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## MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

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COOK COUNTY RECORDER

### BORROWER:

CHICAGO COLONY  
APARTMENTS  
ASSOCIATES, an  
Illinois general  
partnership

95505304

### LENDER:

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY,  
a Massachusetts corporation

THIS INSTRUMENT IS EFFECTIVE AND SHALL REMAIN EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES ON THE REAL ESTATE HEREIN DESCRIBED AND IS TO BE FILED FOR RECORD OR REGISTERED IN THE REAL ESTATE RECORDS OF COOK COUNTY, ILLINOIS. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF BORROWER ARE SET FORTH WITHIN. A PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INSTRUMENT OR ANY FINANCING STATEMENT RELATING TO THIS INSTRUMENT SHALL BE SUFFICIENT AS A FINANCING STATEMENT.

Street Address of Property:  
Colony Apartments  
475 Enterprise Drive  
Mount Prospect, Illinois  
60056

### Property Tax Index Number:

08-23-402-004  
08-23-402-005  
08-23-402-006  
08-23-402-013

95505304



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(AND RECORDED AFTER RECORDING TO):

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## MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

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EXHIBIT A

EXHIBIT B

EXHIBIT C

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## MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT, made as of the 31st day of July, 1995, by and between CHICAGO COLONY APARTMENTS ASSOCIATES, an Illinois general partnership ("Borrower"), whose mailing address is c/o Paragon Group Property Services, Inc., 12400 Olive Boulevard, Suite 100, St. Louis, Missouri 63141, and JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY, a Massachusetts corporation, having its principal office and place of business at John Hancock Place, 200 Clarendon Street, Boston, Massachusetts 02117 ("Lender"),

### W I T N E S S E T H:

A. Borrower has executed and delivered to Lender a PROMISSORY NOTE in the principal amount of SEVENTEEN MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$17,400,000.00), (which PROMISSORY NOTE, together with all notes issued and accepted in substitution or exchange therefor, and as any of the foregoing may from time to time be modified or extended, is hereinafter sometimes called the "Note"), which Note provides, among other things, for final payment of principal and interest under the Note, if not sooner paid or payable as provided therein, to be due on August 1, 2002, the Note by this reference thereto being incorporated herein; and

B. Lender is desirous of securing the prompt payment of the Note together with interest and prepayment fees, if any, thereon in accordance with the terms of the Note, and any additional indebtedness accruing to Lender on account of any future payments, advances or expenditures made by Lender pursuant to the Note or this Mortgage (all hereinafter sometimes collectively referred to as the "indebtedness secured hereby").

NOW, THEREFORE, Borrower, to secure payment of the indebtedness secured hereby and the performance of the covenants and agreements herein contained to be performed by Borrower, and for good and valuable consideration in hand paid, the receipt and sufficiency whereof are hereby acknowledged, hereby agrees and covenants that:

#### 1. GRANTING CLAUSES.

Borrower hereby irrevocably and absolutely does by these presents grant, mortgage, convey, transfer, assign, bargain, and sell to Lender, its successors and assigns, with all powers of sale (if any) and all statutory rights under the laws of the State of Illinois, all of Borrower's present and hereafter acquired estate, right, title and interest in, to and under, and grants to Lender a security interest in, the following:

(a) The real property described in EXHIBIT A attached hereto and incorporated herein by this reference, together with all

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buildings, structures and improvements now or hereafter erected thereupon and together with the fixtures and personal property hereinafter described (which real property, buildings, structures, improvements, fixtures and personal property is hereinafter sometimes referred to as "the Mortgaged Premises"); and

(b) All and singular the easements, rights-of-way, licenses, permits, rights of use or occupancy, privileges, tenements, appendages, hereditaments and appurtenances and other rights and privileges thereunto belonging or in any wise appertaining, whether now or in the future, and all the rents, issues and profits therefrom;

(c) All right, title and interest, if any, of Borrower, in and to the land lying within any street, alley, avenue, roadway or right-of-way open or proposed or hereafter vacated in front of or adjoining said Mortgaged Premises; and all right, title and interest, if any, of Borrower in and to any strips and gores adjoining said Mortgaged Premises;

(d) All machinery, apparatus, equipment, goods, systems, building materials, carpeting, furnishings, fixtures and property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the said Mortgaged Premises, or any part thereof, or used or usable in connection with any construction on or any present or future operation of said Mortgaged Premises, now owned or hereafter acquired by Borrower, including, but without limitation of the generality of the foregoing: all items described in EXHIBIT B attached hereto and made a part hereof; all heating, lighting, refrigerating, ventilating, air-conditioning, air-cooling, fire extinguishing, plumbing, cleaning, communications and power equipment, systems and apparatus; and all elevators, switchboards, motors, pumps, screens, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and also including any of such property owned by Borrower and stored on said Mortgaged Premises or in warehouses and intended to be used in connection with or incorporated into said Mortgaged Premises; it being understood and agreed that all such machinery, equipment, apparatus, goods, systems, fixtures, and property are a part of the said Mortgaged Premises and are declared to be a portion of the security for the indebtedness secured hereby (whether in single units or centrally controlled, and whether physically attached to said real estate or not), excluding, however, personal property owned by tenants of the Mortgaged Premises; and

(e) Any and all awards, payments or insurance proceeds, including interest thereon, and the right to receive the same, which may be paid or payable with respect to the Mortgaged Premises as a result of (1) the exercise of the right of eminent domain, or (2) the alteration of the grade of any street, or (3) any fire, casualty, accident, damage or other injury to or decrease in the value of the Mortgaged Premises, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such

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award or payment by Lender. Borrower agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to confirm such assignment to Lender of any such award or payment.

TO HAVE AND TO HOLD the Mortgaged Premises with all rights, privileges and appurtenances thereunto belonging, and all rents, issues and profits therefrom, unto Lender, its successors and assigns, forever, for the uses and purposes herein expressed.

THIS MORTGAGE IS GIVEN TO SECURE:

- (1) Payment of the indebtedness secured hereby;
- (2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender or advanced under the Loan Documents (hereinafter defined), even though the aggregate amount outstanding at any time may exceed the original principal balance stated herein and in the Note (provided, however, that the indebtedness secured hereby shall in no event exceed an amount equal to three hundred percent (300%) of the face amount of the Note); and
- (3) The due, prompt and complete performance of each and every covenant, condition and agreement contained in this Mortgage, the Note, and every other agreement, document and instrument to which reference is expressly made in this Mortgage or which at any time evidences or secures the indebtedness evidenced by the Note (this Mortgage, the Note and all such other instruments are hereinafter sometimes collectively referred to as the "Loan Documents").

## 2. REPRESENTATIONS AND COVENANTS.

It is a condition of this Mortgage that the representations and covenants made in this Section 2 be true, correct and complete upon the execution and delivery of the Loan Documents, and Borrower hereby represents and covenants to Lender that:

2.1 Title to Mortgaged Premises. As of the date of delivery of this Mortgage, Borrower is well and lawfully seized of the mortgaged Premises as a good and indefeasible estate in fee simple, free and clear of all liens, encumbrances, easements, covenants, conditions, and restrictions (including, with respect to the fixtures and personal property referred to herein, security interests, conditional sales contracts, title retention financing devices and anything of a similar nature except those made or entered into by a tenant of the Mortgaged Premises), subject, however, to the matters set forth in EXHIBIT C attached hereto, and has good and full power and lawful authority to grant, mortgage, convey and grant a security interest in the same in the manner herein provided; and that Borrower will make any further assurances of title that Lender may require and will defend the Mortgaged

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Premises against all claims and demands whatsoever, subject to the matters set forth in Exhibit C attached hereto.

2.2 Due Organization, Authority. Borrower is duly organized and validly existing and in good standing under the laws of the State of Illinois and has power and authority adequate to carry on its business as presently conducted, to own the Mortgaged Premises, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.

2.3 Execution, Delivery and Effect of Loan Documents. The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is intended to be a legal, valid and binding obligation of Borrower, subject to the limitation on personal liability stated in Section 9 hereof, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

2.4 Other Obligations. The execution and performance of the Loan Documents and all agreements and covenants therein and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any presently existing law to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.

2.5 Licenses and Permits. To the best of Borrower's knowledge after due inquiry, there are presently in full force and effect all certificates, licenses, and permits (herein collectively "Permits") required by applicable presently existing laws, ordinances, codes and regulations for the operation of the Mortgaged Premises as a residential 783 unit apartment complex, and Borrower agrees that such Permits shall be available for Lender's inspection at all reasonable times and that copies thereof shall be furnished to Lender upon request. Borrower agrees to keep all Permits and to cause all Permits now or hereafter required in full force and effect and to obtain renewals thereof before expiration. Borrower further agrees that it shall constitute an Event of Default hereunder if Borrower at any time shall fail to keep in full force and effect all necessary permits and licenses described herein or as required by any laws, ordinances, codes and regulations hereinafter enacted.

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2.6 Compliance with Laws. Except as disclosed in that certain Environmental Report prepared by Wight & Company dated June 9, 1995 with respect to the Mortgaged Premises, a copy of which has heretofore been furnished by Borrower to Lender:

(a) To the best of Borrower's knowledge, the improvements forming part of the Mortgaged Premises and the use of the Mortgaged Premises for the purposes set forth above in Section 2.5 hereof comply in all material respects (except as otherwise required by Subsection 3.18(b) hereof) with all presently existing applicable laws and regulations, including without limitation health and sanitation laws, OSHA, building and zoning laws and ordinances and set-back and parking requirements, and with all requirements of applicable insurance carriers; and it shall constitute an Event of Default hereunder, subject to the provisions of Section 3.19 hereof, if the improvements forming part of the Mortgaged Premises or the use of the Mortgaged Premises are at any time determined not to be in compliance with all applicable laws and regulations, and such lack of compliance may cause such improvements to be vacated or demolished, or may result in the institution of proceedings for vacation or demolition of the improvements, or may otherwise, in Lender's reasonable judgment, adversely affect the value of Lender's security in the Mortgaged Premises.

(b) Borrower has received no notice that the environmental or ecological condition of the Mortgaged Premises is in violation of any Environmental Law (as defined in Section 3.20 below); and Borrower, after making reasonable inquiry, has no knowledge of any such violation.

(c) Borrower has received no notice that the soil, surface, water or ground water of or on the Mortgaged Premises are not free from any spill, release or discharge of any Hazardous Substance (as defined in Section 3.20 below), and Borrower, after making reasonable inquiry, has no knowledge of any such spill, release or discharge.

(d) To the best of Borrower's knowledge, Borrower has not used, or permitted to be used, the Mortgaged Premises for the treatment, storage or disposal of any such Hazardous Substance (as defined in Section 3.20 below), nor in any other manner which could lead to the imposition on Borrower of liability under any Environmental Law, and Borrower, after making reasonable inquiry, has no knowledge of such use by any predecessor in interest or any other individual or entity.

(e) To the best of Borrower's knowledge, there have been no releases at, upon, under, or within, nor past or ongoing migration from neighboring lands to the Mortgaged Premises of any Hazardous Substance.

(f) To the best of Borrower's knowledge, no underground storage tank is located on the Mortgaged Premises.

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(g) To the best of Borrower's knowledge, there is no Hazardous Substance located on, at or within the Mortgaged Premises.

(h) Borrower has not received notice of violation of any Environmental Law, nor has it committed, or, to the best of its knowledge, permitted, any activity in violation of the representations made in paragraphs (a) through (g) of this Section 2.6.

(i) For the purposes of this Section 2.6 and Section 3.18 below, any one or more of the following shall constitute a determination of non-compliance with an Environmental Law:

(1) Determination by any governmental authority of such non-compliance, if the effect of such determination is not stayed within thirty (30) days by the commencement of an appropriate administrative or judicial appeal; or

(2) A judgment by a court of competent jurisdiction of such non-compliance, if the effect of such judgment is not stayed within thirty (30) days by the commencement of an appropriate judicial appeal.

2.7 Construction and Completion of Improvements. The presently existing improvements located on the Mortgaged Premises have been completed and installed in a good and workmanlike manner, in compliance in all material respects with applicable laws and ordinances and with the plans and specifications therefor previously delivered to Lender. The improvements are served by electric, gas, sewer, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets and driveways necessary for access to the Mortgaged Premises, and other on-site and off-site improvements necessary for the present and contemplated uses and operation of the Mortgaged Premises and for service by utilities have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

2.8 Independence of the Mortgaged Premises. Borrower has not by act or omission permitted any building or other improvements on property not covered by this Mortgage to rely on the Mortgaged Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence and operation of such property, building or improvement; and no improvements on the Mortgaged Premises shall rely on any property not covered by this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Borrower has not by act or omission impaired the integrity of the Mortgaged Premises as a single, separate, subdivided zoning lot, separate and apart from all other property.

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## 3. BORROWER'S COVENANTS OF PAYMENT AND OPERATION.

3.1 Performance of Covenants in Loan Documents. Borrower shall fully perform, observe and comply with all agreements, covenants, conditions and provisions hereof, of the Note and of the other Loan Documents, and shall duly and punctually pay to Lender the sums of money expressed in the Note, with interest thereon and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage and the other Loan Documents, all without any deduction or credit for taxes or other similar charges paid by Borrower.

### 3.2 Payment of Taxes and Tax Deposits.

(1) Payment of Taxes. Borrower shall pay or cause to be paid all taxes, assessments and other similar charges of whatever nature, ordinary and extraordinary, and to whomever assessed which are now or may hereafter be assessed or levied against the Mortgaged Premises or any portion thereof or interest therein or which become payable with respect thereto or with respect to the occupancy, use or possession thereof, before the same become delinquent; and shall deliver to Lender within thirty (30) days after the payment thereof receipts of the proper officers for such payment. In default thereof, Lender may, but shall not be obligated to, pay such taxes, assessments, and other similar charges, including any penalties or interest thereon (without inquiring into the validity or invalidity of such taxes, assessments or other similar charges and of which payment, amount and validity thereof, the receipt of the proper officer shall be conclusive evidence), and any amount so paid by Lender shall become immediately due and payable by Borrower with interest as described in Section 6.6 hereof until paid and shall be secured by this Mortgage. Borrower shall have the right to contest the amount or validity of any such tax, assessment or other similar charge by appropriate legal proceedings if: (i) the legal proceedings shall operate to prevent the collection of such taxes, assessment or other similar charge so contested and the sale of the Mortgaged Premises or any part thereof to satisfy the same, and (ii) Borrower (unless such taxes, assessment or other similar charge have been paid in full under protest) shall deposit with Lender or with the appropriate court or other governmental authority or title insurance company satisfactory to Lender an amount, with such subsequent additions thereto as may be necessary, sufficient in Lender's opinion to pay such taxes, assessment or other similar charge, together with all estimated interest and penalties in connection therewith, and all charges that may be assessed in said legal proceedings against, or may become a charge on, the Mortgaged Premises.

(2) Tax Escrow Payments. Borrower shall pay to Lender, concurrently with and in addition to each monthly

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installment payable on the Note, such amount as Lender from time to time estimates will be required to maintain thereafter a balance from which to pay taxes, assessments and other governmental liens or charges against the Mortgaged Premises at least thirty (30) days prior to the date on which the same become delinquent or past due. Borrower shall procure and deliver to Lender in advance statements for such charges. Payments for such purposes may be made by Lender at its discretion, even though subsequent owners of the Mortgaged Premises may benefit thereby. Lender shall not be a trustee of such funds, and such funds received pursuant to the foregoing may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand by Lender, Borrower shall deliver and pay over to Lender from time to time such additional sums or such additional security as are necessary to make up any deficiency in the amount necessary to enable Lender to fully pay any of the items hereinabove mentioned as they become payable. If any Event of Default (as hereinafter defined) exists under the terms of this Mortgage, any part or all of the balance of said amounts received by Lender pursuant to the foregoing may be applied to any part of the indebtedness secured hereby in the discretion of Lender and in refunding any part of said amounts Lender may deal with whomever is represented to be the owner of the Mortgaged Premises at that time. The obligations of Borrower pursuant to covenants contained in this Mortgage relating to taxes and assessments shall not be affected by this Subsection 3.2(2) or payments made pursuant hereto, except to the extent that said obligations have actually been satisfied by compliance with this subparagraph. Notwithstanding the foregoing, Borrower's obligations under this Section 3.2 may be satisfied by Borrower and Lender entering into an escrow agreement in form acceptable to Lender naming as escrowee a bank acceptable to Lender.

### 3.3 Insurance and Insurance Deposits.

(1) Required Coverage. Borrower shall procure, deliver to, and maintain for the benefit of Lender (in the manner hereinafter described) to the extent of the balance of the indebtedness secured hereby during the continuance of this Mortgage and until the same is fully satisfied and released, the following insurance policies:

(a) "All-Risk" casualty insurance policies insuring the buildings, structures, improvements and fixtures now existing or hereafter constructed upon the Mortgaged Premises against all loss or damage occasioned by casualties which, under good insurance practice, are commonly insured against for buildings, structures, and improvements of like character in Cook County, Illinois. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost of

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such buildings, structures and improvements, without deduction for depreciation, as reasonably determined by Lender from time to time; such insurance shall name Lender as a first mortgagee;

(b) Rent Loss Insurance insuring against loss arising out of the perils insured against in the policy or policies referred to in Subsection 3.3(1)(a) above, in an amount equal to not less than six (6) months' gross revenue from the operation and rental of all improvements now or hereafter forming part of the Mortgaged Premises, based upon one hundred percent (100%) occupancy of such improvements, less any allocable charges and expenses which do not continue during the period of restoration; such insurance shall name Lender as a loss payee;

(c) Insurance covering pressure vessels, pressure piping and machinery, if any, and all major components of any centralized heating or air-conditioning systems located in the buildings and improvements forming part of the Mortgaged Premises, in an amount satisfactory to Lender, such policies also to insure against physical damage to such buildings and improvements arising out of a peril covered thereunder; such insurance shall name Lender as a first mortgagee;

(d) Insurance on the items of tangible property described in Section 5 hereof and in EXHIBIT B attached hereto and any replacements and substitutions therefor (hereinafter sometimes collectively referred to as "the Equipment") against loss or damage by fire and other hazards presently included in so-called "extended coverage" policies and against vandalism and malicious mischief in an amount satisfactory to Lender, but in any event in such amount as is necessary to preclude the Borrower from being a co-insurer; such insurance shall name Lender as a loss payee;

(e) Comprehensive general public liability and property damage coverage with a broad form coverage endorsement in such amounts and with such companies as are satisfactory to Lender; such insurance shall name Lender as an additional insured;

(f) Flood Insurance, in the event the Mortgaged Premises are located in a federally-designated Special Flood Hazard Area; such insurance shall name Lender as a first mortgagee; and

(g) Such other insurance on the Mortgaged Premises, the buildings and improvements forming a part thereof and the Equipment (and any replacements or substitutions therefor) and in such amounts as may from time to time be

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reasonably required by the Lender against other insurable hazards and perils which at the time are commonly insured against for buildings, structures, improvements and equipment of like character in Cook County, Illinois, due regard being given to the height and type of the buildings and improvements, and their construction, location, use and occupancy, and naming Lender as a beneficiary thereof in the then-customary manner for the insurance coverage in question.

(2) Form of Policies. All policies of insurance required hereunder shall be in such form, issued by such companies, and in such amounts as may be acceptable to Lender, shall be kept on deposit with Lender, and shall contain a non-contributory standard mortgagee clause acceptable to Lender, with loss payable to Lender, a lender's loss payable endorsement, a waiver of subrogation endorsement, and replacement cost and agreed amount endorsements or equivalent clauses or endorsements acceptable to Lender, and shall further provide that such insurance coverage may not be changed or cancelled without at least thirty (30) days' prior written notice to Lender. Borrower shall promptly pay when due any premiums on any policy or policies of insurance required hereunder, and will deliver to Lender renewals of such policy or policies at least fifteen (15) days prior to the expiration dates thereof, said policies and renewals or invoices therefor to be marked "paid" by the issuing company or agent; provided, however, that if the renewals are with the same companies, in at least as great as the amounts and under the same terms and conditions as the expiring policies, Borrower may deliver to Lender at least fifteen (15) days prior to the expiration dates evidence satisfactory to Lender of the renewals of such policy or policies. Certified copies of the renewal policies will be delivered to Lender on the earlier of ten (10) days following Borrower's receipt of same or thirty (30) days following the expiration of the existing policies. Upon Borrower's failure to comply with the requirements of this Section 3.3, Lender may, in its discretion, procure any insurance required hereunder in the amounts required pursuant to the terms and provisions of this Mortgage and pay the premiums due therefor, and any amounts so paid by Lender shall become immediately due and payable by Borrower with interest as described in Section 6.6 hereof, and shall be secured by this Mortgage.

(3) Application of Loss Proceeds. In the event of any loss or damage to any part of the Mortgaged Premises, Borrower shall give prompt notice thereof to Lender, and Lender may make proof of such loss or damage if the same is not promptly made by Borrower or if the Lender deems it desirable to do so. In the event of such loss or damage: (1) all proceeds of insurance shall be payable to Lender to the extent of the full amount of the remaining unpaid indebtedness secured hereby;

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(2) any affected insurance company is authorized and directed to make payment thereof directly to Lender to the extent of the full amount of the then remaining unpaid indebtedness secured hereby; and (3) Lender is authorized and empowered to settle, adjust or compromise any claims for loss, damage, or destruction under any policy or policies of insurance; provided, however, that if no Event of Default exists as of the date of such loss, damage or destruction, Borrower may, subject to Lender's approval, settle, adjust or compromise such claim. Borrower agrees to execute, upon demand by Lender, all receipts, vouchers, releases and other instruments which may be necessary or desirable in aid of the aforementioned authorizations. All such insurance proceeds may, at the sole discretion of Lender, be: (a) applied to the restoration, repair, replacement or rebuilding of the Mortgaged Premises; or (b) applied to the payment of the last maturing installment or installments of the indebtedness secured hereby (whether or not then due and payable); or (c) paid over to the Borrower, on such terms and conditions as the Lender in its discretion may specify, to be used to repair the buildings, structures, improvements or Equipment, or to build or install new ones in their place, or for any other purpose or object satisfactory to the Lender, without affecting the lien of or the priority of the lien of this Mortgage for the full amount of the indebtedness secured hereby before such payment took place. The Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure. If Lender elects or is required to make such insurance proceeds available for repair, restoration or rebuilding of the Mortgaged Premises, any portion of such proceeds not needed or used in such repair, restoration, rebuilding or building shall be applied to the payment of the indebtedness secured hereby, as provided above.

(4) Insurance Escrow Payments. Borrower shall pay to Lender, to the extent reasonably requested by Lender, on dates on which interest under the Note is payable, such amounts as Lender from time to time estimates to be necessary to create and maintain a reserve fund from which to pay premiums as the same become due, for insurance as herein covenanted to be furnished by Borrower. Borrower shall procure and deliver to Lender in advance statements for such charges. Payments for such purposes may be made by the Lender at its discretion, even though subsequent owners of the Mortgaged Premises may benefit thereby. Lender shall not be a trustee of such funds, and such funds received pursuant to the foregoing may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. If any Event of Default occurs under the terms of this Mortgage, any part or all of the balance of said amounts received by Lender pursuant to this Subsection 3.3(4) may be applied to any part of the indebtedness secured hereby in the discretion of Lender and in

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refunding any part of said amounts Lender may deal with whomever is represented to be the owner of the Mortgaged Premises at that time. The obligations of Borrower pursuant to covenants contained in this Mortgage relating to insurance shall not be affected by this Subsection 3.3(4) or payments made pursuant hereto, except to the extent that said obligations have actually been satisfied by compliance with this Subsection.

## 3.4 Maintenance, Repairs and Restoration; Compliance with Laws.

(1) Maintenance and Repair. Borrower shall keep and maintain the Mortgaged Premises in good order, condition and repair and will make, regardless of the sufficiency of insurance proceeds, as and when the same shall become necessary, all structural and non-structural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen, repairs, restorations and maintenance, including any replacements, necessary or appropriate including, without limitation, repairs of damage or destruction caused by fire or other casualty or as the result of any taking under the power of eminent domain; provided, however, that it shall not be deemed an Event of Default hereunder if Borrower fails to repair or restore the Mortgaged Premises following a fire or other casualty or a taking under the power of eminent domain if Lender has failed pursuant to, respectively, Subsection 3.3(3) hereof or Section 4.1, to make insurance proceeds or any condemnation award available for such repair or restoration. Borrower shall give Lender prompt written notice of any damage or destruction to the Mortgaged Premises caused by fire or other casualty. Borrower will suffer or commit no waste to the Mortgaged Premises or any portion thereof. All repairs and maintenance required of Borrower must satisfy Lender as being of a good and workman-like quality and shall in all material respects be in compliance with all matters and things provided in Subsection 3.4(2) below; and with respect to any such proposed action, Borrower shall comply with all requirements which may reasonably be imposed by Lender, including, without limitation, the furnishing of additional title insurance against liens, architectural inspections and certificates, and the furnishing of security guaranteeing the completion of all such work. Borrower shall not cause, suffer or permit the construction of any building, structure or improvement on the Mortgaged Premises without the prior written consent of the Lender to the proposed action as well as to the plans and specifications relating thereto. None of the buildings, structures or capital improvements now or hereafter erected or located on the Mortgaged Premises shall be removed, demolished or substantially or structurally altered in any respect, without the prior written consent of Lender. Borrower shall, however, have the right, at any time and from time to time, to remove and dispose of any Equipment

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(as defined in Subsection 5.1(1)) or appliance which may have become obsolete or unfit for use or which is no longer useful in the operation of said Mortgaged Premises, provided Borrower promptly replaces any such Equipment or appliance so removed or disposed of with other equipment and appliances, of at least equal usefulness and quality, subject to the lien and security interest of this Mortgage and free of superior or pari passu title, security interest, liens or claims. Lender and any person authorized by Lender shall have the right, but not the obligation, to enter upon and inspect the Mortgaged Premises at all reasonable times.

(2) Compliance with Laws. Borrower shall promptly comply or cause compliance in all material respects (except as otherwise required by Subsection 3.18(b) hereof) with all covenants and restrictions affecting the Mortgaged Premises and with all present and future laws, ordinances, rules, regulations and other requirements of all governmental authorities with respect to the Mortgaged Premises and each portion thereof and with respect to the use or occupation thereof. Borrower shall have the right to contest the validity or application of any such laws, ordinances, rules, regulations and other requirements by appropriate legal proceedings, so long as: (i) such legal proceedings shall be prosecuted with diligence by Borrower and shall operate to prevent the taking of the Mortgaged Premises by any governmental authority, and (ii) Borrower shall have deposited with the Lender an amount, with such subsequent additions thereto as may reasonably be deemed necessary by Lender, sufficient in Lender's opinion to pay any fines, penalties, charges and interest thereon which in Lender's opinion may be awarded or assessed and which may become a charge or lien upon the Mortgaged Premises or which may in any way have or take parity with or priority over the lien of this Mortgage.

Borrower will not initiate or acquiesce in any zoning variation or reclassification of the Mortgaged Premises or any part thereof without Lender's prior written consent.

### 3.5 Sale, Assignment, Further Encumbrance and Other Liens and Charges.

(1) Borrower. Borrower covenants and represents that Borrower is an Illinois general partnership, the sole general partners of which are PaineWebber Income Properties Seven, L.P., a Delaware limited partnership and Chicago Colony Apartments Company, L.P., a Missouri limited partnership (collectively, the "General Partner"). The sole general partner of PaineWebber Income Properties Seven, L.P. is Seventh Income Properties Fund, Inc., a Delaware corporation. The sole general partners of Chicago Colony Apartments Company, L.P. are Lewis A. Levey, an individual, and WRC

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Holdings, Inc., a Texas corporation. William R. Cooper is the controlling shareholder of WRC Holdings, Inc.

(2) Prohibition on Transfer of Ownership. Unless specifically permitted pursuant to the terms and conditions of Section 3.5(3) below, and subject to the right of Borrower to enter into leases affecting the Mortgaged Premises pursuant to Section 3.7 hereof, Lender, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest under the Note, together with a prepayment premium as provided in the Note, to be immediately due and payable without notice to Borrower, if:

(a) Borrower shall, without the prior written consent of Lender, sell (on an installment basis or otherwise), transfer, convey, or assign the legal title to all or any portion of the Mortgaged Premises, whether by operation of law, voluntarily or otherwise; or

(b) Chicago Colony Apartments Company, L.P. shall, without the prior written consent of Lender, sell, transfer, convey or assign all or any part of its general partnership interest in Borrower; or

(c) PaineWebber Income Properties Seven, L.P. shall, without the prior written consent of Lender, sell, transfer, convey or assign all or any part of its general partnership interest in Borrower; or

(d) Any general partner of the General Partners shall, without the prior written consent of Lender, sell, transfer, convey or assign all or any part of its or his general partnership interest in the respective General Partner; or

(e) A controlling interest in the stock of Seventh Income Properties Fund, Inc. shall be sold to any person or entity other than a General Partner named in Section 3.5(1) hereof; or

(f) William R. Cooper shall sell his controlling interest in WRC Holdings, Inc.

In connection with Lender giving its consent to any sale, assignment or other transfer referred to in (a), (b), (c), (d) or (e) above, Borrower agrees that:

(i) Lender's right to consent or not to consent to such sale, assignment or transfer shall be in Lender's sole and unfettered discretion;

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(ii) If Lender gives its consent to any such sale, assignment or transfer, such buyer, assignee or transferee shall agree to perform all obligations hereunder of his or its seller, assignor or transferor, subject to the provisions of Section 9.1 hereof, and this Mortgage shall be amended to evidence such transfer or assignment and such agreement by the buyer, assignee or transferee;

(iii) Whether Lender consents to any proposed sale, assignment or transfer or not, Borrower shall reimburse Lender for all of Lender's out-of-pocket expenses for legal fees and other costs which Lender may incur with respect to such transfer, conveyance or assignment;

(iv) The provisions of Subsection 3.5(5) hereof shall be applicable with respect to any such sale, assignment or transfer; and

(v) If Lender approves any such sale, assignment or transfer, no buyer, assignee or transferee shall have any further right to sell, assign or transfer any interest as described in (a), (b), (c), (d) or (e) above without first obtaining Lender's prior written consent and satisfying the provisions of (i) through (iv) above of this Subsection 3.5(2).

### (3) Permitted Transfers of Ownership.

(A) Notwithstanding the provisions of Subsection 3.5(2), Lender shall have no right to accelerate the maturity of the Note in the event any limited partner of a General Partner or any limited partner of any other constituent member entity of Borrower sells, assigns or transfers his, her or its partnership interest in such General Partner or member entity (i) for estate planning purposes to an immediate family member (i.e. spouse or direct lineal descendant of such person) or to a trust established for the benefit of one or more such immediate family members, or (ii) to another limited partner of the respective General Partner or member entity, provided such transferee limited partner was a limited partner of the respective General Partner or member entity as of the date hereof, or (iii) to conservators, executors or administrators upon the disability or incompetence (determined pursuant to court order) or death of any such transferring parties. Notwithstanding anything herein to the contrary, the limited partnership interests of PaineWebber Income Properties Seven, L.P. may be sold, assigned or transferred without regard to the restrictions set forth in the foregoing clauses (i), (ii) and (iii).

Except for transfers of PaineWebber Income Properties Seven, L.P. limited partnership interests

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which may be made without Lender's consent and without notice to Lender, the transfers described above in this Subsection 3.5(3)(A) shall be made only provided that no Event of Default exists as of the time that such conveyance, transfer or assignment is made. Borrower shall promptly notify Lender following any such conveyance, transfer or assignment.

(B) Notwithstanding the provisions of Subsection 3.5(2), Lender shall have no right to accelerate the maturity of the Note upon a transfer, conveyance or assignment of the general partnership interest of PaineWebber Income Properties Seven, L.P. in Borrower to Chicago Colony Apartments Company, L.P., provided that no Event of Default (after the expiration of any applicable notice and cure periods) exists at the time that such conveyance, transfer or assignment is made. Borrower shall give Lender at least ten (10) days prior written notice of any such conveyance, transfer or assignment.

(C) Notwithstanding the provisions of Subsection 3.5(2), Lender shall have no right to accelerate the maturity of the Note in the event that either general partner of Chicago Colony Apartments Company, L.P. sells, assigns or transfers his or its respective general partnership interest (i) to the other general partner of Chicago Colony Apartments Company, L.P. or to William R. Cooper, individually, or (ii) to a trust established for the benefit of one or more immediate family members (i.e. spouse or direct lineal descendant) of either Lewis A. Levey or William R. Cooper, provided that either Lewis A. Levey or William R. Cooper is the trustee with full authority over and responsibility for the general partnership interest, or has the responsibility to direct the trustee with respect to the trustee's authority over the general partnership interest, or (iii) to any other entity controlled by either Lewis A. Levey or William R. Cooper, or (iv) to conservators, executors or administrators upon the disability or incompetence (determined pursuant to court order) or death of either Lewis A. Levey or William R. Cooper, provided that the other of said individuals retains the interest he holds as of the date of this Mortgage in Chicago Colony Apartments Company, L.P. or is the transferee under one of the transactions described in the foregoing clauses (i), (ii) or (iii). The term "controlled by" shall mean the possession, direct or indirect, of the power to cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise.

(D) Notwithstanding the provisions of Subsection 3.5(2) and in addition to the transfers permitted by Subsections 3.5(3)(A), 3.5(3)(B) and 3.5(3)(C), on a one-time basis only (but subject to the exceptions set forth in Subsections 3.5(3)(E) and 3.5(3)(F) hereof), Borrower may convey fee title to the Mortgaged Premises, or either or both of the General

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Partners may transfer or assign its or their respective general partnership interest to one or more transferees or assignees who shall become a general partner of Borrower, and Lender shall have no right to accelerate the maturity of the Note as a result thereof, under the following conditions:

(i) No Event of Default shall exist as of the time that such conveyance, transfer or assignment is made, and no event or occurrence which, with the passage of time or the giving of notice, or both, would constitute an Event of Default shall exist at such time;

(ii) The provisions of Section 3.5(4) hereof shall apply and there shall be no junior financing in connection with such transfer;

(iii) Lender shall be furnished written notice of the proposed conveyance not less than sixty (60) days prior to the making of such conveyance, together with such information and documentation regarding the proposed transferee, including financial and credit information and information regarding such party's management experience and general reputation in the community, as Lender may reasonably request, including, without limitation, a description of the proposed terms of the transfer, a diagram detailing the ownership structure of the proposed transferee entity and each of its constituent member entities, including a list of names of all persons having or proposing to have more than a ten percent (10%) ownership interest in the proposed transferee or any of its constituent member entities, the nature of the ownership interest and ownership percentages for each of them, and financial statements for all general partners as well as any entities having or proposing to have more than a ten percent (10%) ownership interest in the proposed transferee and Lender shall have approved such conveyance to such proposed transferee on the basis of such information. Borrower shall pay to Lender at the time of delivery of the foregoing notice a \$5,000 administrative fee, which shall be deemed fully earned on the date of receipt by Lender and shall be retained by Lender whether or not the transfer occurs and whether or not Lender approves of such transfer. At the date of the conveyance and provided all conditions of this Subsection 3.5(3)(D) have been satisfied, Borrower shall receive a credit against the processing fee described in clause (viii) below in the amount of the administrative fee;

(iv) If Lender gives its consent to such proposed conveyance, such buyer shall agree to perform all obligations hereunder of its seller subject to the provisions of Section 9 hereof (and shall acknowledge in

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writing that it has read and examined all of the provisions hereof), and this Mortgage shall be amended to evidence such conveyance and such agreement by the buyer, and such buyer shall execute and deliver to Lender an assumption agreement and a separate environmental indemnity agreement in form and substance satisfactory to Lender, together with such security agreements, financing statements, collateral assignments and other documentation as shall be reasonably necessary to enable Lender to have and enjoy the same security for the indebtedness secured hereby as Lender has under the Loan Documents;

(v) At least thirty (30) days prior to the transfer, Borrower shall furnish to Lender and Lender's counsel a certification from Borrower and the proposed transferee that the actual terms of the transfer as previously presented to Lender pursuant to the foregoing clause (iii) of this Subsection 3.5(3)(D) remain unchanged, together with evidence that the buyer or transferee has (or will have in place at the closing) casualty insurance in such form and amounts as are satisfactory to Lender, a proforma copy of the title policy described below in clause (ix) of this Subsection 3.5(3)(D), and such other documents or certificates as Lender may require, all in form and substance satisfactory to Lender; at least ten (10) days prior to the transfer, Borrower shall furnish to Lender and Lender's counsel copies of all corporate or partnership documents authenticating the existence and authority of the transferee to acquire the Mortgaged Premises and a legal opinion from the transferee's counsel opining as to the due formation and existence of the transferee and the continuing enforceability of the Loan Documents and covenants and agreements therein as assumed by the transferee.

(vi) Lender shall be provided satisfactory evidence concerning the effect of any change in the real estate taxes for the Mortgaged Premises which may result from the proposed transfer and the effect of such change on the ability of the Mortgaged Premises to generate a cash flow sufficient to pay the debt service on the loan secured hereby and to maintain a debt service coverage ratio satisfactory to Lender;

(vii) Lender shall be provided with evidence satisfactory to Lender that the proposed buyer or transferee is not subject to sovereign immunity and is subject to service of process in the State of Illinois;

(viii) Lender shall be paid a processing fee in an amount equal to one percent (1%) of the unpaid principal balance of the indebtedness evidenced by the Note as of

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the date of the conveyance; provided, however, that no such processing fee shall be payable if the proposed buyer or transferee is an "Affiliate" of PaineWebber Income Properties Seven, L.P. or PaineWebber Incorporated (collectively, the "PW Entities") or Paragon Group, Inc. For purposes of the foregoing, the term "Affiliate" shall mean (aa) any subsidiary of either of the PW Entities or Paragon Group, Inc.; (bb) any parent corporation of either PW Entities or Paragon Group, Inc.; or (cc) any entity which directly or indirectly controls or is controlled by or is under common control with either of the PW Entities or Paragon Group, Inc., as the case may be. The term "control" (including the terms "controlling", "controlled by" and "under common control with") shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise;

(ix) Borrower shall provide to Lender, at Borrower's sole cost and expense, a title insurance policy or an endorsement to Lender's existing title insurance policy, from a company satisfactory to Lender insuring the continuing priority of this Mortgage notwithstanding the transfer and otherwise in form and content satisfactory to Lender. Lender shall further be furnished with a copy of the recorded deed or other instrument of conveyance or transfer promptly after the closing;

(x) Borrower shall reimburse Lender for all of Lender's costs, fees and expenses, including, without limitation, Lender's attorneys' fees, which Lender may incur with respect to such conveyance; and

(xi) Such one-time transfer privilege shall be personal to Borrower, and at such time as such transfer has been effected by Borrower, such one-time transfer privilege shall no longer apply or be applicable to or for the benefit of any subsequent owner of the Mortgaged Premises.

(E) In addition to the one-time transfer right described in Subsection 3.5(3)(D) hereof, Lender will permit the transfer by Chicago Colony Apartments Company, L.P. of its general partnership interest in Borrower to PaineWebber Income Properties Seven, L.P., pursuant to the exercise by PaineWebber Income Properties Seven, L.P. of its right of first refusal contained in Section 7.01 of the partnership agreement of Borrower (the "Partnership Agreement"), provided that Borrower shall comply with all of the conditions of transfer enumerated in Subsection 3.5(3)(D), except for those described in clauses (iv), (v), (vii), (viii) and (ix) thereof

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(and except that the time period described in clause (iii) shall be 45 days rather than 60 days, and further except that the condition set forth in clause (xi) shall be deemed to be applicable to PaineWebber Income Properties Seven L.P., rather than Borrower).

(F) In addition to the one-time transfer right described in Subsection 3.5(3)(D) hereof, but in lieu of the transfer described in Subsection 3.5(3)(E) hereof, Lender will permit the conveyance of fee title to the Mortgaged Premises to either PaineWebber Income Properties Seven, L.P. or Chicago Colony Apartments Company, L.P. in connection with the exercise by such party of its respective buy/sell right contained in Section 7.02 of the Partnership Agreement, provided that Borrower shall comply with all of the conditions of transfer enumerated in Subsection 3.5(3)(D), except for those described in clause (viii) thereof (and except that the condition set forth in clause (xi) shall be deemed to be applicable to either PaineWebber Income Properties Seven, L.P. or Chicago Colony Apartments Company, L.P., as the case may be, rather than Borrower).

#### (4) Prohibition on Further Encumbrances.

(a) Borrower covenants and agrees that this Mortgage is and will be maintained as a valid first lien on the Mortgaged Premises, and that Borrower will not, without the prior written consent of Lender, directly or indirectly, create, suffer or permit to be created or filed against the Mortgaged Premises, or any portion thereof, or against the rents, issues and profits therefrom, or against the beneficial interest in Borrower, any mortgage lien, security interest, or other lien or encumbrance superior or inferior to the lien of this Mortgage, except the lien of current general taxes duly levied and assessed but not yet due and payable. In the event Borrower shall suffer or permit, without the prior written consent of Lender, any superior or junior lien to be attached to the Mortgaged Premises or to the beneficial interest in Borrower, the Lender, at its option, has the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest to be immediately due and payable without notice to Borrower, together with a prepayment premium as provided in the Note.

#### (5) Increase in Interest Rate as Condition of Consent.

In connection with Lender giving its consent to any sale or transfer of the Mortgaged Premises (other than as permitted under Subsection 3.5(3)) or to a junior lien or encumbrance, Borrower agrees that Lender shall have the right and option to increase the interest rate called for in the Note to a rate not in excess of the rate then being offered by Lender on

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mortgage loans secured by real property similar to the Mortgaged Premises and to increase the amount of the monthly installment payments required to be made pursuant to the terms and provisions of the Note.

(6) Consent Not a Waiver. Any consent by Lender, or any waiver by Lender of an Event of Default as provided in Subsections 3.5(2) or 3.5(3) or 3.5(4) hereof, shall not constitute a consent to, or a waiver of any right, power, privilege, option or remedy of the Lender upon, a subsequent Event of Default under Subsections 3.5(2), 3.5(3) or 3.5(4).

(7) Mechanic's Liens; Utility Charges. Borrower shall keep and maintain the Mortgaged Premises free from all liens and encumbrances, whether claimed by operation of law or by virtue of any expressed or implied contract, of persons supplying labor or materials, or both of them, entering into the construction, modification, repair, restoration or maintenance of the Mortgaged Premises or any portion thereof. If any such liens shall be filed against the Mortgaged Premises, Borrower agrees to discharge the same of record within thirty (30) days after Borrower has notice thereof, provided, however, Borrower shall have the right, at Borrower's sole expense, to contest the validity of any such liens asserted by persons allegedly supplying such labor and materials by appropriate legal proceedings so long as: (i) such legal proceedings shall be diligently prosecuted and shall operate to prevent the collection of such liens so contested and the sale of the Mortgaged Premises or any part thereof to satisfy the same; and (ii) Borrower shall deposit an amount reasonably satisfactory to Lender, to be held by Lender without the payment of interest or to be held by an appropriate court or other governmental authority or title insurance company satisfactory to Lender, in any case until such contested liens are removed of record or are satisfied. Borrower shall pay promptly, when due, all charges for utilities or services, including without limitation any charges for electricity, gas, water and sewer, and all license fees, rents and other charges for the use of vaults, canopies or other appurtenances to the Mortgaged Premises. If Borrower fails to pay promptly all such charges described above, Lender may, but shall not be obligated to, pay same and any amounts so paid by Lender shall become immediately due and payable by Borrower with interest as described in Section 6.6 hereof and shall be secured by this Mortgage. Borrower agrees that Lender is under no obligation to inquire into or establish the validity of any liens or claims of lien or interest before making advances to satisfy or settle all or any part of said claims.

(8) Legal Proceedings. If any civil action or proceeding shall be instituted to evict Borrower or recover possession of the Mortgaged Premises or any part thereof or

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for any other purposes affecting the Mortgaged Premises or this Mortgage, Borrower will, promptly upon service thereof on or by Borrower, deliver to Lender a true copy of each petition, summons, complaint, notice of motion, order to show cause and all other process, pleadings and papers, however designated, served in any such civil action or proceeding.

(9) Reasonableness of Provisions. With respect to the provisions of Subsections 3.5(2), 3.5(3) and 3.5(4), Borrower acknowledges that, in determining whether to make the loan secured hereby, Lender has examined the credit-worthiness of Borrower, found it acceptable and relied and continues to rely upon same as the means of repaying the loan. Lender also evaluated the background and experience of Borrower in owning and operating property such as the Mortgaged Premises, found them acceptable and relied and continues to rely upon same as the means of maintaining the value of the Mortgaged Premises which is Lender's security for the loan. Borrower is well-experienced in borrowing money and owning and operating property such as the Mortgaged Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and provisions of the loan, including this provision. Borrower recognizes that Lender 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 of a loan, the security for which is purchased by a party other than the original Borrower. Borrower further recognizes that any secondary or junior financing placed upon the Mortgaged Premises (1) may divert funds which would otherwise be used to pay the Note, (2) could result in acceleration and foreclosure by any such junior lender which would force Lender to take measures and incur expenses to protect its security, (3) would detract from the value of the Mortgaged Premises should Lender come into possession thereof with the intention of selling same, and (4) would impair Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by Lender would be necessary to clear title to the Mortgaged Premises.

In recognition of such considerations and for the purposes of (i) protecting Lender's security, both of the repayment by Borrower and value of the Mortgaged Premises, (ii) giving Lender the full benefit of its bargain and contract with Borrower, (iii) allowing Lender to raise the interest rate and/or collect assumption fees and (iv) keeping the Mortgaged Premises free of any subordinate financing liens, Borrower has agreed to the provisions of Subsections 3.5(2), 3.5(3) and 3.5(4), and agrees that if such provisions may be deemed a restraint on alienation, then they are reasonable restraints on alienation.

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## 3.6 Impairment of Security.

(1) Without limitation of any other provisions hereof, Borrower shall not, except in connection with the lien hereof, assign, in whole or in part, the rents, income or profits arising from the Mortgaged Premises without the prior written consent of Lender; any such assignment made without Lender's prior written consent shall be null and void and of no force and effect, and the making thereof shall at the option of Lender constitute an Event of Default under this Mortgage. Without limitation of the foregoing, Borrower will not without the prior written consent of Lender in any other manner impair the security of this Mortgage for the payment of the indebtedness secured hereby, it being understood that any such impairment shall at the option of Lender also constitute an Event of Default hereunder.

(2) Lender shall have the power (but not the obligation) to: (i) institute, become a party to, and maintain such civil actions and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Premises by any acts which may be unlawful or in violation of this Mortgage; (ii) preserve and protect its interest in the Mortgaged Premises and in the rents, issues, profits and revenues arising therefrom; and (iii) restrain the enforcement of or compliance with any legislative or other governmental enactment, regulation, rule, order or other requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, regulation, rule, order or other requirement would impair the security hereunder or be prejudicial to the interest of the Lender, and all reasonable costs and expenses incurred by the Lender in connection therewith (including, without limitation, reasonable attorneys' fees) shall be paid by Borrower to Lender on demand, with interest at the rate specified in Section 6.6 hereof, and shall be additional indebtedness secured hereby.

## 3.7 Lease Conditions and Assignment of Leases and Rents.

(1) Borrower shall observe and perform all covenants, conditions, and agreements in any lease now or hereafter affecting the Mortgaged Premises, or any portion thereof, on the part of Borrower to be observed and performed. If Borrower shall default in the performance of any of the terms, covenants, conditions or obligations imposed upon Borrower by any such lease and such default would give the lessee the right to terminate or cancel said lease or make monetary advances and offset the same against future rentals, and such right in the lessee to terminate or cancel or to make monetary advances or to offset against future rentals would, in Lender's reasonable judgment, materially affect the value of Lender's security, then, at the option of Lender: (1) the whole of the indebtedness secured hereby, including all

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advances and payments by Lender hereunder, shall become immediately due and payable and collectible by foreclosure or otherwise without notice or demand; and (2) Lender may take such action as Lender deems necessary or advisable to cure such default of Borrower.

(2) Borrower shall furnish to Lender within one hundred twenty (120) days of the end of each fiscal year of Borrower, a rent roll for the Mortgaged Premises showing the name of each tenant in occupancy, the rent currently collectible under each lease, the commencement and expiration dates of each lease and any free rent periods, rent rebates or other rent concessions granted under each lease.

(3) Borrower will not, without the prior written consent of Lender, enter into any new lease or lease renewal of all or any part of the said Mortgaged Premises on any form other than a form of lease approved by Lender; provided, however, that Borrower can make nonmaterial changes to the form of lease without the prior approval of Lender.

(4) In order to further secure payment of the Note and the observance and performance of Borrower's obligations hereunder, Borrower hereby assigns, transfers and sets over to Lender all of Borrower's right, title and interest in, to and under all of the leases now or hereafter affecting any part of the Mortgaged Premises and in and to all of the rents, issues, profits and other benefits now or hereafter arising from any part of the Mortgaged Premises. Unless and until an Event of Default shall have occurred and shall have continued beyond applicable grace or cure periods, if any, contained herein, Borrower shall be entitled to collect the rents, issues, profits and other benefits of the Mortgaged Premises (except as otherwise provided in this Mortgage) as and when they become payable. Borrower shall execute and deliver such further instruments evidencing the assignment of leases and rents, issues, profits and other benefits of the Mortgaged Premises as may reasonably be requested by Lender from time to time. Lender shall be liable to account only for rents, issues, profits and other benefits of the Mortgaged Premises actually received by Lender pursuant to the provisions of this Mortgage.

(5) Upon an Event of Default hereunder and following the expiration of any applicable notice and cure period, and subject to other applicable provisions of this Mortgage, Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any lessees of the Mortgaged Premises, and the failure to make such lessees parties to any foreclosure proceedings and to foreclose such lessees' rights will not constitute, or be asserted by Borrower to constitute, a defense to any proceedings instituted by Lender to collect the indebtedness secured hereby.

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(6) Borrower will not, in connection with any lease of all or any part of the Mortgaged Premises, agree to assume the obligations of the tenant thereunder with respect to an existing lease of said tenant, without first delivering to Lender a letter indemnifying Lender and holding Lender harmless from and against all liability with respect to the assumption by Borrower of said obligations.

## 3.8 Books and Records; Financial Statements.

Borrower shall keep or cause to be kept proper books and records with respect to the Mortgaged Premises and operation thereof. Lender shall have the right to examine the books of account of Borrower and the statements furnished by Borrower pursuant to this Section 3.8 (which books, records and statements, and the data used as a basis for their preparation, shall be kept and preserved for at least three (3) years, but in the event of any dispute, such records shall be retained until the final determination of such dispute) and to discuss the affairs, finances and accounts of Borrower and to be informed as to the same by Borrower, all at such reasonable times and intervals as Lender may desire. Borrower shall keep and preserve its records at the Mortgaged Premises or at the offices of Borrower's property manager which is currently in St. Louis, Missouri, and shall permit Lender or its representatives to make copies and excerpts therefrom. Borrower shall furnish to Lender within ninety (90) days following the end of each fiscal year of the Borrower a statement of annual income and expenses, in detail satisfactory to Lender, in connection with the Mortgaged Premises together with a certified rent roll and other supporting data reasonably requested by Lender. Each such statement shall be reasonably detailed, and shall be certified by an independent certified public accountant who is a member of the American Institute of Certified Public Accountants. The fiscal year of Borrower currently ends on September 30th of each calendar year. Borrower shall promptly advise Lender of any change in the fiscal year of Borrower.

## 3.9 Management and Use of Premises; Licenses; Compliance with Laws; Prohibition of Certain Liens.

(1) Use of Mortgaged Premises. Borrower shall at all times operate the Mortgaged Premises as a residential apartment complex. Borrower represents and covenants that the buildings located upon and forming part of the Mortgaged Premises are fully equipped in a manner appropriate for such operation, and Borrower shall, from time to time and as is necessary and appropriate, maintain, replace and repair such equipment as is necessary to operate the Mortgaged Premises in the same way as they are now being operated. Borrower shall not hereafter acquire any fixtures, equipment, furnishings or apparatus covered by this Mortgage subject to any security interest or other charge or lien having parity with or priority over the lien of this Mortgage. At no time shall

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Borrower file a declaration of condominium affecting the Mortgaged Premises or take any other steps to convert the Mortgaged Premises or subject the Mortgaged Premises to the jurisdiction of the Illinois Condominium Property Act or any successor statute without the prior written consent of Lender.

(2) Licenses and Compliance with Laws. Borrower shall at all times be, and cause the Mortgaged Premises to be, in compliance in all material respects with the representations and covenants stated in Sections 2.5, 2.6, 3.18 and 3.19 hereof.

(3) Acquisition of Personalty. Borrower shall not make, suffer or permit, without the prior written consent of Lender, any purchase, conditional sale, lease or agreement (except those made by a tenant) under which title is reserved in the vendor of any fixtures, apparatus, machinery, Equipment or personal property to be placed in or upon any of the buildings, structures or improvements on the Mortgaged Premises. Borrower shall execute and deliver, from time to time, such further instruments as may reasonably be requested by Lender to confirm the validity and priority of the lien of this Mortgage on any fixtures, machinery, apparatus and Equipment described herein.

### 3.10 Taxes on Lender.

(1) In the event of the passage after the date of this Mortgage of any law of the State of Illinois, the United States of America, or any other governmental authority deducting from the value of real estate for the purpose of taxation any lien thereon or changing in any way the laws for the taxation of mortgages or debts secured by mortgages or the manner of collection of any such taxation so as to adversely affect the yield of the debt secured by this Mortgage, the holder of this Mortgage shall have the right to give sixty (60) days' written notice to Borrower requiring the payment of the debt secured hereby, and said debt shall become due and payable immediately upon the expiration of said sixty (60) days; provided, however, that such requirement of payment shall be ineffective if Borrower is permitted by law to pay the whole of such tax in addition to all other payments required hereunder, without any penalty thereby accruing to Lender and the indebtedness secured hereby, and if Borrower does pay such tax prior to the date upon which payment is required by such notice.

(2) In the event it is hereafter claimed that any tax or other governmental charge or imposition is due, unpaid or payable by Borrower or Lender upon the indebtedness (other than income tax on the interest or prepayment fee receivable by Lender with respect thereto), including any recording tax, documentary stamps or other tax or imposition on the Note or

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this Mortgage, or any other instrument securing the indebtedness secured hereby, Borrower will forthwith pay such tax, charge or imposition and within a reasonable time thereafter deliver to Lender satisfactory proof of payment thereof.

### 3.11 Use of Loan Proceeds.

(1) Business Loan. Borrower covenants and agrees that all of the proceeds of the Note secured by this Mortgage will be used solely for business purposes and in furtherance of the regular business affairs of the Borrower, and the entire principal obligation secured hereby constitutes: (i) a "business loan" as that term is defined in, and for all purposes of, Section 205/4(1)(c) of Chapter 815 of the Illinois Compiled Statutes Annotated; and (ii) "a loan secured by a mortgage on real estate" within the purview and operation of Section 205/4(1)(1) of Chapter 815 of said Statutes.

(2) Usury. All agreements between Borrower and Lender (including, without limitation, those contained in this Mortgage, the Note and any other Loan Documents) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Lender exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other documents securing the indebtedness secured hereby, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, the Lender shall ever receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the indebtedness secured hereby (whether or not then due and payable) and not to the payment of interest.

(3) Regulation G. Borrower covenants and agrees that it shall constitute a default hereunder if any of the proceeds of the loan for which the Note is given will be used, or were used, as the case may be, for the purpose (whether immediate, incidental or ultimate) of "purchasing" or "carrying" any "margin security" as such terms are defined in Regulation G of the Board of Governors of the Federal Reserve System (12 CFR Part 207) or for the purpose of reducing or retiring any indebtedness which was originally incurred for any such purpose.

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3.12 Evasion of Prepayment Premium. In the event that maturity of the indebtedness secured hereby is accelerated by Lender because of an Event of Default hereunder, and a tender of payment is made by or on behalf of Borrower in an amount necessary to satisfy such indebtedness at any time prior to judicial confirmation of a foreclosure sale, such tender shall constitute a prepayment under the Note and, except as otherwise set forth herein or in the Note, shall require payment of the Default Prepayment Premium provided for in the Note and shall be treated as a prepayment thereunder.

3.13 Recorded Instruments. Borrower shall promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Premises, non-compliance with which might affect the security of this Mortgage or impose any duty or obligation upon Borrower or upon any owner, lessee or occupant of the Mortgaged Premises or any part thereof; and Borrower shall do or cause to be done all things reasonably necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Mortgaged Premises.

3.14 Indemnity; Payment of Charges. Borrower shall promptly: (a) pay and discharge any and all license fees or similar charges, if any, with penalties and interest thereon, which may be imposed on Borrower or the Mortgaged Premises for the use of any ramps, vaults or chutes adjoining the Mortgaged Premises; and (b) cure any violation of applicable law and comply with any order of any governmental authority, agency or instrumentality in respect of the repair, replacement or condition of the ramps, sidewalks, curbs or any vaults or chutes described in clause (a) above, adjoining said Mortgaged Premises. In the event of any default under either (a) or (b) of the preceding sentence, Lender may, but shall not be obligated to, pay any and all such fees or similar charges, with penalties and interest thereon, and the charges for such repair or replacement; and all monies expended by Lender in connection therewith (including, but not limited to, reasonable legal fees and costs) shall become immediately due and payable by Borrower, with interest as described in Section 6.6 hereof until paid, and shall be secured by this Mortgage.

3.15 Estoppel Certificate. At any time and from time to time upon not less than ten (10) days' prior written request by Lender, Borrower shall deliver to Lender, or to any person designated by Lender, a written statement executed and acknowledged in recordable form certifying: (1) that this Mortgage, the Note and the Loan Documents are in full force and effect (or, if there have been modifications, that this Mortgage, the Note and the Loan Documents are in full force and effect as modified and stating the modifications); (2) the date to which the indebtedness and all other charges secured hereby have been paid; (3) that to the best of Borrower's knowledge after due inquiry, neither Borrower nor

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Lender is in default under this Mortgage, the Note or the Loan Documents (or, if such a default allegedly exists, stating those claimed); (4) that, to the best of Borrower's knowledge after due inquiry, there are no offsets or defenses to the payment of the sums secured hereby (or, if there are alleged offsets or defenses, specifying such alleged offsets or defenses); and (5) such other information as Lender may reasonably require.

Upon not less than thirty (30) days' prior written request by Borrower and not more than once in any twelve (12) month period, Lender shall furnish to Borrower (or to any person designated by Borrower) in connection with any proposed transfer described in Subsection 3.5(3)(D) hereof, a written statement certifying that to the actual knowledge of Lender, without having made any inquiry or investigation, there is not then in existence an Event of Default.

3.16 Additional Acts, Etc. Borrower will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Lender shall reasonably require for accomplishing the purposes of this Mortgage; and the Borrower shall pay the costs of filing fees, recording fees, searches, reasonable attorneys' fees and other costs relating to the foregoing.

### 3.17 Management; Subordination of Property Manager's Lien.

(a) Borrower shall exert its best efforts to include a "no lien" provision in any property management agreement hereafter entered into by Borrower with a property manager for the Mortgaged Premises, whereby the property manager waives and releases any and all mechanics' lien rights that he, or anyone claiming through or under him, may have pursuant to Section 60/1 of Chapter 770 of the Illinois Compiled Statutes Annotated. Such property management agreement containing such "no lien" provision or a short form thereof shall, at Lender's request, be recorded with the Recorder of Deeds of Cook County, Illinois, as appropriate. With respect to the present property manager, Paragon Group Property Services, Inc., Borrower shall cause the said property manager to enter into a subordination agreement with Lender, in recordable form, whereby the property manager subordinates its present and future lien rights and those of any party claiming by, through or under it, to the lien of this Mortgage. Any future property manager shall also enter into such a subordination agreement.

(b) Throughout the term of the loan secured hereby, the management company for the Mortgaged Premises must be reasonably satisfactory to the Lender. Any claim for leasing commissions and any management agreement affecting the Mortgaged Premises must be subordinate to the lien of this Mortgage.

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## 3.18 Environmental Matters; Notice; Indemnity.

(a) Borrower will not install, use, generate, manufacture, produce, store, release, discharge or dispose of on, under or about the Mortgaged Premises, nor transport to or from the Mortgaged Premises, any Hazardous Substance (as defined below) nor allow any other person or entity to do so except under conditions and in minor amounts as may be expressly permitted by applicable laws, regulations and ordinances.

(b) Borrower will keep and maintain the Mortgaged Premises in compliance with, and shall not cause or permit the Mortgaged Premises to be in violation of, any Environmental Law (as defined in Section 3.20 below).

(c) Borrower will give prompt written notice to Lender of:

(1) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substance (as defined in Section 3.20 below) on, under or about the Mortgaged Premises or the migration thereof to or from adjoining property;

(2) all claims made or threatened by any individual or entity against Borrower or the Mortgaged Premises relating to any loss or injury allegedly resulting from any Hazardous Substance;

(3) the discovery by Borrower of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Premises which might cause the Mortgaged Premises or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use of the Mortgaged Premises under any Environmental Law;

(4) any release, discharge, spill or other occurrence of any Hazardous Substance on or from the Mortgaged Premises, or any migration of any Hazardous Substance from neighboring lands to the Mortgaged Premises;

(5) the receipt by Borrower of any notice from any governmental agency or authority or from any tenant or other occupant or from any other person with respect to any alleged release, discharge, spill or other occurrence of any Hazardous Substance; and

(6) all results of tests of underground storage tanks on or about the Mortgaged Premises, together with copies of such test results.

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(d) Lender shall have the right and privilege to: (i) join in and participate in, as a party if it so elects, any one or more legal proceedings or actions initiated with respect to the Mortgaged Premises; and to (ii) have all costs and expenses thereof (including without limitation Lender's reasonable attorneys' fees and costs) paid by Borrower.

(e) Borrower shall protect, indemnify and hold Lender and its directors, officers, employees, agents, successors and assigns harmless from and against any and all loss, damage, cost, expense and liability (including without limitation reasonable attorneys' fees and costs) directly or indirectly arising out of or attributable to the installation, use, generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence of a Hazardous Substance on, under, from or about the Mortgaged Premises occurring on or prior to the Release Date (as such term is defined below), including without limitation: (i) the imposition by any governmental authority of any lien or so-called "super priority lien" upon the Mortgaged Premises; and (ii) all foreseeable consequential damages; and (iii) the costs of any required or necessary repair, cleanup or detoxification of the Mortgaged Premises; and (iv) the preparation and implementation of any closure, remedial or other required plans. This indemnity shall survive the satisfaction, release or extinguishment of the lien of this Mortgage, including without limitation any extinguishment of the lien of this Mortgage by foreclosure or deed in lieu thereof. As used herein, the term "Release Date" shall mean the earlier of (i) the date on which the indebtedness evidenced by the Note and secured by this Mortgage has been paid and performed in full and this Mortgage has been released; (ii) the date on which Borrower has transferred fee title to the Mortgaged Premises pursuant to and in accordance with the provisions of Section 3.5 hereof, and the transferee has assumed the obligations of Borrower hereunder and under the other Loan Documents; (iii) the date on which there is a tender by Borrower and an acceptance by Lender of a deed in lieu of foreclosure; or (iv) the date on which there is entered a decree of foreclosure of the lien of this Mortgage. In any action by Lender to enforce the obligations of Borrower under this Subsection 1.18(e), Borrower shall bear the burden of proving that the installation, use, generation, manufacture, production, storage, release, discharge, disposal or presence of a Hazardous Substance on the Mortgaged Premises occurred after the Release Date.

(f) Lender shall have the right and privilege (but not the obligation) to enter the Mortgaged Premises to make reasonable inspections of its condition, including but not limited to soil and ground water sampling, and including but not limited to inspections for any Hazardous Substance.

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(g) Borrower hereby represents and warrants that all matters previously certified by Borrower to Lender on a certain environmental certificate submitted to Lender in connection with the application for the loan secured hereby are true and complete, and Borrower agrees to notify Lender in writing immediately upon learning that any of the answers contained in such certificate either was not true when made or is no longer true, it being understood that any event which causes any of the answers on the foregoing certificate to be no longer true shall, subject to the provisions of Section 3.19 below, at the option of Lender also constitute an Event of Default hereunder.

3.19 Remedial Work. If any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is necessary or desirable under any applicable federal, state or local law, regulation or ordinance, or under any judicial or administrative order or judgment, or by any governmental person, board, commission or agency, because of or in connection with the current or future presence, suspected presence, release or suspected release of a Hazardous Substance into the air, soil, ground-water, surface water or soil vapor at, on, about, under or within the Mortgaged Premises or portion thereof, or because of a breach by Borrower of any covenant contained herein or in any other of the Loan Documents relating to the presence of Hazardous Substances (as defined in Section 3.20) on the Mortgaged Premises or the violation of any Environmental Law (as defined in Section 3.20) with respect to the Mortgaged Premises, in each case occurring on or before the Release Date (and Borrower shall bear the burden of proving that the subject event occurred after the Release Date), Borrower shall, within thirty (30) days after written demand for performance by Lender (and if at the end of such 30-day period, Borrower has been unable with the use of diligent efforts to complete such Remedial Work, Borrower shall have an additional 30-day period within which to complete such Remedial Work) (or, notwithstanding anything to the contrary in any of the Loan Documents, within such shorter time as may be required under any applicable law, regulation, ordinance, order or agreement), commence and thereafter diligently prosecute to completion all such Remedial Work. All Remedial Work shall be performed by contractors approved in advance by Lender and under the supervision of a consulting engineer approved in advance by Lender. All costs and expenses of such Remedial Work (including without limitation the reasonable fees and expenses of Lender's counsel) incurred in connection with monitoring or review of the Remedial Work shall be paid by Borrower. If Borrower shall fail or neglect to timely commence or cause to be commenced, or shall fail to diligently prosecute to completion, such Remedial Work, the Lender may (but shall not be required to) cause such Remedial Work to be performed; and all costs and expenses thereof, or incurred in connection therewith (including, without limitation, the reasonable fees and expenses of Lender's counsel), shall be paid by Borrower

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to Lender forthwith after demand and shall be a part of the indebtedness secured hereby.

## 3.20 Definitions.

(a) The term "Environmental Law" means and includes, without limitation, any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under, from or about the Mortgaged Premises, whether now in effect or hereafter enacted, and, including without limitation each of the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"); the Federal Hazardous Materials Transportation Act; the Toxic Substance Control Act, as amended; the Illinois Environmental Protection Act, as amended; the Clean Air Act, as amended; the Federal Water Pollution Control Act, as amended; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency, the Illinois Environmental Protection Agency, the Army Corps of Engineers and the County of Cook and of all other agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Mortgaged Premises or the use or operation thereof.

(b) The term "Hazardous Substance" means and includes, without limitation:

(i) those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances" or "solid waste" in any of the Environmental Laws;

(ii) those substances listed in the U.S. Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto);

(iii) those other substances, materials and wastes which are or become regulated as a Hazardous Substance under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance;

(iv) any material, waste or substance which is any of the following: (A) asbestos or asbestos-containing materials; (B) polychlorinated biphenyls; (C) radon gas; (D) urea formaldehyde foam insulation; (E) designated or listed as a "hazardous substance" pursuant to §311 or

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§307 of the Clean Water Act (33 U.S.C. §§1251 et seq.);  
(F) explosive; or (G) radioactive.

## 4. CONDEMNATION AND EMINENT DOMAIN.

4.1 If all or any substantial part of the Mortgaged Premises are damaged, taken or acquired, either temporarily or permanently, as a result of any condemnation proceeding or by exercise of the power of eminent domain, or by the alteration of the grade of any street affecting the Mortgaged Premises, or by private agreement or sale in lieu of any of the foregoing, the entire indebtedness secured hereby shall, at Lender's option, become immediately due and payable. As additional security for the payment of the indebtedness secured by this Mortgage, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the then remaining unpaid indebtedness secured hereby, is hereby assigned to Lender, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Borrower, and the same shall be paid forthwith to Lender. Any award or payment so received by Lender may, at the option of Lender and after the payment of all its expenses in connection with the foregoing proceedings: (a) be retained and applied, in whole or in part, to the indebtedness secured hereby, in such manner as Lender may determine, or (b) be released, in whole or in part and on such terms and conditions and according to such procedures as Lender may require, to Borrower for the purpose of altering, restoring or rebuilding any part of the Mortgaged Premises which may have been altered, damaged or destroyed as the result of such taking, alteration or proceeding; provided, however, that Lender shall not be obligated to see to the application of any amounts so released, and such release shall not affect the validity and priority of the lien of this Mortgage for the full indebtedness secured hereby before the release or payment took place.

For the purposes of this Section 4.1, reference to a "substantial part" of the Mortgaged Premises means any portion of the land or building, the loss of which, in Lender's reasonable judgment, would materially adversely affect the value of the security granted to Lender hereby.

## 5. SECURITY AGREEMENT; FINANCING STATEMENT.

### 5.1 Security Agreement.

(1) Grant of Security Interest. In addition to and not in substitution for any other interest granted herein, Borrower hereby grants to Lender an express security interest in, and mortgages to the Lender, all goods, types and items of property owned by the Borrower which are described in Subsection 5.1(2) below (herein, "the Equipment") whether now or hereafter erected on or placed in or upon the Mortgaged Premises or any part thereof, and all replacements thereof,

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additions and accessions thereto and products and proceeds thereof, to further secure the payment of the Note, the payment of all other sums due from the Borrower to the Lender, and the performance by Borrower of all the covenants and agreements set forth herein. Borrower represents and covenants that, except for the security interest granted hereby and other interests, if any, stated in EXHIBIT C attached hereto, Borrower is the owner of the Equipment free from any adverse lien, security interest or encumbrance and that Borrower has made payment in full for all such Equipment; and Borrower will defend and protect the Equipment and title thereto against all claims and demands of all persons at any time claiming the Equipment or any interest therein. Borrower will upon request from Lender deliver to Lender such further security agreements, chattel mortgages, financing statements and evidence of ownership of such items as Lender may reasonably request.

(2) Property Covered. The security interest hereby granted to Lender shall cover the following types or items of property now or hereafter owned by the Borrower and used in connection with, and located upon, the Mortgaged Premises: All property described in EXHIBIT B attached hereto. In addition, Borrower hereby grants to Lender an express security interest in all tenements, hereditaments, easements, appurtenances, licenses, privileges and appurtenances belonging or in any way appertaining to the Mortgaged Premises, and all interests in property, rights and franchises or any part thereof, together with all the reversions and remainders, and to the extent permitted by law, all rents, tolls, issues and profits from the Mortgaged Premises, and all the estate, right, title, interest and claims whatsoever, at law and in equity, which Borrower now has or may hereafter acquire with respect to the Mortgaged Premises and the Equipment.

(3) Additional Covenants. Borrower further covenants and agrees as follows:

(a) Transfer or Pledge of the Equipment. Except as permitted under Subsection 3.4(1), Borrower will not sell, assign, pledge, lease or otherwise transfer or encumber the Equipment or any interest therein without the prior written consent of Lender; and Borrower will keep the Equipment free from any adverse lien, security interest, or encumbrance other than those stated in EXHIBIT C. Without limitation or qualification of the foregoing, Borrower shall immediately deliver to Lender all proceeds (cash or non-cash) resulting from any sale, assignment, pledge, lease or other transfer of any part of the Equipment, unless, in respect to each such transfer, Lender shall have agreed otherwise in writing.

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(b) Assembly of the Equipment. Upon the occurrence of an Event of Default and after the expiration of any applicable notice and cure period, and the acceleration of the indebtedness secured hereby pursuant to the provisions hereof, Lender may at its discretion require Borrower to assemble the Equipment and make it available to Lender at a place designated by Lender which is reasonably convenient to both parties.

(c) Notice of sale. Upon the occurrence of an Event of Default and after the expiration of any applicable notice and cure period, Lender shall give Borrower notice, by certified mail, postage prepaid, of the time and place of any public sale of any of the Equipment or of the time after which any private sale or other intended disposition thereof is to be made, by sending notice to Borrower at least ten (10) days before the time of the sale or other disposition, which provisions for notice Borrower and Lender agree are reasonable; provided, however, that nothing herein shall preclude Lender from proceeding as to both real and personal property in accordance with Lender's rights and remedies in respect of the real property as provided in Section 5/9-501(4) of Chapter 810 of the Illinois Compiled Statutes Annotated.

(d) Payment of Lender's expenses. Borrower shall reimburse Lender for all reasonable costs, charges and fees, including reasonable attorneys' fees, incurred by Lender in preparing and filing security agreements, extension agreements, financing statements, continuation statements, termination statements and chattel searches.

(e) Representations and remedies. The Equipment described herein shall be considered for all purposes a part of the Mortgaged Premises as described herein; all representations and covenants contained in this Mortgage made by Borrower, including representations of title, shall be deemed as having been made with reference to the Equipment; all agreements, undertakings and obligations of Borrower stated herein shall apply to the Equipment, including without limitation, obligations regarding insurance, freedom from adverse lien or encumbrance, repair and maintenance; and all remedies of the Lender in the event of any default by Borrower under the items of this Mortgage or any other instrument evidencing or securing the indebtedness secured hereby shall be available to the Lender against the Equipment.

5.2 Financing Statement. This Mortgage also constitutes a financing statement for the purpose of Section 5/9-402 of the Illinois Uniform Commercial Code (Illinois Compiled Statutes Annotated, Chapter 810) and shall constitute a "fixture filing" under such

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statutes and shall be filed in the real estate records of Cook County, Illinois.

(1) Name of Debtor:

CHICAGO COLONY APARTMENTS ASSOCIATES

Debtor's Mailing Address:

c/o Paragon Group Property Services, Inc.  
12400 Olive Boulevard  
Suite 1000  
St. Louis, Missouri 63141  
Attention: Lewis Levey

Address of Property:

475 Enterprise Drive  
Mount Prospect, Illinois 60056

Name of Secured Party:

JOHN HANCOCK MUTUAL LIFE  
INSURANCE COMPANY, a  
Massachusetts corporation

Address of Secured Party:

John Hancock Place  
200 Clarendon Street  
Boston, Massachusetts 02117  
Attention: Real Estate Investment Group (T-53)  
Mortgage Investments

(2) This financing statement covers the following types or items of property: the property described in Section 5.1 and EXHIBIT B of this instrument; and all other items of personal property now or at any time hereafter owned by Borrower or Borrower's beneficiary and used in connection with the Mortgaged Premises.

(3) Some of the above goods are or are to become fixtures on the real property described herein. Borrower is the record owner of the real property described herein upon which the foregoing fixtures and other items and types of property are located.

## 6. EVENTS OF DEFAULT; REMEDIES.

6.1 Defaults. If any one or more of the following events of default (herein collectively called "Events of Default" and each is separately called an "Event of Default") shall occur, all indebtedness secured hereby, including, without limitation, the

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whole of the principal sum remaining unpaid under the Note, together with all accrued interest thereon, shall at the option of Lender become immediately due and payable without notice or demand, and may be recovered at once, by foreclosure or otherwise:

(1) The failure by Borrower to make any payment of principal or interest under the Note or this Mortgage, or of any deposit required under Sections 3.2 or 3.3 hereof, or of any other payment required to be made hereunder or under any of the other Loan Documents, in any case when the same becomes due and payable; or

(2) The failure of Borrower to observe or perform any other term, condition, covenant, agreement, representation or warranty contained herein or in the Note, or the failure of any representation or warranty contained herein or in any of the other Loan Documents or in any instrument or certification delivered to Lender in connection with the making of the loan to be true and accurate in all material respects; or

(3) The occurrence of any default in the observance or performance of any non-monetary term, condition, covenant or agreement in any assignment of lease, assignment of rents, any other Loan Document (excluding the Note and this Mortgage), or any other agreement made as additional security for the performance of the Note and this Mortgage; or

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

(a) Borrower shall generally not pay its debts as they become due or shall admit in writing its inability to pay its debts, or shall make a general assignment for the benefit of creditors;

(b) Borrower shall commence any case, proceeding or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property;

(c) Borrower shall take any action, including corporate or partnership action, to authorize any of the actions set forth in Subsections 6.1(4)(a) or 6.1(4)(b); or

(d) Any case, proceeding or other civil action in the nature of a bankruptcy or insolvency proceeding against Borrower shall be commenced seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any

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law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, and such case, proceeding or other action: (i) results in the entry of an order for relief against it which is not fully stayed within thirty (30) Business Days after the entry thereof; or (ii) remains undismissed for a period of ninety (90) days.

6.2 Remedies. Without limitation of the foregoing provisions of this Section 6 or of any other provision hereof or of any other Loan Document, upon the occurrence of an Event of Default and at any time thereafter, Lender shall have the right, at its option and without notice, without waiving or releasing Borrower from any of its obligations hereunder, to exercise any or all of the following remedies:

(1) Acceleration. Lender may declare the principal balance remaining unpaid under the Note, together with all accrued interest thereon and all other indebtedness secured hereby (including without limitation the Default Prepayment Premium provided for in the Note), immediately due and payable.

(2) Foreclosure. Lender may foreclose this Mortgage to collect all or any part of the indebtedness secured hereby, by instituting a foreclosure action in any court having jurisdiction. Lender shall have the right to purchase the Mortgaged Premises at any foreclosure sale.

(3) Offset Rights. Lender may apply in satisfaction of the indebtedness secured hereby or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Mortgaged Premises, any deposits or other sums credited by or due from Lender to Borrower, including, without limitation, insurance proceeds, proceeds of condemnation and funds held in escrow pursuant to Sections 3.2 and 3.3 hereof.

(4) Cure of Default. Without releasing Borrower from any obligation hereunder or under any of the Loan Documents, Lender shall have the right to cure any Event of Default. In connection therewith, Lender may enter upon the Mortgaged Premises and may do such acts and things as Lender deems necessary or desirable to protect the Mortgaged Premises or the leases thereof, including, without limitation:

(a) paying, purchasing, contesting or compromising any encumbrance, charge, lien, claim of lien, taxes or other charges or liabilities against the Mortgaged Premises;

(b) paying any insurance premiums; and

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(c) employing counsel, accountants, contractors and other appropriate persons to assist Lender in the foregoing; and all monies expended by Lender in connection therewith (including, but not limited to, reasonable attorneys' fees and costs) shall become immediately due and payable by Borrower, with interest as described in Section 6.6 hereof until paid, and shall be secured by this Mortgage.

(5) Possession of Mortgaged Premises. Lender shall have the right to take physical possession of the Mortgaged Premises and of all books, records, documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Mortgaged Premises, including, without limitation, the right, at Borrower's expense, to rent and lease the same and to hire a professional property manager for the Mortgaged Premises. If necessary to obtain possession as provided for herein, Lender may, without exposure to liability from Borrower or any other persons, invoke any and all legal remedies to dispossess Borrower, including, without limitation, one or more civil actions for forcible entry and detainer, trespass and restitution. In connection with any action taken by Lender pursuant to this Subsection 6.2(5), Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Mortgaged Premises or from any other act or omission of Lender in managing the Mortgaged Premises unless caused by the willful misconduct or bad faith of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any lease or by reason of any Loan Document. Borrower hereby agrees to indemnify, hold harmless and defend Lender from and against any liability, loss or damage incurred by Lender under any lease or under any of the Loan Documents as a result of Lender's exercise of rights, powers, options, elections or remedies under any of the Loan Documents. Should Lender incur any such liability, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand. Lender shall have full power to make from time to time all repairs and replacements to the Mortgaged Premises as may seem appropriate to Lender.

(6) Appointment of a Receiver. Upon application to a court of competent jurisdiction, Lender shall be entitled to the appointment of a receiver for the Mortgaged Premises, without notice, without regard to the solvency or insolvency of the person or persons, if any, liable for the payment of the indebtedness secured hereby, and without regard to the then value of the Mortgaged Premises, whether the same shall be then occupied as a homestead or not, and Lender may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Premises and all other powers which may be necessary or are

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usual in such cases for the protection, possession, control, management and operation of the Mortgaged Premises, to the fullest extent permitted by law. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness and other sums secured hereby or by any order or judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such order or judgment, provided such application is made prior to the foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

(7) Uniform Commercial Code Remedies. Lender may exercise any and all rights of a secured party with respect to the Equipment described in Section 5.1 hereof provided under the Illinois Uniform Commercial Code.

(8) Subrogation. Lender shall have and may exercise all rights, powers, privileges, options and remedies of any person, entity or body politic to whom Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including without limitation any rights, powers, privileges, options and remedies under any mechanic's or vendor's lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Mortgaged Premises, to the extent that the sums are paid or discharged pursuant to Subsection 6.2(4) or from the proceeds of the Note, whether or not released of record.

(9) Other. Lender may take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Mortgaged Premises and its ability to collect the indebtedness secured hereby as are available under applicable laws, ordinances and rules of courts having jurisdiction.

(10) Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Lender a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises by Lender.

6.3 Sums Received by Lender. All sums received by Lender under Section 6.2 above, less all costs and expenses incurred by Lender under Section 6.2, including, without limitation, reasonable attorneys' fees and disbursements, property management fees, costs of repairs and replacements made or authorized by Lender and all expenses incident to Lender taking possession of the Mortgaged Premises, shall be applied to the indebtedness secured hereby in such order as Lender shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

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6.4 Fees and Expenses: Distribution of Foreclosure Sale Proceeds. If Lender shall incur or expend any sums, including reasonable attorneys' fees, in connection with any action or proceeding to sustain the lien of this Mortgage or its priority, or to protect or enforce any of Lender's rights hereunder, or to recover any indebtedness secured hereby, or on account of its being Lender hereunder or its making the loan evidenced by the Note, including without limitation Lender's participation in any bankruptcy proceeding commenced by or against Borrower, all such sums shall become immediately due and payable by Borrower with interest thereon as described in Section 6.6 hereof. All such sums shall be secured by this Mortgage and be a lien on the Mortgaged Premises prior to any right, title, interest or claim in, to or upon the Mortgaged Premises attaching or accruing subsequent to the date of this Mortgage. Without limitation of the generality of the foregoing, in any civil action to foreclose the lien hereof, there shall be allowed and included as additional indebtedness secured hereby in the order or judgment for sale all costs and expenses which may be paid or incurred by or on behalf of Lender or the holder of the Note for reasonable attorneys' fees, appraisers' fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Premises, stenographer's charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, title insurance policies and commitments therefor, Certificates of Title issued by the Registrar of Titles (Torrens certificates), and similar data and assurances with respect to title as Lender or holders of the Note may deem to be 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 to or value of the Mortgaged Premises or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the order or judgment for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional indebtedness secured hereby in the order or judgment for sale.

## 6.5 Lender's Exercise of Rights.

(1) Effect of Modification. If Lender in one or more instances: (i) grants any extension of time or forbearance with respect to the payment of any indebtedness secured by this Mortgage; (ii) takes other or additional security for the payment thereof; (iii) waives or fails to exercise any right granted herein or under the Note or in any other Loan Document; (iv) grants, with or without consideration, any release from the lien of this Mortgage or other Loan Document of the whole or any part of the security held for the payment of indebtedness secured hereby (whether or not such security is the property of Borrower or others); (v) agrees to any amendment or modification of any of the terms and provisions hereof or of the Note or of any other instrument securing the Note; then and in any such event, any such act or omission to

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act shall not: (a) release Borrower or any comakers, sureties or guarantors, if any, of this Mortgage or of the Note from any covenant of this Mortgage or the Note or any other Loan Document, nor (b) preclude Lender from exercising any right, power, privilege, option or remedy granted herein or in any other Loan Document or so intended to be granted upon the occurrence of any Event of Default or otherwise, nor (c) in any way impair or affect the lien or priority of the lien of this Mortgage.

(2) Remedies Not Exclusive. No right, power, privilege, option or remedy of Lender under this Mortgage, the Note or any other Loan Document shall be exclusive of, but shall be in addition to, every other right, power, privilege, option and remedy under this Mortgage and the Note and every other right, power, privilege, option and remedy now or hereafter existing at law or in equity. Every such right, power, privilege, option and remedy may be exercised concurrently or independently, and when and as often as may be deemed expedient by Lender. No delay in exercising or omission to exercise any right, power, privilege, option or remedy accruing on any default shall impair any such right, power, privilege, option or remedy or shall be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. A waiver of any of the terms, covenants, conditions or provisions hereof, or of the Note or of any other instrument given by Borrower to secure the indebtedness secured hereby, shall apply to the particular instance and at the particular time only; and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Mortgage, the Note and of such other instruments shall survive and continue to remain in full force and effect.

6.6 Interest on Advances. If Lender makes any advances hereunder (exclusive of advances of principal evidenced by the Note), Lender will promptly notify Borrower of such advances and the amounts so advanced shall become immediately due and payable with interest at the rate per annum specified in Subsection I.F. of the Note applicable to a period when an uncured Event of Default has occurred. The failure of Lender to give the notice contemplated by this Section 6.6 shall not affect the securing by this Mortgage of those amounts so advanced.

6.7 Valuation and Appraisement. Borrower shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws", whether now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and Borrower hereby waives the benefit of all such laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the mortgaged

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property marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold in one parcel as an entirety or in such parcels, manner or order as the Lender in its sole discretion may elect.

6.8 Release and Waiver of Homestead and Right of Reinstatement and Right of Redemption. To the fullest extent allowed by applicable law, Borrower hereby releases and waives: (i) any and all rights under and by virtue of the homestead exemption laws of the State of Illinois; (ii) all rights to retain possession of the Mortgaged Premises after an Event of Default; and (iii) any and all rights of reinstatement or redemption from sale under any order or judgment of foreclosure of this Mortgage or under any sale or statute or order, decree or judgment of any court relating to this Mortgage, on behalf of itself and each and every person acquiring any interest in or title to any portion of the Mortgaged Premises, it being the intent hereof that any and all such rights of reinstatement or redemption of Borrower and of all such other persons are and shall be deemed to be hereby waived to the maximum extent and with the maximum effect permitted by the provisions of the Illinois Mortgage Foreclosure Law, including without limitation Sections 5/15-1601 and 5/15-1602 and any other applicable sections thereof, and to the maximum extent and with the maximum effect permitted by the provisions of all other applicable laws or by any successor or replacement statutes.

## 7. GENERAL.

7.1 Modification. No change, amendment, modification, waiver, cancellation or discharge hereof, or any part hereof, shall be valid unless in writing and signed by all of the parties hereto or their respective successors and assigns.

7.2 Notices. All notices, demands and requests given or required or desired to be given hereunder by Borrower or Lender shall be in writing and shall be delivered in person or by overnight express delivery or by United States certified mail, return receipt requested, postage prepaid, as follows:

If to the Borrower:

Chicago Colony Apartments Associates  
c/o Paragon Group Property Services, Inc.  
12400 Olive Boulevard  
Suite 100  
St. Louis, Missouri 63141  
Attention: Lewis Levey

95505301

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With a copy to:

PaineWebber Income Properties Seven, L.P.  
c/o PaineWebber Properties  
265 Franklin Street  
16th Floor  
Boston, Massachusetts 02110  
Attention: Rock D'Errico

And with a copy to:

Stutzman & Bromberg  
2323 Bryan Street  
Suite 2200  
Dallas, Texas 75201  
Attention: Myron D. Stutzman, Esq.

If to the Lender:

JOHN HANCOCK MUTUAL LIFE  
INSURANCE COMPANY  
John Hancock Place  
200 Clarendon Street  
Boston, Massachusetts 02117  
Attention: Real Estate Investment Group (T-53)  
Mortgage Investments (Loan No. 516684 IQA)  
Attention: Richard E. Talbot

With a copy to:

JOHN HANCOCK REAL ESTATE FINANCE, INC.  
5770 Powers Ferry Road  
The Pavilion - Suite 101  
Atlanta, Georgia 30327

And with a copy to:

WILSON & McILVAINE  
500 West Madison Street  
Suite 3700  
Chicago, Illinois 60661  
Attention: Peter A. Sarasek, Esq.

or to such other addresses as Borrower or Lender may from time to time designate by written notice given as herein required. All notices and copies thereof shall be sent or delivered by the same means of transmission.

Notices, demands and requests given by certified mail as aforesaid shall be deemed sufficiently served or given for all purposes hereunder three (3) days after the time such notice, demand or request shall be deposited in the mails. Notice sent by

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overnight express delivery service shall be deemed served or given on the first (1st) business day following the date such notice is delivered to the carrier.

7.3 Definition of Terms. Whenever used in this instrument, unless the context shall otherwise clearly require, the term "Borrower" and the term "Lender" shall include their legal representatives, successors and assigns, as the case may be, of Borrower and Lender, and all persons claiming by, through, or under Borrower or Lender; the term "person" shall include any individual, partnership, corporation, trust, unincorporated association or government, or any agency or political subdivision thereof, or any two or more of the foregoing acting in concert; the singular shall include the plural, and the plural, the singular; and the gender used shall include the other genders.

7.4 Releases. The right is hereby reserved by Lender to make partial release or releases of the Mortgaged Premises or of any other security held by Lender with respect to all or any part of the indebtedness secured hereby, without notice to, or the consent, approval or agreement of, other parties in interest, including junior lienors, which partial release or releases shall not impair in any manner the validity of or priority of this Mortgage on the portion of said Mortgaged Premises not so released.

7.5 Successors and Assigns. Subject to and without limiting the provisions herein restricting or limiting Borrower's right of assignment and transfer, all of the terms, covenants, conditions and agreements herein set forth shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, legal representatives, successors and assigns, as the case may be, of the parties hereto.

7.6 No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof shall not merge in fee simple title to the Mortgaged Premises, it is hereby understood and agreed that should Lender acquire any additional or other interests in or to the Mortgaged Premises or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof 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.

7.7 Assignment by Lender. Lender may assign all or any portion of its interest hereunder and its rights granted herein and in the Note to any person, trust, financial institution or corporation as Lender may determine; and upon such assignment, such assignee shall thereupon succeed to all the rights, interests and options of Lender herein and in the Note contained. Until advised in writing of the transfer of the Note and of Lender's interest in this Mortgage, Borrower shall regard Lender named on page 1 hereof

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as the holder of the Note and as the mortgagee herein, and shall make payments accordingly and be protected in doing so.

7.8 Applicable Law. This Mortgage shall be governed by the laws of the State of Illinois, which laws shall also govern and control the construction, enforceability, validity and interpretation of this Mortgage.

7.9 Severability. In the event that any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable or contrary to law, the remaining provisions of this Mortgage and the application of such provision or provisions to other persons or circumstances shall not be affected thereby and shall be fully effective and enforceable to the extent permitted by law.

7.10 No Partnership. Borrower acknowledges and agrees that in no event shall Lender be deemed to be a partner or joint venturer with Borrower. Without limitation of the foregoing, Lender shall not be deemed to be such a partner or joint venturer on account of its becoming a Lender in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document securing any portion of the indebtedness secured hereby or otherwise.

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

7.12 Headings. Paragraph and section headings contained herein are for convenience of reference only and are not intended to define, limit or describe the scope or intent of any provision of this instrument.

7.13 Conflict. In the event of any conflict or inconsistency between the terms and provisions of this Mortgage and the terms and provisions of any other Loan Document (excluding the Note), the terms and provisions of this Mortgage shall control.

7.14 Time is of the Essence. Time is of the essence with respect to this Mortgage and each of the other Loan Documents.

## 8. POSSESSION AND DEFEASANCE.

8.1 Possession. Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Mortgaged Premises,

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