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Chicago, IL 60606

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Chicago, Illinois

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. COOK COUNTY RECORDER

N952659 CRIC 2 of 3

MORTGAGE AND SECURITY AGREEMENT

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THE FIRST COMMERCIAL BANK,  
Mortgagee

WEST RIDGE, L.L.C.  
Mortgagor

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## TABLE OF CONTENTS

1.	<u>PAYMENT OF INDEBTEDNESS.</u>	10
2.	<u>MAINTENANCE, REPAIR, RESTORATION, PRIOR LIENS</u>	10
3.	<u>TAXES.</u>	12
4.	<u>INSURANCE COVERAGE.</u>	13
5.	<u>INSURANCE POLICIES.</u>	14
6.	<u>DEPOSITS FOR TAXES.</u>	15
7.	<u>PROCEEDS OF INSURANCE.</u>	17
8.	<u>DISBURSEMENT OF INSURANCE PROCEEDS.</u>	18
9.	<u>CONDEMNATION</u>	19
10.	<u>STAMP TAX.</u>	20
11.	<u>PREPAYMENT PRIVILEGE.</u>	20
12.	<u>EFFECT OF EXTENSIONS OF TIME, AMENDMENTS ON JUNIOR LIENS</u>	20
13.	<u>HAZARDOUS SUBSTANCES.</u>	20
14.	<u>COMPLIANCE WITH GOVERNMENTAL, INSURANCE</u>	23
15.	<u>MORTGAGEE'S PERFORMANCE OF MORTGAGOR'S OBLIGATIONS.</u>	24
16.	<u>ACKNOWLEDGEMENT OF DEBT.</u>	25
17.	<u>RENTS AND LEASES.</u>	25
18.	<u>INSPECTION OF PREMISES.</u>	27
19.	<u>FINANCIAL STATEMENTS</u>	27
20.	<u>RESTRICTIONS ON TRANSFER, LIENS, SECONDARY FINANCING</u>	28
21.	<u>UNIFORM COMMERCIAL CODE.</u>	30
22.	<u>EVENTS OF DEFAULT.</u>	32
23.	<u>EXPENSES INCURRED BY MORTGAGEE.</u>	35
24.	<u>APPLICATION OF DEPOSITS HELD BY MORTGAGEE.</u>	36
25.	<u>FORECLOSURE.</u>	36

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

26.	<u>PROCEEDS OF FORECLOSURE SALE.</u>	37
27.	<u>RECEIVER.</u>	37
28.	<u>INSURANCE UPON FORECLOSURE.</u>	38
29.	<u>COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW.</u>	38
30.	<u>WAIVER.</u>	38
31.	<u>EFFECT OF EXTENSIONS, MODIFICATIONS AND AMENDMENTS.</u>	39
32.	<u>WAIVER OF DEFENSES.</u>	40
33.	<u>PARTIAL PAYMENTS.</u>	40
34.	<u>INTENTIONALLY OMITTED.</u>	40
35.	<u>DELAYS AND OMISSIONS.</u>	40
36.	<u>RESCISSION OF ELECTION.</u>	40
37.	<u>ASSIGNMENT.</u>	40
38.	<u>MORTGAGEE IN POSSESSION.</u>	40
39.	<u>TITLE IN MORTGAGOR'S SUCCESSORS.</u>	41
40.	<u>INDEMNIFICATION.</u>	41
41.	<u>SUBROGATION.</u>	41
42.	<u>PURPOSE OF LOAN.</u>	42
43.	<u>PARTIAL INVALIDITY.</u>	42
44.	<u>RIGHTS CUMULATIVE.</u>	43
45.	<u>FURTHER ASSURANCES.</u>	43
46.	<u>SUCCESSORS AND ASSIGNS.</u>	43
47.	<u>MORTGAGEE'S RIGHT TO DEAL WITH TRANSFEREE.</u>	43
48.	<u>FUTURE ADVANCES.</u>	44
49.	<u>RETURN OR SURRENDER OF PAYMENTS.</u>	44
50.	<u>INTEREST AT THE DEFAULT RATE.</u>	44
51.	<u>CONDOMINIUM CONVERSION</u>	44

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

52.	<u>PARTIAL RELEASES</u> . . . . .	45
53.	<u>CONSTRUCTION PROVISIONS</u> . . . . .	45
54.	<u>EFFECT OF CHANGES IN TAX LAWS.</u> . . . . .	46
55.	<u>PROVISIONS SEVERABLE.</u> . . . . .	47
56.	<u>CAPTIONS AND PRONOUNS.</u> . . . . .	47
57.	<u>ADDRESSES AND NOTICES.</u> . . . . .	47
58.	<u>CHOICE OF LAW.</u> . . . . .	48
1.	<u>PAYMENT OF INDEBTEDNESS.</u> . . . . .	8
2.	<u>MAINTENANCE, REPAIR, RESTORATION, PRIOR LIENS</u> . . . . .	8
3.	<u>TAXES.</u> . . . . .	10
4.	<u>INSURANCE COVERAGE.</u> . . . . .	11
5.	<u>INSURANCE POLICIES.</u> . . . . .	12
6.	<u>DEPOSITS FOR TAXES.</u> . . . . .	13
7.	<u>PROCEEDS OF INSURANCE.</u> . . . . .	15
8.	<u>DISBURSEMENT OF INSURANCE PROCEEDS.</u> . . . . .	16
9.	<u>CONDEMNATION.</u> . . . . .	17
10.	<u>STAMP TAX.</u> . . . . .	18
11.	<u>PREPAYMENT PRIVILEGE.</u> . . . . .	18
12.	<u>EFFECT OF EXTENSIONS OF TIME, AMENDMENTS ON JUNIOR LIENS</u> . . . . .	18
13.	<u>HAZARDOUS SUBSTANCES.</u> . . . . .	18
14.	<u>COMPLIANCE WITH GOVERNMENTAL, INSURANCE</u> . . . . .	21
15.	<u>MORTGAGEE'S PERFORMANCE OF MORTGAGOR'S OBLIGATIONS.</u> . . . . .	22
16.	<u>ACKNOWLEDGEMENT OF DEBT.</u> . . . . .	23
17.	<u>RENTS AND LEASES.</u> . . . . .	23
18.	<u>INSPECTION OF PREMISES.</u> . . . . .	25
19.	<u>FINANCIAL STATEMENTS</u> . . . . .	25

UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

20.	<u>RESTRICTIONS ON TRANSFER, LIENS, SECONDARY FINANCING</u> . . . . .	26
21.	<u>UNIFORM COMMERCIAL CODE</u> . . . . .	28
22.	<u>EVENTS OF DEFAULT</u> . . . . .	30
23.	<u>EXPENSES INCURRED BY MORTGAGEE</u> . . . . .	33
24.	<u>APPLICATION OF DEPOSITS HELD BY MORTGAGEE</u> . . . . .	34
25.	<u>FORECLOSURE</u> . . . . .	34
26.	<u>PROCEEDS OF FORECLOSURE SALE</u> . . . . .	35
27.	<u>RECEIVER</u> . . . . .	35
28.	<u>INSURANCE UPON FORECLOSURE</u> . . . . .	36
29.	<u>COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW</u> . . . . .	36
30.	<u>WAIVER</u> . . . . .	37
31.	<u>EFFECT OF EXTENSIONS, MODIFICATIONS AND AMENDMENTS</u> . . . . .	37
32.	<u>WAIVER OF DEFENSES</u> . . . . .	38
33.	<u>PARTIAL PAYMENTS</u> . . . . .	38
34.	<u>TENDER OF PAYMENT AFTER ACCELERATION</u> . . . . .	38
35.	<u>DELAYS AND OMISSIONS</u> . . . . .	38
36.	<u>RESCISSION OF ELECTION</u> . . . . .	38
37.	<u>ASSIGNMENT</u> . . . . .	39
38.	<u>MORTGAGEE IN POSSESSION</u> . . . . .	39
39.	<u>TITLE IN MORTGAGOR'S SUCCESSORS</u> . . . . .	39
40.	<u>INDEMNIFICATION</u> . . . . .	39
41.	<u>SUBROGATION</u> . . . . .	40
42.	<u>PURPOSE OF LOAN</u> . . . . .	40
43.	<u>PARTIAL INVALIDITY</u> . . . . .	40
44.	<u>RIGHTS CUMULATIVE</u> . . . . .	41
45.	<u>FURTHER ASSURANCES</u> . . . . .	41

UNOFFICIAL COPY

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

46.	<u>SUCCESSORS AND ASSIGNS.</u>	41
47.	<u>MORTGAGEE'S RIGHT TO DEAL WITH TRANSFEREE.</u>	42
48.	<u>FUTURE ADVANCES.</u>	42
49.	<u>RETURN OR SURRENDER OF PAYMENTS.</u>	42
50.	<u>INTEREST AT THE DEFAULT RATE.</u>	43
51.	<u>CONDOMINIUM CONVERSION</u>	43
52.	<u>PARTIAL RELEASES</u>	43
53.	<u>CONSTRUCTION PROVISIONS</u>	44
54.	<u>EFFECT OF CHANGES IN TAX LAWS.</u>	45
55.	<u>PROVISIONS REVERABLE.</u>	45
56.	<u>CAPTIONS AND PRONOUNS.</u>	45
57.	<u>ADDRESSES AND NOTICES.</u>	45
58.	<u>CHOICE OF LAW.</u>	46

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## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") made this 12th day of January, 1996, by

WEST RIDGE, L.L.C.

(herein, whether one or more, and if more than one jointly and severally, called the "Mortgagor), to

THE FIRST COMMERCIAL BANK

(herein, together with its successors and assigns, including each and every from time to time holder of the Note hereinafter referred to, called the "Mortgagee").

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee, the Mortgagor's Mortgage Note dated the date hereof, in the principal sum of

SEVEN HUNDRED TWENTY THOUSAND DOLLARS  
(\$720,000.00)

(hereinafter called the "Note") bearing interest at the rate specified therein, due in installments payable to the order of the Mortgagee, and in any event, no later than July 11, 1997; and

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid (i) in this Mortgage; (ii) in the Note; or (iii) in any other documents securing the Note ("Loan Documents"); are herein called the "Indebtedness Hereby Secured."

NOW, THEREFORE, THIS MORTGAGE WITNESSETH:

That to secure the payment of the principal of and interest and premium, if any, on the Note according to their tenor and effect and to secure the payment of all other Indebtedness Hereby Secured and the performance and observance of all the covenants, provisions and agreements herein and in the Note contained (whether or not the Mortgagor is personally liable for such payment, performance and observance) and in consideration of the making of the loan evidenced by the Note, and for other good and valuable considerations, the receipt and sufficiency of all of which is hereby acknowledged by the Mortgagor, the Mortgagor does hereby GRANT, WARRANT, RELEASE, REMISE, ALIEN, MORTGAGE and CONVEY unto the Mortgagee all and sundry the property (herein together with the property mentioned in the next succeeding paragraphs hereto, called

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the "Premises") described in Exhibit A attached hereto and made a part hereof.

TOGETHER with and including within the term "Premises", as used herein, any and all improvements, tenements, buildings, easements, fixtures, privileges, reservations, allowances, hereditaments and appurtenances now or hereafter thereunto belonging or pertaining; any and all rights and estates in reversion or remainder; all rights of Mortgagor in or to adjacent sidewalks, alleys, streets and vaults; and any and all rights and interests of every name and nature now or hereafter owned by the Mortgagor, forming a part of and/or used in connection with the real estate and/or the operation and convenience of the buildings and improvements located thereon, including (by way of enumeration but without limitation) all furniture, furnishings, and equipment used or useful in the operation of the real property or improvements thereon or furnished by Mortgagor to tenants thereof; all building materials located at the said real estate and intended to be incorporated in improvements now or hereafter to be constructed thereon, whether or not incorporated therein; all machines, machinery, fixtures, apparatus, equipment or articles used to supply heating, gas, electricity, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all floor coverings, screens, storm windows, blinds, awnings, stoves, refrigerators, dishwashers, disposal units, range hoods and blowers, together with all additions thereto and replacements thereof (Mortgagor agreeing to execute such further instruments as requested by Mortgagee to confirm conveyance and transfer of the foregoing); in each case now or hereafter placed in, on or at the Premises (it being understood that the enumeration of any specific articles of property shall in no wise exclude or be held to exclude any items of property not specifically enumerated.) As to any of the property aforesaid which does not form a part and parcel of the real estate or does not constitute a fixture (as defined by the Uniform Commercial Code), this Mortgage is hereby deemed to be as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as Secured Party.

AND TOGETHER WITH all leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases or agreements relating to the use and occupancy of the Premises or any portion thereof, now or hereafter existing or entered into, together with all security deposits, advance rentals and other deposits given in connection with any leases.

AND TOGETHER WITH all of the rents, income, receipts, revenues, issues and profits thereof and therefrom; AND all of the land, estate, property and rights hereinabove described and hereby conveyed and intended so to be, whether real, personal or mixed, and whether or not affixed or annexed to the real estate are

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intended to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real estate and for the purposes hereof shall be deemed to be real estate conveyed and mortgaged hereby.

AND TOGETHER WITH any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Premises as a result of (a) the proceeds of insurance in effect with respect to the Premises, (b) the exercise of the right of eminent domain, condemnation or other similar proceedings, (c) the alteration of the grade of any street, or (d) any other injury to or decrease in the value of the Premises, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by the Mortgagee, and of the reasonable counsel fees, costs and disbursements incurred by the Mortgagee in connection with the collection of such award or payment. The Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by the Mortgagee to confirm such assignment to the Mortgagee of any such award or payment.

AND TOGETHER WITH all of Mortgagor's rights further to encumber said property for debt except by such encumbrances which, by their actual terms and specifically expressed intent, shall be and at all times remain subject and subordinate to any and all leases and/or tenancies (a) which are in existence when such encumbrances become effective, or (b) which are thereafter created, Mortgagor hereby representing to Mortgagee, as a special inducement to Mortgagee to make this loan, that as of the date hereof there are no other encumbrances to secure debt, and covenanting that there are to be none as of the date this Mortgage becomes of record, except in either case encumbrances having the prior written approval of Mortgagee, and all of Mortgagor's rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage or deed of trust other than this Mortgage.

TO HAVE AND TO HOLD all and sundry the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws and Redemption Laws of the State of Illinois, which rights and benefits are hereby expressly released and waived, including but not limited to Mortgagor's right to redemption which is hereby expressly waived per Illinois Compiled Statutes, Chapter 735, 5/15-1601, for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined.

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

AND IT IS FURTHER AGREED THAT:

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

2. MAINTENANCE, REPAIR, RESTORATION, PRIOR LIENS, PARKING, MANAGEMENT, ETC.

A. Mortgagor will (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for the purpose; (b) keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for any lien not expressly subordinated to the lien hereof; (c) pay, when due, any indebtedness which may be secured by a lien or charge on the Premises inferior or superior to the lien hereof, and upon request exhibit satisfactory evidence of the payment or discharge of such lien to the Mortgagee; (d) complete, within a reasonable time, any building or buildings now or at any time in the process of erection upon the Premises; (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof; (f) make no material alterations in the Premises, except as required by law or municipal ordinance and as approved by Mortgagee as provided for in Paragraph 53 hereof; (g) suffer or permit no change in the general nature of the occupancy of the Premises without the Mortgagee's prior written consent; (h) pay all operating costs of the Premises; (i) initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent; and (j) provide, improve, grade, surface and thereafter maintain, clean, repair, police and adequately light parking areas within the Premises of sufficient size to accommodate not less than the number of automobiles as may be required by local zoning authorities, codes or other laws whichever may be greater, together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public

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thoroughfares necessary or desirable for the use thereof; and will reserve and use all such parking areas solely and exclusively for the purpose of providing ingress, egress and parking facilities for automobiles and other passenger vehicles of Mortgagor or tenants or invitees of tenants of the Premises; and Mortgagor will not reduce, build upon, obstruct, redesignate or relocate any such parking areas, sidewalks, aisles, streets, driveways, sidewalk cuts or paved areas or rights-of-way or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the Premises without the prior written consent of the Mortgagee.

B. No improvement on the Premises or on land adjoining the Premises which is owned or controlled by Mortgagor or by any general partner or related business entity of such general partner shall be constructed unless plans and specifications therefor have been first submitted to Mortgagee and approved by it, in the exercise of its sole judgment, as entailing no prejudice to the loan secured hereby or the security therefor. Any alterations performed by Mortgagor (a) shall not change the general character or use of the Premises, or reduce the fair market value thereof below its value immediately before such Mortgagor's alteration, or impair the usefulness of the Premises; (b) shall be effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, insurance requirements, leases, plans and specifications and contracts; (c) shall be promptly and fully paid for by Mortgagor; (d) shall be made, in case the estimated cost thereof exceeds \$5,000.00, under the supervision of a qualified architect or engineer, pursuant to plans and specifications approved by Mortgagor and Mortgagee, or other security satisfactory to Mortgagee, and (e) shall be constructed entirely within the boundaries of the Premises or any permanent encroachment easement approved by Mortgagee. All Mortgagor's alterations shall immediately become and remain subject to the lien of this Mortgage. Mortgagor may not remove or demolish any improvement or any part thereof. Mortgagor will not materially alter any landscaped, recreation or paved area. Notwithstanding anything in this paragraph to the contrary, Mortgagor may make alterations and improvements to the Premises in connection with the conversion of same to a condominium subject to the provisions of paragraph 53 hereof.

C. A property management contract satisfactory to Mortgagee with a professional manager acceptable to it shall be in force at all times during the term of the Indebtedness Hereby Secured. Such management contract shall: (i) be terminable, without penalty or cost, upon the occurrence of an Event of Default hereunder, upon written demand of Mortgagee; (ii) provide that as long as the Mortgagor or any one of the partners of Mortgagor or any of the individuals owning any interest in a partner of Mortgagor or any other related parties to Mortgagor or any indemnitors under the Loan Documents has an interest in the ownership or profits or losses of the management company managing the Premises, the fees

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earned under the management contract pertaining to Premises shall be subordinated to any monies due Mortgagee pursuant to the Loan Documents and shall not be paid to the management company as long as there is an uncured Event of Default pending under the Loan Documents. It shall be an Event of Default hereunder if the management of the Premises is changed or the management contract is terminated or modified, without Mortgagee's prior written consent. Mortgagor shall cause the managing agent of the Premises to perform all undertakings and functions necessary to operate the Premises in a first class manner as an apartment building or condominium building upon conversion to same as provided for in paragraph 51 hereof.

3. **TAXES.** Subject to the provisions of Section 6 herein, the Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, impact fees, water charges, sewer charges and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness Hereby Secured, or any obligation or agreement secured hereby; and Mortgagor will, within thirty days after the due date thereof, furnish to the Mortgagee, duplicate receipts therefor. To prevent default thereunder the Mortgagor will pay in full under protest in the manner provided by statute, any Taxes which the Mortgagor may desire to contest; provided, however, that if deferment of payment of any such Taxes is required to conduct any contest or review, the Mortgagor shall deposit the full amount thereof, together with an amount equal to the estimated interest and penalties thereon during the period of contest, with the Mortgagee, or provide title insurance or bond over such contested taxes. In any event, Mortgagor shall (and if Mortgagor shall fail so to do, the Mortgagee may, but shall not be required to, and for the purpose may use the monies deposited as aforesaid) pay all Taxes, notwithstanding such contest, if in the opinion of the Mortgagee, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed. In the event that any law or court decree has the effect of deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the holder thereof, then and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes or reimburse the Mortgagee therefor. Nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only those that may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in any amount computed as if the Mortgagee

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derived no income from any source other than its interest hereunder.

4. INSURANCE COVERAGE. The Mortgagor will insure and keep insured all of the buildings and improvements now or hereafter constructed or erected upon the Premises and each and every part and parcel thereof, against such perils and hazards as the Mortgagee may from time to time require, and in any event including:

- a) Insurance against loss caused by fire, lightning and risks covered by the so-called "all risks" endorsement, and other such risks as the Mortgagee may reasonably require, in amounts equal to the full replacement value of the Premises without co-insurance (but in no event less than the initial stated principal of the Note), plus the cost of debris removal;
- b) Comprehensive public liability insurance against bodily injury and property damage in any way arising in connection with the Premises, with such limits as the Mortgagee may require and in any event not less than \$2,000,000.00 single limit coverage;
- c) Rent and rental value insurance (or, at the discretion of Mortgagee, business interruption insurance) in amounts sufficient to pay during any period of up to twelve (12) months in which the Premises may be damaged or destroyed, (i) all amounts required herein to be paid by the Mortgagor, including but not limited to all taxes, assessments, utility charges, operating expenses and insurance premiums; and (ii) all projected annual rents derived from the Premises;
- d) Broad form boiler, machinery and other insurance of the types and in amounts as the Mortgagee may require providing for the full repair and replacement cost coverage;
- e) During any period of construction or the making of any alterations or improvements to the Premises, (i) insurance covering claims based on the owner's contingent liability not covered by the insurance required in this Mortgage; (ii) workmens compensation insurance covering all persons engaged in making such alterations or improvements for the benefit of Mortgagor's employees and third parties in the amounts required by applicable state laws; and (iii) extended coverage casualty insurance in the form of a "Builder's Risk" nonreporting policy in an amount to be determined by Mortgagee as the insurable value of the improvements to be constructed, with an endorsement naming Mortgagee

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as Mortgagee without subjecting the Mortgagee to defenses which may be available against the Mortgagor.

- f) Full Federal Flood Insurance in the maximum obtainable amount if Premises is in a flood area, as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended.
- g) Umbrella comprehensive public liability coverage of not less than \$1,000,000.00.
- h) If any part of the Premises is now or hereafter used for the sale or dispensing of beer, wine, spirits or any other alcoholic beverages, so called "dram shop" or "innkeepers liability" insurance, all in amounts as may be required by law or as the Mortgagee may specify, but in no event less than \$3,000,000 single limit coverage.
- i) Until further written notice from Mortgagee, all such insurance policies shall name the following as Loss Payees/Additional Insured:  

The First Commercial Bank  
6945 N. Clark Street  
Chicago, IL 60628
- j) Such other insurance with companies in such amounts and against such insurable risks as from time to time may be reasonably required by Mortgagee.

5. INSURANCE POLICIES. All policies of insurance to be maintained and provided as required by Section 4 hereof shall be in forms, companies and amounts reasonably satisfactory to the Mortgagee and all policies of casualty insurance shall have attached thereto standard mortgage clauses and loss payee/additional insureds or endorsements in favor of and with loss payable to and in form satisfactory to the Mortgagee. All such insurance shall provide "all risk" agreed value 100% replacement cost coverage without co-insurance and shall be carried with companies acceptable to Mortgagee. The policies and renewals (or certificates evidencing same), shall be marked by the insurer "PAID", shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the old policies and shall have attached thereto standard non-contributing mortgage clauses in favor of and entitling the Mortgagee alone to collect any and all of the proceeds payable under all such insurance, as well as standard waiver of subrogation endorsements, and a provision for thirty (30) days' notice to Mortgagee prior to any cancellation thereof. The Mortgagor will deliver all policies, including additional and renewal policies to the Mortgagee and, in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the

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respective dates of expiration. In the event of a change in ownership or of occupancy of the Premises, immediate notice thereof by mail shall be delivered to all insurers, if required by the applicable policy. In the event Mortgagee, in its reasonable discretion, determines that any insurance provided by Mortgagor does not comply with the insurance requirements set forth herein, then Mortgagee may, after giving Mortgagor fourteen (14) days prior written notice, at any time and at its own discretion, procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in such amount and carried in such company as it may determine, the cost of which shall be repaid to Mortgagee by Mortgagor upon demand. Mortgagor shall furnish (not more frequently than annually) to Mortgagee, upon the request, estimates or appraisals of insurable value, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building or buildings and improvements on the Premises.

If the Mortgagor shall fail to keep the Mortgaged Premises insured in accordance with the requirements of Paragraph 4 above, the Mortgagee shall have the right, at its option, to provide for such insurance and pay the premiums thereof, and any amounts paid by the Mortgagee shall constitute additional Indebtedness Hereby Secured by this Mortgage and shall bear interest at the Default Rate as hereinafter defined.

6. DEPOSITS FOR TAXES. In order to assure the payment of Taxes payable with respect to the Premises as and when the same shall become due and payable:

- a) The Mortgagor shall deposit with the Mortgagee on the first day of each and every month, commencing with the date the first payment of interest and/or principal and interest shall become due on the Indebtedness Hereby Secured, an amount equal to one twelfth (1/12) of the Taxes next to become due upon the Premises; provided that, in the case of the first such deposit which shall be made at the time of the first funding of the indebtedness, there shall be deposited in addition, upon demand by Mortgagee, an amount as estimated by Mortgagee which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to Mortgagee's satisfaction that there will be sufficient funds on deposit to pay Taxes as they come due and to maintain an initial Tax reserve as reasonably estimated by Mortgagee ("Tax Deposits").
- b) The aggregate of the monthly Tax Deposits, together with monthly payments of interest and/or principal and interest payable on the Note, shall be paid in a single payment each month, to be applied to the following items in the order stated:

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- i) Accrued but unpaid tax escrow requirements;
  - ii) Indebtedness Hereby Secured other than principal and interest on the Note;
  - iii) Interest on the Note;
  - iv) Amortization of the principal balance of the Note.
- c) The Mortgagee will, out of the Tax Deposits, upon the presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the Taxes or will, upon presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by the Mortgagor. If the total Tax Deposits on hand shall not be sufficient to pay all of the Taxes when the same shall become due, then the Mortgagor shall pay to the Mortgagee on demand any amount necessary to make up the deficiency. If such funds are not paid, or if deposits on hand remain insufficient to pay such taxes, Mortgagee may, at its option, pay and advance on behalf of Mortgagor such funds necessary to pay such real estate taxes in full, and any amounts paid and advanced by Mortgagee shall constitute additional Indebtedness Hereby Secured by this Mortgage and shall bear interest at the Default Rate as hereinafter defined. All such advances shall be immediately due and payable to Mortgagee upon seven (7) days notice to Mortgagor. No such advances shall be deemed to relieve Mortgagor from any default hereunder or impair any right or remedy consequent thereon, and the exercise of the right to make advances granted in this paragraph shall be optional to Mortgagee and not obligatory, and Mortgagee shall not in any case be liable to Mortgagor for a failure to exercise any such right.
- d) Upon the occurrence of an Event of Default in any of the provisions contained in this Mortgage or in the Note, the Mortgagee may, at its option, without being required so to do, apply any Tax Deposits on hand to any of the Indebtedness Hereby Secured, in such order and manner as the Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, then any remaining Tax Deposits shall be paid to the Mortgagor. All Tax Deposits are hereby pledged as additional security for the Indebtedness Hereby Secured, and shall be held in trust to be irrevocably applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of the Mortgagor.
- e) Notwithstanding anything to the contrary herein contained, the Mortgagee shall not be liable for any failure to apply to the payment of Taxes any amounts

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deposited as Tax Deposits unless the Mortgagor, while no default exists hereunder, shall have requested the Mortgagee in writing to make application of such Deposits on hand to the payment of the particular Taxes for the payment of which such Deposits were made, accompanied by the bills therefor.

- f) All Tax Deposits in the hands of Mortgagee shall be held with allowance of interest at such rates as are determined by Mortgagee but need not be kept separate and apart but may be commingled with any funds of the Mortgagee.
- g) Notwithstanding anything to the contrary herein contained, until an Event of Default and failure to cure within any applicable grace period, the Mortgagor shall not be required to make Tax and Insurance Deposits; provided, however, that from and after an Event of Default and failure to remedy within any applicable cure period (even if subsequently remedied), and upon written notice to Mortgagor, Mortgagor shall be required to make Tax and Insurance Deposits with Mortgagee for the balance of the term of the loan in accordance with the provisions of this Section 6.

7. PROCEEDS OF INSURANCE. The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises, and:

- a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the Purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided, that the Mortgagor may itself adjust losses aggregating not in excess of Five Thousand Dollars (\$5,000.00), and provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured, and shall be reimbursed to the Mortgagee upon demand.
- b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty"), and if, in the sole and exclusive judgment of the Mortgagee, the Premises can be restored to an economic unit of the same character not less valuable than the same was prior to the Insured Casualty

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within a reasonable period of time as determined solely by the Mortgagee, and adequately securing the outstanding balance of the Indebtedness Hereby Secured, then, if no Event of Default as hereinafter defined shall have occurred and be then continuing and the Mortgagor shall not be in default hereunder and the Mortgagee, in its sole discretion, is adequately secure in receiving all payments due from the Mortgagor under the Note during the period of construction and restoration, the proceeds of insurance shall be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises or part thereof subject to Insured Casualty, as provided for in Section 8 hereof; and the Mortgagor hereby covenants and agrees forthwith to commence and to diligently prosecute such restoring, repairing, replacing or rebuilding; provided, always, that the Mortgagor shall pay all costs of such restoring, repairing, replacing or rebuilding in excess of the proceeds of insurance.

- c) Except as provided for in Subsection (b) of this Section 7, the Mortgagee may apply the proceeds of insurance consequent upon any Insured Casualty upon the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect.
- d) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the restoring, repairing, replacing or rebuilding of the Premises, the Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to be of at least equal value, and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee.

8. DISBURSEMENT OF INSURANCE PROCEEDS. In the event the Mortgagor is entitled to reimbursement out of insurance proceeds held by the Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the restoration, repair, replacement and rebuilding with funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance, to complete the proposed restoration, repair, replacement and rebuilding and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidences of cost and of payment as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by the Mortgagee prior to commencement of work. Further, the Mortgagee, at its option, may require the establishment of a construction escrow at a title company

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acceptable to Mortgagee to administer the disbursement of the insurance proceeds. No payment made prior to the final completion of the restoration, repair, replacement or rebuilding shall exceed Ninety Percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee (or construction escrowee), together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. No interest shall be allowed to the Mortgagor on account of any proceeds of insurance or other funds held in the hands of Mortgagee.

9. CONDEMNATION. The Mortgagor will give prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process. The Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain, or by condemnation including damages to grade. The Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness Hereby Secured then most remotely to be paid, whether due or not, or to require the Mortgagor to restore or rebuild the Premises, in which event, the proceeds shall be held by the Mortgagee and used to reimburse the Mortgagor for the cost of such rebuilding or restoring. If the Mortgagor is obligated to restore or replace the damaged or destroyed buildings or improvements upon the Premises under the terms of any lease or leases which are or may be prior to the lien of this Mortgage, and if such taking does not result in cancellation of such lease or leases, the award shall be used to reimburse the Mortgagor for the cost of restoration and rebuilding; provided always, that Mortgagor is not in default hereunder and that no Event of Default has occurred and is then continuing. If the Mortgagor is required or permitted to rebuild or restore the Premises as aforesaid, such rebuilding or restoration shall be effected solely in accordance with plans and specifications previously submitted to and approved by the Mortgagee, and proceeds of the award shall be paid out in the same manner as is provided in Section 8 hereof for the payment of insurance proceeds towards the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, the Mortgagor shall pay such costs in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of the award after payment of such costs of rebuilding or restoration shall, at the option of the Mortgagee, be applied on account of the Indebtedness Hereby Secured, then most remotely to be paid, or be paid to any

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other party entitled thereto. No interest shall be allowed to Mortgagor on account of any award held by Mortgagee.

10. STAMP TAX. If, by the laws of the United States of America, or of any state, county or municipality having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, this Mortgage or any other Loan Document, the Mortgagor shall pay such tax in the manner required by such law. Mortgagor will pay all mortgage recording taxes due upon recording of Mortgage.

11. PREPAYMENT PRIVILEGE. The Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the prepayment provisions set forth in the Note, but not otherwise.

12. EFFECT OF EXTENSIONS OF TIME, AMENDMENTS ON JUNIOR LIENS AND OTHERS. If the payment of the Indebtedness Hereby Secured, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee herein to amend, modify and supplement this Mortgage, the Note and the Assignment hereinafter defined and referred to, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

13. HAZARDOUS SUBSTANCES. Mortgagor hereby represents, warrants and covenants that neither the Mortgagor nor, to the best of Mortgagor's knowledge, any other person (including prior owners, tenants or subtenants) has ever caused or permitted any Hazardous Substances (as such term is hereinafter defined) to be placed, stored, treated, manufactured, handled, produced, transported, held, located or disposed of on, under or at the Premises or any part thereof and neither the Premises nor any part thereof has ever been used by the Mortgagor or, to the best of Mortgagor's knowledge, by any other person (including prior owners, tenants and subtenants) as a dump site or storage site (whether permanent or temporary) for any Hazardous Substances. The Mortgagor covenants and agrees that the Mortgagor shall not, nor shall the Mortgagor voluntarily permit any other person or entity to, place, hold, locate or dispose of any Hazardous Substances on, under or at the Premises or any part thereof other than cleaning solvents or similar substances used in the ordinary course of operations of the

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Premises and in compliance with all applicable Environmental Laws. Without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine or process Hazardous Substances, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant or subtenant, a release of Hazardous Substances onto the Premises or onto any other property. Mortgagor shall comply with and ensure compliance by all tenants and subtenants with all applicable federal, state and local laws, ordinances, rules and regulations, and ensure that any and all tenants and subtenants obtain and comply with any and all approvals, registrations or permits required thereunder. The Mortgagee reserves the right to require the Mortgagor to obtain environmental risk studies and reports at any time during the term of this Mortgage.

The Mortgagor hereby agrees to indemnify the Mortgagee, its employees, agents, officers and directors, and their successors and assigns, and hold the Mortgagee harmless from and against any and all losses, liabilities (including strict liability), damages, injuries, penalties, fines, settlements, expenses and costs of whatever kind or nature, known or unknown, contingent or otherwise, including, without limitation, reasonable attorneys' fees, of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by or asserted against, the Mortgagee by any person or entity or governmental agency, for, with respect to, or as a direct or indirect result of (i) the presence on or under, or the escape, leakage, disposal, spillage, emission, discharge or release from the Premises of any Hazardous Substance or (ii) at any time, the incorrectness or breach of this covenant, warranty or representation set forth in this Mortgage or in the separate Environmental and Personal Indemnity Agreement ("Environmental Indemnity Agreement") which is one of the Loan Documents, and also including, without limitation, any violation or claim arising under any Environmental Laws as hereinafter defined, provided, however, that the Mortgagor shall not indemnify the Mortgagee for any such losses, liabilities, damages, injuries, expenses or costs related to or involving Hazardous Substances placed or disposed of on the Premises after Mortgagee acquired title to the Premises through foreclosure or deed in lieu of foreclosure. The Environmental Indemnity Agreement shall be deemed to be a separate and distinct obligation, enforceable separate and apart from this Mortgage.

For purposes hereof, the term "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations, codes, orders, decrees and rules regulating, relating to or imposing liability (including strict liability) or standards of conduct in connection with environmental quality, health, safety, contamination and cleanup, including, without limitation, and as amended from time to time, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42

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U.S.C. §9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1802, et seq.; the Clean Air Act, 42 U.S.C. §7401, et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq., and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136, et seq.; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. §1401, et seq.; the National Environmental Policy Act, 42 U.S.C. §4321, et seq.; the Noise Control Act, 42 U.S.C. §4901, et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. §300f, et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning Community Right-to-Know Act, and Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Atomic Energy Act, 42 U.S.C. §2011, et seq.; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. §10101, et seq.; and state lien and superlien and environmental cleanup statutes, with implementing regulations and guidelines. Environmental Laws shall also include all state, regional, county, municipal and other local laws, regulations and ordinances insofar as they purport to regulate Hazardous Substances, or any other statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including strict liability), or standards of conduct concerning any Hazardous Substance, regardless of whether or not caused by, on behalf of, or within the control of the Mortgagor.

For purposes hereof, the term "Hazardous Substances" shall mean and include any toxic or hazardous waste or material, pollutants or contaminants, or substances, including without limitation, asbestos, PCBs, petroleum products and by-products, hazardous substances or toxic substances, hazardous materials, hazardous waste, toxic pollutant, hazardous air pollutant, or other substances or materials which are included under or regulated by or defined in any Environmental Laws.

If the Mortgagor receives any notice or knowledge of (i) the occurrence of any event involving the use, spill, release, leak, seepage, discharge or cleanup of any Hazardous Substance, or (ii) any complaint, order, citation or other notice with regard to air emissions, water discharges, or any other environmental, health or safety matter affecting the Mortgagor or the Premises (an "Environmental Complaint") from any person or entity (including, without limitation, the EPA) then the Mortgagor shall immediately notify the Mortgagee orally and in writing of any such notice and, if the Environmental Complaint is in writing, shall immediately deliver a copy of the Environmental Complaint to Mortgagee. Further, the Mortgagor shall immediately commence all actions necessary to clean up, remove, resolve and comply with any complaint, order, citation, notice or Environmental Complaint.

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In addition to all other rights granted to the Mortgagee, upon the occurrence of the Mortgagor's receipt of any notice or knowledge specified herein, including, without limitation, an Environmental Complaint and the Mortgagor's failure to commence the cleanup, removal or resolution of any Hazardous Substance or Environmental Complaint within thirty (30) days notice of breach of a covenant or warranty or receipt of notice or knowledge specified herein and to thereafter continuously and diligently proceed with such cleanup, removal or resolution, except as may be delayed by an act of God, strike, act of the public enemy, war, blockade, public riot, fire, storm, flood and explosion ("Force Majeure"), the Mortgagee shall have the right, but not the obligation, to enter onto the Premises or to take such other actions as it deems necessary or advisable to cleanup, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Substance or Environmental Complaint following receipt of any notice from any person or entity (including without limitation, the EPA) asserting the existence of any Hazardous Substance or an Environmental Complaint pertaining to the Premises or any part thereof, which, if true, could result in an order, suit or other action against the Mortgagee and/or which, in the reasonable opinion of the Mortgagee, could have a materially adverse impact on the value of the Premises or otherwise jeopardize the Mortgagee's lien against the Premises granted or created under the Mortgage. Any funds of the Mortgagee used for any purpose referred to in this Section shall constitute advances secured by the Loan Documents and shall bear interest at the rate specified in the Note to be applicable after default thereunder. The Mortgagor acknowledges and states that it has made "appropriate inquiry" into the previous ownership and uses of the Premises, as set forth in the Superfund Amendments and Reauthorization Act of 1986, amending 42 U.S.C. section 9601, et seq.

The provisions of this Section 13 shall be in addition to any and all other obligations and liabilities Mortgagor may have to Mortgagee, including the Environmental Indemnity Agreement, and shall survive the transactions contemplated herein.

**14. COMPLIANCE WITH GOVERNMENTAL, INSURANCE AND OTHER REQUIREMENTS.** Mortgagor shall comply with all statutes, ordinances, orders, requirements, or decrees relating to the Premises or the use thereof of any federal, state, or municipal authority, including, but not limited to any rules or regulations regarding toxic waste and hazardous substances which now or hereafter are located on or below the Premises, and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance required herein and to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions, and non-conforming uses), privileges, franchises, and concessions which are applicable to the Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or

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operating costs and expenses thereof or to keep the Premises and improvements operational and usable for its intended purpose, shall be so much additional Indebtedness Hereby Secured, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate"). Inaction of the Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of the Mortgagor. The Mortgagee, in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the improvements or the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

16. ACKNOWLEDGEMENT OF DEBT. Mortgagor shall furnish from time to time within seven (7) days after Mortgagee's request, a written statement, duly acknowledged, verifying the amount due of the Indebtedness Hereby Secured (as reflected on the books and records of Mortgagee) and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

17. RENTS AND LEASES.

A. Mortgagee's Right of Prior Approval. In the event of any leasing of all or any portion of the Premises, all lease forms shall be subject to the prior review and approval of Mortgagee as to form and content and, without limiting the generality of the foregoing, Mortgagor shall not, without Mortgagee's prior written consent, (i) execute an assignment or pledge of any rents of the Premises or of any lease of all or any part of the Premises, except as security for the Indebtedness Hereby Secured, (ii) accept any prepayment of any installment of any rents more than two (2) months before the due date of such installment, or (iii) grant any lease concessions beyond what is normal and customary in the relevant market and, in any event, not grant more than two (2) months' rent concession or concessions in value of more than two (2) months in rental value without Mortgagee's written consent; or (iv) agree to any amendment to, termination of or change in the terms of any lease previously approved by Mortgagee other than in the ordinary course of business. Mortgagor agrees to supply to Mortgagee, upon ten (10) days prior written request, true and correct copies of all leases for the Premises.

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presently contemplated use of the Premises. In the event that any building or other improvement on the Premises must be altered or removed to enable Mortgagor to comply with the foregoing provision of this paragraph, Mortgagor shall not commence any such alterations or removals without Mortgagee's prior approval of the need therefor and the plans and specifications pertaining thereto. After such approval, Mortgagor, at its sole cost and expense, shall effect the alterations or removal so required and approved by Mortgagee. Mortgagor shall not, by act or omission, permit any building or other improvement on land 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 land not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not, by act or omission, 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 paragraph shall be void. Mortgagor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it under any recorded document or any other agreement of any nature whatsoever binding upon it which pertains to the Premises.

15. MORTGAGEE'S PERFORMANCE OF MORTGAGOR'S OBLIGATIONS. Upon the occurrence of an Event of Default as defined herein, the Mortgagee either before or after acceleration of the Indebtedness Hereby Secured or the foreclosure of the lien hereof may, but shall not be required to, make any payment or perform any act herein required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and the Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment, pay any real estate taxes or other taxes due, and may, but shall not be required to, complete construction, furnishing and equipping of the improvements upon the Premises and rent, operate and manage the Premises and such improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including attorneys' fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such improvements or to pay any such

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B. Mortgagor's Obligations. Mortgagor, without any cost and expense to Mortgagee, shall (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of all or any part of the Premises, on the part of the landlord thereunder to be kept and performed, (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the lessees 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 landlord or of the lessees thereunder, (iv) transfer and assign to Mortgagee upon demand, any and all instruments required to effectuate the Assignment (as defined in Section 37), and (v) furnish Mortgagee, within ten (10) days after a request by Mortgagee so to do, a written statement containing the names of all lessees, terms of all leases, including the spaces occupied, and the rentals payable thereunder. Mortgagee shall have the option to declare this Mortgage in default because of a material default of landlord in any lease of all or any part of the Premises, whether or not such default is cured by Mortgagee pursuant to the right granted herein, provided, however, any material default of landlord alleged by a tenant may be contested by Mortgagor, and in the event of such contest, Mortgagee's right to accelerate the maturity of the Indebtedness Hereby Secured pursuant to the provisions of this sentence (without affecting Mortgagee's right to accelerate in accordance with any other provision hereof) shall be exercisable only if and when the matter is finally resolved in a manner adverse to landlord or Mortgagor and such has a materially adverse impact on the Premises and/or the Mortgagee. Any default under any separate Assignment of Lease or under any Assignment of Rents given as additional security for the Indebtedness Hereby Secured shall constitute a default hereunder on account of which the whole of the Indebtedness Hereby Secured shall at once, at the option of the Mortgagee, become immediately due and payable without notice to the Mortgagor.

C. Mortgagee Exoneration. Nothing in this Mortgage or in any other documents relating to the Indebtedness Hereby Secured shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor, as landlord, under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay.

D. Lessee Attornment. In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each lease of all or any part of the Premises shall, at the option of the Mortgagee, attorn to any person succeeding to the interest of Mortgagor as a result of such enforcement and shall recognize each successor in interest as landlord under such lease without change in the terms or other

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provisions thereof, provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the prior consent of Mortgagee or said successor in interest. Each lessee, upon request by Mortgagee or any such successor in interest, shall execute and deliver an instrument or instruments confirming such attornment, and Mortgagor shall cause each such lease of all or any part of the Premises to contain a covenant on the lessee's part evidencing its agreement to such attornment.

E. Lessee Subordination. All leases affecting the Premises, including without limitation, leases currently in force, shall be subject and subordinate to the lien and provisions of this Mortgage.

18. INSPECTION OF PREMISES. The Mortgagee shall have the right to inspect the Premises at all reasonable times and upon reasonable advance notice, and access thereto shall be permitted for that purpose. Mortgagee shall have the right to engage a consultant, at Mortgagor's sole cost and expense, to prepare and issue a report of the physical condition of the Premises if Mortgagee, in its sole discretion, determines that the physical condition of the improvements on the Premises has experienced a material decrease in condition and, therefore, requires the need for such a report. The cost of such report shall be paid by Mortgagor within thirty (30) days of submission of the bill to Mortgagor from Mortgagee.

19. FINANCIAL STATEMENTS. The Mortgagor shall deliver to the Mortgagee, at the place where interest is thereon payable, quarterly financial and operating statements and rent rolls of the Premises within thirty (30) days after the end of each quarter and annual financial and operating statements for each fiscal year, within ninety (90) days after the end of each fiscal period. Such financial and operating statements shall consist of a balance sheet and operating statement, all in reasonable detail as may be reasonably requested by Mortgagee. In addition, Mortgagor shall deliver to Mortgagee a copy (certified by Mortgagor as a true and correct copy) of its filed federal and state income tax returns (including all schedules) within twenty-one (21) days of filing such returns. Such financial and operating statements shall be certified to Mortgagee by Mortgagor as to their truth and accuracy. If the statements furnished by Mortgagor shall not be prepared in accordance with generally accepted accounting principles consistently applied, or if Mortgagor fails to furnish the same when due, Mortgagee may audit or cause to be audited the books of Mortgagor, by an independent certified accountant, at Mortgagor's expense, and the costs of such audit shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid, and payable upon demand. In the event of such an audit, Mortgagor shall cause the books and records of the Mortgagor to be made available to Mortgagee for such audit purposes. In

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addition to the foregoing, any Guarantors or Indemnitors of the Indebtedness Hereby Secured, or of any obligations under the Loan Documents, shall also be required to submit yearly financial statements by March 30 of each calendar year and a copy (certified by them as true and correct) of their federal and state income tax returns (including all schedules) within twenty-one (21) days of filing such returns.

**20. RESTRICTIONS ON TRANSFER, LIENS, SECONDARY FINANCING OR OTHER ENCUMBRANCES.** It shall be an immediate Event of Default and default hereunder if, without the prior written consent of the Mortgagee, any of the following shall occur, and in any such event Mortgagee may condition its consent upon the payment of a fee:

- a) If the Mortgagor shall create, effect, contract for or consent to or shall suffer or permit any conveyance, installment sale of Premises, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility and excepting leases of individual apartments in the ordinary course;
- b) If the Mortgagor is a trustee, then if any beneficiary of the Mortgagor shall create, effect or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgage;
- c) If the Mortgagor is a corporation or limited liability company, or if any corporation or limited liability company is a beneficiary of a Trustee Mortgagor, or if any corporation or limited liability company directly or indirectly controls Mortgagor or the beneficiary of a Trustee Mortgagor, then if any shareholder of such corporation or the holder of any membership interest in such limited liability company shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's shares in such corporation or such member's interest in such limited liability company; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on

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the "Over The Counter" market, then this Section 20(c) shall be inapplicable;

- d) If the Mortgagor is a partnership, limited partnership or joint venture, or if any beneficiary of a Trustee Mortgagor is a partnership, limited partnership or joint venture, or if any partnership, limited partnership or joint venture directly or indirectly controls Mortgagor or any beneficiary of a Trustee Mortgagor, then if any partner of a general partnership, general partner of a limited partnership, or joint venturer in such partnership, limited partnership or joint venture, shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the general partnership interest, general partner's interest in the limited partnership, or joint venture interest, as the case may be. Notwithstanding the foregoing, nothing contained herein shall restrict or prevent any limited partnership interests from being transferred or pledged.
- e) If there shall be any change in control (by way of transfers of stock ownership, partnership interests or otherwise) in any general partner which directly or indirectly controls or is a general partner of a partnership or joint venture beneficiary as described in Subsection 20(d) above:

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, that the foregoing provisions of this Section 20 shall not apply (i) to liens securing the Indebtedness Hereby Secured, (ii) to the lien of current taxes and assessments not in default or (iii) to any transfers of the Premises or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests as the case may be, in the Mortgagor or any beneficiary of a Trustee Mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee. The provisions of this Section 20 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, share of stock of or partnership or joint venture interest in the Mortgagor or any beneficiary of a Trustee Mortgagor.

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The conversion of the Premises to condominiums as permitted by paragraph 51 hereof shall not be an Event of Default pursuant to the foregoing and is expressly permitted hereunder.

21. UNIFORM COMMERCIAL CODE. This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the state in which the Premises are located (herein called the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate including but not limited to all personal property and fixtures used in connection with the Premises, any Equipment, Inventory, Accounts, Chattel Paper, Intangibles, Fixtures, Documents and Instruments as defined in the Code including all proceeds and products thereof, all insurance and condemnation proceeds, all building materials, all construction and architectural contracts, all plans and specifications and all other personal property specifically identified on any Uniform Commercial Code Financing Statement filed, registered or recorded in connection herewith (all for the purposes of this Section 21 called "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 21 shall not limit the generality or applicability of any other provisions of this Mortgage but shall be in addition thereto:

- a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof.
- b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use, or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises.
- c) The Collateral will be kept at the real estate comprised in the Premises, and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to such real estate but will not be affixed to any other real estate.
- d) The only persons having any interest in the Premises are the Mortgagor, the beneficiary of any trustee mortgagor, tenants in possession and the Mortgagee.
- e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee

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such further information and will execute and deliver to the Mortgagee such financing statement and other documents in form satisfactory to the Mortgagee and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances; and the Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.

- f) Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such default not having previously been cured), the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth in Section 22 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place where the collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of the Mortgagor's obligations, as provided in the Code. The Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Premises. The Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. The Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of Mortgagor shown in Section 54 of this Mortgage, at least ten (10) days

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before the time of the sale or disposition. The Mortgagee may buy at any public sale and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised with the Premises, the Collateral and real estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness Hereby Secured. The Mortgagee will account to the Mortgagor for any surplus realized on such disposition.

- g) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness Hereby Secured remains unsatisfied.
- h) The terms and provisions contained in this Section 21 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

22. EVENTS OF DEFAULT. If one or more of the following events (herein called "Events of Default") shall occur:

- a) If default be made for ten (10) days in the due and punctual payment of the Note or any installment thereof, either principal or interest, as and when the same is due and payable, or if default be made for ten (10) days in the making of any payment of monies required to be made hereunder, under the Note or any other document securing the Note; or
- b) If an Event of Default pursuant to Section 20 hereof shall occur and be continuing, without notice or period of grace of any kind; or
- c) If default be made in the due and punctual delivery to the Mortgagee of the financial statements required pursuant to Section 19 hereof, after ten (10) days written notice; or

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d) In the event of:

- i) The filing by Mortgagor of a request or a petition for liquidation, reorganization, adjustment of debts, arrangement, adjudication as a bankrupt, or similar relief under the bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction; or the institution by Mortgagor of any formal or informal proceeding for the reorganization, dissolution or liquidation of, settlement of claims against or winding up of affairs of Mortgagor; or the cessation by Mortgagor as a going business concern, and the failure of Mortgagor within ninety (90) days to terminate, discharge or otherwise remove such proceeding; or
- ii) The filing against Mortgagor of a request or a petition for liquidation, reorganization, adjustment of debts, arrangement, adjudication as a bankrupt or similar relief under the bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction; or the institution by Mortgagor of any formal or informal proceeding for the reorganization, dissolution or liquidation of, settlement of claims against or winding up of affairs of Mortgagor; and the failure by Mortgagor within ninety (90) days to terminate, discharge or otherwise remove such proceeding. Mortgagee is not obligated to advance any undisbursed funds during such ninety (90) day cure period.
- iii) The appointment of or authorization for a custodian trustee or receiver of Mortgagor, or for a trustee, custodian, receiver or agent to take charge of any property of Mortgagor; provided, such custodian, trustee or receiver or agent shall not have been removed or otherwise discharged within ninety (90) days of the date of his qualification. Mortgagee is not obligated to advance any undisbursed funds during such ninety (90) day cure period.
- iv) Mortgagor shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidation of all or a major part of Mortgagor's property, or the Premises.

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- v) The failure of Mortgagor to generally pay Mortgagor's debts as such debts become due, or an admission of insolvency.
- vi) The transfer of title to any property or any part thereof by Mortgagor as debtor in possession under the Bankruptcy Code, or a trustee for Mortgagor under the Bankruptcy Code, to any third party, whether or not the obligations of Mortgagor under this Agreement are assumed by such third party.
- vii) The institution of a foreclosure action against the Premises or any part thereof, or the filing of a lien against the Premises or any part thereof, which is not removed of record, bonded off, or dismissed within ninety (90) days after Mortgagor is notified by Mortgagee or otherwise of such filing.
- e) If any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of Mortgagor, any guarantor or any indemnitor pursuant to the Loan Documents or in connection with Mortgagor's application for this loan, this Mortgage or otherwise (including, without limitation, representations and warranties contained herein) or as an inducement to Mortgagee to extend any credit to or to enter into this or any other agreement with Mortgagor proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified or to have omitted any substantial contingent or unliquidated liability or claim against Mortgagor, or if on the date of execution of this Mortgage there shall have been any materially adverse changes in any of the facts previously disclosed by any such certificate, statement, representation, warranty or audit, which change shall not have been disclosed to Mortgagee at or prior to the time of such execution.
- f) If any default shall exist under the provisions of Section 37 hereof or the document referred to therein.
- g) If the Premises shall be abandoned or if the Mortgagor shall cease doing business upon the Premises.
- h) If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered under this Mortgage, within ten (10) days after written notice.

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- i) Assignment or conveyance of any rights under any document securing the Note, without Mortgagee's prior written consent.
- j) If any default shall exist under any Guaranty delivered in connection with the transaction contemplated hereby.
- k) If Mortgagor shall change its name, identity, structure or employer identification number without notifying Mortgagee and receiving Mortgagee's consent to same.
- l) Except as otherwise provided above or in paragraph 51 hereof, if there is a default or non-performance, or violation of any covenant of any other provision of this Mortgage, the Note, Assignment of Rents and Leases, or any other Loan Documents which is not cured within thirty (30) days after written notice by Mortgagee to Mortgagor or such lesser period as is provided for in the applicable instrument or if not susceptible to cure within such period, within such longer period as may be necessary to effect such cure provided Mortgagor is diligently pursuing such cure and provided that in no event shall the cure period under this sentence exceed sixty (60) days after such written notice.

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

For purposes of this Section 22, the term "Mortgagor" shall mean and include not only Mortgagor, but also any guarantors of the Note or any other Loan Documents.

23. EXPENSES INCURRED BY MORTGAGEE. Any costs, damages, expenses or fees, including attorneys' fees, incurred by Mortgagee in connection with (i) sustaining the lien of this Mortgage or its priority, (ii) obtaining any commitment for title insurance or title insurance policy, (iii) protecting the Premises, (iv) protecting or enforcing any of Mortgagee's rights hereunder, (v) recovering any Indebtedness Hereby Secured, (vi) any litigation or proceedings (including, but not limited to, bankruptcy, probate and administrative law proceedings) affecting this Mortgage, the Note, or the Premises, or (vii) preparing for the commencement, defense or participation in any threatened litigation or proceedings as aforesaid, or as otherwise enumerated herein, shall

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be so much additional Indebtedness Hereby Secured and shall be immediately due and payable by Mortgagor, without notice, with interest thereon at the Default Interest Rate.

24. APPLICATION OF DEPOSITS HELD BY MORTGAGEE. With respect to any deposits made with or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage, in the event of a default in any of the provisions contained in this Mortgage or in the Note secured hereby, Mortgagee may, at its option, without being required to do so, apply any monies or securities which constitute such deposits on any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

25. FORECLOSURE. When the Indebtedness Hereby Secured, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness Hereby Secured or part thereof and to commence foreclosure proceedings against the Premises through judicial proceedings or by advertisement, at the option of Mortgagee, pursuant to the statutes in such case made and provided, and to sell the Premises or to cause same to be sold at public sale and to convey the same to the purchaser in accordance with the statutes. In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, Illinois Compiled Statutes, Chapter 735, Act 5, Section 15-1101, et seq. as from time to time amended (the "Act"), and all other expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, environmental risk reports, studies or inspections, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage,

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the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate. In the event of foreclosure of this Mortgage, the Premises may, at the option of Mortgagee, be sold in one or more parcels, any provision of law to the contrary notwithstanding.

26. PROCEEDS OF FORECLOSURE SALE. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Sections 23 and 25 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness Hereby Secured additional to interest and principal remaining unpaid upon the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth to the principal remaining unpaid upon the Note; Fifth, to the extent permitted by law, the amount of any prepayment premium that would otherwise be due and owing if the Mortgage and Note were paid at that time; and lastly, any surplus to the Mortgagor, and its successors or assigns, as their rights may appear.

27. RECEIVER. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the Mortgagee shall be entitled to the appointment of a Receiver by the court in which such complaint is filed. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Without limiting the statutory powers of the receiver, such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

- a) The Indebtedness Hereby Secured or the indebtedness secured by any decree foreclosing this Mortgage, or any tax, 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 the foreclosure sale; or

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b) The deficiency in case of a sale and deficiency.

28. INSURANCE UPON FORECLOSURE. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, the Mortgagee is hereby authorized, without consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

29. COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW.

A. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

B. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

C. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

30. WAIVER. The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatsoever claim or take any advantage of, any stay, exemption or

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extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. Without limiting the generality of the foregoing, the Mortgagor and any beneficial owner of Mortgagor hereby expressly waive any and all rights of redemption and reinstatement in connection with foreclosure of this Mortgage, it being the intent hereof that any and all such rights of redemption and reinstatement of the Mortgagor, beneficiary of Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by the provisions of the Act or other applicable law or replacement statutes. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy as though no such law or laws have been made or enacted. The Mortgagor hereby expressly waives all homestead rights, if any. If the Mortgagor is a trustee, Mortgagor and any beneficiary of Mortgagor represent that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of the beneficiary of Mortgagor and the persons having the power of direction over Mortgagor and are made on behalf of the Mortgagor and all beneficiaries of Mortgagor as well as other persons mentioned above.

31. EFFECT OF EXTENSIONS, MODIFICATIONS AND AMENDMENTS. If the payment of the Indebtedness Hereby Secured or any part thereof, be extended or varied, or if any part of the security or guarantees therefor be released, all persons now or at any time hereafter liable therefor or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereby, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Mortgagee to amend (including, without limitation, changing the rate of interest or manner of computation thereof), modify, extend or release the Note, this Mortgage, or any other document or instrument evidencing, securing or guaranteeing the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien except as

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otherwise expressly provided in a separate Subordination Agreement by and between Mortgagee and the holder of such junior lien.

32. WAIVER OF DEFENSES. No action for the enforcement of the lien of this Mortgage 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.

33. PARTIAL PAYMENTS. Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of Mortgagee without its express consent except and to the extent otherwise provided by law.

34. INTENTIONALLY OMITTED.

35. DELAYS AND OMISSIONS. No delay in the exercise of or failure to exercise any remedy or right accruing or any default under this Mortgage shall impair any such remedy or right to be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or of a different nature.

36. RESCISSION OF ELECTION. Acceleration of maturity, once made by Mortgagee, may, at the option of Mortgagee, be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed, whereupon, in either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and power of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

37. ASSIGNMENT. As further security for the Indebtedness Hereby Secured, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee a separate instrument (herein called the "Assignment") dated as of the date hereof, wherein and whereby, among other things, the Mortgagor has collaterally assigned to the Mortgagee all of the rents, issues and profits and/or any and all leases and/or the rights of management of the Premises, all as therein more specifically set forth, which said Assignment is hereby incorporated herein by reference as fully and with the same effect as if set forth herein at length.

38. MORTGAGEE IN POSSESSION. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession

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in the absence of the actual taking of possession of the Premises by the Mortgagee.

39. TITLE IN MORTGAGOR'S SUCCESSORS. In the event that the ownership of the Premises becomes vested in a person or persons other than the Mortgagor, the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness Hereby Secured in the same manner as with the Mortgagor. The Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Section 39 contained shall vary or negate the provisions of Section 20 hereof.

40. INDEMNIFICATION. Mortgagor does hereby covenant and agree that Mortgagee shall have no responsibility for the control, care, management or repair of the Premises and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, immediate stranger or other person; no liability shall be asserted or enforced against Mortgagee arising out of Mortgagee's exercise of the rights and powers hereby granted to the Mortgagee; and Mortgagor hereby expressly waives and releases any such liability (except for gross negligence or willful and wanton misconduct); and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (i) exercise by Mortgagee of any right hereunder, and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the Indebtedness Hereby Secured or in any contracts, agreements or other instruments relating to or affecting the Premises; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

41. SUBROGATION. To the extent that Mortgagee, on or after the date hereof, pays any sum due under or secured by any Senior Lien as hereinafter defined, or Mortgagor or any other person pays any such sum with the proceeds of the Indebtedness Hereby Secured, Mortgagee shall have and be entitled to a lien on the Premises equal in priority to the Senior Lien discharged, and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such Senior Lien, which shall remain in existence and benefit Mortgagee in securing

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the Indebtedness Hereby Secured; and notwithstanding the release of record of Senior Liens (as hereinafter defined) Mortgagee shall be subrogated to the rights and liens of all mortgages, trust deeds, superior titles, vendors' liens, mechanics liens, or liens, charges, encumbrances, rights and equities on the Premises having priority to the lien of this Mortgage (herein generally called "Senior Lien"), to the extent that any obligation secured thereby is directly or indirectly paid or discharged with proceeds of disbursements or advances of the Indebtedness Hereby Secured, whether made pursuant to the provision hereof or of the Note or any document or instrument executed in connection with the Indebtedness Hereby Secured.

42. PURPOSE OF LOAN. The entire proceeds of the loan evidenced by the Note constitute "business loan," as that term is used in Illinois Compiled Statutes, Chapter 815, Act 205, Section 4, and Mortgagor is a "business," as that term is defined in said Illinois Compiled Statutes, Chapter 815, Act 205, Section 4.

43. PARTIAL INVALIDITY. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note and any other instruments or agreements now or hereafter securing the Note, comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note or such other instrument or agreement is found by a court of law to be in violation of any applicable, local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such provision or provisions, or portion, of this Mortgage or the Note or such other instrument or agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such provision, provisions, or portion, shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage and the Note and such other instrument or agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable provision or provisions, or portion, were not contained therein, and that the rights, obligations and interests of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note and such other instrument or agreement shall continue in full force and effect. If, under the circumstances, interest in excess of the limit allowable by law shall have been paid by Mortgagor in connection with the loan evidenced by the Note, such excess shall be applied by Mortgagee to the unpaid principal balance of the Note or refunded to Mortgagor in the manner to be determined by Mortgagee, and if any such excess interest has accrued, Mortgagee shall eliminate such excess interest so that under no circumstances shall interest on the loan evidenced by the Note exceed the maximum rate allowed by the law.

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

45. FURTHER ASSURANCES. Mortgagor, at Mortgagor's expense, will execute, acknowledge and deliver all such documents and take all such action as Mortgagee may reasonably request for the Mortgagor assuring Mortgagee of the rights now or hereafter subject to the lien hereof or assigned hereunder or intended so to be.

46. SUCCESSORS AND ASSIGNS. This Mortgage and each and every covenant, agreement and other provisions hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein). This Section however does not confer upon Mortgagor any right to assign this Mortgage or convey the Premises and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such from time to time holder of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof as fully and to the same extent and with the same effect as if such from time to time holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated the Mortgagee. Additionally, Mortgagee at any time may sell, transfer or assign all or part of its interest in the Loan Documents without notice or consent of any nature.

47. MORTGAGEE'S RIGHT TO DEAL WITH TRANSFEREE. In the event of the voluntary sale or transfer by operation of law or otherwise, of all or any part of said Premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to said Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from said Mortgagor's covenants and undertakings hereunder, and without Mortgagee waiving its rights to accelerate the Note.

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48. FUTURE ADVANCES. Mortgagee may, at its option upon request of Mortgagor, at any time before full payment of this Mortgage, make further advances to Mortgagor, and the same with interest shall be on a parity with, and not subordinate to, the indebtedness evidenced by the Note and shall be secured hereby in accordance with all covenants and agreements herein contained, provided, that the amount of principal secured hereby and remaining unpaid shall not exceed the original principal amount of this Mortgage or Deed of Trust, plus interest and any advances for the benefit or protection of the Premises, including payment of taxes, insurance, assessments or levies, with interest on such disbursements as provided in this Mortgage, and provided, that if Mortgagee shall make further advances as aforesaid, Mortgagor shall repay all such advances in accordance with the note or notes, or agreement or agreements, evidencing same, which Mortgagor shall execute and deliver to Mortgagee and which shall be payable no later than the maturity of this Mortgage and shall include such other terms as Mortgagee shall require.

49. RETURN OR SURRENDER OF PAYMENTS. If, after receipt of any payment of all or any part of the Indebtedness Secured Hereby, Mortgagee is for any reason compelled to surrender such payment to any person or entity because such payment is determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, this Mortgage shall continue in full force notwithstanding any contrary action which may have been taken by Mortgagee in reliance upon such payment, and any such contrary action so taken shall be without prejudice to Mortgagee's rights under this Mortgage and shall be deemed to have been conditioned upon such payment having become final and irrevocable, and such payment shall not constitute a release of Mortgagor from any liability hereunder or under the Note to the extent of such payment, and Mortgagor agrees to pay the amount of such payment, together with interest at the Default Rate, to Mortgagee upon demand.

50. INTEREST AT THE DEFAULT RATE. Without limiting the generality of any provision herein or in the Note contained, if there is an Event of Default, all of the Indebtedness Hereby Secured shall bear interest at the Default Rate specified in the Note, which amount shall be calculated from the date any payment became due under the Note.

51. CONDOMINIUM CONVERSION. Mortgagor has represented to Mortgagee that it is Mortgagor's intent to convert the Premises to a condominium as described and permitted in the Illinois Condominium Act (765 ILCS 605/1 et seq.) and all other applicable law (including without limitation, local ordinances). Mortgagor shall not file or attempt to file any Declaration of Condominium which has not been approved by Mortgagee which approval may be granted or withheld in Mortgagee's reasonable discretion. Copies of all notices given to tenants related to such condominium

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conversion as are required under applicable law (including, without limitation, local ordinances and state law) shall be delivered to Mortgagee at the time they are given accompanied by a certification of Mortgagor and its beneficiary that the notices have been given as required by applicable law and setting forth the date on which those notices have been given.

In addition, Mortgagee shall execute such documents as Mortgagor may at any time reasonably request in order to amend or modify this Mortgage or any other Loan Documents to reflect and address the recording of the Declaration of Condominium.

The condominium established by Mortgagee shall have not more than eighteen (18) individual dwelling units of approximately the same size and location as the apartments currently located in the Premises plus common elements. Any conversion of the Premises into less than or more than eighteen (18) units, shall require Mortgagee's approval which approval may be granted or withheld in Mortgagee's sole and absolute discretion.

52. PARTIAL RELEASES. Provided that there is no Event of Default hereunder or under any other Loan Documents nor any circumstance or condition existing, which with the passage of time or giving of notice or both, would constitute an Event of Default hereunder or thereunder, subsequent to the Declaration of Condominium being recorded, Mortgagee shall grant to Mortgagor partial releases of this Mortgage as to each individual condominium unit provided that Mortgagor makes a mandatory prepayment of principal under the Note of 90% of the "Net Sales Proceeds" of the sale of that unit, but not less than \$55,000.00, at the time of the Closing of the sale of that unit. For purposes hereof the term "Net Sales Proceeds" shall mean the gross sales price for the unit reduced by ordinary and customary broker's commissions not to exceed 1% of the gross sales price, real estate tax proration, if any, reasonable and customary seller's title insurance charges, any amount established for condominium reserves and paid by the Mortgagor, any transfer taxes ordinarily and customarily borne by the seller and Mortgagor's reasonable attorneys fees in connection with such sale.

On request of Mortgagee, Mortgagor shall provide and pay for such title insurance endorsements to Mortgagee's Lenders policy of title insurance related to such partial releases as Mortgagee may request from time to time.

53. CONSTRUCTION PROVISIONS. \$200,000.00 of the proceeds of the Note secured hereby are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions hereof, the provisions of the Note and the provisions of the Construction Loan Escrow Agreement entered into by and between Mortgagee, Mortgagor and Near North National Title Corporation. All advances and indebtedness arising and accruing under the Note, from time to time, shall be secured hereby to the same extent as though said Note were fully

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incorporated herein and the occurrence of any default or Event of Default by Mortgagor under the Construction Loan Escrow Agreement shall constitute a default under this Mortgage antitling Mortgagee to all of the rights and remedies conferred upon the Mortgagee by the terms of this Mortgage or by law as in the case of any other Event of Default. In connection therewith, and the construction disbursements secured hereby, Mortgagor hereby covenants and agrees as follows:

- a) That it will comply (or will cause compliance) with each and all of the covenants of said Construction Loan Escrow Agreement.
- b) That the provisions set forth in said Construction Loan Escrow Agreement are incorporated herein by this express reference; with the further proviso that a default by Mortgagor in any terms therein contained, after due notice as given as may be required, shall be and constitute a default hereunder and as a consequence thereof Mortgagee may declare the entire Indebtedness Hereby Secured to be immediately due and payable or pursue any right, remedy or recourse reserved herein for default or condition broken.
- c) That Mortgagor will cause the construction of the improvements in accordance with all applicable laws, rules and regulations and such plans and specifications as have been approved by Mortgagee from time to time.
- d) That all sums evidenced under the Note from time to time shall be secured hereby and pursuant to the terms and conditions hereof.
- e) That in the case of a conflict or contradiction between any of the terms hereof and those contained in the Construction Loan Escrow Agreement, the Mortgagee will determine which shall govern the issue in question.
- f) That the construction of the improvements is and will be in compliance with all government regulations and restrictions, all restrictions of record, and with all zoning and building laws and ordinances of the county or municipality in which the Premises is located and with all applicable building restrictions.
- g) That all activities in connection with the conversion of the Premises to a condominium under the Illinois Condominium Act and any applicable local laws and ordinances, shall be done and accomplished in accordance with all applicable laws, rules and regulations.

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54. EFFECT OF CHANGES IN TAX LAWS. In the event of the enactment after the date hereof by any appropriate legislative authority of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes so as to affect the Mortgage or the Indebtedness Hereby Secured, or the holder thereof, then and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor. In the event the Mortgagor fails to pay such taxes or assessments or reimburse the Mortgagee within sixty (60) days after demand, this will constitute an Event of Default herein.

55. PROVISIONS SEVERABLE. The unenforceability or invalidity of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

56. CAPTIONS AND PRONOUNS. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

57. ADDRESSES AND NOTICES. Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the transmittal thereof shall be by either certified mail or by overnight national delivery service to the following addresses, or to such other place as any party hereto may by notice in writing designate. Notice shall be deemed to be received two (2) business days after mailing or, if by national overnight delivery service, shall be deemed to be received the date of original attempted delivery. To constitute notice herein, notice shall not be required to be sent to those parties listed which are to receive "copies," as such are courtesy copies only. Notices shall be transmitted as follows:

a) If to the Mortgagee:

The First Commercial Bank  
6945 N. Clark Street  
Chicago, IL 60626  
ATTN: Alan Share

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With a copy to:

Garfield & Merel, Ltd.  
ATTN: Stephen M. Alderman  
211 W. Wacker Drive  
Chicago, IL 60606

b) If to the Mortgagor:

8833 Cross Point Rd  
Suite 209  
Stoke IL 60077  
Attn: Bruce T. C. C. C.

With a copy to:

Mary Yura  
Rudnick & Wolfe  
203 N. LaSalle Street  
Chicago, IL

59. CHOICE OF LAW. This Mortgage and Security Agreement shall be governed and construed under the laws of the State of Illinois, and Mortgagor hereby voluntarily irrevocably consents to venue and jurisdiction in the County and State where the Premises is situated.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed by its Manager and thereunto duly authorized and attested all on and as of the day, month and year first above written.

WEST RIDGE, I.L.C.

By: [Signature]  
Its: MANAGER

By: [Signature]  
Its: MANAGER

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## EXHIBIT "A"

### LEGAL DESCRIPTION

LOTS 20 AND 21 IN BLOCK 11 IN CONGDON'S RIDGE ADDITION TO <sup>ROGERS</sup> RIDGE PARK, BEING A SUBDIVISION OF THE SOUTH 50 ACRES OF THE SOUTH WEST FRACTIONAL QUARTER OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; NORTH OF INDIAN BOUNDARY LINE IN COOK COUNTY, ILLINOIS.

P.I.N.: 1130 322 005 AND 1130 322 006

COMMONLY KNOWN AS: 7235 N. HAMILTON, CHICAGO, ILLINOIS

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