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PURCHASE MONEY MORTGAGE, ASSIGNMENT OF LEASES
AND RENTS, SECURITY AGREEMENT,
FIXTURE FILING AND FINANCING STATEMENT

130.00
128.00
PT

BY

Broadacre Evanston, L.L.C.
an Illinois limited liability company

TO

Northwestern University/Evanston Research Park, Inc.
an Illinois corporation

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TABLE OF CONTENTS

Page No.

I. COVENANTS AND AGREEMENTS OF THE MORTGAGOR		6
1.1	Recitals and Grant	6
1.2	Payment of Liabilities	6
1.3	Payment of Taxes	6
1.4	Maintenance and Repair	6
1.5	Sales; Liens	7
	(a) Sales	7
	(b) Liens	7
	(c) Interest in Mortgagor	7
1.6	Delivery of Documents; Access by Mortgagee	8
	(a) Delivery of Documents	8
	(b) Access by Mortgagee	8
1.7	Stamp and Other Taxes	8
1.8	Mortgagor's Construction Obligations	8
1.9	Performance of Obligations Relating to Construction Loan	9
1.10	Governmental Requirements	9
	(a) Compliance With Laws	9
	(b) Compliance With Permits	9
	(c) Changes in Use; Zoning	9
1.11	No Mechanics' Liens	10
1.12	Continuing Priority	10
1.13	Utilities	10
1.14	Third Party Agreements	10
	(b) Enforceability	11
1.15	Assignment of Leases and Rents, Sales Contracts and Collections; Future Leases	11
	(a) Assignment; License	11
	(b) Mortgagee-in-Possession	11
	(c) Notice to Tenants and Contract Purchasers	12
	(d) Application of Rents and Sales Proceeds; Future Assurance	12
	(e) Assignment by Mortgagee	12
	(f) Remedies	12
1.16	The Mortgagee's Performance of Mortgagor's Obligations	12
1.17	Subrogation Rights	13
1.18	Taxes, Assessments and Insurance	13
1.19	Mortgagor's Right to Contest	13
1.20	Insurance	14
	(b) Policy Requirements	15
	(c) Delivery of Policies	15
	(d) Notice of Casualty	16

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UNOFFICIAL COPY

11/11/2023 10:00 AM

	Page No.
(e) Settlement of Claim	16
(f) Application of Property Insurance Proceeds	16
1.21 Eminent Domain.	17
(a) Notice of Condemnation	17
(b) Settlement of Claim	18
(c) Application of Condemnation Awards	18
1.22 Construction Loan Documents; Reporting	18
1.23 Environmental Requirements	19
H. DEFAULT	
20	
2.1 Events of Default:	20
2.1.1 Debt Documents	20
2.1.2 Provisions of this Mortgage	20
2.1.3 Sales and Liens	20
2.1.4 Bankruptcy, Insolvency, Death	20
2.1.5 Construction Loan Default	21
2.1.6 Sales Contracts	21
2.1.7 Other	21
2.2 Unmatured Default	21
III. REMEDIES	
21	
3.1 Acceleration	21
3.2 Remedies Cumulative	21
3.3 Foreclosure; Receiver	22
(a) Foreclosure	22
(b) Receiver; Mortgagee-in-Possession	22
(c) Powers of Receiver and Mortgagee	22
(d) Partial Foreclosure; Separate Sales	22
(e) Transfer of Title	23
(f) Mortgagee's Right to Bid in Liabilities	23
(g) Economic Default	23
3.4 Possession of the Premises; Remedies for Leases and Rents	23
3.5 Personal Property	25
(a) Remedies	25
(b) Notices	25
(c) Power of Attorney	26
3.6 Performance of Third Party Agreements and Other Agreements	26
3.7 No Liability on Mortgagee	26

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UNOFFICIAL COPY

Page No.

IV. GENERAL		26
4.1	Permitted Acts	26
4.2	Indemnification	27
4.3	Obligatory Future Advances	27
4.4	Security Agreement; Fixture Filing	27
4.5	Defeasance	28
4.6	Release of Lien Upon Sale of Unit	28
4.7	Notices	28
4.8	Successors; Mortgagor; Gender	28
4.9	Care by the Mortgagee	29
4.10	No Waiver; Writing	29
4.11	Governing Law	29
4.12	Attorneys' Fees	29
4.13	WAIVER	29
4.14	JURY TRIAL	30
4.15	No Merger	30
4.16	Time of Essence	30
4.17	No Reliance by Others on the Premises; Single Zoning Lot and Tax Parcel	30
4.18	[INTENTIONALLY OMITTED]	31
4.19	Mortgagee Not a Joint Venturer or Partner	31
4.20	Inconsistency With Note	31
4.21	Compliance with Illinois Mortgage Foreclosure Law	31

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11/11/11

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PURCHASE MONEY MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT

THIS PURCHASE MONEY MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FIXTURE FILING and FINANCING STATEMENT (this "Mortgage") is made as of August 28, 1996 by Broadacre Evanston, L.L.C., an Illinois limited liability company (herein, together with its successors and assigns, the "Mortgagor"), and having its address at 455 East Illinois Street, Suite 570, Chicago, Illinois 60611, Attn: Francis F. Freeman, for the benefit of Northwestern University/Evanston Research Park, Inc., an Illinois corporation (herein, together with its successors and assigns, the "Mortgagee") having its address at c/o 633 Clark Street, Evanston, Illinois 60208, Attn: William Ihlanfeldt.

RECITALS

A. Purchase and Sale Agreement; Promissory Note. Pursuant to that certain Purchase and Sale Agreement dated as of July 3, 1996, by and between Mortgagor and Mortgagee (herein, as the same may be amended, modified, revised or restated from time to time, is called the "Agreement"), concurrently herewith Mortgagee is selling and conveying to Mortgagor the Property (defined herein below) and, as part of the consideration to Mortgagee therefor, Mortgagor is delivering to Mortgagee a Purchase Money Promissory Note dated of even date herewith made by Mortgagor payable to the order of Mortgagee in the original principal amount of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) (such note, as the same may be amended, modified or restated from time to time, and together with all substitutions and replacements therefor, is called the "Note"). Interest accrues and is payable as provided in the Note. The Note is due and payable in full on ~~July~~ ^{August} ~~1999~~ ²⁸, 1999, unless accelerated or prepaid pursuant to the terms of the Note or the other Debt Documents (defined for purposes hereof as defined in the Note), or unless extended pursuant to the terms thereof. Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the Note.

B. This Mortgage; Debt Documents. As provided in the Agreement, Mortgagor is making and delivering this Mortgage to Mortgagee for the purposes and uses set out herein including (without limitation) to secure the Note. The Note, this Mortgage, the Development Criteria and Sale Criteria (which are incorporated into this Mortgage by this reference), the Proceeds Escrow Agreement and any and all other documents and instruments which at any time or from time to time create, evidence or secure any obligation or indebtedness of Mortgagor or any other person to Mortgagee under, or as provided or contemplated in, the Agreement or the Note, each of which is defined for purposes of this Mortgage as it is defined in the Agreement), and as each thereof may be amended, modified or restated from time to time, are hereinafter collectively referred to as the "Debt Documents".

C. The Liabilities. As used in this Mortgage, the term "Liabilities" means and includes all of the following:

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- (i) all performance and payment obligations to the Mortgagee arising under or in connection with the Agreement, the Note, this Mortgage or any of the other Debt Documents;
- (ii) all payment, reimbursement, indemnification and other obligations to the Mortgagee, in each case howsoever created, arising or evidenced, whether direct or indirect, joint or several, absolute or contingent, or now or hereafter existing, or due or to become due, arising out of or in connection with the Agreement, the Note, this Mortgage or any of the other Debt Documents;
- (iii) all indebtedness of any kind arising under, and all amounts of any kind which at any time become due or owing to the Mortgagee under or with respect to, the Note, this Mortgage, and the other Debt Documents;
- (iv) any and all advances, costs or expenses paid or incurred by the Mortgagee (a) to protect any or all of the Collateral (hereinafter defined) and other collateral under the Debt Documents, (b) to perform any obligation of the Mortgagor hereunder or any obligation of the Mortgagor under the Agreement, the Note, this Mortgage or any other Debt Document or collect any amount owing to the Mortgagee which is secured hereby or under the Debt Documents;
- (v) interest on all of the foregoing including, where applicable, interest at the Default Interest Rate (as defined in the Note); and
- (vi) all costs of enforcement and collection (including, without limitation, attorneys' fees and court costs) of this Mortgage and the other Debt Documents.

Any future advances or other amounts disbursed or expended by the Mortgagee under this Mortgage or any of the other Debt Documents, whether obligatory or made at the option of Mortgagee, shall be (i) secured by this Mortgage, (ii) considered additional principal indebtedness evidenced by the Note and within the definition of "Liabilities" and (iii) entitled to the same priority as if such future advances, disbursements or expenditures were made on the date hereof.

The maximum amount included within the Liabilities on account of principal shall not exceed the sum of an amount equal to three times the initial face principal amount of the Note plus the total amount of all advances, disbursements or expenditures made by the Mortgagee to protect the Collateral and the security interest and lien created hereby.

D. The Collateral. For purposes of this Mortgage, the term "Collateral" means and includes all right, title and interest of the Mortgagor, if any, whether now owned or hereafter acquired, in and to all of the following:

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- (i) **Real Estate.** All of the land described on Exhibit A attached hereto (the "Property"), together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anyway appertaining to the Property (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Property; all estate, claim, demand, right, title or interest of the Mortgagor in and to any street, road, highway, or alley (vacated or otherwise) adjoining the Property or any part thereof; all strips and gores belonging, adjacent or pertaining to the Property; and any after-acquired title to any of the foregoing (all of the foregoing is herein referred to collectively as the "Real Estate");
- (ii) **Improvements and Fixtures.** All buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate, together with all building or construction materials, equipment, appliances, machinery, plant equipment, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Real Estate, including (without limitation) all motors, boilers, engines and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment (all of the foregoing is herein referred to collectively as the "Improvements");
- (iii) **Personal Property.** All furniture, furnishings, equipment (including, without limitation, telephone and other communications equipment, window cleaning, building cleaning, monitoring, garbage, air conditioning, pest control and other equipment) and all other tangible property of any kind or character now or hereafter owned or purported to be owned by the Mortgagor and used or useful in connection with the Real Estate, regardless of whether located on the Real Estate or located elsewhere including, without limitation, all rights of the Mortgagor under any lease to furniture, furnishings, fixtures and other items of personal property at any time during the term of such lease and all rights under and to the escrow accounts, if any, and all interest thereon established and maintained pursuant to Section 4.5.1 below (all of the foregoing is herein referred to collectively as the "Goods");
- (iv) **Intangibles.** All goodwill, trademarks, trade names, service names, service marks, option rights, Unit purchase contracts (defined below), Earnest Money Deposits (defined below), books and records and general intangibles of the Mortgagor relating in any way to all or any part of the Property or the Premises (defined below) and all accounts, contract rights, deposit accounts, instruments, chattel paper, choses in action, and other rights or claims of the Mortgagor for

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payment of money to it, for property sold or lent by it, for services rendered by it, for money lent by it, or for advances or deposits made by it, any and all rights and claims under policies of insurance, and any and all other intangible property of the Mortgagor of any and every kind whatsoever (all of the foregoing is herein referred to collectively as the "Intangibles");

- (v) Rents. All rents, issues, profits, royalties, avails, income and other benefits derived or owned by the Mortgagor directly or indirectly from the Premises, including (without limitation) judgments, settlements or bankruptcy claims for unpaid rents or damages arising in connection with any rejection of a Lease (defined below) in bankruptcy as well as rental loss insurance proceeds and claims therefor (all of the foregoing is herein collectively called the "Rents");
- (vi) Leases. All rights of the Mortgagor under all leases, subleases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money or any consideration for the use, possession or occupancy of, or any estate in, the Premises or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing, as each of the same may be amended and modified from time to time, is herein referred to collectively as the "Leases");
- (vii) Plans. All rights of the Mortgagor, if any, to plans and specifications, designs, drawings and other matters prepared for or in connection with or relating to the Premises, including but not limited to the Plans and Specifications described in the Development Criteria (all of the foregoing, as each of the same may be amended and modified from time to time, is herein collectively called the "Plans");
- (viii) Contracts for Services. All rights of the Mortgagor, if any, under any contracts executed by the Mortgagor with any vendor or provider of goods or services for or in connection with any development of or construction undertaken on, or services performed or to be performed in connection with, the Real Estate, including any architect's contract, any general or prime construction contract, any contract with a contractor or materialman, and any management agreement (all of the foregoing, as each of the same may be amended and modified from time to time, is herein referred to collectively as the "Contracts for Services");
- (ix) Contracts for Sale or Financing. All rights of the Mortgagor, if any, as seller under any agreement, contract, understanding or arrangement pursuant to which any person agrees to pay or disburse any money for the purchase or acquisition of all or a portion of the Collateral or any part thereof and all rights of the Mortgagor as borrower under any contract or agreement pursuant to which any person agrees to lend, disburse, advance or pay any money to or for the account

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or benefit of the Mortgagor on the security of all or any portion of or estate or interest in the Property or the Premises (all of the foregoing, as each of the same may be amended and modified from time to time, is herein referred to collectively as the "Sale Contracts") and any and all payments and deposits by purchasers pursuant to the Sale Contracts; and

- (x) Other Property. All other property or rights of the Mortgagor of any kind or character related in any way, directly or indirectly, to all or any part of or interest or estate in the Real Estate or the Improvements, and all proceeds (including insurance and condemnation proceeds) and products of any of the foregoing. (All of the Real Estate and the Improvements, and any other Collateral which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises").

GRANT

NOW THEREFORE, for and in consideration of the premises and the Mortgagee's conveying the Property to the Mortgagor, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Mortgagor, and in order to secure the full, timely and proper payment and performance of each and every one of the Liabilities,

THE MORTGAGOR HEREBY MORTGAGES, WARRANTS, CONVEYS, TRANSFERS AND ASSIGNS TO THE MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER, AND GRANTS TO THE MORTGAGEE A CONTINUING SECURITY INTEREST IN AND TO, ALL OF THE COLLATERAL,

TO HAVE AND TO HOLD the Premises unto the Mortgagee, its successors and assigns, forever, hereby expressly waiving and releasing any and all right, benefit, privilege, advantage or exemption under and by virtue of any and all statutes and laws of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

The Mortgagor hereby covenants with and warrants to the Mortgagee and with the purchaser at any foreclosure sale: that at the execution and delivery hereof it is well seized of the Premises, and of a good, indefeasible estate therein, in fee simple; that the Collateral is free from all encumbrances whatsoever (and any claim of any other person thereto) other than (i) the lien and security interests of the Construction Mortgage to Grand National Bank (the "Construction Mortgage") and the other Construction Loan Documents (as defined in the Note), (ii) the lien and security interests granted to the Mortgagee herein and pursuant to the other Debt Documents and (iii) the encumbrances and other matters specifically identified as exceptions to title on Schedule B of the title insurance policy insuring the lien of this Mortgage in favor of the Mortgagee, including but not limited to the Declaration of Covenants, the Declaration of Condominium, and Plat of Condominium (collectively, the "Permitted Exceptions"); that it has good and lawful right to sell, mortgage, encumber and convey the Collateral to the Mortgagee

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pursuant to this Mortgage; and that it and its successors and assigns will forever warrant and defend the Collateral against all claims and demands whatsoever with the exception of the Permitted Exceptions.

I. COVENANTS AND AGREEMENTS OF THE MORTGAGOR

Further to secure the payment and performance of the Liabilities, the Mortgagor hereby covenants, warrants and agrees with the Mortgagee as follows:

1.1 Recitals and Grant. The Recitals and Grant set forth above are true and correct and are incorporated herein by reference.

1.2 Payment of Liabilities. The Mortgagor agrees that it will pay, or will cause to be paid, timely and in the manner required in the Debt Documents, all amounts due hereunder and under the Debt Documents and all other Liabilities (including fees and charges). All sums payable by the Mortgagor hereunder shall be paid without demand, counterclaim, offset, deduction or defense. The Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

1.3 Payment of Taxes. Subject to the provisions of Section 1.19 hereof, the Mortgagor will pay or cause to be paid when due all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Collateral or any property used in connection therewith. In addition, the Mortgagor will pay before due any tax or other charge on the interest or estate in lands created or represented by this Mortgage or by any of the Debt Documents, whether levied against the Mortgagor or the Mortgagee or otherwise. Upon request of Mortgagee, Mortgagor will submit to the Mortgagee all receipts showing payment of all of such taxes, assessments and charges.

1.4 Maintenance and Repair. The Mortgagor will:

- (a) not abandon the Premises;
- (b) not do or suffer anything to be done which would depreciate or impair the value of the Collateral or the security of this Mortgage;
- (c) not remove or demolish any of the Improvements;
- (d) pay promptly for all labor and materials for all construction, repairs, demolition and improvements to or on the Premises;

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(e) not make any changes, additions or alterations to the Premises or the Improvements except as required by any applicable governmental requirement, as set forth in the Development Criteria which is incorporated into this Mortgage by this reference (the "Development Criteria"), or as otherwise approved in writing by Mortgagee;

(f) maintain, preserve and keep the Collateral in good, safe and insurable condition and in compliance with all applicable laws and ordinances and with the Declaration of Covenants (defined hereinafter), and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction, all as promptly as possible under the circumstances but in all cases in compliance with any time period provided under applicable requirements of governmental authorities and insurance underwriters and the Declaration of Covenants;

(g) not commit, suffer, or permit waste of all or any part of the Collateral; and

(h) maintain all grounds and abutting streets and sidewalks in good and neat order and repair.

1.5 Sales; Liens. The Mortgagor will not:

(a) Sales: directly or indirectly sell, contract to sell, assign, transfer, lease, convey, or dispose of, or permit to be transferred, conveyed or disposed of, the Collateral or any part thereof or any interest or estate in any thereof (including any conveyance into a trust or any conveyance of the beneficial interest in any trust that may hold title to the Premises) or remove any of the Collateral from the Premises, except that Mortgagor may enter into and perform its obligations under Sale Contracts (that term being defined in Exhibit C attached hereto and made a part hereof);

(b) Liens: create, suffer or permit to be created or to exist any mortgage, lien, claim, security interest, charge, encumbrance or other right or claim of any kind whatsoever (whether voluntarily or by operation of law) upon the Collateral or any part thereof or any of the Third Party Agreements (defined hereinbelow), except for liens of current general real estate taxes not then due and payable, the Permitted Exceptions and mechanics' liens being diligently contested in good faith and in accordance with the requirements of Section 1.19 hereof; or

(c) Interests in Mortgagor: directly or indirectly sell, contract to sell, assign, transfer, convey or dispose of any interest in the Mortgagor or any entity which directly or indirectly holds an interest in Mortgagor, except as approved in writing by Mortgagee. Mortgagee's consent to assignments or transfers of interest shall not be withheld provided (i) such transfer is to a family member primarily for estate planning purposes; or (ii) such transfer and prior transfers or assignments to third parties do not aggregate more than 49.9% of the control of Mortgagor or are limited to Mortgagor's economic interests only.

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1.6 Delivery of Documents; Access by Mortgagee.

(a) Delivery of Documents. The Mortgagor will at all times deliver to the Mortgagee, promptly after Mortgagor's execution or receipt thereof (whichever occurs first), either all of its executed originals (in the case of chattel paper or instruments) or (in all other cases), if requested by Mortgagee, certified copies of all Leases, agreements creating or evidencing Intangibles, Plans, Contracts for Services, Sale Contracts, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Collateral.

(b) Access by Mortgagee. Mortgagee shall have the right to, among other things, enter onto, inspect, perform tests (including environmental studies and assessments in connection with its enforcement or preparation to or consideration of enforcing any of its rights or remedies under the Debt Documents) and investigate the Premises and the Collateral and the Mortgagor's books, records and documents relating thereto; and Mortgagor hereby grants to Mortgagee an irrevocable license, easement and right to enter upon the Premises at any time for the foregoing purposes. Mortgagee shall indemnify, defend and hold harmless Mortgagor from all claims and liabilities asserted against Mortgagor as a result of any such entry by Mortgagee or its agents.

1.7 Stamp and Other Taxes. If the Federal, or any state, county, local, municipal or other government or any subdivision of any thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any income tax on the Mortgagee's receipt of interest payments on the principal portion of the Liabilities), assessment or imposition upon this Mortgage, any of the other Liabilities, or any of the other Debt Documents, the interest of the Mortgagee in the Collateral, or any of the foregoing, or upon the Mortgagee by reason of or as holder of any of the foregoing, or shall at any time or times require revenue stamps to be affixed to this Mortgage or any of the other Debt Documents, the Mortgagor shall pay, or cause to be paid, all such taxes and stamps to or for the Mortgagee as they become due and payable. If any law or regulation is enacted or adopted permitting, authorizing or requiring any tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits the Mortgagor from paying the tax, assessment, stamp, or imposition to or for the Mortgagee, then such event shall constitute an Event of Default hereunder and all sums hereby secured shall become immediately due and payable at the option of the Mortgagee.

1.8 Mortgagor's Construction Obligations. Promptly after the execution of this Mortgage (and in all events before NOVEMBER 30, 1996), the Mortgagor will commence the construction of the Project (defined in the Development Criteria), and at all times thereafter the Mortgagor will diligently prosecute the construction and completion of the Project in accordance with the Development Criteria. The Mortgagor will cause the entire Project to be completed, lien-free and in compliance with the Plans and Specifications, with all applicable laws, ordinances, permits and licenses, with the Development Criteria, with the Declaration of Covenants, and with all requirements and provisions of this Mortgage, by the Maturity Date (defined for purposes hereof as defined in the Note). The Mortgagor will perform and comply with all of the provisions of Development Criteria, which is incorporated in and made a part of

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this Mortgage for all purposes. The Mortgagor acknowledges and agrees that the due, timely and strict performance of its covenants and undertakings set out in this Section 1.8 are an essential part of the consideration to the Mortgagee under the Agreement and that any breach or failure to perform any of those covenants or undertakings will constitute a material default by the Mortgagor hereunder.

1.9 Performance of Obligations Relating to Construction Loan. The Mortgagor will, for the benefit of the Mortgagee, duly, timely and properly (i) perform all of its obligations and agreements under the Construction Loan Agreement with Grand National Bank, Niles, Illinois (the "Construction Loan Agreement") and the Construction Loan Documents, (ii) cause to be satisfied all conditions precedent to its right to receive disbursements of Construction Loan (defined for purposes hereof as defined in the Note) proceeds, and (iii) pay all indebtedness arising under the Construction Loan Documents, all as provided in and contemplated by the Construction Loan Documents. For purposes of this Mortgage, "Construction Loan Documents" shall mean and include the Construction Loan Agreement and all documents and instructions which at any time create evidence or secure any indebtedness or other obligation of the Mortgagor under the Construction Loan Agreement or in respect of the Construction Loan.

1.10 Governmental Requirements.

(a) **Compliance With Laws.** The Mortgagor will at all times fully comply with, and cause the Collateral and the use and condition thereof fully to comply with, all federal, state, county, municipal, local and other governmental statutes, laws, ordinances, requirements, regulations, rules, orders and decrees of any kind whatsoever that apply or relate to the Mortgagor or the Collateral or the use or condition thereof, including, without limitation, all federal, state, county and local laws, environmental, zoning, housing and building laws, all laws and ordinances relating to handicapped access to the Premises, and all equal housing laws.

(b) **Compliance With Permits.** The Mortgagor further agrees that it will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to land use and development, landmark preservation, construction, access, water rights and use, noise, environmental pollution and hazardous waste and substances) which are applicable to the Mortgagor or have been granted for the Collateral or the use thereof.

(c) **Changes in Use: Zoning.** Unless required by applicable law, or unless Mortgagee has otherwise first expressly agreed in writing, the Mortgagor shall not: (i) make or allow any changes to be made in the nature of the occupancy or use of the Premises or any portion thereof for which the Premises or such portion was intended at the time this Mortgage was delivered; or (ii) cause or permit the Property to be used for any purpose other than the construction, completion, and use of a 30-unit residential townhome development complying in all respects with the Development Criteria and the Declaration of Covenants (this clause (ii) is in addition to, and does not limit the generality or application of, the preceding clause (i)). The Mortgagor shall not initiate or acquiesce in any change in any zoning or other land use classification now

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or hereafter in effect and affecting the Premises or any part thereof without in each case obtaining the Mortgagee's prior written consent thereto.

1.11 No Mechanics' Liens. Subject to the provisions of Section 1.19 hereof, the Mortgagor will not suffer any mechanic's, laborer's, materialmen's or other similar lien to be created or remain outstanding upon the Premises or any part thereof. In addition, it is further expressly made a covenant and condition hereof that the lien of this Mortgage shall extend to any and all improvements and fixtures now or hereafter on the Premises, prior to any other lien thereon (other than the lien of the Construction Mortgage) that may be claimed by any person, so that subsequently accruing claims for lien on the Premises shall be junior and subordinate to this Mortgage. All contractors, subcontractors, and other parties dealing with the Premises, or with any parties interested therein, are hereby required to take notice of the above provisions. The Mortgagor agrees to promptly deliver to the Mortgagee a copy of any notices that the Mortgagor receives with respect to any pending or threatened lien or the foreclosure thereof.

1.12 Continuing Priority. The Mortgagor will: (a) pay such fees, taxes and charges, execute and deliver to Mortgagee for recordation and filing (at the Mortgagor's expense) such financing statements and other documents, obtain such acknowledgements or consents, notify such obligors or providers of services and materials, and do all such other acts and things as the Mortgagee may from time to time request to establish and maintain a valid prior and perfected lien on and security interest in the Collateral (subject only to the Permitted Exceptions) and a valid first perfected security interest in the Proceeds Escrow and all property held therein (subject to no exceptions); and (b) keep all tangible Collateral on the Real Estate except as the Mortgagee may otherwise consent in writing.

1.13 Utilities. The Mortgagor will pay or cause to be paid all utility charges incurred in connection with the Collateral promptly when due and maintain all utility services available for use at the Premises.

1.14 Third Party Agreements. Except as otherwise deemed prudent by Mortgagor in the ordinary course of business exercising its commercially reasonable judgment:

(a) Performance of Obligations. The Mortgagor will, for the benefit of the Mortgagee, fully and promptly keep, observe, perform and satisfy each obligation, condition, covenant, and agreement of the Mortgagor or imposed on it, or applicable to the Property or the Premises, under any Third Party Agreement, and satisfy or cause to be satisfied all conditions applicable to the Mortgagor thereunder, so that no default will ever occur thereunder and so that the persons (other than the Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Mortgagor and the Mortgagee. The Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such person to avoid or be excused from any such performance. The Mortgagor shall promptly deliver to the Mortgagee copies of any demands for performance or notices of default sent or received by the Mortgagor in connection with any Third Party Agreement and will allow the Mortgagee, at the Mortgagor's cost and expense, the right (but

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the Mortgagee will not have any obligation) to cure any such default. For purposes hereof, "Third Party Agreements" shall mean all agreements between the Mortgagor relating to the Project, the Collateral or the Liabilities, including, without limitation, all reciprocal easement agreements and covenants, conditions and restrictions affecting the Premises, the Declaration of Covenants, the Sale Contracts, Contracts for Services, the Intangibles and any other document imposing an obligation, covenant or restriction against the Collateral or Mortgagor.

(b) Enforceability. In addition, the Mortgagor will enforce, at its expense, each and every obligation of the parties (other than the Mortgagor) under the Third Party Agreements.

Without the prior written consent of the Mortgagee, the Mortgagor shall not (i) collect the proceeds of any Intangibles more than 30 days before the same shall be due and payable; (ii) modify, amend, cancel or terminate any of the Third Party Agreements, or (iii) in any other manner impair Mortgagee's rights or interests with respect to the Third Party Agreements or the Leases or the Rents.

1.15 Assignment of Leases and Rents, Sales Contracts and Collections; Future Leases.

(a) Assignment; License. In addition to, and without limiting the application or generality of, all other provisions in this Agreement having similar purpose or effect, Mortgagor irrevocably, absolutely and unconditionally assigns and transfers to Mortgagee all of Mortgagor's right, title and interest (but not any obligations or liabilities) in, to and under all Leases now existing or hereafter entered into, and all of the Rents, whether now due, past due, or to become due, and including all prepaid rents and security deposits, the Sale Contracts and proceeds thereof (the "Sales Proceeds") and all other amounts due with respect to any of the other Collateral. Mortgagee shall hold and apply all such Leases, Rents, Sale Contracts, Earnest Money Deposits and Sales Proceeds, in payment or reimbursement of the Liabilities and all other sums payable under this Mortgage and the Debt Documents. So long as no Event of Default or Unmatured Default has occurred and remains uncured, the Mortgagor shall have a license to collect and receive all Rents, Sales Proceeds and other amount in accordance with the terms of the Note. Mortgagor shall hold any Rents and Sales Proceeds received under the foregoing license in trust for the benefit of Mortgagee and shall deposit such Rents and Sales Proceeds in the Proceeds Escrow Agreement (defined for purposes of this Mortgage as defined in the Note), for application as provided in the Note. Distributions of such Rents and Sales Proceeds to Mortgagor shall only be made in accordance with the provisions of the Note. Upon the occurrence of an Unmatured Default or an Event of Default, Mortgagor's right to collect and receive the Rents and Sales Proceeds under the foregoing license shall automatically be revoked without regard to the adequacy of Mortgagee's security hereunder and without notice to or demand upon the Mortgagor. Thereafter, Mortgagee shall have the sole right, with or without taking possession of the Premises, to collect and hold (or apply to the Liabilities) all Rents and Sales Proceeds. This is an absolute assignment and not an assignment for security only.

(b) Mortgagee-in-Possession. It is understood and agreed that neither the foregoing assignment to the Mortgagee nor the exercise by the Mortgagee of any of its rights or remedies

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under Article III hereof shall be deemed to make the Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment of any portion thereof, unless and until the Mortgagee, in person or by agent, assumes actual possession thereof. The appointment of a receiver for the Collateral by any court at the request of the Mortgagee or by agreement with the Mortgagor, or the entering into possession of any part of the Collateral by such receiver, shall not be deemed to make the 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.

(c) Notice to Tenants and Contract Purchasers. Upon the occurrence of any Event of Default or any Unmatured Default, this Mortgage shall constitute a direction to and full authority to each lessee under any Leases, each guarantor of any of the Leases, each purchaser under a Contract for Sale and any other person obligated under any of the Collateral to pay all Rents and Sales Proceeds and other amounts to the Mortgagee without proof of the Event of Default or Unmatured Default relied upon. The Mortgagor hereby irrevocably authorizes each such person to rely upon and comply with any notice or demand by the Mortgagee for the payment to the Mortgagee of any Rents and Sales Proceeds and other amounts due or to become due under such documents.

(d) Application of Rents and Sales Proceeds; Future Assurance. The Mortgagor shall apply the Rents and Sales Proceeds and other amounts solely and exclusively to the payment of all necessary and reasonable operating costs and expenses of the Collateral, debt service on the Construction Loan and the Liabilities, and otherwise in compliance with the provisions of the Debt Documents. The Mortgagor shall at any time or from time to time, upon request of the Mortgagee, transfer and assign to the Mortgagee in such form as may be satisfactory to the Mortgagee, the Mortgagor's interest in any of the Leases or Sale Contracts.

(e) Assignment by Mortgagee. The Mortgagee shall have the right to assign the Mortgagee's right, title and interest in any Leases to any subsequent holder of this Mortgage or any participating interest therein or to any person acquiring title to all or any part of the Collateral through foreclosure, deed-in-lieu or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to the Mortgagee.

(f) Remedies. Without limiting the remedies contained in Article III, upon the occurrence of any Event of Default, the Mortgagee shall have the right to execute new leases of any part of the Collateral, including leases that extend beyond the term of this Mortgage. At any time after the occurrence of an Event of Default, the Mortgagee shall have the authority, as the Mortgagor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of the Mortgagor and to bind the Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Collateral.

1.16 The Mortgagee's Performance of Mortgagor's Obligations. If the Mortgagor fails to pay or perform any of its obligations herein contained (including, without limitation,

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payment of expenses of foreclosure and court costs), the Mortgagee may (but need not), as agent or attorney-in-fact of the Mortgagor, after the expiration of any applicable notice or cure period (except in the case of an emergency affecting the Premises or the lien or priority of this Mortgage, in which case no notice or cure period shall be applicable), make any payment or perform (or cause to be performed) any obligation of the Mortgagor hereunder, in any form and manner deemed expedient by the Mortgagee, and any amount so paid or expended (plus reasonable compensation to the Mortgagee for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the Default Interest Rate (as defined in the Note), shall be added to the principal debt hereby secured and shall be repaid to the Mortgagee upon demand.

By way of illustration and not in limitation of the foregoing, the Mortgagee may (but need not) do any or any of the following: (a) make payments of principal or interest or other amounts on account of the Construction Loan Documents or any other lien, encumbrance or charge on any of the Collateral; (b) complete construction of the Project; (c) make repairs; (d) collect rents; (e) enter into Sales Contracts, sell and convey Units and collect Sales Proceeds; (f) prosecute collection of the Collateral or proceeds thereof; (g) purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; (h) contest any tax or assessment; and (i) redeem from any tax sale or forfeiture affecting the Premises or any easement benefitting the Premises.

In making any payment or securing any performance relating to any obligation of the Mortgagor under this Mortgage, the Mortgagee shall, absent manifest error or bad faith, be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of the Mortgagee shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes an Event of Default.

1.17 Subrogation Rights. To the extent that any amount hereafter paid or disbursed by the Mortgagee hereunder or under the other Debt Documents is used, directly or indirectly, to pay off, satisfy or discharge, in whole or in part, any outstanding lien, charge or prior encumbrance against the Collateral or any part thereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, superior titles and liens owned or claimed by any owner or holder of such outstanding liens, charges and prior encumbrances, however remote and irrespective of whether said liens, charges or encumbrances have been released of record by the holder thereof upon payment.

1.18 Taxes, Assessments and Insurance. Mortgagor covenants and agrees to pay the taxes, assessments and insurance obligations pertaining to the Property when due (and before the same become past-due or delinquent) or prior thereto until the Liabilities have been paid and satisfied in full and this Mortgage has been released of record.

1.19 Mortgagor's Right to Contest. Mortgagor may contest or object to the legal validity or amount of any tax or any mechanics' or materialmen's lien on the Premises on and

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subject to the following conditions: (i) no Event of Default has occurred and remains uncured; (ii) after having given Mortgagee at least five business days' prior written notice of its intention to institute such proceedings, Mortgagor shall in good faith have instituted appropriate legal proceedings with respect thereto, the pendency of which shall have the legal effect of staying the effectiveness and enforcement of such taxes or lien (as the case may be) and any and all other remedies relating thereto which may affect the Premises or the title thereto, and Mortgagor shall at all times thereafter prosecute such proceedings diligently and in good faith to completion; and (iii) Mortgagor shall either (A) have duly paid the full amount of the tax or lien under protest or (B) have fully bonded over or title-insured over such tax or lien to Mortgagee's full satisfaction (such bond or title insurance endorsement to affirmatively cover costs of defense).

1.20 Insurance.

(a) Insurance Requirements. Mortgagor shall, at its sole cost and expense, insure and keep insured the Collateral against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, and, in any event, including at least the following:

- (i) All Risk. Insurance against loss to the Collateral on an "All Risk" policy form, covering such risks as Mortgagee may reasonably require, including insurance covering the cost of demolition of undamaged portions of any portion of the Collateral when required by code or ordinance, the increased cost of reconstruction to conform with then-current (at the time of the restoration) code or ordinance requirements and the cost of debris removal. Such policies shall be in amounts equal to the full replacement cost of the Collateral (other than the land component thereof), including the foundation and underground pipes, all fixtures, equipment, and personal property on and off site, and Mortgagor's interest in any tenant's improvements. Such policies shall also contain a 100% co-insurance clause with an agreed amount endorsement (with such amount to include the replacement cost of the foundation and any underground pipes) and deductibles which are in amounts acceptable to Mortgagee.
- (ii) Flood. Insurance against loss or damage by flood or mud slide in compliance with the Flood Disaster Protection Act of 1973, as amended from time to time, if the Collateral is now, or at any time while any of Mortgagor's obligations hereunder or under the other Debt Documents remain unpaid or unperformed shall be, situated in any area which an appropriate governmental authority designates as a special flood hazard area, in amounts equal to the full replacement value of all above-grade structures.
- (iii) Public Liability. Comprehensive broad-form commercial general public liability insurance, on an "occurrence" basis, against death, bodily or personal injury and property damage arising at, upon or in connection with the Collateral. Such

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policy shall list Mortgagee as a named insured, shall designate thereon the location of the Collateral, and shall have such deductible (which shall in no event exceed \$25,000.00) and such limits but in no event less than \$2,000,000.00 per person and \$5,000,000.00 per occurrence (including coverage under any excess "umbrella" policy) as Mortgagee may reasonably require.

- (iv) Other Insurance. All other insurance as is reasonable and customary in the prudent operation of a business like Mortgagor's and the ownership of properties like the Collateral, and such other insurance relating to the Collateral and the use and operation thereof or to the Mortgagee's business or activities as Mortgagee may, from time to time, reasonably require.

(b) Policy Requirements. All insurance shall: (a) be carried in companies with a Best's rating of A/X or better, or otherwise acceptable to Mortgagee; (b) be in form and content acceptable to Mortgagee; (c) provide not less than thirty (30) days' advance written notice to Mortgagee before any cancellation, adverse material modification or notice of non-renewal; (d) to the extent that deductibles or limits are not otherwise specified herein, contain deductibles and limits which are in amounts acceptable to Mortgagee; and (e) name Mortgagee as an additional named insured.

All physical damage and rental or business interruption policies and renewals shall also contain: (a) a standard mortgage clause naming Mortgagee as mortgagee, which clause shall expressly state that any breach of any condition or warranty by Mortgagor shall not prejudice the rights of Mortgagee under such insurance; and (b) a loss payable clause in favor of Mortgagee. No additional parties, other than the mortgagee under the Construction Loan, shall appear in the mortgagee or loss payable provisions without Mortgagee's prior written consent. All certificates of insurance and "blanket" insurance policies shall reference the specific project being covered by name and address. In the event of the foreclosure of the Mortgage or any other transfer of title to the Collateral in full or partial satisfaction of the Indebtedness, all rights, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force and all claims and proceeds thereunder shall pass to the purchaser or grantee.

(c) Delivery of Policies. Any notice pertaining to insurance required pursuant to this Section 1.20 shall be given in the manner provided for notices in this Agreement. The insurance shall be evidenced by certificates of insurance. Mortgagor shall deliver to the Mortgagee on request originals of all policies (or certificates evidencing the same), marked "paid"; in addition, Mortgagor shall deliver to Mortgagee, not later than fifteen (15) days before the expiration date for any policy of insurance, certificates of continuing coverage together with paid receipts and such other evidence of the continuing coverage as Mortgagee may request. If Mortgagee has not received satisfactory evidence of such renewal or substitute insurance in the time herein specified, Mortgagee shall have the right (but no obligation) to purchase such insurance for Mortgagee's interest only. Any amounts so disbursed by Mortgagee pursuant to this Section 1.20(c) shall be a part of the debt secured by the Mortgage and shall bear interest at the Default Interest Rate as provided in the Note. Nothing contained in this Section 1.20(c)

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shall require Mortgagee to incur any expense or take any action hereunder, and inaction by Mortgagee shall never be considered a waiver of any right accruing to Mortgagee on account of this Section 1.20(c). Within two business days after Mortgagor's receipt thereof, Mortgagor shall deliver to Mortgagee a complete and true copy of each notice or demand pertaining in any way to any insurance which is given or renewed by Mortgagor.

(d) Notice of Casualty. Mortgagor shall give to Mortgagee immediate notice of any damage to or loss occurring on or with respect to the Collateral.

(e) Settlement of Claim. In case of loss covered by any policy of insurance, but subject to the rights of the Construction Lender, Mortgagee is hereby irrevocably authorized to adjust, collect and compromise, in its discretion, but subject to the approval of Mortgagor which shall not be unreasonably withheld, conditioned or delayed, all claims thereunder. In the event of any adjustment, collection and compromise by Mortgagee, Mortgagor covenants to sign upon demand, or Mortgagee may sign or endorse on Mortgagor's behalf, all necessary proofs of loss, receipts, releases and other papers required by the insurance companies to be signed by Mortgagor. Mortgagee may deduct from such insurance proceeds any expenses incurred by Mortgagee in the collection and settlement thereof, including attorneys' and adjustors' fees and charges.

Nothing contained in this Mortgage or any of the other Debt Documents shall create any responsibility or obligation on the Mortgagee to collect any amounts owing on any insurance policy, to rebuild or replace any damaged or destroyed Collateral or to performing any other act hereunder. The Mortgagee shall not by the fact of approving, disapproving, accepting, preventing, obtaining or failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and the Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

(f) Application of Property Insurance Proceeds. Subject to the provisions of the immediately following grammatical paragraph, and to the terms of the Construction Loan Documents, any insurance proceeds received by Mortgagor or Mortgagee under any policy of insurance shall be applied, at the option of the Mortgagee, toward prepayment or reimbursement of the Indebtedness and any other amounts evidenced or secured by the Debt Documents, in accordance with the terms of the Proceeds Escrow Agreement or to the rebuilding or repairing of the Collateral so damaged or destroyed, as the Mortgagee in its sole and unreviewable discretion may elect. Mortgagee's election to apply such insurance proceeds to the Indebtedness and other amounts evidenced or secured by the Debt Documents shall not relieve the Mortgagor of the duty to rebuild or repair.

Notwithstanding the foregoing, following the release of the Construction Lender's lien, the Mortgagee shall consent to the application of any proceeds of said insurance to the

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restoration of the Collateral so damaged if and only if Mortgagor fulfills all of the following conditions not expressly waived in writing at that time by Mortgagee:

- (i) that no Event of Default or Unmatured Default has occurred and is uncured (other than default which arises as a result of the applicable damage or destruction);
- (ii) the insurance proceeds shall be sufficient, in Mortgagee's sole judgment, to fully restore and rebuild the Collateral free and clear of all liens except the lien of the Construction Loan, this Mortgage and the Permitted Exceptions, or in the event that such proceeds are in Mortgagee's sole judgment insufficient fully to restore and rebuild the Collateral, then Mortgagor shall have deposited the shortfall with Mortgagee or in an account approved by Mortgagee;
- (iii) any and all monies which are made available for restoration and rebuilding hereunder shall be disbursed substantially in accordance with the disbursement procedures for advances of Construction Loan proceeds under the Construction Loan Agreement (but, for these purposes, treating the Mortgagee as though it were the Construction Lender therein) including, if requested by Mortgagee, a requirement that the Mortgagee be given monthly lien waivers and title insurance date-downs, or in any other manner approved by Mortgagee;
- (iv) the construction and completion of restoration and rebuilding of the Collateral can, in Mortgagor's commercially reasonable judgment, be completed--and is in fact completed--by the date which is the earlier of six (6) months prior to Stated Maturity and twelve (12) months after the occurrence of the casualty;
- (v) the construction and completion of restoration and rebuilding of the Collateral is carried out and completed in accordance with the Plans and Specifications, the Design Criteria, and all other requirements and provisions of this Mortgage applicable to the Project;
- (vi) Mortgagee and (if the Construction Loan has not theretofore been paid and satisfied) the Construction Lender shall have approved all general or prime contractors and all subcontractors, and the general contract or contracts the Mortgagor proposes to enter into with respect to the restoration and rebuilding, which approval shall not be unreasonably withheld or delayed; and

1.21 Eminent Domain.

(a) Notice of Condemnation. Mortgagor shall give to Mortgagee immediate notice of any actual or proposed taking of all or any portion of Collateral or the institution of any proceedings the effect of which is to achieve a taking of all or any portion of any Collateral by condemnation or the power of eminent domain.

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(b) Settlement of Claim. In case the Collateral, or any part or interest in any thereof, is taken by condemnation or the power of eminent domain, subject to the rights of the Construction Lender, if any, the Mortgagee is hereby irrevocably empowered, but any settlement shall be subject to the approval of the Mortgagor, which shall not be unreasonably withheld, to collect and receive all compensation and awards of any kind whatsoever (referred to collectively herein as "Condemnation Awards") which may be paid for any property taken or for damages to any property not taken (all of which the Mortgagor hereby assigns to the Mortgagee) to be applied in accordance with the terms of the Proceeds Escrow Agreement. In the event of any adjustment, collection and compromise by Mortgagee, Mortgagor covenants to sign upon demand, or Mortgagee may sign or endorse on Mortgagor's behalf, all necessary proofs of loss, receipts, releases and other papers required by the condemning authority to be signed by Mortgagor. Mortgagee may deduct from any Condemnation Awards, any expenses incurred by Mortgagee in the collection and settlement thereof, including attorneys' and adjusters' fees and charges.

(c) Application of Condemnation Awards. All Condemnation Awards so received shall be forthwith applied by the Mortgagee, as it may elect in its sole and unreviewable discretion, to the payment or reimbursement of the Indebtedness or the other amounts evidenced or secured by the Debt Documents, or to the repair and restoration of any property not so taken or damaged. No election made by the Mortgagee under this Section 1.21 shall relieve the Mortgagor of the duty to repair and restore.

Nothing contained in this Agreement shall create or result in the imposition of any responsibility or obligation of Mortgagee to collect any amounts owing on account of any such condemnation or proceedings relating to the Collateral, to rebuild or replace any damaged or destroyed property or to perform any other act.

1.22 Construction Loan Documents; Reporting:

(a) Mortgagee covenants to use all proceeds from the Construction Loan ("Construction Loan Proceeds"), and Net Sale Proceeds deposited to the Proceeds Escrow Account solely to pay costs of the ownership of the Property and the construction, marketing, and sale of the Project and constituent units thereof except as may be otherwise permitted in the Proceeds Escrow Agreement.

(b) Mortgagor shall deliver to Mortgagee complete copies of the following: (1) all documents and writings of any kind whatsoever that Mortgagor delivers or causes to be delivered to Construction Lender (including, without limitation, all environmental, engineering, property, sales, financial and other reports, certificates, draw requests and supporting documentation) simultaneously with its submission thereof to the Construction Lender; and, (2) all documents and writings of any kind whatsoever (including, without limitation, notices of loan imbalances or loan defaults) it receives from the Construction Lender, within two days of its receipt thereof.

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(c) In addition to the foregoing, and regardless of whether the Construction Loan has then been paid or satisfied, Mortgagor shall deliver to Mortgagee, promptly on the Mortgagee's request therefor, such reports relating to the Mortgagor, its financial condition, the Collateral or its condition, the Project, the leasing or sale of component units or other parts of the Premises, or other matters related to the interests or concerns of Mortgagee, as the Mortgagee may request from time to time.

1.23 Environmental Requirements. Except for Hazardous Material (a) contained in products used by Mortgagor in de minimis quantities for ordinary cleaning and office purposes, or (b) used in accordance with applicable law, Mortgagor shall not permit or cause any party to bring any Hazardous Material upon the Premises or transport, store, use, generate, manufacture or release any Hazardous Material in or about the Premises without Mortgagee's prior written consent. Mortgagor, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and shall remediate in a manner satisfactory to Mortgagee any Hazardous Materials released on or from the Project by Mortgagor, its agents, employees, contractors, subtenants or invitees. The term "Environmental Requirements" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "Hazardous Materials" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Mortgagor shall indemnify, defend, and hold Mortgagee harmless from and against any and all losses (including, without limitation, diminution in value of the Premises or the Project), claims, demands, actions, suits, damages (including, without limitation, punitive damages), expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys' fees, consultant fees or expert fees and including, without limitation, removal or management of any asbestos brought into the Premises or disturbed in breach of the requirements of this Section 1.23, regardless of whether such removal or management is required by law) which are brought or recoverable against, or suffered or incurred by Mortgagee as a result of any release of Hazardous Materials for which Mortgagor is obligated to remediate as provided above or any other breach of the requirements under this Section 1.23 by Mortgagor, its agents, employees, contractors, subtenants, assignees or invitees, regardless of whether Mortgagor had knowledge of such noncompliance. The obligations of Mortgagor under this Section 1.23 shall survive any termination of this Mortgage.

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Mortgagee shall have access to, and a right to perform inspections and tests of, the Premises to determine Mortgagor's compliance with Environmental Requirements, its obligations under this Section 1.23, or the environmental condition of the Premises. Access shall be granted to Mortgagee upon Mortgagee's prior notice to Mortgagor and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Mortgagor's operations. Such inspections and tests shall be conducted at Mortgagee's expense, unless such inspections or tests reveal that Mortgagor has not complied with any Environmental Requirement, in which case Mortgagor shall reimburse Mortgagee for the reasonable cost of such inspection and tests. Mortgagee's receipt of or satisfaction with any environmental assessment in no way waives any rights that Mortgagee holds against Mortgagor. Mortgagee shall indemnify, defend and hold harmless Mortgagor from all claims and liabilities asserted against Mortgagor as a result of any such entry by Mortgagee or its agents.

II. DEFAULT

2.1 Events of Default. Each and any one of the following shall constitute an event of default (an "Event of Default") hereunder:

2.1.1 Debt Documents. The occurrence of an event of default under the Note or any of the other Debt Documents; or

2.1.2 Provisions of this Mortgage. Non-compliance by the Mortgagor with, or failure by the Mortgagor to perform, any agreement, covenant, undertaking or requirement contained in this Mortgage (other than a matter which constitutes an Event of Default under any provision of this Section 2.1 other than this subsection 2.1.2) and continuance of such non-compliance or failure for five days after written notice from Mortgagee with respect to the payment of any amount required to be paid under this Mortgage or for thirty days after notice thereof to the Mortgagor from the Mortgagee with respect to all other such matters (provided, however, in the case only of such non-monetary matter, if any, which cannot, with diligence, be cured within such thirty-day period, then so long as Mortgagor at all times diligently pursues a cure for such default, Mortgagor shall have an additional 60 days after the expiration of the initial thirty days within which to cure such default); or

2.1.3 Sales and Liens. Subject to the Intercreditor Agreement, a breach by the Mortgagor of any of the provisions, or nonperformance by the Mortgagor of any of its obligations, under Section 1.5 of this Mortgage (there being no notice or cure period available with respect to such matters); or

2.1.4 Bankruptcy, Insolvency, Death. Mortgagor, or any other obligor under or with respect to any of the Debt Documents (including, without limitation, guarantor, indemnitor or other obligor under any guaranty of completion, environmental indemnity agreement, or other guaranty or indemnity agreement), shall: (i) make a general assignment for the benefit of creditors; (ii) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it a bankrupt or insolvent, or seeking

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reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "proceeding for relief"); (iii) become the subject of any proceeding for relief which is not dismissed within 60 days of its initial filing or entry; or (iv) die or suffer a legal disability (if such obligor is an individual) or be dissolved or otherwise fail to maintain its legal existence unless, with respect to the death, insolvency, or bankruptcy of any or all individual obligor(s), Mortgagor establishes to Mortgagee's sole satisfaction within 30 days thereof that present or additional collateral posted by Mortgagor including the net market value of the project is adequate to fully secure an amount equal to \$500,000 less amounts previously paid to Mortgagee pursuant to the Note; or

2.1.5 Construction Loan Default. Any event of default (as defined in such Construction Loan Document) under any of the Construction Loan Documents; or

2.1.6 Sales Contracts. Any default by Mortgagor under any Sales Contract and such Sales Contract is terminated provided Mortgagor (i) does not resell such unit within 90 days; or (ii) suffers out of pocket damages to the applicable unit Buyer which are not satisfied by a source other than the Proceeds Escrow Account; or

2.1.7 Other. Any event or happening which any provision of this Mortgage other than this Section 2.1 declares to be an Event of Default.

2.2 Unmatured Default. For all purposes of this Mortgage, "Unmatured Default" means an event or occurrence which, with the giving of notice or the passage of time or both, would constitute an Event of Default.

III. REMEDIES

3.1 Acceleration. Upon the occurrence of any Event of Default, all of the Liabilities, together with interest thereon at the Default Interest Rate, shall immediately become due and payable in full at the option of the Mortgagee.

3.2 Remedies Cumulative. No remedy or right of the Mortgagee hereunder or under any of the Debt Documents, or otherwise available under applicable law or in equity, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law or in equity. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by the Mortgagee. All obligations of the Mortgagor, and all rights, powers and remedies of the Mortgagee, expressed herein shall be in addition to, and not in limitation of, those provided by

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law or in equity or in any of the Debt Documents or any other written agreement or instrument relating to any of the Liabilities or any security therefor.

3.3 Foreclosure: Receiver.

(a) Foreclosure. Upon the occurrence of any Event of Default, the Mortgagee shall have the right immediately, at any time or from time to time thereafter, to foreclose this Mortgage.

(b) Receiver: Mortgagee-in-Possession. Upon the filing by Mortgagee of any complaint for foreclosure, for the appointment of a receiver, or any other remedy or relief, the court in which such complaint is filed shall, upon application of the Mortgagee or at any time thereafter, either before or after foreclosure sale, and without notice to the Mortgagor or to any party claiming under the Mortgagor and without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of any of the Liabilities, without regard to the then value of the Premises or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, without regard to the adequacy of the security for the Liabilities, and without regarding any bond from the Mortgagor, appoint a receiver for the benefit of the Mortgagee, or permit the Mortgagee to be a mortgagee-in-possession, with power to take possession, charge, and control of the Premises, to lease the same, to keep the buildings thereon insured and in good repair, to contract to sell and to sell and convey Units or other constituent parts of the Premises, and to collect all Rents during the pendency of such foreclosure suit, and, in case of foreclosure sale, during any period of redemption.

(c) Powers of Receiver and Mortgagee. The court may, from time to time, authorize said receiver or the Mortgagee, as mortgagee-in-possession, to apply the net amounts remaining in its hands, after deducting reasonable compensation for itself and its counsel as allowed by the court, in payment (in whole or in part) of any or all of the Liabilities, including without limitation the following, in such order of application as the Mortgagee in its sole discretion may elect: (i) amounts outstanding under the Debt Documents; (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage; (iii) costs and expenses (including, without limitation, attorneys fees and court costs) of foreclosure and litigation upon the Premises; (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises or the Collateral; (v) any other lien or charge upon the Premises or the Collateral that may be or become superior to the lien of this Mortgage or of any decree foreclosing the same; (vi) all moneys advanced or paid by the Mortgagee to cure or attempt to cure any Event of Default or to perform any unperformed obligation of the Mortgagor under any Debt Documents or otherwise to protect the security hereof or of any Debt Document, with interest on such advances or payments at the Default Interest Rate, and (vii) after all of the foregoing amounts have been satisfied, to the extent of any then remaining amounts, to Mortgagor.

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(d) Partial Foreclosure: Separate Sales. This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Premises, as the Mortgagee may elect, until all of the Premises have been foreclosed against and sold. As part of the foreclosure, the Mortgagee in its discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Premises, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable law.

(e) Transfer of Title. Upon the completion of any such sale or sales and any necessary confirmation thereof by the court, Mortgagor shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers the property so sold, in the manner and form as provided by applicable law.

(f) Mortgagee's Right to Bid in Liabilities. In the case of any sale of the Collateral or any part thereof pursuant to any judgment or decree of any court at public auction or otherwise, Mortgagee may become the purchaser, and for the purpose of making settlement for or payment of the purchase price, shall be entitled to deliver over and use the Liabilities and any claims for the debt (or any part thereof) that Mortgagee, in its sole discretion, may determine, in order that there may be credited as paid on the purchase price the amount of such Liabilities and debt. In case of any foreclosure of this Mortgage (or the commencement of or preparation therefor) in any court, all expenses of every kind paid or incurred by the Mortgagee for the enforcement, protection or collection of this security, including court costs, attorneys' fees, stenographers' fees, costs of advertising, and costs of title insurance and any other documentary evidence of title, shall be paid by the Mortgagor.

(g) Economic Default. Except in the case of an Economic Default, as that term is defined in the Note, proceeds received by any receiver of the Property or by Mortgagee at a foreclosure sale shall first be applied to Mortgagee's costs and then in accordance with the Proceeds Escrow Agreement.

3.4 Possession of the Premises: Remedies for Leases and Rents. The Mortgagor hereby waives all right to the possession, income, proceeds, profits, Sales Proceeds, and Rents of the Premises and other Collateral from and after the occurrence of any Event of Default, and the Mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the Premises and other Collateral or any part thereof. If any Event of Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, the Mortgagee shall be entitled, in its sole and absolute discretion, to do all or any of the following: (i) enter and take actual possession of the Premises, the Rents, the Leases, Sale Contracts, Earnest Money Deposits and Sales Proceeds, and other Collateral relating thereto or any part thereof personally, or by its agents or attorneys, and exclude the Mortgagor therefrom; (ii) with process of law, enter upon and take and maintain possession of all of the documents,

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books, records, papers and accounts of the Mortgagor relating thereto; (iii) as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Leases, Sale Contracts, Earnest Money Deposits and Sales Proceeds, and other Collateral relating thereto and conduct the business, if any, thereof either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the Rents, the Leases, Sale Contracts, Earnest Money Deposits and Sales Proceeds, and other Collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent); (iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same; (v) elect to disaffirm any Lease or sublease or Contract for Sale made subsequent hereto or subordinated to the lien hereof; (vi) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its discretion, may seem appropriate; (vii) complete the construction of the Project and any other construction in progress thereon at the expense of Mortgagor and continue any and all outstanding contracts for the erection and completion of the Improvements; (viii) insure and reinsure the Collateral for all risks incidental to the Mortgagee's possession, operation and management thereof; and (ix) receive all such Rents and Sales Proceeds, and perform such other acts in connection with the management and operation of the Collateral, as the Mortgagee in its absolute discretion may deem proper, the Mortgagor hereby granting the Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Event of Default without notice to the Mortgagor or any other person.

The Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents and Sales Proceeds to the payment, in such order as Mortgagee may determine in its absolute discretion, of or on account of any one or more of the following in such order as it may determine: (a) to the payment of the Construction Costs; (b) to the payment of operating expenses of the Premises, including the cost of management thereof, leasing, marketing and sale of Units (which shall include reasonable compensation to the Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include sales and lease commissions and other compensation and expenses of seeking and procuring tenants and purchasers and entering into Sale Contracts and Leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (c) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of the Mortgagee, make it readily rentable or saleable; and (d) to the payment of any Liabilities.

The entering upon and taking possession of the Premises, or any part thereof, and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any Event of Default theretofore or thereafter occurring or affect any notice or Event of Default hereunder or invalidate any act done pursuant to any such Event of Default or notice, and, notwithstanding

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continuance in possession of the Premises or any part thereof by the Mortgagee or a receiver and the collection, receipt and application of the Rents and Sales Proceeds, the Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law or in equity upon or after the occurrence of an Event of Default.

Any of the actions referred to in this Section 3.4 may be taken by the Mortgagee without regard to the adequacy of the security for the indebtedness hereby secured.

3.5 Personal Property.

(a) Remedies. If any Event of Default shall occur, the Mortgagor shall, promptly upon request by the Mortgagee, assemble the Collateral and make it available to the Mortgagee at such place or places, reasonably convenient for both the Mortgagee and the Mortgagor, as the Mortgagee shall designate. Without limiting the generality of the foregoing, whenever there exists an Event of Default hereunder, the Mortgagee may, with respect to so much of the Collateral as is personal property under applicable law, to the fullest extent permitted by applicable law, without further notice, advertisement, hearing or process of law of any kind, (i) notify any person obligated on the Collateral to perform directly for the Mortgagee its obligations thereunder, (ii) enforce collection of any of the Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof or compromise or extend or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, (iii) endorse any checks, drafts or other writings in the name of the Mortgagor to allow collection of the Collateral, (iv) take control of any proceeds of the Collateral, (v) enter upon any premises where any of the Collateral may be located and take possession of and remove such Collateral and render all or any part of the Collateral unusable, all without being responsible for loss or damage, (vi) sell any or all of the Collateral, free of all rights and claims of the Mortgagor therein and thereto, at any lawful public or private sale, and (vii) bid for and purchase any or all of the Collateral at any such public or private sale. Any proceeds of any disposition by the Mortgagee of any of the Collateral may be applied by the Mortgagee to the payment of expenses in connection with the Collateral, including attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by the Mortgagee toward the payment of such of the Liabilities and in such order of application as the Mortgagee may from time to time elect. Without limiting the foregoing, the Mortgagee may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law.

(b) Notices. The Mortgagor hereby expressly waives, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings, or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies after an Event of Default occurs. If any notification of intended disposition of any of the Collateral is required by law, such notification, if mailed, shall be deemed reasonably and properly given if mailed by registered or certified mail, return receipt requested, at least 20 days before such disposition, postage prepaid, addressed to the Mortgagor either at the address shown above or at any other

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address of the Mortgagor appearing on the records of the Mortgagee. The Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note, the Liabilities and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by the Mortgagee of any of its rights and remedies hereunder, except as otherwise expressly provided herein or in any of the other Debt Documents.

(c) Power of Attorney. To the extent permitted by law, the Mortgagor hereby irrevocably constitutes the Mortgagee its attorney-in-fact with full power of substitution to take possession of the Collateral upon any Event of Default and, as the Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by the Mortgagee to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Liabilities is outstanding or unsatisfied.

3.6 Performance of Third Party Agreements and Other Agreements. The Mortgagee may, in its sole discretion at any time after the occurrence of an Event of Default, notify any person obligated to the Mortgagor under or with respect to any Third Party Agreement or any of the Construction Loan Documents or any Sale Contract (collectively, "Other Agreements") of the existence of an Event of Default, require that performance be made directly to the Mortgagee at the Mortgagor's expense, and advance such sums as are necessary or appropriate to satisfy the Mortgagor's obligations thereunder; and exercise, on behalf of the Mortgagor, any and all rights of the Mortgagor under any Other Agreements, and the Mortgagor agrees to cooperate with the Mortgagee in all ways reasonably requested by the Mortgagee (including the giving of any notices requested by, or joining in any notices given by, the Mortgagee) to accomplish the foregoing.

3.7 No Liability on Mortgagee. Notwithstanding anything contained herein, the Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether hereunder, under any of the Third Party Agreements or any of the Other Agreements or otherwise. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or 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, employee, stranger or other person. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers granted to it under this Mortgage, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage under any of the Third Party Agreements or any of the Other Agreements or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees, except for any liability, loss or damage caused by the Mortgagee's gross negligence or willful misconduct.

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IV. GENERAL

4.1 Permitted Acts. The Mortgagor agrees that, without affecting or diminishing in any way the liability of the Mortgagor or any other person for the payment or performance of any of the Liabilities or for the performance of any obligation contained herein or affecting the lien or security interest hereof upon the Collateral or any part thereof, the Mortgagee may at any time and from time to time, without notice to or the consent of any person: (a) release any person liable for the payment or performance of the Liabilities or any guaranty given in connection therewith; (b) extend the time for, or agree to alter the terms of payment, reimbursement or performance of any of the Liabilities or any guaranty given in connection therewith; (c) modify or waive any obligation; (d) subordinate, modify or otherwise deal with the lien hereof; (e) accept additional security of any kind for repayment of the Liabilities or any guaranty given in connection therewith; (f) release any Collateral or other property securing any or all of the Liabilities or any guaranty given in connection therewith; (g) make releases of any portion of the Premises; (h) consent to the making of any map or plat of the Premises; (i) consent to the creation of any easements on the Premises or of any covenants restricting the use or occupancy thereof; or (j) exercise or refrain from exercising, or waive, any right the Mortgagee may have.

4.2 Indemnification. Without limiting any other indemnification contained in the Debt Documents, the Mortgagor agrees to indemnify and defend the Mortgagee against, and hold the Mortgagee and each of its officers, directors, employees and agents harmless from and against, any and all losses, liabilities, damages, costs, expenses and claims of any kind whatsoever (including, without limitation, reasonable attorneys' fees and expenses) which the Mortgagee may pay or incur in connection with the Note, this Mortgage or the other Debt Documents or any suit or proceeding in or to which the Mortgagee may be made or become a party, which suit or proceeding does or may affect all or any portion of the Collateral or the value, use or operation thereof or this Mortgage or the validity, enforceability, lien or priority hereof or of any of the Liabilities or indebtedness secured hereby, except to the extent (if any) that such losses, liabilities damages, costs, expenses and claims are caused by the Mortgagee's gross negligence or willful misconduct.

4.3 Obligatory Future Advances. This Mortgage is granted to secure not only the Liabilities but also future advances, disbursements and payments made by the Mortgagee to or for the benefit of, or for the account of, the Mortgagor or the Premises, and costs and expenses of enforcing the Mortgagor's obligations under this Mortgage, the Note and the other Debt Documents. All advances, disbursements or other payments pursuant to the Debt Documents shall be deemed to be obligatory advances for purposes of determining priorities under applicable law and shall, to the fullest extent permitted by law, have priority over any and all liens, security interests and encumbrances arising after this Mortgage is recorded.

4.4 Security Agreement: Fixture Filing. This Mortgage, to the extent that it conveys, encumbers or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also constitute a security agreement under the Illinois

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Uniform Commercial Code, and this Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the Recorder of Cook County, Illinois with respect to any and all fixtures included within the term "Collateral" as used herein and with respect to any Goods or other personal property that may now be or hereafter become such fixtures. For purposes of the foregoing, the Mortgagor is the debtor (with its address as set forth above) and the Mortgagee is the secured party (with its address as set forth above).

4.5 Defeasance. Upon full payment of all indebtedness secured hereby and full payment, performance and satisfaction of all the Liabilities in accordance with their respective terms and at the time and in the manner provided, and when the Mortgagee has no further obligation to make any advance under any of the Debt Documents, this conveyance shall be deemed to have terminated, and thereafter, upon demand therefor, an appropriate instrument of quitclaim, reconveyance or release shall promptly be delivered by the Mortgagee to the Mortgagor, at the expense of the Mortgagor.

4.6 Release of Lien Upon Sale of Unit. Mortgagee shall release the lien of this Mortgage from a particular Unit at the closing of the sale of such Unit in accordance with a Sales Contract upon the satisfaction of all of the following conditions:

(a) The Unit shall have received a Certificate of Occupancy from the City of Evanston unless the terms of the Sale Contract do not require such certificate;

(b) The Construction Lender shall have released such Unit from the lien and security interests of the Construction Loan Documents;

(c) Following the release of the Construction Mortgage the purchaser of such Unit shall have paid in cash therefor an amount not less than the Minimum Sale Price (defined in the Sale Criteria) therefor, and all of the Net Sales Proceeds arising from the sale of that Unit shall have been paid into the Proceeds Escrow;

(d) The Unit which is the subject of the sale shall have been duly subdivided and separated from all other parts of the Premises and shall at that time constitute a separate parcel of record and be separate and independent from all other parts of the Premises, and

(e) Notwithstanding subparagraph (c) above, during the pendency of an Economic Default after satisfaction of the Construction Mortgage, Net Sale Proceeds shall be paid directly to Mortgagee rather than to the Proceeds Escrow.

4.7 Notices. All notices, demands and other communications hereunder to either party shall be given to such party at its address, and in the manner provided, in the Note with respect to notices given thereunder.

4.8 Successors; Mortgagor; Gender. All provisions hereof shall bind the Mortgagor and the Mortgagee and their respective successors, vendees and assigns and shall inure to the

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benefit of the Mortgagee and its successors and assigns. The Mortgagor shall not have any right to assign any of its rights hereunder. Except as limited by the preceding sentence, the word "Mortgagor" shall include all persons claiming under or through the Mortgagor and all persons liable for the payment or performance of any of the Liabilities whether or not such persons shall have executed this Mortgage or the other Debt Documents to the extent of such express liability under the respective document. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be deemed to include all genders.

4.9 Care by the Mortgagee. The Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any of the Collateral assigned by the Mortgagor to the Mortgagee or in the Mortgagee's possession if it takes such action for that purpose as the Mortgagor requests in writing, but failure of the Mortgagee to comply with any such request shall not be deemed to be (or to be evidence of) a failure to exercise reasonable care, and no failure of the Mortgagee to preserve or protect any rights with respect to such Collateral against prior or other parties, or to do any act with respect to the preservation of such Collateral not so requested by the Mortgagor, shall be deemed a failure to exercise reasonable care in the custody or preservation of such Collateral.

4.10 No Waiver: Writing. No delay on the part of the Mortgagee in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Mortgagee of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions.

4.11 Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois.

4.12 Attorneys' Fees. Mortgagor shall pay all costs and expenses paid or incurred by Mortgagee in connection with the enforcement and collection (but not preparation) of the Debt Documents and the Liabilities, including (but not limited to) attorneys' fees and expenses, whether or not such enforcement and collection includes the filing of a lawsuit provided such action results in a judgment in Mortgagee's favor. As used in this Mortgage and in the other Debt Documents, the term "attorneys' fees" or "attorneys' fees and costs (or expenses)" shall include, without limitation, all such fees and expenses incurred with respect to appeals, arbitrations, bankruptcy proceedings and any post-judgment proceedings to collect any judgment, and whether or not any action or proceeding is brought with respect to the matter for which said fees and expenses were incurred. The provisions allowing for the recovery of post-judgment fees, costs and expenses are separate and several and shall survive the merger of the applicable Debt Document into any judgment.


4.13 WAIVER. The Mortgagor, on behalf of itself and all persons now or hereafter interested in the Premises or the Collateral, voluntarily and knowingly hereby: acknowledges that the transaction of which this Mortgage is a part does not include either agricultural

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real estate (as defined in the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., herein the "Act"), or residential real estate (as defined in the Act); waives, to the fullest extent permitted by applicable law, all rights under all appraisement, homestead, moratorium, valuation, exemption, stay, extension, and redemption statutes, laws or equities now or hereafter existing, and the Mortgagor agrees that no defense, claim or right based on any thereof will be asserted, or may be enforced, in any action enforcing or relating to this Mortgage or any of this Collateral. Without limiting the generality of the preceding sentence, the Mortgagor, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, hereby irrevocably waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or under any power contained herein or under any sale pursuant to any statute, order, decree or judgment of any court. The Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Collateral shall be sold in the event of any sale or sales pursuant hereto and to have any of the Collateral or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

4.14 JURY TRIAL. THE MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY DOCUMENT TO WHICH IT IS A PARTY, OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR ANY RELATED DOCUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AS A SO-CALLED "BENCH TRIAL" AND NOT BEFORE A JURY. THE MORTGAGOR HAS BEEN ADVISED BY ITS OWN LEGAL COUNSEL AS TO THE EFFECTS OF ITS WAIVER SET OUT HEREIN AND KNOWINGLY GRANTS THIS WAIVER. Initials of Mortgagor's Authorized Signatory: 

4.15 No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should the Mortgagee acquire an additional or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

4.16 Time of Essence. Time is declared to be of the essence in this Mortgage, the Note and the other Debt Documents and of every part and provision hereof and thereof.

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4.17 No Reliance by Others on the Premises: Single Zoning Lot and Tax Parcel. The Mortgagor covenants that it will not cause or permit any land, building or other improvement, or other property of any kind whatsoever which is not subject to the lien of this Mortgage (regardless of whether such property is owned by Mortgagor), to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement of any kind whatsoever, and the Mortgagor hereby assigns to the Mortgagee any and all rights to give or withhold consent for all or any portion of the Premises or any interest therein to be so used. The Mortgagor represents, warrants and covenants that no building or other improvement situated on or comprising part of the Premises does, or at any time will, rely on any property not subject to the lien of this Mortgage to fulfill any governmental or municipal requirement of any kind whatsoever. The Mortgagor shall not cause or permit to be impaired the integrity of the Premises as a single independent zoning lot and one or more single independent tax parcels separate and apart from all other zoning lots and tax parcels, except as follows: Mortgagor will cause the Property to be subdivided into thirty separate independent and free-standing parcels of record, each of which shall also constitute a separate and independent tax parcel, in accordance with a plat and Declaration of Covenants and Declaration of Condominium therefor that Mortgagee shall have approved in writing each of which parcels of record shall constitute a Unit which approval Mortgagee shall not unreasonably withhold or delay. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section shall be void ab initio and of no force or effect for any purpose whatsoever.

4.18 [INTENTIONALLY OMITTED]

4.19 Mortgagee Not a Joint Venturer or Partner. The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Mortgagor. Without limitation of the foregoing, the 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 Mortgage or pursuant to any other instrument or document evidencing or securing any of the Liabilities secured hereby, or otherwise. The only relationship of Mortgagee to Mortgagor shall be that of a secured creditor to its debtor-obligor.

4.20 Inconsistency With Note. If there should be any irreconcilable inconsistency between the provisions of this Mortgage and the provisions of the Note, the terms and provisions of the Note shall govern and control.

4.21 Compliance with Illinois Mortgage Foreclosure Law.

(a) If any provision of this Mortgage is inconsistent with any applicable provision of the Act (as defined above), the provisions of the Act shall take precedence over the provisions of this Mortgage, to the extent of the inconsistency, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

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(b) Without in any way limiting or restricting any of Mortgagee's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights, remedies, powers, and authorities, the Mortgagee shall also have and may exercise any and all rights, remedies, powers and authorities which (i) the holder of a mortgage is permitted to have or exercise under the provisions of the Act and (ii) a secured creditor may have under the Uniform Commercial Code, in each case as the same may respectively be amended from time to time, except to the extent (if any) as otherwise expressly provided herein.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee, to the extent reimbursable under Sections 5/15-1510, 5/15-1512, or any other provision of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the indebtedness secured by this Mortgage and by the judgment of foreclosure.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Mortgage on the day and year first above written, pursuant to proper authority duly granted.

BROADACRE EVANSTON, L.L.C., an Illinois
limited liability company

By:


~~FRANCIS F. PROBERT~~ FIDEL LOPEZ
its ~~MANAGER~~ MEMBER

THIS INSTRUMENT WAS PREPARED BY
AND UPON RECORDING RETURN TO:

Brian P. Gallagher, Esq.
Mayer, Brown & Platt
190 South LaSalle Street - Suite 3100
Chicago, Illinois 60603
Tel: 312/701-8565

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STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, Pamela Petrizzi, a Notary Public, do hereby certify that Francis P. Freeman, personally known to me to be a Manager of Broadacre Evanston, L.L.C., an Illinois limited liability company, and Fidel Lopez, personally known to me to be the Manager of said company, and personally known to me to be the same persons whose names ~~are~~ subscribed to the foregoing document, appeared before me this day in person and ~~separately~~ acknowledged that as such Managers they signed and delivered the said document as Managers of said company, pursuant to authority given by the Managers of said ~~corporation~~ as their free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 20th day of August, 1996.

Pamela Petrizzi
Notary Public

Type or

Print Name:



My commission expires:

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EXHIBIT A

PROPERTY ADDRESS: Southeast Corner of Emerson and Maple, Evanston, Illinois

LOT 8 (EXCEPT THE EAST 34 FEET THEREOF), LOT 9, LOT 10 AND 11 (EXCEPT THE WEST 33 FEET THEREOF TAKEN FOR PUBLIC STREET),

EXCEPTING THEREFROM THAT PART OF LOTS 8 AND 9 LYING NORTH OF THE FOLLOWING DESCRIBED LINE.

BEGINNING AT THE NORTHEAST CORNER OF LOT 9; THENCE SOUTHEASTWARDLY TO A POINT 25 FEET SOUTH OF THE NORTH LINE OF LOT 8 MEASURED AT RIGHT ANGLES FROM A POINT 7.00 FEET EAST OF WEST LINE OF LOT 8; THENCE SOUTHEASTWARDLY TO A POINT 50 FEET SOUTH OF THE NORTH LINE OF SAID LOT 8 MEASURED AT RIGHT ANGLES FROM A POINT 32 FEET EAST OF THE WEST LINE OF SAID LOT 8; THENCE NORTH 50 FEET TO THE NORTH LINE OF LOT 8; THENCE WEST 98 FEET TO THE POINT OF BEGINNING, ALL IN BLOCK 6 IN THE VILLAGE OF EVANSTON, - IN SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Noe.:

11-18-113-001-0000
11-18-113-003-0000
11-18-113-006-8001)
11-18-113-006-8002)

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PROCEEDS ESCROW AND SECURITY AGREEMENT

This Proceeds Escrow and Security Agreement (this "Agreement") is entered into by and between Broadacre Evanston, L.L.C., an Illinois limited liability company ("Broadacre"), Northwestern University/Evanston Research Park, Inc., an Illinois corporation ("Payee"), and Chicago Title and Trust Company, a Missouri corporation ("CT&T" or "escrowee"), as of this ___ day of _____, 1996.

WITNESSETH

WHEREAS, Payee is this day conveying to Broadacre the real estate described in Exhibit "A" attached hereto (the "Property") pursuant to that certain Purchase and Sale Agreement dated as of the ___ day of _____, 1996 between Broadacre and Payee (the "Purchase Agreement"); and

WHEREAS, pursuant to the provisions of the Purchase Money Mortgage, Assignment of Leases and Rents, Security Agreement, Fixture, Filing and Financing Statement (the "Mortgage") given by Broadacre to Payee as collateral for the Note (described below), Broadacre will cause the Net Proceeds of Sale of certain Units to be constructed by Broadacre on the Property to be deposited with CT&T, to be held, dealt with and disbursed by CT&T in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Broadacre, Payee, and CT&T agree as follows:

ARTICLE I: DEFINITIONS

1.1 Definitions: Any term used and not otherwise defined herein shall have the meaning ascribed to such term in the Purchase Money Promissory Note dated as of July ___, 1996 made by Broadacre payable to the order of Payee (the "Note") or, if not defined therein, the meaning ascribed to such term in the Mortgage (that term being defined for purposes of this Agreement as it is defined in the Note) or, if not defined therein, the meaning ascribed to such term in the Purchase Agreement.

ARTICLE 2: ESTABLISHMENT OF PROCEEDS ESCROW ACCOUNT; DEPOSITS BY BROADACRE

2.1 The parties hereto hereby establish account No. _____ (the "Account"), with CT&T as the escrow trustee thereunder, such account to be governed by the terms, provisions and conditions of this Agreement.

2.2 The closing of all Unit Sales shall take place at the offices of CT&T or Chicago Title Insurance Company ("CTIC") at 8707 Skokie Boulevard, Skokie, Illinois 60076 or

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171 North Clark Street, Chicago, Illinois 60601, as Broadacre may determine from time to time upon at least five business days advance written notice to Payee and CT&T. All proceeds of each Unit Sale shall be paid by the purchaser thereof to CT&T or CTIC as closing escrowee. Such closing escrowee shall cause all Net Sales Proceeds from each such Unit Sale to be disbursed as follows:

(a) Until such time as Grand National Bank, Niles, Illinois ("Construction Lender") has released of record all of the Property from the lien of any and all mortgages and liens it holds that encumber any part of the Property (The "Construction Mortgage Release Date"):

(i) first, to Construction Lender, an amount which Construction Lender states, in a signed writing addressed to Broadacre, Payee and CT&T or CTIC as closing escrowee, is the amount to which it is entitled by the provisions of the Construction Loan Agreement to be paid from the proceeds of the sale of that Unit on account of such Unit Sale, such amount to be disbursed to Construction Lender upon Construction Lender's delivery of a "payoff letter" to the closing escrowee covenanting to release of record of the Unit which is the subject of such sale from the lien, charge and encumbrance of the Construction Loan Mortgage and all other mortgages, liens and charges held by Construction Lender and that all of such amount shall be applied to Broadacre's Indebtedness under the Construction Loan;

(ii) then, the entire remainder of such Net Sale Proceeds, if any, will be deposited into and held by CT&T in the Account to be dealt with by CT&T as provided herein.

(b) From and after the Construction Mortgage Release Date, and prior to an Event of Default by Broadacre under any Debt Document, all Net Sales Proceeds shall be deposited into and held by CT&T in the Account to be dealt with by CT&T as provided herein, and Payee shall release the lien of its Mortgage from the particular Unit upon written confirmation to Payee from CT&T that the Net Sale Proceeds from the sale of that Unit had been received by CT&T and deposited into the Account. Following an Economic Default after the Construction Mortgage Release Date, Net Proceeds from Sale shall be payable directly to Payee.

ARTICLE 3: DISBURSEMENT REQUIREMENTS

3.1 Prior to any Event of Defaults or Unmatured Default, amounts held in the Account shall be disbursed by CT&T (i) to Broadacre for its payment of (or reimbursement to it for its having advanced) Expenses, as set forth in Paragraph 3.2 below, or (ii) to Payee, for application by Payee to Indebtedness under the Note or to other obligations of Broadacre to Payee under the Debt Documents, or (iii) to Broadacre, all as set forth herein.

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3.2 Expenses. Until such time as CT&T receives written notice from Payee that an Event of Default or Unmatured Default has occurred under the Note or any of the other Debt Documents, CT&T shall disburse to Broadacre, not more frequently than once in any calendar month, no earlier than five (5) business days after receipt of the Expense Request Certificate (defined below), an amount (to the extent that funds therefor are then held in the Account) equal to the amount (the "Needed Expense Amount") specified in a written certificate (an "Expense Request Certificate") signed by Broadacre and delivered to CT&T in the form attached hereto as Exhibit C. Each Expense Request Certificate shall be signed by Broadacre and its architect of record, addressed to CT&T and Payee, expressly recite that a copy thereof had been concurrently delivered to Payee, specify the Needed Expense Amount then being requested by Broadacre from the Account, and affirm that the entire Needed Expense Amount is then due and payable by Broadacre to unaffiliated third parties, or at rates or costs not exceeding rates which would be charged by third parties, for costs and expenses incurred by Broadacre for its development, construction, improvement, management, leasing, operation or sale of the Project or Units therein as contemplated and permitted by the provisions of the Construction Loan Documents and Debt Documents and that no part of such Needed Expense Amount is then available to be drawn by Broadacre as loan proceeds under the Construction Loan. From and after the time that CT&T receives written notice from Payee that an Event of Default has occurred under any one or more of the Debt Documents, or if CT&T receives a written Objection (the "Objection") to the Expense Request Certificate on or before 5:00 p.m. on the third (3rd) business day following CT&T's receipt of the Expense Request Certificate, CT&T will not pay or disburse any amount to Broadacre under this Paragraph 3.2 or otherwise, whether for Expenses or any other amount or item, without in each case the prior express written consent of Payee (which consent Payee may withhold in its absolute and unreviewable discretion).

3.3 Payments to Payee of Debt Service Amounts under Note. (a) The provisions of this subparagraph (a) are binding upon Broadacre and Payee only and shall not bind or affect CT&T. Within 15 days after the end of each calendar quarter, Broadacre shall submit to Payee a written statement and analysis of Available Adjusted Gross Revenue. If Payee fails to object thereto within 15 business days after its receipt thereof, Payee shall be deemed to have accepted such statement of Available Adjusted Gross Revenue. If Payee objects to such statement and analysis, Payee shall have the right, at its expense, to promptly cause the statement and analysis of Available Adjusted Gross Revenue for the period in question to be reviewed by an independent certified public accountant selected by Payee, and such accountant's determination of Available Adjusted Gross Revenue, as set out in a written report signed by such accountant and addressed to Broadacre and Payee, shall be binding on Payee and Broadacre. Broadacre shall reimburse Payee for the cost of such review if the amount of any discrepancy adverse to Payee exceeds two percent (2%) of the Available Adjusted Gross Revenue. When the amount of such period's Available Adjusted Gross Revenues has been determined, Broadacre and Payee shall direct Escrowee to release to Payee from the Account, for the purposes and applications indicated hereinbelow, the following amounts:

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(i) an amount equal to all of the Available Adjusted Gross Revenue (to the extent that funds are then held in the Account) until the total amount then and theretofore paid to Payee on account of the Note equals \$500,000.00;

(ii) then, when the total amount theretofore paid to Payee on account of the Note equals \$500,000.00, then to the extent of Available Adjusted Gross Revenue,

(A) if a Broadacre Return Event has occurred, the next amounts distributed from the Account (unless and until an Event of Default occurs under any of the Debt Documents) shall be paid to Broadacre until Broadacre has received amounts totalling in the aggregate the Broadacre Return Amount (i.e., the lesser of \$300,000.00 or the Broadacre Contribution Amount) (but no payments or distributions shall be made to Broadacre at any time when an Economic Default exists); and once the total amounts received by Broadacre equals the Broadacre Return Amount, each of the next distributions made from the Account shall be paid one-half to Payee (for application to Indebtedness under the Note) and one-half to Broadacre until Broadacre has received aggregate distributions from the Account totalling \$400,000.00 (plus the Broadacre Return Amount if a Broadacre Return Event had occurred); or

(B) if no Broadacre Return Event has occurred, each payment from the Account shall be paid one-half to Payee (for application to Indebtedness under the Note) and one-half to Broadacre until Broadacre has received aggregate distributions from the Account totalling \$400,000.00;

(iii) then, after Broadacre has received the aggregate amounts described in the preceding clause (ii), to the extent of Available Adjusted Gross Revenue the next amounts paid from the Account shall be paid to Broadacre until Broadacre has received payments under clause (ii) and this clause (iii) aggregating \$900,000.00;

(iv) thereafter, to the extent of Available Adjusted Gross Income each of the distributions from the Account shall be paid one-half to Payee (for application to Indebtedness under the Note) and one-half to Broadacre;

(v) at Actual Maturity of the Note, there shall be paid and distributed to Payee from the Account an amount equal to the entire unpaid principal balance of the Note together with all accrued and unpaid interest (including, without limitation, all Basic Interest, all Additional Interest and all Shared Appreciation Interest) and all other amounts (if any) payable under the Note and the other Loan Documents to the extent available from Available Adjusted Gross Revenue or a refinancing of the remaining unsold Units, (the provisions of this clause (v) shall govern and control over all other provisions of this Agreement).

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(b) CT&T shall comply with any joint direction from Payee and Broadacre to the extent funds are available in the Account. Anything in this Agreement to the contrary notwithstanding, from and after the time (if any) that CT&T receives from Payee a written notice stating that an Economic Default has occurred under the Note or any of the other Debt Documents, CT&T shall (i) pay over to Payee, on demand by Payee made at any time or from time to time, any and all amounts then held by CT&T in the Account and (ii) not pay or distribute from the Account any amount to or at the direction of Broadacre.

ARTICLE 4: GENERAL CONDITIONS

4.1 CT&T Functions. The functions and duties assumed by CT&T include only those described in this Agreement and CT&T is not obligated to act except in accordance with the provisions of this Agreement.

4.2 Investment. All amounts held by CT&T in the Account shall be invested by CT&T in such investments described below as Payee may direct it from time to time. Payee may direct CT&T to invest funds held in the Account in debt obligations of or guaranteed by the United States of America or any agency thereof or of the State of Illinois, commercial paper rated "AA" or "AAA" and having a maturity date not later than 65 days after the date of purchase by CT&T, money market accounts, or certificates of deposit insured by an agency of the United States of America and issued by a commercial bank having a business office in Cook County, Illinois. All interest or other income earned on such investments shall be reported as income of Broadacre. Broadacre agrees to furnish its federal taxpayer's identification number to CT&T. CT&T agrees, upon request, to furnish information concerning its procedures and fee schedules for investment.

4.3 Commingle. Except as to deposits of funds for which escrow trustee has received express written direction concerning investment or other handling, the parties hereto agree that CT&T shall be under no duty to invest or reinvest any deposits at any time held by it hereunder; and, further, that CT&T may commingle such deposits with other deposits or with its own funds in the manner provided for the administration of funds under Section 2-9 of the Corporate Fiduciary Act (205 ILCS 620/2-8) and may use any part or all such funds for its own benefit without obligation to any party for interest or earnings derived thereby, if any. However, nothing herein shall diminish CT&T's obligation to pay, disburse and apply the full amount of the deposits in accordance with the provisions of this Agreement.

4.4 No Third Party Beneficiaries. The parties agree that this Agreement is not intended by any of the parties to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation other than CT&T, Broadacre and Payee as a third party beneficiary or otherwise under any theory of law.

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ARTICLE 5: SECURITY AGREEMENT

5.1 Security Interest.

(a) Grant of Security Interest. As security for all Indebtedness and all obligations of Broadacre under the Note and the other Debt Documents (collectively, the "Secured Obligations"), Broadacre presently and irrevocably pledges, hypothecates, assigns, delivers and transfers to Payee, and grants to Payee a continuing security interest in, all of the following property (collectively, the "Collateral"):

(i) all Broadacre's right, title and interest (whether contractual or otherwise) in and to this Agreement, the Account and all funds, amounts, and investments of any and every kind (including, without limitation, all securities, certificates and instruments) now or at any time or from time to time hereafter held therein, and all interest and proceeds and other property from time to time accruing or earned thereon or distributed therefrom; and

(ii) to the extent not described in the preceding clause (i), all proceeds of any and all of the foregoing.

(b) Continuing Security Interest. This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until payment and performance in full of all Secured Obligations. Upon the payment and performance in full of all Secured Obligations, the security interest granted herein shall terminate. Upon any such termination, Payee shall, at Broadacre's sole expense, deliver to the Broadacre, execute and deliver to the Broadacre such documents as Broadacre shall reasonably request to evidence such termination.

(c) Security Interest Absolute. All rights of Payee and the security interests granted to Payee hereunder, and all obligations of Broadacre hereunder, shall be absolute and unconditional, irrespective of:

(i) any lack of validity or enforceability of any of the Debt Documents, or

(ii) the failure of Payee to assert any claim or demand or to enforce any right or remedy against any other person under the provisions of any of the Debt Documents or otherwise; or

(iii) any change in the time, manner or place of payment of, or in any other term of, any of the Secured Obligations; or

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(iv) any reduction, limitation, impairment or termination of any of the Secured Obligations for any reason, including any claim of waiver, release, surrender, alteration or compromise; or

(v) any amendment to, rescission, waiver or other modification of, or any consent to or departure from, any of the terms of any of the Debt Documents; or

(vi) any addition, exchange, release or surrender, or non-perfection of any security interest in, any collateral (including the Collateral) securing the Secured Obligations, or any amendment to or waiver or release of or addition to or consent to departure from any guaranty, for any of the Secured Obligations; or

(vii) any other circumstance which might otherwise constitute a defense available to, or a legal or equitable discharge of, any surety or any guarantor.

5.2 Covenants.

(a) Broadacre shall not sell, assign, transfer, pledge or encumber in any manner any of the Collateral (except for the pledge to and security interest in favor of Payee hereunder). Broadacre shall warrant and defend the right and title herein granted unto Payee in and to the Collateral (and all right, title and interest represented by the Collateral) against the claims and demands of all persons whomsoever.

(b) Broadacre shall, at its expense, promptly execute and deliver to Payee all further documents and instruments (including financing statements, continuation statements, and other instruments of perfection, transfer or control) reasonably requested by Payee at any time or from time to time. In addition, Broadacre shall, at its expense, promptly take all further action that Payee may reasonably request at any time or from time to time in order to perfect and protect any security interest granted or purported to be granted hereby or to enable Payee to exercise and enforce its rights and remedies hereunder with respect to any Collateral, including the rights and remedies under Paragraph 5.5(b) below.

5.3 Payee Appointed Attorney-in-Fact. Broadacre hereby irrevocably appoints Payee as Broadacre's attorney-in-fact, with full power and authority in the name and place of Broadacre or otherwise (i) to take any action and to execute any instrument or document which Payee may deem necessary or advisable to perfect, continue or protect the security interest granted hereby and (ii) to exercise after an Event of Default any and all of its rights and remedies hereunder as the legal and beneficial owner of the Collateral. The power of attorney granted pursuant to this Paragraph 5.3 is coupled with an interest and is irrevocable.

5.4 Event of Default. As used in this Agreement, an "Event of Default" shall mean the occurrence of any one or more of the following:

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(a) any failure in the observance or performance by Broadacre of any of its obligations, covenants or duties hereunder; or

(b) the occurrence of any Event of Default as defined in the Note or any of the other Debt Documents.

5.5 Remedies.

(a) Certain Remedies. If any Event of Default occurs, Payee shall have all of the rights and remedies of a secured party under the Illinois Uniform Commercial Code. In the exercise of such rights and remedies Payee may, without notice except as specified below, sell the Collateral or any part thereof at one or more public or private sales held at any of Payee's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Payee may deem reasonable. Broadacre agrees that any private sale may result in prices and other terms less favorable than if such sale were a public sale. Broadacre agrees that to the extent notice of sale shall be required by law, ten days' (or any longer period selected by Payee) prior notice to Broadacre of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Payee shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Payee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) Application of Proceeds. All cash proceeds received by Payee in respect of any sale of all or any part of the Collateral may be held by Payee as additional collateral security for, or then or at any time thereafter be applied in whole or in part by Payee against, all or any part of the Secured Obligations in such order as Payee shall elect unless the default giving rise to the sale was not an Economic Default, as such term is defined in the Note, in which event proceeds shall be applied first to Payee's costs of enforcement and then in accordance with Article 3 hereof. Any surplus of such cash or cash proceeds held by Payee and remaining after payment in full of all the Secured Obligations (including, without limitation, all Indebtedness under the Note) shall be paid over to Broadacre or to whomsoever may be lawfully entitled to receive such surplus.

(c) Indemnity and Expenses. Broadacre hereby indemnifies and holds harmless Payee from and against any and all claims, losses and liabilities arising out of or resulting from this Agreement (including enforcement of this Agreement), except claims, losses or liabilities resulting from Payee's recklessness or wilful misconduct. Upon demand, Broadacre shall pay to Payee the amount of any and all reasonable expenses, including the reasonable fees and disbursements of its counsel and of any experts and agents, which Payee may incur, together with interest thereon at the rate of twelve percent (12%) per annum or the maximum amount permitted by law from the date incurred until the date paid, in connection with the exercise or enforcement of any of the rights of Payee

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hereunder (including a sale of the Collateral) as well as the failure by Broadacre to perform or observe any of the provisions hereof.

(d) **Remedies Cumulative.** No remedy or right of Payee hereunder, under any of the other Debt Documents or otherwise available under applicable law or in equity, shall be exclusive of any other right or remedy. Each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under applicable law or in equity. No delay in the exercise of, or omission to exercise, any remedy or right after any Event of Default shall impair any such remedy or right or be construed as a waiver of any such Event of Default or an acquiescence thereto, nor shall it affect any subsequent Event of Default of the same or different nature. Every remedy or right may be exercised concurrently or independently and when and as often as may be deemed necessary by Payee.

5.6 **Waiver of Jury Trial.** BROADACRE HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR ANY DOCUMENT TO WHICH IT IS A PARTY, OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR ANY RELATED DOCUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AS A SO-CALLED "BENCH TRIAL" AND NOT BEFORE A JURY. BROADACRE HAS BEEN ADVISED BY ITS OWN LEGAL COUNSEL AS TO THE EFFECTS OF ITS WAIVER SET OUT HEREIN AND KNOWINGLY GRANTS THIS WAIVER. Initials of Broadacre's Authorized Signatory: _____

5.7 **Limitation of Payee's Liability.** Payee shall not be liable for any claims, suits, actions, costs, damages, liabilities and expenses (collectively, the "Liabilities") in connection with the subject matter of this Agreement or its obligations hereunder, other than as a direct result of Payee's reckless or willful material breach of any material obligation of Payee set forth in the Debt Documents.

5.8 **Separate Agreement.** The provisions of this Article 5 shall constitute a separate agreement between Payee and Broadacre, distinct and separate from the remainder of the provisions of this Agreement. CT&T shall have no rights, duties or obligations with respect to any of the provisions of this Article 5, and the provisions of this Article 5 may be amended or modified by Payee and Broadacre without the consent or approval of, any notice to, or any action by, CT&T. The provisions of this Article 5 shall constitute one of the Debt Documents as that term is defined in, and for all purposes of, the Note, the Mortgage and the other Debt Documents.

5.9 **CT&T Acknowledgement.** CT&T acknowledges receipt of a copy of this Agreement including (without limitation) Article 5 hereof and CT&T agrees to honor and recognize Payee's security interest in the Collateral created thereby.

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ARTICLE 6: MISCELLANEOUS

6.1 No Limitation on Broadacre Liability. Nothing in this Agreement is intended to or shall limit Broadacre's liability to Payee pursuant to the Note, the Mortgage or any of the other Debt Documents.

6.2 Payee Not Liable for Expenses; No Joint Venture. (a) Nothing in this Agreement shall be intended or construed to hold or render Payee liable or responsible, or to subject Payee to any liability or obligation, for or on account of any expense, disbursement, liability or obligation of any kind or nature whatsoever, including but not limited to, wages, salaries, payroll taxes, withholding, benefits or other amounts payable to or on behalf of Broadacre, whether or not there is sufficient money in the Accounts to pay such expenses or costs and whether any present or future creditor attempts to assert a claim against Payee, including but not limited to any attempt in any bankruptcy proceeding to assert a claim under Section 506(c) of the Bankruptcy Code or any other provision of the Bankruptcy Code.

(b) This Agreement shall not constitute a joint venture or partnership agreement of any kind between the parties hereto, or otherwise create or evidence a relationship of joint venturers or partners between the parties hereto. Nothing contained herein shall characterize or be deemed to characterize Payee as a "mortgagee-in-possession".

(c) This Agreement does not amend or modify the Purchase Agreement, the Note or any of the other Debt Documents. In the event of any conflict between this Agreement and the Purchase Agreement, the Note, or the Mortgage, the provisions of the Purchase Agreement, Note or the Mortgage (as the case may be) shall control and govern.

6.3 This Agreement a Debt Document. This Agreement shall constitute one of the Debt Documents as that term is defined in, and for all purposes of, the Note, the Mortgage and the other Debt Documents.

6.4 Governing Law. This Agreement is entered into in the State of Illinois and shall be governed by and construed in accordance with the laws of the State of Illinois.

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**SIGNATURE PAGE TO
PROCEEDS ESCROW AGREEMENT
DATED AUGUST __, 1996**

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement at Evanston, Illinois as of the date first written above, pursuant to proper authority duly granted.

BROADACRE EVANSTON, L.L.C., an Illinois limited liability company

By: _____
Francis F. Freeman, Manager

**NORTHWESTERN UNIVERSITY/EVANSTON RESEARCH
PARK, INC., an Illinois corporation**

By: _____
Name: _____
Title: _____

CHICAGO TITLE & TRUST COMPANY, a Missouri corporation

By: _____
Name: _____
Title: _____

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EXHIBIT LIST

- A. Legal Description of the Property
- B. Purchase Agreement and Note
- C. Expense Request Certificate

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Prepared by and when
recorded return to:
Brian P. Gallagher
Mayer, Brown & Platt
190 S. LaSalle St.
Chicago, IL 60603

DECLARATION AND GRANT OF EASEMENT (GATEWAY EASEMENT)

This Declaration and Grant of Easement (the "Declaration") is made as of _____, 1996, by Northwestern University/Evanston Research Park, Inc., ("Declarant"), as the owner of Parcel 12 (defined hereinafter) to and in favor of, and as the agent of, the collective owners of Parcel B (defined hereinafter) pursuant to that certain Declaration of Covenants, Conditions, Restrictions and Easements for Northwestern University/Evanston Research Park recorded March 24, 1988 as Document Number 88122453 in the Office of the Cook County Recorder of Deeds (the "Park Declaration").

RECITALS

WHEREAS, Declarant is the owner of that certain real property commonly known as Parcel 12, Northwestern University/Evanston Research Park, and legally described on Exhibit A attached hereto and made a part hereof (hereinafter "Parcel 12") and is the "Park Operator" under the Park Declaration of that certain real property commonly known as Northwestern University/Evanston Research Park and legally described on Exhibit B attached hereto and made a part hereof (hereinafter "Parcel B"). The term Park Operator shall also refer to the successors and assigns of said Park Operator.

WHEREAS, in order to facilitate the development, use and ownership of Parcel 12 consistently with the intentions, purposes and objectives of the Park Declaration, Declarant desires to grant, declare, establish and reserve an easement to and for the benefit of Parcel B and the Park Operator over that portion of Parcel 12 depicted on Exhibit C (the "Easement Parcel").

NOW THEREFORE, for good and valuable consideration, the Declarant hereby states as follows:

1. The Declarant hereby declares and establishes in favor of and grants to the owners, lessees (including any ground lessees, and sublessees thereof), and occupants of Parcel B, their heirs, successors and assigns, employees, agents, contractors and invitees, as an easement appurtenant to Parcel B, a non-exclusive, perpetual easement for maintenance of the

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