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AMENDED AND RESTATED
LEASEHOLD MORTGAGE AND SECURITY AGREEMENT
AND ASSIGNMENT OF LEASES AND RENTS

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Date of Document:

June 30, 1996

Document prepared by and to be returned to:

96534352

John K. Kneafsey
Nisen & Elliott
200 West Adams Street - Suite 2500
Chicago, Illinois 60606



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AMENDED AND RESTATED LEASEHOLD MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS

THIS AMENDED AND RESTATED LEASEHOLD MORTGAGE AND SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS made as of this 30th day of June, 1996, by and between Chicago Double Drive-Thru, (V) L.P., an Illinois limited partnership (the "Mortgagor"), as Lessee of the real estate pursuant to a lease (the "Lease") described in Exhibit "A" attached hereto and made a part hereof (the "Leasehold Estate") in favor of Burling Bank, 141 West Jackson Boulevard, Chicago, Illinois 60604 (together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to as "Mortgagee");

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of ONE HUNDRED EIGHTY THOUSAND DOLLARS (\$180,000), which Indebtedness (as hereinafter defined) is evidenced by Borrower's Amended and Restated Leasehold Mortgage Note (the "Note") of even date herewith, which Note provides for payment of the Indebtedness as set forth therein; and

NOW, THEREFORE, Mortgagor, in order to secure the payment of the Note with interest thereon, and any extension and renewals thereof, in whole or in part, and the payment of all other sums with interest thereon advanced in accordance herewith or in the Note provided (the "Indebtedness") to protect the security of this Leasehold Mortgage, and the performance of the covenants and agreements of Mortgagor herein contained, does hereby mortgage, grant and convey to Mortgagee the following described Leasehold Estate located in the City of Chicago, County of Cook, State of Illinois:

See Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Real Estate"),

This instrument was prepared by and after recording return to:

John K. Kneafsey
Nisen & Elliott
200 W. Adams St., Suite 2500
Chicago, IL 60606

P.I.N. 14-21-107-009

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which Leasehold Estate is presently improved with a commercial building and which has a common address of 3601 N. Halsted, Chicago, Illinois, and which, with the property herein described, is referred to herein as the "Premises" together with Mortgagor's right, title and interest in:

- (a) all buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, and all materials intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings or improvements (all hereinafter referred to as the "Improvements");
- (b) all privileges, reservations, allowances, hereditament, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;
- (c) all leasehold estates, leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (all hereinafter referred to as "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;
- (d) all rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (all hereinafter referred to as "Rents"), subject to the right, power and authority given to the Mortgagor in the Assignment hereinafter referred to, to collect and apply the rents;
- (e) all options to purchase or lease the Real Estate or Improvements, or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the premises, now owned or hereafter acquired by Mortgagor;
- (f) any interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;
- (g) all now owned or hereafter acquired rights, title and interest in and to
 - (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate; (ii) any and all alleys,

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sidewalks, strips and gores of land adjacent to or used in connection with the Real Estate and Improvements; (iii) any and all rights and interests of every name or nature forming part of or used in connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto, and (v) all water rights and shares of stock evidencing the same;

(h) all tangible personal property (hereinafter referred to as "Personal Property") owned by Mortgagor and now or at any time hereafter located in, on or at the Leasehold Estate or Improvements or used or useful in connection therewith, including, but not limited to:

- (i) all furniture, furnishings and equipment furnished by Mortgagor to tenants of the Real Estate or Improvements;
- (ii) all building materials and equipment located upon the Real Estate and intended to be incorporated in the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements;
- (iii) all machines, machinery, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all fire sprinklers, alarm systems, electronic monitoring equipment and devices;
- (iv) all window or structural cleaning rigs, maintenance equipment and equipment relating to exclusion of vermin or insects and removal of dust, refuse or garbage;
- (v) all other indoor and outdoor furniture, including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, wall beds, wall safes, and other furnishings;
- (vi) all rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds and curtains;
- (vii) all lamps, chandeliers and other lighting fixtures;
- (viii) all recreational equipment and materials;

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from time to time require due to (i) failure of Mortgagee to require, or failure of Mortgagor to make, Tax Deposits in previous months, (ii) underestimation of the amounts of Taxes, due dates and, or (iii) application of the Tax Deposits pursuant to Section 5.1(c) hereof. Mortgagee shall hold all Tax Deposits without any allowance of interest thereon.

- (b) Mortgagee will, out of the Tax Deposits, upon the presentation to Mortgagee by Mortgagor of the bills therefor, pay the Taxes or will, upon the presentation of receipted bills therefor, reimburse Mortgagor for such payments made by Mortgagor. If the total Tax Deposits on hand shall not be sufficient to pay all of the Taxes when the same shall become due, then Mortgagor shall pay to Mortgagee on demand the amount necessary to make up the deficiency.
- (c) Upon an Event of Default under this Leasehold Mortgage, Mortgagee may, at its option, apply any Tax Deposits on hand to the Indebtedness, in such order and manner as Mortgagee may elect. When the Indebtedness has been fully paid, any remaining Tax Deposits shall be paid to Mortgagor. All Tax Deposits are hereby pledged as additional security for the Indebtedness, and shall be held by Mortgagee irrevocably to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of Mortgagor.
- (d) Notwithstanding anything herein contained to the contrary, Mortgagee shall not be liable for any failure to apply the Tax Deposits unless Mortgagor, while no Event of Default exists hereunder, shall have (i) requested Mortgagee in writing to make application of such Deposits to the payment of the Taxes and (ii) presented Mortgagee with bills for such Taxes.
- (e) The provisions of this Leasehold Mortgage are for the benefit of Mortgagor and Mortgagee alone. No provision of this Leasehold Mortgage shall be construed as creating in any other party any rights in and to the Tax Deposits or any rights to have the Tax Deposits applied to payment of Taxes. Mortgagee shall have no obligation or duty to any third party to collect Tax Deposits.

7. Proceeds of Insurance. The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises; and

- (a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or

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- (ix) all office furniture, equipment and supplies;
- (x) all kitchen equipment, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units;
- (xi) all laundry equipment, including washers and dryers;
- (xii) all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of exterior portions of the Real Estate; and
- (xiii) all maintenance supplies and inventories; provided that the enumeration of any specific articles of Personal Property set forth above shall in no way exclude or be held to exclude any items of property not specifically enumerated; but provided that there shall be excluded from and not included within the term "Personal Property" as used herein and hereby mortgaged and conveyed, any equipment, trade fixtures, furniture, furnishings or other property of subtenants of the Premises;

- (i) all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises, and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (all hereinafter generally referred to as "Awards").

any proceeds including

MORTGAGOR COVENANTS that it is lawfully seized of the Leasehold Estate hereby conveyed and has the right to mortgage, grant and convey the Premises, that the Premises are unencumbered except as to the matters reflected in the title insurance policy to be obtained insuring the lien of this Leasehold Mortgage delivered to Mortgagee herewith and that Mortgagor will warrant and defend generally the title to the Premises against all claims and demands, subject to the matters reflected in said title insurance policy and further that the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, and hereby conveyed unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together

and Personal Property

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with all rights to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined;

FOR THE PURPOSE OF SECURING the payment of the Indebtedness with interest thereon evidenced by the Note and any and all modifications, extensions and renewals thereof, and all other Indebtedness and the performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the Assignment referred to in Section 29 hereof; provided that the aggregate of the Indebtedness shall at no time exceed \$100,000,000.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then this Leasehold Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

AND IT IS FURTHER AGREED THAT:

1. Payment of Indebtedness. Mortgagor will duly and promptly pay each and every installment of the principal of, if any and interest and premium, if any, on the Note, and all other Indebtedness, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein or in the Note provided on the part of the Borrower to be performed and observed.

2. Mortgagor hereby represents and covenants:

- (a) That the Lease is in full force and effect and unmodified;
- (b) That all rents (including additional rents and other charges) reserved in the said Lease have been paid to the extent they were payable prior to the date hereof;
- (c) The quiet and peaceful possession of the Mortgagee, and Mortgagor further agrees to defend the Leasehold Estate created under the Lease for the entire remainder of the term set forth therein, against all and every person or persons lawfully claiming, or who may claim the same or any part thereof, subject to the payment of the rents in the lease reserved and subject to the performance and observance of all of the terms, covenants, conditions and warranties thereof;

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- (d) That there is no uncured default under the Lease or in the performance of any of the terms, covenants, conditions or warranties thereof on the part of the Lessee to be observed and performed. Further, no state of facts exist under the Lease which, with the lapse of time or giving of notice or both would constitute a default thereunder.

3. Maintenance, Repair, Restoration, Prior Liens, Parking. In addition, Mortgagor will:

- (a) Promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed, provided the proceeds of insurance are made available to Mortgagor for such purpose;
- (b) Keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof;
- (c) Pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;
- (d) Complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;
- (e) Comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
- (f) Suffer or permit no change in the general nature of the occupancy of the Premises or consent to any change in any existing private restrictive covenants, zoning ordinances or other public or private restriction, without the Mortgagee's prior written consent;
- (g) Pay when due all operating costs of the Premises;
- (h) Initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent;
- (i) Provide, improve, grade, surface and thereafter maintain, clean, repair, police and adequately light parking areas within the Premises which areas shall be of sufficient size to accommodate standard-sized

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American-made automobiles as may be required by law, ordinance or regulation, together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; however, the foregoing shall not require Mortgagor to pave any parking areas or driveways which are not paved on the date hereof:

- (i) Reserve and use all such parking areas solely and exclusively for the purpose of providing ingress, egress and parking facilities for automobiles and other passenger vehicles and trucks of Mortgagor and tenants of the Premises and their invitees and licensees;
- (k) Not reduce, build upon, obstruct, redesignate or relocate any such parking areas, sidewalks, aisles, streets, driveways, sidewalk cuts or paved areas or rights-of-way or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the Premises, without the prior written consent of the Mortgagee;
- (l) Pay all utility charges incurred by mortgagor in connection with the Premises and all improvements thereon and maintain all utility services now or hereafter available for use at the Premises;
- (m) The Mortgagor shall at all times promptly and faithfully keep and perform, or cause to be kept and performed, all the covenants and conditions contained in the Lease by the Lessee under the Lease be kept and performed and in all respects conform to and comply with the terms and conditions of the Lease, and the Mortgagor further covenants that it shall not do or permit anything which will impair or tend to impair the security of this Leasehold Mortgage or will be grounds for declaring a forfeiture of the Lease, and upon any such failure aforesaid, Mortgagor shall be subject to all of the rights and remedies granted Mortgagee in this Leasehold Mortgage;
- (n) The Mortgagor shall not modify, extend or in any way alter the terms of the Lease or cancel or surrender said Lease, or waive, execute, condone or in any way release or discharge the Lessor thereunder of or from the obligations, covenants, conditions and agreements by said Lessor to be done and performed; and the Mortgagor does expressly release, relinquish and surrender unto the Mortgagee all of its rights, power and authority to cancel, surrender, amend, modify or alter in any way the terms and provisions of the Lease and any attempt on the part of the Mortgagor to exercise any such right without the written approval and consent of the Mortgagee thereto being first had and obtained shall,

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subject to applicable grace period, constitute a default under the terms hereof and the entire Indebtedness shall, at the option of the Mortgagee, become due and payable forthwith and without notice;

- (o) The entire Indebtedness shall immediately become due and payable at the option of the Mortgagee, if the Mortgagor fails to give the Mortgagee notice of any default under the Lease within ten (10) days of notifying the Lessor of such default or of any notice of default from the Lessor within ten (10) days after receipt of notice of such default from the Lessor, or if the Mortgagor fails to furnish to the Mortgagee immediately any and all information which it may reasonably request concerning the performance by the Mortgagor of the covenants of the Lease, or if the Mortgagor fails to permit the Mortgagee or its representative at all reasonable times to make investigation or examination concerning the performance by the Mortgagor of the covenants of the Lease, or if the Mortgagor fails to permit the Mortgagee or its representative at all reasonable times to make investigation or examination concerning such performance. The Mortgagor shall deliver to the Mortgagee an original executed copy of the Lease, an estoppel certificate from the Lessor and the Lease within ten (10) days of requested by Mortgagee and in such form and content as shall be satisfactory to Mortgagee, as well as any and all documentary evidence received by it showing compliance by the Mortgagor with the provisions of the Lease.
- (p) In the event of any failure by Mortgagor to perform any covenant on the part of Lessee to be observed and performed under the Lease, the performance by Mortgagee on behalf of Mortgagor of the Lease covenant shall not remove or waive, as between Mortgagor and Mortgagee, the corresponding default under the terms hereof and any amount so advanced by Mortgagee or any costs incurred in connection therewith, with interest thereon at the default rate shall constitute additional Indebtedness and be immediately due and payable; and
- (q) To the extent permitted by law, the price payable by the Mortgagor, or by any other party so entitled, in the exercise of the right of redemption, if any, shall include all rents paid and other sums advanced by Mortgagee, on behalf of Mortgagor, as Lessee under the said Lease.

4. Taxes. The Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all hereinafter referred to as "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any

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obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor; provided that (a) in the event that any law or court decree has the effect of deducting from the value of land for the purposes of taxation any lien thereof, or imposing upon the Mortgagee the payment in whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or changing in any way the law relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Leasehold Mortgage or the Indebtedness or the holder thereof, then, and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor; and (b) nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

5. **Insurance Coverage.** The Mortgagor will insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards as the Mortgagee may from time to time require and in any event will continuously maintain the following described policies of insurance:

- (a) Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement in amounts not less than the full insurable replacement value of all Improvements, fixtures and equipment from time to time on the Premises and bearing a replacement cost agreed amount endorsement;
- (b) Comprehensive public liability against death, bodily injury and property damage in an amount not less than One Million Dollars (\$1,000,000.00);
- (c) Employer's Liability Insurance;
- (d) Rental or business interruption insurance in amounts sufficient to pay, for a period of up to one (1) year, all amounts required to be paid by the Borrower pursuant to the Note and by the Mortgagor pursuant to this Leasehold Mortgage;
- (e) Steam boiler, machinery and pressurized vessel insurance (if applicable to the Premises); and
- (f) If the Federal Insurance Administration (FIA) has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of

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subsidized insurance, first and second layer flood insurance when and as available.

6. Insurance Policies. All policies of insurance to be maintained and provided as required by Section 5 hereof shall:

- (a) Be in forms, companies and amounts reasonably satisfactory to Mortgagee (but not more than the amount of this Leasehold Mortgage), and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee;
- (b) Contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee;
- (c) Be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer;
- (d) Provide for thirty (30) days' prior written notice of cancellation to Mortgagee; and

Mortgagor will deliver all policies, including additional and renewal policies, to Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

6.1 Deposits for Taxes. In order to assure the payment of Taxes when due and if required by Mortgagee:

- (a) Mortgagor shall deposit with Mortgagee on the first business Day of each month, an amount equal to one-twelfth (1/12) of the Taxes thereof to become due with respect to the Premises between one (1) and thirteen (13) months after the date of such deposit; provided that in the case of the first such deposit, Mortgagor shall deposit in addition an amount which, when added to the aggregate amount of monthly deposits to be made hereunder with respect to Taxes to become due within thirteen (13) months after such first deposit, will provide (without interest) a sufficient fund to pay such Taxes, one (1) month prior to the date when they are due. The amounts of such deposits (herein generally called "Tax Deposits") shall be based upon Mortgagee's reasonable estimate of the amount of Taxes. Mortgagor shall promptly upon the demand of Mortgagee make additional Tax Deposits as Mortgagee may

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decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies in consultation with, but without consent of the Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagor may itself adjust and collect losses aggregating not in excess of One Hundred Thousand Dollars (\$100,000.00); provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to the Mortgagor upon demand accompanied by itemized bills therefor.

- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (hereinafter referred to as an "Insured Casualty") and if, in the reasonable judgment of the Mortgagee, the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness, and the insurers do not deny liability to the insureds, then, if no Event of Default as hereinafter defined shall have occurred and be then continuing, and if there was no Event of Default, whether continuing or not, at the time of occurrence of damage or destruction which resulted in said loss, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (hereinafter referred to as "Restoring") the Premises or any part thereof subject to Insured Casualty, as provided for in Section 9 hereof; so long as no Event of Default hereunder has occurred and is continuing, such insurance proceeds, after deducting therefrom any necessary expenses incurred in the collection thereof, shall be made available by Mortgagee for the Restoring of the Premises; provided that Mortgagor shall furnish evidence sufficient to Mortgagee that there are sufficient funds available for the rebuilding or restoration of the Premises.
- (c) If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Insured Casualty, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness to be, and at the expiration of such thirty (30) day period the Indebtedness shall be and become, immediately due and payable.
- (d) Except as provided for in Subsection (b) of this Section 7, Mortgagee shall apply the proceeds of insurance (including amounts not required

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for Restoring effected in accordance with Subsection (b) above) consequent upon any Insured Casualty upon the Indebtedness, in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness made out of insurance proceeds as aforesaid.

- (e) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the Restoring of the Premises, Mortgagor hereby covenants to Restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee if the cost of Restoration exceeds \$50,000.
- (f) Any portion of insurance proceeds remaining after payment in full of the Indebtedness shall be paid to Mortgagor.
- (g) Subject to the reasonable approval of the Mortgagee, interest shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagee, provided Mortgagor delivers written instructions relative to such investment to Mortgagee and such investment instructions do not unreasonably interfere with the payment of expenses or costs incurred in the Restoring of the Premises.
- (h) Nothing contained in this Leasehold Mortgage shall create any responsibility or liability upon the Mortgagee to (i) collect any proceeds of any policies of insurance but Mortgagee shall cooperate with Mortgagor's efforts in this regard, or (ii) Restore any portion of the Premises damaged or destroyed through any cause.

8. **Condemnation.** The Mortgagor will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (hereinafter referred to as a "Taking"), of all or any part of the Premises, including damages to grade, and:

- (a) Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds which Mortgagor receives of any Award consequent upon any Taking.
- (b) If, in the reasonable judgment of the Mortgagee, the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the Premises prior to such Taking and adequately securing the outstanding balance of the Indebtedness, then if no Event of Default, as hereinafter defined, shall have occurred and

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be then continuing, the Award shall be applied to reimburse Mortgagor for the cost of Restoring the portion of the Premises remaining after such Taking, as provided for in Section 9 hereof.

- (c) If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Taking, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness to be, and at the expiration of such thirty (30) day period the Indebtedness shall be and become, immediately due and payable.
- (d) Except as provided for in Subsection (b) of this Section 8, Mortgagee shall apply any Award (including the amount not required for Restoration effected in accordance with Subsection (b) above) upon the Indebtedness in such order or manner as the Mortgagee may elect.
- (e) In the event that any Award shall be made available to the Mortgagor for Restoring the portion of the Premises remaining after a Taking, Mortgagor hereby covenants to Restore the remaining portion of the Premises to be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee if the cost of restoration exceeds \$50,000.
- (f) Provided the Premises is not being restored, any portion of any Award remaining after payment in full of the Indebtedness shall be paid to Mortgagor.
- (g) Subject to the reasonable approval of the Mortgagee, interest shall be payable by Mortgagee on account of any Award at any time held by Mortgagee, provided Mortgagor delivers written instructions relative to such investment to Mortgagee and such investment instructions do not unreasonably interfere with the payment of expenses or costs incurred in the Restoring of the Premises.

9. Disbursement of Insurance Proceeds and Condemnation Awards. In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidence of costs and

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payments as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work, which approval shall not be unreasonably withheld, conditioned or delayed; and in each case:

- (a) No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time;
- (b) Funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds; and
- (c) At all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien.
- (d) If the cost of rebuilding, repairing or restoring the buildings and improvements can reasonably exceed the sum of \$50,000.00, then Mortgagee shall approve plans and specifications of such work before such work shall be commenced, which approval shall not be unreasonably withheld, conditioned or delayed. Any surplus which remains out of said insurance proceeds after payment of such costs of building or restoring shall be paid to any party entitled thereto.

10. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor shall pay such tax in the manner required by such law.

11. Prepayment Privilege. Mortgagor shall have the privilege of making prepayments on the principal of the Note at any time without penalty.

12. Effect of Extensions of Time, Amendments on Junior Liens and Others. Mortgagor covenants and agrees that:

- (a) If the payment of the Indebtedness, 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, if any, and the lien and all provisions hereof shall continue in full force and effect; the right of recourse against all such persons being expressly

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reserved by the Mortgagee, notwithstanding any such extension, variation or release.

- (b) Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee herein to amend, modify and supplement this Leasehold Mortgage, the Note and the Assignment (as defined in Section 29 hereof) hereinafter referred to, and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Leasehold Mortgage losing its priority over the rights of any such junior lien.
- (c) Nothing in this Section contained shall be construed as waiving any provision of Section 17 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered without the prior written consent of the Mortgagee.
- (d) Extension of the time for payment or modification of amortization of the sums secured by this Leasehold Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release in any manner the liability of the original Mortgagor and Mortgagor's successor in interest. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Leasehold Mortgage by reason of any demand made by the original Mortgagor and Mortgagor's successors in interest.

13. **Effect of Changes in Tax Laws.** In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of leasehold mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect this Leasehold Mortgage or the Indebtedness, or the holder hereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided that if in the reasonable opinion of counsel for the Mortgagee the payment by Mortgagor of any such taxes or assessments shall be unlawful, the Mortgagee may, by notice to the Mortgagor, declare the entire principal balance of the Indebtedness and all accrued interest to be due and payable on a date specified in such notice, not less than ninety (90) days after the date of such notice, and the Indebtedness and all

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accrued interest shall then be due and payable without premium or penalty on the date so specified in such notice.

14. **Mortgagee's Performance of Mortgagor's Obligations.** In case of an Event of Default as defined in Section 20 herein, the Mortgagee either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof, and during, if any, may upon notice to Mortgagor, but shall not be required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and in connection therewith:

- (a) The Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof which is not being contested in accordance herewith, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment;
- (b) Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and Improvements shall be operational and usable for their intended purposes;
- (c) All monies paid for any of the purposes herein authorized or authorized by any other instrument evidencing or securing the Indebtedness, and all expenses paid or incurred in connection therewith, including attorney's fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping, or to rent, operate and manage the Premises and such Improvements, or to pay any such operating costs and expenses thereof, or to keep the Premises and Improvements operational and usable for their intended purposes, shall be so much additional Indebtedness, whether or not they exceed the amount of the Note, and shall become immediately due and payable upon demand, and if not paid within thirty (30) days with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate");
- (d) Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor;

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- (e) The Mortgagee, in making any payment hereby authorized (i) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale forfeiture, tax lien or title or claim thereof, (ii) 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, or (iii) in connection with the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate, and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

15. **Inspection of Premises.** Mortgagor will at all reasonable times upon request deliver to Mortgagee duplicate originals or certified copies of all contracts, agreements and documents relating to the Premises and shall permit access by Mortgagee to its books and records, insurance policies and other papers for examination and making copies and extracts thereof. Mortgagee, its agents and designees shall have the right to inspect the Premises upon reasonable prior notice at all reasonable times and access thereto shall be permitted for that purpose provided same shall not interfere with the business operations of Mortgagor or its tenants in the Premises.

16. **Financial Statements.** The Mortgagor will furnish to the Mortgagee at the address of Mortgagee as stated herein or otherwise provided, such financial and operating statements of the Premises as required by the Mortgagee herein or therein.

17. **Restrictions on Transfer.** Subject to the provisions of Section 20 hereof and with applicable grace period, it shall be an Event of Default hereunder if, without the prior written consent of the Mortgagee, any of the following shall occur, and in any event Mortgagee may condition its consent upon such increase in rate of interest payable upon the Indebtedness, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require:

If the Mortgagor shall create, effect, or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Leasehold Estate or any part thereof, or interest therein, or any sales or other dispositions of Collateral as defined in Section 18 (hereinafter referred to as "Obsolete Collateral") no longer useful in connection with the operation of the Premises; provided that prior to the sale or other disposition thereof, such Obsolete Collateral shall have been replaced

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by Collateral, subject to the first and prior lien hereof, of at least equal value and utility;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that provisions of this Section 17 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, of a Trustee Mortgagor; and provided further that no consent by Mortgagee to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section 17, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Mortgagee consequent thereon.

18. Permitted Transfers. The provisions of Section 17 hereof shall not apply to any of the following:

- (a) Liens securing the Indebtedness;
- (b) The lien of current real estate taxes and assessments not in default;
- (c) Liens being contested as provided herein.

19. Security Agreement - Uniform Commercial Code. This Leasehold Mortgage constitutes a Security Agreement under the Uniform commercial Code of the State of Illinois (hereinafter referred to as the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all hereinafter referred to as "Collateral"); all of the terms, provisions, conditions and agreements contained in this Leasehold Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 19 shall not limit the generality or applicability of any other provision of this Leasehold Mortgage, but shall be in addition thereto:

- (a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof;
- (b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by landlord;
- (c) The Collateral will be kept at the Leasehold Estate and will not be removed therefrom (other than in the ordinary course of mortgagor's

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business) without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to the Leasehold Estate but will not be affixed to any other real estate;

- (d) The only persons having any interest in the Premises are the Owner, the Mortgagor the Mortgagee and persons occupying the Premises as tenants only;
- (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statement and other documents in form satisfactory to the Mortgagee, and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be reasonably necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no adverse liens or encumbrances; and the Mortgagor, as the case may be, will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices whenever filing or recording is deemed by the Mortgagee to be necessary or desirable;
- (f) Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Event of Default not having previously been cured), the Mortgagee at its option may declare the Indebtedness immediately due and payable, all as more fully set forth in Section 21 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation the right to the extent provided under the Code to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);
- (g) The Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to the Mortgagor's right of redemption, if any, in satisfaction of the Mortgagor's obligations as provided in the Code;

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provided that (i) the Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Premises, and (ii) the Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties;

- (h) The Mortgagee will give Mortgagor at least fifteen (15) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of the Mortgagor determined as provided in Section 47 hereof, at least fifteen (15) days before the time of the sale or disposition;
- (i) The Mortgagee may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale, and any such sale may be held as part of and in conjunction with any foreclosure sale of the Leasehold Estate comprised within the Premises;
- (j) The net proceeds realized upon any such disposition, after deduction for the necessary expenses of retaking, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness; and the Mortgagee will account to the Mortgagor for any surplus realized on such disposition;
- (k) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof, so long as any part of the Indebtedness remains unsatisfied;
- (l) The terms and provisions contained in this Section 19 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

20. Events of Default. If one or more of the following events (hereinafter referred to as "Events of Default") shall occur:

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- (a) Any default shall occur in the due and punctual payment of principal on the Note by the Borrower when and as the same becomes due which default shall continue for ten (10) days after notice by Mortgagee; or any default shall occur in the due and punctual payment of interest on the Note when and as the same shall become due which default shall continue for ten (10) days after notice by Mortgagee;
- (b) Any failure of Mortgagor or any Guarantor for a period of thirty (30) days after receipt of notice as herein provided (except as to Defaults specified elsewhere in this Section 20 or where a longer or shorter period is specified herein or in the other Loan Documents for a particular default) after written notice from Mortgagee to Mortgagor to observe or perform any of the covenants of Mortgagor or any Guarantor under the terms of this Leasehold Mortgage or other of the Loan Documents except payment of the Note;
- (c) The existence of any collusion, fraud, dishonesty or bad faith by Mortgagor or any Guarantor which in any way relates to or affects this Leasehold Mortgage or the Premises and which is adjudicated by a court of competent jurisdiction;
- (d) If at any time any material representation, statement, report or certificate made now or hereafter by Mortgagor or any Guarantor is not true and correct, or if at any time any statement or representation made any application submitted to Mortgagee for this loan is not true and correct, and such representation, statement, report or certificate is not corrected within thirty (30) days after written notice thereof;
- (e) If all or a substantial part of the assets of Mortgagor, or any Guarantor is attached, seized, subjected to a writ or distress warrant, or is levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within thirty (30) days;
- (f) If Mortgagor or any Guarantor is enjoined, restrained or in any way prevented by court order from performing any of its material obligations hereunder or under the Guaranty or conducting all or a substantial part of its business affairs; or if a proceeding seeking such relief is not dismissed within thirty (30) days of being filed or commenced;
- (g) If a notice of lien, levy or assessment is filed of record with respect to all or substantial part of the property of Mortgagor or any Guarantor by the United States, or any other governmental authority and same remains unsatisfied for thirty (30) days, unless contestable and actually and diligently contested in accordance herewith;

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- (h) If there occurs a materially adverse change in the financial condition of Mortgagor or any Guarantor;
- (i) If Mortgagor or any Guarantor, or any one of them:
 - (i) Shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter in effect;
 - (ii) Shall file an answer or other pleading in any proceedings admitting insolvency, bankruptcy, or inability to pay its debts as they mature;
 - (iii) Within thirty (30) days after the filing against it of any involuntary proceedings under the Federal Bankruptcy Act or similar law, state or federal, now or hereafter in effect, such proceedings shall not have been vacated;
 - (iv) Any order appointing a receiver, trustee or liquidator for it or for all or a major part of its property or the Premises shall not be vacated within thirty (30) days following entry thereof;
 - (v) Shall be adjudicated a bankrupt;
 - (vi) Shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises;
- (j) If an Event of Default pursuant to Section 17 hereof shall occur and be continuing and Mortgagor shall fail to cure within applicable grace period,;
- (k) If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered hereunder, provided that same shall not be an Event of Default if delivery is made before expiration of such insurance;
- (l) If any default shall exist under the provisions of Section 30 hereof, or under the Assignment referred to therein which default shall continue for thirty (30) days after notice by Mortgagee;

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- (m) If the Premises shall be abandoned (abandonment shall mean that no tenant is in occupancy for a period of 120 days); or

then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, with notice all Indebtedness to be immediately due and payable, whether or not such default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Leasehold Mortgage and/or exercise any right, power or remedy provided by this Leasehold Mortgage, the Note, or by law or in equity conferred.

21. Foreclosure. When the Indebtedness, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and in connection therewith:

- (a) In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale, all reasonable necessary expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' 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 assurances with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidder at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises; and
- (b) All reasonable expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Leasehold Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Leasehold Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate.
- (c) In the event of a deficiency upon a sale of the Premises pledged hereunder by Mortgagor, then Mortgagor shall forthwith pay such deficiency including all necessary expenses and fees which may be

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incurred by the holder of the Note secured by this Leasehold Mortgage in enforcing any of the terms and provisions of this Leasehold Mortgage.

22. **Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 19 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and lastly, any surplus to the Mortgagor, and its successors or assigns, as their rights may appear.

23. **Receiver.** Mortgagor consents and agrees that:

- (a) Upon, or at any time after, the filing of a complaint to foreclose this Leasehold Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises to the extent provided by and in accordance with law;
- (b) Such appointment may be made either before or after sale, with notice to Mortgagor, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not;
- (c) Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and 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 said period;
- (d) The court may, from time to time, to the extent provided by and in accordance with law, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:
 - (i) The Indebtedness or the Indebtedness secured by a decree foreclosing this Leasehold Mortgage, or any tax, special assessment or other lien which may be or become superior to the

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lien hereof or such decree, provided such application is made prior to the foreclosure sale; or

- (ii) The deficiency in case of a sale and deficiency.

24. **Insurance Upon Foreclosure.** In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct; and:

- (a) In the case of foreclosure of this Leasehold Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redelector may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redelector, and
- (b) In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

25. **Compliance With Illinois Mortgage Foreclosure Law.**

- (a) In the event that any provision in this Leasehold Mortgage shall be inconsistent with any provision of the Illinois law the provisions of the Illinois law shall take precedence over the provisions of this Leasehold Mortgage, but shall not invalidate or render unenforceable any other provision of this Leasehold Mortgage that can be construed in a manner consistent with applicable law.
- (b) If any provision of this Leasehold Mortgage shall grant to Mortgagee any rights or remedies upon an Event of Default by Mortgagor or any Guarantor which are more limited than the rights would otherwise be vested in Mortgagee under the

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applicable law in the sense of said provision, Mortgagee shall be vested with the rights granted by applicable law to the full extent permitted by law.

- (c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Illinois law, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in any paragraph of this Leasehold Mortgage, shall be added to the Indebtedness secured by this Leasehold Mortgage or the judgement of foreclosure.

26. **Waiver of Statutory Rights.** Mortgagor acknowledges that the transaction of which this Leasehold Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead exemption, stay, redemption and moratorium laws under any state or federal law.

27. **Forbearance.** Any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the Indebtedness secured by this Leasehold Mortgage.

28. **Waiver.** The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force or redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

- (a) The Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Leasehold Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of the Mortgagor acquiring any interest or title to the Premises or beneficial interest in Mortgagor

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subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 110, Para. 15-1601 of the Illinois Revised Statutes or other applicable law or replacement statutes;

- (b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and
- (c) If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the Trust Estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

29. Assignment of Leases and Rents.

- (a) All of Mortgagor's interest in and rights under any leases hereinbefore or hereafter entered into with the consent of Mortgagee as provided herein, and all of the Rents, to become due, and including all prepaid rents and security deposits, are hereby absolutely, presently and unconditionally assigned and conveyed to Mortgagee to be applied by Mortgagee in payment of all sums due under the Note, and of all other sums payable under this Leasehold Mortgage. Prior to the occurrence of any Event of Default, Mortgagor shall have a license to collect and receive all Rents, which license shall be terminated at the sole option of Mortgagee, without regard to the adequacy of its security hereunder upon notice and demand upon Mortgagor, upon the occurrence of an Event of Default. It is understood and agreed that neither the foregoing assignment of Rents to Mortgagee nor the exercise by Mortgagee of any of its rights or remedies hereunder shall be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or any portion thereof, unless and until Mortgagee, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Collateral by any court at the request of Mortgagee or by agreement with Mortgagor, or the entering into possession of any part of the Collateral by such

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receiver, be deemed to make Mortgagee a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or operation of all or any portion thereof. Upon the occurrence of an Event of Default, this assignment shall constitute a direction to and full authority to each lessee under any Lease and each guarantor of any Lease to pay all Rents to Mortgagee without proof of the default relied upon. Mortgagor hereby irrevocably authorizes each lessee and guarantor to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any Rents due or to become due.

- (b) Mortgagor shall at all times fully perform the obligations of the lessee under all Leases. Mortgagor shall at any time or from time to time, upon request of Mortgagee, transfer and assign to Mortgagee in such form as may be satisfactory to Mortgagee, Mortgagor's interest in the Leases.
- (c) Mortgagee shall have the right to assign Mortgagor's right, title and interest in any leases to any subsequent holder of this Leasehold Mortgage or any participating interest therein or to any person acquiring title to all or any part of the Collateral through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to Mortgagee. Upon an Event of Default and foreclosure of this Leasehold Mortgage, Mortgagee shall have the right to execute new leases of any part of the Collateral, including leases that extend beyond the term of this Leasehold Mortgage.
- (d) Nothing contained in this Section 29 shall be deemed to constitute Mortgagor's consent to any Lease affecting the Premises and Mortgagor hereby acknowledges that all leases are subject to Mortgagee's approval as provided herein.

30. Priorities With Respect To Leases.

- (a) If the Mortgagee shall execute and record (or register) in the public office wherein this Leasehold Mortgage was recorded (or registered) a unilateral declaration that this Leasehold Mortgage shall be subject and subordinate, in whole or in part, to any Lease, then upon such recordation (or registration), this Leasehold Mortgage shall become subject and subordinate to such Lease to the extent set forth in such instrument; provided that such subordination shall not extend to or affect the priority

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of entitlement to insurance proceeds or any Award unless such instrument shall specifically so provide.

- (b) Notwithstanding anything herein contained, this Leasehold Mortgage is executed upon the condition that no purchaser at any foreclosure sale (or purchaser by deed-in-lieu of foreclosure) shall acquire any right, title or interest in or to the Lease hereby mortgaged, unless the purchaser, or the person, firm or corporation to whom or to which such purchaser's right has been assigned, in the instrument transferring to such purchaser or to such assignee the interest of tenant under the Lease hereby mortgaged, shall assume and agree to perform all of the terms, covenants and conditions of Lease thereafter to be observed or performed on the part of such tenant, that no further or additional mortgage or assignment of the Lease hereby mortgaged shall be made unless provided otherwise herein, and that a duplicate original of said instrument containing such assumption agreement, duly executed and acknowledged by such purchaser or such assignee and in recordable form, is delivered to Landlord under the hereby mortgaged Lease immediately after the consummation of such sale, or, in any event, prior to taking the possession of the premises.
- (c) The Mortgagee waives all rights and options to retain and apply the proceeds of any insurance or the proceeds of any condemnation award toward payment of the sum secured by this Leasehold Mortgage to the extent such proceeds are required for and applied to the demolition, repair or restoration of the Premises in accordance with the provisions of the Lease hereby mortgaged.
- (d) This Leasehold Mortgage and all rights of the Mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of the Landlord under the Lease hereby mortgaged, as said Lease may have been previously modified, amended or renewed with the consent of the Mortgagor or its predecessors in interest, or may hereafter be modified, amended or renewed with the consent of the Mortgagee. Nevertheless, the holder of this Leasehold Mortgage agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by the Landlord under the Lease to evidence the foregoing subordination.

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31. **Mortgagee In Possession.** Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee.

32. **Business Loan.** It is understood and agreed that the loan evidenced by the Note and secured hereby is a business loan within the purview of Section 6404 of Chapter 17 of Illinois Revised Statutes (or any substitute, amended, or replacement statutes) transacted solely for the purpose of carrying on or acquiring the business of the Mortgagor of, or if the Mortgagor is a trustee, for the purpose of carrying on or acquiring the business of the beneficiaries of the Mortgagor as contemplated by said Section.

33. **Contests.** Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanic's, materialmen's or other liens or claims for lien upon the Premises (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

- (a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;
- (b) Mortgagor shall deposit with Mortgagee the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;
- (c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and if Mortgagor fails to prosecute same, shall permit Mortgagee to be represented in any such contest and shall pay all reasonable expenses incurred by Mortgagee in so doing, including reasonable fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);
- (d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor by a final judgment and applicable appeal periods have expired, or (ii) forthwith upon demand by Mortgagee if Mortgagor fails to prosecute such contest;

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provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection 32(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

34 Indemnification. Mortgagor does hereby covenant and agree that:

- (a) Mortgagee shall have no responsibility for the control, care, management or repair of the Premises and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the premises resulting in loss, injury or death to any tenant, licensee, immediate stranger or other person except to the extent caused by Mortgagee, its employees, representatives or agents;
- (b) No liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers hereby granted to the Mortgagee, and Mortgagor hereby expressly waives and releases any such liability;
- (c) Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (i) exercise by Mortgagee of any right hereunder except as results from the negligence or willful misconduct of Mortgagee, its employees and agents, and (ii) any and all claims and demand whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the Indebtedness or in any contracts, agreements or other instruments relating to or affecting the Premises except as results from the negligence or willful misconduct of Mortgagee, its employees and agents; and all such liability, loss or damage incurred by the Mortgagee together with the costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional

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Indebtedness, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

- (d) In the event of foreclosure of the lien hereof, the foregoing provisions of this Section 33 shall expire upon the first to occur of (i) the Mortgagee taking possession of the Premises; or (ii) the Mortgagee acquiring title to the Premises, provided however said expiration shall only apply as to occurrences arising after the event giving rise to the expiration of the provisions of this Section 33.

35. **Mortgagor Not A Joint Venturer Or Partner.** Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor; and without limiting the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Leasehold Mortgage or pursuant to any other instrument or document evidencing or securing any of the Indebtedness, or otherwise.

36. **Subrogation.** To the extent that Mortgagee, on or after the date hereof, pays any sum due under or secured by any Senior Lien as hereinafter defined, or Mortgagor or any other person pays any such sum with the proceeds of the Indebtedness:

- (a) Mortgagee shall have and be entitled to a lien on the Premises equal in priority to the Senior Lien discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such Senior Lien, which shall remain in existence and benefit Mortgagee in securing the Indebtedness; and
- (b) Notwithstanding the release of record of Senior Liens (as hereinafter defined) Mortgagee shall be subrogated to the rights and liens of all mortgages, trust deeds, superior titles, vendors' liens, mechanics liens, or liens, charges, encumbrances, rights and equities on the Premises having priority to the lien of the Leasehold Mortgage (hereinafter referred to as "Senior Liens"), to the extent that any obligation secured thereby is directly or indirectly paid or discharged with proceeds of disbursements or advances of the Indebtedness, whether made pursuant to the provisions hereof or of the Note or any document or instrument executed in connection with the Indebtedness.

37. **Mortgagor's Statement.** Mortgagor, within fifteen (15) days upon written request by mail, shall furnish a written statement duly acknowledged of all amounts

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due on any Indebtedness secured hereby, whether for principal or interest on the Note or otherwise, and stating whether any offsets or defenses exist against the Indebtedness and covering such other matters with respect to any of the Indebtedness as Mortgagee may reasonably require.

38. Maximum Interest Rate.

- (a) Any agreements between Mortgagor and Mortgagee are expressly limited so that, in no event whatsoever, whether by reason of disbursement of the proceeds of the loans secured hereby or otherwise, shall the amount paid or agreed to be paid to Mortgagee for the use, detention or forbearance of the loan proceeds to be disbursed exceed the highest lawful contract rate permissible under any law which a court of competent jurisdiction may deem applicable thereto.
- (b) If fulfillment of the Note, any provision herein Loan Documents or in any other instrument pledged as security for the Note, at the time performance of such provision becomes due, involves exceeding such highest lawful contract rate, then ipso facto, the obligation to fulfil the same shall be reduced to such highest lawful contract rate. If by any circumstance Mortgagee shall ever receive as interest an amount which would exceed such highest lawful contract rate, the amount which may be deemed excessive interest shall be applied in the manner set forth in the Note.

39. Future Advances. This Leasehold Mortgage shall secure all future advances and loans, as well as all costs and expenses of performing and enforcing the Mortgagor's obligations under this Leasehold Mortgage and the Loan Documents. All advances under the Note or under or pursuant to this Leasehold Mortgage or the Loan Documents are obligatory advances and shall, to the fullest extent permitted by law, have priority over mechanics' liens and any and all other liens, charges and claims, if any, arising after this Leasehold Mortgage is recorded.

40. Merger. So long as any of the Indebtedness shall remain unpaid, unless the Mortgagee shall otherwise in writing consent, the fee title and the Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates either in the Lessor or in the Lessee, or in a third party, by purchase or otherwise; and the Mortgagor covenants and agrees that, if it shall acquire the fee title, or any other estate, title or interest in the Premises covered by said Lease, this Leasehold Mortgage shall be considered as mortgaged, assigned or conveyed to the Mortgagee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein mortgaged, assigned or conveyed and spread. The

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provisions of this paragraph shall not apply if the holder of the Note acquires the fee of the Premises unless Mortgagee shall so elect.

41. **Title In Mortgagor's Successors.** In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagor (a) the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Leasehold Mortgage and the Indebtedness in the same manner as with the Mortgagor; and (b) the Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises; but nothing in this Section 41 contained shall vary or negate the provision of Section 17 hereof.

42. **Rights Cumulative.** Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

43. **Successors and Assigns.** This Leasehold Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein) and shall inure to the benefit of the Mortgagee and its successors and assigns and (a) wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder of from time to time of the Note, whether so expressed or not; and (b) each such from time to time holder of the note shall have and enjoy all of the rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagee.

44. **Provisions Severable.** The enforceability of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

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45. **Waiver of Defense.** 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 the same in an action at law upon the Note.

46. **Captions And Pronouns.** The captions and headings of the various sections of this Leasehold Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent or the provisions hereof. Whenever the context requires or permits, the singular number shall include the plural, the plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.

47. **Addresses And Notices.** Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof, by overnight delivery, or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder, with copies to:

IF TO MORTGAGEE:

John K. Kneafsey, Esq.
Nisen & Elliott
200 West Adams St., Suite 2500
Chicago, IL 60606

IF TO MORTGAGOR:

Timothy R. Pohl, Esq.
Jones Day Reavis & Pogue
77 West Wacker Drive
Chicago, IL 60601

48. **Mortgagor Will Not Discriminate.** Mortgagor covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, but not limited to, the requirements of Title VII of the 1968 Civil Rights Act, or any substitute, amended or replacement Acts.

49. **Interest At the Default Rate.** Without limiting the generality of any provision herein or in the Note contained, from and after the occurrence of any Event of Default hereunder, all of the Indebtedness shall bear interest at the rate set forth in the Note.

50. **Time.** Time is of the essence hereof and of the Note, Assignment and all other instruments delivered in connection with the Indebtedness.

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51. **Governing Law.** This Leasehold Mortgage shall be governed by the laws of the State of Illinois. In the event one or more of the provisions contained in this Leasehold Mortgage shall be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Leasehold Mortgage.

52. **Hazardous Waste.** The Mortgagor represents and warrants to the Mortgagee that (a) to the best of Mortgagor's knowledge the Mortgagor has not used Hazardous Materials (as defined below), on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and, to the best of the Mortgagor's knowledge, no prior owner of the Premises or any existing or prior tenant, or occupant has used Hazardous Materials on, from or affecting the Premises in any manner which violates federal, state or local law, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials; (b) to the best of Mortgagor's knowledge the Mortgagor has never received any notice of any violations (and is not aware of any existing violations) of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials at the Premises and, to the best of the Mortgagor's knowledge, there have been no actions commenced or threatened by any party for noncompliance which affects the Premises; (c) Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials except to the extent that such Hazardous Materials are stored and/or used in compliance with all applicable federal, state and local laws and regulations; and, without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or occupant, a release, spill, leak or emission of Hazardous Materials onto the Premises or onto any other contiguous property; (d) the Mortgagor shall conduct and complete all investigations, including a comprehensive environmental audit, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Premises as required by all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the satisfaction of the Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities. If the Mortgagor fails to conduct an environmental audit reasonably required by the Mortgagee, then the Mortgagee may at its option and at the expense of the Mortgagor, conduct such audit.

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Subject to the limitations set forth below, the Mortgagor shall defend, indemnify and hold harmless the Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to (a) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Premises, (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials with respect to the Premises, and/or (d) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Mortgagee, which are based upon or in any way related to such Hazardous Materials used in the Premises. The indemnity obligations under this paragraph are specifically limited as follows:

- (i) The Mortgagor shall have no indemnity obligation with respect to Hazardous Materials that are first introduced to the Premises or any part of the Premises subsequent to the date that the Mortgagor's interest in and possession of the Premises or any part of the Premises shall have fully terminated by foreclosure of this Leasehold Mortgage or acceptance of a deed in lieu of foreclosure;
- (ii) The Mortgagor shall not have indemnity obligation with respect to any Hazardous Materials introduced to the Premises or any part of the Premises by the Mortgagee, its successors or assigns.

The Mortgagor agrees that in the event this Leasehold Mortgage is foreclosed or the Mortgagor tenders a deed in lieu of foreclosure, the Mortgagor shall deliver the Premises to the Mortgagee free of any and all Hazardous Materials which are then required to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises.

For purposes of this Leasehold Mortgage, "Hazardous Materials", includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et. seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et. seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et. seq.) and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule or regulation.

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The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Mortgagor may have to the Mortgagee under any loan document, and in common law, and shall survive (a) the repayment of all sums due for the debt, (b) the satisfaction of all of the other obligations of the Mortgagor in this Leasehold Mortgage and under any loan document, (c) the discharge of this Leasehold Mortgage, and (d) the foreclosure of this leasehold Mortgage or acceptance of a deed in lieu of foreclosure. Notwithstanding anything to the contrary contained in this Leasehold Mortgage, it is the intention of the Mortgagor and the Mortgagee that the indemnity provisions of this paragraph shall only apply to an action commenced against any owner or operator of the Premises in which any interest of the Mortgagee is threatened or any claim is made against the Mortgagee for the payment of money.

IN WITNESS WHEREOF, this Leasehold Mortgage is executed and delivered as of the day and year first above written.

MORTGAGOR:

CHICAGO
GREATER DOUBLE DRIVE-THRU, V
L.P., an Illinois limited partnership

By: CHECKERS OF CHICAGO, INC.,
an Illinois corporation,
General partner

By: Michael E. [Signature]

Title: Vice-President

Attest:

Title: _____

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STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that the above named Michael Dew Vice President and Assistant Secretary of Checkers of Chicago, Inc., as General Partner of the Mortgagor 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 the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notary seal this 30th day of June, 1996.

Catherine Boogs

My commission expires April 29, 2000



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EXHIBIT A

LOT 17 AND THE WEST 15 FEET OF LOT 16 IN THE SUBDIVISION OF
BLOCK 9 IN HUNDLEY'S SUBDIVISION OF LOTS 3 TO 21 INCLUSIVE AND
LOTS 33 TO 37 INCLUSIVE IN PINE GROVE, BEING PART OF THE WEST
1/2 OF SECTION 21, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD
PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS 3601 NORTH HALSTED STREET, CHICAGO, ILLINOIS
60613

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