

UNOFFICIAL COPY

91179008

(2)

207258

91179008

JUNIOR MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS JUNIOR MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, ASSIGNMENT OF CONTRACTS, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") is made as of this 13th day of January, 1994, by KOSOH Housing Limited Partnership, an Illinois limited partnership ("Partnership") and Cole Taylor Bank, not personally but solely as trustee under trust agreement dated October 30, 1990 and known as trust number 90-3016 ("Trustee") (Partnership and Trustee are hereinafter collectively referred to as "Mortgagor"), to the City of Chicago, Illinois together with its successors and assigns, having its principal office at 121 North LaSalle Street, Chicago, Illinois 60602 ("Mortgagee").

All capitalized terms, unless defined herein, shall have the same meanings as are set forth in that certain Housing Loan Agreement dated even date herewith between Mortgagor and Mortgagee (herein as the same may be amended, supplemented or restated from time to time called the "Loan Agreement").

W I T N E S S E T H:

WHEREAS, Mortgagor has concurrently herewith executed and delivered a promissory note bearing even date herewith, in the principal sum of One Hundred Forty-Seven Thousand Nine Hundred Eighty-Seven Dollars (\$147,987) and made payable to Mortgagee (herein such note together with all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof shall be called the "Note") in which Mortgagor promises to pay said principal sum, plus default interest, if any, thereon at the rate specified in the Note, and the maturity of which note is the first day (the "Maturity Date") of the 179th consecutive calendar month following July 1, 1995; and

WHEREAS, Mortgagee desires to secure repayment of the indebtedness evidenced by the Note, together with default interest, if any, thereon, in accordance with the terms of the Loan Documents and any additional indebtedness or obligations incurred by Mortgagor on account of any future payments, advances or expenditures made by Mortgagee pursuant to the Loan Documents;

NOW, THEREFORE, in order to secure payment of principal and default interest, if any, under the Note and of all other payments due to Mortgagee by Mortgagor under any of the Loan Documents and performance of the covenants and agreements contained in this Mortgage, including any substitutions, extensions or modifications hereto, Mortgagor does grant, assign, convey and mortgage to Mortgagee, its successors and assigns, and grants to Mortgagee, its successors and assigns forever a continuing security interest in and to, all of the following rights, interests, claims and property:

Box 430

9/8

91179008

91179008

UNOFFICIAL COPY

(A) all of the real estate, as more particularly described in Exhibit A attached hereto and hereby made a part hereof, together with all easements, water rights, hereditaments, mineral rights and other rights and interests appurtenant thereto (the "Real Property");

(B) all buildings, structures and other improvements of every kind and description now or hereafter erected, situated or placed upon the Real Property, together with any fixtures or attachments now or hereafter owned by Mortgagor and located in or on, forming part of, attached to, used or intended to be used in connection with or incorporated in the Real Property, including all excensions, additions, betterments, renewals, substitutions and replacements to any of the foregoing (the "Improvements");

(C) any interests, estates or other claims of every name, kind or nature, both at law and in equity, which Mortgagor now has or may acquire in the Real Property, the Improvements, the Equipment (as hereinafter defined) or any of the property described in clauses (D), (E), (G), (H), (I), (J), (K) or (L) hereof;

(D) all of Mortgagor's interest and rights as lessor in and to all leases, subleases and agreements, written or oral, now existing (as more particularly described in Exhibit C attached hereto and hereby made a part hereof) or hereafter entered into, affecting the Real Property, the Improvements, the Equipment or any part thereof, as said leases may have been or may from time to time be hereafter modified, extended and renewed (the "Leases") (provided that the assignment hereby made shall not diminish or impair the obligations of Mortgagor under the provisions of such leases, nor shall such obligations be imposed on Mortgagee);

(E) all rents, issues, profits, royalties, avails, income and other benefits derived or owned by the Mortgagor directly or indirectly from the Real Property or the Improvements (all of the foregoing is herein collectively called the "Rents");

(F) all right, title and interest of Mortgagor in and to all fixtures and personal property now or hereafter attached to, contained in and used or useful in connection with the Real Property or the Improvements, together with all apparatus, systems, fixtures and other items of personal property of every kind and nature, now or hereafter located in, upon or affixed to the Real Property or the Improvements, or used or useful in connection with any present or future operation of the Real Property or the Improvements, including, but not limited to, all apparatus and equipment used to supply heat, gas, air conditioning, water, light, power, refrigeration, electricity, plumbing and ventilation, including all renewals, additions and accessories to and replacements of and substitutions for each and

UNOFFICIAL COPY

9 / 1 / 9

all of the foregoing, and all proceeds therefrom (the "Equipment");

(G) all of the estate, interest, right, title or other claim or demand which Mortgagor now has or may acquire with respect to (i) proceeds of insurance in effect with respect to the Real Property, the Improvements or the Equipment, and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding of all or any portion of the Real Property, the Improvements or the Equipment;

(H) all intangible personal property, accounts, licenses, permits, instruments, contract rights, and chattel paper of Mortgagor, including, but not limited to cash, accounts receivable, bank accounts, certificates of deposit, rights (if any) to amounts held in escrow, deposits, judgments, liens and causes of action, warranties and guarantees, relating to the Real Property, the Equipment or the Improvements or as otherwise required under the Loan Documents;

(I) all other property rights of Mortgagor of any kind or character related to all or any portion of the Real Property, the Improvements or the Equipment;

(J) all Plans and Specifications (as defined in the Loan Agreement) for the rehabilitation of the Project in existence from time to time, together with all revisions and modifications thereof and all drawings and notes related thereto;

(K) all rights of the Mortgagor, if any, under any contracts executed by the Mortgagor with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Real Property or the Improvements, including those documents described in Exhibit D attached hereto and made a part hereof (the "Documents");

(L) any and all permits, approvals, licenses, authorizations, warranties, reports, contracts, subcontracts and agreements now or hereafter entered into relating to the rehabilitation or operation of the Project, including any and all addenda, supplements, amendments and modifications thereto, whether now or hereafter existing; and

(M) the proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding clauses.

All of the property referred to in the preceding clauses (A) through (M) shall be called, collectively, the "Premises."

94179005

UNOFFICIAL COPY

9 . 1 / 9 1 1

IT IS FURTHER agreed, intended and declared that all the aforesaid property rights and interests shall, so far as permitted by law, be deemed to form a part and parcel of the Premises and be covered by this Mortgage.

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

The Loan Agreement is referred to herein as the "Commitment". Mortgagee has bound itself and does hereby bind itself to make advances pursuant to and subject to the terms of the Commitment, and the parties hereby acknowledge and intend that all such advances, including future advances whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(1) of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as amended, supplemented and restated from time to time (the "Act").

If Mortgagor hereunder is described as a trustee under a trust agreement, said trust arrangement constitutes a "land trust" as said term is defined in Section 5/15-1205 of the Act.

To protect the security of this Mortgage, Mortgagor further covenants and agrees as follows.

(1) **Principal.** Mortgagor shall pay promptly when due the principal of the Note and any other sums required to be paid on the Note or under the other Loan Documents at the times and in the manner provided therein and shall pay any other indebtedness secured hereby as the same becomes due and shall perform and observe all of the covenants, agreements and provisions contained herein and in the other Loan Documents.

Mortgagor shall pay promptly when due any sums due under the Senior Loan Documents and shall perform promptly and fully any acts required under the Senior Loan Documents. Mortgagor will not, without prior written consent of Mortgagee, modify, extend or amend the Senior Loan Documents, increase the amount of the indebtedness secured thereby or change the repayment terms of such indebtedness except as has already been disclosed to the City. Mortgagor shall promptly give Mortgagee a copy of any notice received by Mortgagor from Senior Lender or given by Mortgagor to Senior Lender pursuant to any of the Senior Loan Documents.

(2) **Preservation, Restoration and Use of Premises.** Mortgagor shall:

(a) promptly repair, restore, replace or rebuild any portion of the Premises which may become damaged, destroyed, altered, removed, severed or demolished, whether or not insurance

UNOFFICIAL COPY

proceeds are available or sufficient for the purpose, with replacements at least equal in quality and condition as existed prior thereto, free from any security interest in, encumbrances on or reservation of title thereto except Permitted Encumbrances (including but not limited to those listed on Exhibit B hereto);

(b) keep and maintain the Premises in good condition and repair, without waste, and free from mechanics' liens, materialmen's liens or other liens and claims except Permitted Encumbrances;

(c) complete, within a reasonable time, any construction of improvements now or hereafter constructed upon the Premises;

(d) comply with all applicable statutes, rules, regulations, orders, decrees and other requirements of any federal, state or local governmental body having jurisdiction over the Premises and the use thereof and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions that are applicable to the ownership, renovation, use and occupancy of the Premises;

(e) make no material alterations in the Premises (except those required by law or those contemplated pursuant to the Plans and Specifications) without Mortgagee's prior written consent;

(f) suffer or permit no change in the general nature of the occupancy or use of the Premises without Mortgagee's prior written consent;

(g) pay all operating costs of the Premises when due, including all utility charges and all other assessments or charges of a similar nature;

(h) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Mortgagee's prior written consent;

(i) not abandon the Premises, nor do anything whatsoever to depreciate or impair the value of the Premises or the security of this Mortgage;

(j) refrain from any action and correct any condition which would increase the risk of fire or other hazard to all or any portion of the Premises;

(k) not permit any unlawful use or nuisance to exist upon the Premises; and

UNOFFICIAL COPY

(1) comply with all instruments and documents of record or otherwise affecting the use or occupancy of all or any portion of the Premises.

(3) **Taxes and Charges.** Mortgagor agrees to pay or cause to be paid, at least 10 days prior to delinquency, all Charges (as hereinafter defined) which are assessed or imposed upon the Premises or upon any of the Loan Documents or Senior Loan Documents or become due and payable, and which create, may create or appear to create a lien upon the Premises or any part thereof or upon any of the Loan Documents or Senior Loan Documents; provided, however, that if by law any such Charge is payable or, at the option of Mortgagor, may be paid in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Charge in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

("Charge" shall mean and include all federal, state, county, city, municipal or other governmental (or any instrumentality, division, agency, body or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances related to the Premises, Borrower's Liabilities, Mortgagor and/or General Partner or any of the Loan Documents or Senior Loan Documents.

Mortgagor shall furnish Mortgagee within 30 days after the date upon which any Charge is due and payable by Mortgagor, official receipts of the appropriate authority, or other proof satisfactory to Mortgagee, evidencing the payment thereof. Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Charge by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay collection of the contested Charge and prevent the imposition of a lien or the sale or forfeiture of the Premises to collect the same; provided that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Charge at the time and in the manner provided in this Mortgage unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to contest or object to a Charge and, unless at Mortgagee's sole option, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that legal proceedings instituted by Mortgagor contesting or objecting to such Charge shall conclusively operate to prevent a lien against or the sale or forfeiture of the Premises or any part thereof as satisfaction of such Charge prior to final determination of such proceedings, and (ii) Mortgagor shall furnish to Mortgagee or Senior Lender (and if to Senior Lender notice thereof to Mortgagee) a good and sufficient bond or surety, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, in an amount (x) not less than 125% of such Charge and (y) adequate fully to pay all such contested Charges

UNOFFICIAL COPY

and all interest and penalties upon the adverse determination of such contest.

(4) **Insurance.** Mortgagor shall procure and maintain at all times, at Mortgagor's own expense, until final repayment of the indebtedness secured hereby, the types of insurance specified below, with insurance companies authorized to do business in the State of Illinois covering all operations contemplated in connection with the Project, whether performed by Mortgagor or others.

The kinds and amounts of insurance required are as follows:

(a) commercial liability insurance with limits of not less than \$1,000,000 per occurrence, combined single limit, for bodily injury and/or property damage liability; such insurance shall include products/completed operation, independent contractors and contractual liability coverages; Mortgagee shall be named as an additional insured;

(b) all risk property insurance, including improvements and betterments, in the amount of the full replacement value of the Premises; extensions of coverage shall include business interruption/loss of rents, and boiler and machinery, if applicable; such policy shall list Mortgagee as loss payee/mortgagee;

(c) during any construction work to the Premises, all risk builder's risk insurance covering the materials, equipment, machinery and fixtures that are to be part of the Premises; Mortgagee shall be named as a loss payee;

(d) during any construction work to the Premises, insurance with respect to the General Contractor (including without limitation worker's compensation and automobile liability) with such insurers and limits as may be satisfactory to Mortgagee, in its sole discretion; at Mortgagee's request, Mortgagee shall be named as an additional insured; and

(e) such additional coverage as Mortgagee may require, in form, content and amount and with such insurers as may be satisfactory to Mortgagee, in its sole discretion; at Mortgagee's request, Mortgagee shall be named as an additional insured and/or loss payee/mortgagee.

All insurance policies shall provide that Mortgagee shall be given 30 days' prior written notice of any modification, nonrenewal or cancellation. Certificates evidencing the required coverages, along with paid receipts, shall be delivered to Mortgagee on or prior to the Closing Date. Upon the request of Mortgagee, Mortgagor shall provide certified copies of the policies within 10 days of such request by Mortgagee. If Mortgagor fails to obtain or maintain any of the insurance policies required under this Mortgage or to pay any premium in whole or in

UNOFFICIAL COPY

part when due, Mortgagee may (without waiving or releasing any obligation or Event of Default by Mortgagor hereunder) obtain and maintain such insurance policies and take any other action which Mortgagee deems advisable to protect its interest in the Premises, including acceleration of the Note. All sums so disbursed by Mortgagee, including reasonable attorneys' fees, court costs and expenses, shall be reimbursed by Mortgagor upon demand by Mortgagee.

Mortgagor shall require all contractors and subcontractors to carry the insurance required herein, or Mortgagor may provide the coverage for any or all contractors and subcontractors, and, if so, the evidence of insurance submitted shall so stipulate.

Mortgagor expressly understands and agrees that any insurance coverages and limits furnished by Mortgagor shall in no way limit Mortgagor's liabilities and responsibilities specified under any of the Loan Documents or by law.

Mortgagor agrees and shall cause each contractor and subcontractor in connection with the Project to agree that all insurers shall waive their rights of subrogation against Mortgagee.

Mortgagor expressly understands and agrees that any insurance maintained with respect to the Premises by Mortgagee shall apply in excess of and not contribute with insurance provided by Mortgagor under this Section.

Mortgagee maintains the right to modify, delete, alter or change these requirements.

(5) **Inspection of Premises and of Books and Records.**

Mortgagor shall permit Mortgagee, the United States Department of Housing and Urban Development and/or their agents to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose. Mortgagor shall keep and maintain full and correct records at Mortgagor's office showing in detail the income and expenses of the Premises and shall make such books, records and all supporting vouchers, data and other documents available for inspection, copying (including excerpts and transcriptions), audit and examination upon request by Mortgagee, HUD and their respective agents, successors and assigns as long as the Loan is outstanding.

(6) **Insurance Proceeds.** In the event of any damage to, or destruction of the Premises, Mortgagor will give written notice to Mortgagee of such damage or destruction within five Business Days thereafter and, subject to the rights granted to Senior Lender under the Senior Mortgage, authorize Mortgagee to proceed as follows:

UNOFFICIAL COPY

(a) In the event of any loss covered by insurance policies, Mortgagee is hereby authorized at its option to either (i) settle and adjust any claim under such policies without the consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. Mortgagee shall, and is hereby authorized to, collect any such insurance proceeds, and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be deemed additional indebtedness secured by this Mortgage and shall be reimbursed to Mortgagee by Mortgagor upon demand.

(b) In the event of any insured damage to, or destruction of, the Premises or any part thereof, Mortgagee shall apply the proceeds of insurance to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises if (i) an Event of Default hereunder or an event of default under any of the other Loan Documents or the Senior Loan Documents shall not have occurred and be continuing; (ii) such insurance proceeds shall be in an amount sufficient to restore the Premises to at least the same value and substantially the same character as the Premises had immediately prior to such damage or destruction (and subject to no liens or encumbrances other than Permitted Encumbrances), or if such proceeds are not so sufficient, Mortgagor shall promptly deposit with Mortgagee or the Senior Lender funds equal to the amount of such deficiency (provided that if such funds are deposited with the Senior Lender, acceptable evidence of such deposit will be provided to Mortgagee); (iii) Mortgagor shall obtain all required governmental approvals with respect to such restoration, repair, replacement or rebuilding; (iv) prior to such restoration, repair, replacement or rebuilding, Mortgagee shall receive and approve plans and specifications and a detailed budget and cost breakdown with respect to such work; and (v) such restoration, repair, replacement or rebuilding is reasonably susceptible to completion not less than six months prior to the Maturity Date.

(c) In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the restoration, repair, replacement or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to at least equal value, and substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications submitted to and approved by Mortgagee, and to expend all such proceeds and any funds deposited by Mortgagor pursuant to Section 6(b)(ii) hereof prior to the further disbursement of any Loan proceeds. If the amount of such insurance proceeds shall be in excess of \$50,000, such proceeds shall be disbursed through an escrow pursuant to an escrow agreement approved by Mortgagee.

(d) If all of the conditions described in paragraph (b) of this Section with respect to the application of proceeds of

UNOFFICIAL COPY

insurance shall not be met, Mortgagee may, in its sole discretion, apply such proceeds to the indebtedness secured hereby in such order or manner as Mortgagee may elect.

(e) To the extent that any amount of proceeds of insurance remain unexpended after completion of the restoration, repair, replacement or rebuilding of the Premises, such amount shall be applied to the indebtedness secured hereby.

(7) Condemnation/Eminent Domain. Mortgagor shall give Mortgagee prompt notice of any proceedings, pending or threatened, seeking condemnation or taking by eminent domain or any like process ("Taking"), of all or any portion of the Premises or affecting any easement thereon or appurtenance thereto and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings, and Mortgagor hereby assigns and transfers to Mortgagee, subject to the rights granted to Senior Lender under the Senior Mortgage, the entire proceeds of all awards resulting from any Taking. Mortgagee is hereby authorized to collect and receive from the condemnation authorities said awards and is further authorized to give appropriate receipts therefor. In the event of any such Taking, but subject to any rights granted to Senior Lender under the Senior Mortgage, Mortgagee may, in its sole discretion, (i) apply the proceeds of all awards resulting from such Taking to the indebtedness secured hereby in such order or manner as Mortgagee may elect, or (ii) apply such proceeds to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises. In the event that such proceeds, if any, shall be made available to Mortgagor for the restoration, repair, replacement or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to at least equal value and substantially the same character as prior to such taking, all to be effected in accordance with plans and specifications submitted to and approved by Mortgagee. If the amount of such proceeds shall be in excess of \$50,000, such proceeds shall be disbursed through an escrow pursuant to an escrow agreement approved by Mortgagee.

(8) Transfer and Encumbrance of Premises. Mortgagor shall not create, effect, contract for, commit to, consent to, suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing, other than a contract for sale or financing to pay in full the Note and all other amounts due and owing by Mortgagor to Mortgagee under the Loan Documents, provided that any such contract shall be expressly contingent upon the receipt of prior written consent to such sale or financing by Mortgagee, which consent shall not be unreasonably withheld by Mortgagee with respect to any contract providing for payment in full of the Note and all other amounts due and owing by Mortgagor to Mortgagee under the Loan

UNOFFICIAL COPY

Documents), directly or indirectly, by willful act, by operation of law or otherwise, of all or any portion of the Premises or any interest therein, other than Permitted Encumbrances, or any interest in the Partnership or any partner thereof (each of the foregoing being referred to herein as a "Prohibited Transfer"), without Mortgagee's prior written consent. If Mortgagor shall do or allow any of the foregoing Prohibited Transfers without Mortgagee's prior written consent, Mortgagee at its option, has the right to accelerate the maturity of the Note causing the full principal balance thereof and accrued interest thereon to be immediately due and payable without notice to Mortgagor. Any waiver by Mortgagee of the provisions of this paragraph shall not be deemed to be a waiver of the right of Mortgagee to insist upon strict compliance with the provisions of this paragraph in the future. Notwithstanding the foregoing, Mortgagee shall not unreasonably withhold its consent to the replacement and/or addition of a general partner of the Partnership pursuant to the terms of the Partnership's Articles of Limited Partnership and to the extent Mortgagee so consents, it shall not be considered a Prohibited Transfer hereunder. Further, no consent by Mortgagee shall be required for the withdrawal, replacement and/or addition of any of the Partnership's limited partners or of any such limited partner's general partners (or any other ownership interests in and to said limited partners), and the same shall not constitute a Prohibited Transfer hereunder.

(9) Mortgagee's Options; Subrogation.

(a) In case of an Event of Default hereunder by Mortgagor, Mortgagee may (but is not obligated to) make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may (but is not obligated to) make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem the Premises from any tax sale or forfeiture affecting the Premises or contest any tax or assessment thereon. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises and the lien hereof, shall be deemed additional indebtedness secured hereby, and shall become immediately due and payable, with interest thereon at a rate of the lesser of 15% per annum or the maximum amount permitted by law. 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 Mortgagor.

(b) To the extent that Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or Mortgagor or any other person or

UNOFFICIAL COPY

9 / 1 / 9

entity pays any such sum with the proceeds of the indebtedness secured hereby, Mortgagee shall have and be entitled to a lien or other interest on the Premises equal in priority to the lien or other interest discharged and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the indebtedness secured hereby.

(10) Assignment of Rents and Leases. It is expressly understood and agreed by the parties hereto that before an Event of Default (as hereinafter defined) occurs, the Mortgagor shall have the right to collect the Rents and to retain, use and enjoy the same; provided, however, that even before an Event of Default occurs, no Rents more than one month in advance (other than reasonable security deposits) shall be collected or accepted without the prior written consent of the Mortgagee. Anything to the contrary notwithstanding, after the occurrence of an Event of Default and during the continuance thereof, the Mortgagor hereby assigns to the Mortgagee any award made after the occurrence of such Event of Default and during the continuance thereof to the Mortgagor in any court procedure involving any of the lessees in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and any and all payments made by lessees in lieu of rent. Upon the occurrence of an Event of Default, the Mortgagor hereby appoints the Mortgagee as its irrevocable attorney in fact to appear in any action and/or to collect any such award or payment; subject to the condition, however, that if after the occurrence of an Event of Default, said Event of Default shall be cured or waived, the appointment of the Mortgagee as attorney in fact for the Mortgagor shall cease and determine.

The Mortgagor covenants and represents that (i) the Mortgagor has full right and title to assign the Leases and the Rents, due or to become due thereunder; (ii) the terms of the Leases have not been changed from the terms in the copy of the Leases submitted to the Mortgagee for approval; (iii) no other assignment of any interest therein has been made other than to the Senior Lender; (iv) there are no existing defaults under the provisions thereof; (v) all Rents due under any of the Leases on or before the date hereof have been paid in full to the Mortgagor; (vi) other than reasonable security deposits, no Rents under any of the Leases have heretofore been collected more than one month in advance; (vii) the Mortgagor has not granted any concession to any lessee under any of the Leases other than as appears in the terms thereof; (viii) the Mortgagor will comply with all of the material terms of all of the Leases; (ix) the Mortgagor will promptly give the Mortgagee a copy of any notice received by the Mortgagor concerning any material default by the Mortgagor under any of the Leases; and (x) the Mortgagor will not hereafter cancel, surrender or terminate any of the Leases, or exercise any option which might lead to such termination or change, or alter or modify any of the Leases or consent to the release of any

UNOFFICIAL COPY

party liable thereunder or to the assignment of any lessee's interest in any Lease to which such lessee is a party, other than in the ordinary course of business of the Mortgagor.

The Mortgagor hereby authorizes the Mortgagee, if an Event of Default has occurred and is continuing, to give notice in writing of this Mortgage at any time to any tenant under any of the Leases.

(11) Assignment of Contracts. Mortgagor agrees:

(a) To abide by, perform and discharge each and every obligation, covenant, condition and agreement of the Documents to be performed by Mortgagor, to the extent not waived by the other party thereto in writing, so as to avoid the occurrence of a default thereunder, and to use all reasonable efforts to enforce (or cause to be enforced) performance by the other party thereto of each and every material obligation, covenant, condition and agreement to be performed by such other party.

(b) At any time after the occurrence of an Event of Default, Mortgagee may at its option, without notice, and without regard to the adequacy of security for the indebtedness hereby secured, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court at any time hereafter, enforce for its own benefit the Documents, or any of them, and utilize the Plans for completion of the Project. The exercise of any rights under this Mortgage shall not be deemed to cure or waive any Event of Default under any of the Loan Documents, or waive, modify or affect any notice of an Event of Default under any of the Loan Documents, or invalidate any act done pursuant to such notice.

(c) That Architect, Contractor, Engineers and Manager (all as defined in Exhibit D), upon written notice from Mortgagee of the occurrence of an Event of Default, shall be and are hereby authorized by Mortgagor to perform their respective agreements for the benefit of Mortgagee in accordance with the terms and conditions thereof without any obligation to determine whether or not such an Event of Default has in fact occurred.

(d) Mortgagor further hereby covenants and represents to Mortgagee that (a) the Documents are in full force and effect, (b) Mortgagor has not previously assigned, sold, pledged, transferred, mortgaged, hypothecated or otherwise encumbered the Documents or any of them, or its right, title and interest therein, other than to the Senior Lender pursuant to the Senior Loan Documents (as defined in the Loan Agreement) from Mortgagor to the Senior Lender (the "Senior Assignment"), (c) Mortgagor shall not assign, sell, pledge, transfer, deed, hypothecate or otherwise encumber its interests in the Documents or any of them, except to the Senior Lender pursuant to the Senior Loan, (d) Mortgagor has not performed any act which might prevent Mortgagor from performing its undertakings hereunder or which might prevent

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagee from operating under or enforcing any of the terms and conditions hereof or which would limit Mortgagee in such operation or enforcement, (e) Mortgagor is not in default under the Documents or any of them, and to the best knowledge of Mortgagor, no other party to the respective Documents is in default thereunder except as disclosed in writing to Mortgagee, and (f) no amendments to any of the Documents will be made without the prior written consent of Mortgagee, except as expressly permitted by the Loan Agreement.

(e) At the request of Mortgagee, upon execution of any of the Documents, Mortgagor will deliver a copy of such Documents to Mortgagee and will require such Architect, Contractor, Engineers and Manager, as the case may be, to execute and deliver to Mortgagee a consent to this Mortgage in form satisfactory to Mortgagee.

(12) **Events of Default.** The following shall constitute an "Event of Default" under this Mortgage:

- (i) the occurrence of an Event of Default under the terms and provisions of the Loan Agreement; or
- (ii) non-compliance by the Mortgagor with, or failure by the Mortgagor to perform, any agreement contained herein, which remains unremedied for 30 days after notice thereof from Mortgagee to Mortgagor, provided, however, that if any such default cannot reasonably be remedied within said 30-period and if Mortgagor shall have commenced to remedy such default within said 30-day period and shall thereafter continue diligently to effect such remedy, then said 30-day period shall be extended to 60 days upon written request from Mortgagor to Mortgagee delivered during such 30-day period, and upon further written request from Mortgagor to Mortgagee delivered during said 60-day period, said 60-day period shall be extended to 90 days (provided, however, that Mortgagee shall not be precluded during any such periods from exercising any remedies hereunder if its security becomes or is about to become materially jeopardized by any failure to cure a default within such period); if any material representation or warranty made herein is or proves to be false or inaccurate; or the occurrence of any event which non-compliance, failure or occurrence is expressly made an Event of Default by some other provision hereof.

UNOFFICIAL COPY

9 1 7 9 1 3

(13) **Acceleration, Etc.** Upon the occurrence of an Event of Default hereunder, Mortgagee may elect to accelerate the maturity of the Note causing the full principal balance of and accrued default interest, if any, on the Note, together with all other amounts then due and owing by Mortgagor to Mortgagee under any of the Loan Documents, to become immediately due and payable at the place of payment as aforesaid, and Mortgagee may proceed to foreclose this Mortgage and to exercise any rights and remedies available to Mortgagee under this Mortgage or any of the other Loan Documents and to exercise any other rights and remedies against Mortgagor, or with respect to the Note, which Mortgagee may have at law, in equity or otherwise; provided, however, that upon the occurrence of an Event of Default under Section 7.01(x) or (xi) of the Loan Agreement, the entire unpaid principal of and interest on the Note shall, without any declaration, notice or other action on the part of Mortgagee, be immediately due and payable, anything herein or in the other Loan Documents to the contrary notwithstanding. Mortgagee may also elect to commence an action to enforce specifically any of the provisions contained in any of the Loan Documents.

Upon the occurrence of an event of default under any of the Senior Loan Documents, Mortgagee may at its option proceed to cure, if possible, such event of default; subject to Section 9(b) hereof, all amounts so expended by Mortgagee in the course of such action shall be reimbursed by Mortgagor to Mortgagee upon demand and shall be additional indebtedness of Mortgagor secured by this Mortgage and the other Loan Documents.

(14) **Remedies.** Mortgagee's remedies as provided in this Mortgage or the other Loan Documents shall be cumulative and concurrent and may be pursued singularly, successively or together, at the sole discretion of Mortgagee and may be exercised as often as occasion therefor shall arise, and shall not be exclusive but shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. Failure of Mortgagee, for any period of time or on more than one occasion, to exercise any such remedy shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent Event of Default. No act of omission or commission of Mortgagee, including specifically any failure to exercise any right or remedy, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by Mortgagee and then only to the extent specifically recited therein. A waiver or release with reference to any one event shall not be construed as a waiver or release of any subsequent event or as a bar to any subsequent exercise of Mortgagee's rights or remedies hereunder. Except as otherwise specifically required herein, notice of the exercise of any right or remedy granted to Mortgagee by the Loan Documents is not required to be given.

(15) **Additional Indebtedness.** In the event that: (a) the Note is placed in the hands of an attorney for collection or

UNOFFICIAL COPY

9 . 1 / 9

enforcement or is collected or enforced through any legal proceeding; (b) an attorney is retained to represent Mortgagee in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under any of the Loan Documents; (c) an attorney is retained to protect or enforce the lien of this Mortgage, or the liens or security interests of any of the other Loan Documents; or (d) an attorney is retained to represent Mortgagee in any other proceedings whatsoever in connection with the Loan Documents, or any property subject thereto, then Mortgagor shall pay to Mortgagee all reasonable attorneys' fees, and all costs and expenses incurred in connection therewith.

(16) **Waiver.** Mortgagee's failure to require strict performance by Mortgagor of any provision of this Mortgage shall not waive, affect or diminish any right of Mortgagee thereafter to demand strict compliance and performance therewith, nor shall any waiver by Mortgagee of an Event of Default waive, suspend or affect any other Event of Default under this Mortgage, whether the same is prior or subsequent thereto, or of the same or a different type. Mortgagee's delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights hereunder or under any of the other Loan Documents, shall not operate as a waiver of such rights or limit them in any way so long as an Event of Default shall be continuing.

(17) **Right of Possession.** To the extent permitted by law and subject to the rights of the Senior Lender, in any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether before or after the institution of such proceedings or before or after sale thereunder, Mortgagor shall, at the option of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of all or any portion of the Premises personally or by its agents or attorneys, and Mortgagee, in its sole discretion, may enter upon, take and maintain possession of all or any portion of the Premises.

Upon taking possession of the Premises, Mortgagee may make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Premises as it may deem judicious to insure, protect and maintain the Premises against all risks incidental to Mortgagee's possession, operation and management thereof, and may receive all Rents therefrom. Mortgagee shall have, in addition to any other power provided herein, all powers and duties as provided for in Sections 5/15-1701, 5/15-1702 and 5/15-1703 of the Act.

The receipt by the Mortgagee of any Rents pursuant to this Assignment after the institution of foreclosure proceedings under the Mortgage shall not cure such default nor affect such proceedings or any sale pursuant thereto. Upon foreclosure of this Mortgage, it is understood by the Mortgagor and the Mortgagee

UNOFFICIAL COPY

that the Mortgagee's rights under this Mortgage continue through the period of foreclosure.

(18) **Appointment of Receiver.** Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may, upon application, appoint a receiver of the Premises. Such appointment may be made either before or after foreclosure sale, without notice, 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 hereby secured, without regard to the value of the Premises at such time and whether or not the same is then occupied as a homestead, and without bond being required of the applicant. Mortgagee or any employee or agent thereof may be appointed as such receiver. The receiver shall have the power to take possession, control and care of the Premises and to collect all Rents thereof and from the Leases, to let or relet the Premises or any part thereof, to cancel and modify Leases, evict tenants, bring or defend any suits in connection with the possession of the Premises in its own name or the Mortgagor's name, and perform such other acts, in its own name or the Mortgagor's name, in connection with the management and operation of the Premises as the Mortgagee, in its discretion, may deem proper, and all powers and duties provided for in Section 5/15-1704 of the Act, and such other powers as the court may direct.

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

(20) **Application of Proceeds from Foreclosure Sale.** 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 default interest, if any, thereon, (iii) all principal and default interest, if any, remaining unpaid on the Note and (iv) any surplus or remaining funds to Mortgagor, its successors or assigns, as their rights may appear.

(21) **Insurance Upon Foreclosure.** Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insur-

UNOFFICIAL COPY

9 - 1 / 9

ance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale. Upon confirmation of sale, Mortgagee shall be empowered to assign all policies of insurance to the purchaser at the sale. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in restoring the Premises, shall be used to pay the amount due in accordance with any foreclosure decree that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

(22) **Remedies for Leases and Rents.** If any Event of Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, the Mortgagee shall be entitled, in its discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the Rents, the Leases and other collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of the Mortgagor relating thereto; (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Leases, and other collateral relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, 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 of the Rents, the Leases and other collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) insure and reinsure any collateral secured hereby for all risks incidental to the Mortgagee's possession, operation and management thereof; and (viii) receive all such Rents, and perform such other acts in connection with the management and operation of the Rents, Leases and other collateral secured hereby, as the Mortgagee in its discretion may deem proper, the Mortgagor hereby granting the Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Event of Default without notice to the Mortgagor or any other Person. The Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order

UNOFFICIAL COPY

as it may determine: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to the Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Real Property or other collateral secured hereby, including the costs from time to time of installing, replacing or repairing the Equipment or other collateral secured hereby, and of placing the Real Property, the Equipment or other collateral secured hereby in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and (c) to the payment of any amounts described in Sections (20) (ii) and (iii) hereof. The entering upon and taking possession of the Premises, or any part thereof, and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any Event of Default theretofore or thereafter occurring or affect any notice or Event of Default hereunder or invalidate any act done pursuant to any such Event of Default or notice, and, notwithstanding continuance in possession of the Premises or any part thereof by the Mortgagee or a receiver and the collection, receipt and application of the Rents, the Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of an Event of Default. Any of the actions referred to in this Section 24 may be taken by the Mortgagee irrespective of whether any notice of an Event of Default has been given hereunder (unless notice is required pursuant to such Event of Default) and without regard to the adequacy of the security for the indebtedness hereby secured.

(23) Personal Property/Documents. During the continuance of any Event of Default, the Mortgagee may exercise from time to time any rights and remedies available to it under applicable law upon default in payment of indebtedness. During the continuance of any Event of Default, the Mortgagor shall, promptly upon request by the Mortgagee, assemble the Equipment, the collateral relating to the Documents or other collateral secured hereby and make it available to the Mortgagee at such place or places, reasonably convenient for both the Mortgagee and the Mortgagor, as the Mortgagee shall designate. The Mortgagor hereby expressly waives, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings, or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies after an Event of Default occurs. If any notification of intended disposition of any of the Equipment, the collateral relating to the Documents or other collateral secured hereby is required by law, such notification, if mailed, shall be deemed reasonably and properly given if mailed by registered or certified mail, return receipt requested, at least 5 business

UNOFFICIAL COPY

days before such disposition, postage prepaid, addressed to the Mortgagor either at the address shown above or at any other address of the Mortgagor appearing on the records of the Mortgagee. Without limiting the generality of the foregoing, whenever there exists an Event of Default hereunder, the Mortgagee may, with respect to so much of the Equipment, collateral relating to the Documents or other collateral secured hereby as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law or any kind, (i) notify any Person obligated on the Equipment, collateral relating to the Documents or other collateral secured hereby to perform directly for the Mortgagee its obligations thereunder, (ii) enforce collection of any of the Equipment, collateral relating to the Documents or other collateral secured hereby by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of the Mortgagor to allow collection of the Equipment, collateral relating to the Documents or other collateral secured hereby, (iv) take control of any proceeds of the Equipment, collateral relating to the Documents or other collateral secured hereby, (v) enter upon any premises where any of the collateral may be located and take possession of and remove such Equipment, collateral relating to the Documents or other collateral secured hereby and render all or any part of the Equipment, collateral relating to the Documents or other collateral secured hereby unusable, all without being responsible for loss or damage, (vi) sell any or all of the Equipment, collateral relating to the Documents or other collateral secured hereby, free of all rights and claims of the Mortgagor therein and thereto, at any lawful public or private sale, and (vii) bid for and purchase any or all of the Equipment, collateral relating to the Documents or other collateral secured hereby at any such public or private sale. Any proceeds of any disposition by the Mortgagee of any of the Equipment, collateral relating to the Documents or other collateral secured hereby may be applied by the Mortgagee to the payment of expenses in connection with the Equipment, collateral relating to the Documents or other collateral secured hereby, including attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by the Mortgagee toward the payment of any amounts owing under the Note or the other Loan Document in such order of application as the Mortgagee may from time to time elect. Without limiting the foregoing, Mortgagee may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law.

The Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Loan and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings

UNOFFICIAL COPY

9-179

or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies hereunder, except as expressly provided herein or in the other Loan Documents to the contrary. During the continuance of an Event of Default, the Mortgagor hereby constitutes the Mortgagee its attorney-in-fact with full power of substitution to take possession of the Equipment, collateral relating to the Documents or other collateral secured hereby upon any Event of Default and, as the Mortgagee in its sole discretion deems necessary or proper, to exercise any or all of Mortgagor's rights in, to, and under the Documents, to give appropriate receipts, releases, and satisfactions on behalf of Mortgagor in connection with the performance by the other parties under the Documents, to do any or all other acts, in Mortgagor's name or in Mortgagee's own name, that Mortgagor could do under any or all of the Documents with the same force and effect as if this Mortgage had not been made, to perform any agreement contained herein, and to execute and deliver all instruments required by the Mortgagee to accomplish the disposition of the Equipment, collateral relating to the Documents or other collateral secured hereby; this power of attorney is a power coupled with an interest and is irrevocable while any amounts owing are outstanding.

(24) **Waiver of Statutory Rights.** To the extent permitted by law, Mortgagor shall not apply for or avail itself of any appraisal, valuation, redemption, reinstatement, 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 this Mortgage and hereby waives the benefit of such laws. 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. To the extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement, on its own behalf and on behalf of each and every person having a beneficial interest in Mortgagor, it being the intent hereof that any and all such rights of redemption or reinstatement of Mortgagor and of all other persons are and shall be deemed to be hereby waived. Mortgagor acknowledges that the Premises do not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act.

(25) **Partial Payments.** Acceptance by 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 Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued default interest, if any, thereon, immediately due and payable without notice, or any other rights of Mortgagee at that time or any subsequent time, without its express written consent, except and to the extent otherwise provided by law.

94770005

UNOFFICIAL COPY

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

(27) Notice. Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram or telecopy; (c) overnight courier, receipt requested; or (d) registered or certified mail, return receipt requested.

IF TO MORTGAGEE: Department of Housing
City of Chicago
119 South Michigan Avenue
Chicago, Illinois 60604
Attention: Commissioner

WITH COPIES TO: Office of the Corporation Counsel
City of Chicago
City Hall
121 North LaSalle Street, Room 511
Chicago, Illinois 60602
Attention: Finance & Economic
Development Division

Department of Finance
City of Chicago
121 North LaSalle Street, Room 501
Chicago, Illinois 60602
Attention: Comptroller

IF TO MORTGAGOR: KOSOH Housing Limited Partnership
c/o Investment Management Corporation
One East Superior Street
Suite 604
Chicago, Illinois 60611
Attention: President

Such addresses may be changed by notice to the other parties given in the same manner as above provided. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or upon dispatch by electronic means with confirmation of receipt. Any notice,

UNOFFICIAL COPY

9 1 7 9

demand or request sent pursuant to clause (c) above shall be deemed received on the Business Day immediately following deposit with the overnight courier and, if sent pursuant to clause (d) above, shall be deemed received two Business Days following deposit in the mail.

(28) **Time.** Time is of the essence with respect to the Loan Documents.

(29) **Modifications.** This Mortgage may not be altered, amended, modified, canceled, changed or discharged except by written instrument signed by the parties hereto or their respective successors and assigns.

(30) **Headings.** The headings of articles, sections, paragraphs and subparagraphs in this Mortgage are for convenience of reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

(31) **Construction of Mortgage.** This Mortgage shall be construed and enforced according to Illinois law.

(32) **Severability.** If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstance, is held invalid, the remainder of this Mortgage shall be construed as if such invalid part were never included herein and this Mortgage shall be and remain valid and enforceable to the fullest extent permitted by law.

(33) **Grammar.** As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

(34) **Successors and Assigns.** This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner of the Premises or any other person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Whenever Mortgagee is referred to herein, such reference shall also include the Holder of the Note, whether so expressed or not.

(35) **Further Assurances.** Mortgagor will perform, execute, acknowledge and deliver every act, deed, conveyance, transfer and assurance necessary or proper, in the sole judgment of Mortgagee, for assuring, conveying, mortgaging, assigning and confirming to Mortgagee all property mortgaged hereby or property intended so to be, whether now owned or hereafter acquired by Mortgagor, and for creating, maintaining and preserving the lien and security interest created hereby on the Premises. Upon any failure by Mortgagor to do so, Mortgagee may make, execute and record any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee and its agents as attorney-in-fact for that purpose. Mortgagor will reimburse

59179005

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagee for any sums expended by Mortgagee in making, executing and recording such documents including attorneys' fees and court costs.

(36) **Indemnification.** In addition to all other indemnities in favor of Mortgagee specifically provided in this Mortgage, Mortgagor shall indemnify Mortgagee and save Mortgagee harmless from and against any and all Losses incurred in any Claim brought by reason of any such Loss, other than those Losses arising out of the Mortgagee's gross negligence or willful misconduct following the Mortgagee's acquisition of title to or control of the Premises, unless such act is taken in response to (i) any negligent act or omission or willful misconduct of the Mortgagor or (ii) any breach by the Mortgagor of any provisions of the instruments executed by the Mortgagor in connection with the Loan and concerning Hazardous Materials or the operation or use of the Premises in accordance with any Environmental Laws.

(37) **Junior Mortgage.** This is a junior mortgage on the Premises and is subject and subordinate in each and every respect to any and all rights of any kind created by:

That certain Construction Loan Mortgage and Security Agreement with Collateral Assignment of Leases and Rents ("First Mortgage") dated December 26, 1990 from Mortgagor to First Senior Lender and recorded as Document No. 91000058 in the office of the Cook County Recorder of Deeds on January 2, 1991, securing two notes of even date therewith in the aggregate principal amount of \$880,000 in favor of First Senior Lender.

That certain Junior Mortgage ("Second Mortgage") dated December 27, 1990 from Mortgagor to Second Senior Lender and recorded as Document No. 91000059 in the office of the Cook County Recorder of Deeds on January 2, 1991, securing a note of even date therewith in the principal amount of \$558,623 in favor of Second Senior Lender.

That certain Third Mortgage ("Third Mortgage") dated December 27, 1990 from Mortgagor to Second Senior Lender and recorded as Document No. 91000060 in the office of the Cook County Recorder of Deeds on January 2, 1991, securing a note of even date therewith in the principal amount of \$100,000 in favor of Second Senior Lender.

The First Mortgage, Second Mortgage and Third Mortgage are referred to collectively herein as the "Senior Mortgage". So long as the Senior Mortgage is in effect, in the event of any conflict between the provisions of this Mortgage and the Senior Mortgage, the Senior Mortgage shall prevail. Any waiver or forbearance by the Senior Lender under the Senior Loan Documents shall not impair the priority of its lien under the Senior Loan Documents.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(38) Security Agreement. This Mortgage shall be construed as a "security agreement" within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of Illinois with respect to any part of the Premises which constitutes fixtures or personal property. Mortgagee shall have all the rights with respect to such fixtures or personal property afforded to it by said Uniform Commercial Code in addition to, but not in limitation of, the other rights afforded Mortgagee by this Mortgage or any other agreement. Upon the recording hereof, this Mortgage shall constitute a financing statement under the Uniform Commercial Code. This Mortgage is a "construction mortgage" as that term is defined in Section 9-313(1)(c) of said Uniform Commercial Code.

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

(40) Protective Advances; Maximum Amount of Indebtedness. All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b) (5) of Section 5/15-1302 of the Act;

(b) payments by Mortgagee of: (i) when due, installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) when due, installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;

UNOFFICIAL COPY

(c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(d) attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Sections 5/15-1504(d)(2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;

(e) Mortgagee's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;

(g) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act;

(h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) if the Premises or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (ii) if any interest in the Premises is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (iii) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (iv) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (v) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Premises; (vi) shared or common expense assessments payable to any association or corporation in which the owner of the Premises is a member in any way affecting the Premises; (vii) if the loan secured hereby is a construction loan, costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment or loan agreement; (viii) pursuant to any lease or other agreement for occupancy of the

UNOFFICIAL COPY

Premises; and (ix) if this Mortgage is insured, payments of FHA or private mortgage insurance.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Note.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

(1) the determination of the amount of indebtedness secured by this Mortgage at any time;

(2) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(3) if the right of redemption has not been waived by this Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 5/15-1603 of the Act;

(4) the determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(5) the application of income in the hands of any receiver or mortgagee in possession; and

(6) the computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

The maximum amount of indebtedness secured by this Mortgage is \$295,974 plus default interest, if any, plus any disbursements for the payment of taxes and insurance on the Premises, plus interest thereon, and any other sums advanced in accordance with the terms hereof or any of the other Loan Documents to protect the security of this Mortgage or any of the other Loan Documents plus default interest thereon, if any.

UNOFFICIAL COPY

3 1 / 9

(41) Non-Recourse Loan.

(a) Subject to the terms of Sections 41(b) and (c) hereof and notwithstanding any provision herein to the contrary, the indebtedness secured hereunder shall be non-recourse and in the event of default hereunder, Mortgagee's sole source of satisfaction of repayment of the amounts due to Mortgagee hereunder or under any of the Loan Documents shall be limited to Mortgagee's rights with respect to the collateral pledged and assigned hereunder or under any of the other Loan Documents.

(b) Notwithstanding paragraph (a) of this Section, nothing herein or in any of the Loan Documents shall limit the rights of the Mortgagee, following any of the events hereinafter described, to take any action as may be necessary or desirable to pursue Mortgagor and/or General Partner, if any, for any and all Losses incurred by Mortgagee arising from: (i) a material misrepresentation, fraud made in writing or misappropriation of funds by Mortgagor, General Partner, if any, and/or Owner, if any; (ii) intentional or material waste to the Premises; (iii) use of proceeds of the indebtedness evidenced by the Note for costs other than Eligible Costs; (iv) the occurrence of a Prohibited Transfer without Mortgagee's prior written consent to the extent such Prohibited Transfer results from the intentional, willful and/or voluntary acts or omissions of Mortgagor and/or General Partner; (v) any breach of Mortgagor's representations, warranties or covenants regarding Hazardous Materials or Environmental Laws contained herein or in any of the other Loan Documents; (vi) the occurrence of any uninsured casualty to the Premises or other collateral or security provided under any of the Loan Documents for which there has been a failure to maintain insurance coverage as required by the terms and provisions of the Loan Documents; (vii) the misappropriation or misapplication of insurance proceeds or condemnation awards relating to the Premises or other collateral or security provided under any of the Loan Documents; or (viii) any inaccuracy in the statements made by William W. Higginson, as Affiant, in that certain Affidavit dated concurrently herewith and delivered to Mortgagee as of the Closing Date. Further, notwithstanding paragraph (a) of this Section, nothing herein or in any of the Loan Documents shall limit the rights of the City pursuant to the terms of the Guaranty of Payment (as defined in the Loan Agreement).

(c) The Mortgagee waives any and all right to seek or demand any personal deficiency judgment against the Mortgagor, in conjunction with a foreclosure proceeding, under or by reason of any of the non-recourse monetary obligations of the Mortgagor; provided, however, that the foregoing shall not limit or affect the Mortgagee's right to sue or otherwise seek recourse against Mortgagor and/or General Partner in any separate action or proceeding for all Losses incurred by the Mortgagee arising from any of the matters described in Section 41(b) hereof, nor shall

UNOFFICIAL COPY

the foregoing limit or affect Mortgagee's right to sue or otherwise seek recourse against Owner in any separate action or proceeding regarding enforcement of the Guaranty of Payment.

(42) Land Trustee Exculpation. This Mortgage is executed by the Trustee, not personally but as Trustee as aforesaid in the exercise of power and authority conferred upon and vested in it as such Trustee and said Trustee hereby warrants that it possesses full power and authority to execute this instrument and it is expressly understood and agreed that nothing herein shall be construed as creating any liability on the Trustee personally to perform any covenant either express or implied herein. No personal liability shall be asserted or be enforceable against the Trustee by reason of the covenants, statements, representations or warranties contained in this instrument.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed and attested to on the day and year first above written.

KOSOH Housing Limited Partnership,
an Illinois limited partnership

By: Investment Management Corpora-
tion, an Illinois not-for-profit
corporation and its general partner

ATTEST:

By: _____
Name: _____
Title: _____

By: William W. Higginson
Name: William W. Higginson
Title: President

COLE TAYLOR BANK, as Trustee as
aforesaid

ATTEST: Constance E. Condit
Constance E. Condit
Last Test: 11/15/93

By: Lucille G. Hart
Name: LUCILLE G. HART
Title: TRUSTEE OFFICER

This instrument prepared by
and when recorded return to:

Angela T. Vosnos
Assistant Corporation Counsel
City of Chicago
Office of Corporation Counsel
121 North LaSalle Street
Room 511
Chicago, Illinois 60602

EXCERPTORY CLAUSE

It is expressly understood and agreed by and between the parties hereto... (The text of the Excerptory Clause is largely illegible due to the quality of the scan and the small font size.)

COLE TAYLOR BANK

Property of Cook County Clerk's Office

94179005

94179005

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that William W. Robinson and Respect, personally known to me to be the Respect and Respect, respectively, of Investment Management Corporation (the "General Partner"), an Illinois corporation and sole general partner of KOSOH Housing Limited Partnership (the "Borrower"), an Illinois limited partnership, and 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 as such Respect and Respect, they signed and delivered the said instrument pursuant to authority given by the Board of Directors of the General Partner, and as their ~~respective~~ free and voluntary acts and deeds and as the free and voluntary act and deed of the General Partner and the Borrower for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 15th day of JANUARY, 1997.

[Signature]
Notary Public

(SEAL)

OFFICIAL SEAL GREGORY G. SCHULER NOTARY PUBLIC, STATE OF ILLINOIS MY COMMISSION EXPIRES 8-12-97
--

County Clerk's Office

34179605

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

THE EAST 50 FEET OF THE WEST 150 FEET OF LOT 2 IN RUFUS C. HALL'S SUBDIVISION OF THE 15 RODS SOUTH OF AND ADJOINING THE NORTH 80 RODS OF THE EAST HALF OF THE NORTH EAST QUARTER OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS ✓

ADDRESS COMMONLY KNOWN AS: 927 West Wilson Avenue
Chicago, Illinois 60640

PERMANENT INDEX NO.: 14-17-220-005 Vol. 478 ✓

Property of Cook County Clerk's Office

94175005

UNOFFICIAL COPY

9 1 7 9 0 0 0

EXHIBIT B

PERMITTED ENCUMBRANCES

Those matters set forth as Schedule B title exceptions in Mortgagee's title insurance policy issued by Commonwealth Land Title Insurance Company as of the initial disbursement of proceeds of the loan evidenced by the Note (but only so long as applicable title endorsements, if any, issued in conjunction with such matters as of such initial disbursement of loan proceeds continue to remain in full force and effect).

Property of Cook County Clerk's Office

94179005

UNOFFICIAL COPY

EXHIBIT C

LEASES

NAME	APT NO	BORN SIZE
Wellington, Mary	101	0
	102	0
Oliver, George	103	0
	104	1
	105	0
	106	0
Bance, Pierre	107	0
Hooper, Alvester	108	0
	109	0
Hampton, Fidella	201	2
Hammond, Sheila	202	2
Smith, Flossie	203	2
	204	1
	205	1
Johnson, Kathy	206	3
	207	0
Hooper, Sandra	208	1
Cornias, Gloria	301	2
Greenlee, Amelia	302	2
Haynes, Lizzie	303	2
	304	1
Hall, Vera	305	1
Irene McIntosh & Lolita Lyons	306	3
	307	0
	308	1
Vaughn, Rosalie	401	2
Wilcox, Edward	402	2

NAME	APT NO	BORN SIZE
Fletcher, Ralph	403	2
	404	1
Lawrence, Michelle	405	1
Stokley, Pauline & Daniel	406	3
	407	1
	408	0
Cotton, Betty	501	2
Franklin, Walter & Welthe	502	2
Clark, Angel	503	2
Hicks, Melvin	504	1
	505	1
Carrison, Hazelina	506	3
	507	0
Hooper, Carolyn	508	1

94129005

UNOFFICIAL COPY

7 1 9

EXHIBIT D

CONTRACTS

1. The agreement dated July 27, 1993 between Partnership and Phillip Kupritz and Associates ("Architect"), pursuant to which Architect agrees to perform any architectural services required in connection with the rehabilitation of the Project (as defined in the Loan Agreement), said agreement together with any and all extensions, modifications, amendments and renewals thereof being hereinafter collectively referred to as the "Architect's Agreement;"
2. The agreement dated January 11, 1994 between Partnership and Custom Construction and Remodeling Services, Inc. ("Contractor"), pursuant to which Contractor agrees to perform the construction, rehabilitation, equipping and fixturing of the Project, said agreement together with any and all modifications, extensions, amendments and renewals thereof being hereinafter collectively referred to as the "General Contract;"
3. The agreement (or agreements), if any, between Partnership and any structural/mechanical/electrical engineer (or engineers) (hereinafter collectively referred to as "Engineers") pursuant to which said Engineers agree to perform any of the engineering services required in connection with the rehabilitation of the Project, said agreement or agreements, together with any and all extensions, modifications, amendments and renewals thereof being hereinafter collectively referred to as the "Engineer's Agreement;"
4. The agreement (or agreements), if any, between Partnership and any property manager or agent (hereinafter collectively referred to as "Manager") pursuant to which Manager agrees to perform any property management, leasing, maintenance or other services required in connection with the operation of the Project, said agreement or agreements, together with any and all extensions, modifications, amendments and renewals thereof being hereinafter collectively referred to as the "Management Agreement;"

94175005

UNOFFICIAL COPY

Property of Cook County Clerk's Office