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95143513

This instrument was prepared by and shall be returned to:

Scott A. Lindquist  
8000 Sears Tower  
Chicago, Illinois 60606



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Property

First American Title Order # 8881406 Above Space For Recorder's Use Only

## MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT, AND FIXTURE FILING ("Mortgage") is made as of this 27th day of February, 1995, by and between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee under Trust Agreement dated March 23, 1994, and known as Trust No. 118105-04 ("Mortgagor"), and ORIX USA CORPORATION, a Delaware corporation ("Mortgagee").

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### WITNESSETH:

WHEREAS, Mortgagee, Mortgagor and Chi-Town Partners, L.P., a Delaware limited partnership, the sole beneficiary of Mortgagor ("Beneficiary") are parties to a Loan Agreement of even date herewith (the "Loan Agreement") pursuant to which Mortgagee has agreed to make a loan to Mortgagor in the aggregate principal amount of up to \$12,000,000 (the "Loan");

WHEREAS, as evidence of the indebtedness incurred under the Loan, Mortgagor and Beneficiary have executed and delivered to Mortgagee a Note of even date herewith, payable to Mortgagee, in the original principal amount of TWELVE MILLION DOLLARS (\$12,000,000.00) (the "Note"), in and by which Note Mortgagor and Beneficiary promise to pay the said principal sum, or so much thereof as has been advanced, and interest at the rate and in installments as provided in the Note, with a final payment of the outstanding principal balance and accrued and unpaid interest being due on or before the fifth anniversary of the date of this Mortgage, subject to Mortgagor's right to extend such maturity date in accordance with the provisions of Section 4.4 of the Loan Agreement. All of said principal and interest is made payable at

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such place as the holder or holders of the Note (the "Holders") may from time to time, in writing appoint, and in absence of such appointment, then by bank wire to the Mortgagee's account at The Sanwa Bank Ltd., New York Branch, ABA # 026-009823, for Account: ORIX USA Corporation #006089-0010.

NOW, THEREFORE, Mortgagor, in consideration of the Loan evidenced by the Note and to secure the timely payment of both principal and interest in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this Mortgage, and to secure the performance of the covenants and agreements to be performed by Mortgagor or Beneficiary contained herein and in the Note, the Loan Agreement and each of the other documents evidencing and securing the Loan (the Note, Loan Agreement and such other documents being collectively referred to herein as the "Loan Documents"), does by these presents GRANT, CONVEY AND MORTGAGE unto Mortgagee, its successors and assigns, the real estate described in Exhibit A attached hereto (the "Land") and made a part hereof and all of its estate, right, title and interest therein, situated, lying, and being in the City of Chicago, County of Cook and State of Illinois, which, with the property hereinafter described, is referred to as the "Premises";

TOGETHER with all easements, rights of way, strips and gores of land, vaults, streets, alleys, water rights, mineral rights, and rights used in connection with the Land or to provide a means of access to the Land, and all tenements, hereditaments and appurtenances thereof and thereto pertaining or belonging, and all underground and overhead passageways and licenses in connection therewith;

TOGETHER with all leasehold estates, right, title and interest of the Mortgagor in any and all leases, subleases, management agreements, arrangements, concessions, or agreements, written or oral, relating to the use and occupancy of the Land and improvements or any portion thereof located thereon, now or hereafter existing or entered into;

TOGETHER with all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily) and all accounts receivable derived from the operation of the Premises and other receivables (including, without limitation, revenues, rentals, rent equivalents, receipts, income and profits from guest rooms, meeting rooms, food and beverage facilities, vending machines, telephone systems, and any other items of revenue, receipts and/or income);

TOGETHER with any and all buildings and improvements now or hereafter erected on the Land, including, but not limited to, the

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fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements and all tangible personal property owned by Mortgagor now or any time hereafter located on or at the Land or used in connection therewith, including, but not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating, boilers, refrigerating, electronic monitoring, water, lighting, power, sanitation, waste removal, entertainment, recreational, window or structural cleaning rigs, maintenance and all other equipment of every kind), lobby and all other indoor or outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), furnishings, appliances, inventory, rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, venetian blinds, partitions, chandeliers and other lighting fixtures, and all other fixtures, apparatus, equipment, furniture, furnishings, and articles used in connection with the operation of the improvements on the Land, it being understood that the enumeration of any specific articles of property shall in nowise result in or be held to exclude any items of property not specifically mentioned;

TOGETHER with all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereinafter acquire in the Premises, and any and all awards made for the taking by eminent domain, or by any proceedings or purchase in lieu thereof, of the whole or any part of the Premises, including without limitation any awards resulting from the change of grade of streets and awards for severance damages.

TOGETHER with all other property (real or personal) owned by Mortgagor from time to time.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

Mortgagor covenants that it is lawfully seized of the Premises, that the same are unencumbered except for the Permitted Exceptions (as defined in the Loan Agreement), and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

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

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

Maintenance, Repair and Restoration of Improvements, Payment of Liens, Etc.

1. Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed if insurance proceeds are available to Mortgagor pursuant to Section 13.1 of the Loan Agreement; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien; provided, however, that Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim upon furnishing (i) to First American Title Insurance Company or such other title insurance company approved by Mortgagee such security or indemnity as it may require to induce said title insurance company to issue its title insurance commitments or its mortgage title insurance policies insuring against all such claims or liens, or (ii) to Mortgagee such other security with respect to such claim as may be reasonably acceptable to Mortgagee; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises and comply in all material respects with all requirements of all Loan Documents subject to Mortgagor's rights under Section 2 hereof and Section 12.1 of the Loan Agreement, and, upon request, exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) complete in accordance with the terms of the Loan Agreement any improvements now or at any time in the process of erection upon the Premises and any renovation of existing buildings, including but not limited to the Renovation Construction (as defined in the Loan Agreement); (e) comply in all material respects with all then applicable requirements of law, municipal ordinances or restrictions of record with respect to the Premises and the use thereof; (f) initiate or acquiesce in no zoning variation or reclassification without Mortgagee's written consent; (g) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note; (h) make no material alterations (which shall be deemed to mean structural changes or improvements to the Premises or alterations affecting the overall design or capacity of the mechanical, plumbing, electrical and other systems of the Premises, in either case costing in excess of \$250,000) to or demolish any portion of the Premises, except as required by law or municipal ordinance or as contemplated by the Loan Agreement; and (i) suffer or permit no change in the general nature of the occupancy of the Premises without Mortgagee's written consent.

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## Payment of Taxes

2. Except to the extent that Mortgagee exercises the option described in Section 4 below, Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the Premises ("Impositions") when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. Mortgagor, in good faith and at Mortgagor's own expense, may contest the amount or the validity of any Imposition by appropriate legal proceedings, provided that (i) such proceedings shall operate to suspend the collection thereof or other realization thereon and neither the Secured Property nor any part thereof, or interest therein or any income therefrom, would, by reason of such suspension, be forfeited or lost, or subjected to any lien, encumbrance or charge and neither Mortgagor nor Mortgagee would, by reason thereof, be subject to civil or criminal liability; and (ii) during such contest Mortgagor shall, at the option of Mortgagee, provide security reasonably satisfactory to Mortgagee, assuring the payment of the contested Imposition and of any additional charge, penalty or expense arising from or incurred as a result of such contest and any third party, out-of-pocket costs or expenses incurred or to be incurred by Mortgagee in connection with or as a consequence of Mortgagor's contest; provided, that if at any time nonpayment of any Imposition would result in the delivery of a tax deed to the Premises or any portion thereof or similar instrument, then Mortgagor shall pay such Imposition (together with all applicable fines, penalties and other governmental charges and any interest or costs with respect thereto) in time to prevent the delivery of such deed or instrument.

## Insurance

3. (a) Mortgagor shall maintain casualty, liability and other policies of insurance relating to the Premises as required pursuant to Section 6.1(b)(3) of the Loan Agreement. All policies of insurance to be furnished hereunder shall (i) be in forms, companies and amounts satisfactory to Mortgagee, (ii) at all times prior to and during foreclosure and at any time prior to confirmation of the foreclosure sale, bear mortgagee clauses or other loss payable clauses in favor of and satisfactory to Mortgagee, including a provision requiring that the coverage thereby shall not be terminated or materially modified without thirty (30) days prior written notice to Mortgagee, and (iii) include waivers by all insurers of all rights of subrogation against any named or additional insured, the indebtedness secured hereby and the Premises. Mortgagor shall deliver all policies, including additional and renewal policies, together with evidence of payment of premiums thereon, to Mortgagee, and in the case of all insurance about to expire, shall deliver renewal policies not

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less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard, non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance.

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

(b) Mortgagor hereby assigns to Mortgagee the unearned premiums on all insurance policies furnished hereunder or under the Loan Agreement and consents to the cancellation of such policies (and the refund of all unearned premiums to Mortgagee) if Mortgagee purchases the Premises at foreclosure sale. Any such unearned premiums shall be applied against sums due to Mortgagee under the Note or hereunder. Upon a foreclosure of this Mortgage or other transfer of title to the Premises in full or partial payment of the Loan, all right, title, and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee or other person designated by the holder of the Note.

## Escrow Requirements

4. Notwithstanding anything to the contrary in any Loan Document, Mortgagee shall have the right at any time after an Event of Default to require Mortgagor to pay to Mortgagee, at the time of each payment of a monthly installment of interest or principal under the Note, a sum equal to one-twelfth of the estimated annual amount of all Impositions, and, at Mortgagee's further option, a sum equal to one-twelfth of the annual amount of any other recurring charges with respect to the Secured Property (such as insurance premiums), so that at least one month before the due date of each such charge Mortgagee shall hold sufficient funds to pay each such charge in full. The determination of the amount so payable and of the fractional part thereof to be deposited with Mortgagee, so that the aggregate of such deposit shall be sufficient for this purpose, shall be made by Mortgagee in its sole discretion. Such amounts shall be held by Mortgagee, but not in trust and without interest, and applied

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to the payment of such charges in such order or priority as Mortgagee shall determine, on or before the respective dates on which the same or any of them would become delinquent. If at any time before the date payment of any such charge is due, Mortgagee determines that the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, then Mortgagor, within ten days after demand, shall deposit the amount of the deficiency with Mortgagee. This Section 4 does not affect any right or remedy of Mortgagee under any provisions of this Mortgage or of any statute or rule of law to pay any such amount and to add the amount so paid, together with interest at the Default Rate (as defined in the Loan Agreement), to the indebtedness secured by this Mortgage, as more fully described in Section 11. Upon the occurrence of an Event of Default, Mortgagee may, at its option and without notice to Mortgagor, apply any funds held pursuant to this Section in payment of any of the obligations described above or to any unpaid principal or interest under the Note.

## Mortgagee's Interest in and Use of Deposits

5. Upon the occurrence of an Event of Default (as defined in Section 13 hereof), Mortgagee may, at its option, without being required to do so, apply any moneys at the time on deposit pursuant to any provision of this Mortgage, as any one or more of the same may be applicable, on any of Mortgagor's obligations herein or in the Note or Loan Documents contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that neither Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments or insurance premiums any amount so deposited unless Mortgagor, while no Event of Default exists hereunder, shall have requested said depository in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes and assessments or insurance premiums.

## Adjustment of Losses with Insurer and Application of Proceeds of Insurance

6. Mortgagor shall give Mortgagee prompt notice of any casualty affecting the Premises. In the event of any loss or damage to any portion of the Premises due to fire or other casualty, the adjustment of claims and the application of all

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insurance proceeds shall be governed by Section 13.1 of the Loan Agreement. If Mortgagee can and does elect to apply to the indebtedness secured hereby all insurance proceeds (after deduction of all expenses of collection and settlement, including attorneys' and adjusters' fees and expenses), and if such proceeds are insufficient to pay such amount in full, then Mortgagee may at its option declare the balance remaining unpaid on the Note and this Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Note as in the case of an Event of Default. In case Mortgagee cannot or does not elect to apply the insurance proceeds to the indebtedness secured hereby as set forth in the preceding sentence, such insurance proceeds shall be used to reimburse Mortgagor for the cost of rebuilding or restoration of the Premises in the manner set forth in Section 13.2 of the Loan Agreement.

In case of the occurrence of any Event of Default under this Mortgage which would entitle Mortgagee to declare the whole of the principal sum secured hereby to become due and payable in accordance with Section 13 of this Mortgage, whether or not such Event of Default shall have occurred after Mortgagor may theretofore have commenced restoration or rebuilding or let contracts or otherwise obligated itself for the payment of any of the costs thereof or may theretofore otherwise have become entitled to receive reimbursement out of insurance proceeds, and whether or not foreclosure proceedings may have commenced, Mortgagee shall be relieved of any obligation for reimbursement of Mortgagor, and the proceeds of any such insurance policy or policies, if not theretofore applied to reimbursement for restoration or rebuilding, may, at the option of Mortgagee, be applied: (a) in payment or reduction of the indebtedness secured hereby; or (b) in payment or reduction of the amount due in accordance with any judgment of foreclosure and any supplemental judgments that may be entered in any such proceedings; or (c) to payments directly to persons furnishing and supplying labor, services and materials for such restoration or rebuilding, and the balance, if any, after full payment and satisfaction of all such indebtedness, shall be paid to the owner of redemption if it shall then be entitled to the same or as the court may direct. In case of the foreclosure of this Mortgage, the court in its judgment may provide that Mortgagee, as judgment creditor, may cause a new or additional loss clause to be attached to each of said policies making the loss thereunder payable to it as such judgment creditor; and any such foreclosure judgment may further provide, unless the right of redemption has been waived pursuant to Section 15-1601(b) of the Illinois Mortgage Foreclosure Law, as amended from time to time ("Act"), that in case of redemption under said judgment, pursuant to the Act, then, and in every such case, the redeemer may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such

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redemptor. In the event of foreclosure sale, Mortgagee is hereby authorized, but not required, without the consent of Mortgagor, to assign or cause a receiver to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

## Stamp Tax

7. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, or recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note, or recording of this Mortgage.

## Prepayment

8. Mortgagor shall not have the privilege of making prepayment on the principal of the Note in whole or in part, except as otherwise set forth in Section III.C of the Note and Section 4.7 of the Loan Agreement.

## Effect of Extensions of Time and Amendments

9. If the payment of the indebtedness secured by this Mortgage or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release (subject to the limitations of Section 37 hereof). Any person or entity taking a junior mortgage or other lien upon the Premises or any interest therein, shall take said lien subject to the rights of Mortgagee herein to amend, modify, and supplement this Mortgage, the Note, and each of the Loan Documents, and to vary the rate of interest on the Loan and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Loan, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Paragraph contained shall be construed as waiving any provision contained herein which

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provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed, or encumbered.

## Effect of Changes in Laws Regarding Taxation

10. In the event of the enactment after this date of any law of the State of Illinois or any political subdivision thereof deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by Mortgages or the Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the Holders, then, and in any such event, Mortgagor, upon thirty days written notice by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if (a) it would be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness (without any prepayment penalty) secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

## Mortgagee's Performance of Defaulted Acts; Protective Advances; Subrogation

11. After the occurrence of an Event of Default, Mortgagee may, but need not, make any payment or perform any act herein or therein required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on any Prior Encumbrances (as hereinafter defined), if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment.

In the event Mortgagee shall elect, pursuant to this Section 11, to undertake to perform Mortgagor's obligations for restoration or rebuilding as required of Mortgagor by Section 6 or Section 20 of this Mortgage or the Loan Agreement, Mortgagee shall not be required to restore or rebuild the improvements to any greater extent than will be covered by available proceeds or estimated proceeds of insurance or condemnation award, provided, that in the event the available proceeds are sufficient to pay the entire indebtedness in full, Mortgagor shall have the option to direct Mortgagee to apply the available proceeds to payment of the entire indebtedness in full. An estimate of available proceeds may be made if at such time as Mortgagee is prepared to arrange for plans, solicit bids, let a contract, or otherwise

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proceed with restoration, the loss may not have been adjusted with insurers or the court may not have finally determined the amount of a condemnation award. If Mortgagee shall have expended any amount for restoration or rebuilding in excess of the actual or estimated proceeds of insurance or condemnation award for the purpose of such repair or replacement, the amount of such excess ("Excess Restoration Cost") so expended by Mortgagee shall constitute additional indebtedness hereunder and shall be secured by the lien hereof.

All reasonable advances, disbursements and expenditures (collectively "advances") made by Mortgagee before and during foreclosure, prior to sale, and where applicable, after sale, for the following purposes, including interest thereon at the Default Rate, are hereinafter referred to as "Protective Advances":

- (a) advances pursuant to this Section 11;
- (b) Excess Restoration Costs;
- (c) advances in accordance with the terms of this Mortgage to: (i) protect, preserve or restore the Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b) (5) of Section 15-1302 of the Act;
- (d) payments of (i) when due installments of principal, interest or other obligations in accordance with the terms of any Prior Encumbrance; (ii) when due installments of real estate taxes and other Impositions; (iii) other obligations authorized by this Mortgage; or (iv) with court approval any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, all as referred to in the first paragraph of this Section of this Mortgage and in Section 15-1505 of the Act;
- (e) attorneys' fees and other reasonable costs incurred in connection with the foreclosure of this Mortgage as referred to in Sections 1504 (d) (2) and 15-1510 of the Act and in connection with any other litigation or administrative proceeding to which the Mortgagee may be or become or be threatened or contemplated to be a party, including probate and bankruptcy proceedings, or in the preparation for the commencement or defense of any such suit or proceeding; including filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, Torrens certificates, appraisals, and

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similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Premises;

(f) Mortgagee's fees and reasonable costs, excluding internal costs of Mortgagee (including, but not limited to costs of in-house counsel), arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b) (1) of Section 15-1508 of the Act;

(g) payment by Mortgagee of Impositions as required of Mortgagor by Sections 2 and 4 of this Mortgage;

(h) Mortgagee's advances of any amount required to make up a deficiency in deposits for installments of Impositions, as required of Mortgagor by Sections 2 and 4 of this Mortgage;

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

(j) expenses incurred and expenditures made by Mortgagee for any one or more of the following:

(i) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, without regard to the limitation to maintaining of insurance in effect at the time any receiver or mortgagee takes possession of the Premises imposed by Subsection (c) (1) of Section 15-1704 of the Act; (ii) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, reciprocal easement agreement, agreement with any adjoining land owners or other instruments creating covenants or restrictions for the benefit of or affecting the Premises; (iii) operating deficits incurred by Mortgagee in possession or reimbursed by Mortgagee to any receiver; (iv) costs incurred by Mortgagee for completion of construction as may be authorized by the Loan Agreement; (v) reasonable fees and costs incurred to obtain an environmental assessment report relating to the Premises; and (vi) any monies expended in excess of the face amount of the Note.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from

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the time the Mortgage is recorded, pursuant to Subsection (b) (5) of Section 15-1302 of the Act.

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

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

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

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

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

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

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

All reasonable moneys paid for Protective Advances or any of the other purposes herein authorized and all reasonable expenses paid or incurred in connection therewith, including attorneys' fees, and any other moneys advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

Should the proceeds of the Note or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any senior mortgage (as described in Subsection (i) of Section 15-1505 of the Act) or any other lien or encumbrance upon the Premises or any part thereof on a parity with or prior or superior to the lien hereof ("Prior Encumbrance"), then as additional security hereunder, the Mortgagee shall be subrogated

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to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

## Mortgagee's Reliance on Tax Bills, Etc.

12. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

## Acceleration of Indebtedness in Case of Default

13. The occurrence of any one or more of the following shall constitute an "Event of Default" hereunder:

(a) If Mortgagor shall default in the payment of principal when due under the Note and fails to cure such default within five (5) days after notice thereof from Lender, except that no notice or grace period shall apply if Mortgagor fails to make two principal payments during any twelve month period or fails to pay principal due at maturity; or

(b) If Mortgagor shall default in the payment of interest when due under the Note and such default shall continue after notice thereof from Mortgagee for five (5) days, or if Mortgagor shall default in the performance of any of its other covenants, agreements and obligations hereunder involving the payment of money and shall fail to cure such default within fifteen (15) days after written notice thereof from Mortgagee; or

(c) If Mortgagor defaults in the performance of any of its non-monetary covenants, agreements and obligations under this Mortgage and fails to cure such default within thirty (30) days after written notice thereof from Mortgagee; provided, that Mortgagee shall extend such thirty day period up to sixty (60) additional days if (i) Mortgagee determines in good faith that (A) such default cannot be cured within such thirty day period but can be cured within such additional sixty days, (B) no lien or security interest created by the Loan Documents will be impaired prior to the completion of such cure, and (C) Mortgagee's immediate exercise of remedies provided herein or by law is not necessary for the preservation of the Property or Mortgagee's liens or security interests therein, and (ii)

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Mortgagor has commenced its efforts to cure within such thirty day period and thereafter diligently pursues the same to completion;

(d) If any default shall have occurred under the Note, Loan Agreement, or any of the other Loan Documents and the default shall not have been cured within any applicable grace period; or

(e) If any unpermitted transfer of title described in Section 28 hereof shall occur.

Upon the occurrence of any Event of Default hereunder, the whole of said principal sum hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, without any presentment, demand, protest or notice of any kind to Mortgagor.

## Foreclosure; Expense of Litigation; Indemnification

14. If an Event of Default has occurred hereunder, or when the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and pursue all remedies afforded to a mortgagee under and pursuant to the Act. In case of any foreclosure sale of the Premises, the same may be sold in one or more parcels.

Without limiting the liability of Mortgagor as set forth above, Mortgagor shall indemnify Mortgagee and its officers, directors, employees and agents, and hold them harmless from and against all claims, injury, damage, loss and liability of any and every kind to any persons or property by reason of (i) the Renovation Construction or other work contemplated by the Loan Agreement; (ii) the operation or maintenance of the Premises; or (iii) any other action or inaction by or matter which is the responsibility of Mortgagor, excluding all claims, injury, damage, loss or liability of any and every kind to any persons or property arising from Mortgagee's gross negligence or wilful misconduct.

## Application of Proceeds of Foreclosure Sale

15. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the provisions of Subsection (c) of Section 15-1512 of the Act. The judgment of foreclosure or order confirming the sale shall provide (after application pursuant to Subsections (a) and (b) of said Section 15-1512) for application of sale proceeds in the following order of priority: first, all items not covered by the provisions of said Subsections (a) and (b), which under the terms hereof constitute secured indebtedness additional to that

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evidenced by the Note, with interest thereon as herein provided; and second, all principal and interest remaining unpaid on the Note.

## Appointment of Receiver

16. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall appoint a receiver of the Premises whenever Mortgagee, when entitled to possession, so requests pursuant to Section 15-1702(a) of the Act or when such appointment is otherwise authorized by operation of law. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act, including the power to make leases to be binding upon all parties, including the Mortgagor after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure, all as provided in Subsection (g) of Section 15-1701 of the Act. In addition, such receiver shall also have the following powers: (a) to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of 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 and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (b) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by or included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a Protective Advance; and (b) the deficiency in case of a sale and deficiency.

## Mortgagee's Right of Possession in Case of Default

17. In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after judgment thereunder,

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and at all times until confirmation of sale, Mortgagor shall forthwith, upon demand of Mortgagee, surrender to Mortgagee and Mortgagee shall be entitled to take and upon Mortgagee's request to the court to be placed in actual possession of, Mortgagee shall be placed in possession of the Premises or any part thereof, personally, or by its agent or attorneys as provided in Subsections (b) (2) and (c) of Section 1701 of the Act. In such event Mortgagee in its discretion may, without force and with or without process of law, enter upon and take and maintain or may apply to the court in which a foreclosure is pending to be placed in possession of all or any part of said Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may, 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 Premises and conduct the business, if any, thereof, either personally or by its agents, and 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 or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing leases and to make new leases, 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 maturity date of the indebtedness hereunder and beyond the date of 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 and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to enter into any management, leasing or brokerage agreements covering the Premises; (e) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious; (f) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (g) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor. Without limiting the generality of the foregoing

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provisions of this Section, Mortgagee shall also have all power, authority and duties as provided in Section 15-1703 of the Act.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur by reason of its performance of any action authorized under this Section 17 and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor, excluding any liability, loss or damage arising from Mortgagee's gross negligence or wilful misconduct. Should Mortgagee incur any such liability, loss or damage, by its performance or nonperformance of actions authorized by this Section, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest on any such amount at the Default Rate shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

## Application of Income Received by Mortgagee

18. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 17 hereof, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of Protective Advances;

(c) to the payment of all maintenance, repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Premises, and of placing the Premises in such condition as will, in the judgment of Mortgagee, make it readily rentable; and

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

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## Mortgagee's Right of Inspection

19. Mortgagee shall have the right upon two days prior written notice to Mortgagor to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

## Condemnation

20. Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, shall notify Mortgagee of the pendency of such proceedings. Mortgagee may participate in any such proceedings, and Mortgagor from time to time shall deliver to Mortgagee all instruments Mortgagee requests to permit such participation. In any such condemnation proceedings, Mortgagee may be represented by counsel selected by Mortgagee, whose fees shall be paid from the condemnation award. The proceeds (the "Condemnation Proceeds") of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation or any transaction in lieu of condemnation ("Condemnation") is hereby assigned to and shall be paid to Mortgagee, provided that if the Condemnation Proceeds are less than \$100,000, such Condemnation Proceeds may be paid directly to Mortgagor. If Mortgagor satisfies the requirements of Section 13.1 of the Loan Agreement pertaining to casualty proceeds, the Condemnation Proceeds shall be used to reimburse Mortgagor for the cost of rebuilding or restoring of buildings or improvements on the Premises, provided no Event of Default exists under this Mortgage. In all other cases Mortgagee shall have the right, at its option, to apply the Condemnation Proceeds upon or in reduction of the indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, Mortgagee may at its option declare the balance remaining unpaid on the Note and this Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Note as in the case of a default. If the Condemnation Proceeds are required to be used as aforesaid for the cost of rebuilding or restoring buildings or improvements on the Premises, or if Mortgagee elects that the Condemnation Proceeds be so used, and the buildings and other improvements shall be rebuilt or restored, the Condemnation Proceeds shall be paid out in the same manner as is provided in Section 13.2 of the Loan Agreement for the payment of insurance proceeds toward the cost of rebuilding or restoration of such buildings and other improvements subject to the same right, after the occurrence of an Event of Default, to be relieved of any obligation for reimbursement of Mortgagor, as provided in Section 6 of this Mortgage. Any surplus which may remain out of the Condemnation Proceeds after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto.

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## Release

21. If Mortgagor shall fully pay all principal and interest on the Note, and all other indebtedness secured hereby and comply in all material respects with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, and if Beneficiary shall have paid all amounts due to Mortgagee and performed and complied with all terms and provisions of the Loan Documents to be performed and complied with by Beneficiary, then this Mortgage shall be null and void. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of any filing fee in connection with such release.

## Giving of Notice

22. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given if hand delivered, if sent by reputable overnight courier (effective the business day following delivery to such courier) or if mailed (effective two business days after mailing) by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

### *Trustee*

American National Bank and Trust  
Company of Chicago  
U/T/A dated March 23, 1994  
A/K/A Trust No. 118105-04  
33 North LaSalle Street  
Chicago, Illinois 60690  
Attn: Land Trust Department

### *If to Beneficiary:*

Chi-Town Partners, L.P.  
C/O Angelo, Gordon & Co.  
245 Park Avenue, 26th Floor  
New York, New York 10167-0094  
Attn: Jeffrey Eisenberg, Esq.

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with a copy to:

Levenfeld, Eisenberg, Janger,  
Glassberg & Halper  
33 West Monroe Street, 21st Floor  
Chicago, Illinois 60603  
Attn: Robert G. Goldstein, Esq.

and to:

AE-Huron, Inc.  
C/O Amerimar Enterprises, Inc.  
The Rittenhouse  
210 West Rittenhouse, Suite 1900  
Philadelphia, Pennsylvania 19103  
Attn: Keith F. Barket

with a copy to:

Amerimar Enterprises, Inc.  
210 West Rittenhouse, Suite 1900  
Philadelphia, Pennsylvania 19103  
Attn: Howard P. Treatman, Esq.

If to Mortgagee:

ORIX USA Corporation, Chicago Branch  
100 North Riverside Plaza, Suite 1400  
Chicago, Illinois 60606  
Attn: Michael Cipriano

With a copy to:

Sonnenschein Nath & Rosenthal  
8000 Sears Tower  
Chicago, IL 60606  
Attn: John Collen

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

## Remedies Not Exclusive

23. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in

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force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given hereby to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. No waiver of any default of the Mortgagor hereunder shall be implied from any omission by the Mortgagee or Holders to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the penalty or Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee or Holders at any time thereafter to demand and collect payment of interest at such Default Rate or of late charges, if any.

## Waiver of Statutory Rights

24. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement 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 Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor acknowledges that the Premises do not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. Mortgagor hereby waives any and all rights of redemption from sale under any judgment of foreclosure of this Mortgage on behalf of Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises of any nature whatsoever, subsequent to the date of

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this Mortgage. The foregoing waiver of right of redemption is made pursuant to the provisions of Section 15-1601(b) of the Act.

25. THERE IS NO SECTION 25.

## Binding on Successors and Assigns

26. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of the Holders from time to time and of the successors and assigns of the Mortgagee.

## Definitions of "Mortgagor," "Mortgagee" and "Affiliated Parties"

27. The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof; (b) said original Mortgagor's successors and assigns; and (c) all owners from time to time of the Premises. The words "Affiliated Parties" when used herein shall mean Beneficiary and its general partners. The words "Holders" and "Mortgagee" when used herein shall include all successors and assigns of the original Holders and Mortgagee identified in the preambles hereof.

## Maintenance of Mortgagor's and Affiliated Parties' Interests

28. Mortgagee has evaluated the background and experience of Beneficiary in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the Loan. Beneficiary is an entity controlled by individuals or entities well-experienced in borrowing money and owning and operating property such as the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Mortgagor and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor;

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(iii) allowing Mortgagee to raise the interest rate; and  
(iv) keeping the Premises free of subordinate financing liens (excluding personal property leases to the extent permitted under the Loan Agreement), Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that (except as specifically allowed pursuant to Section 12.1(w) of the Loan Agreement) any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be an Event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, it shall be deemed to be an unpermitted transfer of title to the Premises and therefore an Event of Default hereunder, giving Mortgagee the right at its election under Section 13 hereof, to declare immediately due and payable the entire indebtedness secured hereby, if without Mortgagee's prior written consent (unless otherwise provided for in Section 12.1(v) of the Loan Agreement in which case no consent is required):

(a) Mortgagor shall transfer, convey, alien, pledge, hypothecate or mortgage the Premises or any part thereof or if Mortgagor shall contract for or commit to any of the foregoing (other than a sale contract pursuant to which Mortgagee will be paid in full including any applicable prepayment premium at a time when prepayment is permitted); or

(b) Beneficiary shall transfer, convey, alien, pledge, hypothecate or alter in any way an interest in the Mortgagor (whether in the form of a beneficial interest therein or otherwise) or any Affiliated Party shall transfer, convey, alien, pledge, hypothecate or alter in any way an interest in the Beneficiary (except to an entity controlled or managed by (i) Angelo Gordon & Co., L.P. or (ii) any officer or managing director of Angelo Gordon & Co., L.P.); or

(c) Mortgagor or any Affiliated Party terminates its existence or merges into or consolidates with any other corporation, firm or association (except if such other corporation, firm or association is controlled or managed by (i) Angelo Gordon & Co., L.P. or (ii) any officer or director of Angelo Gordon & Co., L.P.) or conveys, transfers, leases or otherwise disposes of all or substantially all of its property, assets or business (except to any entity controlled or managed by (i) Angelo Gordon & Co., L.P. or (ii) any officer or director of Angelo Gordon & Co., L.P.); or

(d) There is any change in control (by way of transfer of stock ownership, partnership interest, or otherwise) in Mortgagor or any Managing General Partner (as defined in the

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Loan Agreement) except to any entity controlled by or managed by (i) Angelo Gordon & Co., L.P. or (ii) any officer or managing director of Angelo Gordon & Co., L.P.

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

## Captions

29. The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

## Disbursement of Loan Proceeds for Construction of Improvements

30. This is a construction mortgage, as said term is defined in Section 9-313(1)(c) of the Uniform Commercial Code. Mortgagor further consents and agrees that the Loan is a construction loan and that the proceeds of the Loan are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions contained in the Loan Agreement which is incorporated herein by express reference. All advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the resulting indebtedness secured hereby may exceed the face amount of the Note, shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Mortgage. In the event of any conflict or inconsistency between the terms of this Mortgage and the Loan Agreement, the terms and provisions of the Loan Agreement shall in each instance govern and control.

It is understood and agreed, however, that with respect to subsequent purchasers and mortgagees without actual notice, none of the advances or indebtedness arising or accruing under the Loan Agreement, shall result in an increase of the indebtedness secured and to be secured hereby over the face amount of the Note beyond one hundred percent (100%) of such face amount. In determining the amount of such increase there shall be excluded from any computation, all indebtedness which would constitute secured indebtedness under the terms of this Mortgage had this Section 30 been omitted herefrom.

## Security Agreement and Financing Statements

31. Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the state in which the Premises are located with respect to all sums on deposit with the Mortgagee pursuant to Section 4 hereof ("Deposits") and with

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respect to any property included in the definition herein of the word "Premises," which property may not be deemed to form a part of the real estate described in Exhibit A or may not constitute a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (ii) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof, subject to the terms of Section 4 hereof.

If an Event of Default occurs under this Mortgage, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, Mortgagee shall have all remedies available to a secured party under the Code and ten (10) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as no Event of Default has occurred hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral of equivalent value and utility to the value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

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Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the word "Premises" herein are or are to become fixtures on the land described in Exhibit A; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code; and (iii) Mortgagor is the record owner of the land described in Exhibit A. The addresses of Mortgagor and Mortgagee are set forth in Section 22 hereof.

Mortgagor, upon reasonable request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee or cause Beneficiary, any other Affiliated Party, or its property manager (as the case may be) to so execute, acknowledge and deliver to Mortgagee, a separate Security Agreement, Financing Statement or other similar security instruments, in form satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor, such Affiliated Party or its property manager, as the case may be, which is owned by any of such persons and is essential to the operation of the Premises and which constitutes goods within the meaning of the Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this Mortgage under the laws of the state in which the Premises are located, and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all reasonable costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document. Annually, Mortgagor shall deliver to Mortgagee an inventory of the Collateral in reasonable detail.

## Partial Invalidity: Maximum Allowable Rate of Interest

32. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent

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that they are legal, valid and enforceable, that the remainder of this Mortgage shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage shall continue in full force and effect. All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to the Holders for the use, forbearance or detention of the money to be advanced under the Note exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the Holders shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

## Mortgagee's Lien for Expenses

33. At all times, regardless of whether any Loan proceeds have been disbursed, this Mortgage secures (in addition to the amounts secured hereby) the payment of any and all liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the Loan; provided, however, that in no event shall the total amount secured hereby exceed two hundred percent (200%) of the face amount of the Note.

## Scope of Security

34. All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Premises, hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by Mortgagor on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, without any further mortgage, conveyance, assignment or other act of Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as if now owned by Mortgagor and specifically described herein. Mortgagor shall, however, execute and deliver to Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly

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and specifically subjecting the same to the lien of this Mortgage.

## Applicable Law

35. This Mortgage, the Note and all other instruments evidencing and securing the loan secured hereby shall be construed, interpreted and governed by the laws of the State of Illinois.

## Declaration of Subordination

36. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any Condemnation Proceeds), to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter in the appropriate official records of the County wherein the Premises are situated, of a unilateral declaration to that effect.

## Limitation of Liability

37. Notwithstanding any other provision of this Mortgage or the other Loan Documents to the contrary, the obligations and liability of each of Mortgagor and Beneficiary (or the partners, officers, directors, members or shareholders of such entities) for payment of the sums due Mortgagee, or the performance by Mortgagor or Mortgagee of its obligations, under the Note, this Mortgage and the other Loan Documents shall be enforceable solely against any property (including, without limitation, the Premises), security, collateral and/or assets (including the proceeds thereof) now or hereafter encumbered, pledged or assigned by or pursuant to this Mortgage and the other Loan Documents and the issues, profits, and proceeds thereof, and neither Mortgagor nor Beneficiary or their partners, officers, directors, or shareholders of such entities (except as set forth below or in any of the other Loan Documents) shall be personally liable for the payment or satisfaction of such amounts or the performance of such obligations. The foregoing limitation on liability shall not impair or otherwise affect the validity or enforceability of (a) the indebtedness evidenced by the Note or of any other obligations evidenced by the Loan Documents (including, without limitation, any guaranty(ies) delivered to Mortgagee or any other holder hereof [but it is acknowledged that there are no such guaranties, nor any obligation to provide any such guaranties, under or in connection with the Loan or this Mortgage]), or (b) the liens, security interest, rights and remedies in favor of, or available to, the holder of the Note with respect to the Premises or any other property, security, collateral and/or assets (including the proceeds thereof) encumbered, pledged or assigned by or pursuant to this Mortgage

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and the other Loan Documents, including the rights of foreclosure and/or sale as provided herein. The foregoing limitation on liability shall not apply to: (i) any and all losses, costs, damages and expenses (including attorneys' fees and disbursements and attorneys' fees and disbursements incurred in establishing liability and in collecting amounts payable hereunder) suffered or incurred by Mortgagee due to Mortgagor's fraud (it being stipulated that any distributions made to any constituent partners of Beneficiary prior to an Event of Default shall not be deemed fraudulent), misapplication by Borrower or its agents of any construction funds, proceeds in the FF&E Reserve, insurance proceeds or condemnation awards, or physical waste to the Premises as a result of actions or inactions by Borrower or its agents ("Excluded Losses") and the Mortgagor and Beneficiary (but not Beneficiary's constituent partners, officers, directors, members, or shareholders, who shall in no event be liable for any of the foregoing) shall be jointly and severally personally liable for such Excluded Losses.

Mortgagor and Beneficiary (but not Beneficiary's partners, officers, directors, members, or shareholders, who shall in no event be liable for any of the following) shall also be jointly and severally liable to the extent of Mortgagee's actual losses incurred by reason of Mortgagor's breach of any of the representations, warranties, and covenants regarding Hazardous Materials (whether contained in this Mortgage or any of the other Loan Documents), and Mortgagor and Beneficiary (but not Beneficiary's partners, officers, directors, members, or shareholders, who shall in no event be liable for such indemnity) shall indemnify Mortgagee for any environmental liability Mortgagee may have with respect to the Premises and any all damages or expenses suffered or incurred by Lender by reason of the foregoing (other than liability caused by Mortgagee's actions).

Mortgagor and Beneficiary (but not Beneficiary's partners, officers, directors, members, or shareholders, who shall in no event be liable for any of the following) shall also be jointly and severally personally liable for the outstanding principal and accrued interest thereon upon the occurrence of any transfer, sale or encumbrance of the Premises, all or any part of the beneficial interest in the Mortgagor, or all or any part of the partnership interests in Beneficiary other than as expressly permitted in the Loan Agreement or hereunder, except as otherwise approved in writing by Mortgagee.

Lastly, nothing in this Note or the other Loan Documents shall be deemed to limit the liability of Mortgagor or Beneficiary to the extent that Mortgagor or Beneficiary (or any party acting on behalf of either of them) shall, after the occurrence of an Event of Default under the Loan Agreement, Mortgage, or other Loan Documents, collect any revenue from the

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Premises that is not used to make regularly scheduled monthly payments of interest and principal under the Note or to pay real estate taxes, operating expenses with respect to the Premises, or other amounts required to be paid under the Loan Documents (including amounts required to be deposited to the FF&E Account established pursuant to the Pledge and Deposit Agreement being executed concurrently herewith), and for any improper use of the proceeds of such FF&E Account. Any such amounts collected by Mortgagor after an Event of Default and distributed by Mortgagor with knowledge of such Event of Default to its partners shall be recoverable to the extent permitted by law from any party receiving such funds but only to the extent of such funds received. Nothing in this Mortgage, the Note or the other Loan Documents shall limit Mortgagee's recourse to the proceeds of the FF&E Account referred to in such Pledge and Deposit Agreement.

## Trustee's Exculpation

38. This Mortgage is executed by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO ("Trustee"), not personally but solely as successor trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and American National Bank and Trust Company of Chicago hereby represents and warrants that it possesses full power and authority to execute this instrument). All the terms, provisions, stipulations, covenants and conditions to be performed hereunder (whether or not the same are expressed in terms of covenants, promises or agreements), are undertaken by it solely as Trustee, as aforesaid, and not individually, and no personal liability shall be asserted to be enforceable against Trustee by reason of any of the terms, provisions, stipulations, covenants and conditions contained herein.

The trust agreement under which Mortgagor is acting as trustee constitutes a "land trust" as said term is defined in Section 15-1205 of the Foreclosure Act.

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IN WITNESS WHEREOF, AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as trustee as aforesaid, has caused these presents to be signed by its Vice President, and its corporate seal to be hereunto affixed and attested by its Assistant Secretary the day and year first above written.

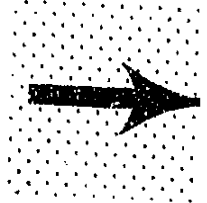
AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as trustee u/t/a dated March 23, 1994, and known as Trust No. 118105-04

By: [Signature]  
Its: \_\_\_\_\_

ATTEST:  
Its: [Signature] ASSISTANT SECRETARY

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**SIGN  
HERE**



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EXHIBIT A

LEGAL DESCRIPTION

THE SOUTHEAST 1/4 (EXCEPT THE WEST 1 1/2 FEET THEREOF) OF BLOCK 45 OF KINZIE'S ADDITION TO CHICAGO IN THE NORTH FRACTIONAL 1/2 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

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Property address:

140160 E Huron St.  
Chicago, IL

17-10-106-007

. DEPT-01 RECORDING #87.50  
. T#0001 TRAN 3135 03/02/95 13:28:00  
. #2321 #1 F #-95-143513  
. COOK COUNTY RECORDER

95143513

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STATE OF ILLINOIS )  
 )  
COUNTY OF COOK ) SS.

I, RUTH ANNE BOOKER, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY, that J. Michael Whelan, the VICE PRESIDENT of American National Bank and Trust Company of Chicago ("Trustee"), not personally but as successor trustee as aforesaid, and Gregory S. Kasprzyk, the ASSISTANT SECRETARY of said Trustee, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE PRESIDENT and ASSISTANT SECRETARY respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as such officers of said Trustee, as their own free and voluntary act and as the free and voluntary act of the Trustee, as trustee as aforesaid, for the uses and purposes therein set forth, and the said ASSISTANT SECRETARY then and there acknowledged that J. Michael Whelan, as custodian of the corporate seal of said Trustee, did affix the corporate seal of said Trustee to said instrument of his own free and voluntary act, and as the free and voluntary act of said Trustee, as trustee aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this MAR 01 1995 day of \_\_\_\_\_, 1993.

*Ruth Anne Booker*  
Notary Public

My Commission Expires:  
"OFFICIAL SEAL"  
RUTH ANNE BOOKER  
Notary Public, State of Illinois  
My Commission Expires 5/5/98

County Clerk's Office

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