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• COOK COUNTY RECORDER

## JUNIOR MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS

by

97<sup>50</sup>  
13

**PINNACLE BANK**  
(successor trustee to First National Bank of Cicero),  
not personally, but solely  
as Trustee under  
Trust Agreement dated July 17, 1990 and  
known as Trust No. 6783

to and for the benefit of

**JAN E. KOE, an individual**

FIRST AMERICAN TITLE INSURANCE #

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## TABLE OF CONTENTS

<u>Paragraph</u>	<u>Page</u>
1. Title .....	2
2. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc. ....	3
3. Payment of Taxes and Assessments .....	3
4. Tax Deposits .....	4
5. Mortgagee's Interest In and Use of Deposits .....	4
6. Insurance .....	5
7. Condemnation .....	6
8. Stamp Tax .....	7
9. Lease Assignment .....	7
10. Effect of Extensions of Time .....	11
11. Effect of Changes in Laws Regarding Taxation .....	11
12. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee .....	11
13. Mortgagee's Reliance on Tax Bills and Claims for Liens .....	12
14. Event of Default; Acceleration .....	12
15. Foreclosure; Expense of Litigation .....	14
16. Application of Proceeds of Foreclosure Sale .....	15
17. Appointment of Receiver .....	15
18. Mortgagee's Right of Possession in Case of Default .....	16
19. Application of Income Received by Mortgagee .....	17

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20.	Rights Cumulative	17
21.	Mortgagee's Right of Inspection	17
22.	Disbursement of Insurance or Eminent Domain Proceeds	18
23.	Release Upon Payment and Discharge of Mortgagor's Obligations	19
24.	Notices	19
25.	Waiver of Defenses	20
26.	Waiver of Rights	20
27.	Transfer of Premises; Further Encumbrance	21
28.	Expenses Relating to Note and Mortgage	21
29.	Intentionally Omitted	22
30.	Statement of Indebtedness	22
31.	Further Instruments	23
32.	Additional Indebtedness Secured	23
33.	Indemnity	23
34.	Waiver of Rights of Redemption and Reinstatement	23
35.	Subordination of Property Manager's Lien	24
36.	Fixture Filing	24
37.	Compliance with Environmental Laws	24
38.	Compliance with Illinois Mortgage Foreclosure Law	25
39.	Prior Mortgages	25
40.	Mortgagor's Covenants with Respect to Senior Instruments.	26
41.	Default under Senior Instruments; Mortgagee's Right to Cure.	26

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42.	Mortgagee's Right to Prepay Prior Notes. ....	27
43.	Miscellaneous .....	27

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## JUNIOR MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS

**THIS JUNIOR MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS** (the "Mortgage") is made as of the 21<sup>st</sup> day of August, 1996, by **PINNACLE BANK** (successor trustee to First National Bank of Cicero), not personally, but solely as Trustee under Trust Agreement dated July 17, 1980 and known as Trust No. 6783 ("Mortgagor"), to and for the benefit of **JAN E. KOE, an individual** ("Mortgagee");

### RECITALS:

A. Mortgagee has agreed to loan to Mortgagor and James V. Persino ("Persino") and Walter Daniels ("Daniels") and Matteson WHP Partnership, an Illinois general partnership (the "Partnership"), being the sole beneficiary of Mortgagor, the principal amount of \$170,000 ("Loan"). The Loan shall be evidenced by a certain Mortgage Note of even date herewith ("Note") made jointly and severally by Mortgagor, the Partnership, Persino and Daniels, and payable to Mortgagee.

B. A condition precedent to Mortgagee's extension of the Loan to Mortgagor, is the execution and delivery by Mortgagor of this Mortgage.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns, the real estate legally described on Exhibit A attached hereto (the "Real Estate"), together with the other property described in the following paragraph (the Real Estate and property being hereinafter referred to as the "Premises") to secure: (i) the payment of the Loan and all interest, late charges and other indebtedness evidenced by or owing under the Note, the Collateral Assignment of Beneficial Interest of even date herewith made by the Partnership in favor of Mortgagee (the "Collateral ABI") or any

---

This instrument was prepared by and,  
after recording, return to:

Schwartz, Cooper, Greenberger & Krauss,  
Chartered  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
Attn: Neil T. Neumark, Esq.

Permanent Real Estate Tax Index No.:

31-17-201-005

Common Address:

5601-5617 West Vollmer Road  
Southwest Corner of Vollmer and Central  
Matteson, Illinois

980751 99



EXONERATION PROVISION RESTRICTING  
ANY LIABILITY OF PINNACLE BANK,  
ATTACHED HERETO, IS HEREBY EXPRESSLY  
MADE A PART HEREOF.

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other document evidencing or securing the Loan and delivered to Mortgagee by Mortgagor, Persino, Daniels, the Partnership or any other person or entity (hereinafter collectively referred to as the "Loan Documents") and by any extensions, modifications, renewals or refinancings thereof; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Mortgagor or any other obligor to or benefiting Mortgagee which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the other Loan Documents, with interest thereon as provided herein or therein.

In addition to the Real Estate, the Premises hereby mortgaged includes all buildings, structures and improvements now or hereafter constructed or erected upon or located on the Real Estate, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the Real Estate, and all rents, issues, royalties, income, revenue, proceeds, profits and other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders thereof, for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said Real Estate and not secondarily), and all machinery, apparatus, equipment, appliances, floor covering, furniture, furnishings, supplies, materials, fittings, fixtures and other personal property of every kind and nature whatsoever, and all proceeds thereof, now or hereafter located thereon or therein and which is owned by Mortgagor. All of the land, estate and property hereinabove described, real, personal and mixed, whether or not affixed or annexed, and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall be for the purposes of this Mortgage deemed to be conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed to also be a Security Agreement under the Uniform Commercial Code of the State of Illinois (the "Code") for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as secured party (as defined in the Code).

TO HAVE AND TO HOLD the Premises unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

### 1. Title.

Mortgagor represents and covenants that (a) Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and

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encumbrances described on Exhibit B attached hereto (the "Permitted Exceptions"); and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

## 2. Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.

Mortgagor shall: (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right to contest by appropriate proceedings the validity or amount of any such lien if and only if Mortgagor shall, within fifteen days after the filing thereof, (i) place a bond with Mortgagee in an amount, form, content and issued by a surety reasonably acceptable to Mortgagee for the payment of any such lien or (ii) cause the title company which has issued the loan policy of title insurance insuring this Mortgage to Mortgagee insuring the lien of this Mortgage to issue an endorsement thereto insuring against loss or damage on account of any such lien; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to or at parity with the lien hereof (no such superior, inferior or parity lien to be permitted hereunder except for the Prior Mortgages as hereinafter defined), and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (d) complete within a reasonable time any buildings or any other improvements now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises and the use thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) make no material alterations to the Premises or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Mortgagee; (g) not suffer or permit any change which would have an adverse effect on the general nature of the occupancy of the Premises without the prior written consent of Mortgagee; (h) not initiate or acquiesce in any zoning reclassification without the prior written consent of Mortgagee; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms of the Note and the other Loan Documents; and (j) duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Note and in the other Loan Documents on the part of Mortgagor to be performed and observed. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.

## 3. Payment of Taxes and Assessments.

Mortgagor shall pay all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other liens or charges levied or assessed against the Premises, or any interest therein, of any nature whatsoever when due and before any penalty or interest is assessed, and, at the request of Mortgagee, shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in

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installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. Notwithstanding anything contained herein to the contrary, Mortgagor shall have the right to protest any taxes assessed against the Premises, so long as such protest is conducted in good faith by appropriate legal proceedings diligently prosecuted and Mortgagor shall furnish to the title insurer such security or indemnity as said insurer requires to induce it to issue an endorsement, in form and substance acceptable to Mortgagee, insuring over any exception created by such protest.

#### **4. Tax Deposits.**

If requested by Mortgagee in writing, Mortgagor covenants to deposit with Mortgagee on the first day of each month following such written request until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth (1/12th) of 105% of the annual taxes and assessments (general and special) on the Premises, as reasonably determined by Mortgagee. If requested by Mortgagee, Mortgagor shall also deposit with Mortgagee an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full such installment of annual taxes and assessments, as estimated by Mortgagee; provided, however, that Mortgagor shall not be required to make the aforesaid deposits if Mortgagor is depositing the same with Prior Lender and provides Mortgagee evidence satisfactory to Mortgagee, that such deposits have, in full, been made to Prior Lender. Any such deposits are to be held without any allowance of interest and are to be used for the payment of taxes and assessments on the Premises next due and payable when they become due. Mortgagee may, at its option, pay such taxes and assessments when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for the payment thereof. If the funds so deposited are insufficient to pay any such taxes or assessments for any year (or installments thereof, as applicable) when the same shall become due and payable, Mortgagor shall, within ten days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes and assessments in full. If the funds so deposited exceed the amount required to pay such taxes and assessments for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee.

#### **5. Mortgagee's Interest In and Use of Deposits.**

Upon the occurrence of an Event of Default, Mortgagee may, at its option, apply any monies at the time on deposit pursuant to Paragraph 4 hereof toward any of the indebtedness secured hereby in such order and manner as Mortgagee may elect. When such indebtedness has been fully paid, any remaining deposits shall be returned to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall not be subject to the direction or control of Mortgagor. Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, prior to the occurrence of an Event of Default, shall have requested Mortgagee in

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writing to make application of such funds to the payment of such amounts, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

## 6. Insurance.

(a) Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation: (i) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount and inflation protection endorsements; (ii) if there are tenants under leases at the Premises, rent and rental value or business loss insurance for the same perils described in clause (i) above payable at the rate per month and for the period specified from time to time by Mortgagee; (iii) broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Premises shall contain a boiler and/or sprinkler system, respectively; (iv) if the Premises are located in a flood hazard area, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; and (v) such other insurance as Mortgagee may from time to time reasonably require. Mortgagor also shall at all times maintain commercial general liability, property damage and workmen's compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may require. Mortgagor shall be the named insured under such policies and Mortgagee shall be identified as an additional insured party. All policies of insurance to be furnished hereunder shall be in forms, with companies, in amounts and with deductibles reasonably satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or modified without thirty days prior written notice to Mortgagee and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. Mortgagor shall deliver all policies, certificates of insurance and/or binders to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies, certificates of insurance and/or binders to Mortgagee, not less than thirty days prior to their respective dates of expiration. In the event Mortgagor is only able to deliver a certificate of insurance and/or binder, Mortgagor agrees to provide Mortgagee with policies immediately upon receipt from insurer.

(b) Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee and such separate insurance is otherwise acceptable to Mortgagee.

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(c) In the event of loss, Mortgagor shall give immediate notice thereof to Mortgagee, who shall have the sole and absolute right to make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee (rather than to Mortgagor and Mortgagee jointly). Mortgagee shall have the right, at its option and in its sole discretion, to apply any insurance proceeds so received after the payment of all of Mortgagee's expenses, either (i) on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable, whereupon Mortgagee may declare the whole of the balance of indebtedness hereby secured to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in Paragraph 22 hereof. If insurance proceeds are delivered to Mortgagor by Mortgagee as hereinafter provided, Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event Mortgagee permits the application of such insurance proceeds to the cost of restoration and repair of the Premises, any surplus which may remain out of said insurance proceeds after payment of such costs shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. At the request of Mortgagee, from time to time, Mortgagor shall furnish Mortgagee, without cost to Mortgagee, evidence of the replacement value of the Premises. Notwithstanding anything to the contrary contained herein, in the event of loss wherein the Prior Lender ( as hereinafter defined) permits the application of such insurance proceeds to the cost of restoration or repair of the Premises, then Mortgagee shall so permit the application of such insurance proceeds.

## 7. Condemnation.

If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this Mortgage, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee. Such award or monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking Mortgagee may declare the whole of the balance of the indebtedness hereby secured to be due and payable. Notwithstanding the provisions of this Paragraph to the contrary, if any condemnation or taking of less than the entire Premises occurs and provided that no Event of Default and no event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and if such partial condemnation, in the reasonable discretion of Mortgagee, has no material adverse affect on the operation or value of the Premises, then the award or payment for such

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taking or consideration for damages resulting therefrom may be collected and received by Mortgagor, and Mortgagee hereby agrees that in such event it shall not declare the whole of the indebtedness hereby secured to be due and payable, if it is not otherwise then due and payable.

## 8. Stamp Tax.

If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

## 9. Lease Assignment.

As additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, Mortgagor, as lessor, hereby unconditionally and absolutely grants, transfers, sets over and assigns to Mortgagee the entire lessor's right, title and interest in and to all leases and subleases (including all extensions and renewals thereof) which now or hereafter affect all or any portion of the Premises (collectively, the "Leases") and in and to all rents, issues, income and profits of or from all or any portion of the Premises.

Mortgagor will not, without Mortgagee's prior written consent (i) enter into a Lease of all or any portion of the Premises, modify or amend the terms and conditions of any Lease, or give any approval or consent required or permitted by any Lease; (ii) execute an assignment or pledge of any rents and/or any leases affecting all or any portion of the Premises; or (iii) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, other than security and other deposits. Notwithstanding the foregoing to the contrary, Mortgagee's prior written consent shall not be required if and only if (A) at the time Mortgagor enters into such Lease, no Event of Default shall have occurred hereunder and be continuing, (B) such Lease substantially conforms with a form of lease previously approved by Mortgagee, (C) the term of such Lease, the rental rate per square foot of net rentable space thereunder and all of the other economic terms and provisions thereunder are in accordance with leasing guidelines approved from time to time by Mortgagee in writing and then in effect.

Mortgagor, at its sole cost and expense, will (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all Leases affecting all or any portion of the Premises, on the part of the lessor thereunder to be kept and performed, and will not, without the prior written consent of Mortgagee, release the liability of any tenant thereunder (unless such release is given in connection with and

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subsequent to Mortgagor's execution of a replacement lease for such tenant's premises which replacement lease complies with the leasing parameters referenced above) permit any tenant thereunder to withhold the payment of rent or make off-sets against rent, permit any tenant to claim a total or partial eviction, permit any tenant to terminate or cancel any Lease, waive or excuse the obligation to pay rent under any Lease or modify or cancel the terms of any guaranty of any Lease; (ii) use its best efforts to enforce or secure the performance of all of the covenants, conditions and agreements of such Leases on the part of the tenants to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such Leases or the obligations, duties or liabilities of the lessor or of the tenants thereunder; (iv) as additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, transfer and assign to Mortgagee any Lease or Leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) give written notice to Mortgagee within five (5) days after the occurrence of any material default under any Lease affecting all or any portion of the Premises; and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the tenant under any Lease affecting all or any portion of the Premises a certificate with respect to the status thereof.

Mortgagor represents and covenants to Mortgagee that Mortgagor has not heretofore made any other assignment of all or any part of its interest in and to any or all of the Leases, or any or all of the rents, issues, income or profits assigned hereunder or entered into any agreement to subordinate any of the Leases, or Mortgagor's right to receive any of the rents, issues, income or profits assigned hereunder except for that certain Assignment of Rents, dated January 8, 1996 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on February 6, 1996 as Document No. 96-100286 ("First Assignment of Rents") and that certain Assignment of Rents, dated January 8, 1996 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on February 6, 1996 as Document No. 96-100288 ("Second Assignment of Rents") each made by Mortgagor in favor of Prior Lender (as hereinafter defined). The First Assignment of Rents and Second Assignment of Rents are sometimes hereinafter collectively referred to as the "Prior Assignments of Rents").

So long as no Event of Default exists under this Mortgage, the Note or any of the other Loan Documents, Mortgagor shall have the right to collect, but not more than thirty (30) days in advance of the date provided for the payment thereof, all rents, issues, income and profits assigned hereunder (other than security or similar deposits) and to retain, use and enjoy the same. Mortgagee shall have the right to notify the tenants under the Leases of this assignment at any time provided, however, Mortgagee shall not exercise its remedies thereunder so long as no Event of Default exists hereunder.

Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from Mortgagee's failure to let the Premises following the occurrence of an Event of Default under this Mortgage or from any other act or omission of Mortgagee in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Mortgagee shall not

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be obligated to observe, perform or discharge, nor does Mortgagee hereby undertake to oversee, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Mortgagee under or by reason of this Mortgage, and Mortgagor shall and does hereby agree to indemnify Mortgagee for, and to hold Mortgagee harmless of and from, any and all liability, loss, or damage which Mortgagee may or might incur under any Lease and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease. Should Mortgagee incur any liability, loss, or damage under any Lease, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Mortgagor with interest thereon at eighteen percent (18%) (the "Default Rate") secured by this Mortgage. This Mortgage shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease upon Mortgagee, nor shall it operate to make Mortgagee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger.

In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each Lease affecting all or any portion of the Premises shall, at the option of Mortgagee, attorn to any person succeeding to the interest of Mortgagor as a result of such enforcement and shall recognize such successor in interest as lessor under such Lease without change in the terms or other provisions thereof; provided, however, that said successor in interest shall not be bound (a) by any payment of rent or additional rent paid more than one month in advance; or (b) by any amendment or modification to any lease made without the consent of Mortgagee or said successor in interest or in violation of the terms and provisions of Article 9 hereof. Each tenant, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

Upon the occurrence of an Event of Default under this Mortgage, Mortgagee shall have the right, subject to the rights of the Prior Lender, to:

(x) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Mortgagee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Mortgagee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Mortgagee deems necessary or proper;

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(y) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect and give acquittance for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder, provided that, for such purpose, this Mortgage shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Mortgagee, without proof of default hereunder, upon receipt from Mortgagee of written notice specifying that a default has occurred hereunder and directing such tenants to thereafter pay all such rents and other amounts to Mortgagee and to comply with any notice or demand by Mortgagee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided, further, that Mortgagor will facilitate in all reasonable ways Mortgagee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Mortgagee.

All sums collected and received by Mortgagee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Event of Default shall be applied as follows:

(a) First, to reimbursement of Mortgagee for and of all expenses of: taking and retaining possession of the Premises; managing the Premises and collecting the rents, issues, income and profits thereof, including without limitation, salaries, fees and wages of a managing agent and such other employees as Mortgagee may deem necessary and proper, and reasonable attorneys' fees; operating and maintaining the Premises, including without limitation, taxes, charges, claims, assessments, water rents, sewer rents, other liens, and premiums for any insurance provided in this Mortgage; the cost of all alterations, renovations, repairs or replacements of or to the Premises which Mortgagee may deem necessary and proper, with interest thereon at the Default Rate;

(b) Second, to reimbursement of Mortgagee for and of all sums expended by Mortgagee pursuant to Paragraph 12 below to make any payment or do any act required herein of Mortgagee, together with interest thereon as provided herein;

(c) Third, to reimbursement of Mortgagee for and of all other sums with respect to which Mortgagee is indemnified pursuant to this Paragraph 9, together with interest thereon as provided herein;

(d) Fourth, to the payment of all accrued and unpaid interest then due under the terms of the Note;

(e) Fifth, to payment of the unpaid principal balance of the Note; and

(f) Sixth, any balance remaining to or as directed by Mortgagor.

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## 10. Effect of Extensions of Time.

If the payment of the indebtedness secured hereby or any part thereof is extended or varied or if any part of any security for the payment of the indebtedness is released, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

## 11. Effect of Changes in Laws Regarding Taxation.

If any law is enacted after the date hereof requiring (i) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (ii) the imposition upon Mortgagee of the payment of the whole or any part of the taxes or assessments, charges or liens herein required to be paid by Mortgagor, or (iii) a change in the method of taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holders thereof, then Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor, provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee it may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may declare all of the indebtedness secured hereby to be immediately due and payable.

## 12. Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.

If an Event of Default has occurred, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon at the Default Rate. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Mortgagee's rights

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hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

### **13. Mortgagee's Reliance on Tax Bills and Claims for Liens.**

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

### **14. Event of Default; Acceleration.**

Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Mortgagor, the Partnership, Persino or Daniels fails to pay on the date when due (i) any installment of principal or interest payable pursuant to the Note, or (ii) any other amount payable pursuant to the Note, this Mortgage or any of the other Loan Documents;

(b) Mortgagor, the Partnership, Persino or Daniels fails to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under the Note, this Mortgage or any of the other Loan Documents; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the lien created

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by the Mortgage or any of the other Loan Documents and the value of the Premises are not impaired, threatened or jeopardized, then Mortgagor, the Partnership, Persino and Daniels shall have a period (the "Cure Period") of thirty days after written notice from Mortgagee of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if Mortgagor, the Partnership, Persino and Daniels commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty additional days, but in no event shall the Cure Period be longer than sixty days in the aggregate;

(c) The existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to Mortgagee by Mortgagor, the Partnership, Persino or Daniels;

(d) Mortgagor, the Partnership, Persino or Daniels files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Mortgagor, the Partnership, Persino or Daniels or of all or any substantial part of the property of Mortgagor, the Partnership, Persino or Daniels, or any of the Premises;

(e) The commencement of any involuntary petition in bankruptcy against Mortgagor, the Partnership, Persino or Daniels or the institution against Mortgagor, the Partnership, Persino or Daniels of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor, the Partnership, Persino or Daniels which shall remain undismissed or undischarged for a period of sixty days;

(f) The death or legal incompetency of Persino or Daniels;

(g) Any sale, transfer, lease made in violation of the terms and provisions of Article 9 of this Mortgage, assignment, conveyance, financing, lien or encumbrance made in violation of Paragraph 27 of this Mortgage; or

(h) the occurrence of any Event of Default under the Prior Mortgages, the Prior Notes (as hereinafter defined) or any of the other Senior Instruments (as hereinafter defined).

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If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable upon providing written notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate.

## 15. Foreclosure; Expense of Litigation.

(a) When all or any part of the indebtedness hereby secured shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. It is further agreed that if default be made in the payment of any part of the secured indebtedness, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness. It is further agreed that such sale pursuant to a partial foreclosure shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale in connection therewith, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree to discontinue such partial foreclosure and to accelerate the entire secured indebtedness by reason of any uncured Event of Default upon which such partial foreclosure was predicated or by reason of any other Event of Default and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such

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decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

## 16. Application of Proceeds of Foreclosure Sale.

The proceeds of any foreclosure (or partial foreclosure) sale of the Premises shall be distributed and applied to the following in such order and manner as Mortgagee may elect in the exercise of its sole and absolute discretion: to all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 15 above; to all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as provided herein or in the other Loan Documents; and to all principal and interest remaining unpaid on the Note. Any surplus remaining after payment of the items described in the immediately preceding sentence shall be paid to Mortgagor, its successors or assigns, as their rights may appear or to any other party legally entitled thereto.

## 17. Appointment of Receiver.

Upon or at any time after the filing of a complaint to foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed shall upon petition by Mortgagee, appoint a receiver for the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor or the Partnership, Persino or Daniels at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax,

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special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

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

At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Premises. Mortgagee, in its discretion, may, with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor, the Partnership, Persino or Daniels and their respective employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- (b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee deems are necessary;
- (e) insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof; and
- (f) receive all of such avails, rents, issues and profits.

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## 19. Application of Income Received by Mortgagee.

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

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized. Notwithstanding the foregoing to the contrary, in no event shall Mortgagee pay any compensation or other fees to any management company affiliated with Mortgagor;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any indebtedness secured hereby, including any deficiency which may result from any foreclosure sale.

## 20. Rights Cumulative.

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

## 21. Mortgagee's Right of Inspection.

Mortgagee and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times, and access thereto shall be permitted for that purpose.

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## 22. Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, which approval shall not be unreasonably withheld.

(b) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Premises to the extent permitted in Paragraph 6 above (which payment or application may be made, at Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be entitled to be satisfied as to the following:

(i) An Event of Default has not occurred;

(ii) Either (A) such improvements have been fully restored, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore and rebuild the Premises, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Premises; and

(iii) Prior to each disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 22 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagee's architect or an independent third-party contractor (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds to the repair, restoration or rebuilding of the improvements upon the Premises to the extent permitted in Paragraph 6 above, there shall have been delivered to Mortgagee the following:

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(i) A waiver of subrogation from any insurer with respect to Mortgagor or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds (in the instance of repairs or restoration costs which Mortgagee reasonably anticipates may exceed \$25,000.) and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Mortgagee.

(d) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed satisfactory by Mortgagee, then Mortgagee, at its option, may commence and perform all necessary acts to restore, repair or rebuild the said improvements for or on behalf of Mortgagor. In the event insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Premises, such excess shall be applied on account of the unpaid principal balances of the loans evidenced by the Note irrespective of whether such balances are then due and payable.

(e) In the event Mortgagor commences the repair or rebuilding of the improvements located on the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds set forth in this Paragraph 22, or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Premises within a time deemed satisfactory by Mortgagee, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above, then such failure shall constitute an Event of Default.

## **23. Release Upon Payment and Discharge of Mortgagor's Obligations.**

Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of all reasonable expenses incurred by Mortgagee in connection with the execution of such release.

## **24. Notices.**

Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

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To Mortgagee: Mr. Jan E. Koc  
c/o Method K Partners, Inc.  
2400 East Oakton Street  
Arlington Heights, Illinois 60005

With copy to: Schwartz Cooper Greenberger  
& Krauss, Chtd.  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
Attn: Neil T. Neumark, Esq.

To Mortgagor: Mr. James Persino  
6316 North Northwest Highway  
Chicago, Illinois 60631

and to: Mr. Walter Daniels  
6316 North Northwest Highway  
Chicago, Illinois 60631

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

## 25. Waiver of Defenses.

No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

## 26. Waiver of Rights.

Mortgagor hereby covenants and agrees that Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the fullest extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any claims based on allegations that Mortgagee has failed to act in a commercially reasonable manner (except as otherwise expressly provided in this Mortgage or the other Loan Documents) and any and all rights to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

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## **27. Transfer of Premises; Further Encumbrance.**

(a) Neither all nor any portion of (i) the Premises or (ii) any partnership interest in the Partnership, (iii) the beneficial interest in Mortgagor or (iv) any interest of Mortgagor in the Premises shall be sold, conveyed, assigned, encumbered or otherwise transferred without, in each instance, the prior written consent of Mortgagee, which consent may be given or withheld in Mortgagee's sole and absolute discretion, and may be conditioned in any manner that Mortgagee desires, including, without limitation, increases in the rate of interest charged on the Loan and payment of assumption fees. Any violation or attempted violation of the provisions of this Paragraph 27 shall be an Event of Default for purposes of all of the Loan Documents. Notwithstanding the foregoing, the Prior Mortgages and Prior Assignments of Rents shall not constitute a violation of the provisions of this Paragraph 27.

(b) Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this Paragraph 27 shall not constitute a consent to or waiver of any right, remedy or power of Mortgagee upon a continuing or subsequent Event of Default under this Paragraph 27. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 27 shall be void and of no force or effect. Mortgagor agrees that if any provision of this Paragraph 27 is deemed a restraint on alienation, that such restraint is a reasonable one.

## **28. Expenses Relating to Note and Mortgage.**

(a) Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

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(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Mortgagor, the Partnership, Persino or Daniels or any of their respective agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Mortgagor, the Partnership, Persino or Daniels or any of their respective agents, employees or attorneys pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor, which approval is required by the terms of this Mortgage.

(b) All expenses, charges, costs and fees described in this Paragraph 28 (which shall include any reasonable legal fees or any other fees incurred by Mortgagee in connection with review and preparation of any such documents) shall be so much additional indebtedness secured hereby and shall be paid by Mortgagor to Mortgagee within ten (10) days after written demand therefor. Any sum not paid within said ten (10) day period shall bear interest from the date so incurred until paid at the Default Rate.

(c) Mortgagor agrees that it will not employ Schwartz, Cooper, Greenberger & Krauss in connection with any matter relating to this Mortgage or any of the related loan documents.

29. Intentionally Omitted.

30. Statement of Indebtedness.

Mortgagor, within seven days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

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## 31. Further Instruments.

Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

## 32. Additional Indebtedness Secured.

All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the indebtedness secured hereby, including, without limitation, any and all amounts expended by Mortgagee to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

## 33. Indemnity.

Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) (collectively, the "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Mortgagee in accordance with the terms of this Mortgage. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

## 34. Waiver of Rights of Redemption and Reinstatement.

Mortgagor hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption provided in the Illinois Mortgage Foreclosure Law.

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## 35. Subordination of Property Manager's Lien.

Any property management agreement for the Premises entered into hereafter with a property manager shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a "no lien" provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

## 36. Fixture Filing.

Mortgagor and Mortgagee agree that this Mortgage shall constitute a financing statement and fixture filing under the Code with respect to all "fixtures" (as defined in the Code) attached to or otherwise forming a part of the Premises and that a security interest in and to such fixtures is hereby granted to Mortgagee. For purposes of the foregoing, Mortgagee is the secured party and Mortgagor is the debtor and the collateral covered by this financing statement shall be all items of property contained within the definition of the "Premises" which is or becomes a fixture on the Real Estate or any other real estate contained within the definition of the Premises.

## 37. Compliance with Environmental Laws.

In addition to all other provisions of this Mortgage, Mortgagor, at its cost and expense, shall comply with all laws, and all rules and regulations of any governmental authority ("Agency") having jurisdiction, concerning environmental matters, including but not limited to, any discharge (whether before or after the date of this Mortgage) into the air, waterways, sewers, soil or ground water or any substance or "pollutant". Mortgagee and its agents and representatives shall have access to the Premises and to the books and records of Mortgagor, the Partnership, Persino and Daniels and any occupant of the Premises claiming by, through or under Mortgagor, the Partnership, Persino and Daniels for the purpose of ascertaining the nature of the activities being conducted thereon and to determine the type, kind and quantity of all products, materials and substances brought onto the Premises or made or produced thereon. Mortgagor, the Partnership, Persino and Daniels and all occupants of the Premises claiming under Mortgagor, the Partnership, Persino and Daniels shall provide to Mortgagee copies of all manifests, schedules, correspondence and other documents of all types and kinds when filed or provided to any Agency or as such are received from any Agency. Mortgagee and its agents and representatives shall have the right to take samples in quantity sufficient for

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scientific analysis of all products, materials and substances present on the Premises including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Premises by Mortgagor, the Partnership, Persino and Daniels or an occupant claiming by, through or under Mortgagor, the Partnership, Persino or Daniels or otherwise present on the Premises.

## **38. Compliance with Illinois Mortgage Foreclosure Law.**

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 17 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or Section 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 12, 15 or 28 of this Mortgage, shall be added to the indebtedness secured by this Mortgage and/or by the judgment of foreclosure.

## **39. Prior Mortgages.**

Notwithstanding anything to the contrary contained herein, the liens, rights and remedies granted or created by this Mortgage are junior, subject and subordinate to those granted or created by that certain First Mortgage dated January 8, 1996, executed by Mortgagor in favor of CIB Bank (the "First Mortgage") and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on February 6, 1996 as Document Number 96 100285, as thereafter amended from time to time and by that certain Second Mortgage dated January 8, 1996, executed by Mortgagor in favor of CIB Bank (the "Second Mortgage") and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on February 6, 1996 as Document Number 96-100287, as thereafter amended from time to time.

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## 40. Mortgagor's Covenants with Respect to Senior Instruments.

(a) Mortgagor covenants and agrees to comply with all of the terms and provisions of the Prior Mortgage, the prior notes (the "Prior Notes") dated January 8, 1996 each made by the Partnership in favor of CIB Bank ("Prior Lender") and all other loan documents and instruments securing such Prior Notes or delivered to induce Prior Lender to disburse proceeds evidenced thereby (collectively, "Senior Instruments"). If Mortgagor shall default in the performance of any term or provision contained in this Mortgage or in the Note, the owner or holder of the Note may, but shall not be obligated to, pay any principal or interest due under the Prior Notes or any of the Senior Instruments. To the extent the owner and holder of the Note pays any installment of principal or interest or any other sums due under the Prior Notes or the Senior Instruments, the said owner and holder shall become entitled to a lien on the Premises covered by this Mortgage and by the Senior Instruments, equal in rank and priority to the Senior Instruments, and in addition to the extent necessary to make effective such rank and priority (i) the Mortgagee shall become subrogated to receive and enjoy all of the rights, liens, powers and privileges granted to the Prior Lender under the Senior Instruments and (ii) the Senior Instruments shall remain in existence for the benefit of and to further secure the debt and other sums secured, or hereafter to become secured hereunder.

(b) Mortgagor shall give Mortgagee a copy of all notices given Mortgagor with respect to any of the Senior Instruments within five (5) days after receiving such notice.

(c) Mortgagor shall not, without the prior written consent of Mortgagee, enter into any modification, amendment, agreement or arrangement in connection with any of the Prior Notes, Prior Mortgages or any of the other Senior Instruments.

## 41. Default under Senior Instruments; Mortgagee's Right to Cure.

In the event Mortgagor is declared by the holder of the Senior Instruments to be in default with respect to any requirement of any of the Senior Instruments, Mortgagor agrees that said default shall constitute an Event of Default hereunder. Upon the occurrence of such an Event of Default, in addition to any other rights or remedies available to Mortgagee, Mortgagee may, but need not, make any payment or perform any act required to cure or attempt to cure any said default under any of the Senior Instruments in any manner and form deemed expedient by Mortgagee. Mortgagee shall not be responsible for determining the validity or accuracy of any claim of default made by the Prior Lender under the Senior Instruments and the payment of any sum by Mortgagee in curing or attempting to cure any alleged default or omission shall be presumed conclusively to have been reasonable, justified and authorized. Mortgagor hereby grants to Mortgagee an irrevocable power of attorney, which power of attorney is coupled with an interest, for the term of this Mortgage to cure any default or forfeiture which may occur under the Prior Mortgages. All monies paid by Mortgagee in

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curing any default under the Senior Instruments, including attorneys' fees and costs in connection therewith, shall bear interest from the date or dates of such payment at the Default Rate, shall be paid by Mortgagor to Mortgagee on demand, and shall be deemed a part of the indebtedness and recoverable as such in all respects. Any inaction on the part of the Mortgagee shall not be construed as a waiver of any right accruing to Mortgagee on account of any Event of Default hereunder.

## 42. Mortgagee's Right to Prepay Prior Notes.

In the event of an Event of Default hereunder, Mortgagee may (but shall not be required to) prepay the entire balances due under the Prior Notes, and any prepayment fees or penalty incurred by Mortgagee in connection with such prepayment shall bear interest from the date of such payment at the Default Rate, shall be paid by Mortgagor to Mortgagee upon demand, and shall be deemed a part of the indebtedness and recoverable in all respects.

## 43. Miscellaneous.

### (a) Successors and Assigns.

This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor, and its estates, heirs, legatees, assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

### (b) Invalidity of Provisions: Governing Law.

In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Mortgagee shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

### (c) Municipal and Zoning Requirements.

Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by

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act or omission alter (or permit the alteration of) the zoning classification of the Premises in effect as of the date hereof, nor shall Mortgagor impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) **Rights of Tenants.**

Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) **Option of Mortgagee to Subordinate.**

At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by Mortgagee of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(f) **Mortgagee in Possession.**

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

(g) **Relationship of Mortgagee and Mortgagor.**

Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

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(h) Time of the Essence.

Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the other Loan Documents and the performance and observance by Mortgagor, and any other obligor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

(i) No Merger.

It being the desire and intention of the parties hereto that the Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by 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 and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) Maximum indebtedness.

Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to Five Hundred Thousand and no/100 Dollars (\$500,000).

(k) JURISDICTION AND VENUE.

MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF MORTGAGEE INITIATES SUCH ACTION, ANY COURT IN WHICH MORTGAGEE SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY MORTGAGEE IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. MORTGAGOR WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD MORTGAGOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO

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SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY MORTGAGEE AGAINST MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY MORTGAGEE, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY MORTGAGEE, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(l) WAIVER OF RIGHT TO JURY TRIAL.

MORTGAGOR AND MORTGAGEE ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS MORTGAGE, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES. ACCORDINGLY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND MORTGAGEE, BY ITS ACCEPTANCE OF THIS MORTGAGE, HEREBY KNOWINGLY AND VOLUNTARILY MUTUALLY (A) WAIVE THE RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION, CLAIM, COUNTERCLAIM, CROSS-CLAIM, THIRD-PARTY CLAIM, DISPUTE, DEMAND, SUIT OR PROCEEDING ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS MORTGAGE, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, THE Loan, OR ANY RENEWAL, EXTENSION OR MODIFICATION THEREOF, OR ANY CONDUCT OF ANY PARTY RELATING THERETO, AND (B) AGREE THAT ANY SUCH ACTION, CLAIM, SUIT OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.

(m) Trustee Exculpation.

This Mortgage is executed by Pinnacle Bank, not personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing in this Mortgage shall be construed as creating any liability on such Trustee personally to perform any express or implied covenant, condition or obligation under this Mortgage, all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title or interest under this Mortgage; provided, however, that the foregoing exculpation of the Trustee shall not impair or otherwise affect any of Mortgagee's rights or remedies against the assets held by Mortgagor or other collateral now or hereafter pledged to Mortgagee as security for the obligations of Mortgagor, or any guarantor of the Note, the Partnership, Persino or Daniels or any other person or entity liable for the obligations of Mortgagor.

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

PINNACLE BANK (successor trustee to First National Bank of Cicero), not personally, but solely as Trustee as aforesaid

By: [Signature]  
Title: GLENN G. RICHTER, VICE PRESIDENT  
Attest: [Signature]  
Title: NANCY FURBIA, Asst Secretary

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THIS DOCUMENT IS SIGNED BY PINNACLE BANK, NOT INDIVIDUALLY BY OFFICERS OR EMPLOYEES UNDER THE SIGNATURE OF ANY OF THE EMPLOYEES OF PINNACLE BANK. THIS DOCUMENT IS THE PROPERTY OF PINNACLE BANK AND IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF PINNACLE BANK. THE SIGNATURE OF ANY EMPLOYEE OF PINNACLE BANK ON THIS DOCUMENT DOES NOT CONSTITUTE AN AUTHORITY TO BIND PINNACLE BANK TO ANY AGREEMENT OR OBLIGATION OF ANY KIND. THE SIGNATURE OF ANY EMPLOYEE OF PINNACLE BANK ON THIS DOCUMENT DOES NOT CONSTITUTE AN AUTHORITY TO BIND PINNACLE BANK TO ANY AGREEMENT OR OBLIGATION OF ANY KIND. THE SIGNATURE OF ANY EMPLOYEE OF PINNACLE BANK ON THIS DOCUMENT DOES NOT CONSTITUTE AN AUTHORITY TO BIND PINNACLE BANK TO ANY AGREEMENT OR OBLIGATION OF ANY KIND.

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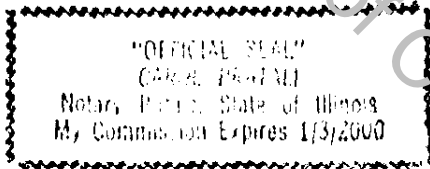
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STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Glenn J. Ruckter the Vice President of PINNACLE BANK, as Trustee, and Nancy Fudala the Asst Secretary thereof, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice Pres. and Asst Sec., respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 29 day of August, 1996.



Carol Producci  
NOTARY PUBLIC

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## JOINDER

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned, being the sole owner of 100% of the beneficial interest in Mortgagor, hereby joins in the foregoing Mortgage and Assignment of Leases and Rents for purposes of (i) granting, transferring, setting over and assigning to Mortgagee, all of its right, title and interest in and to the Leases and any and all rents, issues, incomes, and profits of and from the Premises.

IN WITNESS WHEREOF, this Joinder has been executed and delivered as of this 21<sup>st</sup> day of AUGUST, 1996.

**MATTESON WHP PARTNERSHIP**, an Illinois general partnership

By: [Signature]  
James V. Persino, general partner

By: [Signature]  
Walter Daniels, general partner

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK         )

I, ANGELA S. ORTEGA, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **JAMES V. PERSINO** and **WALTER DANIELS** being the sole general partners of **MATTESON WHP PARTNERSHIP**, an Illinois general partnership (the "Partnership"), who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as the sole general partners of the Partnership, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts and as the free and voluntary act of the Partnership, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 21<sup>st</sup> day of AUGUST, 1996.

[Signature]  
Notary Public

“OFFICIAL SEAL”  
Angela S. Ortega  
Notary Public, State of Illinois  
My Commission Exp. 06/25/2000

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## EXHIBIT A

### Legal Description of Premises

S.W. Corner of Vollmer & Central,  
Matteson, Illinois

5601-5617 West Vollmer Road, Matteson, Illinois

Lot 1 in Woodgate Commercial Subdivision being a subdivision of the Northeast ¼ of the Northeast ¼ of Section 17, Township 35 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

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A-1

EXONERATION PROVISION, DISTRICITING  
AND LIEN LIFT C. 11-1-2011  
ATTN: COUNTY CLERK'S OFFICE  
600 N. LAKE STREET

560751 59

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## EXHIBIT B

### Permitted Exceptions

1. General real estate taxes for the year 1996 and each year thereafter not yet due and payable.
2. Exception Nos. 2, 3, 4, 5, 8, 9, 11 and 12, contained on Schedule B of First American Title Insurance Company Commitment No. 18130 dated July 23, 1996.

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE.  
DATE 07/21/00 BY 60322 UC/BAW

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