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This instrument Prepared by
and When Recorded Return
to:

Rudnick & Wolfe
203 North LaSalle Street
Chicago, IL 60601
Attn.: Janet B. Cory, Esq.

DEPT-01 RECORDING \$121.50
10010 TRAN 3525 12/14/95 11:03:00
19735 # C.J. * 95 868101
COOK COUNTY RECORDER

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AMENDED AND RESTATED MORTGAGE, FIXTURE FILING AND SECURITY AGREEMENT WITH ASSIGNMENT OF LEASES AND CASH COLLATERAL

This Amended and Restated Mortgage, Fixture Filing and Security Agreement with Assignment of Leases and Cash Collateral (the "Mortgage") is entered into as of the 1st day of December, 1995, by Enterprise Center VII, L.P., an Illinois limited partnership ("Mortgagor") for the benefit of Society National Bank, a national banking association, and its permitted assigns (the "Bank") and Cole Taylor Bank as trustee under the Indenture (as hereinafter defined) and any successor trustee under the Indenture ("Trustee"; Trustee and the Bank are collectively referred to herein as "Mortgagees").

RECITALS:

A. The City of Chicago, a political subdivision, body politic incorporate of the State of Illinois ("Issuer") has issued certain Bonds (as hereinafter defined) pursuant to the Indenture (as hereinafter defined). Pursuant to a Financing Agreement (the "Financing Agreement") dated as of June 15, 1992 between Issuer and Mortgagor, Issuer has lent the proceeds of the sale of the Bonds to Mortgagor (the "Loan"). On or about June 25, 1993, Kemper Investors Life Insurance Company, an Illinois insurance corporation ("KILICO") purchased all of the Bonds.

B. Pursuant to Section 2.03(b) of that certain Indenture of Trust between the Issuer and the Trustee dated as of June 15, 1992 (the "Indenture") securing the Bonds, in connection with the purchase of the Bonds by KILICO, Trustee and KILICO received a first mortgage lien on the Mortgaged Premises (as hereinafter defined) pursuant to that certain Mortgage, Fixture Filing and Security Agreement With Assignment of Leases and Cash Collateral dated June 25, 1993 and recorded with the Recorder's Office of Cook County, Illinois as Document No. 93489527, as amended by that certain Modification of Mortgage and Related Documents recorded as Document No. 94936848 and further amended by that certain Second Modification of Mortgage and Related Documents recorded as Document No. 95403012 (together, the

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"Original Mortgage"), as security for the Bonds and also received a first security interest in other collateral pursuant to other security documents (the "Original Security Documents").

C. Prime IRB Holdings, L.P., an Illinois limited partnership and an affiliate of the LC Borrowers (hereinafter defined) and Guarantor (hereinafter defined) ("Prime") has purchased the bonds from KILICO and as part of such purchase, KILICO has assigned to Prime its entire right, title and interest in, to and under the Original Mortgage and certain of the Original Security Documents pursuant to an Assignment dated as of December 13, 1995.

D. Simultaneously with such acquisition, pursuant to the terms of six (6) separate Letter of Credit Agreements dated as of December 1, 1995 (the "Letter of Credit Agreements"), the Bank is issuing six (6) separate letters of credit in the aggregate stated amount of Twenty-Nine Million Fifty-Three Thousand Three Hundred Fifty-Eight Dollars (\$29,053,358) (the "LC Facilities") for the account of six (6) partnerships affiliated with Mortgagor (collectively, the "LC Borrowers") which LC Borrowers share with Mortgagor a common managing general partner, K-P Enterprise Centers Limited Partnership, an Illinois limited partnership ("Guarantor")

E. As partial security for the LC Facilities, the Bank has required that (i) Guarantor execute and deliver that certain Guaranty dated as of December 1, 1995 (the "Guaranty") guarantying all obligations of the LC Borrowers under the Letter of Credit Agreements; (ii) Prime pledge all of its right, title and interest in, to and under the Bonds to the Bank pursuant to that certain Bond Pledge Agreement dated as of December 1, 1995 (the "Bond Pledge"); and (iii) Prime assign all of its right, title and interest in, to and under the Original Mortgage and certain Original Security Documents to the Bank pursuant to an Assignment dated as of December 13, 1995.

F. In connection with the issuance of the LC Facilities by the Bank to the LC Borrowers and the pledge by Prime to the Bank pursuant to the Bond Pledge, the Bank has required that Prime enter into that certain Unanimous Consent, Direction and Waiver of Sole Bondholder dated as of December 13, 1995 (the "Forbearance Agreement") for the benefit of Mortgagor and certain other parties.

G. In consideration of the foregoing, and as security for Mortgagor's obligations to the Bank under the Guaranty and Mortgagor's obligations to the Trustee under the Financing Agreement, Mortgagor and Mortgagee are amending and restating the Original Mortgage in its entirety, but without novation thereof.

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WITNESSETH:

ARTICLE I

DEFINITIONS

1.1 **Definitions:** As used herein, the following terms shall have the following meanings:

- (a) **Act:** Illinois Foreclosure Act, 735 ILCS 15/15-1101 et. seq.
- (b) **Affiliate:** any person which, directly or indirectly, owns or controls, on an aggregate basis, including all beneficial ownership and ownership or control as a trustee, guardian or other fiduciary, at least ten percent (10%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) of the general partner of the general partner of Mortgagor, or which is controlled by or is under common control with the general partner of the general partner of Mortgagor. For the purpose of this definition, "control" means the possession, directly or indirectly, of the power to direct or to cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.
- (c) **Assignment of Rents:** That certain Amended and Restated Absolute Assignment of Rents and Leases dated of even date herewith from Mortgagor to Mortgagee.
- (d) **Bank:** As defined in the first paragraph of this Mortgage.
- (e) **Bonds:** The \$7,200,000 City of Chicago, Illinois Industrial Development Revenue Bonds, Series 1992 (Enterprise Center VII Project), issued by Issuer.
- (f) **Buildings and Improvements:** All buildings, structures and improvements now or hereafter situated, placed or constructed upon the Realty or any part thereof owned by Mortgagor including but not limited to, any and all industrial buildings, hotels, shopping centers, office buildings, apartment buildings, houses, garages, carports, clubhouses, warehouses, utility sheds, workrooms, swimming pools, tennis courts, sidewalks, parking areas, drives, retaining walls, fences, gates, grading, terracing and other improvements and appurtenances thereto, and any and all additions, alterations and betterments to such buildings, structures and improvements now or hereafter situated, placed or constructed upon the Realty or any part thereof.
- (g) **Cash Collateral:** All rents, security deposits, income, receipts, royalties, revenues, issues, profits, damages and other income in any form and of any nature now

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due to Mortgagor or which may become due or to which Mortgagor may now or hereafter become entitled, or make demand or claim for, including, without limitation, any income of any nature becoming due during any redemption period, arising or issuing from or out of the Leases or from or out of the Property, or any part thereof, including, without limitation, rent derived from all Leases, or any part thereof now or hereafter entered into and all right, title and interest of Mortgagor thereunder, including without limitation, cash or securities deposited thereunder to secure performance by the Tenants of their obligations thereunder, provided, that any security deposits which may hereafter be held under Leases shall be held and utilized by Mortgagee in accordance with the terms of the Leases, including, further, the right upon the happening of any Event of Default hereunder, to receive and collect the rents thereunder pursuant to the terms of the Assignment of Rents, and all bonuses, royalties, parking or common area maintenance contributions, tax or insurance contributions, deficiency rents and liquidated damages following default in any Lease, any premium payable by any Tenant upon exercise of any option provided in any Lease, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, together with any and all rights and claims of any kind which Mortgagor may have against any Tenant under the Leases or any subtenants or occupants of the Mortgaged Premises.

(h) **Code:** Uniform Commercial Code of the State.

(i) **Collateral:** Subject to the Permitted Exceptions, all the following personal property and Fixtures now or hereafter owned by Mortgagor and used in connection with the Property: goods, equipment, furnishings, fixtures, furniture, chattels, books and records and personal property of whatever nature owned by Mortgagor now or hereafter attached or affixed to or used in and about the Buildings and Improvements; and the accessions and appurtenances thereto; all renewals or replacements of or substitutions for any of the foregoing; all building materials and equipment now or hereafter delivered to the Mortgaged Premises and intended to be installed or incorporated therein; all Cash Collateral held by or for the benefit of Mortgagor; all monetary deposits which Mortgagor has been required to give to any public or private utility with respect to utility services furnished to the Mortgaged Premises; all Intangibles; all proceeds from any casualty insurance policy claim affecting the Mortgaged Premises and all proceeds from any condemnation award or settlement affecting the Mortgaged Premises; all funds, accounts, deposit accounts, inventory, instruments, documents, general intangibles, including Mortgagor's right, title and interest in trademarks, trade names and symbols used in connection therewith, and notes or chattel paper arising from or by virtue of any transactions related to the Mortgaged Premises; and all permits, licenses, franchises, certificates and other rights and privileges obtained in connection with the Mortgaged Premises. Collateral shall also include, but not be limited to, the following property owned by Mortgagor and used in connection with the Mortgaged Premises: radios, communication equipment, computers, and all hardware and software therefor, call signaling equipment, sprinkler and alarm systems, telephone systems, window screens, storm windows, shades, ranges, refrigerators, washing machines, dryers, engines,

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generators, transformers, machinery, pumps, motors, compressors, boilers, condensing units, fuel storage tanks, disposals, dishwashers, tables, chairs, drapes, rods, beds, springs, mattresses, lamps, hoses, tools, lawn equipment, sofas, dressers, mirrors, televisions, furniture, television antenna systems, television cable systems, recreational equipment, fire extinguishing equipment, elevators, speakers, signs, supplies, office equipment, carpeting, tools, light fixtures, plans, specifications, unexpired claims, warranties, guaranties, indemnifications, sureties, contracts, licenses and permits and all renewals, replacements and substitutions thereof.

(j) **Default Rate:** A rate per annum equal to the greater of (i) the Prime Rate plus two percent (2%), or (ii) sixteen percent (16%).

(k) **Environmental Laws:** All federal, state, and local environmental laws, and any rule or regulation promulgated thereunder and any order, standard, interim regulation, moratorium, policy or guideline of or pertaining to any federal, state or local government, department or agency, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Marine Protection, Research, and Sanctuaries Act, the National Environmental Policy Act, the Noise Control Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act ("RCRA"), as amended, the Hazardous Materials Transportation Act, the Refuse Act, the Uranium Mill Tailings Radiation Control Act and the Atomic Energy Act and regulations of the Nuclear Regulatory Agency, and all state and local counterparts or related statutes, laws, regulations and orders and treaties of the United States.

(l) **Equipment:** All overhead cranes currently located on the Mortgaged Premises and more particularly described on EXHIBIT "C" attached hereto.

(m) **Events of Default:** Any happening or event described in Section 9.1 hereof.

(n) **Financing Agreement:** As defined in Recital A of this Mortgage.

(o) **Fixtures:** All materials, fixtures, goods and equipment, including additions thereto, which Mortgagor now owns or at any time hereafter acquires, and which are now or at any time hereafter attached or affixed to the Realty, including but not limited to, all electrification equipment and power lines, whether owned individually or jointly with others (to the extent of Mortgagor's interest therein), water supply equipment and water tanks, all heating, lighting, cooking, refrigeration, washing, drying, plumbing, ventilating, incinerating, water heating, radio communications equipment, call signaling equipment and alarm system equipment, computers, telephone and television equipment and lines, electrical dishwashing equipment, air conditioning equipment, engines, machinery, generators, transformers, elevators, pumps, hoods, bookcases, cabinets,

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sprinklers, fire extinguishing equipment, electrical wiring, pipe, and floor coverings; all built in equipment as shown by plans and specifications; recreation equipment, including swimming pools, saunas, steam rooms, whirlpools and exercise equipment; all installations of any kind specially designed for the Mortgaged Premises; and all accessories, parts, replacements and substitutions thereof and additions thereto.

(p) **Forbearance Agreement:** As defined in Recital F of this Mortgage.

(q) **Governmental Authority:** Any and all courts, boards, agencies, commissions, offices or authorities of any nature whatsoever for any governmental unit or subdivision, whether federal, state, county, district, municipal, city or otherwise, and whether now or hereafter in existence.

(r) **Guarantor:** As defined in Recital D of this Mortgage.

(s) **Guaranty:** As defined in Recital E of this Mortgage.

(t) **Hazardous Substances:** Any substance, material, pollutant, contaminant or waste which is or becomes regulated by the United States Government or any applicable state, including, without limitation, (i) asbestos; (ii) oil and petroleum products; (iii) polychlorinated biphenyls; and (iv) any substance, material, pollutant, contaminant or waste regulated under Environmental Laws.

(u) **Impositions:** All real estate and personal property taxes; use tax and surcharge taxes; irrigation district assessments; sewer and utility rates and charges; charges for any easement, license or agreement maintained for the benefit of the Mortgaged Premises; ground rents; all other taxes, charges and assessments, and any interest, costs or penalties with respect thereto, whether general or special, ordinary or extraordinary, foreseen and unforeseen, and of any kind or nature whatsoever, and which at any time prior to or after the execution hereof may be assessed, levied, charged against or imposed upon the Mortgaged Premises.

(v) **Indenture:** As defined in Recital B of this Mortgage.

(w) **Intangibles:** Mortgagor's interest in and to all (i) governmental permits or licenses, tradenames, construction contracts, architectural agreements, engineering agreements, plans and specifications, soil test reports, toxic waste reports, computer programs and other software, working drawings, utility agreements, and any and all other agreements applicable to the Mortgaged Premises, (ii) contracts now or hereafter entered into by and between Mortgagor and any other party as well as all right, title and interest of Mortgagor in and to any subcontract providing for the construction, installation, restoration or modification of any of the improvements to or on any of the Mortgaged Premises and the furnishing of any materials, supplies, equipment or labor in connection therewith, (iii) plans, specifications and drawings, including but not limited to mechanical, electrical, architectural and engineering plans and studies relating to systems

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thereof, systems used in connection with any construction heretofore or hereafter prepared by any architect, engineer or consultant, directly or indirectly relating to the Mortgaged Premises, (iv) agreements now or hereafter entered into with any party in respect to architectural, engineering, management, consulting maintenance and security services rendered or to be rendered in respect to the planning, design, operation, maintenance, supervision and inspection of the Mortgaged Premises, (v) commitments issued by any lender or investor other than the Mortgagee to finance, invest or refinance all or any portion of the Mortgaged Premises, and (vi) completion, payment, performance, labor or materialman's bond or any other bond relating to the construction or modification of any of the Mortgaged Premises.

- (x) **Issuer:** As defined in Recital A of this Mortgage.
- (y) **KILICO:** As defined in Recital A of this Mortgage.
- (z) **LC Borrowers:** As defined in Recital D of this Mortgage.
- (aa) **LC Facilities:** As defined in Recital D of this Mortgage.
- (ab) **Leases:** All leases and other agreements for the use and occupancy of all or any portion of the Mortgaged Premises together with any and all extensions and renewals thereof and any and all further leases including subleases upon all or any part of the Mortgaged Premises.
- (ac) **Legal Requirements:** Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Mortgagor or the Mortgaged Premises, including the ownership, use, occupancy, possession, operation, maintenance, alteration, repair, reconstruction, environmental impact or zoning thereof; and Mortgagor's presently or subsequently effective by-laws and articles of incorporation or partnership, limited partnership, joint venture, trust, or other form of business association agreement.
- (ad) **Letter of Credit Agreements:** As defined in Recital D of this Mortgage.
- (ae) **Mortgage:** This Amended and Restated Mortgage, Fixture Filing and Security Agreement with Assignment of Cash Collateral, as it may be amended from time to time.
- (af) **Mortgaged Premises:** The Realty, Buildings and Improvements, Fixtures, Intangibles and the rights, titles, interests and estates thereto and conveyances of Mortgagor hereinafter set forth.
- (ag) **Mortgagee:** As defined in the first paragraph of this Mortgage.
- (ah) **Mortgagor:** As defined in the first paragraph of this Mortgage.

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(ai) **Permitted Exceptions:** The matters described in EXHIBIT "B" attached hereto and incorporated herein by reference.

(aj) **Prime:** As defined in Recital C of this Mortgage.

(ak) **Prime Rate:** The per annum rate of interest announced by Society National Bank in Cleveland, Ohio, from time to time as its corporate base rate or equivalent rate, with any change in such corporate base rate to be effective on the date of such change, it being understood that such rate may not be the best or lowest rate offered by the Bank.

(al) **Property:** The Mortgaged Premises and Collateral.

(am) **Realty:** The parcel or parcels of land which are located in Cook County, State of Illinois, as described in EXHIBIT "A" attached hereto and incorporated herein by reference.

(an) **Secured Obligations:** The obligations under the Financing Agreement, any and all obligations guaranteed by the Guarantor under the Guaranty and any and all of the agreements, promises, covenants, warranties, representations and other obligations made or undertaken by Mortgagor to Mortgagee as set forth in this Mortgage and the other Security Documents, and in any renewal, modification or extension of the Financing Agreement, the Guaranty, this Mortgage or any other Security Document.

(ao) **Security Documents:** This Mortgage, the Financing Agreement, the Guaranty and any and all other documents now or hereafter executed by Mortgagor, the Guarantor or any other person or entity to evidence, collateralize, secure or support the payment of the Secured Obligations or required hereby to assure the performance and discharge of the covenants in this Mortgage or to protect or enhance the Property.

(ap) **State:** The State of Illinois.

(aq) **Tenant:** The tenant, subtenant or other person having the right to occupy or use a part of the Property under a Lease.

ARTICLE 2

GRANT

2.1 **Grant:** Mortgagor, in consideration of the Bank's issuance of the LC Facilities to the LC Borrowers, the forbearance of Prime pursuant to the Forbearance Agreement and for other valuable consideration, the receipt of which is hereby acknowledged, and in consideration of the indebtedness and of the trusts hereinafter described, MORTGAGES, WARRANTS, GRANTS, CONVEYS, ASSIGNS, TRANSFERS, PLEDGES, AND SETS OVER TO MORT-

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GAGEE, its successors and assigns, with the right of entry and possession forever, the Realty and all of its present and hereafter acquired estate, right, title and interest therein, situated, lying and being in Cook County, Illinois more particularly described on EXHIBIT "A", attached hereto, incorporated herein and made a part hereof by this reference.

TOGETHER WITH all Buildings and Improvements and Collateral now or hereafter placed thereon;

TOGETHER WITH all of Mortgagor's right, title and interest in and to all appurtenances, easements, estates, rights, interests, liberties, privileges, servitudes, rights-of-way, ways, streets, alleys, prescriptions, tenements, hereditaments, waters, watercourses, riparian rights, water rights, and advantages thereunto belonging or in any way appertaining, whether created by contract, municipal ordinance or otherwise; and all Cash Collateral arising therefrom and for use thereof;

TOGETHER WITH all right, title and interest of Mortgagor now owned or hereafter acquired in and to any land lying within the right of way of any street, open or proposed, adjoining the Realty, and any and all sidewalks, alleys and strips and gores of land contiguous or adjacent to or used in connection with the Realty;

TOGETHER WITH all Fixtures. It is hereby agreed that all of the Fixtures are deemed part of and affixed to the Realty;

TOGETHER WITH all right, title and interest of Mortgagor in and to the minerals, flowers, shrubs, crops, trees, timber and other emplacements now or hereafter located on the Mortgaged Premises or under or above the same, or any part or parcel thereof;

TOGETHER WITH all right, title and interest of Mortgagor in and to any and all bonuses, rents and royalties accrued or to accrue under all gas or mineral leases and all right, title and interest of Mortgagor in and to all Leases, rents, royalties, profits, revenues, income, and other benefits arising from the use and enjoyment of all or any portion of the Mortgaged Premises, or from any contract pertaining to such use or enjoyment, now existing or which may hereafter come into existence;

TOGETHER WITH all the estate, interest, right, title, reversions, remainders, and other claims or demands, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereafter acquire or own in the Mortgaged Premises and any Buildings and Improvements thereon, and all right, title and interest of Mortgagor in and to any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Premises, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages;

TOGETHER WITH all Intangibles;

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TOGETHER WITH all other right, title, interest, estate or other claims of every kind and character, both in law and in equity, which Mortgagor now has or at any time hereafter acquires in and to the Mortgaged Premises, the Realty and Buildings and Improvements thereon and all Property of Mortgagor that is used or useful in connection with the Realty and the Buildings and Improvements located thereon; and

TOGETHER WITH all proceeds and products of the foregoing.

TO HAVE AND TO HOLD the Mortgaged Premises, together with all rights, estates, powers and privileges appurtenant or incidental thereto unto the Mortgagee forever.

Mortgagor warrants that it has good and marketable title to the Mortgaged Premises, subject only to the Permitted Exceptions, and is lawfully seized and possessed of the Mortgaged Premises, and every part thereof, and has the right to convey the Mortgaged Premises; and that the Mortgaged Premises are unencumbered except as to the Permitted Exceptions and as may be herein provided. Mortgagor hereby binds itself, its successors and assigns to warrant and forever defend the title to the Mortgaged Premises unto the Mortgagee, its successors and assigns, against every person now or hereafter lawfully claiming or otherwise claiming the same or any part thereof, subject to the Permitted Exceptions.

ARTICLE 3

SECURED OBLIGATIONS

3.1 **Secured Obligations:** This conveyance is made on the following covenants, terms and conditions, and for the purpose of securing and enforcing the Secured Obligations.

ARTICLE 4

SECURITY

4.1 **Security:** As additional security for the payment and performance of the Secured Obligations, Mortgagor transfers and assigns unto Mortgagee all of Mortgagor's right, title and interest in, to and under:

(a) All judgments, awards of damages and settlements hereafter made as a result of condemnation proceedings, the taking or use of all or any part of the Property under the power of eminent domain or by deed in lieu thereof; or for any damage (whether caused by such taking or otherwise) to the Property, or any part thereof, or to any rights appurtenant thereto. Promptly upon obtaining knowledge of the institution of any proceeding for the condemnation of the Property or any portion thereof, or any other proceedings which may or could result in injury or damage to the Property or any portion thereof, Mortgagor shall promptly notify Mortgagee of the pendency of such pro-

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ceedings. Mortgagee may, at its option, participate in any such proceedings, and Mortgagor shall reimburse Mortgagee for any costs and expenses incurred in any manner by Mortgagee in connection with any such proceedings; and in any event, Mortgagor shall from time to time punctually deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor shall, at its expense, diligently prosecute any such proceedings, and shall consult with Mortgagee, its attorneys and agents, and cooperate with them in the carrying on or in the defense of any such proceedings. Mortgagor hereby absolutely and unconditionally assigns and transfers all such proceeds, judgments, decrees and awards to Mortgagee; Mortgagor agrees and authorizes Mortgagee to collect, adjust or compromise such proceedings, actions, judgments, decrees and awards; and Mortgagor agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as Mortgagee may request. Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Mortgagee shall not, in any event or circumstance, be liable or responsible for failure to collect or exercise diligence in the pursuit or collection of any such proceeds, judgments, decrees or awards. Funds from such proceedings, actions, judgments, decrees and awards shall first be applied to reimburse Mortgagee for all reasonable costs and expenses, including attorneys' fees and costs, associated with or arising from such condemnation proceedings or actions, and second, shall, at Mortgagee's option, (a) be applied without prepayment premium or penalty to the Secured Obligations, in such order as Mortgagee may, in its sole discretion, determine and without regard to impairment of the Property, or (b) be retained by Mortgagee to repair or restore the Property, or (c) be released to Mortgagor; however, it is expressly understood that any such release or application shall not cure or waive any default under the Financing Agreement or this Mortgage. In any event, Mortgagor shall not be excused in the payment of any unpaid portion of the Secured Obligations. If upon conclusion of any condemnation proceeding or action, there results from such taking any damage, loss or destruction of the Property, irrespective of whether any proceeds from such taking are obtained or obtainable, Mortgagor shall give immediate notice thereof by mail to Mortgagee, and unless otherwise so instructed by Mortgagee, Mortgagor shall, provided Mortgagee makes the condemnation proceeds, if any, regarding the portion of the Property which was the subject of the taking, available to Mortgagor in accordance with this Paragraph 4.1(a), promptly restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction at Mortgagor's sole cost and expense. Such restoration, repair, replacement or rebuilding shall be in accordance with a restoration program approved by Mortgagee. If Mortgagee elects to retain such proceeds to repair or restore the damaged Property, Mortgagee may further elect either to disburse directly such proceeds to Mortgagor to complete such repair or restoration, or to retain such proceeds in a noninterest bearing escrow until completion of a restoration program as described in Section 6.8 hereof. Subject to fulfillment of the conditions described in Section 6.8 hereof in respect to the permitted use of insurance proceeds for reconstruction following a casualty loss, Mortgagee shall not unreasonably withhold its consent to the use of condemnation proceeds to repair or restore damage to the Property.

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(b) All Cash Collateral of the Property, including but not limited to, unsevered crops and timber, to Mortgagee as a primary security for the Secured Obligations, subject to the following terms:

- (i) Notwithstanding anything to the contrary contained herein, that so long as there exists no Event of Default, Mortgagor shall have the right under a license granted hereby to collect, but not prior to their accrual, all Cash Collateral from the Property. All rights and privileges contained in Article 9 hereof may additionally be exercised as such rights and privileges are cumulative of the rights and privileges contained in this subsection (b), and Mortgagee will not have been deemed thereby to have made an election of remedies.
- (ii) That upon any such Event of Default, Mortgagee may, at its option, enter upon the Property and collect such Cash Collateral from the Tenants or Mortgagor without being deemed a mortgagee in possession; however, Mortgagor hereby agrees that only for the purpose of collection of such Cash Collateral shall Mortgagee have constructive possession of the Property. Mortgagee shall never be liable for its failure to collect or exercise diligence in collection of such Cash Collateral, or for its entering upon or operating the Mortgagor Premises.
- (iii) The assignment of Cash Collateral contained in this subsection (b) shall terminate automatically without the necessity of notice upon the release of the Mortgagor, or by foreclosure or other extinguishment of the lien of this Mortgage.

The provisions contained in this subsection (b) shall apply to all items that may be Cash Collateral notwithstanding those items that may be included in another form of Collateral.

4.2 Subordination to Leases: Nothing in this Mortgage shall ever be construed as subordinating it to any Lease; provided, however, that any proceedings by Mortgagee to foreclose this Mortgage, or any action by way of its entry into possession after default, shall not operate to terminate any Lease which has been the subject of an attornment and subordination agreement executed by Mortgagee; and Mortgagee will not cause any Tenant under any such Lease to be disturbed in his or its possession and enjoyment of that portion of the Property under such Lease as long as such Tenant shall continue to perform fully and promptly all of the terms, covenants and provisions of such Lease and such attornment and subordination agreement. All other subordinate Leases may, at the option of Mortgagee, be terminated by any foreclosure action.

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4.3 **Mortgagee's Expenses:** In the event Mortgagee ever collects Cash Collateral with or without entering upon the Property, it shall pay all costs of such collection, compensate itself and its agent, if any, for such collection in a reasonable and customary fashion, and reimburse itself for any advances made to pay such costs. Such costs, compensation and reimbursement are to be paid from, but not limited to, such Cash Collateral.

ARTICLE 5

WARRANTIES AND REPRESENTATIONS

Mortgagor unconditionally represents and warrants to Mortgagee as follows:

5.1 **Organization and Power:** Mortgagor has all requisite power, and has or will obtain and will maintain all governmental certificates of authority, licenses, permits, qualifications and documentation to own, lease and operate its properties and to carry on its business as now being, and as proposed to be, conducted. Mortgagor, each of its partners and each of the partners of such partners that is not a natural person is duly organized, validly existing and in good standing under applicable law.

5.2 **Validity of Loan Instruments:** The execution and delivery of the Security Documents, the performance by Mortgagor under the Security Documents and the incurring of the Secured Obligations: (a) are within Mortgagor's powers and, where applicable, have been duly authorized by Mortgagor's partners or other necessary parties, and all other requisite action for such authorization has been taken; (b) have received any and all requisite prior governmental approval in order to be legally binding and enforceable in accordance with the terms thereof; and (c) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under any Legal Requirement or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property or assets, except as contemplated by the provisions of the Security Documents. The Security Documents constitute the legal, valid and binding obligations of Mortgagor and others obligated thereunder in accordance with their respective terms.

5.3 **Title to Mortgaged Premises and Lien of this Instrument:** (a) Mortgagor has fee simple title to the Realty and Buildings and Improvements, and good and marketable title to the Fixtures and Collateral, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever, except the Permitted Exceptions. This Mortgage constitutes a valid, subsisting, first lien Mortgage on Mortgagor's interest as aforesaid in the Realty, the Buildings and Improvements, and the Fixtures, and a valid, subsisting first security interest in and to the Collateral and Cash Collateral, subject only to the Permitted Exceptions. (b) Mortgagor has done nothing to impair its title to the Property, subject only to the Permitted Exceptions. (c) Mortgagor will defend the title to the Property against any claim made through it. (d) Mortgagor has examined the Permitted Exceptions and they do not, in Mortgagor's opinion, materially impair marketability of title to the Property.

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5.4 **Payment of Prior Taxes and Tax and Mechanic's Liens:** Mortgagor has filed all federal, state, county, municipal and city income and other tax returns required to have been filed by it, and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by it, and Mortgagor knows of no basis for any additional assessment in respect of any such taxes except as otherwise disclosed to Mortgagee. Mortgagor has paid or will pay in full all sums now or hereafter owing or claimed for labor, material, supplies, personal property, whether or not forming a Fixture hereunder, and services of every kind and character used, furnished or installed in or on the Property, and no claim for such sums now exists or will be permitted hereafter to be created.

5.5 **Litigation.** There is no litigation or administrative proceeding of any kind pending or, to the best of Mortgagor's knowledge, threatened, in respect to the Property or any part thereof or which, if adversely determined, would result in a material adverse change in the financial condition, business operations or properties of Mortgagor.

5.6 **Usury:** Neither this Mortgage, the Financing Agreement nor any payment required to be made by Mortgagor under any Security Document violates any applicable law, ordinance or regulation pertaining to usury and, without limiting the foregoing, Mortgagor to the fullest extent permitted by law hereby expressly waives and relinquishes any and all defenses against enforcement of this Mortgage, the Financing Agreement, or any Security Document based upon usury.

5.7 **Information:** All information, reports, papers and data given to Mortgagee by Mortgagor with respect to Mortgagor and the Mortgaged Premises are true, accurate, complete and correct in all material respects and do not omit any fact which must be included to prevent any other facts contained therein from being materially misleading or false.

ARTICLE 6

AFFIRMATIVE COVENANTS

Mortgagor unconditionally covenants and agrees with Mortgagee as follows:

6.1 **Payment and Performance:** Mortgagor will pay the Secured Obligations as and when called for in the Financing Agreement and the Security Documents, and will perform all of its obligations thereunder in full on or before the dates the same are to be performed.

6.2 **Entity Existence:** Mortgagor will preserve and keep its existence in full force and effect and in good standing, will preserve and maintain all its rights, licenses, franchises, trade names and trademarks, will timely file any and all tax reports and returns, and will timely pay all franchise and other taxes of any kind Mortgagor is required to pay.

6.3 **Compliance with Legal Requirements:** With respect to the Property, Mortgagor will promptly and faithfully comply with, conform to, obey and perform all present and future

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Legal Requirements at Mortgagor's cost; provided, however, that Mortgagor may, at Mortgagor's cost and expense, diligently contest any Legal Requirement by appropriate proceedings so long as the enforcement of such Legal Requirement and any fines, penalty or other remedy for the failure to comply with such Legal Requirement, is fully stayed during the entire period of such contest.

6.4 Lien and Security Interest Priority: Mortgagor will protect and defend the lien and security interest status of this Mortgage, subject to the Permitted Exceptions, and will not act to, acquiesce in or allow any mortgaging, hypothecating or encumbering of the Property with any other lien or security interest of any nature whatsoever, whether statutory, constitutional or contractual, regardless of whether such lien or security interest is allegedly or expressly inferior to the lien and security interest created by this Mortgage and if any such lien or security interest is asserted against the Property, Mortgagor will promptly, and at its own cost and expense, (a) within five (5) days from the date such lien or security interest is so asserted, give Mortgagee notice of the assertion of such lien or security interest; and (b) pay the underlying claim in full or take such other action so as to cause same to be released, subject to Mortgagor's right to contest contained in Paragraphs 6.7 and 9.11 herein. Such notice shall specify who is asserting such lien or security interest and shall detail the origin, nature and amount of such underlying claim.

6.5 Expenses, Claims and Costs: Mortgagor shall pay all reasonable expenses of Mortgagee or reimburse Mortgagee for any reasonable expenses, including without limitation, appraisal fees and expenses, receivership fees and expenses, reasonable attorneys' fees and legal expenses, which are incurred or expended in connection with: (a) any event which in Mortgagee's reasonable determination is a breach by Mortgagor of any obligation herein, or (b) Mortgagee's exercise of any of its rights and remedies hereunder or under the Financing Agreement or any other Security Document. Mortgagor agrees to indemnify and hold harmless Mortgagee from and against all claims, demands, liabilities, losses, damages, judgments and penalties, or obtains a bond in such amount and reimburse Mortgagee for reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, which may be imposed upon, asserted against or incurred or paid by Mortgagee in connection with the Property or any Security Document through any cause whatsoever, or which may be asserted against Mortgagee on account of any act performed or omitted to be performed under any Security Document, or on account of any transaction arising out of or in any way connected with the Property or with any Security Document, including but not limited to any liability arising under any Environmental Law, except to the extent that such claims, liabilities, losses, damages, judgments or penalties result from the gross negligence or willful misconduct of Mortgagee.

6.6 Use of Fixtures: The Fixtures are and will be used as equipment in Mortgagor's business, but will not be used as inventory or as goods leased or held for lease or sale by Mortgagor, except as part of a Lease.

6.7 Payment of Impositions: Mortgagor will duly pay and discharge, or cause to be paid and discharged prior to delinquency, all Impositions and furnish Mortgagee receipts upon request evidencing such payments not less than ten (10) days prior to the applicable delinquency

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date therefor, unless such payments are to be made by Mortgagee as otherwise provided herein. Mortgagor may, however, if permitted by law and if installment payment would not create or permit the filing of a lien against the Mortgaged Premises, pay the Impositions in installments, provided no penalty, charge or interest will accrue by reason of such payment in installments.

Anything herein contained to the contrary notwithstanding Mortgagor may contest or object to the legal validity or amount of any Impositions and may institute appropriate proceedings as Mortgagor considers necessary with respect thereto, provided that any such contest or objection is in good faith and Mortgagor gives Mortgagee written notice thereof. Except where Mortgagor is objecting to or contesting Impositions prior to the tax authority's delinquency date and has given written notice of such objection or contest to Mortgagee as aforesaid, Mortgagor shall not carry on or maintain any contest or objection to any Impositions unless Mortgagor (i) gives written notice to Mortgagee of such contest or objection at least thirty (30) days before the delinquency date of such Impositions; (ii) either (a) shall have duly paid the full amount of the Impositions under protest; (b) posts with Mortgagee one and one-half (1-1/2) times the full amount under contest plus all interest, costs, expenses and penalties, from a surety company qualified to do business in the State, securing payment of said Impositions, said company and the form, contents, and amount of the bond to be subject to the written approval of Mortgagee, which approval shall not be unreasonably withheld; or (c) at Mortgagor's expense obtains title insurance in favor of Mortgagee insuring over any lien which may arise by reason of non-payment of such Imposition; and (iii) procures and maintains a stay of all proceedings to enforce any judgment for collection of the Impositions. If Mortgagor seeks a reduction of or contests the Impositions, the failure on Mortgagor's part to pay the Impositions before delinquency or to suffer or permit any lien to arise against or attach to the Mortgaged Premises shall not constitute a default so long as Mortgagor complies with the provisions of this paragraph. Mortgagor, promptly after the final determination of such proceeding or contest, shall pay or discharge any decision or judgment rendered, together with all costs, charges, interest and penalties incurred or imposed or assessed in connection with such proceeding or contest.

6.8 **Insurance:** Mortgagor will keep all insurable portions of the Property insured for the protection of Mortgagee in an amount not less than One Hundred percent (100%) of the insurable replacement value thereof. All policies of insurance, types of coverages, coverage amounts, and quality of insuring companies shall be as Mortgagee may reasonably require. Mortgagor shall also secure and place such policies on deposit with Mortgagee together with such endorsements as Mortgagee may require, and with such evidence of payment of premiums for periods as specified by Mortgagee. Such coverages may include, but not be limited to, as Mortgagee may require, fire, explosion, windstorm, hail, tornado, earthquake, flood (if the Property is located in an identified flood plain or mud slide hazard area designated by the Federal Emergency Management Agency or other agency or subdivision of the federal, state or local government in which flood insurance has been made available pursuant to the National Flood Insurance Program), rental interruption (for a minimum period of one year), glass breakage and public liability. If renewal policies for such required coverages are not delivered to Mortgagee fifteen (15) days before the expiration of existing policies, Mortgagee may, but shall not be obligated to, obtain such policies on behalf of Mortgagor (or such insurance policies insuring Mortgagee alone), and pay the premiums of such policies. Any such payment of

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premiums by Mortgagee shall be an advance secured hereby, and shall bear interest from the date of such advance at the Default Rate, and shall, at the option of Mortgagee, be repayable immediately upon demand. Should Mortgagor fail to repay Mortgagee any such advance with interest as provided herein within ten (10) days after written demand for repayment, Mortgagee may, at its option, declare the Secured Obligations immediately due and payable, and avail itself of any and all remedies provided herein; and neither the exercise nor the failure to exercise the foregoing options by Mortgagee shall be deemed a waiver or release of its right to thereafter declare a default hereunder by reason of such failure of Mortgagor to keep, observe or perform its obligations hereunder or under the Financing Agreement, or any other Security Document. Subject to Mortgagor's right to restore or repair the Property in accordance with the second following sentence of this Section 6.8, Mortgagor assigns to Mortgagee all its right, title and interest in all such policies of insurance, and authorizes Mortgagee to collect for, adjust or compromise any loss which is covered by the provisions of such policies, and to collect loss proceeds (less expenses of collection). Subject to Mortgagor's rights to restore or repair the Property in accordance with the following sentence, in the event of any loss or damage to the Property, Mortgagee may elect (a) to make the proceeds of casualty insurance on the Property, after deducting therefrom any expenses incurred by the Mortgagee in the collection thereof, available to the Mortgagor for the repair, rebuilding or restoration of the Buildings and Improvements on the Property or (b) to apply such insurance proceeds in reduction of the Secured Obligations, whether due or not, without prepayment premium. Provided: (a) no Event of Default or event which, but for the passage of time, giving of notice or both, would constitute an Event of Default, shall exist under this Mortgage, the Financing Agreement, or any other Security Document, (b) in Mortgagee's reasonable judgment, the amount of insurance proceeds and other funds available to Mortgagor are sufficient to reconstruct the Buildings and Improvements to their condition prior to such casualty, and (c) Mortgagor is maintaining not less than one year's business interruption insurance on the Property, then Mortgagee shall not unreasonably withhold its approval to the application of insurance proceeds to restoration and repairs of the Property. In the event Mortgagee makes proceeds of insurance available for rebuilding, the Buildings and Improvements shall be so repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction, in a good and workmanlike manner in conformity with all governmental statutes, ordinances and regulations. If the insurance proceeds are made available for repair, rebuilding or restoration, such proceeds shall be disbursed by Mortgagee or a disbursing party chosen by Mortgagee ("Disbursing Party") in accordance with procedures satisfactory to the Mortgagee including delivery of plans and specifications for approval by the Mortgagee, satisfactory evidence of the cost of completion thereof and architects' certificates, waivers of lien, contractors' and subcontractors' sworn statements, title continuations and other evidence of cost and payments so that the Disbursing Party can verify that the amounts disbursed from time to time are represented by completed and in-place work and that such work is free and clear of mechanics' lien claims except for liens which are being contested by the Mortgagor in accordance with the terms of this Mortgage. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of the Disbursing Party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If the cost of rebuilding, repairing or restoring the Buildings and

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Improvements may reasonably exceed the sum of Fifty Thousand Dollars (\$50,000.00), then the Mortgagee must approve plans and specifications of such work before such work shall be commenced. If such insurance proceeds are insufficient to pay for the cost of completion of such work, the Mortgagor shall promptly pay any additional amounts required therefor. Any surplus which may remain out of such insurance proceeds, after payment of the cost of repair, rebuilding or restoration, and the reasonable charges of the Disbursing Party shall, at the option of the Mortgagee, be applied on account of the Secured Obligations without prepayment premium or penalty, or paid to any party entitled thereto as the same appear on the records of the Mortgagee. Any interest earned on the proceeds of insurance held by the Disbursing Party shall be deemed used and applied as insurance proceeds. Notwithstanding anything in this paragraph to the contrary, in the event of any casualty to the Property the cost of repair of which does not exceed \$100,000.00 the Mortgagor may adjust and compromise such loss to the extent covered by policies of insurance and may collect the proceeds thereof, provided that such proceeds shall be disbursed to complete the repair and restoration of the Buildings and Improvements damaged by such casualty and all such repairs and restoration shall be performed in a good and workmanlike manner, in conformity with all governmental statutes, ordinances, and regulations and free of liens.

6.9 **Escrows for Impositions:** That to assure the performance and discharge of Mortgagor's obligations under Section 6.7 and 6.8 of this Article 6, but not in lieu of such obligations, Mortgagor shall, at the option and upon the direction of the Mortgagee, deposit with Mortgagee, either concurrently with the execution and delivery of this Mortgage or at any time thereafter, a prorated sum for funding an escrow for payment of Impositions, including but not limited to, ad valorem taxes, assessments and charges (which charges for the purpose of this Section shall include, without limitation, water and sewer rents) against the Property and for payment of premiums for all policies of insurance required hereby, based on One Hundred Ten Percent (110%) of the applicable amounts for the preceding year. In the event such election is made, Mortgagor shall deposit with Mortgagee on the first day of each month, an amount estimated by Mortgagee or its designee to be equal to one-twelfth (1/12th) of One Hundred Ten Percent (110%) of the annual Impositions to have funds available to pay, at least fifteen (15) days prior to the due date thereof, the next maturing Impositions. In the event the monthly installment of Impositions so paid are not sufficient to pay such Impositions when due, then after notification by Mortgagee, Mortgagor will promptly deposit with Mortgagee an amount sufficient to pay such Impositions. Any excess over the amounts required for such purposes shall, at Mortgagee's option, either be held by Mortgagee for future payment of such Impositions, or be applied to the Secured Obligations in such order and manner as Mortgagee may elect, or be refunded to Mortgagor. Mortgagee may, at its sole discretion, directly pay such Impositions in such manner and at such times as it may deem advisable; however, in no event shall Mortgagee be liable for any damages arising out of Mortgagee's manner or method of estimating or of making such payments. Mortgagee shall have no duty or liability to inquire as to the existence, necessity for, or making of any protest of said Impositions. If there is a default under any of the provisions of this Mortgage resulting in a foreclosure sale of the Property, or if Mortgagee otherwise acquires the Property after default, Mortgagee is authorized and may, at its option, apply at the time of commencement of such proceedings, or at the time the property is otherwise acquired, any funds then accumulated in such escrow account as a credit against any amount then

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remaining unpaid or any Secured Obligations in such order and manner as Mortgagee may elect. All such deposits shall be held by Mortgagee in an interest bearing account at an institution of Mortgagee's choice, which may include itself, with the interest earned thereon to be paid to Mortgagor.

6.10 **Repair:** Mortgagor will place and thereafter keep the Property in not less than the order, repair and operating condition existing on the date hereof, causing all necessary repairs, alterations, renewals, replacements, additions, betterments and improvements to be promptly made thereto, and will not allow any of the Property to be misused, abused or wasted, or to deteriorate, except for reasonable wear and tear. Mortgagor will promptly replace all worn-out or obsolete Fixtures or Collateral covered by this Mortgage and necessary for the operation and maintenance of the Property with Fixtures or Collateral comparable to the replaced Fixtures or Collateral when new; and will not, without the prior written consent of Mortgagee, remove from the Property any Fixtures or Collateral covered by this Mortgage except as provided herein, nor make structural alterations to the Property or any other alterations thereto which, in the opinion of Mortgagee, would materially impair the value thereof.

6.11 **Performance by Mortgagee:** Subject to Mortgagor's right to contest in accordance with Sections 6.7 and 9.11 hereof, if Mortgagor shall default in the payment of any Imposition levied or assessed against the Property; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage; in the delivery to Mortgagee of the insurance policies required hereunder; in the performance or observance of this or any other obligation hereunder, including but not limited to, those covering preservation of the Property and prevention of physical waste thereto, then Mortgagee, at its option, may but shall not be obligated to perform, observe or cure the same, and any payments made by Mortgagee which are incurred for costs or expenses in connection therewith shall be an advance secured hereby and shall bear interest from the date of such advance at the Default Rate, and shall, at the option of Mortgagee, be repayable immediately upon demand. Should Mortgagor fail to repay Mortgagee any such advance with interest as herein provided within ten (10) days after receipt of written demand for repayment of the same, Mortgagee may, at its option, declare all Secured Obligations immediately due and payable, and avail itself of any and all remedies provided herein; and neither the exercise nor the failure to exercise the foregoing options by Mortgagee shall be deemed a waiver or release of its right to thereafter declare a default hereunder by reason of said failure of Mortgagor to keep, observe or perform its obligations hereunder or under any Security Document. In the event Mortgagee elects to make any such advance, Mortgagee shall be subrogated respectively to the rights of the holder of any lien or claim, or to the rights of any taxing authority. Mortgagee shall be the sole judge of the legality, validity and priority of any matter for which any advance is made; of the necessity for any such actions; of the amount necessary to be paid in connection with or in satisfaction thereof; and of the necessity of making any such advance. Mortgagee is hereby empowered to enter, and to authorize its agents, workmen and others to enter upon the Property or any part thereof for the purpose of performing, observing or curing any such defaulted obligation without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

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6.12 **Errors, Defects and Amendments:** Mortgagor shall, on request of Mortgagee, (a) promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage, or in any other Security Document, or in the execution or acknowledgment of any of them; (b) execute, acknowledge, deliver and record or file such further instruments (including without limitation, further Mortgages, security agreements, financing statements, continuation statements and assignments of leases and cash collateral) and to do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and such other instruments given to collateralize the obligations secured hereby, and to subject all of the Property to the liens and security interests created herein, including specifically but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property; and (c) execute, acknowledge, deliver, procure and record or file any document or instrument (including without limitation, any financing statement) reasonably deemed advisable by Mortgagee to protect the lien or the security interest granted herein against the rights or interests of third persons, and Mortgagor will pay all reasonable costs in connection with any of the foregoing actions.

6.13 **Partial Release:** Mortgagee, at its reasonable option and without notice, may release any part of either the Mortgaged Premises or Collateral, or any person liable for any of the Secured Obligations, without in any way affecting the lien and security interest hereof or the liability of any other person or entity liable for any of the Secured Obligations. With respect to any part of the Property not expressly released, Mortgagee may agree with any party obligated on any of the Secured Obligations or having any interest in the Property to modify or extend the time for payment of any party or all of the debt. Such agreement shall not in any way release or impair the lien and security interest hereof, but shall extend the lien and security interest hereof as against the title of all parties having any interest in the Property. Unless otherwise expressly provided herein, Mortgagor shall have the right of partial release of the Property.

6.14 **Subrogation:** That to the extent that any proceeds are disbursed by Mortgagor to pay the indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, if such proceeds shall have been advanced by Mortgagee at Mortgagor's request or otherwise pursuant to the terms of this Mortgage, Mortgagee shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released, and it is expressly understood that in consideration of the payment of such indebtedness by Mortgagee, Mortgagor hereby waives and releases all demands and causes of action for offsets, payments and rentals to, upon and in connection with such indebtedness.

6.15 **Waiver of Redemption:** That Mortgagor, to the extent permitted by law, hereby waives (a) the benefit of all laws now existing or that hereafter may be enacted providing for any appraisal before sale of any portion of the Mortgaged Premises and (b) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the Secured Obligations creating or extending a period of redemption from any sale made in collecting such Secured Obligations. To the full extent Mortgagor may do so under

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applicable law, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Mortgagor, for Mortgagor and Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Premises, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the indebtedness secured hereby and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this paragraph and now in force, of which Mortgagor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. To the fullest extent permitted by law Mortgagor expressly waives and relinquishes any and all rights and remedies that Mortgagor may have or be able to assert by reason of applicable law pertaining to the rights and remedies of sureties. Without limiting the foregoing, but in addition thereto and in amplification thereof, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order, judgment or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree of judgment creditors of the Mortgagor acquiring any interest in or title to the Mortgaged Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and all other persons are and shall be deemed to be hereby waived to the full extent permitted by law.

6.16 **Annual Statements:** That Mortgagor shall furnish Mortgagee with the financial statements and operating statements covering the operation of the Property in form and substance and as and when required by the Security Documents.

6.17 **Investment Information:** That Mortgagor understands that Mortgagee may sell, or may offer for sale, an interest or interests in the indebtedness guaranteed by the Guaranty and secured by this Mortgage. Mortgagor covenants and agrees that it will, promptly upon request of any bona fide purchaser or offeree as to any such interest, furnish an estoppel certificate in form and content reasonably satisfactory to the Mortgagee setting forth the amount of the Secured Obligations outstanding from time to time and whether or not any default, offset or defense is alleged to exist against the Secured Obligations and, if so, specifying the nature thereof.

6.18 **Manager:** That Mortgagor shall cause the Mortgaged Premises to be managed by a managing agent reasonably satisfactory to Mortgagee.

6.19 **Financing Agreement:** That Mortgagor will perform all of its obligations under the Financing Agreement, all of the provisions of which are incorporated herein by this reference.

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ARTICLE 7

NEGATIVE COVENANTS

Until all Secured Obligations shall have been paid in full, Mortgagor hereby covenants and agrees with Mortgagee that:

7.1 **Use Violations:** Mortgagor shall not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of the Property in any manner which (a) violates any Legal Requirement in a manner which materially adversely affects the value of the Property; (b) may be dangerous unless safeguarded as required by law; (c) constitutes a public or private nuisance; or (d) makes void, voidable or cancellable any insurance then in force with respect to the Property.

7.2 **Alterations:** Mortgagor shall not commit or permit any material physical waste of the Property, whether commissive or permissive and will not make or permit to be made any alterations or additions to the Mortgaged Premises of a material nature without the prior written consent of the Mortgagee.

7.3 **Replacement of Fixtures and Collateral:** Except as otherwise provided herein, Mortgagor shall not convey, transfer, assign, remove, demolish, erect, add to or materially alter any Building and Improvement, Fixture or Collateral now or hereafter subject to the lien and security interest of this Mortgage, without the prior written consent of Mortgagee. Mortgagor, however, shall have the right, without the prior written consent of Mortgagee to remove and dispose of such Fixtures and Collateral (hereafter referred to in this paragraph as "Replaced Equipment") free from the lien and security interest of this Mortgage, as from time to time may become non-functioning or obsolete, provided that, if such item is necessary for the operation or maintenance of the Property, either simultaneously with or prior to such removal, such item shall be replaced with an item of similar function with a value at least equal to that of the Replaced Equipment and free from any lease, lien, title retention, or security interest or other encumbrance. By such removal and replacement, Mortgagor shall be deemed to have subjected such replacement Fixtures and Collateral to the lien and security interest of this Mortgage.

7.4 **Due on Sale or Further Encumbrance Clause:** In determining the adequacy of the security represented by the Guaranty, the Bank has examined the creditworthiness of Mortgagor, found it acceptable and relied and continues to rely upon same as the means of repayment of the Secured Obligations. Mortgagor recognizes that any secondary or junior financing placed upon the Property, (a) may divert funds which would otherwise be used to pay the Secured Obligations; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect the security; (c) would detract from the value of the Property should Mortgagee come into possession thereof with the intention of selling the Property; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure as a foreclosure by Mortgagee would be necessary to clear the title to the Property.

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In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Mortgagor and of value of the Property; (ii) giving the Mortgagee the full benefit of the bargain and contract with Mortgagor; and (iii) keeping the Property free of subordinate financing liens, Mortgagor agrees that any sale, transfer of title, conveyance, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance (or any agreement to do any of the foregoing) of the Property or any part thereof or interest therein or, of any interest in Mortgagor, of any interest in a general partner of Mortgagor to any party other than an Affiliate, whether involuntary or by operation of law, except for a taking by condemnation or eminent domain, and except for the Permitted Exceptions, such matters as are being contested in accordance with Sections 6.7 or 9.11 hereof, or as expressly permitted below in this Section 7.4, without the Mortgagee's prior written consent, or as expressly permitted below shall be an Event of Default hereunder. Any consent by the Mortgagee or any waiver of an Event of Default under this Section shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent Event of Default under this Section. Notwithstanding the foregoing, in the event that Mortgagee consents to any of the assignments or transfers hereinabove described, if any, Mortgagee may deal with any such assignee or transferee of such interests with respect to the Property, the Secured Obligations, or any of the terms or conditions of this Mortgage, the Financing Agreement, or any other Security Document, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from its liability or undertakings hereunder. In the event Mortgagor commits or suffers or permits any of the foregoing prohibited acts, all Secured Obligations shall, at the option of Mortgagee, become immediately due and payable, and Mortgagee may avail itself of all remedies provided for herein.

7.5 Platting, Replatting, Subdivision and Resubdivision: Mortgagor shall not hereafter, without the consent of Mortgagee, impose any restrictions, agreements or covenants which run with the land upon the Mortgaged Premises, nor plat, replat, subdivide or resubdivide the Mortgaged Premises except through action with or compliance with the requirements or procedures of any Governmental Authority, of any Legal Requirements, or through recordation in any required public office. Notwithstanding the foregoing, Mortgagor may, without the consent of Mortgagee, record a corrective plat of subdivision to exclude two triangular portions of property owned by third party utility companies, which parcels are erroneously included in the original plat of subdivision.

ARTICLE 8

HAZARDOUS SUBSTANCES

8.1 Representations and Warranties: Mortgagor unconditionally represents and warrants to Mortgagee as follows: to the best of Mortgagor's knowledge, except as otherwise disclosed in writing to the Mortgagee, the Mortgaged Premises and the use and operation thereof are currently in compliance and will remain in compliance with all applicable Environmental Laws; to the best of Mortgagor's knowledge, except as otherwise disclosed in writing to the Mortgagee, the Mortgaged Premises contain no environmental, health or safety hazards; to the

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best of Mortgagor's knowledge, except as otherwise disclosed in writing to the Mortgagee, the Mortgaged Premises have never been used for a sanitary land fill, dump or for the disposal, generation or storage of any Hazardous Substances deposited or located in, under or upon the Mortgaged Premises, or any parcels adjacent thereto, or on or affecting any part of the Mortgaged Premises or the business or operations conducted thereon in violation of any Environmental Law; to the best of Mortgagor's knowledge, except as otherwise disclosed in writing to the Mortgagee, no underground storage tanks are or have been located on the Mortgaged Premises; to the best of Mortgagor's knowledge, except as otherwise disclosed in writing to the Mortgagee, no portion of the Mortgaged Premises is presently contaminated by any Hazardous Substances and no storage, treatment or disposal of any Hazardous Substance has occurred on or in the Mortgaged Premises in violation of any Environmental Law; except as otherwise disclosed in writing to Mortgagee, Mortgagor has not received any notice of any Hazardous Substance in, under or upon the Mortgaged Premises in violation of any Environmental Laws or of any other violation of any Environmental Laws with respect to the Mortgaged Premises or has knowledge of any condition or event which would provide a basis for any such violation with respect to the Mortgaged Premises; and except as otherwise disclosed in writing to Mortgagee, Mortgagor has not received actual notice of any there are no pending or threatened actions or proceedings, or notices of potential actions or proceedings, from any governmental agency or any other entity regarding the condition or use of the Mortgaged Premises or regarding any environmental, health or safety law.

8.2 Covenants: Mortgagor will promptly notify Mortgagee in writing of any notices and any pending or threatened action or proceeding in the future regarding the representations and warranties in Section 8.1 hereof, and Mortgagor will promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of Mortgagee. Mortgagor covenants and agrees that, throughout the term of this Mortgage, no Hazardous Substances will be used or stored for any purpose upon the Mortgaged Premises in violation of applicable Environmental Laws.

Mortgagor further covenants and agrees to perform and conduct (or cause to be performed and conducted) any and all remedial work that is required by, is necessitated by or arises out of (a) the presence, storage, use, transportation or Release of any Hazardous Substance on or in the Mortgaged Premises or on or in other property emanating from the Mortgaged Premises; (b) any and all Hazardous Substance Claims; or (c) any noncompliance with or violation of any Environmental Law relating to the Mortgaged Premises (collectively "Remedial Work"). The foregoing notwithstanding, Mortgagor shall not be required to perform Remedial Work which exceeds (either in scope or method) remediation which is customarily performed under the prevailing industry standards of reasonable prudence and with commonly available technology, unless required by applicable Environmental Laws or by court order. The Remedial Work shall include but not be limited to the work described in that certain Environmental Remediation and Indemnity Agreement of even date herewith from certain affiliates of Mortgagor to Mortgagee, as that work relates to the Mortgaged Premises. All Remedial Work shall be conducted (a) in full compliance with Environmental Laws; (b) in a diligent and timely fashion by licensed contractors, and where such contractor is not an environmental engineering firm or does not have staff environmental engineers, under the supervision

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of a consulting environmental engineer; (c) pursuant to a detailed written plan for the Remedial Work approved by any public or private agencies or persons with a legal or contractual right to such approval, or where such approval is required under the Environmental Laws; (d) with such insurance coverage pertaining to liabilities arising out of the Remedial Work as is then customarily maintained with respect to such activities; and (e) only following receipt of any required permits, licenses or approvals. In addition, at the request of Mortgagee, Mortgagor shall submit to Mortgagee, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental approvals and other similar information prepared or received by Mortgagor in connection with any Remedial Work or Hazardous Substances relating to the Mortgaged Premises. All costs and expenses of such Remedial Work shall be paid by Mortgagor, including without limitation, the charges of the Remedial Work contractors and consulting environmental engineer. As used herein, the terms Release, Remedy, Removal and Response shall have the meaning set forth in 42 U.S.C. Sections 9601 et seq., and the term Hazardous Substance Claim shall mean any and all investigation, enforcement, cleanup, assessment, Removal, Response, Remedy or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Law, together with any and all claims made or threatened by any governmental entity or other third party against Mortgagor, Mortgagee or the Mortgaged Premises for indemnification, damage, contribution, cost recovery, compensation, loss or injury resulting from any actual, proposed or threatened use, storage, existence or Release of Hazardous Substances, including, without limitation, the movement or migration of any Hazardous Substance from surrounding property or groundwater in, into or onto the Mortgaged Premises and any residual Hazardous Substance contamination on or under the Mortgaged Premises.

8.3 **Indemnification:** Mortgagor shall indemnify and hold Mortgagee harmless from and against all loss, cost (including, without limitation, reasonable attorney fees), liability and damage whatsoever incurred by Mortgagee by reason of any violation of any applicable Environmental Law which occurs or has occurred upon the 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, due to or arising from any and all Hazardous Substance Claims or Mortgagor's performance of the Remedial Work, or in any way related to the generation, storage, use, transportation, Release, discharge or emission on, in or from the Mortgaged Premises of Hazardous Substances. Mortgagor's obligation to Mortgagee under the foregoing indemnity shall be without regard to fault on the part of Mortgagor with respect to the violation which results in liability to Mortgagee. The release of this Mortgage shall in no event terminate or otherwise affect the indemnity given by Mortgagor to Mortgagee under this Mortgage or any separate indemnity given by Mortgagor to Mortgagee concerning Hazardous Substances.

ARTICLE 9

EVENTS OF DEFAULT; REMEDIES

9.1 **Events of Default:** The occurrence of any one or more of the following constitutes an event of default hereunder if not cured in accordance with the provisions of Section 9.10

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herein, to the extent applicable (each of which occurrences not so cured is herein called an "Event of Default"):

(a) **Non-payment of Indebtedness:** The failure, refusal or neglect of Mortgagor to pay the Secured Obligations as and when they become due.

(b) **Non-performance of Secured Obligations:** The failure, refusal or neglect of Mortgagor to fully and timely perform any of its obligations under the Financing Agreement, this Mortgage or any other Security Document as and when called for, whether such failure, refusal or neglect shall be curable or incurable.

(c) **Assignment for Benefit of Creditors:** The execution of an assignment for the benefit of creditors by the Mortgagor or any general partner of Mortgagor.

(d) **Levy Against the Property:** The levy of any execution, attachment, sequestration or other writ against the Property or any part thereof not dismissed within ninety (90) days after such levy.

(e) **Appointment of Receiver:** The appointment of a receiver for Mortgagor or any general partner of Mortgagor or the Property, or any major part thereof, and not dismissed within ninety (90) days after such appointment.

(f) **Other Liens, Security, Interests or Rights:** Without the prior written consent of Mortgagee, Mortgagor's creation, placement, permission, acquiescence, allowance or inaction which results in any mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Property which are not delinquent and except for any liens being contested by Mortgagor in accordance with this Mortgage), security interest, encumbrance or charge, conditional sale or other title retention document, against or covering the Property, or any part thereof, except for Permitted Exceptions, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created by this Mortgage.

(g) **Waste:** The Property is subjected to actual material physical waste, whether commissive or permissive.

(h) **Abandonment:** Mortgagor's acts or inaction which, in the sole reasonable judgment of Mortgagee, would constitute abandonment of all or any portion of the Property.

(i) **Non-Compliance with Governmental Authorities:** The failure, refusal or neglect of Mortgagor to comply at its own cost with all Legal Requirements of any Governmental Authority having lawful jurisdiction over the Property or its operation subject to the right to contest set forth in Section 6.3, Section 6.7 or Section 9.11 hereof.

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(j) **Adverse Liens:** Except with respect to any Permitted Exception or unless being contested in accordance with Section 9.11 hereof, the assertion of any claim of priority to this Mortgage by title, lien, security interest or otherwise in any legal or equitable proceeding (which claim Mortgagee, acting in good faith, reasonably believes is substantive).

(k) **False Representation:** If any representation, warranty or statement made by Mortgagor, by any partner of Mortgagor, or by any other person or entity in, under or pursuant to this Mortgage or any other Security Document, or any affidavit, financial statement or other instrument delivered or executed in connection therewith shall be false, misleading or erroneous in a material respect.

(l) **Foreclosure of Other Liens:** If the holder of any lien or security interest on the Property (whether or not Mortgagee has consented to the existence of such lien or security interest and without hereby implying Mortgagee's consent to the existence, placing, creating or permitting of any such lien or security interest) institutes or completes foreclosure or other proceedings for the enforcement of its remedies with respect to such lien or security interest.

(m) **Dissolution of Entity:** Any action or the institution of any proceeding by Mortgagor or any of its partners for the dissolution or termination of Mortgagor.

(n) **Default under Guaranty:** The occurrence of a default or event of default, after the expiration of any applicable cure periods, under the Guaranty or failure by the Guarantor to perform any of the guaranteed obligations described therein within the time periods provided for therein, after the expiration of any applicable periods of notice or cure.

(o) **Default under Security Documents:** The occurrence of a default or event of default, after the expiration of any applicable cure periods or grace periods, under the Financing Agreement or any of the Security Documents.

(p) **Default under Other Partnerships:** The occurrence of a default or event of default, after the expiration of any applicable cure periods, pursuant to any obligation of any partnership in which the general partner of Mortgagor is a general partner.

9.2 **Remedies:** Upon the occurrence of any Event of Default hereunder the Mortgagee is hereby authorized and empowered, at its sole option and without affecting the lien and security interests hereby created or the priority of such lien and security interests or any other right of the Mortgagee hereunder or under any other Security Document, to do any or all of the following without further notice to or demand upon the Mortgagor or any party liable for the Secured Obligations or having an interest in the Mortgaged Premises, except as otherwise required by law:

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(a) **Acceleration:** Mortgagee may, by written notice to Mortgagor declare the Secured Obligations to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) **Uniform Commercial Code:** Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Code, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter without legal process any premises where any such property may be found. Any requirement of the Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The expenses of making, selling and otherwise disposing of such property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the Default Rate.

(c) **Foreclosure:** Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness hereby secured in the decree of sale, all expenditures and expenses authorized by the Act and all other expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs, which may be estimated as to items to be expended after entry of the decree, of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Premises. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage or the Mortgaged Premises, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional indebtedness hereby secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid.

(d) **Appointment of Receiver:** Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through

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it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed for all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(c) **Taking Possession, Collecting Rents, Etc.:** Upon demand by Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver may enter upon and take and maintain possession of all or any part of the Mortgaged Premises, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as mortgagee and under the powers herein granted:

- (i) hold, operate, manage and control all or any part of the Mortgaged Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;
- (ii) cancel or terminate any Lease or sublease of all or any part of the Mortgaged Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;
- (iii) elect to disaffirm any Lease or sublease of all or any part of the Mortgaged Premises made subsequent to this Mortgage without Mortgagee's prior written consent unless permitted hereunder;

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- (iv) extend or modify any then existing Leases and make new Leases of all or any part of the Mortgaged Premises, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the release of this Mortgage and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;
- (v) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Premises as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom;
- (vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Premises, to the payment of taxes, premiums and other charges applicable to the Mortgaged Premises, or in reduction of the indebtedness hereby secured in such order and manner as Mortgagee shall select; and
- (vii) at Mortgagor's expense, authorize, conduct and supervise an environmental audit or assessment ("Audit") of the Mortgaged Premises, which Audit shall include, but not be limited to an identification of any location to which or at which Hazardous Substances were generated, stored, transported, treated or disposed of by Mortgagor or any of Mortgagor's agents, contractors, employees, officers or directors and a listing of all correspondence, notices or information received by Mortgagor relating to such locations.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises.

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The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate, conserve and improve the Mortgaged Premises, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses, including any receiver's fees, reasonable counsel fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured hereby which expenses Mortgagor promises to pay upon demand together with interest at an applicable market rate determined by Mortgagee at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises, including hiring watchmen therefor, and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Rate.

9.3 Waiver of Right to Redeem From Sale - Waiver of Appraisalment, Valuation, Etc. Mortgagor shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Secured Obligations, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. To the fullest extent permitted by law, Mortgagor hereby voluntarily and knowingly waives any and all rights of reinstatement and redemption and to the fullest extent permitted by law, the benefits of all present and future valuation, appraisalment, homestead, exemption and moratorium laws under any state or federal law, all on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons.

9.4 Application of Proceeds: The proceeds of any foreclosure sale of the Mortgaged Premises or of any sale of property pursuant to Section 9.2 hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Section 9.2 hereof; and

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Second, to the Secured Obligations, with any surplus to whomsoever shall be lawfully entitled to such surplus.

9.5 Remedies Cumulative: No remedy or right of Mortgagee hereunder, or under any other Security Document or otherwise available under applicable law, shall be exclusive of any other right or remedy, 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 under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any 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 it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee. All obligations of the Mortgagor, and all rights, powers and remedies of the Mortgagee expressed herein shall be in addition to, and not in limitation of, those provided by law or in the Financing Agreement or any other Security Document.

9.6 Remedies for Leases and Cash Collateral: If any Event of Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, the Mortgagee shall be entitled in its discretion, to do any of the following: (a) enter and take actual possession of the Property, the Cash Collateral, the Leases and other Property relating thereto or any part thereof personally, or by its agents or attorneys and exclude Mortgagor therefrom; (b) enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating thereto; (c) as attorney-in-fact or agent of Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Cash Collateral, the Leases and other Property relating thereto and conduct the business thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Cash Collateral, the Leases and other Collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (d) cancel or terminate any Lease for any cause or on any ground which would entitle Mortgagor to cancel the same; (e) elect to disaffirm any Lease made subsequent hereto, or subordinated to the lien hereof; (f) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Property that, in its discretion, may seem appropriate; (g) insure and reinsure the Collateral for all risks incidental to the Mortgagee's possession, operation and management thereof; and (h) receive all such Cash Collateral and proceeds, and perform such other acts in connection with the management and operation of the Property as Mortgagee in its discretion may deem proper, Mortgagor hereby granting full power and authority to exercise each and every of the rights, privileges and powers contained herein at any and all times after any Event of Default without notice to Mortgagor. The Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Cash Collateral to the payment of or on account of the following, in such order as it may determine: (i) to the payment of the operating expenses of the Property, including the cost of management and leasing thereof, which shall include reasonable compensation to the Mortgagee and its agents or contractors, and it shall also include lease

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commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases, established claims for damages, if any, and premiums on insurance hereinabove authorized; (ii) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, or betterments, and improvements of the Property, including the cost from time to time of installing, replacing or repairing the Property and of placing the Property in such condition as will, in the judgment of the Mortgagee, make it readily rentable; and (ii) to the payment of any Secured Obligations.

9.7 **Collateral:** Whenever an Event of Default shall be existing, the Mortgagee may exercise from time to time any rights and remedies available to it with respect to the Collateral under applicable law upon default in payment of indebtedness secured by collateral. Mortgagor, promptly upon request by the Mortgagee, shall assemble the Collateral and make it available to the Mortgagee and Mortgagor, as the Mortgagee shall designate. Any notification required by law of intended disposition by Mortgagor of any of the Collateral shall be deemed reasonable and properly given if given at least ten (10) days before such disposition. Without limiting the foregoing, whenever an Event of Default is existing the Mortgagee may, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (a) notify any person obligated on the Collateral to perform directly for the Mortgagee its obligations thereunder, (b) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period, whether or not longer than the original period, any obligations of any nature of any party with respect thereto, (c) endorse any checks, drafts or other writings in the name of Mortgagor to allow collection of the Collateral, (d) take control of any proceeds of the Collateral, (e) with respect to so much of the Collateral as is personal property under applicable law, enter upon any premises where any of the Collateral may be located and take possession of and remove such Collateral, (f) with respect to so much of the Collateral as is personal property under applicable law, sell any or all of the Collateral free of all rights and claims of the Mortgagor therein and thereto, at any public or private sale, and (g) with respect to so much of the Collateral as is personal property under applicable law, bid for and purchase any or all of the Collateral at any such sale. Any proceeds of any disposition by the Mortgagee of any of the Collateral may be applied by the Mortgagee to the payment of expenses in connection with the Collateral, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by the Mortgagee toward the payment of the Secured Obligations in such order of application as the Mortgagee may from time to time elect. The Mortgagee may exercise from time to time any rights and remedies available to it under the Code or other applicable law as in effect from time to time or otherwise available to it under applicable law. The Mortgagor hereby expressly waives presentment, demand, notice of dishonor, notice of intent to accelerate and acceleration and protest in connection with the Security Documents, and, to the fullest extent permitted by applicable law and except as otherwise expressly provided for herein, any and all other notices, advertisements, hearings or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies hereunder.

The Mortgagor hereby constitutes the Mortgagee its attorney-in-fact with full power of substitution upon an Event of Default to take possession of the Collateral upon any Event of Default and, as the Mortgagee in its sole discretion reasonably exercised deems necessary or

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proper, to execute and deliver all instruments required by Mortgagor to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the indebtedness secured hereby or the Secured Obligations are outstanding.

9.8 No Liability on Mortgagee: Notwithstanding anything contained herein to the contrary, the Mortgagee shall not be obligated to perform or discharge, any obligation, duty or liability of Mortgagor, whether under any of the Leases or otherwise, and Mortgagor shall and does hereby agree to indemnify and hold the Mortgagee harmless of and from any and all liability, claim, expense, loss or damage which Mortgagee may or might incur with respect to the Property, or under or by reason of its exercise of rights hereunder, and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to be performed or discharged, except such as arise from the gross negligence or willful misconduct of Mortgagee. The Mortgagee shall not have responsibility for the control, care, management or repair of the Property nor shall the Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Property resulting in loss or injury or death to any Tenant, licensee, employee or stranger. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers herein granted to it, and Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage, under any of the Leases or under or by reason hereof, or in the defense of any claims or demands the Mortgagor, to the fullest extent permitted by law, agrees to reimburse the Mortgagee immediately upon demand for the amount thereof, including costs, expenses and a reasonable attorney's fee, together with interest thereon from date of such payment at the Default Rate.

9.9 Extent of Remedies: In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of such provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

9.10 Cure Periods: Anything contained in this Mortgage to the contrary notwithstanding, Mortgagee does hereby agree that it will not avail itself of its option to accelerate the indebtedness secured hereby or avail itself of its other rights and remedies herein contained upon the occurrence of an event described in paragraph 9.1 (b), (f), (g), (h), (i), (j) or (k) until any such default shall have remained uncured for a period of thirty (30) days, unless Mortgagee shall consent to an extension of time for such default; provided, however, that no cure period shall be permitted if the default consists of a violation of the provisions of Section 7.4 hereof.

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9.11 **Right to Contest:** Anything herein contained to the contrary notwithstanding, Mortgagor, in good faith and with reasonable diligence, may contest the validity or amount of any mechanic's liens or other liens or claims for lien, security interest or asserted non-compliance with a Legal Requirement ("Lien") and defer payment and discharge thereof during the pending of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Property or any part thereof, or any interest therein, to satisfy such Lien; (ii) that, within ten (10) days after Mortgagor has been notified of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint a sum of money (or letter of credit or bond or other security reasonably satisfactory to Mortgagee) which shall be sufficient in the judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable. Such deposits are to be held without any allowance of interest. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the Lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which will pay such lien as provided below, or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such Lien together with all interest thereon, Mortgagor shall, within three (3) days after demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon. Any amounts thereafter remaining on deposit with Mortgagee, after payment of the fees and expenses of the Mortgagee, shall be returned to Mortgagor.

ARTICLE 10

SECURITY AGREEMENT AND FINANCING STATEMENT

10.1 **Security Agreement:** This Mortgage shall, in addition to being construed as a Mortgage on the Mortgaged Premises, also constitute and serve as a "Security Agreement and Financing Statement" within the meaning of the Code with respect to the Collateral, and with respect to any property included in the definition herein of the word "Property" which property may not be deemed to form a part of the Realty or may not constitute a "fixture" (within the meaning of the Code) and a first security interest in all Collateral is hereby granted to Mortgagee until the grant of this Mortgage shall terminate.

10.2 **Indebtedness Secured:** Mortgagor agrees that the security interest created by this Security Agreement and Financing Statement shall secure the payment of all Secured Obligations and shall also secure payment of any other or future debt or advancement relating to the

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Property owing by Mortgagor to Mortgagee and performance of any other obligations. The stated amount of the monetary obligations secured hereby is \$29,053,358.

10.3 Prohibition of Encumbrance or Sale: Except for dispositions of obsolete equipment or personal property not necessary in the operation of the *Mortgaged Premises*, or, if necessary, which is replaced with replacement equipment or personal property as required under Section 7.3 of this Mortgage, Mortgagor agrees not to sell, convey or grant security interests in, or otherwise dispose of or encumber, any of the Collateral, nor, in any event, to impair any of Mortgagee's right, title or interest therein, whether involuntary or by operation of law, except for a taking by condemnation or eminent domain, without first securing Mortgagee's written consent.

10.4 Transfers: Mortgagor agrees that if Mortgagor's rights in the Collateral are voluntarily or involuntarily transferred, whether by sale, creation of a security interest, attachment, levy, garnishment or other judicial process, without the written consent of Mortgagee, except as expressly permitted in Section 7.4 of this Mortgage, and except for a taking by condemnation or eminent domain, such transfer shall constitute an Event of Default.

10.5 Financing Statements: Mortgagor authorizes Mortgagee to file financing statements and replacement, continuation or correction financing statements and other security documents covering Fixtures and Collateral in any jurisdiction where this Security Agreement and Financing Statement will be given effect. At the request of Mortgagee, Mortgagor covenants and agrees to join Mortgagee in executing one or more such financing statements, including the customary fees of the Mortgagee, pursuant to the Code in a form satisfactory to Mortgagee, and to pay all costs of filing any such financing statements in all requisite public filing offices at any time and from time to time wherever Mortgagee deems filing or recording of any financing statement to be desirable or necessary.

10.6 Character of Collateral: Mortgagor and Mortgagee agree that: (a) the execution and filing of any financing statement pursuant hereto shall never be construed as in any way derogating from or impairing the declaration and stated intention herein of the parties hereto that, to the extent permitted by law, all such Collateral, Fixtures, rights and Cash Collateral which are described in this Mortgage are, for all purposes and in all proceedings, both legal and equitable, and at all times, to be regarded as fixtures as part of the Realty described herein, irrespective of whether or not any such item is physically attached to such Realty, or any such item is referred to or reflected in any such financing statement so filed at any time; (b) this instrument, upon recordation with the real estate records of the Recorder of Deeds, Cook County in the State shall constitute a "fixture filing" within the meanings of the Code; and (c) a carbon, photographic or other reproduction of this Mortgage is sufficient and may be filed as a financing statement under the Code. The mailing addresses of Mortgagor and Mortgagee from which information concerning the security interest being granted herein, is as set forth below. Similarly, the description in any such financing statement of (i) the rights in or to the proceeds of any casualty insurance policy required hereby, or (ii) the proceeds of any settlement or any award in any eminent domain or condemnation proceedings for a taking or for loss of value, or (iii) Mortgagor's interest as lessor in any Lease covering such Property or rights to Cash Col-

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lateral growing out of the use and occupancy, or occupancy of such Property, whether pursuant to any such Lease or otherwise shall never in any manner be construed as altering any of the rights of Mortgagee hereunder, or impugning the priority of the lien and security interest granted hereby or by any other Security Document; but any such description in any such financing statement is declared to be for the protection of Mortgagee in the event any court of competent jurisdiction shall at any time hold with respect to (i), (ii) or (iii) hereof, that in order for notice of such Mortgagee's priority or interest to be effective against a particular class of persons or entities, including but not limited to, the United States Government and any Governmental Authority, a financing statement must be filed in the appropriate records required pursuant to the Code.

10.7 Other Financing Statements: Mortgagor warrants and covenants that there is and will be no financing statement covering the Collateral, or any part of it, on file in any public office other than financing statements executed and filed in connection herewith, or as shown on the Permitted Exceptions, and that the Collateral is located on the Realty.

10.8 Remedies of Mortgagee: Mortgagor agrees that upon or after the occurrence of any Event of Default hereunder, Mortgagee may exercise its rights to declare all Secured Obligations immediately due and payable, in which case Mortgagee shall have all rights and remedies granted by law, and more particularly, the Code, including but not limited to, the right to take possession of the Collateral to the extent permitted by law or otherwise permitted by this Mortgage and to require Mortgagor to assemble and deliver the Collateral to such place as Mortgagee may designate; and for this purpose may enter upon any premises on which any or all of the Collateral is situated without being deemed guilty of trespass and without liability for damages thereby occasioned, and take possession of and operate such Collateral or remove it therefrom. Mortgagee shall have the further right to take any action it deems necessary, appropriate or desirable, at its option and in its discretion, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition, and to sell at public or private sales or otherwise dispose of, lease, or utilize the Collateral and any part thereof in any manner authorized or permitted by law, and to apply the proceeds thereof toward payment of any costs and expenses, including attorneys' fees and legal expenses, thereby incurred by Mortgagee and toward payment of the Secured Obligations in such order and manner as Mortgagee may elect. To the extent permitted by law, Mortgagor expressly waives any notice of sale or other disposition of the Collateral, and any other rights or remedies of a debtor or other formalities prescribed by law relative to a sale or disposition of the Collateral, or to exercise any other right or remedy existing after default hereunder; and to the extent any notice is required and cannot be waived, Mortgagor agrees that if such notice is sent as provided herein to Mortgagor at least ten (10) days before the time the sale or disposition, such notice shall be deemed reasonably given and shall fully satisfy any requirements for giving of said notice.

10.9 Sale of Collateral: Mortgagor agrees that, to the extent permitted by law and without limiting any rights and privileges herein granted to Mortgagee, Mortgagee may dispose of any or all of the Collateral at the same time and place, and in the same manner as the non-judicial foreclosure sale provided under the terms and conditions of this Mortgage, upon giving the same notice provided for in this Mortgage for such non-judicial foreclosure sale.

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ARTICLE 11

MISCELLANEOUS

11.1 **Term:** If Mortgagor shall fully pay all Secured Obligations that may be owing, or cause same to be paid, and all obligations under the Security Documents have been fully satisfied, then this Mortgage shall become null and void and Mortgagee agrees to execute a release hereof; otherwise this Mortgage is to be and shall remain in full force and effect.

11.2 **Governing Law:** This Mortgage, and the debts and obligations secured hereby and all other obligations of the parties hereunder, shall be governed by and construed in accordance with the internal laws of the State.

11.3 **Cumulative Powers:** Each and every right, power and remedy herein given to Mortgagee shall be cumulative and not exclusive; each and every such right, power and remedy, whether specifically given herein or otherwise existing, may be exercised from time to time and as often and in such order as may be deemed expedient by Mortgagee. The exercise of or the attempted exercise of any such right, power or remedy will not be deemed a waiver of the right to exercise or an election of remedies with respect to any other right, power or remedy that may or could be exercised at the same time or thereafter. No delay or failure to avail itself of the exercise of any right, power or remedy will impair the rights of Mortgagee to exercise any such right, power or remedy or operate as a waiver thereof, or thereafter to exercise any other right, power or remedy then or thereafter existing.

11.4 **Business Purpose:** That Mortgagor represents and agrees that the purpose for which Mortgagor has undertaken the Secured Obligations is for business purposes. It is the intent of Mortgagor and Mortgagee in the execution of this Mortgage and all other Security Documents to contract in strict compliance with any usury laws governing the Secured Obligations if and to the extent applicable. In furtherance thereof, Mortgagee and Mortgagor stipulate and agree that none of the terms and provisions contained in this Mortgage, the Financing Agreement, or any of the Security Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged under applicable laws governing the Secured Obligations. Mortgagor or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Secured Obligations shall never be liable for interest on the Secured Obligations at a rate in excess of the maximum interest that may be lawfully charged under applicable laws. The provisions of this Section shall control over all other provisions of the Financing Agreement and any other instrument executed in connection herewith that may be in apparent conflict therewith.

11.5 **Partial Invalidity of Lien:** If the lien or security interest secured by this Mortgage is invalid or unenforceable as to any part of the Secured Obligations, or if such lien or security interest is invalid or unenforceable as to any part of the Property, any unsecured portion of such Secured Obligations shall be completely paid prior to the payment of the

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remaining and secured or partially secured portion of the Secured Obligations. All payments made on the Secured Obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Secured Obligations which is not secured by the lien or security interest of this Mortgage.

11.6 **Partial Invalidity of Mortgage:** The invalidity or unenforceability in any particular circumstance of any provision of this Mortgage shall not extend beyond such provision or such circumstance, and no other provision of this instrument shall be affected thereby.

11.7 **Disclaimer or Waiver:** Any failure by Mortgagee to insist, or any election by Mortgagee not to insist, upon strict performance by Mortgagor of any of the terms, provisions or conditions of this Mortgage or any Security Document shall not be deemed to be a waiver of same or of any other covenant, term, condition, agreement or provision thereof, and Mortgagee shall have the right at any time or times thereafter to insist upon strict performance by Mortgagor of any and all of such covenants, terms, provisions and conditions of this Mortgage or any Security Document.

11.8 **Payment on Account:** Acceptance by Mortgagee of any payment in an amount less than the amount then due on the Secured Obligations shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a default. Until all Secured Obligations have been paid, Mortgagee shall be entitled to exercise all rights conferred upon it in this instrument upon the occurrence of an Event of Default.

11.9 **Performance at Mortgagor's Expense:** The cost and expense of performing or complying with any and all of the obligations of Mortgagor hereunder shall be borne solely by Mortgagor, and no portion of such cost and expense shall in any way and to any extent be credited against any installment or portion of the Secured Obligations.

11.10 **Further Assurances:** Mortgagor, upon the request of Mortgagee, will execute, acknowledge, deliver, record and/or file such further instruments and perform such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purpose of this Mortgage and any other Security Document and to subject to the liens and security interest hereof and thereof any Property intended to be covered thereby, including specifically but without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the Property, provided that all such instruments and acts will not increase Mortgagor's obligations.

11.11 **Covenants Running with the Land:** All Secured Obligations contained herein or in the other Security Documents are intended by the parties to be, and shall be construed as, covenants running with the Mortgaged Premises.

11.12 **Successors and Assigns:** All of the terms, covenants and agreements contained in this Mortgage and the other Security Documents shall be binding upon Mortgagor and Mortgagor's successors, assigns, legal representatives, heirs, executors and administrators (provided

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that nothing in this Section shall imply that any assignment or transfer may be made except in compliance with the foregoing provisions of this Mortgage restricting such assignment or transfer) and shall inure to the benefit of Mortgagee and Mortgagee's successors and assigns.

11.13 **Relation after Foreclosure Sale:** Any foreclosure sale of the Mortgaged Premises under this Mortgage shall, without further notice create the relation of landlord and tenant at sufferance between the purchaser at such sale as landlord, and Mortgagor as tenant: and upon failure to surrender possession after acquisition of title by the Mortgagee and demand, Mortgagor may be removed by a writ of possession upon suit by such purchaser.

11.14 **No Joint Venture:** It is the intention of Mortgagor and Mortgagee that nothing herein contained shall be deemed to create any partnership, joint venture, co-venture or other relationship other than that of debtor and creditor.

11.15 **Marshaling of Assets:** Mortgagor hereby waives all rights of marshaling of assets in the event of any foreclosure of the liens and security interest hereby created. Upon any foreclosure of this Mortgage, Mortgagor, or any person claiming any part of the Mortgaged Premises by, through or under Mortgagor, shall not be entitled to a marshaling of Mortgagor's assets, including the Mortgaged Premises, or a sale in inverse order of alienation.

11.16 **Taxation:** If after the date of this instrument any state or local law is passed in the situs of the Property which deducts any lien on the Mortgaged Premises from the value of either the Mortgaged Premises or Collateral for the purposes of taxation of Mortgages or debts secured thereby, or such law changes the manner of collection of any such taxes so as to affect the interest of Mortgagee, then in any such event, unless Mortgagor makes timely payment of any and all such amounts when due so as to prevent any adverse affect on the interest of Mortgagee, the whole sum secured by this instrument with interest thereon shall at the option of Mortgagee, immediately become due, payable and collectible without notice to any party. Mortgagor shall pay all Mortgage taxes imposed by applicable law.

11.17 **Fixture Filing:** Portions of the hereinabove described Collateral are goods which are or shall become fixtures on the hereinabove described Realty, and the parties hereto expressly covenant and agree that the filing of this Mortgage in the real estate records of Cook County in the State shall also operate, at the time of such filing, as a financing statement or a fixture filing in accordance with the provisions of the Code.

11.18 **Nature of the Instrument:** This instrument will be deemed to be and may be enforced from time to time as an assignment of leases and cash collateral, chattel mortgage, contract, financing statement, real estate mortgage or security agreement if appropriate under applicable state law. Because this instrument is effective as a mortgage, as a security agreement, and as a combination of both, any default under any provision herein shall constitute a default under both the mortgage and the security agreement. This instrument may be foreclosed as to any of the Property (and may be foreclosed against less than all of the tracts included in the Property but maintained as a continuing second lien against all tracts not made subject to foreclosure proceedings) in any manner permitted by the laws of the State or of any other state in

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which any part of the Property is situated, upon any occurrence of an Event of Default by reason of this instrument being effective as a mortgage as well as a mortgage and security agreement, and any judicial foreclosure suit may be brought by Mortgagee. This instrument contains the entire agreements, covenants, representations, warranties, undertakings, understandings, acceptances and approvals of Mortgagor. No variations, modifications or changes herein or hereof shall be effective or binding upon either party unless set forth in a document duly executed by or on behalf of both parties. Time is of the essence as to Mortgagor's agreements to pay all Secured Obligations and to perform and observe all obligations hereunder.

11.18 Notices: Each party hereto requests that a copy of any notice of default and a copy of any notice of sale hereunder be given to each person who is a party hereto at the address of such person set forth herein, all at the same time and in the same manner as would be required if a separate request therefor had been filed by each of such persons.

All notices or other communications required or permitted hereunder shall be in writing (including cable, telecopy or telex) and shall be given to such party at its address, telecopier number or telex number set forth below or such other address, telecopier number or telex as such party may hereafter specify by notice to Mortgagor and Mortgagee given by United States registered or certified mail, by telegram or by other telecommunication device capable of creating written record of such notice and its receipt. Notices hereunder shall be effective when received and shall be addressed:

If to Mortgagor: % The Prime Group, Inc.
77 West Wacker Drive, Suite 3900
Chicago, IL 60601
Attention: Michael W. Reschke
Telecopier No.: (312) 782-5867

With Copy to: The Prime Group, Inc.
77 West Wacker Drive, Suite 3900
Chicago, Illinois 60601
Attention: Robert J. Rudnik
Telecopier No.: (312) 917-4234

and to: Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601
Attention: Wayne D. Boberg, Esq.
Telecopier No.: (312) 558-5700

If to Mortgagee: Society National Bank
127 Public Square, 4th Floor
Cleveland, Ohio 44114-1306
Attention: Michael L. Kauffman
Telecopier No.: (216) 689-4997

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With Copy to: Rudnick & Wolfe
203 N. LaSalle Street, Suite 1800
Chicago, Illinois 60601-1293
Attention: John T. Cusack, Esq.
Telecopier No.: (312) 236-7516

Each such notice, request or other communication shall be effective (i) if given by telecopier, when such telecopy is transmitted to the telecopier number specified in this Section and a confirmation of such telecopy has been received by the sender (ii) if given by telex, when such telex is transmitted to the telex number specified in this Section and the answerback is received by sender, (iii) if given by mail, five (5) days after such communication is deposited in the mail, registered with return receipt requested, addressed as aforesaid or (iv) if given by any other means, when delivered at the addresses specified, in this Section.

11.20 **Consent of Mortgagee:** No consent or agreement of Mortgagee described herein shall be effective or binding upon Mortgagee unless given in writing by Mortgagee.

11.21 **Headings:** The article, section and subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define or be used in construing the text of such articles, sections or subsections.

11.22 **Meanings:** Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. If more than one person executes this instrument as Mortgagor, the duties under this instrument shall be joint and several.

11.23 **No Personal Liability:** Notwithstanding anything to the contrary contained herein or in any of the other Security Documents, except as otherwise provided in this Section, none of Mortgagor's shareholders, officers, directors, partners, employees, agents or other representatives who are natural persons ("Other Persons") shall have any personal liability for the Secured Obligations under this Mortgage, or for the obligation to observe, perform or discharge any of the terms, covenants or conditions contained herein or in any of the other Security Documents and, except as otherwise provided in this Section, no attachment, execution, writ or other process shall be sought and no judicial proceeding shall be initiated by or on behalf of Mortgagee against any Other Person as a result of a breach or default under this Mortgage or under any of the other Security Documents, except to the extent that such attachment, execution, writ or judicial proceeding shall be necessary to enforce any of the rights, remedies or recourse of Mortgagee against or with reference to the Mortgaged Premises; provided, however, that nothing herein contained shall be construed to: (i) be a release or impairment of Mortgagor's or of any guarantor's, any other party's or any Other Person's obligations hereunder or under any of the other Security Documents, (ii) prevent the Mortgagee from exercising and enforcing, consistent with the provisions of this Section, any other remedy allowed at law or in equity or by statute or by the terms hereof or any of the other Security Documents or (iii) prevent Mortgagee from recovering from Mortgagor (or any guarantor or any such Other Person), or limit Mortgagee's recourse against Mortgagor (or any such Other Person) for, any

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losses, damages or costs (including, without limitation, reasonable legal expenses) incurred by Mortgagee as a result of any willful act or omission in bad faith or any fraudulent act or omission by Mortgagor or any Other Person. Nothing in this Section shall be deemed to increase the liability of any Other Person beyond that which such Other Person may have under applicable law.

11.24 Future Advances: The total indebtedness secured by this Mortgage shall not exceed Sixty Million Dollars (\$60,000,000.00) at any one time.

11.25 Role of Trustee: Notwithstanding anything contained in this Mortgage to the contrary, Mortgagor and Mortgagee acknowledge and agree that this Mortgage is entered into and executed for the benefit of Trustee, not personally but solely as trustee under the Indenture; and that all covenants, conditions and conditions to be performed hereunder by Trustee, as Mortgagee are undertaken solely as trustee under the Indenture and not individually, and that no personal liability shall be asserted or be enforceable against Trustee by reason of any of the covenants, statements, representations or warranties contained in this Mortgage; and that Trustee, as Mortgagee may act or decline to act only in accordance with the terms of the Indenture, including any protections or indemnities contemplated thereunder.

11.26 Bank to Act for Mortgagee: The Bank may act on behalf of the Mortgagee without the consent or joint action of the Trustee with respect to any matter set forth in this Mortgage or any other Security Document, including, without limitation, (i) the exercise of any remedies hereunder, including, without limitation, (i) the foreclosure of the lien of this Mortgage and the sale of the Mortgaged Premises following any such foreclosure action, acceptance of a deed in lieu of foreclosure or any other transfer of the Security Documents or the Mortgaged Premises to the Bank, its affiliate or any third party and, if the Bank or its affiliate takes ownership of the Mortgaged Premises, then any subsequent transfer, sale or other disposition by the Bank or its affiliate of all or part of any direct or indirect ownership interest in the Mortgaged Premises to any other person pursuant to any terms and conditions which the Bank deems appropriate, in its sole discretion, (ii) the declaration of defaults or Events of Default, (iii) the release, in whole or in part, of any collateral or other property, and (iv) any consent, approval or waiver required or permitted hereunder. Any such action by the Bank will be deemed the act of the Mortgagee without need of further inquiry by any other party. The Trustee may not take any action as Mortgagee under this Mortgage without the prior written consent of the Bank. The Bank shall indemnify the Trustee against and hold the Trustee harmless from any and all claims, demands, costs, damages, liabilities, expenses (including reasonable fees of counsel), actions, suits and judgments arising out of or as a result of any actions taken by the Bank on behalf of Mortgagee pursuant to this Section, whether with respect to this Mortgage or any other Security Document, except for such liability as is adjudicated to have resulted from the negligence or willful misconduct of the Trustee.

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IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage as of day and year first above written.

MORTGAGOR:

ENTERPRISE CENTER VII, L. P., an Illinois limited partnership

By: **K-P ENTERPRISE CENTERS LIMITED PARTNERSHIP,** an Illinois limited partnership, its General Partner

By: **K-P ENTERPRISE CENTERS, INC.,** an Illinois corporation, its General Partner

By: *Christopher J. Sultz*
Name: Christopher J. Sultz
Title: Vice President

BANK:

SOCIETY NATIONAL BANK

By: *Michael I. Kauffman*
Name: Michael I. Kauffman
Title: Vice President

TRUSTEE:

COLE TAYLOR BANK, as Trustee under that certain Indenture of Trust dated as of June 15, 1992

By: *[Signature]*
Name: *[Name]*
Title: *[Title]*

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BANK ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that Michael L. Kauffman, personally known to me to be the Vice President of Society National Bank, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument, duly authorized on behalf of such partnership, as his free and voluntary act and the free and voluntary act of such partnership for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 12 day of December, 1995.

Kathy H. Wilson

Name: _____
Notary Public

My Commission Expires: 12/1/98

OFFICIAL SEAL
KATHY H. WILSON
NOTARY PUBLIC - STATE OF ILLINOIS
My Commission Expires Dec. 1, 1998

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TRUSTEE ACKNOWLEDGEMENT

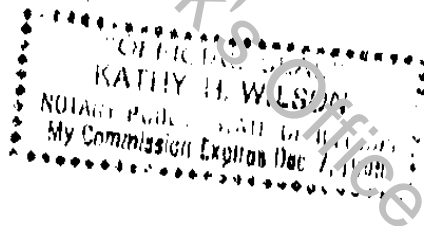
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that David G. ..., personally known to me to be the Vice President of Cole Taylor Bank, as Trustee under that certain Indenture of Trust dated as of June 15, 1992, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and sealed such instrument, duly authorized on behalf of such partnership, as his free and voluntary act and the free and voluntary act of such partnership for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 12 day of December, 1995.

Kathy H. Wilson
Name: _____
Notary Public

My Commission Expires:
12/31/98



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EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

LOTS 2 AND 16 IN CHICAGO ENTERPRISE CENTER SUBDIVISION RECORDED MAY 25, 1993 AS DOCUMENT NUMBER 93397195 BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 AND THE SOUTHWEST 1/4 OF SECTION 31, TOWNSHIP 37 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE SOUTHWESTERLY LINE OF THE RIGHT-OF-WAY OF THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR INGRESS AND EGRESS AS CREATED BY THE PLAT OF CHICAGO ENTERPRISE SUBDIVISION RECORDED MAY 25, 1993 AS DOCUMENT NUMBER 93397195 OVER AND ACROSS LOT 17 AND PARTS OF LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 AND 16 IN SAID SUBDIVISION.

PERMANENT INDEX NUMBER: 26-31-303-024
 26-31-303-010

Street address: Chicago Enterprise Center, 13535 South Torrence, Chicago, IL.

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EXHIBIT "B"

PERMITTED EXCEPTIONS

1. Taxes for the years 1994 and 1995 not yet due and payable.
2. Liens and security interests of mortgagee.
3. Rights of Existing Tenants.
4. Easement in favor of the Sanitary District of Chicago for construction, reconstruction, repair, maintenance and operation of an intercepting sewer, created by instrument recorded March 25, 1937, as Document Number 11968808. (Affects Lot 16)
5. Easement in favor of the Sanitary District of Chicago for construction, reconstruction, repair, maintenance and operation of an intercepting sewer, created by instrument recorded March 25, 1937, as Document Number 11968812. (Affects Lot 16)
6. Party Wall and Party Wall Rights along the east line of Lot 2 and the north line of Lot 16, as disclosed by plat of subdivision recorded on May 25, 1993 as Document 93397195.
7. Easement for ingress and egress over the west 12.5 feet of Lot 2, as shown by plat of subdivision recorded on May 25, 1993 as Document 93397195.
8. Easement for railroad purposes over portions of Lots 2 and 16, as shown by plat of subdivision recorded on May 25, 1993 as Document 93397195.
9. Easement for ingress and egress over the west 12.5 feet at the very northwest corner of Lot 16, as shown by plat of subdivision recorded on May 25, 1993 as Document 93397195.
10. Declaration of Covenants, Conditions, Restrictions and Easements for Chicago Enterprise Center recorded February 2, 1995 as Document 95080794 relating to the use of the land, building type-cost quality and size, common areas, plan approval, maintenance, easements and related matters.
11. Matters disclosed by a current survey that do not materially affect title and are approved by mortgagee.
12. Information and disclosures as set forth in Environmental Disclosure Document for Transfer of real property recorded June 28, 1990 as Document No. 90310864.

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EXHIBIT C

Equipment

Location	# of Links	Manufacturer	Capacity	Serial #	ENTERPRISE CENTER
Building A - Bay 1	1	Whiting	10 Ton	6127	EC VII
Bay 1	1	Whiting	10 Ton	8125	
Bay 1	1	Whiting	10 Ton	8124	
- Bay 2	1	Milwaukee	10 Ton	1547	
- Bay 2	1	P & H	10 Ton	C20890	
- Bay 3	1	Whiting	10 Ton	8123	
- Bay 3	1	Milwaukee	10 Ton	1542	
- Bay 4	1	Milwaukee	10 Ton	1595	
- Bay 4	1	Milwaukee	10 Ton	1594	
- Bay 5	1	Milwaukee	10 Ton	E3828	
- Bay 5	1	Milwaukee	10 Ton	E3835A	
- Bay 6	1	Milwaukee	10 Ton	1544	
- Bay 6	1	Milwaukee	10 Ton	1546	

CHICAGO ENTERPRISE CENTER
OVERHEAD CRANES - December 5, 1995

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CHICAGO ENTERPRISE CENTER
OVERHEAD CRANES - December 5, 1995

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Location

of Units

Manufacturer

Capacity

Serial #

ENTERPRISE
CENTER

Building P

1

P & H
P & H

15 Ton
40 Ton

C1-25655
C1-25654

EC VII

Property of Cook County Clerk's Office