation and laboratory

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fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to (i) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Premises; (iii) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials with respect to the Premises, and/or (iv) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Mortgagee, which are based upon or in any way related to such Hazardous Materials used in the Premises. The indemnity obligations under this paragraph are specifically limited as follows:

i. The Mortgagor shall have no indemnity obligation with respect to Hazardous Materials that are first introduced to the Premises or any part of the Premises subsequent to the date that the Mortgagor's interest in and possession of the Premises or any part of the Premises shall have fully terminated by foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure;

ii. The Mortgagor shall have no indemnity obligation with respect to any Hazardous Materials introduced to the Premises or any part of the Premises by the Mortgagee, its successors or assigns.

iii. The Mortgagor agrees that in the event this Mortgage is foreclosed or the Mortgagor tenders a deed in lieu of foreclosure, the Mortgagor shall deliver the Premises to the Mortgagee free of any and all Hazardous Materials which are then required to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises.

(c) Definitions. For purposes of this Mortgage the term "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related material defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et. seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et. seq.) and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule or regulation and shall furthermore have the meanings prescribed and defined in the Loan Agreement.

(d) Additional Obligation. The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Mortgagor may have to the Mortgagee under the Loan Documents, or by law, and shall survive: (i) the repayment of all sums due for the debt; (ii) the satisfaction of all of the other obligations of the Mortgagor in this Mortgage and under any loan document; (iii) the discharge of this Mortgage; and (iv) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure. Notwithstanding anything to the contrary contained in this Mortgage, it is the intention of the Mortgagor and the Mortgagee that the indemnity provisions of this paragraph shall only apply to an action commenced against any owner or operator of the Premises in which any interest of the Mortgagee is threatened or any claim is made against the Mortgagee for the payment of money.

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7. **Liens, Encumbrances and Transfers of Ownership.** The Mortgagor shall keep the Premises free from liens of mechanics and materialmen and from all other liens, charges, and encumbrances of whatever nature regardless of (i) whether the same arise voluntarily or involuntarily on the part of the Mortgagor and (ii) whether the same are subordinate to, prior to, or on a parity with the lien of this Mortgage, and shall furnish to the Mortgagee satisfactory evidence of the payment and discharge of or title insurance coverage or other acceptable bonding or security over any such liens, charges, and encumbrances, asserted or claimed to exist against the Premises, *excepting, however, any lien or encumbrance expressly consented to by the Mortgagee, with respect to which the Mortgagor shall pay, when due, the Indebtedness Secured Hereby and upon the Mortgagee's request, furnish to the Mortgagee satisfactory evidence of such payment or payments.* Without in any way limiting the Mortgagee's right to withhold its consent to the Mortgagor hereinafter granting or creating a lien against all or any part of the Premises which is subordinate to the lien hereof, any lien for which such consent is given shall be subject and subordinate to all liens pertaining to the Premises whether then in existence or thereafter arising, and further subject to any and all renewals, extensions, modifications, releases, increases, changes or exchanges pertaining to the Indebtedness Secured Hereby, without the consent of such subordinate lien holder and without any obligation to give notice of any kind thereto, regardless of whether or not expressed in such consent or in the document granting such subordinate lien. Except for the sale of the Dwelling Units in the manner provided in and governed by the Construction Loan Agreement, the Mortgagor shall not, without the prior written consent of the Mortgagee, sell, transfer, convey, lease or sublease, alien, pledge, hypothecate, mortgage, encumber, or assign the title or any interest (beneficial or otherwise) therein to all or any portion of the Premises, or the rents, issues, or profits therefor, whether by operation of law, voluntarily, or otherwise, and shall not contract to do any of the foregoing.

8. **Stamp Tax.** If at any time the United States of America or any state, local or municipal government shall require Internal Revenue or other documentary stamps, hereon or on the Note, or shall otherwise impose a tax or impose an assessment on this Mortgage or on the Note or shall require payment of an interest equalization tax upon the Indebtedness Secured Hereby, then the principal of the Secured Indebtedness and the accrued interest thereon shall be and become due and payable at the election of the Mortgagee thirty (30) days after the mailing of notice of such election to the Mortgagor; provided, however, said election shall be unavailing and this Mortgage and the Note shall be and remain in effect if the Mortgagor lawfully may pay for such stamps or such tax, including interest and penalties thereon, to or on behalf of the Mortgagee and the Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

9. **Effect of Change in Laws Regarding Taxation.** In the event of the enactment, after the date of this Mortgage, of any law of the United States of America or of the state in which the Premises are located which deducts from the value of the land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness Secured Hereby or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse

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the Mortgagee therefor; provided, however, that if, in the opinion of counsel for the Mortgagee, (i) it might be unlawful to require the Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then, and in any such event, the Mortgagee may elect, by notice in writing given to the Mortgagor to declare all of the Indebtedness Secured Hereby to be and become due and payable within thirty (30) days from the giving of such notice. Notwithstanding the foregoing, the Mortgagor shall not be obligated to pay any portion of the Mortgagee's federal or state income tax.

10. Representations and Warranties.

(a) To induce the Mortgagee to consummate the transactions contemplated hereby, and in addition to any and all other representations and warranties set forth elsewhere in this Mortgage and in the other Loan Documents (whether or not specifically stated as a representation or warranty), all of which are incorporated in this paragraph by reference, the Mortgagor represents and warrants to the Mortgagee as follows:

i. The Mortgagor is duly organized, validly existing and in good standing under the laws of the State of Illinois, has the lawful power and authority to own its properties and to carry on its business as now conducted, is qualified to do business and is in good standing in each jurisdiction wherein the nature of the business transacted or to be transacted by it or property owned or to be owned by it makes such qualification necessary and where the failure to be so qualified would have a material adverse effect on its business, properties or condition, financial or otherwise and possesses all material permits necessary to operate the business it conducts.

ii. The Mortgagor is empowered to perform all acts and things undertaken and done pursuant to the Loan Documents and has taken all action necessary to authorize the execution, delivery and performance of the Loan Documents. The Loan Documents, when executed and delivered, will be the legal, valid and binding obligations of the Mortgagor, enforceable against it in accordance with their respective terms.

iii. There are no actions, suits or proceedings, other than as disclosed on Mortgagor's financial statements, delivered to Mortgagee, pending, or, to the best of the knowledge of the Mortgagor, threatened against or affecting the Mortgagor at law or in equity or before or by any governmental authority or any foreign equivalent thereof, which involve the possibility of any material judgment or liability, or which are, in the aggregate, material in light of the financial condition and assets of the Mortgagor. There are no actions, suits, investigations or proceedings pending, or to the best of the knowledge of the Mortgagor, threatened against the Mortgagor or its properties regarding Environmental Laws, the manufacture, storage or treatment of Hazardous Substances or products liability.

iv. The Mortgagor is not in violation of, and the execution and delivery of the Loan Documents and the performance by the Mortgagor of its obligations under the Loan Documents, do not and will not result in the Mortgagor being in violation of or in conflict with, or constitute a default under any term or provision of any note, mortgage, indenture, contract, agreement, instrument, judgment or law applicable to the Mortgagor, or result

in the creation or imposition of any mortgage, lien, charge or encumbrance of any nature whatsoever (other than those in favor of the Mortgagee) upon any of the assets of the Mortgagor pursuant to any such term or provision. The Mortgagor is not in default in any respect in the performance or fulfillment of any of its obligations, covenants or conditions contained in any agreement or instrument to which it is a party or by which any of its properties may be bound, and the Mortgagor does not know of any dispute regarding any such agreement or instrument.

v. The Mortgagor's uses of the proceeds of the loan is, and will continue to be, legal and proper uses which are consistent with all applicable laws.

vi. All tax returns and reports of the Mortgagor required by law to be filed, have been duly filed, and all taxes, assessments, fees and other governmental charges (other than those presently payable without penalty or interest) upon each or upon any of its properties or assets, which are due and payable, have been paid. The charges, accruals and reserves on the books of the Mortgagor in respect of taxes are considered adequate by the Mortgagor, and the Mortgagor does not know of any assessment of a material nature against it.

vii. Except to the extent that failure to comply would not materially interfere with the conduct of the business of the Mortgagor, or affect in any way the Mortgagor's obligations (or the Mortgagee's rights) under the Loan Documents, the Mortgagor has complied with all applicable laws with respect to: (i) any restrictions, specifications or other requirements pertaining to products that the Mortgagor manufactures and sells or the services it performs, including without limitation all Environmental Laws, (ii) the conduct of its business and (iii) the use, maintenance, and operation of the real and personal properties owned or leased by it in the conduct of its business.

viii. No authorization, consent, license or approval of, or filing or registration with, or notification to, any governmental authority is required in connection with the execution, delivery or performance of the Loan Documents by the Mortgagor.

ix. The Mortgagor has good and marketable title to the Premises and to all of its assets, other than as disclosed on Mortgagor's financial statements as delivered to Mortgagee, all subject to no security interest, encumbrance, lien or claim of any Person excepting only liens specifically itemized in writing and acknowledged by the Mortgagee, and there are no mortgages, trust deeds, financing statements or other evidence of any such security interest, encumbrance or lien or any claim of any Person on file in any public office.

x. The Mortgagor is solvent; no transaction under or contemplated by the Loan Documents renders or will render the Mortgagor insolvent, the Mortgagor retains sufficient capital for the business and transactions in which it engages or intends to engage, no obligation incurred hereby is beyond the ability of the Mortgagor to pay as such obligation matures, the Mortgagor is not contemplating either the filing of a petition under any state or federal bankruptcy or insolvency laws or the liquidating of all or a major portion of any

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of its property, and the Mortgagor has no knowledge of any person contemplating the filing of any such petition against it.

xi. There exists no actual or, to the best knowledge of Mortgagor, threatened termination, cancellation or limitation of, or any modification or change in, the proposed business relationship of the Mortgagor with any customer or group of customers whose purchases individually or in the aggregate are material to the current business of the Mortgagor, or in the proposed business relationship of the Mortgagor with any material supplier, and the Mortgagor reasonably anticipates that all such customers and suppliers will continue a business relationship with the Mortgagor on a basis no less favorable to the Mortgagor than that heretofore conducted; and there exists no other condition or state of facts or circumstances which would materially adversely affect the current operation of the business of the Mortgagor after the consummation of the transactions contemplated by the Loan Documents on a basis no less favorable to the Mortgagor than that in which it has heretofore been conducted by the Mortgagor.

xii. No brokerage commissions, finder's fees or investment banking fees will be payable to any Person engaged by or on behalf of the Mortgagor in connection with the transactions contemplated by the Loan Documents.

xiii. No representation or warranty by the Mortgagor contained herein or in any certificate or other document furnished by or on behalf of the Mortgagor in connection with the transactions hereunder contains any untrue statement of material fact or omits to state a material fact necessary to make such representation or warranty not misleading in light of the circumstances under which it was made.

xiv. All of the representations and warranties set forth in the Loan Documents, including this Mortgage shall survive and continue to be true, complete and correct until all Obligations of the Mortgagor hereunder are paid and satisfied in full and the Loan Documents shall have been terminated.

(b) The Mortgagor covenants that until the Secured Indebtedness is paid and satisfied in full, the Mortgagor will not, directly or indirectly, without the prior consent in writing of the Mortgagee:

i. Create, assume, incur or suffer or permit to exist any mortgage, pledge, encumbrance, security interest, assignment, lien or charge of any kind or character upon the Premises other than the lien created hereby.

ii. Make any loans, or advances, whether secured or unsecured, to, or make any guaranty of, or otherwise become obligated on behalf of any other Person for, any such loans or advances to any Person (except for guaranties in favor of the Mortgagee) that results in a material adverse change to the Mortgagor's financial conditions.

iii. Except in the ordinary course of business, dispose by sale, assignment, lease, sale and leaseback or otherwise any of its properties or assets (other than obsolete or worn out property or equipment not used or useful in its business), whether now owned or

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hereafter acquired, except that, so long as no Event of Default shall have occurred and be continuing, the Mortgagor may sell its inventory, including the Dwelling Units as provided in the Construction Loan Agreement, in the ordinary course of business as conducted by it on the date of the Loan Documents, for a reasonably equivalent value.

iv. Transfer, directly or indirectly, any of its assets or pay out, directly or indirectly, money or property or provide services or do any other act, or fail to do any act, which would have the effect of materially and adversely affecting its ability to perform its obligations hereunder.

v. Make any material change in its ownership or financial structure, financial condition, make any material change in its management, change its name, enter into any merger, consolidation, dissolution, liquidation, reorganization or recapitalization, or reclassification of its stock, or issue, redeem, purchase or refund any of its stock or issue any warrant, right or option pertaining thereto or other security convertible into any of the foregoing without the prior written consent of the Mortgagee.

vi. Engage in business activities or operations substantially different from and unrelated to its business activities on the date of the Loan Documents.

vii. Create, incur or assume any Debt other than (i) this loan, (ii) Debt disclosed in financial statements provided to the Mortgagee on or before the date hereof, and (iii) Debt (other than Debt for money borrowed) incurred in the ordinary course of business and which is not prohibited by the other provisions of the Loan Documents.

viii. Furnish the Mortgagee any certificate or other document that will contain any untrue statement of material fact or that will omit to state a material fact necessary to make it not misleading in light of the circumstances under which it was furnished.

ix. Sell or transfer any stock of the Mortgagor, make or effect any change in either the present stockholder(s) or the percentage of ownership of stock by any stockholder(s) of Mortgagor without the prior written consent of Mortgagee.

x. Effect any change in the present management of Mortgagor.

xi. Except for the sale of Dwelling Units pursuant to the terms and conditions of the Construction Loan Agreement, transfer or assign, directly or indirectly, any of the interest of the Mortgagor in and to the Premises.

(c) The Mortgagor covenants that until all Obligations of the Mortgagor are paid and satisfied in full, the Mortgagor will:

i. Furnish and deliver to the Mortgagee:

a. as soon as practicable, and in any event within ninety (90) days after the end of each fiscal year, (a) a statement of cash flow of the Premises for such year, (b) an income statement of the Premises for such year and (c) a balance sheet

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of the operation of the Premises as of the end of such year; all in reasonable detail, including all footnotes, and audited by certified public accountants selected by the Mortgagor and reasonably acceptable to the Mortgagee, certified by such accountants to have been prepared in accordance with GAAP, except for any inconsistencies explained in such certificate (or, in lieu thereof, if acceptable to the Mortgagee, the items required under (a), (b) and (c) may be prepared and certified by the Mortgagor's chief financial officer);

b. from time to time such information regarding the Mortgagor's and Guarantor's assets and financial condition as the Mortgagee may reasonably request. Without limiting the foregoing, the Mortgagor shall, unless otherwise agreed to by Mortgagee in writing, deliver to the Mortgagee (i) within ninety (90) days after the end of each fiscal year, Mortgagor's annual financial statement for its preceding year in a format acceptable to the Mortgagee; (ii) within thirty (30) days after they shall be due, photocopies of all federal and state income tax returns required to be filed by the Borrower and Guarantor, with all schedules attached, certified by a duly authorized agent of the Mortgagor to be complete and accurate photocopies of all documents actually filed; (iii) within thirty (30) days after the end of each fiscal quarter certified financial statements of the Mortgagor consisting of a balance sheet and statement of income prepared in accordance with generally accepted accounting principles and certified by the chief financial officer of the company; (iv) within ninety (90) days after the end of Mortgagor's fiscal quarter and fiscal year, a personal financial statement of the Guarantor, in form and content reasonably acceptable to Mortgagee, certified by him or his accountant to be true and correct; and (v) within thirty (30) days after request, such interim financial statements and financial information for the Mortgagor and Guarantor as the Mortgagee may reasonably require.

c. immediately upon receipt thereof, copies of any management letters, interim and supplemental reports submitted to the Borrower by independent accountants in connection with any review of the books of the Premises made by such accountants;

d. upon request by the Mortgagee, evidence satisfactory to the Mortgagee of the insurance coverages required under the Loan Documents and the Mortgage; and

ef. with reasonable promptness, such other information materially concerning the business, properties, conditions or operations, financial or otherwise, of the Mortgagor and the Premises, or compliance by the Mortgagor with any of the covenants in the Loan Documents, as the Mortgagee may from time to time reasonably request.

ii. Furnish and deliver to the Mortgagee:

a. immediately after the occurrence thereof, notice of any Event of Default or of any fact, condition or event that with the giving of notice or passage

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of time or both, would become an Event of Default, or of the failure by the Mortgagor to observe any of its respective undertakings hereunder;

b. immediately after the occurrence thereof, notice of any default under any Debt, or under any indenture, mortgage or other agreement relating thereto under which the Borrower is obligated;

c. immediately after knowledge thereof, notice of any litigation or proceeding in which the Mortgagor is a party if an adverse decision therein would require the Borrower or Guarantor to pay over more than \$15,000.00 or deliver assets the value of which exceeds such sum (whether or not the claim is considered to be covered by insurance);

d. immediately after receipt of notice thereof, notice of the institution of any other suit or similar adversarial proceeding involving the Borrower or Guarantor and which involves an amount in excess of \$15,000; and

e. immediately after the occurrence thereof, notice of any other matter which has resulted in, or might result in, a materially adverse change in the business, properties, or the conditions or operations, financial or otherwise, of the Borrower.

iii. Promptly pay and discharge when due all taxes, assessments and other governmental charges imposed upon it, or upon its income, profits or property, and all claims for labor, material or supplies which, if unpaid, might by law become a lien or charge upon its property; provided, however, that it shall not be required to pay any tax, assessment, charge or claim if so permitted by law, so long as the validity thereof shall be contested in good faith by appropriate proceedings and Mortgagee shall be furnished with adequate title insurance coverage as it deems appropriate.

iv. Maintain its equipment, real estate and other properties, including the Premises, in good condition and repair (normal wear and tear, excepted), pay and discharge or cause to be paid and discharged when due, the costs of repairs to or maintenance of the same, and pay or cause to be paid all rental or mortgage payments due on the same.

v. Maintain its existence, maintain all rights, privileges, franchises, permits and approvals necessary or desirable for the continuation of its business, and comply with the requirements of all material agreements to which it is a party or by which any of its assets is bound, and all applicable laws, including Environmental Laws, and orders of any governmental authority, noncompliance with which would materially adversely affect its business, properties, condition, financial or otherwise, or ability to repay its Obligations.

vi. Keep adequate records and books of account, in which complete entries will be made in accordance with its past practices and consistent with sound business practice, reflecting all of its financial transactions, and collect its accounts only in the ordinary course of business.

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vii. Permit, upon reasonable notice and at reasonable times, any of the Mortgagee's representatives to examine and inspect the Premises, all other of its properties and operations, and all books of account, records, reports and other papers and to make copies and extracts therefrom, and to discuss its affairs, finances and accounts with its employees or its independent public accountants (and by this provision the Mortgagor authorizes said accountants to discuss the finances and affairs of the Mortgagor), all at such reasonable times and as often as may be reasonably requested. The Mortgagor shall pay all of the Mortgagee's reasonable expenses incurred in connection with any reasonably undertaken examinations and inspections.

viii. Pay when due all of its Debt except if (with respect to Debt other than the Obligations) it is in good faith contesting by appropriate proceedings such amounts due and has maintained adequate reserves for such liability in accordance with GAAP or made other provisions acceptable to Mortgagee.

ix. At the Mortgagee's request, execute and/or deliver to the Mortgagee, at any time or times hereafter, all supplemental documentation that the Mortgagee may request, in form and substance acceptable to the Mortgagee, and pay the costs of any recording or filing of the same.

x. Maintain, in addition to the insurance on the Premises required hereunder, (i) liability insurance in form, with insurers and in amounts as may be reasonably required by Mortgagee, showing the Mortgagee as an additional insured, (ii) fidelity bonds and such other insurance in form, with insurers in amounts as may be reasonably required by Mortgagee, and (iii) such other insurance coverages as reasonably required by Mortgagee.

xi. Maintain the "Project Account" (as defined in the Loan Documents) of the Mortgagor relating to the Premises with the Mortgagee.

11. Eminent Domain. The Mortgagee is hereby authorized to collect and receive from any governmental or other local authority any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Premises by any such governmental or other lawful authority for the taking, by condemnation or eminent domain (or by threat of condemnation or by settlement of said threat of condemnation), hereby assigned from the Mortgagor to the Mortgagee, as aforesaid, and the Mortgagee is hereby authorized to give appropriate receipts and acquittances therefor. The Mortgagor shall give the Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation of eminent domain, affecting all or any part of the Premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to the Mortgagee copies of any and all papers served in connection with any such proceedings. The Mortgagor shall make, execute and deliver to the Mortgagee at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and instruments deemed necessary by the Mortgagee for the purpose of validly and sufficiently assigning to the Mortgagee all awards and other compensation heretofore and hereafter to be made to the Mortgagor for any taking, either permanent or temporary, under any such proceeding. The proceeds of all such awards shall be paid to the Mortgagee and may be applied by the Mortgagee, at its option, after the payment of all of its expenses in connection with such proceedings, including costs and attorneys' fees, to the

reduction of the Indebtedness Secured Hereby or to restoring the Improvements, in which event the same shall be paid out in the same manner as is provided, with respect to insurance proceeds, in the appropriate subparagraph above. No interest shall be allowed to the Mortgagor on any condemnation award paid to or held by the Mortgagee.

12. Rents and Leases.

(a) **Assignment of Rents, Issues and Profits.** Pursuant to the assignment made by the Mortgagor in the granting clauses of this Mortgage, the Mortgagee is entitled to receive all rents, issues, proceeds, deposits and profits accruing and to accrue from the Premises pursuant to any leases with respect thereto, whether heretofore or hereafter entered into. The Mortgagor hereby grants and confers upon the Mortgagee the right, power and authority to collect all such rents, issues, proceeds, deposits and profits and the Mortgagor appoints the Mortgagee its true and lawful agent and attorney-in-fact, at the option of the Mortgagee, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue in the name of the Mortgagor, for all such rents, issues, profits, deposits and proceeds accrued but unpaid and in arrears at the date of an event of default hereunder as well as all such rents, issues, profits, deposits and proceeds thereafter accruing and becoming payable during the continuance of any such event of default, and to apply the same to the Indebtedness Secured Hereby; provided, however, that the Mortgagor shall have the right to collect all such rents, issues, profits, deposits and proceeds (but not in advance unless the written approval of the Mortgagee has first been obtained), and to retain and enjoy the same, so long as an Event of Default shall not have occurred or been declared hereunder. Upon request of the Mortgagee, the Mortgagor shall execute and deliver to the Mortgagee the following: (i) a specific assignment, in recordable form, of any lease, sublease, license, concession or other agreement now or hereafter affecting all or any portion of the Premises to furnish evidence of the assignment made by this Mortgage; and (ii) such other instrument(s) as the Mortgagee may deem necessary, convenient or appropriate in connection with the payment and delivery directly to the Mortgagee of all of the rents, issues, profits, deposits and proceeds accruing and to accrue under any of the leases of all or any portion of the Premises. The Mortgagor acknowledges that to facilitate the performance of its obligations hereunder and under the Note and the Loan Documents, the assignment of the rents, issues, profits, deposits and proceeds and of the Mortgagor's right, title and interest in and to such leases, is intended to be an absolute assignment from the Mortgagor to the Mortgagee and not merely the granting of a security interest. The Mortgagee may require the Mortgagor to execute and deliver a separate document, in recordable form, to evidence this absolute assignment on the terms contained herein, which document shall set forth such other terms and conditions as the Mortgagee may deem necessary or appropriate.

Nothing herein to the contrary, it is expressly covenanted by the Mortgagor to the Mortgagee that the Mortgagor shall not enter into any lease(s) for any portion of the Real Estate or the Premises without first obtaining the prior written consent of the Mortgagee.

(b) **Mortgagee Exoneration.** Nothing in this Mortgage or in any other Loan Documents relating to the Indebtedness Secured Hereby shall be construed to obligate the Mortgagee, expressly or by implication, to perform any of the covenants of the Mortgagor, as lessor, lessee or assignor, under any of the leases assigned to the Mortgagee or to pay any sum of money or

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damages therein provided to be paid by the lessor or lessor's assignee, each and all of which covenants and payments the Mortgagor agrees to perform and pay.

(c) **Lessee Attornment; Estoppel Certificate.** In the event of the enforcement by the Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each lease of all or any part of the Premises subordinate to the lien of this Mortgage shall, at the option of the Mortgagee, attorn to any person succeeding to the interest of the Mortgagor, as a result of such enforcement and shall recognize such successor in interest as lessor under such lease without change in the terms or other provisions thereof, provided, however, that said successor in interest shall not be bound by any payment of rent for more than one month in advance or any amendment or modification to any lease made without the prior consent of the Mortgagee or said successor in interest. Mortgagor shall also furnish to Mortgagee within the time specified by Mortgagee, an original estoppel certificate executed by Mortgagor and each tenant of the Premises in form and content satisfactory to or required by Mortgagee.

(d) **Declaration of Subordination.** At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises, upon the execution by the Mortgagee and recording thereof, at any time hereafter, in the Office of the County Recorder in and for the county wherein the Premises are situated, of a unilateral declaration to that effect.

13. **Inspection of Premises.** The Mortgagor shall permit the Mortgagee and its agents to inspect the Premises at all times on written notice, and access thereto shall be permitted for such purpose.

14. **Access by the Mortgagee.** The Mortgagor shall at all times deliver to the Mortgagee duplicate originals or certified copies of all leases, agreements and documents relating to the Premises. The Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and upon written demand therefor shall allow the Mortgagee (at the Mortgagor's cost) to examine and copy such books and records and all supporting vouchers any time and from time to time, on request, at its offices, or at such other location as may be mutually agreed upon.

15. **Future Advances.** The Mortgagee may, at its option upon request of the Mortgagor, at any time before full payment of the Secured Indebtedness, make further advances to the Mortgagor, and the same, with interest, shall be on a parity with, and not subordinate to, the Indebtedness Secured Hereby and such advances shall be secured hereby in accordance with all covenants and agreements herein contained, provided, that the amount of principal secured hereby and remaining unpaid shall not, including the amount of such advances, exceed ten times the original principal sum of the Indebtedness Secured Hereby, plus disbursements as herein provided, and further provided, that if the Mortgagee shall make further advances as aforesaid, the Mortgagor shall repay all such advances in accordance with the note or notes, or agreement and agreements, evidencing the same, which the Mortgagor shall execute and deliver to the Mortgagee and which shall be payable no later than the maturity of this Mortgage and shall include such other terms as the Mortgagee shall require.

16. **Partial Invalidity.** The Mortgagor and the Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal statute, law, ordinance, rule, regulation or decree, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage or the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of the Mortgagor and the Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained herein, or therein, as the case may be, and that the rights, obligations and interest of the Mortgagor and the Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. If under the circumstances, interest in excess of the limit allowable by law shall have been paid by the Mortgagor in connection with the Indebtedness Secured Hereby, such excess shall be applied by the Mortgagee to the unpaid principal balance of the Note in such manner as the Mortgagee may in its sole discretion determine, or refunded to the Mortgagor in the manner to be determined by the Mortgagee and if any such excess interest has accrued, the Mortgagee shall eliminate such excess interest so that under no circumstances shall interest on the Indebtedness Secured Hereby exceed the maximum rate allowed by the law.

17. **Subrogation.** In the event the proceeds of the Indebtedness Secured Hereby, or any part thereof, or any other amount paid out or advanced by the Mortgagee shall be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then the Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

18. **The Mortgagee's Right to Deal with Transferee.** In the event of any permitted voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises encumbered by the lien of this Mortgage, the Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the Indebtedness Secured Hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with the Mortgagor, without in any way releasing, or discharging the Mortgagor from the Mortgagor's covenants and undertakings hereunder, and without the Mortgagee waiving its rights to accelerate the Note.

19. **Security Agreement.**

(a) **Mortgage Deemed Security Agreement.** Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of the Mortgage or the Agreement and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of the Code), and any personal property owned by

Borrower situated within any improvements upon the Premises (all of which property is hereinafter referred to as "Personal Property") and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions, covenants and warranties shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto: (i) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the Agreement; (ii) the Collateral is to be used by Mortgagor solely for business purposes; (iii) the Collateral will be kept at the Premises, and, except for Obsolete Collateral (as hereinafter defined), will not, except in the ordinary course of Mortgagor's business, be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code) (The Collateral may be affixed to the Land but will not be affixed to any other real estate); (iv) the only persons having any interest in the Premises are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted by the Agreement; and, no Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted by the Agreement) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and (v) Mortgagor will at its own cost and expense, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted by the Agreement; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable.

(b) Remedies Upon Default. Upon Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give

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Mortgagor at least twenty (20) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least twenty (20) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Mortgagee so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

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

(d) **Intended As Financing Statements.** This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are herein. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located.

(e) **Leases.** To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

(f) **Execution of Documents.** The Mortgagor, within ten (10) days after request, shall execute, acknowledge and deliver to the Mortgagee any security agreement, financing statement, or other similar security instrument, in form satisfactory to the Mortgagee, covering all property of any kind whatsoever owned by the Mortgagor which, in the sole opinion of the Mortgagee, is essential to the operation of the Premises and concerning which there may be any doubt as to whether the title to same has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the State of Illinois and shall further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement, or certificate or other documents as the Mortgagee may request in order to perfect, preserve, maintain, continue, and extend such security interest. The Mortgagor further agrees to pay to the Mortgagee, on demand, all costs and expenses (including attorney's fees) incurred by the Mortgagee in connection with the preparation, execution, recording, filing, and refile of any such document.

20. **Certain Acts of the Mortgagee.** The Mortgagee, at its sole option, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, (i) may release any part of the Premises or any person liable for any Indebtedness Secured Hereby, without in any way affecting the liability under the Note, this Mortgage, the other Loan Documents given as additional security for the Indebtedness Secured

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Hereby, and without in any way affecting the priority of the lien of this Mortgage, (ii) may agree with any person obligated on the Secured Indebtedness to extend the time for payment of any part or all of the Indebtedness Secured Hereby, (iii) may accept a renewal note or notes therefor, (iv) may take or release other or additional security for the Secured Indebtedness, (v) may consent to any plat, map or plan of the Premises, (vi) may consent to the granting of any easement, (vii) may join in any extension or subordination agreement, (viii) may agree in writing with the Mortgagor to modify the rate of interest or period of amortization of the Note or change the time of payment or the amount of the monthly installments payable thereunder, or (ix) may waive or fail to exercise any right, power or remedy granted by law, this Mortgage, the Note, or other Loan Documents given as security for the Secured Indebtedness. Any such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person personally obligated for the Indebtedness Secured Hereby, but shall, as applicable, extend the lien hereof as against the title of all persons having any interest in the Premises which interest is subject to this Mortgage.

Nothing herein to the contrary, the Indebtedness Secured hereby may not be assumed by an person or entity.

21. Expenses Incurred by the Mortgagee. Any reasonable costs, damages, expenses or fees, including attorneys' fees, reasonably incurred by the Mortgagee in connection with (i) this Mortgage, the other Loan Documents or the Premises, (ii) sustaining the lien of this Mortgage or its priority, (iii) obtaining any abstract, title opinion, title report, title searches, commitment for title insurance or title insurance policy, (iv) protecting the Premises, (v) protecting or enforcing any of the Mortgagee's rights hereunder, (vi) recovering any Indebtedness Secured Hereby, (vii) any litigation or proceedings (including, but not limited to, bankruptcy, probate and administrative law proceedings) affecting this Mortgage, the Note, or the Premises, or (viii) preparing for the commencement, defense or participation in any threatened litigation or proceedings as aforesaid, or as otherwise enumerated in this Mortgage, shall be so much additional Indebtedness Secured Hereby and shall be immediately due and payable by the Mortgagor, without notice, with interest thereon at the Default Interest Rate specified in the Note.

22. Default and Remedies.

(a) Events of Default. It shall constitute an Event of Default under this Mortgage when and (i) if any event of default occurs under the Note, under any of the Loan Documents or if a default occurs in the payment of any of the Indebtedness Secured Hereby within the time limits specified herein or in the other Loan Documents, (ii) if any default occurs in the due and punctual performance of or compliance with any term, requirement, covenant or condition in this Mortgage, in any of the Loan Documents within the time limits specified herein or in the other Loan Documents, or (iii) any of the representations or warranties of the Mortgagor made herein or in any of the Loan Documents shall prove to be false in any material respect when made and not subject to cure within the provisions stated herein or in the other Loan Documents, or (iv) if the Mortgagor or any guarantor of the Indebtedness Secured Hereby is voluntarily adjudicated a bankrupt or insolvent, seeks or consents to the appointment of a receiver or trustee or custodian for itself or for all or any part of its property, files a petition seeking relief under or files an answer admitting the material allegations of a petition filed against it under any bankruptcy or similar laws of the United States or any state, makes a general assignment for the benefit of

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creditors, takes any action for the purpose of effecting any of the foregoing, is generally not paying its debts as such debts become due, or suffers to exist any Event of Default under any lease of all or a portion of the Premises and not subject to cure within the provisions stated herein or in the other Loan Documents, or (v) if any order, judgment or decree is entered upon an application of a creditor of the Mortgagor or a guarantor of the Indebtedness Secured Hereby, a court of competent jurisdiction appointing a receiver or trustee or custodian of all or a substantial part of the assets of the Mortgagor or of such guarantor, as the case may be, or approving any petition filed against the Mortgagor or any such guarantor of the Indebtedness Secured Hereby seeking relief under any bankruptcy or other similar laws of the United States or any state and remains in force, undischarged or unstayed for a period of forty five (45) days and not subject to cure within the provisions stated herein or in the other Loan Documents, or (vi) a default occurs under the terms, covenants and conditions of any document(s) evidencing any other loans made by the Mortgagee to the Mortgagor.

(b) Remedies. In addition to any other remedy herein specified, if any Event of Default under this Mortgage shall occur, which has not been cured within applicable time limits stated herein or in the other Loan Documents, the Mortgagee may, at its option, (i) declare the entire Indebtedness Secured Hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by the Mortgagor) whereupon the same shall become immediately due and payable, (ii) institute proceedings for the complete foreclosure of this Mortgage, (iii) institute proceedings to collect any delinquent installment or installments of the Indebtedness Secured Hereby without accelerating the due date of the entire Secured Indebtedness by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of such indebtedness only and any sale of the Premises under such a foreclosure proceedings shall be subject to and shall not affect the unmatured part of the Secured Indebtedness and this Mortgage shall be and continue as a lien on the Premises securing the unmatured Secured Indebtedness, (iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note, this Mortgage, in any other Loan Document, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as the Mortgagee shall elect, (v) with respect to any part of the Premises constituting property of the type in respect of which a security interest granted thereon is governed by the Uniform Commercial Code, exercise all rights, options and remedies of secured parties under the Uniform Commercial Code, including the right to possession of any such property or any part thereof, and the right to enter, without legal process, any premises where any such property may be found, it being agreed and understood by the Mortgagor that any requirement of the Uniform Commercial Code for reasonable notification shall be met by mailing written notice to the Mortgagor at its address set forth below at least twenty (20) days prior to sale or other event for which such notice is required, or (vi) enforce this Mortgage in any other manner permitted under the laws of the state in which the Premises are situated.

(c) Expense of Litigation. In any suit to foreclose the lien of this Mortgage or enforce any other remedy of the Mortgagee under this Mortgage or the Note there shall be allowed and included, as additional Secured Indebtedness in the judgment or decree, all reasonable expenditures and expenses, costs and fees which may be paid or incurred by or on behalf of the Mortgagee, including but not limited to, reasonable amounts attributable to attorneys' fees, court costs, expenses and fees, appraiser's fees, outlays for documentary and expert evidence, stenographers'

charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title commitments, title reports, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Premises.

(d) **Mortgagee's Right of Possession in the Case of Default.** In any case in which, under the provisions of this Mortgage, the Mortgagee has a right to institute foreclosure proceedings whether or not the entire principal of the Indebtedness Secured Hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of the Mortgagee, the Mortgagor shall surrender to the Mortgagee and the Mortgagee shall be entitled to take actual possession of the Premises, or any part thereof, personally or by its agent or attorneys, as for condition broken and the Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of the Mortgagor or the then manager of the Premises relating thereto, and may exclude the Mortgagor, its agents, or servants, wholly therefrom and shall have the right but not the obligation to (i) hold, operate, manage, and control the Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the Premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without prior notice (but with notice) to the Mortgagor, (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same, (iii) elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, (iv) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Secured Indebtedness and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that, to the extent permitted by applicable law, any such leases, and the options or other such provisions to be contained herein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Secured Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the Premises as to the Mortgagee may seem judicious, (vi) insure and reinsure the Premises and all risks incidental to the Mortgagee's possession, operation, and management thereof, and (vii) receive all avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter without prior notice (but with notice) to the Mortgagor.

The Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. The Mortgagor shall and

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does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should the Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and attorneys' fees and expenses, shall be additional Indebtedness Secured Hereby, and the Mortgagor shall reimburse the Mortgagee therefor immediately upon demand.

(e) Application of Rental Proceeds. Any avails, rents, issues and profits of the Premises received by the Mortgagee after having possession of the Premises, or pursuant to any assignment thereof to the Mortgagee under the provisions of this Mortgage or of any separate assignment of rents or assignment of leases, shall be applied in payment of or on account of the following, in such order as the Mortgagee (or in case of a receivership, as the court) may determine: (i) to the payment of the operating expenses of the Premises, including reasonable compensation to the Mortgagee or the receiver and its agent or agents, if management of the Premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring lessees and entering into leases and the payment of premiums in insurance hereinabove authorized, (ii) to the payment of taxes, special assessments, and water taxes and other charges now due or which may hereafter become due on the Premises, or which may become a lien prior to the lien of this Mortgage, (iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises, including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the Premises, and of placing said property in such condition as will, in the sole judgment of the Mortgagee or receiver, make the Premises readily rentable, (iv) to the payment of any Indebtedness Secured Hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any surplus or remaining funds, to the Mortgagor, its successors, or assigns, as their rights may appear.

(f) Appointment of Receiver. Upon or at any time after the filing of any action to foreclose this Mortgage, the Mortgagor consents, upon application by the Mortgagee to the appropriate court, to the appointment of a receiver of the Premises. Such appointment may be made either before or after sale without notice and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Indebtedness Secured Hereby and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver shall have the power to take possession, control, and care of the Premises and to collect the rents, issues, and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by the Mortgagor), as well as during any further times when the Mortgagor, its heirs, administrators, executors, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the Premises, during the whole of said period. To the extent permitted by law, said receiver may be authorized by the court to extend or modify any then existing leases to make new leases, which extensions, modifications, and

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new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Secured Indebtedness, it being understood and agreed that any such leases and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Secured Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

(g) **Sale of Premises.** Except as expressly permitted under the Loan Agreement, all or any portion of the Premises or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to this Mortgage shall be sold in one parcel as an entirety, or in such parcels and in such manner or order as the Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by the laws of the state in which the Premises are situated. At any such sale, the Mortgagee may bid for and acquire, as purchaser, the Premises or any part thereof, and in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness due the amount of the Mortgagee's bid.

(h) **Application of Proceeds From Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, (ii) all other items which, under the terms hereof, constitute Secured Indebtedness additional to that evidenced by the Note, with interest thereon, at the Default Interest Rate specified in the Note, (iii) all principal and interest remaining unpaid on the Note in such order as the Mortgagee may, in its sole discretion, determine and (iv) any overage to the Mortgagor, its successors or assigns, as their rights may appear.

(i) **Application of Deposits Held by the Mortgagee.** With respect to any deposits made with or held by the Mortgagee or any depository pursuant to any of the provisions of this Mortgage, if an Event of Default hereunder shall occur, and not be cured within applicable time limits stated herein or in the Loan Documents, the Mortgagee may, at its option, without being required to do so, apply any monies or securities which constitute such deposits on any of the Mortgagor's obligations herein or in the Note contained, in such order and manner as the Mortgagee may elect. When the Indebtedness Secured Hereby has been fully paid, any remaining deposits shall be paid to the Mortgagor or to the then owner or owners of the Premises. Such deposits are hereby pledged as additional security for the prompt payment of the Indebtedness Secured Hereby and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

(j) **Deficiency Decree.** If, at any foreclosure proceeding, the Premises shall be sold for a sum less than the total amount of the indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against the Mortgagor and against the property of the Mortgagor for the amount of such deficiency and the Mortgagor does hereby irrevocably consent to the appointment of a receiver for the Premises and the property of the Mortgagor and of the avails, rents, issues and profits thereof after such sale until such deficiency decree is satisfied in full.

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(k) **Waiver of Defenses.** No action for the enforcement of the lien of this Mortgage shall be subject to any defense which would not be good and available to the party interposing the same in an action of law upon the Note.

(l) **Partial Payments.** Acceptance by the Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the Mortgagee's right to exercise its option to declare the whole of the principal of the Indebtedness Secured Hereby then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of the Mortgagee without its express consent except and to the extent otherwise provided by law.

(m) **Tender of Payment After Acceleration.** Upon the occurrence of an Event of Default hereunder, which has not been cured within applicable time limits stated herein or in the Loan Documents, and following the acceleration of maturity as aforesaid, a tender of payment of the amount necessary to satisfy the entire Indebtedness Secured Hereby made at any time prior to foreclosure sale by the Mortgagor, its successors or assigns or by anyone in behalf of the Mortgagor, its successors or assigns shall constitute an evasion of the prepayment privilege and shall be deemed to be a voluntary prepayment hereunder and such prepayment, to the extent permitted by law, will therefore include a premium required under the prepayment privilege, if any, contained in the Note. In case, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire Secured Indebtedness due hereunder, the Mortgagee shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be so much additional Indebtedness Secured Hereby, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses, and charges shall have been paid in full.

(n) **Delays and Omissions.** No delay in the exercise of or failure to exercise any remedy or right accruing on the occurrence of any Event of Default hereunder shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or of a different nature.

(o) **Rescission of Election.** Acceleration of maturity, once made by the Mortgagee, may at the option of the Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at the Mortgagee's option, be discontinued or dismissed, whereupon, in either of such events, the Mortgagor and the Mortgagee shall be restored to their former positions, and the rights, remedies and power of the Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

(p) **Remedies Cumulative and Concurrent.** The rights and remedies of the Mortgagee as provided in the Note, this Mortgage and the other Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against the Mortgagor, any guarantor or the Premises, or any one or more of them, at the sole discretion of the Mortgagee, and may be exercised as often as occasion therefor shall arise, all to the maximum extent permitted by the laws of the state in which the Premises are situated. If the Mortgagee elects to proceed under one right or remedy under this Mortgage, the Note or the other Loan Documents, the

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Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Mortgage, the Note or the other Loan Documents.

(q) **The Mortgagee's Use of Counsel.** The Mortgagee may reasonably employ counsel for advice or other legal service at the Mortgagee's discretion in connection with any dispute as to the obligations of the Mortgagor hereunder, or as to the title of the Mortgagee to the Premises pursuant to this Mortgage, or in any litigation to which the Mortgagee may be a party which may affect the title to the Premises or the validity of the Indebtedness Secured Hereby, and any attorneys' fees so incurred shall be added to and be a part of the Indebtedness Secured Hereby. Any costs and expenses incurred in connection with any other dispute or litigation affecting said debt or the Mortgagee's title to the Premises, including estimated amounts to conclude the transaction, shall be added to and be a part of the Indebtedness Secured Hereby. All such amounts shall be payable by the Mortgagor to the Mortgagee upon demand, but regardless of whether such demand has been made, shall be included as a part of the Secured Indebtedness and shall include interest at the Default Interest Rate as set forth in the Note, from the dates of their respective expenditures.

23. **The Mortgagee's Performance of Defaulted Acts.** If an Event of Default hereunder shall occur, which is not cured within the applicable time limits stated herein or in the Loan Documents, the Mortgagee may, but need not, make any payment or perform any act herein required of the Mortgagor in any form and manner deemed expedient by the Mortgagee. By way of illustration and not in limitation of the foregoing, the Mortgagee may, but need not, (i) make full or partial payments of principal, interest, penalties or late charges on prior encumbrances, if any, (ii) purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof, (iii) redeem from any tax sale or forfeiture affecting the Premises, (iv) contest any tax or assessment, (v) collect rents, (vi) prosecute collection of any sums due with respect to the Premises, and (vii) make repairs to the Premises. The Mortgagee is hereby authorized to make or advance any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental charges, fines, impositions, or liens asserted against the Premises and may do so according to any bill, statement, or estimate procured from the appropriate governmental authority without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof, and the Mortgagee is further authorized to make or advance any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not otherwise enumerated herein and may do so whenever, in the Mortgagee's sole and reasonable judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this Mortgage, and in connection with any such advance, the Mortgagee, at its option, may and is hereby authorized to obtain a continuation abstract or report of title or commitment for title insurance or title insurance policy prepared by an abstractor or title insurance company of the Mortgagee's choosing. All monies reasonably paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, shall be so much additional Indebtedness Secured Hereby, and shall become immediately due and payable by the Mortgagor to the Mortgagee without notice and with interest thereon at the Default Interest Rate specified in the Note. Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of the Mortgagor.

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24. **Giving of Notice.** All notices which any party may be required or may desire to give in connection with this Mortgage shall be in writing, and shall be either personally delivered, sent by overnight express delivery by a nationally recognized delivery service, freight prepaid, or sent by United States Registered or Certified Mail, postage prepaid, addressed as follows:

- (a) If to the Mortgagor at the address set forth below.
- (b) If to the Mortgagee at the address set forth above to the attention of the Real Estate Loan Department.

Notices, demands and requests which shall be served in the manner aforesaid shall be deemed to be sufficiently delivered or given for all purposes hereunder (i) in the case of personal delivery upon such delivery, (ii) in the case of overnight express delivery, one (1) business day after delivery to such delivery service, (iii) in the case of mailing by Registered or Certified Mail, two (2) business days after such notice, demand or request shall be mailed or (4) the next day after timely deposit in a Federal Express box. By notice complying with the foregoing provisions of this paragraph, either party may from time to time change its address for notice purposes, except that any such notice shall not be deemed delivered until actually received. Except as otherwise specifically required, notice of the exercise of any option, right or remedy granted to the Mortgagee herein, in the Note or in the other Loan Documents is not required to be given.

25. **Time is of the Essence.** It is specifically agreed that time is of the essence of this Mortgage. The waiver of any of the options, rights or remedies of the Mortgagee shall not at any time thereafter be held to be abandonment of such rights.

26. **Mortgagee's Lien for Service Charge and Expenses.** At all times, regardless of whether any proceeds of the Note have been disbursed, this Mortgage shall secure (in addition to any proceeds of any Secured Indebtedness disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the Indebtedness Secured Hereby which are reasonable.

27. **Modifications.** This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

28. **Covenants to Run with the Real Estate.** All the covenants of the Mortgagor hereof shall run with and touch and concern the Real Estate.

29. **Captions.** The captions and headings of various paragraphs are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

30. **Construction.** This Mortgage shall be governed by and construed and enforced according to the laws of the State of Illinois.

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31. **Binding on Successors and Assigns and Certain Definitions.** This Mortgage and all provisions and covenants of the Mortgage hereof shall extend to and be binding upon the Mortgagor's successors and assigns and all persons claiming under or through the Mortgagor, and the word "the Mortgagor" when used herein shall include and refer to, in addition to the Mortgagor named herein, (i) all such persons liable for the payment of the Secured Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage, (ii) the Mortgagor's successors and assigns and (iii) all owners from time to time of the Premises encumbered by the lien of this Mortgage. The word "the Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note. All capitalized terms and phrases not otherwise defined herein shall have the meanings prescribed in the Loan Agreement. The following words and phrases shall be construed as follows: (x) "any" shall be construed as "any and all"; (y) "include" and "including" shall be construed as "including but not limited to"; and (z) "will" and "shall" shall each be construed as mandatory. The words "hereby", "hereof", "hereto", "herein" and "hereunder" and any similar terms shall refer to this Mortgage as a whole and not to any particular paragraph or subparagraph. The word "hereafter" shall mean after the date of this Mortgage and the word "heretofore" shall mean before the date of this Mortgage. Words of the masculine, feminine or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number and vice versa. Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

32. **Further Assurances.** The Mortgagor shall execute, acknowledge and deliver to the Mortgagee and to any subsequent holder of the Note from time to time upon demand (and pay the costs of preparation and recording thereof) any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to re-affirm, to correct and to perfect the evidence of the obligations and Indebtedness Secured Hereby and the lien of the Mortgagee to all or any part of the Premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof, and will do or cause to be done all such further acts and things as may be necessary fully to effectuate the intent of this Mortgage.

33. **Recording and Filing.** The Mortgagor, at its expense, will cause this Mortgage and all supplements thereto for which constructive notice must be given to protect the Mortgagee, at all times to be recorded and filed, and re-recorded and refiled, in such manner and in such places as the Mortgagee shall request, and will pay all such recording, filing, re-recording, re-filing, taxes, fees and other charges to the maximum extent permitted by the laws of the state in which the Premises are situated.

34. **Right to Contest Taxes and Mechanics' Liens.** The obligations of the Mortgagor under this Mortgage relating to real estate taxes and mechanics' liens are subject to the right of the Mortgagor to contest in good faith the validity or amount of any tax or assessment or lien arising from any work performed at or materials furnished to the Premises which right, however, is conditional upon (i) such contest having the effect of preventing the collection of the tax, assessment or lien so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same, (ii) the Mortgagor giving the Mortgagee written notice of its

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intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any such tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanic's lien claim, shall mean within ten (10) days after the Mortgagor receives actual notice of the filing thereof, (iii) the Mortgagor making and thereafter maintaining with the Mortgagee or such other depository as the Mortgagee may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in the Mortgagee's sole discretion, be acceptable to the Mortgagee, and in either case having a present value equal to the amount herein specified) in an amount not less than One Hundred Fifty percent (150%) of the amount which, in the Mortgagee's sole judgment, determined from time to time, shall be sufficient to pay in full such contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination thereof adverse to the Mortgagor or in the event the Mortgagor fails to prosecute such contest as herein required, or having the title insurance company that issued the loan policy to Mortgagee issue an endorsement, satisfactory to Mortgagee and its counsel as to form and content, defending and insuring the Mortgagee against any loss or damage or threat of loss or damage due to such liens, and (iv) the Mortgagor diligently prosecuting such contest by appropriate legal proceedings. In the event the Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds, or other security as aforesaid, on deposit as hereinabove provided, or to provide such title insurance endorsements, the Mortgagee may, at its option, liquidate any securities deposited with the Mortgagee, and apply the proceeds thereof and other monies deposited with the Mortgagee in payment of, or on account of, such taxes, assessments, or liens or any portion thereof then unpaid, including the payment of all penalties and interest thereon, or, if no such amounts have been deposited, declare an Event of Default.

35. Waivers by the Mortgagor. To the extent permitted by applicable law, the Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, redemption, stay, extension, or exemption laws or any so-called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. The Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. The Mortgagor hereby waives any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagor, the trust estate, if any, and all persons beneficially interested therein, if any, and each and every person acquiring any interest in or title to the Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by law. THE MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES (TO THE EXTENT PERMITTED BY APPLICABLE LAW) ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS MORTGAGE, THE NOTE, ANY OTHER OF THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT REFERRED TO HEREIN OR THEREIN AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

36. Condition of the Premises. As of the date hereof, the condition of the Premises is substantially the same as that shown on the survey delivered to the Mortgagee and the Mortgagor has taken no action, nor suffered any action to be taken, which might adversely affect

the Mortgagor's interest in the Premises, or the Mortgagor's ability to perform its covenants hereunder.

37. **After Acquired Property.** Any and all property hereafter acquired and placed, installed or incorporated on or into the Premises, which is of the kind or nature herein provided, or is intended to be and becomes subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act of the Mortgagor's become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein, but nevertheless, the Mortgagor shall from time to time, if requested by the Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

38. **Business Loan Recital.** The loan evidenced by the Note constitutes a business loan which comes within the purview of subparagraph (1)(c) of Section 4 of "An Act in relation to the rate of interest and other charges in connection with sales on credit and the lending of money," approved May 24, 1873, as amended (Ill. Rev. Stat., 1986 ed., ch. 17, Sec. 6404(1)(c)), and is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, et seq.

39. **No Merger.** It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should the Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the said fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the said fee simple title.

40. **No Partnership or Joint Venture.** The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, the Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, the Note, the other Loan Documents or otherwise.

41. **No Liability on the Mortgagee.** This Mortgage is intended only as security for the obligations herein set forth. Notwithstanding anything contained herein to the contrary, the Mortgagee shall not be obligated to perform or discharge and does not hereby undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether hereunder, under any of the leases affecting the Premises, under any contract relating to the Premises or otherwise, and, except for the negligent or willful misconduct of the Mortgagee, the Mortgagor shall and does hereby agree to indemnify against and hold the Mortgagee harmless of and from: (i) any and all liability, loss or damage which the Mortgagee may incur under or with respect to any portion of the Premises or under or by reason of its exercise of rights hereunder and (ii) any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in any of the contracts, documents or instruments affecting any portion of the Premises or affecting any rights of the Mortgagor thereto. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in

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loss or injury or death to any lessee, licensee, employee, stranger or other person. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers herein granted to it, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage under any of the leases affecting the Premises or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees.

42. **Consent and Approval.** In any instance where the Mortgagee's consent or approval is required hereunder, except and to the extent otherwise specifically provided, the granting or withholding of such consent or approval shall be within the Mortgagee's sole and reasonable discretion.

43. **Other Definitions.**

a. **Mortgagor:** The Person(s) defined as the Mortgagor in the first paragraph of this Mortgage.

b. **Debt:** With respect to the subject Person, all items of indebtedness, obligation or liability, whether matured or unmatured, liquidated or unliquidated, direct or indirect, or joint or several, including:

i. All Obligations of such Person;

ii. All indebtedness in effect guaranteed, directly or indirectly, in any manner, or endorsed (other than for collection or deposit in the ordinary course of business) or discounted with recourse;

iii. All indebtedness in effect guaranteed, directly or indirectly through agreements, contingent or otherwise: (1) to purchase such indebtedness, or (2) to purchase, sell or lease (as lessee or lessor) property, products, materials or supplies or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such indebtedness or to assure the owner of the indebtedness against loss, or (3) to supply funds to or in any other manner invest in any Person;

iv. All indebtedness secured (or for which the holder of such indebtedness has a right, contingent or otherwise, to be secured) by any mortgage, trust deed, deed of trust, pledge, lien, security interest or other charge or encumbrance upon property owned or acquired subject thereto, whether or not the liabilities secured thereby have been assumed; and

c. **Loan Documents:** This Mortgage, the Note, the Loan Agreement and the other documents defined or described as Loan Documents in that Loan Agreement executed by and between the Borrower, Guarantor and Mortgagee and any other document(s), instrument(s), affidavit(s), letter(s), or certificate(s) to be executed and delivered hereunder or in connection with or as a part of this loan transaction by or on behalf of the Mortgagor, any Guarantor or any Person.

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d. Borrower: Terrestris Development Company, an Illinois corporation.

e. Obligations: With respect to any Person, all of such Person's liabilities, obligations and indebtedness to the Mortgagee of any and every kind and nature. Such Person's other liabilities and obligations to the Mortgagee under this Mortgage, and such Person's liabilities and obligations to the Bank under any other agreement, document or instrument, (including any guaranty of another Person's Obligations), whether heretofore, now or hereafter owing, arising, due or payable by or from such Person to the Bank, howsoever evidenced, created, incurred, acquired or owing, and whether joint, several, primary, secondary, direct, contingent, fixed or otherwise.

f. Person: Mortgagor and/or Guarantor.

44. Release of Portion of Premises. Nothing herein to the contrary and so long as no Event of Default has occurred under this Mortgage or any other Loan Document, the Mortgagee may, subject to the terms of the Loan Agreement and other Loan Documents, release less than the entirety of the Premises which partial release shall have no affect on the balance of the Premises encumbered hereby.

45. Revolving Credit. This Mortgage is given to secure, in part, a revolving credit loan and shall secure not only existing indebtedness hereby secured but also such future advances, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness secured hereby outstanding at the time any advance is made, as provided in the Illinois Banking Act, approved May 11, 1955, as amended and as provided in any other applicable laws. The lien of this Mortgage shall be valid as to all indebtedness secured hereby, including future advances, from the time of its filing for record in the office of the Recorder of Deeds of DuPage County, Illinois. The total amount of indebtedness hereby secured may increase or decrease from time to time, but the total unpaid principal balance of indebtedness hereby secured (including disbursements which the Mortgagee may make under this Mortgage, or any other Loan Document with respect to the loans evidenced by the Notes) at any time outstanding shall not exceed a maximum of \$30,000,000 (all such indebtedness being hereinafter referred to as the "maximum amount secured hereby"). This Mortgage shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, to the extent of the maximum amount secured hereby.

46. Compliance with Loan Documents. Mortgagor will abide by and comply with and be governed and restricted by all of the terms, covenants, provisions, restrictions and agreements contained in the Loan Documents, and in each and every supplement thereto or extension or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

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IN WITNESS WHEREOF, the Mortgagor has signed these presents the day and year first above written.

MORTGAGOR:

Terrestris Development Company

By:

Dennis Cortesi

Print Name:

DENNIS A CORTESI

Title:

President

ATTEST:

By:

Wanda L. Elliott
Secretary

NOTICE ADDRESS FOR MORTGAGOR: 2211 York Road, Suite 311
Oak Brook, Illinois 60521
Attn: Dennis Cortesi

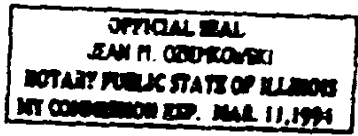
STATE OF ILLINOIS)
) SS
COUNTY OF)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Dennis A Cortesi personally known to me to be the President of Terrestris Development Company, and Wanda L Elliott personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that in such capacity, they signed and delivered the said instrument and caused the corporate seal to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act of the corporation, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND and notarial seal on June 30, 1992.

Jean M Ozonkowski
NOTARY PUBLIC

My Commission Expires: _____



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Property of Cook County Clerk's Office

JAN 14 2011
10:00 AM
CHICAGO, ILLINOIS
PROPERTY OF COOK COUNTY CLERK'S OFFICE

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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

LOTS 1 THROUGH 15 INCLUSIVE IN LEXINGTON SQUARE SUBDIVISION, BEING A SUBDIVISION IN THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 23, 1990 AS DOCUMENT 90411700 AND CERTIFICATE OF CORRECTION RECORDED DECEMBER 10, 1990 AS DOCUMENT 90598723, IN COOK COUNTY, ILLINOIS.

P.I.N.

(AS TO LOT 1) 07-27-211-060
(AS TO LOT 2) 07-27-211-061
(AS TO LOT 3) 07-27-211-062
(AS TO LOT 4) 07-27-211-063
(AS TO LOT 5) 07-27-211-064
(AS TO LOT 6) 07-27-201-038
(AS TO LOT 7) 07-27-201-037
(AS TO LOT 8) 07-27-201-036
(AS TO LOT 9) 07-27-201-035
(AS TO LOT 10) 07-27-201-034
(AS TO LOT 11) 07-27-201-033
(AS TO LOT 12) 07-27-201-032
(AS TO LOT 13) 07-27-201-031
(AS TO LOT 14) 07-27-211-065
(AS TO LOT 15) 07-27-211-066

COMMON ADDRESS:

LOTS 1 THROUGH 15
LEXINGTON SQUARE SUBDIVISION
SCHAUMBURG, ILLINOIS

92482143