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729283.MORTGAGE(3)/Homan Sq.II/93204
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Prepared by:
Dean E. Parker
Hinshaw & Culbertson
222 North LaSalle Street
Suite 300
Chicago, Illinois 60601

Note: This document has been recorded subsequent to that certain Redevelopment Agreement between Mortgagor and the City of Chicago dated August 16, 1995

DEPT-01 RECORDING	
140004 TRAX 3263 09/07/95 08:59:00	
11491 L.F. * - 95 - 596547	
COOK COUNTY RECORDER	
DEPT-01 RECORDING	\$77.50
140004 TRAX 3263 09/07/95 08:59:00	
11491 L.F. * - 95 - 596547	
COOK COUNTY RECORDER	

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NOTE: THIS SPACE FOR RECORDER'S USE ONLY

EVOLVING CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT made this 29th day of August, 1995, by WEST SIDE AFFORDABLE HOUSING LIMITED PARTNERSHIP, an Illinois limited partnership ("Mortgagor"), in favor of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association ("Mortgagee");

WITNESSETH, THAT WHEREAS, Mortgagor is justly indebted to Mortgagee for money borrowed in the principal amount of FIVE MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$5,200,000.00) ("Principal Amount"), as evidenced by Note Secured by Mortgage executed by Mortgagor of even date herewith, made payable to the order of and delivered to Mortgagee (which note, together with any and all other notes executed and delivered in substitution therefor or in renewal and extension thereof, in whole or in part, are herein collectively referred to as "Note"), by the provisions of which Mortgagor promises to pay, as designated by the legal owner and holder of Note, from time to time, Principal Amount, interest at "Note Rate" (as such term is defined in Note) as specified in Note, which varies from time to time in accordance with a specified percentage in addition to Mortgagee's "base rate", as provided in Note, and all other sums due and owing pursuant to "Loan Agreement" (as defined below), Note, hereunder or under "Other Loan Documents" (as defined below) and advanced by Mortgagee to protect Mortgaged Premises or to preserve the priority of the lien established hereby, PROVIDED THAT such other sums shall not exceed one hundred fifty per cent (150%) of Principal Amount (collectively "Indebtedness"), from the date of disbursement of portions of Principal Amount, in the installments set forth in Note, with a final payment of Indebtedness on December 31, 1996 ("Maturity Date").

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NOW, THEREFORE, to secure the payment of Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein and in loan agreement of even date ("Loan Agreement") among Mortgagor and Mortgagee, Note and any and all other documents executed and delivered to secure Indebtedness, including any guaranty ("Other Loan Documents"), Mortgagor, by these presents, DOES HEREBY GRANT, BARGAIN, SELL AND CONVEY to Mortgagee, its successors and assigns, forever, the land legally described on Exhibit "A" attached hereto and made a part hereof ("Land"), situated in the City of Chicago, Illinois, TOGETHER WITH THE FOLLOWING (collectively "Other Interests"):

- A. All right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the rights-of-way, roads, streets, avenues and alleys adjoining Land.
- B. All and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water rights, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including any other claim at law or in equity and any after-acquired title, franchise or license and the reversions and remainder and remainders thereof.
- C. All buildings and improvements, of every kind, nature and description, now or hereafter located and placed upon Land (collectively "Improvements") and all materials intended for construction, re-construction, alteration and repair of Improvements, which shall be deemed a part thereof immediately upon the delivery of the same, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with Land and Improvements, including, but not limited to, all furniture, furnishings, apparatus, machinery, motors, elevators, fittings, radiators, awnings, shades, screens, blinds, office equipment, carpeting and other furnishings and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning, electrical and sprinkler systems and equipment, if any, and fixtures and appurtenances thereto ("Personal Property") and all renewals or replacements of Personal Property or articles in substitution therefor, whether or not the same are or shall be attached to Improvements in any manner, excepting therefrom, however, any furniture, fixtures, equipment and articles of personal property, regardless of the manner or mode of attachment, belonging to any present or future tenant or lessee of Land and Improvements ("Occupancy Tenant") (any reference hereafter made to Personal Property shall be deemed to exclude the same); IT BEING MUTUALLY AGREED that all of Personal Property owned by Mortgagor and placed by it on Land and Improvements shall, insofar as the same is permitted by law, be deemed to be fixtures and a part of the realty and security for the payment of Indebtedness and, as to any Personal Property not deemed to be fixtures and a part of Land and Improvements, this Mortgage shall be and is a security agreement for the purpose of establishing a security interest in Personal Property, pursuant to the Uniform Commercial Code of

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the State of Illinois, and additional security for the payment of Indebtedness and the performance of all other obligations of Mortgagor herein and in Note, Loan Agreement and Other Loan Documents set forth.

- D. All rents, issues, proceeds and profits accruing and to accrue from Land and Improvements and all right, title and interest of Mortgagor in and to any leases executed pursuant to the terms and conditions of Loan Agreement now or hereafter on or affecting the same, whether written or oral, and all other leases and agreements for the use thereof (collectively "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission of Mortgagee given to Mortgagor to collect the rentals to be paid pursuant thereto.
- E. All proceeds heretofore or hereafter payable to Mortgagor and all subsequent owners of Land and Improvements ("Proceeds") by reason of loss or damage by fire and such other hazards, casualties and contingencies (collectively "Casualty") insured pursuant to Insurance Policies, and all awards and other compensation heretofore or hereafter payable to Mortgagor and all subsequent owners of Land and Improvements ("Awards") for any taking by condemnation or eminent domain proceedings, either permanent or temporary ("Condemnation"), of all or any part of Land and Improvements or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets. Proceeds and Awards are hereby assigned to Mortgagee and Mortgagor hereby appoints Mortgagee its attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney-in-fact, at its option, on behalf of Mortgagor, its personal representatives, successors and assigns, to adjust or compromise the claim for Proceeds and Awards (subject, however, to the provisions of paragraphs 7 and 8 hereof) and to collect and receive the amounts thereof, to give proper receipts and acquittances therefor and, after deducting expenses of collection, to apply the net proceeds received therefrom as a credit upon any part, as may be selected by Mortgagee, of Indebtedness (notwithstanding that the amount owing thereon may not then be due and payable or that the same is otherwise adequately secured).

For convenience, Land, Improvements and Other Interests are herein collectively referred to as "Mortgaged Premises".

TO HAVE AND TO HOLD Mortgaged Premises unto Mortgagee, its successors and assigns, forever, for the uses and purposes herein set forth (Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois); PROVIDED, HOWEVER, that if and when Mortgagor shall pay Indebtedness and shall perform all of the terms, covenants, conditions and agreements contained herein and in Note, Loan Agreement and Other Loan Documents, this Mortgage, Note and Other Loan Documents shall be released, at the sole cost and expense of Mortgagor; otherwise, the same shall be and remain in full force and effect.

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MORTGAGOR HEREBY FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. **DEFINITIONS AND EXHIBITS:** For convenience, the following words, terms and phrases used herein are defined in the following references:

<u>Defined Term</u>	<u>Reference</u>
Applicable Laws	7th full para. of Paragraph 7
Awards	NOW, THEREFORE, Paragraph E
Casualty	NOW, THEREFORE, Paragraph E
Code	Paragraph 27
Collateral	Paragraph 27
Condemnation	NOW, THEREFORE, Paragraph E
Default Rate	2nd full para. of Paragraph 7
Impositions	Paragraph 6
Improvements	NOW, THEREFORE, Paragraph C
Indebtedness	WITNESSETH Paragraph
Insurance Policies	Paragraph 7
Land	NOW, THEREFORE, Paragraph
Leases	NOW, THEREFORE, Paragraph C
Loan Agreement	NOW, THEREFORE, Paragraph
Maturity Date	WITNESSETH Paragraph
Monetary Default	Paragraph 17
Mortgaged Premises	NOW, THEREFORE, Paragraph
Mortgagee	Introduction
Mortgagor	Introduction
Non-Monetary Defaults	Paragraph 17
Note	WITNESSETH Paragraph
Notice Receiver	Paragraph 46
Occupancy Tenant	NOW, THEREFORE, Paragraph C
Other Interests	NOW, THEREFORE, Paragraph
Other Loan Documents	NOW, THEREFORE, Paragraph
Personal Property	NOW, THEREFORE, Paragraph C
Principal Amount	WITNESSETH Paragraph
Proceeds	NOW, THEREFORE, Paragraph E
Rebuilding or Restoration	Paragraph 8 a)
Release Payment	Paragraph 31
Repair or Restoration	7th full para. of Paragraph 7
Sale Parcels	Paragraph 31
Unpermitted Transfers	Paragraph 15

The following exhibits are attached hereto and made a part hereof:

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Exhibit "A"

Legal description of Land

2. PRIORITY OF LIEN AND SUBORDINATE ENCUMBRANCES: This Mortgage is and shall remain a first and valid lien on Mortgaged Premises until the payment in full of Indebtedness and Mortgagor shall keep Mortgaged Premises free and clear of superior or subordinate liens or claims of every nature and kind, and shall not execute, deliver or grant any other mortgage, trust deed or security interest encumbering Mortgaged Premises, now or at any time hereafter.

3. SUBROGATION: To the extent that any part of Indebtedness is applied in payment of any existing lien against Mortgaged Premises, or any part thereof (other than the lien created by this Mortgage), or, following the date hereof, Mortgagee pays any sum due pursuant to any provision of law or any instrument or document establishing any lien prior or superior to the lien of this Mortgage, Mortgagee shall have and be entitled to a lien on Mortgaged Premises equal in parity to that discharged and Mortgagee shall be subrogated to, receive and enjoy all rights and liens possessed, held or enjoyed by the holder of such lien, which shall remain in existence and benefit Mortgagee to secure the payment of Indebtedness. Mortgagee shall be subrogated, notwithstanding its release of record, to mortgages, trust deeds, superior titles, vendors' liens, and other liens, charges, encumbrances, rights and equities on Mortgaged Premises to the extent that any obligation thereunder is paid or discharged from indebtedness or other payments by Mortgagee.

4. PROMPT PAYMENT AND PERFORMANCE OF COVENANTS: Mortgagor shall promptly pay Indebtedness as the same becomes due and shall duly and punctually perform and observe all of the terms, covenants, conditions and agreements to be performed and observed by Mortgagor as provided herein and in Note, Loan Agreement and Other Loan Documents.

5. TAX AND INSURANCE DEPOSITS AND APPLICATION: In addition to the payment of Indebtedness, Mortgagor shall pay to Mortgagee, at Mortgagee's election, concurrently with the monthly payments required pursuant to Note, an amount equal to the real estate taxes and special assessments, if any, next due on Mortgaged Premises, together with the premiums which will next become due and payable on Insurance Policies, as estimated by Mortgagee, less all sums previously paid therefor, divided by the number of months to elapse before one (1) month prior to the dates when such taxes, assessments and premiums will become delinquent. Any funds held by Mortgagee, or its duly authorized agent, will be held in trust for the purpose of paying said real estate taxes, assessments and insurance premiums when the same become due and payable, without any obligation of Mortgagee to pay interest thereon.

In the event that the amounts deposited with Mortgagee:

- a) shall not be sufficient to pay said real estate taxes, assessments or insurance premiums in full, when due, Mortgagor shall deposit with Mortgagee, or its duly authorized agent, such additional amounts as shall be sufficient to pay the same and if Mortgagor shall default in making such payments for fifteen (15) days following written notice from Mortgagee to Mortgagor, at the

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option of Mortgagee, Indebtedness shall become immediately due and payable; or

- b) are in excess of the amounts required to pay real estate taxes, assessments and insurance premiums, such excess shall, upon the written demand of Mortgagor, be refunded to Mortgagor, PROVIDED THAT no Monetary Default or Non-Monetary Default shall exist.

At such time as Indebtedness is paid in full, whether by reason of maturity or prepayment, as provided in Note, Mortgagee shall apply, as a credit against Indebtedness, all funds held by it pursuant to this Paragraph 5.

If, as a result of a Monetary Default or Non-Monetary Default, Mortgaged Premises are sold, foreclosed upon or otherwise acquired by Mortgagee following a Monetary Default or Non-Monetary Default, Mortgagee shall, concurrently with the commencement of proceedings for sale or foreclosure or at the time Mortgaged Premises are otherwise acquired, apply the balance of the funds deposited by Mortgagor pursuant hereto as a credit against such part of Indebtedness as Mortgagee may select.

6. PAYMENT OF TAXES AND OTHER IMPOSITIONS: Mortgagor shall promptly pay, when due and payable, all taxes and assessments (general and special), water and sewer charges, public impositions, levies, dues and other charges, of whatsoever nature, which are now or shall hereafter be levied or assessed or which may otherwise be or become a lien upon or against Mortgaged Premises, or any part thereof (collectively "Impositions"), and in the event that funds are deposited with Mortgagee for the payment of Impositions, the same will be applied for such purpose.

7. INSURANCE POLICIES, PAYMENT AND APPLICATION OF PROCEEDS AND SETTLEMENT OF CLAIMS: Until such time as Indebtedness shall have been paid in full, Mortgagor shall keep Mortgaged Premises continuously insured against Casualty by policies of insurance hereafter set forth, in such amounts and for such periods as may, from time to time, be required by Mortgagee ("Insurance Policies"), which Insurance Policies and all renewals thereof shall:

- a) be written with companies licensed to do business in the State of Illinois, having a Best's "General Policy Holder Rating" of A+ or better and a financial rating class of XII or better and, if written by a mutual company, the insurance policy holder or its mortgagee must not be assessable, the risk of any one (1) company shall not exceed ten per cent (10%) of the issuer's policyholders' surplus (including capital);
- b) be written with companies and in amounts acceptable to Mortgagee, provide replacement coverage and otherwise be in form satisfactory to Mortgagee;

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- c) cite Mortgagee's interest in standard mortgage clauses effective as of Closing Date;
- d) be maintained to and including Maturity Date, without cost to Mortgagee;
- e) at the option of Mortgagee, be delivered to Mortgagee as issued (PROVIDED THAT Mortgagee will accept certificates thereof, in lieu of original Insurance Policies), together with evidence of payment of premiums therefor in full, not less than thirty (30) days prior to the expiration of the previous Insurance Policies; and
- f) contain a so-called "cut-through" endorsement, in the event that any part of the fire or other risks insured thereby is reinsured;

and the original Insurance Policies or certificates thereof shall be held by Mortgagee until such time as Indebtedness is paid in full.

In the event of a sale of Mortgaged Premises pursuant to foreclosure hereof or other transfer of title thereto and the extinguishment of Indebtedness, complete title to Insurance Policies and renewals thereof, together with all prepaid or unearned premiums thereon, in the possession of Mortgagee shall pass to and vest in the purchaser or grantee of Mortgaged Premises. If any renewal Insurance Policy or certificate thereof is not delivered to Mortgagee within thirty (30) days prior to the expiration of any existing Insurance Policy, with evidence of premium paid, Mortgagee may obtain the required insurance on behalf of Mortgagor (or in favor of Mortgagee only) and pay the premiums therefor, in which event any monies so advanced shall be so much additional Indebtedness secured hereby and shall become immediately due and payable, with interest thereon at the rate of four percent (4%) per annum above the Mortgagee's base rate of interest as announced from time to time ("Default Rate"). Mortgagee shall not, by reason of acceptance, rejection, approval or obtaining Insurance Policies, incur any liability for payment of losses.

Without, in any way, limiting the generality of the foregoing, Mortgagor agrees to maintain the following Insurance Policies on Mortgaged Premises:

<u>Insurance Policy</u>	<u>Amount</u>
s). Builder's Risk All Risk Property coverage including without limitation:	Satisfactory to Mortgagee
(1) Replacement Cost Coverage Endorsement	
(2) Inflation Adjustment Endorsement	
(3) Standard Mortgagee clause naming	

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Mortgagee as first mortgagee
(4) Agreed Amount Endorsement

- t). Flood Insurance (if Mortgaged Premises are within a Zone A designated "flood area") with clause naming Mortgagee as mortgagee Satisfactory to Mortgagee
- u). Comprehensive General Liability naming Mortgagee as Additional Insured In accordance with Loan Agreement
- v). such other insurance policies, including liquor liability (if alcoholic beverages are dispensed on Mortgaged Premises), as may be reasonably required, from time to time, by Mortgagee, upon written notice to Mortgagor.

If any part or all of Insurance Policies or other insurance coverages is furnished by any Occupancy Tenant, Mortgagor shall furnish to Mortgagee duplicate original Insurance Policies or, with the consent of Mortgagee, certificates evidencing such coverages, which shall be subject to the approval of Mortgagee. Insurance Policies shall be in form and content satisfactory to Mortgagee and, at the option of Mortgagee, contain mortgage clauses in favor of or name Mortgagee as an additional insured and provide for not less than thirty (30) days' prior written notice to Mortgagee in the event of cancellation or material modification thereof. Any of the foregoing insurance may be carried as part of blanket policies, provided that the Builder's Risk policy shall be specially endorsed to provide for minimum reserved limits applicable to the Mortgaged Premises, which are acceptable to Mortgagee.

Mortgagor shall not purchase separate insurance, concurrent in form or contributing in the event of Casualty, unless Mortgagee is included thereon pursuant to standard mortgagee clause acceptable to Mortgagee, and in the event Mortgagor does purchase such separate insurance, Mortgagor shall immediately notify Mortgagee thereof and promptly deliver to Mortgagee such policy or policies.

Mortgagor shall have the right to settle, adjust and compromise claims under \$150,000.00 in the aggregate as long as no Monetary Default or Non-Monetary Default exists nor does any event or circumstance exist which, with the giving of notice or passage of time, or both, would in the reasonable judgement of Lender, constitute a Monetary Default or Non-Monetary Default. In the event of any other loss sustained by Casualty for which Insurance Policies are in effect, Mortgagor may, with the consent of Mortgagee, settle, compromise and adjust any and all rights and claims pursuant to the provisions of Insurance Policies, PROVIDED THAT Proceeds shall be payable to Mortgagee. In the absence of such consent, Mortgagee is hereby authorized to settle, compromise

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and adjust such claims or rights and receive Proceeds, which shall be applied either on account of Indebtedness or on account of the costs of Repair or Restoration, at the sole election of Mortgagee except as expressly provided in the Loan Agreement.

If Mortgagee shall elect to, or by the terms of the Loan Agreement is required to, apply Proceeds on account of the costs of repairs, rebuilding and restoration ("Repair or Restoration"), (1) that part of Mortgaged Premises so damaged or destroyed shall be repaired or rebuilt, in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed) and all life, safety and environmental regulations, laws, ordinances (including zoning), rules and regulations of governmental authorities having jurisdiction thereover (collectively "Applicable Laws"), so as to be as similar, as is reasonably possible, to the condition which existed prior to such Casualty, and (2) the same shall be paid to Mortgagor, from time to time, upon the delivery to Mortgagee of satisfactory evidence of the estimated cost of completing Repair or Restoration, together with such architect's certificates, contractor's sworn statements, waivers of lien, title insurance policies or certifications and other evidences of cost and payments as Mortgagee may reasonably require and approve; PROVIDED, HOWEVER, that (aa) intentionally omitted, (bb) at all times, the undisbursed balance of Proceeds shall not be less than the amount required to pay for the cost of completion thereof, free and clear of liens or encumbrances, (cc) in the event that, in the reasonable opinion of Mortgagee, Proceeds are insufficient to pay for all costs of Repair or Restoration, Mortgagor shall deposit with Mortgagee an amount equal to such excess costs prior to the disbursement of any part of Proceeds to it, (dd) all provisions of Loan Agreement shall continue to be complied with, including without limitation, those provisions relating expressly to the use of insurance proceeds and (ee) any surplus Proceeds, following the payment of all costs of Repair or Restoration, shall, at the option of Mortgagee, be applied on account of Indebtedness or paid to Mortgagor. Mortgagee shall allow application of Proceeds on account of Repair or Restoration pursuant to conditions set forth in Loan Agreement, pursuant to procedures set forth therein and herein and otherwise established by Mortgagee.

8. CONDEMNATION: In the event that:

- a) Mortgaged Premises, or any part thereof, is taken by Condemnation, Mortgagee is hereby empowered to collect and receive Awards, PROVIDED THAT that part thereof applicable to that part of Mortgaged Premises taken shall be applied on account of Indebtedness and that part of Awards applicable to damage to the remainder of Mortgaged Premises shall, at the election of Mortgagee, be applied to the payment of Indebtedness or on account of rebuilding or restoring that part of Mortgaged Premises not so taken or damaged ("Rebuilding or Restoration");
- b) Mortgagee elects to, or by the terms of the Loan Agreement is required to, permit the use of Awards for Rebuilding or Restoration, Mortgaged Premises shall be so rebuilt or restored, in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not

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be unreasonably withheld or delayed) and Applicable Laws, so as to be as similar, as is reasonably possible, to the condition which existed prior to Condemnation and all disbursements shall be paid in the same manner as provided in Paragraph 7 hereof with respect to a loss by Casualty;

- c) Awards are insufficient to pay for all costs of Rebuilding or Restoration, Mortgagor shall deposit with Mortgagee an amount equal to such excess costs prior to any disbursement of Awards to it; or
- d) Awards are in excess of Rebuilding or Restoration, any surplus Awards, following payment in full of all costs of Rebuilding or Restoration shall, at the option of Mortgagee, either be applied on account of Indebtedness or paid to Mortgagor.

9. CASUALTY OR CONDEMNATION AFTER FORECLOSURE: In the event of Casualty or Condemnation following the institution of foreclosure proceedings, Proceeds or Awards, if not applied as specified in Paragraphs 7 and 8, shall be used to pay the amounts due in accordance with any decree of foreclosure which may be entered in any such proceedings and the balance, if any, shall either be paid to the owner of the equity redemption, if such owner shall be entitled to the same, or as the court may direct.

10. MORTGAGEE'S LIABILITY FOR COLLECTION OF PROCEEDS OR AWARDS: Mortgagee shall not, except for its gross negligence or willful misconduct, be held responsible for any failure to collect Proceeds or Awards, regardless of the cause of such failure and the power and authority granted to Mortgagee to collect Proceeds or Awards is irrevocable and coupled with an interest and shall, in no way, affect the security of this Mortgage or the liability of Mortgagor for payment of Indebtedness. The entry of a decree of foreclosure of the lien hereof shall not affect or impair the power and authority granted to Mortgagee pursuant to this Paragraph 10.

11. USE, CARE AND WASTE: Mortgagor:

- a) Shall constantly maintain and not diminish, in any respect, or materially alter Improvements or materially change the use of Mortgaged Premises so long as Indebtedness, or any part thereof, remains unpaid and shall not erect any buildings or improvements on Mortgaged Premises without the prior written consent of Mortgagee. Without, in any way, limiting the generality of the foregoing, Mortgagor shall:
 - (i) not abandon Mortgaged Premises or do or suffer anything to be done which would depreciate or impair the value thereof or the security of this Mortgage;

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- (ii) not remove or demolish any part of Improvements which would adversely affect the value of Mortgaged Premises;
 - (iii) pay promptly all services, labor and material necessary and required to refurbish and renovate Improvements pursuant to contracts therefor;
 - (iv) maintain, preserve and keep Mortgaged Premises in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear and tear, damage, obsolescence or destruction;
 - (v) not make any changes, additions or alterations to Mortgaged Premises of a structural nature or which would materially adversely affect the value thereof, except as required by Applicable Laws or as otherwise approved in writing by Mortgagee (which approval shall not be unreasonably withheld or delayed);
 - (vi) promptly commence and diligently pursue Repair or Restoration or Rebuilding or Restoration, as the case may be;
 - (vii) not commit or permit to exist any waste of Mortgaged Premises; and
 - (viii) maintain all planted or landscaped common areas, adjoining plaza, if any, and abutting sidewalks in good and neat order and repair.
- b) Represents to Mortgagee that:
- (i) no hazardous substances, hazardous waste, industrial waste, pollution control waste or toxic substances, within the meaning of any applicable statute or regulation (collectively "Hazardous Substances"), are presently stored or otherwise located on Mortgaged Premises and that, within the definition of such statute, no part of Mortgaged Premises, including the ground-water located therein, is presently contaminated by any Hazardous Substances;
 - (ii) until Indebtedness is paid in full, all Hazardous Substances, which may be used by any person for any purpose upon Mortgaged Premises, shall be used or stored thereon only in a safe, approved manner, in accordance with all industrial standards and all laws, regulations and requirements for such storage promulgated by any governmental authority;

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- (iii) Mortgaged Premises will not be used for the principal purpose of storing Hazardous Substances and that no such storage or use will otherwise be allowed on Mortgaged Premises which will cause or increase the likelihood of causing the release of Hazardous Substances onto Mortgaged Premises; and
- (iv) Mortgagor shall promptly notify Mortgagee as soon as Mortgagor knows of or suspects that a Hazardous Substance has been released on Mortgaged Premises in violation of Applicable Laws which remains uncured.

c) Shall, in addition to the indemnification specified in Paragraph 36 hereof, indemnify and hold Mortgagee harmless of and from all loss, cost (including reasonable attorneys' fees), liability and damage whatsoever incurred by Mortgagee by reason of any violation of any applicable statute or regulation for the protection of the environment which occurs upon Mortgaged Premises or by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation except to the extent exacerbated by the actions of Mortgagee; PROVIDED, HOWEVER, that to the extent Mortgagee is strictly liable pursuant to any such statute, Mortgagor's obligations to Mortgagee pursuant to this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to Mortgagee.

d) Shall comply with and cause Mortgaged Premises, and the use and condition thereof, to comply with Applicable Laws and with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to the operation and marketing of Mortgaged Premises as a downtown Chicago residential subdivision, and use and development, construction, access, water rights, noise and pollution) which are applicable to Mortgagor or have been granted for Mortgaged Premises, or the use thereof.

12. MORTGAGEE'S PERFORMANCE OF CERTAIN OF MORTGAGOR'S OBLIGATIONS: In the event of the failure of Mortgagor in:

- a) the prompt discharge of any lien or encumbrance;
- b) defending the title to Mortgaged Premises;
- c) the payment of any Imposition;

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- d) diligently and continuously pursuing Repair or Restoration or Rebuilding or Restoration, as the case may be;
- e) the proper maintenance and preservation of Mortgaged Premises; or
- f) the performance of any obligation specified in Paragraph 11 above;

and such failure is not cured to the reasonable satisfaction of Mortgagee or other satisfactory security is not furnished to Mortgagee within the time specified in any written notice served by Mortgagee to Mortgagor pursuant to Paragraph 17 hereof, or if Mortgagor shall fail to procure and maintain Insurance Policies, such failure, in any instance, shall be deemed to be a Non-Monetary Default and Mortgagee may, in addition to the exercise of all other remedies provided herein and in Loan Agreement, Note and Other Loan Documents, at its election and without further demand or notice, pay and discharge such lien or encumbrance, defend the title to Mortgaged Premises, pay such Impositions (plus any interest and penalties thereon), perform Rebuilding or Restoration or any obligation of Mortgagor specified in Paragraph 11 hereof, procure Insurance Policies and maintain and preserve Mortgaged Premises. All expenditures therefor, including reasonable attorneys' fees incurred by Mortgagee, shall forthwith become due and payable to Mortgagee, together with interest thereon at Default Rate, which shall be added to and become a part of Indebtedness and shall be secured by the lien of this Mortgage, all without prejudice to the right of Mortgagee to declare Indebtedness immediately due and payable by reason of a Monetary Default or Non-Monetary Default. Mortgagee shall have the sole right of determination as to the validity of any lien, encumbrance or Imposition attributable to or assessed against Mortgaged Premises and payment thereof by Mortgagee shall establish its right to recover the amount so paid, with interest at Default Rate, subject to the provisions of Paragraph 13 following.

13. CONTEST OF LIENS OR ENCUMBRANCES: Mortgagor shall keep Mortgaged Premises free and clear of all liens for charges of services, labor, material and supplies furnished to or for its benefit and shall pay, as soon as the same become payable, all accruing taxes and special assessments thereon; PROVIDED, HOWEVER, that notwithstanding the foregoing, so long as no Monetary Default or Non-Monetary Default has occurred, Mortgagor shall not be required to pay any lien claim, tax or assessment deemed excessive or invalid or otherwise contested by them so long as they shall, in good faith, object to or otherwise contest the validity of the same by appropriate legal proceedings and Mortgagor shall, upon demand by Mortgagee, as protection and indemnity against loss or damage resulting therefrom, either:

- a) obtain title insurance from or a title company acceptable to Mortgagee over such claim; or
- b) deposit cash, securities or a letter of credit acceptable to Mortgagee in an amount sufficient, in the reasonable judgment of Mortgagee, to pay the claim for lien or the unpaid or protested part of any such tax or assessment, together with any costs and penalties thereon which may thereafter accrue;

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PROVIDED THAT, in any event, Mortgagor shall pay any such lien claim, tax or assessment prior to any foreclosure sale foreclosing such lien or any tax sale relating to any such tax or assessment.

If the foregoing title insurance is obtained or deposits are made and Mortgagor continues, in good faith, to contest the validity of such lien, encumbrance or Imposition, by appropriate legal proceedings which shall operate to prevent the collection thereof and the sale of Mortgaged Premises, or any part thereof, to satisfy the same, Mortgagor shall be under no obligation to pay such lien, encumbrance or Imposition until such time as the same has been decreed, by court order, to be a valid lien on Mortgaged Premises. Mortgagee shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to the payment of any unpaid lien, encumbrance or Imposition to prevent the sale or forfeiture of Mortgaged Premises or non-payment of such lien, encumbrance or imposition, without liability on Mortgagee for any failure to apply the security or indemnity so deposited, unless Mortgagor, in writing, requests the application thereof to the payment of the particular lien, encumbrance or Imposition for which such deposit was made. Any surplus deposit retained by Mortgagee, after the payment of the lien, encumbrance or Imposition for which the same was made, shall be repaid to Mortgagor, unless Monetary Default or Non-Monetary Default exists, in which event, such surplus shall be applied by Mortgagee to cure such default.

14. WAIVERS: To the full extent permitted by law, Mortgagor:

- a) shall not, at any time, insist upon or plead or, in any manner whatsoever, claim, or take advantage of any stay, exemption or extension law or any so-called "Moratorium Law" (now or at any time hereafter in force) nor claim, take or insist upon any benefit or advantage of or from any law (now or hereafter in force) providing for the valuation or appraisal of Mortgaged Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to any decree, judgment or order of any court of competent jurisdiction or after such sale or sales, claim or exercise any rights pursuant to any statute now or hereafter in force to redeem Mortgaged Premises so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof;
- b) hereby expressly waives any and all statutory right of redemption on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to Mortgaged Premises subsequent to the date hereof, it being the intent of Mortgagor hereby that any and all such statutory rights of redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by Applicable Law;

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- c) agrees that it will not, by invoking or utilizing any applicable redemption period or similar law or laws seek to hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws has, have been or will have been made or enacted; and
- d) for itself and all who or which claim by, through or under Mortgagor, waives any and all right to have Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose the lien of this Mortgage may order Mortgaged Premises sold as an entirety.

15. UNPERMITTED TRANSFERS: For the purpose of protecting Mortgagee's security, keeping Mortgaged Premises free from subordinate financing liens and/or permitting Mortgagee to raise the rate of interest due on Note and to collect assumption fees, Mortgagor agrees that any sale, installment sale, conveyance, assignment or other transfer of or grant of a security interest in and to all or any part of the:

- a) legal and/or equitable title to Mortgaged Premises except for Home sales in compliance with the terms of the Loan Agreement; or
- b) stock of any corporate owner of Mortgaged Premises; or
- c) partnership interests of the general partners of any partnership owning Mortgaged Premises; or
- d) limited partnership interests of any limited partnership owning Mortgaged Premises;

shall be deemed to be an unpermitted transfer (collectively "Unpermitted Transfers").

16. PROHIBITION AGAINST SUBMITTING MORTGAGED PREMISES TO CONDOMINIUM PROPERTY ACT: Mortgagor shall not submit Mortgaged Premises to the Condominium Property Act of the State of Illinois or to any other cooperative ownership (except for owners' associations established pursuant to agreements approved by Mortgagee).

17. DEFAULT: In the event of a default by Mortgagor in the due and punctual payment of the whole or any part of the several installments due pursuant to Note or in the payment of all other fees, costs and expenses required to be paid by Mortgagor pursuant to Loan Agreement or Other Loan Documents including, without limitation, the failure of Mortgagor or Sears, Roebuck and Co. ("Sears" or "Guarantor") to pay or deposit Deficiencies immediately upon demand, (any one (1) or more of the foregoing, a "Monetary Default"), or if any one (1) or more of the following

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events shall occur and, are continuing for thirty (30) days following written notice thereof from Mortgagee to Mortgagor, the same shall constitute a non-monetary default ("Non-Monetary Defaults"):

- a) the failure of Mortgagor to perform any of the terms, covenants, conditions and agreements required of them, pursuant hereto or pursuant to Loan Agreement, Note or Other Loan Documents which would not result in a Monetary Default;
- b) "Warranties and Representations" (as such term is defined in Loan Agreement), or any of the same, are, is or shall become untrue in any material respect;
- c) any conveyance, transfer or assignment of Mortgaged Premises or any interest therein, except as permitted by the provisions hereof;
- d) the existence of any collusion, fraud, dishonesty or bad faith by or with the acquiescence of Mortgagor which, in any way, relates to or affects Indebtedness;
- e) Mortgagor shall:
 - (i) have an order entered with respect to its or their relief pursuant to the Federal Bankruptcy Act;
 - (ii) not pay, or admit in writing his or its inability to pay his or its debts as the same become due;
 - (iii) make an assignment for the benefit of creditors;
 - (iv) apply for, seek, consent to or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for him or it or for any substantial part of his or its property;
 - (v) institute any proceeding seeking the entry of an order for relief pursuant to the Federal Bankruptcy Act to adjudicate him or it bankrupt or insolvent or seeking dissolution, winding-up, liquidation, reorganization, arrangement, adjustment or composition of him or it or his or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or failure to file an answer or other pleading denying the material allegations of any such proceeding filed against him or it; or

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(vi) take any action to authorize or effect any of the actions set forth herein or fail to contest in good faith any appointment or proceeding described in Subparagraph f). following;

- f) without the application, approval or consent of Mortgagor, a receiver, trustee, examiner, liquidator or similar official shall be appointed for Mortgagor and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days;
- g) intentionally omitted;
- h) a material adverse misrepresentation in the financial statements to be furnished pursuant to Paragraph 29 hereof; or
- i) a default by Mortgagor in the maintenance of any licenses which are necessary and required for the operation of Mortgaged Premises or the cancellation or any attempted assignment thereof without the prior written consent of Mortgagee;

then, or at any time thereafter during the continuance of a Monetary Default or Non-Monetary Default, Mortgagee may declare Indebtedness immediately due and payable in full, without further notice thereof and without demand or presentment, anything contained herein or in Note, Loan Agreement or Other Loan Documents to the contrary notwithstanding, and Indebtedness so accelerated and declared due as aforesaid shall thereafter bear interest at Default Rate.

PROVIDED that in the event of Non-Monetary Default which is not capable of being cured within said initial thirty (30) day period, the time to cure the same shall be extended for an additional reasonable period not to exceed sixty (60) days if, within the initial thirty (30) day period, Mortgagor shall initiate and diligently pursue a course of action reasonably expected to cure such Non-Monetary Default within the additional period of time.

In the event of a Monetary Default or Non-Monetary Default and immediately upon the commencement of any action, suit or other legal proceedings by Mortgagee to foreclose this Mortgage, Mortgagor hereby unconditionally and irrevocably consents to the appointment of a receiver or receivers of Mortgaged Premises to receive all revenues from the operation of Mortgaged Premises, upon ten (10) days written notice to Mortgagor. Mortgagee shall be entitled to such appointment without regard to the adequacy of any security given for the payment of Indebtedness and said receiver or receivers shall be entitled to take possession of Mortgaged Premises from the owner, tenants and/or occupants of the whole or any part thereof and to collect and receive Income for the use and benefit of Mortgagee.

18. **REMEDIES NOT EXCLUSIVE:** No remedy or right of Mortgagee hereunder or pursuant to Note, Loan Agreement or Other Loan Documents or otherwise available under applicable

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law, shall be exclusive of any other remedy or right but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing at law or in equity pursuant thereto. No delay in the exercise of or omission to exercise any remedy or right accruing by reason of a Monetary Default or a Non-Monetary Default shall impair any such remedy or right or be construed to be a waiver of any such default or an acquiescence therein nor shall the same affect any subsequent Monetary Default or Non-Monetary Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by Mortgagee. All obligations of Mortgagor and all rights, powers and remedies of Mortgagee expressed herein shall be in addition to and not in limitation of those provided by law, this Mortgage and Other Loan Documents.

19. **REMEDIES:** Upon the occurrence of a Monetary Default or a Non-Monetary Default, Mortgagee shall have the right, in addition to any and all other remedies specified herein and in Loan Agreement, Note and Other Loan Documents, to immediately foreclose this Mortgage. Upon the filing of any complaint by reason thereof, the court in which the same is filed may:

- a) upon application of Mortgagee or at any time thereafter;
- b) either before or after foreclosure sale and without notice to Mortgagor or to any party claiming under Mortgagor;
- c) without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of Indebtedness, or any part thereof;
- d) without regard to the then value of Mortgaged Premises or whether the same shall then be occupied in whole or in part, as a homestead by the owner of the equity of redemption; and
- e) without requiring any bond from the complainant in such proceedings;

appoint a receiver for the benefit of Mortgagee, with power to take possession, charge and control of Mortgaged Premises, to lease the same, keep Mortgaged Premises insured and in good repair and collect all rentals during the pendency of such foreclosure suit and, in the event of foreclosure sale and a deficiency in the proceeds received therefrom, during any period of redemption. The court may, from time to time, authorize such receiver to apply the net amounts remaining in his possession, after deducting reasonable compensation for himself and his counsel to be allowed by the court, in payment (in whole or in part) of any part or all of Indebtedness, including, without limitation, the following, in such order of application as Mortgagee may elect:

- (i) any amount due upon any decree entered in any suit foreclosing this Mortgage;

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- (ii) costs and expenses of foreclosure and litigation upon Mortgaged Premises;
- (iii) premiums due on Insurance Policies or costs of Repair or Restoration, Rebuilding or Restoration, Impositions (and any interest, penalties and costs thereon) or any other lien or charge upon Mortgaged Premises which may be or become superior to the lien of this Mortgage or of any decree foreclosing the same; and
- (iv) all sums advanced by Mortgagee to cure or attempt to cure any Monetary Default or Non-Monetary Default, to protect the security provided herein and in Loan Agreement, Note and Other Loan Documents, with interest on such advances at Default Rate.

Any overplus of the proceeds of foreclosure sale shall then be paid to Mortgagor. This Mortgage may be foreclosed at any one time against all or successively against any part or parts of Mortgaged Premises, as Mortgagee may elect and this Mortgage and the right of foreclosure hereunder shall not be impaired or exhausted by one or any foreclosure or by one or any sale and may be foreclosed successively and in parts until all of Mortgaged Premises shall have been foreclosed and sold. In the event of any foreclosure of Mortgaged Premises (or commencement of or preparation for the same) in any court, all expenses of every kind paid or incurred by Mortgagee for the enforcement, protection or collection of this security, including reasonable costs, attorneys' fees, stenographers' fees, costs of advertising, title charges and other costs and expenses shall be paid by Mortgagor.

20. POSSESSORY RIGHTS OF MORTGAGOR: Upon the occurrence of a Monetary Default or a Non-Monetary Default, whether before or after the institution of legal proceedings to foreclose the lien of this Mortgage or any sale thereunder, Mortgagee shall, in addition to all other remedies specified herein and in Loan Agreement, Note and Other Loan Documents, be entitled, in its sole discretion, to perform any of the following (to the extent permitted by law):

- a) enter and take actual possession of Mortgaged Premises. Leases and the rents payable pursuant thereto, personally or by its agents or attorneys and excluding Mortgagor therefrom;
- b) with process of law or otherwise peaceably, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating thereto;
- c) as agent for Mortgagor or in its own name as Mortgagee and pursuant to the powers herein granted, hold, operate, manage and control Mortgaged Premises and Leases and collect all rentals payable pursuant thereto and conduct the business, if any, thereof, either personally or by its agents,

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contractors or nominees, with full power to use such measures. legal or equitable, as, in its discretion, may be deemed proper or necessary to enforce the terms and conditions of Leases and the rentals payable pursuant thereto (including actions for the recovery of rents, actions in forcible detainer and actions in distress of rent);

- d) cancel or terminate any Lease or sublease for any cause or for any reason which would entitle Mortgagor to cancel the same;
- e) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof;
- f) complete Repair or Restoration or Rebuilding or Restoration and make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to Mortgaged Premises which, in Mortgagee's sole discretion, may seem appropriate;
- g) insure and re-insure Mortgaged Premises against all risks incidental to Mortgagee's possession, operation and management thereof; and
- h) perform such other acts in connection with the management and operation of Mortgaged Premises as Mortgagee, in its sole discretion, may deem proper;

Mortgagor hereby granting full power and authority to Mortgagee to exercise each and every of the rights, privileges and powers contained herein at any and all times following the occurrence of a Monetary Default or a Non-Monetary Default, without notice to Mortgagor.

Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the rentals collected by it to the payment or on account of the following, in such order as it may determine:

- (i) operating expenses of Mortgaged Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and leasing commissions and other compensation and expenses in seeking and procuring Occupancy Tenant and entering into Leases), established claims for damages, if any, and premiums on Insurance Policies;
- (ii) Impositions, costs of repairs, decorating, renewals, replacements, alterations, additions or betterments and improvements of Mortgaged Premises, including the cost, from time to time, of installing, replacing or repairing Mortgaged Premises and of placing Mortgaged

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Premises in such condition as will, in the judgment of Mortgagee, make the same readily rentable; and

(iii) Indebtedness, or any part thereof.

21. **OTHER REMEDIES:** In the event of a Monetary Default or a Non-Monetary Default, Mortgagee may exercise, from time to time, any rights and remedies available to it pursuant to applicable law. Mortgagor shall, promptly upon request by Mortgagee, assemble Personal Property and make the same available to Mortgagee at such place or places reasonably convenient for Mortgagee and Mortgagor, as Mortgagee shall designate. Any notification required by law of intended disposition by Mortgagee of any part of Mortgaged Premises shall be deemed reasonable and properly given if served as herein provided at least ten (10) days prior to such disposition. Without limiting the foregoing, whenever a Monetary Default or Non-Monetary Default is existing, Mortgagee may, with respect to Personal Property, without further notice, advertisement, hearing, or process of law of any kind:

- a) notify any person obligated on Personal Property to perform, directly for Mortgagee its obligations thereunder;
- b) enforce collection of any part of Personal Property by suit or otherwise and surrender, release or exchange all or any part thereof or compromise, extend or renew, for any period (whether or not in excess of the original period), any obligations of any nature of any party with respect thereto;
- c) endorse any checks, drafts or other writings in the name of Mortgagor to permit collection of Personal Property and control of any proceeds thereof;
- d) enter upon any part of Mortgaged Premises where Personal Property may be located and take possession of and remove the same;
- e) sell any part or all of Personal Property free of all rights and claims of Mortgagor therein and thereto, at any public or private sale; and
- f) bid for and purchase any part or all of Personal Property at any such sale.

Any proceeds of any disposition by Mortgagee of any part of Personal Property may be applied by Mortgagee to the payment of expenses incurred in connection therewith, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by Mortgagee in the payment of such part of Indebtedness and in such order of application as Mortgagee may, from time to time, elect. Mortgagee may exercise, from time to time, any rights and remedies available to it pursuant to the Uniform Commercial Code, other applicable laws in effect from time to time or otherwise available to it by reason of any applicable law. Mortgagor hereby expressly waives presentment, demand, notice of dishonor and protest in connection with Indebt-

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edness and, to the fullest extent permitted by applicable law, any and all other notices, advertisements, hearings or process of law in connection with the exercise by Mortgagee of any of its rights and remedies hereunder except that Mortgagor shall be entitled to notice of any UCC sale.

Mortgagor hereby constitutes Mortgagee its attorney-in-fact, with full power of substitution, to take possession of Personal Property upon the occurrence of a Monetary Default or Non-Monetary Default, as Mortgagee, in its sole discretion (reasonably exercised) deems necessary or proper, to execute and deliver all instruments required by Mortgagor to accomplish the disposition of Personal Property, or any part thereof, which power of attorney is a power coupled with an interest, irrevocable until such time as Indebtedness is paid in full.

22. NON-LIABILITY OF MORTGAGEE: Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor pursuant to Leases or otherwise and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur pursuant thereto or by reason of its exercise of its rights hereunder and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings, on its part, to perform or discharge any of the terms, covenants or agreements with respect to Mortgaged Premises. Mortgagee shall not have responsibility for the control, care, management or repair of Mortgaged Premises nor shall Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of Mortgaged Premises resulting in loss, injury or death to any Occupancy Tenant, licensee, employee or stranger upon Mortgaged Premises. No liability shall be enforced or asserted against Mortgagee in the exercise of the powers herein granted to it and, except for gross negligence or wilful misconduct in management of the Mortgaged Premises by Mortgagee, Mortgagor expressly waives and releases any such liability. In the event Mortgagee incurs any such liability, loss or damage pursuant hereto and to any Lease or in the defense of any claim or demand, Mortgagor agrees to reimburse Mortgagee, immediately upon demand, for the amount thereof, including costs, expenses and reasonable attorneys' fees.

23. USURY: Mortgagor represents and agrees that Loan will be used for business purposes and this Mortgage is exempt from limitations upon lawful interest, pursuant to the terms of 805 Illinois Compiled Statutes (ILCS) 205/4.

24. CHANGE OF LAW: In the event of the enactment, following the date hereof, of any law in the State of Illinois deducting from the value of Mortgaged Premises, for the purpose of taxation, the amount of any lien, encumbrance or Imposition or imposing upon Mortgagee the payment of the whole or any part thereof or changing, in any way, the laws relating to the taxation of mortgages or debts secured by mortgages or the manner of collection of liens, encumbrances or Impositions, so as to affect this Mortgage, Indebtedness or Mortgagee, Mortgagor shall, in any such event, upon demand by Mortgagee, pay such liens, encumbrances or Impositions or reimburse Mortgagee therefor; PROVIDED, HOWEVER, that if, in the reasonable opinion of counsel for Mortgagee, it may be unlawful to require Mortgagor to make such payment or the making of such

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payment may result in the payment of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare Indebtedness and all interest due and owing thereon to be and become due and payable within six (6) months from the service of such notice. Notwithstanding the foregoing, it is understood and agreed that Mortgagor is not obligated to pay any part of Mortgagee's federal or state income tax.

25. COMPLIANCE WITH AGREEMENTS: Mortgagor shall pay promptly and keep, observe, perform and comply with all covenants, terms and provisions of operating agreements, Leases, instruments and documents relating to Mortgaged Premises or evidencing or securing any indebtedness secured thereby and shall observe all covenants, conditions and restrictions affecting the same.

26. ASSIGNMENT OF LEASES, RENTS AND PROFITS BY MORTGAGOR, AS LESSOR: To further secure Indebtedness and the performance of all of the terms, covenants, conditions and agreements contained herein and in Note and Other Loan Documents, Mortgagor hereby sells, assigns and transfers to Mortgagee all of its right, title and interest in and to Leases and all rentals, issues, proceeds and profits now due and which may hereafter become due pursuant thereto, it being the intention hereby to establish an absolute transfer and assignment thereof to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its agent, in its name and stead (with or without taking possession of Mortgaged Premises, as provided in Paragraph 20 hereof), to rent, lease or let all or any part of Mortgaged Premises to any party or parties, at such rental and upon such terms as Mortgagee shall, in its discretion, determine and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter and all presently due or which may hereafter become due pursuant to each and every Lease, written or oral, or other tenancy existing or which hereafter exist on Mortgaged Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon a taking of possession pursuant to the provisions of Paragraph 20 hereof. Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any part of Mortgaged Premises for more than one (1) installment in advance and that the payment of no part of the rents to accrue for any part of Mortgaged Premises has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor. Mortgagor waives any rights of set-off against any person in possession of any part of Mortgaged Premises and agrees that it will not assign any of the rents or profits from Mortgaged Premises except with the consent of Mortgagee.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of Mortgaged Premises by Mortgagee pursuant to Paragraph 20 hereof. In the exercise of the powers granted herein to Mortgagee, no liability shall be asserted or enforced against Mortgagee (except for wilful misconduct of Mortgagee in management of the Mortgaged Premises), all such liability being expressly waived and released by Mortgagor. Mortgagor further agrees to assign and transfer Leases to Mortgagee and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in Mortgaged Premises as Mortgagee shall, from time to time, require. Although it is the intention of Mortgagor

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and Mortgagee that the assignment contained in this paragraph shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it pursuant hereto until a Monetary Default or a Non-Monetary Default shall exist. Within forty five (45) days following Mortgagee's written request therefor, Mortgagor will furnish to Mortgagee executed copies of Leases, which shall be in form and content satisfactory to Mortgagee. In the event that Mortgagee requires the same, Mortgagor shall execute and record a separate Collateral Assignment of Rents or separate Assignment of Leases, in form and content satisfactory to Mortgagee, and the terms and provisions of said Assignments shall control in the event of a conflict between the terms hereof and the terms thereof.

Mortgagor shall faithfully perform the covenants of Mortgagor, as Lessor under any present and future Leases affecting all or any portion of Mortgaged Premises, and neither do nor neglect to do or permit to be done anything which may cause the termination of Leases, or any part thereof, or which may diminish or impair the value thereof, the rents provided for therein or the interest of Mortgagor or Mortgagee therein or thereunder. Mortgagor agrees:

- a) that Leases shall remain in full force and effect, irrespective of any merger of the interest of the Lessor and any Occupancy Tenant thereunder;
- b) to furnish rental insurance to Mortgagee, the policy for which shall be written by an insurance company and be in an amount and otherwise in form and content satisfactory to Mortgagee;
- c) that except in the ordinary course of business, it will not terminate, modify or amend Leases or any of the terms thereof or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of Mortgagee, and it will not enter into any new leases;
- d) not to collect any of the rents, income and profits arising or accruing pursuant to Leases for more than one (1) month in advance of the time the same become due under the terms thereof;
- e) not to discount any future accruing rents;
- f) not to execute any other assignments of Leases or any interest therein or any of the rents payable thereunder;
- g) to perform all of Mortgagor's covenants and agreements, as Lessor, pursuant to Leases and not suffer or permit to occur any release of liability of any Occupancy Tenant or any rights of any Occupancy Tenant to withhold payment of rents;

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- h) to give prompt notice to Mortgagee of any notice of default on the part of Mortgagor with respect to Leases received from any Occupancy Tenant thereunder and to furnish Mortgagee with complete copies of said notices;
- i) if so requested by Mortgagee, to enforce Leases and all remedies available to Mortgagor in the event of default by any Occupancy Tenant thereof;
- j) that none of the rights or remedies of Mortgagee provided herein shall be delayed or in any way prejudiced by assignment;
- k) that notwithstanding any variation of the terms of this Mortgage or any extension of time for the payment of Indebtedness or any release of any part of Mortgaged Premises, Leases and the benefits thereby assigned shall continue as additional security in accordance with the terms hereof;
- l) except in the ordinary course of business, it will not alter, modify or change the terms of any guarantees of any of Leases or cancel or terminate the same or consent to any assignments thereof or any subletting thereunder, whether or not in accordance with the terms of Leases, without the prior written consent of the Mortgagee;
- m) not to request, consent to, agree to or accept a subordination of Leases to any mortgage or other encumbrance now or hereafter affecting Mortgaged Premises, except for this Mortgage and if requested by Mortgagee;
- n) not to exercise any right of election, whether specifically set forth in any Lease or otherwise, which would in any way diminish the liability of any Occupancy Tenant or have the effect of shortening the stated term of thereof; and
- o) not to sell, transfer, assign, or remove any Personal Property unless such action results in the substitution or replacement thereof with similar items owned by Mortgagor, not otherwise encumbered and of equal value, without the prior written consent of Mortgagee.

Mortgagor shall, in addition to the assignment provisions contained herein, deliver (for collateral purposes only) to Mortgagee a recorded assignment of all of its interest, as Lessor, in and to Leases, in form and substance satisfactory to Mortgagee.

27. SECURITY AGREEMENT: Mortgagor and Mortgagee agree that:

- a) this Mortgage shall constitute a security agreement within the meaning of the Illinois Uniform Commercial Code ("Code") with respect to any and all sums

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at any time on deposit for the benefit of or held by Mortgagee (whether deposited by or on behalf of Mortgagor or others) pursuant to any provision of this Mortgage, Note, Loan Agreement or Other Loan Documents and any personal property included in the granting clauses of this Mortgage, which may not be deemed to be affixed to Mortgaged Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of Code) and all replacements thereof, substitutions therefor, additions thereto and the proceeds thereof (collectively "Collateral");

- b) a security interest in and to Collateral is hereby granted to Mortgagee;
- c) Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee to secure the payment of Indebtedness;
- d) all of the terms, provisions, conditions and agreements contained herein shall pertain and apply to Collateral as fully and to the same extent as the same apply to any other property comprising Mortgaged Premises; and
- e) the following provisions shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:
 - (i) Mortgagor (being the "Debtor", as such term is defined in Code) is and will be the true and lawful owner of Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee only and liens and encumbrances, if any, expressly permitted pursuant hereto and to Note, Loan Agreement and Other Loan Documents;
 - (ii) Collateral shall be used by Mortgagor solely for business purposes;
 - (iii) Collateral shall be kept at Mortgaged Premises and, except for obsolete Collateral, will not be removed therefrom without the prior consent of Mortgagee (which consent shall not be unreasonably withheld or delayed);
 - (iv) no financing statement (other than financing statements indicating Mortgagee as the sole "Secured Party" (as such term is defined in Code) or except as permitted in writing by Mortgagee or with respect to liens or encumbrances, if any, expressly permitted pursuant hereto and to Note, Loan Agreement and Other Loan Documents) applicable to any part of Collateral or any proceeds thereof is on file in any public office;

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(v) Mortgagor shall, upon demand and at its sole cost and expense, furnish to Mortgagee such further information, execute and deliver such financing statements and other documents (in form satisfactory to Mortgagee) and do all such acts and things as Mortgagee may, at any time or from time to time, reasonably request or as may be reasonably necessary or appropriate to establish and maintain a perfected security interest in Collateral as security for Indebtedness, free and clear of all liens or encumbrances other than liens or encumbrances benefitting Mortgagee only and liens and encumbrances, if any, expressly permitted hereby or pursuant to Note, Loan Agreement or Other Loan Documents and Mortgagor will pay the cost of filing or recording this instrument and such financing statements or other documents in all public offices wherever filing or recording is deemed necessary or desirable by Mortgagee;

(vi) In the event of the occurrence of a Monetary Default or a Non-Monetary Default, Mortgagee: t). shall have the remedies of a Secured Party pursuant to Code, including, without limitation, the right to take immediate and exclusive possession of Collateral, or any part thereof and, for that purpose, may, insofar as Mortgagor can give authority therefor, with or without judicial process, enter (if the same can be done without breach of the peace) upon any place in which Collateral, or any part thereof, may be situated and remove the same therefrom (provided that if Collateral is affixed to real estate, such removal shall be subject to the conditions stated in Code); u). shall be entitled to hold, maintain, preserve and prepare Collateral for sale (until the disposition thereof) or may propose to retain the same subject to Mortgagor's right of redemption, in satisfaction of Mortgagor's obligations, as provided in Code; v). may render Collateral unusable without removal and may dispose of the same on Mortgaged Premises; w). may require Mortgagor to assemble Collateral and make the same available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both Mortgagee and Mortgagor; x). will furnish to Mortgagor not less than ten (10) days' prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed by certified United States mail (or equivalent), postage prepaid, to the address of Mortgagor hereafter set forth; y). may purchase, at any public sale and, if Collateral is of a type customarily sold in a recognized market or the subject of widely distributed standard price quotations, Mortgagee may purchase Collateral at

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private sale, which sale may be held as a part of and in conjunction with any foreclosure sale of Mortgaged Premises and Collateral and Mortgaged Premises may be sold as one lot, if Mortgagee so elects, and the net proceeds realized upon any such disposition, after deduction for the expenses of re-taking, holding, preparing for sale, selling or the like, and reasonable attorneys' fees and legal expenses incurred by Mortgagee shall be applied against Indebtedness in such order or manner as Mortgagee shall select; and z). will pay Mortgagor any surplus realized on such disposition;

(vii) the terms and provisions contained in this Paragraph 27 shall, unless the context otherwise requires, have the meanings contained and be construed as provided in Code;

(viii) this Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of Code with respect to Collateral and the goods described herein, which are or may become fixtures relating to Mortgaged Premises, and: x). the addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereafter set forth; y). this Mortgage shall be filed or recorded with the Recorder of Deeds of Cook County, Illinois; and z). Mortgagor is the record owner of Mortgaged Premises, and

(ix) to the extent permitted by applicable law, the security interest established hereby is specifically intended to cover and include all of the right, title and interest of Mortgagor, as landlord, in and to Leases, including all extended terms and extensions and renewals thereof, together with any amendments to or replacements thereof and all right, title and interest of Mortgagor, as landlord thereunder, including, without limitation, the present and continuing right to: x). make claim for, collect, receive and receipt for any and all rents, income, revenues, issues, profits and monies payable as damages or, in lieu of the rents and moneys payable, as the purchase price of Mortgaged Premises, or any part thereof or of awards or claims of money and other sums of money payable or receivable thereunder, howsoever payable; y). bring actions and proceedings thereunder or for the enforcement thereof; and z). do any and all things which Mortgagor or any landlord is or may become entitled to do pursuant to Leases.

28. EXECUTION OF SEPARATE SECURITY AGREEMENT AND FINANCING STATEMENT: In addition to this Mortgage being deemed a security agreement, Mortgagor shall, upon the written request of Mortgagee, as additional security for the payment of Indebtedness and

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the performance of all of the terms, covenants, conditions and agreements set forth herein and in Note, Loan Agreement and Other Loan Documents, execute and deliver to Mortgagee a security agreement, granting to Mortgagee a first security interest in and to Collateral, all right, title and interest of Mortgagor, as landlord, in and to Leases and all rents, issues and profits due or which may hereafter become due and payable pursuant to the terms and provisions thereof; and, further, execute and deliver Financing Statements pursuant to the Uniform Commercial Code, State of Illinois. Mortgagor agrees, from time to time, to execute such additional Security Agreements and Financing Statements as may be necessary to vest in Mortgagee a security interest in and to Collateral and Leases until Indebtedness is paid in full.

29. FINANCIAL STATEMENTS: Within ninety (90) days following the close of each calendar year, Mortgagor shall furnish to Mortgagee financial statements of Mortgagor, prepared by a certified public accountant in accordance with generally accepted accounting principles, consistently applied, which shall be in such detail as Lender may require. Mortgagee shall have the right, at its expense, upon reasonable notice, to inspect and make copies of the books, records and income tax returns of Mortgagor with respect to Mortgaged Premises for any reasonable purpose.

30. PAYMENT AND PERFORMANCE BY MORTGAGEE: In the event that Mortgagor shall fail to pay or perform any of its obligations contained herein and in Note, Loan Agreement and Other Loan Documents (including the payment of expenses of foreclosure and court costs), Mortgagee, in addition to all other remedies provided in Loan Agreement, Note and Other Loan Documents, may, but need not, following the expiration of any applicable grace period provided therein, pay or perform (or cause to be paid or performed) any obligation of Mortgagor pursuant thereto, in any form and manner deemed reasonably expedient by Mortgagee, as agent or attorney-in-fact of Mortgagor, and any amount so paid or expended (plus reasonable compensation to Mortgagee for its out-of-pocket and other expenses for each matter for which it acts hereunder), with interest thereon at Default Rate, shall be and become a part of Indebtedness and shall be paid to Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not:

- a) perform any obligation of Mortgagor required pursuant to Loan Agreement;
- b) collect rentals due and owing pursuant to Leases and prosecute the collection of Collateral or the proceeds thereof;
- c) purchase, discharge, compromise or settle any Imposition, lien or any other lien, encumbrance, suit, proceeding, title or claim thereof;
- d) redeem from any tax sale or forfeiture affecting Mortgaged Premises or contest any Imposition; and
- e) perform any act or deed reasonably necessary and required to protect the value of Mortgaged Premises and the security given for Indebtedness.

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In making any payment or securing any performance relating to any obligation of Mortgagor hereunder, Mortgagee, so long as it acts in good faith, shall have the sole discretion as to the legality, validity and amount of any lien, encumbrance or Imposition and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee shall be considered a waiver of any right accruing to it on account of the occurrence of any Monetary Default or Non-Monetary Default.

31. **PARTIAL RELEASE:** Prior to the payment of Indebtedness in full, Mortgagor shall have the right to sell portions of the Mortgaged Premises, herein for convenience referred to as "Sale Parcels", upon the payment of an amount set forth by formula in the Loan Agreement ("Release Payment") and upon compliance with the other provisions thereof, including without limitation, that the gross sales price may not be less than that calculated pursuant to a formula set forth in the Loan Agreement. Upon receipt of Release Payment, Mortgagee will issue its release deeds in favor of the bona fide purchasers of Sale Parcels, releasing the lien of this Mortgage as to Sale Parcels being sold; PROVIDED HOWEVER, THAT:

- a) no Monetary Default or Non-Monetary Default shall exist nor shall any circumstances exist which, with the giving of notice or passage of time, or both, would in the opinion of Mortgagee, constitute a Monetary Default or Non-Monetary Default;
- b) the remainder of the Mortgaged Premises, after the conveyance of the Sale Parcels ("Remainder of Mortgaged Premises") has adequate means of ingress and egress to and from public rights of way, which access may be by recorded easement agreements, all of which shall be satisfactory to Mortgagee;
- c) the Remainder of Mortgaged Premises shall not in the Mortgagee's reasonable opinion, be materially, adversely or economically jeopardized (provided that, absent changed circumstances, Mortgagee acknowledges that sales of "Homes" pursuant to the Loan Agreement in accordance with the "Site Plan" and "Plat of Subdivision" [as such terms are defined in the Loan Agreement] shall not be so jeopardized);
- d) Mortgagor complies with all applicable statute, law or ordinance of any governmental authority having jurisdiction over Mortgaged Premises and the division thereof into multiple parcels of real estate owned and operated by separate persons and the creation of separate tax parcels.

32. **RELEASE:** If the foregoing conditions are not met, Mortgagee shall not be required to issue a partial release. Upon payment in full of Indebtedness, at the time and in the manner herein provided, and cancellation of any further obligations of Mortgagee to lend or extend credit this conveyance shall be null and void and, upon demand therefor following such payment, an

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appropriate instrument of reconveyance or release shall, in due course, be made by Mortgagee to Mortgagor, at Mortgagor's expense.

33. **CONSENT OF MORTGAGEE:** The consent by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent in any like matter arising at a subsequent date and the failure of Mortgagee to promptly exercise any right, power, remedy or consent provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy or consent at a later date.

34. **CARE:** Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any part of Mortgaged Premises in its possession if it takes such action for that purpose, as Mortgagor requests in writing, but failure of Mortgagee to comply with any such request shall not, of itself, be deemed a failure to exercise reasonable care and no failure of Mortgagee to preserve or protect any rights with respect to Mortgaged Premises against prior parties or do any act with respect to the preservation thereof not so requested by Mortgagor shall be deemed a failure to exercise reasonable care in the custody or preservation of Mortgaged Premises.

35. **MORTGAGOR'S CONTINUING LIABILITY:** This Mortgage is intended only as security for Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein and in Note, Loan Agreement and Other Loan Documents. Mortgagor shall be and remain liable to perform all of the obligations assumed by it pursuant hereto and Mortgagee shall have no obligation or liability by reason of or arising out of this Mortgage except as expressly set forth herein and shall not be required or obligated, in any manner, to perform or fulfill any of the obligations of Mortgagor pursuant hereto, anything contained herein or in Note, Loan Agreement and Other Loan Documents to the contrary notwithstanding.

36. **INSPECTIONS:** Mortgagee, by any authorized agent or employee and for the protection of its interest in Mortgaged Premises, is hereby authorized and empowered to enter in and upon Mortgaged Premises at any and all reasonable times, for the purpose of inspecting the same and ascertaining the condition thereof.

37. **INDEMNIFICATION:** Mortgagor shall indemnify Mortgagee from all losses, damages and expenses, including reasonable attorneys' fees, incurred in connection with any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this Mortgage except for such actions arising solely out of Mortgagee's gross negligence or willful misconduct.

38. **TAX SERVICE CONTRACT:** Mortgagor shall, at the request of Mortgagee, enter into a contract with a tax reporting agency approved by Mortgagee for the purpose of making annual tax searches to assure the prompt payment of real estate taxes and special assessments levied against Mortgaged Premises; PROVIDED, HOWEVER, that if Mortgagee does not require such an agency contract, Mortgagor shall reimburse Mortgagee or its loan servicing agent for the cost of such annual searches.

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39. LATE CHARGE: In addition to the payment of Indebtedness, Mortgagee shall have the right to demand and Mortgagor shall pay a late charge equal to FOUR CENTS (\$.04) for each ONE AND 00/100 DOLLAR (\$1.00) of payments due and owing on account of Indebtedness not made when due.

40. LOAN AGREEMENT; REVOLVING ADVANCES; OBLIGATORY FUTURE ADVANCES: Mortgagor:

- a) shall timely and fully perform and satisfy all the terms, covenants and conditions of the Loan Agreement to be performed by it;
- b) agrees that all advances and indebtedness arising or accruing pursuant to the terms and conditions of the Loan Agreement from time to time and relating to the "Revolving Portion" (as such term is defined in Loan Agreement), whether or not the total amount thereof may exceed the maximum amount specified in Loan Agreement or the face amount of the Note, shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Mortgage and if there shall be any inconsistency between provisions of this Mortgage and the Loan Agreement, the Mortgagee shall have the option of determining which of such inconsistent provisions shall prevail;
- c) shall have the right provided that no Monetary Default or Non-Monetary Default has occurred and provisions of Loan Agreement are complied with, to additional advances of the Proceeds of Revolving Portion notwithstanding that pursuant to the provisions of Loan agreement payments have been made on account of Revolving Portion;
- d) agrees that this Mortgage is granted to secure future advances and loans from the Mortgagee to the Mortgagor, as provided in the Loan Agreement and all advances, disbursements or other payments required by the Loan Agreement are obligatory advances up to the credit limits established therein and shall, to the fullest extent permitted by law, have priority over any and all mechanics' liens and other liens and encumbrances arising after this Mortgage is recorded;
- e) agrees that Mortgagee is authorized, if Mortgagee so elects, to either maintain a separate schedule attached to Note, setting forth the date of each disbursement of the proceeds of "Development Portion" and Revolving Portion, the date of repayment thereof, from time to time, and the outstanding principal balance due and owing thereon on each date of disbursement, or record such disbursements, repayments and balances by computer record, PROVIDED THAT, in all events, notice of the principal balance due and

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owing on Revolving Portion shall be delivered or made available to Mortgagor not less frequently than monthly.

- f) acknowledges this Mortgage, the Note, Loan Agreement and Other Loan Documents, evidence a "revolving credit" as such term is defined in 805 Illinois Compiled Statutes (ILCS) 5/5d

41. **MULTIPLE DISBURSEMENTS:** This Mortgage is granted to secure future disbursements of Principal Amount, as provided in Loan Agreement.

42. **CORRECTIVE DOCUMENTS:** Mortgagor and Mortgagee shall, at the request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by Mortgagee or Mortgagor, as the case may be, to correct such defect, error or omission.

43. **CONSENT OR APPROVAL:** The consent by Mortgagee in any single instance shall not be deemed or construed to be consent in any like matter arising at a subsequent date and any failure by Mortgagee to promptly exercise any right, power, remedy or consent provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy or consent at a later date. Any consent or approval required of and granted by Mortgagee pursuant hereto shall:

- a) be narrowly construed to be applicable only to Mortgagor and the facts identified in such consent or approval and no third party shall claim any benefit by reason thereof; and
- b) not be deemed to constitute Mortgagee a venturer or partner with Mortgagor whatsoever nor shall privity of contract be presumed to have been established with any such third party.

44. **MECHANIC'S LIENS:** The lien of any mechanic or materialman shall not be permitted to attach to or remain against Mortgaged Premises unless the same is being contested pursuant hereto.

45. **GOVERNING LAW:** This Mortgage shall be construed in accordance with and governed by the laws of the State of Illinois. Whenever possible, each provision of this Mortgage shall be interpreted in such a manner as to be effective and valid pursuant to applicable law; however, if any part thereof shall be prohibited by or invalid thereunder, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder thereof or the remaining provisions of this Mortgage.

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46. TIME OF THE ESSENCE: It is specifically agreed that time is of the essence of this Mortgage and that a waiver of the options or obligations secured hereby shall not, at any time thereafter, be held to be abandonment of such rights. Notice of the exercise of any option granted to Mortgagee pursuant hereto or to Note, Loan Agreement or Other Loan Documents is not required to be given.

47. NOTICES: Any notice, consent or other communication to be served hereunder or pursuant to Note, Loan Agreement or Other Loan Documents shall be deemed properly delivered if delivered personally or by Federal Express or comparable "over-night" courier service (which shall be deemed received on the date of delivery thereof), or mailed by United States certified or registered mail, postage prepaid (which shall be deemed received three [3] business days following the postmark date thereof), to Mortgagor, Mortgagee and Notice Receivers at the addresses set forth below or to such other address as Mortgagor, Mortgagee or Notice Receivers may direct in writing:

If to Mortgagor: West Side Affordable Housing Limited Partnership
c/o The Shaw Company
Sears Tower, Suite 325
Chicago, Illinois 60606
Attention: William T. King
Senior Vice President/CFO

with a copy to: Gerald J. Sherman, Esq.
Sonnenschein Nath & Rosenthal
8000 Sears Tower
Chicago, Illinois 60654-6404 ("Notice Receiver")

If to Lender, and if personally messengered, to:
American National Bank and Trust Company of Chicago
20 North Clark Street, 3rd Floor, Chicago, Illinois 60620
Attention: Bruce F. Martin and Jennifer Pehlke
Real Estate Division

If mailed or sent by overnight courier, to:
American National Bank and Trust Company of Chicago
33 North LaSalle Street, Chicago, Illinois 60690
Attention: Bruce F. Martin and Jennifer Pehlke
Real Estate Division

in either case, with a copy to:
Dean E. Parker, Hinshaw & Culbertson, 222 North LaSalle Street,
Suite 300, Chicago, Illinois 60601.

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48. **CAPTIONS:** The headings or captions of the paragraphs or subparagraphs hereof are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms of this Mortgage.

49. **BENEFIT:** All grants, conditions and provisions hereof shall apply, extend to and be binding upon Mortgagor and all persons claiming any interest in Mortgaged Premises by, through or under Mortgagor, and shall inure to the benefit of Mortgagee, its successors and assigns.

Nothing contained herein or in Loan Agreement, Note and Other Loan Documents to the contrary notwithstanding shall be deemed to release, affect or impair Indebtedness or the rights of Mortgagee to enforce its remedies pursuant hereto and to Loan Agreement, Note and Other Loan Documents including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed by its duly authorized officers and its corporate seal to be hereunto affixed on the day and year first above written.

WEST SIDE AFFORDABLE HOUSING LIMITED
PARTNERSHIP, an Illinois limited partnership

By: West Side Affordable Housing, Inc., an
Illinois corporation, its general partner

By: William T. King
Name: William T. King
Title: Vice President

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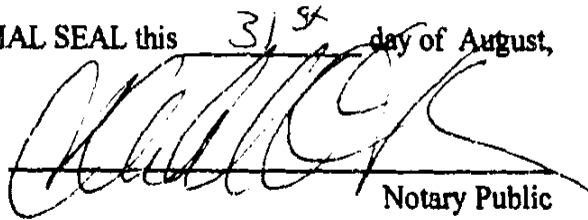
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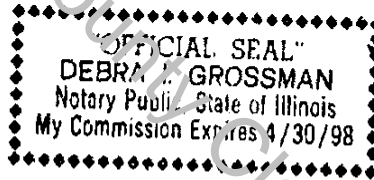
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that William T. King, Vice President of West Side Affordable Housing, Inc., an Illinois corporation, which is general partner of West Side Affordable Housing Limited Partnership, an Illinois limited partnership ("Corporation") and _____ Secretary of said Corporation who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and _____ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation on behalf of said partnership, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND AND NOTARIAL SEAL this 31st day of August, 1995.


Notary Public

My Commission Expires:



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EXHIBIT A

LEGAL DESCRIPTION OF MORTGAGED PREMISES

HOMAN SQUARE, PHASE TWO, SECTION ONE

LOTS 1 TO 8, BOTH INCLUSIVE, LOTS 10 TO 22, BOTH INCLUSIVE, LOTS 25 TO 40, BOTH INCLUSIVE, LOTS 42 TO 45, BOTH INCLUSIVE, IN HOMAN SQUARE PHASE TWO, SECTION ONE, BEING A RESUBDIVISION OF LOTS 1 THROUGH 48 INCLUSIVE, AND THE VACATED 16 FOOT EAST/WEST ALLEY IN BLOCK 10 IN E.A. CUMMINGS AND CO.'S CENTRAL PARK AVENUE ADDITION, A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE NORTH 40 RODS THEREOF AND NORTH OF THE NORTH LINE OF THE CHICAGO AND GREAT WESTERN RAIL ROAD, RECORDED JUNE 23, 1899 AS DOCUMENT NUMBER 2837304 IN THE RECORDER'S OFFICE RECORDED JULY 28, 1995 AS DOCUMENT NUMBER 95492644 ALL IN COOK COUNTY, ILLINOIS.

Tax Parcel Index Nos.: 16-14-413-003

HOMAN SQUARE, PHASE TWO, SECTION TWO

LOTS 1 TO 16, BOTH INCLUSIVE, IN HOMAN SQUARE PHASE TWO, SECTION TWO, BEING A RESUBDIVISION OF LOTS 1 THROUGH 24, INCLUSIVE, AND THE VACATED 16 FOOT EAST/WEST ALLEY IN BLOCK 11 OF E.A. CUMMINGS AND CO.'S CENTRAL PARK AVENUE ADDITION, A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED JULY 28, 1995 AS DOCUMENT NUMBER 95492645, ALL IN COOK COUNTY, ILLINOIS.

Tax Parcel Index Nos.: 16-14-414-001
16-14-414-023

Address of Property: Polk & S. Homan Avenue
(VACANT LAND)

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