

Mortgage Assignment of Rents, Security Agreement and Financing Statement

7421467 DBK 200

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") is made as of July 28, 1993 by Mortgagee shall issue partial releases of Lien applicable to any portion of unit of the Premises upon receipt of 85% of the Gross Sale proceeds of the sale of such unit or portion

35/AMK not personally

- Initials: [ ] but as Trustee under Trust Agreement dated [ ] 18 [ ] and known as Trust No. [ ] [ ] and [ ] [ ] [ ] (X) 1340 State Parkway Limited Partnership in Illinois limited partnership. [ ]

COOK COUNTY, ILLINOIS FILED FOR RECORD 03 AUG -3 AM 9:50

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d/b/a [ ] general partnership or joint venture [ ]

("Mortgagor") whose mailing address is 3257 North Sheffield, Chicago, Illinois 60657

in favor of Bank One, Chicago, NA ("Mortgagee"), whose mailing address is 208 S. LaSalle Street, Suite 10, Chicago, Illinois 60604

Mortgagor or [ ] is justly indebted to the Mortgagee including, without limitation, the principal sum of Three Million Three Hundred Fifty Thousand dollars and no/100

Dollars (\$ 3,350,000.00) as evidenced by a certain PROMISSORY NOTE of even date herewith ("Note"), made payable to the order of and delivered to the Mortgagee, whereby the obligor promises to pay the Note, late charges, prepayment premiums (if any) and interest at the rate or rates, all as provided in the Note. The final payment of principal and interest, if not sooner paid, renewed, modified, extended or renegotiated shall be due on August 1, 1994. All such payments on account of the indebtedness secured hereby shall be applied first to interest on the unpaid principal balance of the Note, secondly to any other sums due thereunder, thirdly to all other advances and sums secured hereby, and the remainder in principal.

Mortgagor, (i) in order to secure the payment of said principal sum of money and said interest and late charges and prepayment premiums, (if any, fees and expenses, in accordance with the terms, provisions and limitations of this Mortgage and of the Note; (ii) either directly or indirectly as evidenced by a guaranty of payment of performance executed by the Mortgagor or beneficiary of Mortgage and the performance of the covenants and agreements herein contained by the Mortgagor to be performed; (iii) as security for repayment of any and all other liabilities and obligations of Mortgagor or its beneficiary now or hereafter due Mortgagee, whether direct or indirect, specific or contingent, primary or secondary, joint or several; and (iv) in consideration of the sum of ONE DOLLAR (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, Mortgagor does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee and its successors and assigns, the following described real estate and all of its present and hereafter acquired estate, title and interest therein, lying and being in the County of

Cook and State of Illinois to wit:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A"

Commonly known as 1340 State Parkway, Chicago, Illinois which, with the property hereinafter described, is collectively referred to herein as the "Premises."

This Instrument Prepared By: Susan Fogel

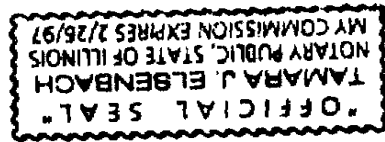
and Shall be Returned to [ ] Banc One Illinois Corporation

Att: Susan Fogel Banc One Illinois Corporation 208 S. LaSalle Street, Suite 10 Chicago, Illinois 60604

Real Estate Tax I.D. No. [ ]

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*Tamara J. Elsenbach*  
day of July 28 1993

GIVEN under my hand and notary seal this \_\_\_\_\_ day of \_\_\_\_\_ 1993  
and personally known to me to be the same person(s) whose name(s) (is/are) subscribed to the foregoing instrument, appeared before me the day in person, and acknowledged that (s)he (they) signed, sealed and delivered the said instrument as (he/she/their) free and voluntary act, for the use and purpose and in the capacity (if any) therein set forth.

the said County, in the State aforesaid, do hereby certify that Bruce Abrams  
a Notary Public in and for and residing in \_\_\_\_\_

STATE OF ILLINOIS }  
COUNTY OF COOK }  
the undersigned

933684771

Property of Cook County Clerk's Office

### INDIVIDUALS:

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

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

ATTEST: \_\_\_\_\_

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

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

a \_\_\_\_\_ (state) corporation

### CORPORATION:

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

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

Trust No. \_\_\_\_\_ and not personally.

as Trustee under Agreement dated \_\_\_\_\_ 19 \_\_\_\_\_ and known as \_\_\_\_\_

### LAND TRUST:

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

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

\* BY: 1340 State Parkway, Inc., an Illinois corporation, General Partner

a n Illinois Limited (state) (limited/general) partnership,

(name of partnership or joint venture)

1340 State Parkway Limited Partnership

### PARTNERSHIP/JOINT VENTURE:

The Mortgagor has executed the instrument as of the day and year first above written.

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deposited, accompanied by the bills for such taxes or assessments or evidence of payment. Mortgagee shall not be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

**5. INSURANCE.** Mortgagor shall keep all buildings and improvements and the Collateral (defined in Paragraph 27 below) now or hereafter situated on said Premises insured against loss or damage by fire on a so-called "All Risks" basis and against such other hazards as may reasonably be required by Mortgagee, including without limitation of the generality of the foregoing: (a) rent loss or business interruption insurance whenever in the opinion of Mortgagee such protection is necessary; and (b) flood insurance whenever same is available and, in the opinion of Mortgagee, such protection is necessary. Mortgagor shall also provide insurance coverages with such limits for personal injury and death and property damage as Mortgagee may require. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with waiver of subrogation and replacement cost endorsements and a standard non-contributory mortgagee clause attached to all policies, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver all original policies, including additional and renewal policies, to Mortgagee and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure of the lien Mortgagee, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be.

Within ninety (90) days following the end of each fiscal year of Mortgagor, at the request of the Mortgagee, Mortgagor agrees to furnish evidence of replacement cost, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building(s) and other improvements on the Premises.

**6. ADJUSTMENT OF LEASES WITH INSURER AND APPLICATION OF PROCEEDS OF INSURANCE.** In case of the loss or damage by fire or other casualty, Mortgagee is authorized: (a) to settle and adjust any claim under insurance policies which insure such risks; or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance monies so long as: (a) each lease applicable to the premises is in full force and effect and each tenant thereunder is not in default and such loss or damage shall not result in the termination or cancellation of any of those leases or give any tenant thereunder the right to terminate or cancel its lease; (b) no insurer denies liability as to any insured or claims any right of participation in any of the Mortgagee's security; and (c) this Mortgagee is not in default; then such insurance proceeds, after deducting therefrom any expense incurred by Mortgagee in the collection thereof, shall be made available by the Mortgagor for the repair, rebuilding or restoration of the building(s) and other improvement(s) on the Premises. In all other cases, such insurance proceeds may, at the option of the Mortgagee, be: (a) applied in reduction of the indebtedness, whether due or not; or (b) held by the Mortgagee and used to reimburse Mortgagor (or any lessee) for the cost of the repair, rebuilding or restoration of the building(s) and other improvement(s) on the Premises. In any event, the building(s) and other improvement(s) shall be repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the insurance proceeds are made available for repair, rebuilding or restoration, such proceeds shall be disbursed upon the "Disbursing party" (hereinafter defined) being furnished with satisfactory evidence of the cost of completion thereof and with architect's certificates, waivers of lien, contractors' and subcontractors' sworn statements, title commitments and other evidence of cost and payments so that the Disbursing Party can verify that the amounts disbursed from time to time are represented by completed and in-place work and that said work is free and clear of mechanics' lien claims. No payment made prior to the final completion of the work shall exceed ninety per cent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of the Disbursing Party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If the cost of rebuilding, repairing or restoring the buildings and other improvements may reasonably exceed the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), then the Mortgagee must approve plans and specifications for such work before such work shall be commenced. Any surplus which may remain out of said insurance proceeds, after payment of the cost or repair, rebuilding, restoration and the reasonable charges of the Disbursing Party, shall at the option of the Mortgagee, be applied on account of the indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on any proceeds of insurance held by the Disbursing Party.

As used in this Paragraph 6, the term "Disbursing Party" refers to the Mortgagor and/or any title insurance company selected by the Mortgagee.

**7. STAMP TAX; EFFECT OF CHANGES IN LAWS REGARDING TAXATION.** If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, any tax is due or becomes due in respect to the Note or this Mortgage, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

In the event of the enactment of any law of the state in which the Premises are located imposing upon the Mortgagee the payment of the whole or any part of taxes, assessments or charges on the lien of this Mortgage, 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 debt 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 the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by 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 to be and become due and payable sixty (60) days from the giving of such notice.

**8. OBSERVANCE OF LEASE ASSIGNMENT.** As additional security for the payment of the Note and for the faithful performance of the terms and conditions contained herein, Mortgagor and its beneficiary or beneficiaries do hereby assign to the Mortgagee all of their right, title and interest as landlords in and to the present leases and all future leases of the Premises. All leases of the Premises are subject to the approval of the Mortgagee as to form, content and tenant(s).

Mortgagor will not and Mortgagor's beneficiary or beneficiaries will not, without Mortgagee's prior written consent: (i) execute assignment or pledge of any rents or any leases of the Premises except an assignment or pledge securing the indebtedness in favor of Mortgagee; or (ii) accept any payment of any installment of rent more than thirty (30) days before the due date thereof; or (iii) make any lease of the Premises except for actual occupancy by the tenant thereunder.

Mortgagor shall not and the beneficiary of Mortgagor, if any, shall not enter into or permit to be entered into any management contract, assignment or sublease of any lease, license or concession pertaining to the Premises without the prior written approval of Mortgagee having first been obtained and following such approval shall not amend or modify the same without further written approval of Mortgagee.

Mortgagor at its sole cost and expense will: (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of the Premises, on the part of the landlord thereunder to be kept and performed; (ii) enforce or secure the performance of all of the covenants, conditions, and agreements of such leases on the part of the tenants to be kept and performed, but Mortgagor shall not and Mortgagor's beneficiary or beneficiaries shall not modify, amend, cancel, terminate or accept surrender of any lease without prior written consent of Mortgagee; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the landlord or of any tenants thereunder; (iv) transfer and assign or cause to be separately transferred and assigned to Mortgagee, upon written request of Mortgagee, any lease or leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all tenants and the terms of all leases of the Premises, including the spaces occupied and the rentals payable thereunder; and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the tenant under any lease of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the Note secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of the landlord under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay or cause to be performed and paid.

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28. LITIGATION CHARGES AND THE LIKE. So long as the original Mortgage named on Page 1 hereof is the owner of the Note, and regardless of whether any proceeds of the loan advanced by the Note have been disbursed, the Mortgagee shall require the owner of the Note, and all persons claiming under or through the Mortgagee, to pay all taxes, assessments and charges arising out of or in connection with the execution, delivery, filing, recording and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording and registration of the Note, this Mortgage and all other documents securing the Note and all assignments thereof.

25. BUSINESS PURPOSE; USURY EXEMPTION. Mortgagee hereby represents, or if applicable Mortgagee has been advised by its beneficiaries, that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Paragraph B-04 of Chapter 17 of the 1981 Illinois Revised Statutes, and that the principal obligation secured hereby constitutes a "business loan" which comes with the purchase and operation of said paragraph.

29. MISCELLANEOUS; BINDING NATURE. This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagee named on Page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the Premises and all persons claiming under or through Mortgagee, and the word "Mortgagee" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the Note, direct or indirect.

26.1 Release of Previous Holder. The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on Page 1 hereof, and the holder or holders, from time to time, of the Note. However, whenever the Note is sold, each prior holder shall be automatically released and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder insofar as to be performed, provided that any monies in which the Mortgagee has an interest, which monies are then held by the seller of the Note, are turned over to the purchaser of the Note.

26.2 Severability and Applicable Law. In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note or other document and the Mortgage, the Note or other document shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein or therein. The validity and interpretation of this Mortgage and the Note it secures are to be construed in accordance with and governed by the laws of the State in which the Premises are situated.

26.3 Governmental Compliance. Mortgagee shall, not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagee hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagee shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagee which would result in a violation of any of the provisions of this paragraph shall be void.

26.4 Escrowed Certificate. Mortgagee, within fifteen (15) days after making of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the indebtedness and whether or not any default, offset or defense then is alleged to exist against the indebtedness and, in so specifying the nature thereof.

26.5 Non-Joiner of Tenant. After an event of default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order of judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their rights shall not be asserted by the Mortgagee as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after the foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

26.6 Evaluation of Prepayment Premium. If maturity of the indebtedness accelerated by the Mortgagee because of an event of default, as herein provided, and a tender of payment is made by or on behalf of the Mortgagee or an amount necessary to satisfy the indebtedness at any time prior to judicial confirmation of foreclosure sale, such tender shall constitute an election of the prepayment premium provided for in the Note, if any, and shall be treated as a prepayment thereunder. Any such tender must therefore include the prepayment premium, if any required under the Note, or if it then time there is no prepayment privilege provided for in the Note, then such payment will include a prepayment premium of two percent (2%) of the then unpaid principal balance of the Note.

27. SECURITY AGREEMENT AND FINANCING STATEMENT. Mortgagee and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State in which the Premises are located with respect to all sums on deposit with the Mortgagee pursuant to Paragraph 6 and 18 hereof ("Deposits"), and with respect to any property included in the definition herein of the word "Premises," which property may not be deemed to form a part of the real estate (as provided in EXHIBIT "A," or may constitute a fixture (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, books and records relating to the Premises and operation thereof (said property, substitutions, additions, replacements, additions, and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagee's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the indebtedness and to secure performance by the Mortgagee of the terms, covenants and provisions hereof.

In the event of a default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that the Mortgagee shall proceed with respect to the Collateral separately from the real property, five (5) days notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaining, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorney's fees and legal expenses incurred by Mortgagee including in house staff. The Mortgagee agrees that, without the written consent of the Mortgagee, the Mortgagee will not remove or permit to be removed from the Premises any of the Collateral except that as long as the Mortgagee is not in default hereunder, Mortgagee shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessarily for use in the operation of the business of the Mortgagee, and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Mortgagee shall be perfected and first in priority. It being expressly understood and agreed that all replacements, additions and substitutions an additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagee shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee all the cost of the Mortgagee: (i) such further financing statements and security documents and assurances as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. The Mortgagee covenants and represents that all Collateral now, and that all replacements thereof, substitutions thereof or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

The Mortgagee and Mortgagee agree, to the extent permitted by law, that this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code.

If the Collateral is sold in connection with a sale of the Premises, Mortgagee shall notify the Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agree to assume Mortgagee's obligation as to the security interests herein granted and to execute whatever agreements and things are deemed necessary by the Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral, Deposits and the deposits described in Paragraph 4 above.

28. LITIGATION CHARGES AND THE LIKE. So long as the original Mortgage named on Page 1 hereof is the owner of the Note, and regardless of whether any proceeds of the loan advanced by the Note have been disbursed, the Mortgagee shall require the owner of the Note, and all persons claiming under or through the Mortgagee, to pay all taxes, assessments and charges arising out of or in connection with the execution, delivery, filing, recording and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording and registration of the Note, this Mortgage and all other documents securing the Note and all assignments thereof.

25. BUSINESS PURPOSE; USURY EXEMPTION. Mortgagee hereby represents, or if applicable Mortgagee has been advised by its beneficiaries, that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in Paragraph B-04 of Chapter 17 of the 1981 Illinois Revised Statutes, and that the principal obligation secured hereby constitutes a "business loan" which comes with the purchase and operation of said paragraph.

29. MISCELLANEOUS; BINDING NATURE. This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagee named on Page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the Premises and all persons claiming under or through Mortgagee, and the word "Mortgagee" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the Note, direct or indirect.

26.1 Release of Previous Holder. The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on Page 1 hereof, and the holder or holders, from time to time, of the Note. However, whenever the Note is sold, each prior holder shall be automatically released and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder insofar as to be performed, provided that any monies in which the Mortgagee has an interest, which monies are then held by the seller of the Note, are turned over to the purchaser of the Note.

26.2 Severability and Applicable Law. In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note or other document and the Mortgage, the Note or other document shall be construed as if such invalid, illegal or unenforceable provision had never been contained therein or therein. The validity and interpretation of this Mortgage and the Note it secures are to be construed in accordance with and governed by the laws of the State in which the Premises are situated.

26.3 Governmental Compliance. Mortgagee shall, not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagee hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be used. Similarly, no lands or improvements comprising the Premises shall be included with any lands or improvements not subject to the lien of this Mortgage in fulfillment of any governmental requirement. Mortgagee shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagee which would result in a violation of any of the provisions of this paragraph shall be void.

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**29. DUE ON SALE OR FURTHER ENCUMBRANCE CLAUSE.** In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor and/or Mortgagor's beneficiary or guarantors (if applicable), found the same to be acceptable and relied and continues to rely upon same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagor and/or its beneficiary or guarantor (if applicable) in owning and operating property such as the Premises, found the same to be acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the loan. It is recognized that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan the security for which is purchased by its party other than the original Mortgagor and/or its beneficiary (if applicable). Mortgagor and/or its beneficiary (if applicable) further recognize that any secondary or junior financing placed upon the Premises, or the beneficial interest of beneficiary in Mortgagor (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in satisfaction and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purpose of (i) protecting Mortgagee's security, both of repayment by the indebtedness and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor and/or beneficiary (if applicable) and Mortgagee; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises and the beneficial interest (if applicable) free of subordinate financing liens, beneficiary (if applicable) and Mortgagor agree that if this Paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be an event of default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default hereunder:

- (a) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises or the beneficial interest or power of direction under the trust agreement with the Mortgagor, if applicable;
- (b) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of the Mortgagor, (if a corporation) or the corporation which is the beneficiary or one of the beneficiaries under the trust agreement with the Mortgagor, or of any corporation directly or indirectly controlling such beneficiary corporation;
- (c) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any general partnership interest of the limited partnership or general partnership herein called the "Partnership" which is the Mortgagor or the beneficiary or one of the beneficiaries under the trust agreement with the Mortgagor;
- (d) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of any corporation directly or indirectly controlling any such Partnership.

Any consent by the Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

**30. HAZARDOUS MATERIALS.** Mortgagor and its beneficiary (for purposes of this paragraph, collectively "Mortgagor") represents, warrants and covenants that Mortgagor has not used Hazardous Materials (as defined hereinafter) 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 that, to the best of Mortgagor's knowledge, no prior owner of the Premises or any tenant, subtenant, prior tenant or prior subtenant have 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. Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials. Without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, store, manufacture, refine, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or 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 or subtenant, a release of Hazardous Materials onto the Premises or onto any other property. Mortgagor shall comply with and ensure compliance by all tenants and subtenants with all applicable federal, state or local laws, ordinances, rules and regulations, whenever and by whomsoever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. Mortgagor shall (a) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Premises (i) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, (ii) to the satisfaction of Mortgagee, and (iii) in accordance with the orders and directives of all federal, state and local governmental authorities, and (b) defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, 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 which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (ii) any personal injury (including wrongful death) or property damage real or personal arising out of or related to such Hazardous Materials; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, and/or (iv) any violation of laws, orders, regulations, requirements, or demands of government authorities, or any policies or requirements of Mortgagee, which are based upon or in any way related to such Hazardous Materials including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. In the event Mortgagee is foreclosed, or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Premises to Mortgagee free of any and all Hazardous Materials, so that the condition of the Premises shall conform with all applicable federal, state or local laws, ordinances, rules, regulations affecting the Premises. For purposes of this paragraph 30, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous, regulated toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 6901, 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. Sections 6901, et seq.); and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation. Mortgagor shall secure all permits and approvals and file all notifications required under state and local laws, ordinances and regulations prior to undertaking asbestos abatement activities. The provisions of this paragraph 30 shall be in addition to any and all other obligations and liabilities Mortgagor may have to Mortgagee at common law, and shall survive the transactions contemplated herein.

Initials:

**31. REVOLVING CREDIT.** In the event that the box is checked to signify that this Mortgage secures a revolving credit note, this Mortgage shall secure not only the existing indebtedness, 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 years from the date hereof, to the same extent as if such future advances were made on the date of 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 outstanding at the time any advance is made. The total amount of indebtedness that is secured hereby may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed a maximum principal amount of the Note, plus interest thereon, and any disbursements made for the payment of taxes, special assessments, or insurance on the Premises, with interest on such disbursements.

**32. EXCULPATORY.** In the event the Mortgagor executing this Mortgage is an Illinois land trust, this Mortgage is executed by the Mortgagor, not personally, but as Trustee aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee and the Mortgagor hereby warrants that it possesses full power and authority to execute this instrument and it is expressly understood and agreed that nothing contained herein or in the Note shall be construed as creating any liability on the Mortgagor personally to pay the Note or any interest, late charge or premium that may accrue thereon, or any indebtedness secured by this Mortgage, or to perform any covenant, either express or implied herein contained, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as Mortgagor is personally concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness secured hereby shall look solely to the Premises and Collateral hereby mortgaged, conveyed and assigned and to any other security given at any time to secure the payment thereof.

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4. MORTGAGEE'S INTEREST IN AND USE OF TAX AND INSURANCE DEPOSITS; SECURITY INTEREST. In the event of a default hereunder, the Mortgagee may, at its option but without being required so to do, apply any monies at the time of deposit pursuant to Paragraphs 3 and 4 hereof as an offset against any obligations contained herein or in the Note, in such order and manner as the Mortgagee may elect. When the indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagee or to the then owner or owners of the Premises in the amount appear on the record of the Mortgage. A security interest, within the meaning of the Uniform Commercial Code of the State in which the Premises are located, shall be granted to the Mortgagee and to all monies at any time on deposit pursuant to Paragraphs 3 and 4 hereof and such monies and all of Mortgagee's right, title and interest are hereby assigned to Mortgagee, all as additional security for the indebtedness hereunder and shall, in the absence of default, revert to the Mortgagee for the purposes for which made hereunder and shall be subject to the direction or control of the Mortgagee. However, the Mortgagee shall not be liable for any failure to apply to the payment of taxes or assessments or insurance premiums any amount deposited under this Mortgage, which shall be the responsibility of the Mortgagor, and Mortgagee shall not be liable for any failure to apply to the payment of such taxes or assessments or insurance premiums in writing to make application of such funds to the purpose for which they were

3. INSURANCE DEPOSITS. For the purpose of providing funds with which to pay premiums when due on all policies of fire and other hazard insurance covering the Premises and the Collateral (defined below) and unless waived from time to time by Mortgagee in writing, Mortgagee shall deposit with the mortgagee, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs (unless otherwise agreed to by Mortgagee), a sum equal to the amount of such taxes next due or for the Premises (the amount to be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed) reduced by the amount, if any, then on deposit with the Mortgagee, as well as the amount of such taxes or assessments, and Mortgagee shall not have the right to apportion the amount of any such taxes or assessments for the purpose of such computation. If such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 3 shall be based upon the entire amount of such taxes or assessments, and Mortgagee shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, if any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof.

Anything in this Paragraph 3 to the contrary notwithstanding, if the funds so deposited are insufficient to pay any such taxes or assessments (general or special) or any installment thereof, Mortgagee will, not later than the thirtieth (30th) day prior to the first day on which the same may be paid without penalty or interest, deposit with the Mortgagee the full amount of any such deficiency.

3. TAX DEPOSITS. Unless waived from time to time by Mortgagee in writing, Mortgagee shall deposit with the Mortgagee, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs (unless otherwise agreed to by Mortgagee), a sum equal to the amount of all real estate taxes and assessments (general and special) next due upon the property or interest in the Mortgagee, as well as the amount of such taxes or assessments, and Mortgagee shall not have the right to apportion the amount of any such taxes or assessments for the purpose of such computation. If such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 3 shall be based upon the entire amount of such taxes or assessments, and Mortgagee shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, if any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof.

2. PAYMENT OF TAXES. Mortgagee shall pay all general taxes before any penalty or interest attaches, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts thereof within thirty (30) days following the date of payment; Mortgagee shall pay in full, under protest, any tax or assessment which Mortgagee may desire to contest, in the manner provided by law.

Anything in (c) and (d) above to the contrary notwithstanding, Mortgagee may, in good faith and with reasonable diligence, contest the validity or amount of any lien not expressly subordinated to the lien hereof, and defer payment and discharge (hereof) during the pendency of such contest, provided (i) that such contest shall have the effect of preventing the sale or foreclosure of the Premises or any part thereof, or any interest therein, to satisfy such lien; (ii) that, within ten (10) days after Mortgagee has been notified of the assertion of such lien, Mortgagee shall have notified Mortgagee in writing of Mortgagee's intention to contest such lien; and (iii) the Mortgagee shall have deposited with Mortgagee, a sum of money which shall be sufficient in the judgment of Mortgagee, such that the amount of such lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount, to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable. Such deposits are to be held without any allowance or interest, and Mortgagee shall not be held without any allowance or interest to pay any such taxes or assessments (general and special) on the first day of each month following the month in which said disbursement occurs (unless otherwise agreed to by Mortgagee), a sum equal to the amount of all real estate taxes and assessments (general and special) next due upon the property or interest in the Mortgagee, as well as the amount of such taxes or assessments, and Mortgagee shall not have the right to apportion the amount of any such taxes or assessments for the purpose of such computation. If such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 3 shall be based upon the entire amount of such taxes or assessments, and Mortgagee shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, if any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof.

1. MAINTENANCE, REPAIR AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC., MORTGAGOR SHALL: (a) promptly repair, restore or rebuild any buildings and other improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability of any casualty insurance proceeds or eminent domain awards; (b) keep the Premises constantly in good condition and repair, without waste; (c) keep the Premises free from mechanics' liens or other liens or claims for not expressly subordinated to the lien hereof (collectively called "Liens"), subject, however, to the rights of the Mortgagee set forth in the next Paragraph below; (d) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises on a discharge of such lien to Mortgagee; (e) complete within a reasonable time any building(s) or other improvement(s) now or at any time in process of erection upon the Premises; (f) comply with all federal, state and local requirements of law, regulations, ordinances, orders and judgments and all covenants, easements and restrictions of record with respect to the Premises and the use thereof; (g) make no alterations in the Premises without Mortgagee's prior written consent; (h) suffer or permit no change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent; (i) observe and comply with all conditions and requirements (if any) necessarily to preserve and extend all rights, easements, licenses, permits (including zoning variations and any non-conforming uses and structures), privileges, franchises and concessions applicable to the Premises or connected for in connection with any present or future use of the Premises; and (j) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof and of the Note. As used in this Paragraph and elsewhere in the Mortgage, the term "indebtedness" means and includes the unpaid principal sum evidenced by the Note, together with all interest, additional interest, late charges and prepayment premiums thereon, (if any) and all other sums at any time secured by this Mortgage.

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successors and assigns forever, for the purpose and uses herein set forth.

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Loan Documents a Default shall not occur hereunder or under any other Loan Documents unless and until Bank has given written notice of such Default to Uncle Sam and such Default remains uncured for ten (10) days. and the sum of such expenditures shall be secured by this Mortgage, and shall bear interest after demand at the rate specified in the Note applicable to a period when an uncured default exists thereunder, and such interest shall be secured hereby and shall be due and payable on demand.

**14. APPLICATION OF PROCEEDS OF FORECLOSURE SALE.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order or priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Paragraph hereof; second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any excess to any party entitled thereto as their rights may appear.

**15. APPOINTMENT OF RECEIVER OR MORTGAGEE IN POSSESSION.** Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee or any holder of the Note may be appointed as such receiver as Mortgagee in possession. Such receiver or the Mortgagee in possession shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when, Mortgagor, except for the intervention of such receiver or Mortgagee in possession, would be entitled to collect such rents, issues and profits, and all other powers which be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver or Mortgagee in possession to apply the net income in its hands in payment in whole or in part of: (a) the indebtedness secured hereby or by any order or judgement foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or the lien of such order of judgement, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

**16. RIGHTS CUMULATIVE.** Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, given now or hereafter existing at law and in equity; and each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee; and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of, or default in, or by, the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

**17. MORTGAGEE'S RIGHT OF INSPECTION.** Mortgagee, its representatives, agents or participants shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

**18. EMINENT DOMAIN AND/OR CONDEMNATION.** Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. So long as: (a) any applicable lease is in full force and effect and each tenant thereunder is not in default and such taking shall not result in the termination or cancellation of any of those leases or given any tenant thereunder the right to cancel its lease; (b) the Premises require repair, rebuilding or restoration; and (c) this Mortgage is not in default; then any award, after deducting therefrom any expenses incurred in the collection thereof, shall be made available by the Mortgagee for the repair, rebuilding or restoration of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee.

In all other cases, the Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness, whether due or not, or make those proceeds available for repair, restoration or rebuilding of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee. In any case where proceeds are made available for repair, rebuilding or restoration, the proceeds of the award shall be paid out in the same manner and under the same conditions provided in Paragraph 6 hereof for the payment of insurance proceeds toward the cost of repair, rebuilding or restoration. Any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party shall, at the option of Mortgagee, be applied on account of the indebtedness or paid to any party entitled thereof as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on account of any proceeds of any award held by the Mortgagee.

**19. RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS.** Mortgagee shall release (in whole or partially) this Mortgage and the lien (in whole or partially) by proper instrument upon payment and discharge of all indebtedness (or applicable agreed portion) secured hereby (including any prepayment charges and late charges provided for herein or in the Note) and upon payment of a reasonable fee to Mortgagee for the preparation and execution of such proper instrument as shall be determined by Mortgagee in its absolute discretion.

**20. GIVING OF NOTICE.** Any notice which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof, by certified mail addressed to the Mortgagor or to the Mortgagee, as the case may be, at the respective addresses set forth on the first page hereof or at such other place as any party hereto may by notice in writing designate as a place of notice, shall constitute service of notice hereunder.

**21. WAIVER OF DEFENSE.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note.

**22. WAIVER OF STATUTORY RIGHTS.** Mortgagor shall not and will not (nor shall any beneficiary of Mortgagee) apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, including its beneficiary, 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. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgement of foreclosure of the lien of this Mortgage on behalf of the Mortgagor, the trust estate and all persons beneficially interested therein and each and every person, except judgement creditors of the Mortgagor in its representative capacity and of the trust estate, acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

**23. FURNISHING OF FINANCIAL STATEMENTS TO MORTGAGEE.** Mortgagor covenants and agrees that it will keep and maintain, or cause its beneficiary or beneficiaries from time to time to keep and maintain, books and records of account in which full, true and correct entries shall be made of all dealings and transactions relative to the Premises, which books and records of account shall, at reasonable times and on reasonable notice, be open to the inspection of the Mortgagee and its accountants and other duly authorized representatives. Such books of record and account shall be kept and maintained in accordance with generally accepted accounting principles consistently applied.

**23.1** Mortgagor covenants and agrees to furnish to the Mortgagee, within ninety (90) days following the end of every fiscal year applicable to the operation of the improvements on the Premises, a copy of a report of the operations of the improvements on the Premises for the year then ended, to be certified by the Mortgagor or its beneficiary (or a general partner, if the beneficiary of Mortgagee is a partnership or the chief financial officer if the beneficiary of Mortgagee is a corporation) satisfactory to the Mortgagee, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses. Each such certificate to each such annual report shall certify that the certifying party examined such records as were deemed necessary for such certification and those statements are true, correct and complete.

**23.2** If Mortgagor fails to furnish promptly any report required by Paragraph 23.1, the Mortgagee may elect (in addition to exercising any other right, remedy and power) to make an audit of all books and records of Mortgagor and its beneficiaries which in any way pertain to the Premises and to prepare the statement or statements which Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent Certified Public Accountant to be selected by the Mortgagee. Mortgagor shall pay all expenses of the audit and other services which expenses shall be secured hereby as additional indebtedness and shall be immediately due and payable with interest thereon at the rate set forth in the Note applicable to a period when default exists thereunder.

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At all times, the Mortgagee shall appear in and defend any suit, action or proceeding that might in any way in the sole judgment of Mortgagee affect the value of the Premises, the priority of the Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the indebtedness. Mortgagee shall, at all times, defend, hold harmless and reimburse the lender for any and all loss, damage, expense or cost, including cost of enforcement, incurred by the lender in connection with the loan, including any such suit, action or proceeding.

13. FORECLOSURE; EXPENSES OF LITIGATION. When the indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose, the lien herein for such indebtedness or part thereof in any civil action or proceeding, the lien hereon, there shall be allowed and included as additional indebtedness in the order of judgment for foreclosure and sale at public auction and expenses which may be paid or incurred by or on behalf of Mortgagee including, without limitation, expenses for attorney's fees, including those of in-house counsel, appraiser's fees, outlays for documentation and expert evidence, attorneys' charges, publication costs and costs (which may be estimated as to items to be expended after entry of said order of judgment) of procuring all such abstracts or title, title searches and examinations, title insurance policies, Certificates and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title as may be incurred in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by Mortgagee, with interest thereon at the rate set forth in the Note applicable to a period when a default exists hereunder, and shall be secured by this Mortgage.

12. ACCCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT. (a) Default shall be made in the due and punctual payment of principal or interest on the Note, or any other payment due in accordance with the terms thereof, or (b) the Mortgagee or any guarantor of any guarantor of the Note shall file (i) a petition for liquidation, reorganization or adjustment of debt under Title 11 of the United States Code (11 U.S.C. §§ 101 et seq.) or any similar law state or federal, whether now or hereafter existing, or (ii) any answer concerning insolvency or inability to pay debt, or (iii) fail to obtain a vacation or stay of involuntary proceedings within ten (10) days, as hereinafter provided; or (c) any order for relief of the Mortgagee or any guarantor of any guarantor of the Note shall be entered in any case Title 11 of the United States Code, or a trustee or a receiver shall be appointed for the Mortgagee or for any guarantor of the Note, or for all or the major part of the property of Mortgagee or of any guarantor of the Note in any voluntary or involuntary proceedings for the property of the Mortgagee or of any guarantor of the Note in any voluntary or involuntary proceedings for the property of the Mortgagee or of any guarantor of the Note and such trustee or receiver shall not be discharged or such jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed within ten (10) days, or (d) the Mortgagee or any guarantor of the Note secured hereon shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator or of all or any part of its property, (e) default shall be made in the due observance or performance of any other covenant, agreement or condition hereunder or hereinafter contained and required to be kept or performed or observed by the Mortgagee or its beneficiary, (f) default shall be made in the due observance or performance of any other covenant, agreement or condition hereunder or hereinafter contained and required to be kept or performed or observed by Mortgagee or its beneficiary, to be made in the due observance or performance of any covenant, agreement or condition required to be kept or observed by Mortgagee or its beneficiary, to be made in the due observance or performance of any covenant, agreement or condition hereunder or hereinafter contained and required to be kept or observed by Mortgagee or its beneficiary, the whole of the indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without notice to such event, if while any insolvency proceedings or condemnation awards are held by or for the Mortgagee to reimburse Mortgagee or any leasee for the cost of repair, rebuilding or restoration of buildings) or other improvements) on the Premises, as set forth herein, the Mortgagee shall be or become entitled to accelerate the maturity of the indebtedness, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the indebtedness, and any excess held by it over the amount of the indebtedness shall be paid to Mortgagee or any party entitled thereto, without interest, as the same appear on the records of the Mortgagee.

11. MORTGAGEE'S RELIANCE ON TAX BILLS, ETC. Mortgagee, in making any payment hereon authorized by this Mortgage, may do so according to the accuracy of any computer or billing service, bill, statement or estimate or into the hands of any tax, reassessment, sale, forfeiture, tax lien or title or claim thereof; or (c) for the purchase, discharge, compromise settlement of any other lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

10. MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS. In case of default hereon, Mortgagee may, but need not, make any payment or perform any act hereon required of Mortgagee in any form and manner Mortgagee deems expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or assessment or other prior lien or title claim thereof, or redeem from any tax sale or foreclosure attaching said Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee in regard to protecting the Premises or the lien hereon, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the rate of interest set forth in the Note applicable to a period when a default exists hereunder. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagee.

9. MORTGAGE AND LIEN NOT RELEASED. From time to time Mortgagee may, at the Mortgagee's option, without giving notice to or obtaining the consent of Mortgagee, its beneficiary, or Mortgagee's successors or assigns or the consent of any junior lien holder, guarantor or tenant, without liability on Mortgagee's part and notwithstanding Mortgagee's breach of any covenant, agreement or condition, (a) release anyone primarily or secondarily liable on any of the indebtedness; (b) accept a renewal note or notes of the Note; (c) release from the lien of this Mortgage any part of the Premises; (d) take or release other or additional security for the indebtedness; (e) consent to any plat, map or plan of the Premises or Declaration of Premises; (f) agree in writing with Mortgagee to modify the rate of interest or period of amortization of the Note or change the time of payment or the amount of the installment payments payable thereunder; and (f) waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to, with or secure the payment of the indebtedness.

Any actions taken by Mortgagee pursuant to the terms of this Paragraph 9 shall not impair or affect: (a) the obligation of Mortgagee or Mortgagee's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the indebtedness; and (c) the lien or priority of the lien hereon against the Premises.

Mortgagee shall pay to Mortgagee a reasonable service charge and such title insurance premiums and attorney's fees (including in-house title) as may be incurred by Mortgagee for any action described in this Paragraph 9 taken at the request of Mortgagee or its beneficiary or beneficiaries.

10. MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS. In case of default hereon, Mortgagee may, but need not, make any payment or perform any act hereon required of Mortgagee in any form and manner Mortgagee deems expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or assessment or other prior lien or title claim thereof, or redeem from any tax sale or foreclosure attaching said Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee in regard to protecting the Premises or the lien hereon, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the rate of interest set forth in the Note applicable to a period when a default exists hereunder. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagee.

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