

UNOFFICIAL COPY

Walt

CH 30000000

75-73-852-DI CT.Y.

This document prepared by
and upon recording should
be mailed to:

96099419

Ernest D. Simon
SACHNOFF & WEAVER, LTD.
30 S. Wacker Drive
29th Floor
Chicago, IL 60606-7484

DEPT-01 RECORDING \$118.00
T0012 TRAN 9038 02/06/96 14:58:00
45871 CG *-96-099419
COOK COUNTY RECORDER

LASALLE NATIONAL TRUST N.A. TRUST NO. 119986
CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES
AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT

118.00

1972

THIS CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT and FINANCING STATEMENT (herein sometimes called
"Mortgage") is made as of ~~January~~ ^{February} 5, 1996, by LASALLE NATIONAL TRUST N.A. as Trustee
under a Trust Agreement dated December 15, 1995 and known as Trust No. 119986 having its
principal office as 135 S. LaSalle St., Chicago, Illinois 60606 in favor of Highland Community
Bank located at 1701 W. 87th Street, Chicago, Illinois 60620-4899 ("Mortgage").

RECITALS

A. The Loan. Mortgagor is the owner of the land (the "Land") described on Exhibit
A attached hereto, together with all improvements thereon. To provide funds for the Mortgagor,
Mortgagee has entered into a Construction Loan Agreement (herein, as it may from time to time
be amended, supplemented or modified, referred to as the "Loan Agreement") bearing even date
herewith providing for the Mortgagor's performance of certain covenants, satisfaction of certain
conditions and making of certain representations and warranties, and for loans and advances to
be made from time to time by Mortgagee to the Mortgagor pursuant to the terms and conditions
set out therein, in an amount not to exceed One Million Six Hundred Thousand and no/100 Dollars
(\$1,600,000.00) (herein, the "Loan") pursuant to the terms and conditions set forth herein.

B. The Note and Other Loan Documents. Pursuant to the Loan Agreement, Mortgagor
executed and delivered to the Mortgagee a promissory note bearing even date herewith, payable
to the order of the Mortgagee, bearing interest at the rate of 1% per annum in excess of
Mortgagees Prime Rate adjusted from time to time as Mortgagee adjusts its Prime Rate and due
and payable in full if not sooner paid on or before February 1, 1997, subject to acceleration or
extension as provided in the Note, this Mortgage, or the other Loan Documents (defined for

96099419

BOX 333-CTI

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

purposes hereof as defined in the Loan Agreement) in the original principal amount of \$1,600,000.00 (herein, such promissory note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof or which may evidence any of the indebtedness secured hereby, shall herein be called the "Note"). All principal and interest on the Note are payable in lawful money of the United States of America at the office of the Mortgagee at 1701 W. 87th Street, Chicago, Illinois 60620-4899 or at such place as the holder thereof may from time to time appoint in writing.

C. The Liabilities. As used in this Mortgage, the term "Liabilities" means and includes all of the following: the principal of and interest on the Note; all indebtedness of any kind arising under, and all amounts of any kind which at any time become due or owing to the Mortgagee under or with respect to the Note, the Loan Agreement, this Mortgage or any of the other Loan Documents; the due and punctual performance, observance and payment of all of the covenants, obligations and agreements to be performed, observed or paid by any party thereto, other than Mortgagee in, under or pursuant to the Note, the Loan Agreement, this Mortgage, and all of the other Loan Documents, and all advances, costs or expenses paid or incurred by the Mortgagee to protect any or all of the Collateral (hereinafter defined), perform any obligation of the Mortgagor hereunder or collect any amount owing to the Mortgagee which is secured hereby; any and all other liabilities, obligations and indebtedness, howsoever created, arising or evidenced, direct or indirect, absolute or contingent, recourse or nonrecourse, now or hereafter existing or due or to become due, owing by the Mortgagor to the Mortgagee (provided, however, that the maximum amount included within the Liabilities on account of principal shall not exceed the sum of an amount equal to ten times the original principal amount of the Note plus the total amount of all advances made by the Mortgagee from time to time to protect the Collateral and the security interest and lien created hereby); interest on all of the foregoing; and all costs of enforcement and collection of the Note, the Loan Agreement, this Mortgage and the other Loan Documents, if any, and the Liabilities.

D. Collateral. The term "Collateral," for purposes of this Mortgage, means and includes all of the following:

(i) Real Estate. All of the Land described on Exhibit A attached hereto, together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in any-wise appertaining to the Land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Land; all estate, claim, demand, right, title or interest of the Mortgagor in and to any street, road, highway, or alley (vacated or otherwise) adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing (all of the foregoing is herein referred to collectively as the "Real Estate");

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(ii) Improvements and Fixtures. All buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate, together with all building or construction materials, equipment, appliances, machinery, plant equipment, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever now or hereafter found on, affixed to or attached to the Real Estate, including (without limitation) all motors, boilers, engines and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment (except to the extent any of the foregoing items in this subparagraph are owned by tenants and such tenants have the right to remove such items at the termination of their Lease (as hereinafter defined)) (all of the foregoing is herein referred to collectively as the "Improvements," all of the Real Estate and the Improvements, and any other property which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises");

(iii) Personal Property. All goods, appliances (including stoves, refrigerators, water fountains and coolers, fans, heaters, incinerators, compactors, water heaters and similar equipment), signs, supplies, blinds, window shades, carpeting, floor coverings, office equipment, growing plants, fire sprinklers and alarms, control devices, equipment (including motor vehicles and all window cleaning, building cleaning, swimming pool, recreational, monitoring, garbage, air conditioning, pest control and other equipment), tools, furnishings, furniture, light fixtures, non-structural additions to the Real Estate, and all other tangible property of any kind or character now or hereafter owned by the Mortgagor and used or useful in connection with the Real Estate, any construction undertaken on the Real Estate, any trade, business or other activity (whether or not engaged in for profit) for which the Real Estate is used, the maintenance of the Real Estate or the convenience of any tenants, guests, licensees or invitees of Mortgagor, all regardless of whether located on the Real Estate or located elsewhere (except to the extent any of the foregoing items in this subparagraph are owned by tenants and such tenants have the right to remove such items at the termination of their Leases (all of the foregoing is herein referred to collectively as the "Goods"));

(iv) Intangibles. All goodwill, trademarks, trade names, option rights, purchase contracts, books and records and general intangibles of Mortgagor relating to the Real Estate or the Improvements and all accounts, contract rights, instruments, chattel paper and other rights of Mortgagor for payment of money, for property sold or lent, for services rendered, for money lent, or for advances or deposits made, and any other intangible property of the Mortgagor related to the Real Estate or the Improvements, and all accounts and monies held in possession of Mortgagee for the benefit of Mortgagor (all of the foregoing is herein referred to collectively as the "Intangibles");

(v) Rents. All rents, issues, profits, royalties, avails, income and other benefits derived or owned by Mortgagor directly or indirectly from the Real Estate or the Improvements (all of the foregoing is herein collectively called the "Rents");

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(vi) Leases. All rights of Mortgagor under all leases, lettings, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money or any consideration for the use, possession or occupancy of, or any estate in, the Real Estate or the Improvements or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof (all of the foregoing is herein referred to collectively as the "Leases");

(vii) Plans. All rights of Mortgagor to plans and specifications, designs, drawings and other matters prepared for any construction of the Real Estate, including the plans identified in the Loan Agreement (all of the following are herein called the "Plans");

(viii) Contracts for Construction or Services. All rights of Mortgagor under any contracts executed by Mortgagor or anyone acting on behalf of Mortgagor with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Real Estate or the Improvements, including the Architect's Agreement and the Construction Contract (defined for purposes hereof as defined in the Loan Agreement) (all of the foregoing are herein referred to collectively as the "Contracts for Construction"); and

(ix) Service Agreements. All rights and interests of Mortgagor in and under any and all service and other agreements relating to the operation, maintenance, and repair of the Premises or the buildings and improvements thereon ("Service Agreements");

(x) Loan Proceeds. All proceeds, contract rights and payments payable to Mortgagor under any loan commitment for financing of the Premises ("Loan Proceeds"); and

(xi) Insurance. All unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by the Mortgagor and all proceeds of the conversion, voluntary or involuntary, of the Collateral or any part thereof into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Collateral by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Collateral or any easement therein, including awards for any change of grade of streets;

(xii) Betterments. All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Collateral, hereafter acquired by, or released to, the Mortgagor or constructed, assembled or placed by the Mortgagor on the Collateral, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described herein; and

(xiii) Other Property. All other property or rights of the Mortgagor of any kind or character related to the Real Estate or the Improvements, and all proceeds (including, without limitation, insurance and condemnation proceeds) and products of any of the foregoing. It is specifically understood that the enumeration of any specific articles of property shall not exclude or be deemed to exclude any items of property not specifically mentioned. All of the Premises hereinabove described, real, personal and mixed, whether affixed or annexed or not, and all rights hereby conveyed and mortgaged are intended to be as a unit and are hereby understood and agreed and declared to be appropriated to the use of the Premises, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

G R A N T

NOW THEREFORE, for and in consideration of Mortgagee's making the proceeds of the loan available to Mortgagor and any other financial accommodation to or for the benefit of Mortgagor, consideration of the various agreements contained herein and in the other Loan Documents, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Mortgagor, and in order to secure the full, timely and proper payment and performance of each and every one of the Liabilities,

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

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

THIS MORTGAGE SECURES MANDATORY FUTURE ADVANCES TO BE MADE FROM TIME TO TIME IN ACCORDANCE WITH THE LOAN AGREEMENT.

Mortgagor hereby covenants with Mortgagee and with the purchaser at any foreclosure sale: that at the execution and delivery hereof it is well seized of the Premises, and of a good, indefeasible estate therein, in fee simple; that the Collateral is free from all encumbrances whatsoever (and any claim of any other person thereto) other than those exceptions and encumbrances permitted by Mortgagee set forth on Exhibit "B" attached hereto and made a part

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

hereof (the "Permitted Exceptions"); that it has good and lawful right to sell, mortgage and convey the Collateral; and that Mortgagor and its successors and assigns will forever defend the Collateral against all claims and demands whatsoever.

I. COVENANTS AND AGREEMENTS OF MORTGAGOR

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

1.1. Payment of Liabilities. Mortgagor agrees that it will pay, timely and in the manner required in the appropriate documents or instruments, the principal of and interest on the Note, and all other Liabilities (including fees and charges). All sums payable by Mortgagor hereunder shall be paid without demand, counterclaim, offset, deduction or defense. Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset, deduction or defense.

1.2. Taxes.

1.2.1. Payment of Taxes. Mortgagor will pay before delinquent all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due (collectively referred to herein as an "Imposition" or "Impositions"), that may be levied, assessed, made, imposed or charged on or against the Collateral or any property used in connection therewith, and will pay before due any tax or other charge on the interest or estate in lands created or represented by this Mortgage or by any of the other Loan Documents, whether levied against Mortgagor or Mortgagee or otherwise, and will submit to Mortgagee all receipts showing payment of all of such taxes, assessments and charges.

Notwithstanding anything to the contrary contained in the foregoing sentence, if, by law, any Imposition, at the option of the taxpayer, can and customarily is paid in installments, whether or not interest shall accrue on the unpaid balance of such Imposition, Mortgagor may, so long as no Event of Default shall exist under this Mortgage or any other Loan Document, exercise the option to pay such Imposition in installments and, in such event, shall pay such installments, together with any interest thereon, as the same become due and payable and before any fine, penalty, additional interest or cost may be added thereto.

1.2.2. Contest of Impositions. Mortgagor shall have the right at its own expense to contest the amount or validity, in whole or in part, of any Imposition, by appropriate proceedings diligently conducted in good faith, but only after payment of such Imposition unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, notwithstanding the provisions of subsection 1.2.1 above, payment of such Imposition shall be postponed if and only so long as:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(i) Neither the Premises nor any part thereof would by reason of such postponement or deferment be, in the judgment of the Mortgagee, in danger of being forfeited or lost; and

(ii) Mortgagor shall, upon demand by Mortgagee, have deposited with Mortgagee the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof in such proceedings. Upon termination of any such proceedings, it shall be the obligation of Mortgagor to pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including counsel fees), interest, penalties or other liabilities in connection therewith. Upon such payment, Mortgagee shall return any amount deposited with it with respect to such Imposition. Mortgagee shall, if requested by Mortgagor, disburse said moneys on deposit with it directly to the imposing authority to whom such Imposition is payable. Upon failure of Mortgagor so to do, the amount theretofore deposited may be applied by Mortgagee to the payment, removal and discharge of such Imposition, the interest and penalties in connection therewith and any costs, fees (including reasonable attorney's fees) or other liability accruing in any such proceedings. The balance, if any, shall be returned to Mortgagor and the deficiency, if any, shall be paid by Mortgagor to Mortgagee within five (5) business days after demand therefor.

1.2.3. Funds for Taxes and Insurance. Mortgagor shall deposit with Mortgagee or its designee, on the first day of each month during the term hereof, an amount sufficient to discharge the obligations of Mortgagor under Sections 1.2.1 hereof. Mortgagor shall deposit with Mortgagee, upon demand, an amount sufficient to discharge Mortgagor's obligations under 1.7 hereof and Section 4(c) of the Loan Agreement as and when they become due. The determination of the initial amount payable to mortgagee and the fractional part to be deposited on the first day of each month thereafter with Mortgagee shall be made by Mortgagee in its discretion based on the prior year's taxes and insurance premiums and Mortgagee's estimate of the amount by which taxes and insurance premiums can be expected to rise. Said amounts shall be held by Mortgagee or its designee not in trust and not as agent of Mortgagor, and may be commingled with other funds held by Mortgagee or its designee, and said amounts shall not bear interest, and shall be applied to the payment of the obligations in respect to which the amounts were deposited or, at the option of Mortgagee, to the payment of said obligations in such order or priority as Mortgagee shall determine. If at any time within thirty (30) days prior to the due date of any of the aforementioned obligations the amounts then on deposit therefor shall be insufficient for the payment of such obligation in full, Mortgagor shall within ten (10) days after demand deposit the amount of the deficiency with Mortgagee. If the amounts deposited are in excess of the actual obligations for which they were deposited, Mortgagee may refund any such excess, or, at its option, may hold the same in a reserve account, not in trust and not bearing interest. Nothing herein contained shall be deemed to affect any right or remedy of Mortgagee under any other provision of this Mortgage or under any statute or rule of law to pay any such amount and to add the amount so paid to the Liabilities hereby secured. All amounts so deposited shall be held by

96099419

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgagee or its designee as additional security for the Liabilities secured by this Mortgage and upon the occurrence of an Event of Default hereunder Mortgagee may, in its sole and absolute discretion and without regard to the adequacy of its security hereunder, apply such amounts or any portion thereof to any part of the indebtedness secured hereby. Any such application of said amounts or any portion thereof to any indebtedness secured hereby shall not be construed to cure or waive any Event of Default or notice of default hereunder or invalidate any act done pursuant to any such Event of Default or notice. Mortgagor shall deliver to Mortgagee all tax bills, bond and assessment statements, statements of insurance premiums, and statements for any other obligations referred to above as soon as the same are received by Mortgagor. If Mortgagee sells or assigns this Mortgage, Mortgagee shall have the right to transfer all amounts deposited under this Section 1.2.3. to the purchaser or assignee, and Mortgagee shall thereupon be released and have no further liability hereunder for the application of such deposits, and Mortgagor shall look solely to such purchaser or assignee for such application and for all responsibility relating to such deposits.

1.3. Maintenance and Repair: Protection of Security.

(i) Mortgagor will: not abandon the Premises; not do or suffer anything to be done which would depreciate or impair the value of the Collateral or the security of this Mortgage; not remove or demolish any of the Improvements; pay promptly for all labor and materials for all construction, repairs and improvements to or on the Premises; not make any changes, additions or alterations to the Premises or the Improvements or as required by any applicable governmental requirement or as otherwise approved in writing by Mortgagee; maintain, preserve and keep the Goods and the Improvements in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear, damage, obsolescence or destruction; promptly restore and replace any of the Improvements or Goods which are destroyed or damaged; not commit, suffer, or permit waste of any part of the Premises; and maintain all grounds and abutting streets and sidewalks in good and neat order and repair.

(ii) Mortgagor shall promptly notify Mortgagee of and appear in and defend any suit, action or proceeding that affects the Premises or the rights or interest of Mortgagee hereunder and the Mortgagee may elect to appear in or defend any such action or proceeding. Mortgagor agrees to indemnify and reimburse Mortgagee from any and all loss, damage, expense or cost arising out of or incurred in connection with any such suit, action or proceeding, including costs of evidence of title and reasonable attorneys' fees and such amounts together with interest thereon at the Interest Rate, shall become additional Liabilities secured hereby and shall become immediately due and payable.

1.4. Sales; Liens. Mortgagor shall not:

(i) Except for sales of individual condominium units, directly or indirectly sell, contract to sell, assign, transfer, convey, or dispose of the Premises, or any

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

part thereof or any interest or estate therein, whether legal, equitable, beneficial or possessory (including (a) any conveyance into trust, or (b) any conveyance, sale or assignment of the beneficial interest in any trust holding title to the Premises.

(ii) subject or permit the Premises, or any portion thereof or interest therein (whether legal, equitable, beneficial or otherwise) or estate in any thereof (including the right to receive the rents and profits therefrom) directly or indirectly, to any mortgage, deed of trust, lien, claim, security interest, encumbrance or right (whether senior or junior to, or on a parity with, this Mortgage); or

(iii) subject or permit the beneficial interest under any trust holding title to the Premises, or any portion thereof or interest therein (whether legal, equitable, beneficial or otherwise) or estate in any thereof (or permit the same to be subjected), directly or indirectly, to any mortgage, deed of trust, lien, claim, security interest, encumbrance, collateral assignment or right, or

(iv) lease the Premises, or any portion thereof.

1.5. Access by Mortgagee. The Mortgagor will at all times: deliver to Mortgagee either all of its executed originals (in the case of chattel paper or instruments) or certified copies (in all other cases) of all leases, agreements creating or evidencing Intangibles, all amendments and supplements thereto, and any other document which is, or which evidences, governs, or creates, Collateral; permit access by Mortgagee and its agents, representatives, contractors and participants (if any) during normal business hours to its books and records, tenant registers, offices, insurance policies and other papers for examination and the making of copies and extracts; prepare such schedules, summaries, reports and progress schedules as Mortgagee and its agents, representatives, contractors and participants (if any) may reasonably request; and permit Mortgagee and its agents, representatives, contractors and participants (if any), at all reasonable times, to enter onto and inspect the Premises.

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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

1.7. Insurance.

1.7.1. Required Insurance. Mortgagor will at all times maintain or cause to be maintained on the Goods, the Premises and on all other Collateral, all insurance required at any time or from time to time by the other Loan Documents or as reasonably requested by Mortgagee and in any event the following:

(i) Casualty Insurance: insurance covering the Premises and the Goods in the event of fire, lightning, windstorm, vandalism, malicious mischief and all other risks normally covered by "all risk" coverage policies in Chicago, Illinois in an amount equal to 100% of the replacement value thereof (but in no event less than \$1,500,000), together with any Agreed Amount Replacement Endorsement;

(ii) Comprehensive General Public Liability Insurance: comprehensive general public liability insurance (including coverage for elevators and escalators, if any, contractual liability, explosion, underground property, and broad form property damage endorsement, against claims for bodily injury, death or property damage occurring or caused by events occurring on, in or about the Premises and adjoining streets and sidewalks, in such minimum combined single limit amount as Mortgagee shall from time to time determine;

(iii) Workers' Compensation Insurance: during the course of any construction or repair of the Premises, Worker's Compensation and employer's liability insurance covering its employees in such amount as is required by law;

(iv) Builder's Risk Insurance: during the course of any construction or repair of the Premises, a Builder's Risk Completed Value Policy of insurance against "all risks", including collapse and transit coverage, during construction of such improvements, covering the total value of work performed and equipment, supplies and materials furnished and, to the extent not covered by other insurance as to which Mortgagee is a named insured during such work;

(v) Contents Insurance: Fire and Extended Coverage Insurance (contents broad form) and Sprinkler Leakage Insurance on Mortgagor's personal property located on the Premises, and on all improvements or betterment constructed by Mortgagor, in amounts sufficient to fully insure such personal property;

(vi) Flood Insurance: insurance against flood (if required by the Federal Flood Disaster Protection Act of 1973 and regulations issued thereunder or any other law applicable to the Mortgagee);

(vii) Business Interruption/Rent Loss Insurance: Business Interruption Insurance with loss of rents endorsement in amounts as Mortgagee shall request but in no

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

amount less than the aggregate of the amount of the monthly Rent for the next succeeding twelve (12) month period;

(viii) Plate Glass: plate glass (which may be self-insured by Mortgagor upon the prior written consent of Mortgagee), sprinkler, garage and machinery explosion and pressurized vessel insurance.

All insurance shall be in such amounts satisfactory to the Mortgagee, and all to be maintained in such form and with such companies as shall be approved by the Mortgagee. Mortgagor shall deliver to and keep deposited with the Mortgagee original certificates and certified copies of all policies of such insurance and renewals thereof, with premiums prepaid, and with standard non-contributory mortgagee and loss payable clauses satisfactory to the Mortgagee, and clauses providing for not less than thirty (30) days' prior written notice to the Mortgagee of cancellation or material modification of such policies, attached thereto in favor of the Mortgagee. All of the above-mentioned original insurance policies or certified copies of such policies and certificates of such insurance satisfactory to Mortgagee, together with receipts for the payment of premiums thereon, shall be delivered to and held by Mortgagee, which delivery shall constitute assignment to Mortgagee of all return premiums to be held as additional security hereunder. All renewal and replacement policies shall be delivered to Mortgagee at least thirty (30) days before the expiration of the expiring policies.

Any insurance provided for in this Section may be effected by a policy or policies of blanket insurance, provided, however, that the amount of the total insurance allocated to the Premises shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects, any such policy or policies shall comply with the other provisions of this Mortgage, except that no such policy shall be submitted to Mortgagee less than thirty (30) days prior to expiration of an existing policy. In any such case, it shall not be necessary to deliver the original of any such blanket policy to the Mortgagee, but the Mortgagee shall be furnished with a certificate or duplicate of such policy reasonably acceptable to Mortgagee. Each policy of insurance provided for in this Section shall contain the standard form of waiver of subrogation.

1.7.2. Repair of Damage. If the Premises shall be destroyed or damaged in whole or in part, by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Mortgagor shall give to Mortgagee immediate notice thereof. Mortgagor, at its own cost and expense, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose, shall promptly repair, alter, restore, replace and rebuild the same, at least to the extent of the value and as nearly as possible to the character of the Premises existing immediately prior to such occurrence. Mortgagee shall in no event be called upon to repair, alter, replace, restore or rebuild such Premises, or any portion thereof, nor to pay any of the costs or expenses thereof.

96099419

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

1.7.3. Settlement of Loss. Mortgagee is authorized to (A) settle and adjust any claim under such insurance policies which insure against such risk or (B) allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. Notwithstanding the foregoing, Mortgagor is authorized to settle and adjust any claim in an amount which does not exceed \$10,000 under such insurance policies.

1.7.4. Application of Insurance Proceeds. In all events, Mortgagee is authorized to collect and receipt for any such insurance monies, and such insurance proceeds may, at the option of the Mortgagee, be: (i) applied in reduction of the Liabilities, whether due or not; or (ii) held by the Mortgagee and applied to pay for the cost of repair, rebuilding or restoration of the buildings and other improvements on the Premises.

In the event, in Mortgagee's sole and absolute discretion, the proceeds are to be made available to Mortgagor for the cost of repair. Mortgagee shall be entitled to reimburse itself to the extent of the reasonably necessary and proper expenses paid or incurred by Mortgagee in the collection and administration of such monies, including reasonable attorney's fees. (Any funds received by Mortgagee from insurance provided by Mortgagor less any funds Mortgagee is entitled to reimburse itself shall be defined herein as "Net Insurance Proceeds"). If, in Mortgagee's sole and absolute discretion, the Net Insurance Proceeds are to be made available by the Mortgagor for the cost of repair, rebuilding, and restoration, any surplus which may remain out of said proceeds after payment of such cost of repair, rebuilding and restoration and the reasonable charges of the escrowee by disbursing such funds, if applicable, shall, at the option of the Mortgagee, be applied on account of the Liabilities or paid to any party entitled thereto as the same appear on the records of the Mortgagee. In the event the Net Insurance Proceeds are to be made available to Mortgagor for the cost of repair, such proceeds shall be disbursed to Mortgagor pursuant to such terms and conditions as Mortgagee may in its sole discretion require.

1.8. Eminent Domain. In case the Collateral, or any part or interest therein, is taken by condemnation, Mortgagee is hereby empowered to collect and receive all compensation and awards of any kind whatsoever (referred to collectively herein as "Condemnation Awards") which may be paid for any property taken or for damages to any property not taken, all of which Mortgagor hereby assigns to Mortgagee. Mortgagor hereby empowers Mortgagee, to settle, compromise and adjust any and all claims or rights arising under any condemnation or eminent domain proceeding relating to the Collateral or any portion thereof. All Condemnation Awards so received shall be forthwith applied by Mortgagee, as it may, in its sole and absolute discretion elect, to the prepayment of the Note or any other Liabilities, or to the repair and restoration of any property so taken or damaged. In the event the Condemnation Awards are, in Mortgagee's sole and absolute discretion, to be made available to Mortgagor for repair of the Premises, such proceeds shall be disbursed to Mortgagor pursuant to such terms and conditions as Mortgagee may in its sole discretion require.

96099419

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

1.9. Governmental Requirements.

1.9.1. Compliance with Laws. Mortgagor will at all times fully comply with, and cause the Collateral and the use and condition thereof fully to comply with, all federal, state, county, municipal, local and other governmental statutes, ordinances, requirements, regulations, rules, orders, licensing provisions and decrees of any kind whatsoever that apply or relate to Mortgagor or the Collateral or the use thereof, zoning or building laws or ordinances, any noise abatement, occupancy, or environmental protection laws or regulations, or any rules, regulations or orders of any governmental agency) (collectively, the "Environmental Laws"), and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, easements, rights-of-way, covenants, restrictions, grants, franchises and concessions (including, without limitation, those relating to land use and development, landmark preservation, construction, access, water rights and use, noise and pollution) which are applicable to Mortgagor or have been granted (whether or not of record) for the Collateral or the use thereof. Unless required by applicable law or unless Mortgagee has otherwise first agreed in writing, Mortgagor shall not make or allow any changes to be made in the nature of the occupancy or use of the Premises or any portion thereof for which the Premises or such portion was intended at the time this Mortgage was delivered. Mortgagor shall not initiate or acquiesce in any change in any zoning or other land use classification now or hereafter in effect and affecting the Premises or any part thereof without in each case obtaining Mortgagee's prior written consent thereto. All rental units located on the Premises and occupied by tenants shall be at all times fully licensed by the City of Chicago.

At all times the environmental and ecological condition of the Premises shall not be in violation of any law, ordinance, rule or regulation applicable thereto; the soil, surface, water and ground water of or on the Premises shall be free from any solid waste, toxic, hazardous or special substances or contaminants; and the Premises shall not be used for the manufacture, refinement, treatment, storage, hauling or disposal of any such material. No "Hazardous Materials" (as hereinafter defined) shall be discharged, dispersed, released, stored, treated, generated, disposed of, or allowed to escape on the Premises in violation of the Environmental Laws; no asbestos or asbestos-containing materials shall be installed, used, incorporated into or disposed of on the Premises; no polychlorinated biphenyls ("PCBs") will be located on, in, or used in connection with the Premises; no underground storage tanks shall be located on the Premises; and the Premises shall be in compliance with all applicable federal, state and local statutes, laws, regulations, ordinances, orders, or codes relating to environmental matters.

"Hazardous Materials" means asbestos, PCBs, and any hazardous, toxic or special substance, material or waste that is regulated by any governmental authority, including the State of Illinois or the United States government and includes, without limitation, any material, substance or waste that is (i) designated as such pursuant to Section 307 of the Federal Water Pollution Control Act 33 U.S.C. §1251 et seq. (33 U.S.C. §1317); (ii) defined as such pursuant to §1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq. (42 U.S.C. §6903); (iii) defined as such pursuant to §101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et. seq. (42 U.S.C. §9601); or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(iv) designated or defined under any applicable federal or state statute or county or municipal law, regulation, ordinance, order or code, in each case as amended.

1.9.2. Contest of Laws. Mortgagor shall have the right, after prior notice to Mortgagee and so long as there exists no material threat to the priority of the lien of the Mortgage, the Loan Documents or the value of the Collateral, to contest by appropriate legal proceedings conducted in the name of Mortgagor, the validity or application of any ordinances, requirements, regulations, rules, orders and decrees of the nature referred to in subsection 1.9.1. above. Mortgagor shall indemnify and hold Mortgagee harmless from any cost, expense, liability or damage, including reasonable attorney's fees, relating to such contest.

1.10. Mechanics' Liens.

1.10.1. Prohibitions Against Liens. Mortgagor will not permit any mechanics' or other construction lien under the laws of Illinois to arise against or attach to the Premises or any part thereof unless such lien shall first be wholly waived as against this Mortgage. In addition, it is further expressly made a covenant and condition hereof that the lien of this Mortgage shall extend to any and all improvements and fixtures now or hereafter on the Premises, prior to any other lien thereon that may be claimed by any person, so that subsequently accruing claims for lien on the Premises shall be junior and subordinate to this Mortgage. All contractors, subcontractors, and other parties dealing with the Premises, or with any parties interested therein, are hereby required to take notice of the above provisions.

1.10.2. Discharge of Mechanic's Liens. If any mechanic's, laborer's or materialmen's lien shall at any time be filed against the Premises or any part thereof, Mortgagor, within 30 days after notice of the filing thereof, shall cause the same to be discharged of record or otherwise stayed by payment, deposit, order of a court of competent jurisdiction or otherwise or bonded or insured over by a title insurance company acceptable to Mortgagee (the "Title Company"). If Mortgagor shall fail to cause such lien to be discharged, stayed within such period or bonded or insured over by the Title Company within such period then, in addition to any other right or remedy, Mortgagee may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Mortgagee shall be entitled, if Mortgagee so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor, with interest, costs and allowances. In any event, if any suit, action or proceedings shall be brought to foreclose or enforce any such lien (whether or not the prosecution thereof was so compelled by Mortgagee), Mortgagor shall, at its own sole cost and expense, promptly pay, satisfy and discharge any final judgment entered therein, in default of which Mortgagee, at its option, may three (3) days after notice thereof, do so. Any and all amounts so paid by Mortgagee as in this paragraph provided, and all costs and expenses paid or incurred by Mortgagee in connection with any or all of the foregoing matters, including, without limitation, reasonable attorneys' fees and disbursements shall become due and payable within five (5) days after notice thereof, such amounts, charges, costs, expenses, fees and sums, together with interest thereon at the default rate of interest, specified under the Note.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

1.10.3. Right to Contest Liens. Notwithstanding anything to the contrary contained herein, Mortgagor may, in good faith and with due diligence, contest the validity or amount of any lien not expressly subordinated to the lien hereof and defer payment and discharge thereof during the pending of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such lien; (ii) that, within ten (10) days after Mortgagor has been notified of the assertion of such lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such lien; and (iii) that Mortgagor shall have deposited with Mortgagee, upon demand by Mortgagee, a sum of money which shall be sufficient in the sole discretion of Mortgagee to pay in full such lien and all interest which might become due thereon. Such deposits are to be held without interest. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the full disposition of such contest, apply the money so deposited in full payment of such lien or that part thereof then unpaid, together with all interest thereon, (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made.

1.11. Continuing Priority. Subject to Mortgagor's right to contest set forth in Sections 1.9, and 1.10 hereof, Mortgagor will: pay such fees, taxes and charges, execute and file (at Mortgagor's expense) such financing statements, obtain such acknowledgments or consents, notify such obligors or providers of services and materials and do all such other acts and things as Mortgagee may from time to time request to establish and maintain a valid and perfected first and prior lien on and security interest in the Collateral and to provide for payment to Mortgagee directly of all cash proceeds thereof, with Mortgagee in possession of the Collateral to the extent it requests; keep all of its books and records relating to the Collateral on the Premises or at the principal office of the Beneficiary; keep all tangible Collateral on the Real Estate except as Mortgagee may otherwise consent in writing; make notations on its books and records sufficient to enable Mortgagee, as well as third parties, to determine the interest of the Mortgagee hereunder; and not collect any rents or the proceeds of any of the Leases or Intangibles more than thirty (30) days before the same shall be due and payable except as the Mortgagee may otherwise consent in writing, except for deposits by tenants of the Premises to secure such tenant's performance of its obligations under its Lease.

1.12. Utilities. Mortgagor will pay all utility charges incurred in connection with the Collateral promptly when due and maintain all utility services available for use at the Premises.

96099419

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

1.13. Contract Maintenance; Other Agreements. Mortgagor will, for the benefit of Mortgagee, fully and promptly keep, observe, perform and satisfy each obligation of Mortgagor, condition, covenant, and restriction affecting the Premises or imposed on it under any agreement between Mortgagor and a third party relating to the Collateral or the Liabilities, including without limitation the Contract for Construction and Architect's Agreement (herein collectively the "Third Party Agreements"), so that there will be no default under such Third Party Agreements and so that the persons (other than Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Mortgagee. Except as expressly contemplated in the Loan Agreement, Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a basis or justification for any such person to avoid such performance. Without the prior written consent of Mortgagee, Mortgagor shall not make or permit any termination or amendment of any Third Party Agreement, unless and until each of the following are satisfied:

(i) the termination or amendment of the Third Party Agreement would not adversely affect the performance by Mortgagor of its obligations and duties under any of the Loan Documents; and

(ii) in the event a Third Party Agreement is terminated prior to the complete performance of the third party and such performance is required to complete the construction of the Improvements or pay the amount due hereunder on the Maturity Date, Mortgagor will enter into an agreement with another third party, upon substantially similar terms and conditions as the Third Party Agreement that had been terminated.

Mortgagor shall keep, observe, perform and comply with all covenants, conditions and restrictions affecting the Premises and other instruments relating to or affecting the Collateral, notwithstanding any default of a third party under the terms and provisions of any Third Party Agreement.

1.14. Notify Mortgagee of Default. Mortgagor shall notify Mortgagee in writing within five (5) days after the date on which it becomes aware of or receives notice of the occurrence of any Event of Default or other event which, upon the giving of notice or the passage of time or both, would constitute an Event of Default hereunder or under any of the other Loan Documents.

1.15. No Assignments; Future Leases. Mortgagor will not cause or permit (by operation of law or otherwise) any Rents, Leases, or other contracts relating to the Premises to be assigned, to any party other than Mortgagee without first obtaining the express written consent of Mortgagee to any such assignment or permit any such assignment to occur by operation of law. In addition, Mortgagor shall not cause or permit all or any portion of or interest in the Premises or the Improvements to be leased (that word having the same meaning for purposes hereof as it does in the law of landlord and tenant) directly or indirectly to any person, except pursuant to written leases in the ordinary course of business.

1.16. Mortgagor To Comply With Leases. Mortgagor will, at its own cost and expense:

960999419

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(i) Faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any leases of the Premises to be performed by the landlord thereunder;

(ii) Enforce or secure the performance of each and every material obligation, covenant, condition and agreement of said leases by the tenants thereunder to be performed;

(iii) Not borrow against, pledge or further assign any rentals due under said leases;

(iv) Not permit the prepayment of any rents due under any lease for more than thirty (30) days in advance nor for more than the next accruing installment of rents, nor anticipate, discount (other than front-end incentives such as rent abatement), compromise, forgive or waive any such rents;

(v) Not waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the leases without the express prior written consent of Mortgagees;

(vi) Not permit any tenant to assign or sublet its interest in its lease unless required to do so by the terms of the lease and then only if such assignment does not work to relieve the tenant of any liability for payment of and performance of its obligations under the lease and only if the new tenant is of the same or better creditworthiness as the prior tenant and the terms of the new lease provide for the same or better use of the leased space;

(vii) Not terminate any lease or accept a surrender thereof or a discharge of the tenant unless required to do so by the terms of its lease or unless the Mortgagor and tenant or another equally financially responsible tenant shall have executed a new lease effective upon such termination for the same term of years at a rental not less than as provided in the terminated lease and on terms no less favorable to the landlord than as in the terminated lease;

(viii) Not consent to a subordination of the interest of any tenant to any party other than Mortgagee and then only if specifically consented to by the Mortgagee; and

(ix) Not amend or modify any lease or alter the obligations of the parties thereunder.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

11/11/11

UNOFFICIAL COPY

1.17. Mortgagee' Right to Perform Under Leases. Should the Mortgagor fail to perform, comply with or discharge any obligations of Mortgagor under any lease or should the Mortgagee become aware of or be notified by any tenant under any lease of a failure on the part of Mortgagor to so perform, comply with or discharge its obligations under said lease, Mortgagee may, but shall not be obligated to, and without further demand upon the Mortgagor, and without waiving or releasing Mortgagor from any obligation in this Mortgage contained, remedy such failure, and the Mortgagor agrees to repay upon demand all sums incurred by the Mortgagee in remedying any such failure together with interest at the Interest Rate. All such sums, together with interest at the Interest Rate shall become so much additional Secured Indebtedness, but no such advance shall be deemed to relieve the Mortgagor from any default hereunder.

1.18. Assignment of Rents, Leases and Profits. The Mortgagor does hereby sell, assign, and transfer unto Mortgagee all of the Rents, Leases and profits from the Premises, it being the intention of this Mortgage to establish an absolute transfer and assignment of all such Rents, Leases and profits from and on the Premises unto the Mortgagee and the Mortgagor does hereby appoint irrevocably the Mortgagee its true and lawful attorney in its name and stead, which appointment is coupled with an interest, to collect all of said rents and profits; provided, Mortgagee grant the Mortgagor the privilege to collect and retain such rents, income, and profits unless and until an Event of Default exists under this Mortgage. Upon the occurrence of an Event of Default, and whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale of the Premises or during any period of redemption, the Mortgagee, without regard to waste, adequacy of the security or solvency of the Mortgagor, may revoke the privilege granted Mortgagor hereunder to collect the rents, issues and profits of the Premises, and may, at its option, without notice:

(i) in person or by agent, with or without taking possession of or entering the Premises, with or without bringing any action or proceeding, give, or require Mortgagor to give, notice to any or all tenants under any lease authorizing and directing the tenant to pay such rents and profits to Mortgagee; collect all of the rents, issues and profits; enforce the payment thereof and exercise all of the rights of the landlord under any lease and all of the rights of Mortgagee hereunder; enter upon, take possession of, manage and operate said Premises, or any part thereof; cancel, enforce or modify any leases, and fix or modify rents, and do any acts which the Mortgagee deems proper to protect the security hereof with or without taking possession of said Premises; and

(ii) apply for the appointment of a receiver in accordance with the statutes and law made and provided for, which receivership Mortgagor hereby consents to, which receiver shall collect the rents, profits and all other income of any kind, manage the Premises so as to prevent waste, execute leases within or beyond the period of receivership, and apply the rents, profits and income in the following order:

(a) to payment of all reasonable fees of any receiver appointed hereunder;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

- (b) to application of tenant's security deposits;
- (c) to payment when due of prior or current real estate taxes or special assessments with respect to the Premises or, if the Mortgage so requires, to the periodic escrow for payment of the taxes or special assessments when due;
- (d) to payment when due of premiums for insurance of the type required by the Mortgage or, if the Mortgage so requires, to the periodic escrow for the payment of premiums then due;
- (e) to payment of all expenses for normal maintenance of the Premises;
- (f) if received prior to a foreclosure sale, such amounts shall be paid to the Mortgagee and deposited with Mortgagee, as provided in the Indenture for application as provided for therein; provided, if the Premises shall be foreclosed and sold pursuant to a foreclosure sale, the rents during the period of redemption from such foreclosure sale:
- (1) If the Mortgagee is the purchaser at the foreclosure sale, the rents shall be paid to the Mortgagee to be applied to the extent of any deficiency remaining after the sale, the balance to be retained by the Mortgagee, and if the Premises be redeemed by the Mortgagor or any other party entitled to redeem; to be applied as a credit against the redemption price provided, if the Premises not be redeemed, any remaining excess rents are to be paid to the Mortgagee and deposited with Mortgagee, as provided in the Indenture for application as provided therein, whether or not a deficiency exists;
- (2) If the Mortgagee is not the purchaser at the foreclosure sale, the rents shall be paid to the Mortgagee to be applied to the extent of any deficiency remaining after the sale, and the balance, if any, shall be paid to the purchasers to be applied as a credit against the redemption price, provided, if the Premises not be redeemed, any remaining excess rents shall be paid to the purchasers.

The entering upon and taking possession of the Premises, the collection of such rents and profits and the application thereof as aforesaid shall not cure or waive any defaults under this Mortgage nor in any way operate to prevent the Mortgagee from pursuing any other remedy which it may now or hereafter have under the terms of this Mortgage nor shall it in any way be deemed to constitute the Mortgagee a mortgagee-in-possession. The rights and powers of the Mortgagee

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

hereunder shall remain in full force and effect both prior to and after any foreclosure of the Mortgage and any sale pursuant thereto and until expiration of the period of redemption from said sale, regardless of whether a deficiency remains from said sale. The purchaser at any foreclosure sale, including the Mortgagee, shall have the right, at any time and without limitation, to advance money to any receiver appointed hereunder to pay any part or all of the items which the receiver would otherwise be authorized to pay if cash were available from the Premises and the sum so advanced, with interest at the Interest Rate, shall be a part of the sum required to be paid to redeem from any foreclosure sale. The rights hereunder shall in no way be dependent upon and shall apply without regard to whether the Premises are in danger of being lost, materially injured or damaged or whether the Premises are adequate to discharge the Liabilities. The rights contained herein are in addition to and shall be cumulative with the rights given in any separate instrument, if any, assigning any leases, rents and profits of the Premises and shall not amend or modify the rights in any such separate agreement.

1.19. Maintenance of Existence. The Mortgagor will do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its incorporation, or formation, as the case may be, and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor or to the Premises or any part thereof. Mortgagor shall not liquidate, terminate, consolidate, merge or voluntarily dissolve.

1.20. Mortgagee's Performance. If Mortgagor or Guarantors (as defined in the Loan Agreement) for the benefit of Mortgagee fails to pay or perform any of its obligations herein contained (including payment of expenses of foreclosure and court costs) and all applicable grace or cure periods have expired, Mortgagee may (but need not), as agent or attorney-in-fact of Mortgagor, make any payment or perform (or cause to be performed) any obligation of Mortgagor or Guarantor hereunder, in any form and manner deemed expedient by Mortgagee, and any amount so paid or expended (plus reasonable compensation to Mortgagee for its out-of-pocket and other expenses for each matter for which it acts under this Mortgage), with interest thereon at the Interest Rate, shall be added to the principal debt hereby secured and shall be repaid to Mortgagee within five (5) days after notice thereof. By way of illustration and not in limitation of the foregoing, Mortgagee may (but need not) do all or any of the following: make payments of principal or interest or other amounts on any lien, encumbrance or charge on any of the Collateral; make repairs; collect rents; prosecute collection of the Collateral or proceeds thereof; purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; contest any tax or assessment; and redeem from any tax sale or forfeiture affecting the Premises. In making any payment or securing any performance relating to any obligation of Mortgagor hereunder, Mortgagee shall (as long as it acts in good faith) be the sole judge of the legality, validity and amount of any lien or encumbrance and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee shall ever be considered as a waiver of any right accruing to it on account of the occurrence of any matter which constitutes an Event of Default.

96099419

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

1.21. Subrogation. To the extent that Mortgagee, on or after the date hereof, pays any sum under any provision of law or any instrument or document creating any lien or other interest prior or superior to the lien of this Mortgage, or Mortgagor or any other person pays any such sum with the proceeds of the loan secured hereby, Mortgagee shall have and be entitled to a lien or other interest on the Collateral equal in priority to the lien or other interest discharged and Mortgagee shall be subrogated to, and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Mortgagee in securing the Liabilities.

II. DEFAULT

Each of the following shall constitute an event of default ("Event of Default") hereunder (including, if Mortgagor consists of more than one person or entity, the occurrence of any of such events with respect to any one or more of such persons or entities):

2.1. Payment Performance.

(i) Failure to make any payment of principal, interest, fees or any other amount due under the Note or this Mortgage within ten (10) days after the due date thereof; or

(ii) failure to pay any of the other Liabilities, when and as the same shall become due and payable, whether at maturity or by acceleration or otherwise within ten (10) days after the due date thereof; or

(iii) except as specifically set forth in any other provision of this Article II., default in the timely and proper performance of any of the covenants or agreements of Mortgagor contained herein, and the continuation of such failure for thirty (30) days after written notice thereof is given to Mortgagor by Mortgagee. If Mortgagor is diligently pursuing a cure of the default this period will be extended by thirty (30) days; or

(iv) default in the full and timely performance of any of the covenants or agreements of Mortgagor, any Guarantor or any one or more of them, as applicable, contained in the Note, the Guaranty or in any of the other Loan Documents, provided that to the extent (if any) that such other document or instrument provides a grace or cure period with respect to such default, the same grace or cure period, and only such period, shall apply with respect thereto under this Mortgage; or

(v) default in the performance of any covenant or agreement set forth in Sections 1.4., 1.7. or 1.9 herein.

2.2. Receiver. Suspension. Attachment. The appointment, pursuant to an order of a court of competent jurisdiction, of a trustee, receiver or liquidator of the Collateral or any part

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

thereof, or of Mortgagor, or any termination or voluntary suspension of the transaction of business of Mortgagor, or any attachment, execution or other judicial seizure of all or any substantial portion of Mortgagor's assets which attachment, execution or seizure is not discharged within, sixty (60) days.

2.3. Miscellaneous. If Mortgagor is other than a natural person or persons, without the prior written consent of Mortgagee in each case, (a) the dissolution or termination of existence of Mortgagor, voluntarily or involuntarily; or (b) the amendment or modification in any material respect of Mortgagor's articles or agreement of partnership or its corporate resolutions relating to this transaction or its articles of incorporation or bylaws.

2.4. Tax on Mortgagee. The imposition of a tax, other than a state or federal income tax, on or payable by Mortgagee by reason of its ownership of the Note, or this Mortgage, and Mortgagor not promptly paying said tax, or it being illegal for Mortgagor to pay said tax.

2.5. Representations and Warranties. Any representation, warranty, or disclosure made to Mortgagee by Mortgagor or Guarantor in connection with or as an inducement to the making of the loan evidenced by the Note this Mortgage or any of the other Loan Documents, proving to be false or misleading in any material respect as of the time the same was made, whether or not any such representation or disclosure appears as part of this Mortgage.

2.6. Material Destruction of Premises. The Premises or any material part thereof is damaged or destroyed by fire or other casualty and the loss is not adequately covered by insurance actually collected or in the process of collection, and Mortgagor fails to deposit or to cause to be deposited with the Mortgagee the full amount of the deficiency in cash within ten (10) days of the Mortgagee's written request therefor.

2.7. Condemnation/Eminent Domain. Proceedings are formally commenced by any public or quasi-public body to acquire the land, the Premises or any interest in or any part of any of them by condemnation, eminent domain or any similar power or authority, and such proceeding are not dismissed within sixty (60) days of their being instituted, unless in the Mortgagee's opinion such acquisition would not materially interfere with the intended uses of the Premises.

2.8. Mechanics Liens. Any lien or notice of lien of any kind whatsoever (whether for the performance of work or services or the supplying of materials or other things, or in the nature of a judgment lien or lien for taxes, or otherwise) is filed or served against the Premises or any part thereof or is received by the Mortgagee, and remains unsatisfied, uninsured by the title insurer or unbonded to the Mortgagee's satisfaction for a period of thirty (30) days after the Mortgagor receives notice thereof, provided that Mortgagor shall have the right to contest such lien in accordance with the terms of Section 1.10. of this Mortgage.

2.9. Creditor's Rights. The Mortgagor or any guarantor or the indebtedness shall fail to pay its debts, make an assignment for the benefit of its creditors, or shall commit an act of bankruptcy, or shall admit in writing its inability to pay its debts as they become due, or shall

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

seek a composition, readjustment, arrangement, liquidation, dissolution or insolvency proceeding under any present or future statute or law, or shall file a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, or shall become "insolvent" as that term is generally defined under the Federal Bankruptcy Code, or shall in any involuntary bankruptcy case commenced against it file an answer admitting insolvency or inability to pay its debts as they become due, or shall fail to obtain a dismissal of such case within sixty (60) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or shall have a custodian, trustee or receiver appointed for, or have any court take jurisdiction of its property, or any part hereof, in any proceeding for the purpose of reorganization, arrangement, dissolution or liquidation, and such custodian, trustee, liquidator or receiver shall not be discharged, or such jurisdiction shall not be relinquished, vacated or stayed within sixty (60) days of the appointment.

III. REMEDIES

3.1. Acceleration. Upon the occurrence of any Event of Default, the entire indebtedness evidenced by Note and all other Liabilities, together with interest thereon at the rate applicable after maturity as provided in the Note, shall, at the option of Mortgagee, notwithstanding any provisions thereof and without presentment, demand, protest or notice of any kind to Mortgagor or to any other person become and be immediately due and payable.

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

3.3. Possession of Premises; Remedies under Loan Documents and Note. To the extent permitted by law, Mortgagor hereby waives all right to the possession, income, and Rents of the Premises from and after the occurrence of any Event of Default, and Mortgagee is hereby expressly authorized and empowered, at and following any such occurrence, to enter into and upon and take possession of the Premises or any part thereof, to complete any construction or repairs in progress thereon at the expense of Mortgagor, to lease the same, to collect and receive all Rents and to apply the same, less the necessary or appropriate expenses of collection thereof, either for

960999419
61966096

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

the care, operation and preservation of the Premises or, at the election of Mortgagee in its sole discretion, to a reduction of such of the Liabilities in such order as Mortgagee may elect. Mortgagee, in addition to the rights provided under the Note and any of the other Loan Documents is also hereby granted full and complete authority to enter upon the Premises, employ watchmen to protect the Goods and Improvements from depredation or injury and to preserve and protect the Collateral, and to continue any and all outstanding contracts for the erection, completion or repair of improvements to the Premises, to make and enter into any contracts and obligations wherever necessary in its own name, and to pay and discharge all debts, obligations and liabilities incurred thereby, all at the expense of Mortgagor. All such expenditures by Mortgagee shall be Liabilities hereunder. Upon the occurrence of any Event of Default, Mortgagee may also exercise any or all rights or remedies under the Note and any of the other Loan Documents.

3.4. Foreclosure; Receiver. Upon the occurrence of any Event of Default, Mortgagee shall also have the right immediately or at any time thereafter to foreclose this Mortgage. Upon the filing of any complaint for that purpose, the court in which such complaint is filed may, upon application of Mortgagee or at any time thereafter, either before or after foreclosure sale, and without notice to Mortgagor or to any party claiming under Mortgagor and without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of any of the Liabilities, without regard to the then value of the Premises or whether the same shall then be occupied, in whole or in part, as a homestead, by the owner of the equity of redemption, and without regarding any bond from the complainant in such proceedings, appoint a receiver for the benefit of Mortgagee, with power to take possession, charge, and control of the Premises, to lease the same, to keep the buildings thereon insured and in good repair, and to collect all Rents during the pendency of such foreclosure suit, and, in case of foreclosure sale and a deficiency, during any period of redemption.

The court may, from time to time, authorize said receiver to apply the net amounts remaining in his hands, after deducting reasonable compensation for the receiver and his counsel as allowed by the court, in payment (in whole or in part) of any or all of the Liabilities, including without limitation the following, in such order of application as Mortgagee may, in its sole and absolute discretion, elect: (i) amounts due upon the Note, (ii) amounts due upon any decree entered in any suit foreclosing this Mortgage, (iii) costs and expenses of foreclosure and litigation upon the Premises, (iv) insurance premiums, repairs, taxes, special assessments, water charges and interest, penalties and costs, in connection with the Premises, (v) any other lien or charge upon the Premises that may be or become superior to the lien of this Mortgage, or of any decree foreclosing the same and (vi) all moneys advanced by Mortgagee to cure or attempt to cure any default by Mortgagor in the performance of any obligation or condition contained in any of the other Loan Documents or this Mortgage or otherwise, to protect the security hereof provided herein, or in any of the other Loan Documents, with interest on such advances at the interest rate applicable after maturity under the Note. The excess of the proceeds of sale, if any, shall then be paid to Mortgagor, upon reasonable request.

This Mortgage may be foreclosed once against all, or successively against any portion or portions, of the Premises, as Mortgagee may elect, until all of the Premises have been foreclosed

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

against and sold. As part of the foreclosure, Mortgagee in its discretion may, with or without entry, personally or by attorney, sell to the highest bidder all or any part of the Premises, and all right, title, interest, claim and demand therein, and the right of redemption thereof, as an entirety, or in separate lots, as Mortgagee may elect, and in one sale or in any number of separate sales held at one time or at any number of times, all in any manner and upon such notice as provided by applicable law. Upon the completion of any such sale or sales, Mortgagee shall transfer and deliver, or cause to be transferred and delivered, to the purchaser or purchasers the property so sold, in the manner and form as provided by applicable law, and Mortgagee is hereby irrevocably appointed the true and lawful attorney-in-fact of Mortgagor, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose Mortgagee may execute and deliver, for and in the name of Mortgagor, all necessary instruments of assignment and transfer, Mortgagor hereby ratifying and confirming all that said attorney-in-fact shall lawfully do by virtue hereof.

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

3.5. Remedies for Leases and Rents. If any Event of Default shall occur, then, whether before or after institution of legal proceedings to foreclose the lien of this Mortgage or before or after the sale thereunder, Mortgagee shall be entitled, in its discretion, to do all or any of the following:

(i) enter and take actual possession of the Premises, the Rents, the Leases and other Collateral relating thereto or any part thereof, personally, or by its agents or attorneys, and exclude Mortgagor therefrom;

(ii) enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating thereto;

(iii) as attorney-in-fact or agent of Mortgagor, or in its own name as mortgagee and under the powers herein granted, hold, operate, manage and control the Premises, the Rents, the Leases and other Collateral relating thereto and conduct the business, if any, thereof (including entering into new leases of the Premises, or any part thereof, under such terms and conditions as Mortgagee, in its sole and absolute discretion, may elect) either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment of the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Rents, the Leases and other Collateral relating thereto (including actions for the recovery of rent, actions in forcible detainer and actions in distress of rent);

(iv) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;

(v) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof;

(vi) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to the Premises that, in its reasonable discretion, may seem appropriate;

(vii) insure and reinsure the Collateral for all risks incidental to Mortgagee's possession, operation and management thereof; and

(viii) receive all such Rents and proceeds, and perform such other acts in connection with the management and operation of the Collateral, as Mortgagee in its sole discretion may deem necessary or desirable.

Mortgagor hereby granting Mortgagee full power and authority to exercise each and every one of the rights, privileges and powers contained herein at any and all times after any Event of Default without notice to Mortgagor or any other person. Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the Rents to the payment of or on account of the following, in such order as it may, in its sole and absolute discretion, determine: (a) to the payment of the operating expenses of the Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and it shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into Leases), established claims for damages, if any, and premiums on insurance hereinabove authorized; (b) to the payment of taxes, charges and special assessments, the costs of all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Collateral, including the cost from time to time of installing, replacing or repairing the Collateral, and of placing the Collateral in such condition as will, in the judgment of Mortgagee, make it readily rentable; (c) to the payment of any Liabilities; and (d) to the payment of any other cost or expense required or permitted hereunder, including without limitation those expenses set forth in subsections 3.4(i) through (vi) hereof.

The entering upon and taking possession of the Premises, or any part thereof, and the collection of any Rents and the application thereof as aforesaid shall not cure or waive any default theretofore or thereafter occurring or affect any notice or default hereunder or invalidate any act done pursuant to any such default or notice, and, notwithstanding continuance in possession of the Premises or any part thereof by Mortgagee or a receiver, and the collection, receipt and application of the Rents, Mortgagee shall be entitled to exercise every right provided for in this

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgage or by law or in equity upon or after the occurrence of an Event of Default. Any of the actions referred to in this Section 3.5 may be taken by Mortgagee irrespective of and without regard to the adequacy of the security for the indebtedness hereby secured.

3.6. Personal Property. Whenever there exists an Event of Default hereunder, Mortgagee may exercise from time to time any rights, powers and remedies available to it under applicable law and as may be provided in this Mortgage, the Note and the other Loan Documents upon default in the payment of any indebtedness. Mortgagor shall, promptly upon request by Mortgagee, assemble the Collateral and make it available to Mortgagee at such place or places, reasonably convenient for both Mortgagee and Mortgagor, as Mortgagee shall designate. Any notification required by law of intended disposition by Mortgagor of any of the Collateral shall be deemed reasonably and properly given if given at least ten (10) days before such disposition.

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

Mortgagee may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code or other applicable law as in effect from time to time or otherwise available to it under applicable law. Mortgagor hereby expressly waives presentment, demand, notice of dishonor, protest and notice of protest in connection with the Note and, to the fullest extent permitted by applicable law, any and all other notices, demands, advertisements, hearings or process of law in connection with the exercise by Mortgagee of any of its rights and remedies hereunder. Mortgagor hereby constitutes Mortgagee its attorney-in-fact with full power of substitution to take possession of the Collateral upon any Event of Default and, as Mortgagee in its sole discretion deems necessary or proper, to execute and deliver all instruments required by Mortgagee to accomplish the disposition of the Collateral; this power of attorney is a power coupled with an interest and is irrevocable while any of the Liabilities are outstanding.

96099419

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

3.7. No Liability on Mortgagee. Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor and Mortgagor shall and does hereby agree to indemnify against and hold Mortgagee harmless of and from: any and all liabilities, losses or damages which Mortgagee may incur or pay under or with respect to any of the Collateral or under or by reason of its exercise of rights hereunder and any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Collateral or in any of the contracts, documents or instruments evidencing or creating any of the Collateral, unless such liability, claim, cost or demand is caused solely by Mortgagee's wilful misconduct. Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against Mortgagee in its exercise of the powers herein granted to it, and Mortgagor expressly waives and releases any such liability. Should Mortgagee incur any such liability, loss or damage under any of the Leases or under or by reason hereof, or in the defense of any claims or demands, Mortgagor agrees to reimburse Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and reasonable attorneys' fees.

3.8. Accounts. Upon the occurrence of any Event of Default, Mortgagee shall, to the fullest extent permitted by law, be entitled to appropriate and apply on the payment of the Liabilities (whether or not due and in any order of priority as may be selected by Mortgagee in its sole and absolute discretion), any and all accounts and monies held in possession of Mortgagee for the benefit of Mortgagor.

IV. GENERAL

4.1. Permitted Acts. Mortgagor agrees that, without affecting or diminishing in any way the liability of Mortgagor or any other person (except any person expressly released in writing by Mortgagee) for the payment or performance of any of the Liabilities or for the performance of any obligation contained herein or affecting the lien hereof upon the Collateral or any part thereof, Mortgagee may at any time and from time to time, without notice to or the consent of any person release any person liable for the payment or performance of any of the Liabilities; extend the time for, or agree to alter the terms of payment of, any indebtedness under the Note or any of the Liabilities; modify or waive any obligation; subordinate, modify or otherwise deal with the lien hereof; accept additional security of any kind; release any Collateral or other property securing any or all of the Liabilities; make releases of any portion of the Premises; consent to the making of any map or plat of the Premises; consent to the creation of a condominium regime on all or any part of the Premises or the submission of all or any part of the Premises to the provisions of any condominium act or any similar provisions of law of the state where the Premises are located, or to the creation of any easements on the Premises or of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

any covenants restricting the use or occupancy thereof; or exercise or refrain from exercising, or waive, any right Mortgagee may have hereunder or under any of the other Loan Documents.

4.2. Expenses. Mortgagor agrees to indemnify Mortgagee, and hold Mortgagee harmless, from and against all loss, damage and expense, including (without limitation) reasonable attorneys' fees, incurred in connection with any suit or proceeding in or to which Mortgagee may pay or incur in connection with any suit or proceeding in or to which Mortgagee may be made or become a party, which suit or proceeding does or may affect all or any portion of the Collateral or the value, use or operation thereof or this Mortgage or the validity, enforceability, lien or priority hereof or of any of the Liabilities or indebtedness secured hereby. All expenses for which Mortgagor is required to reimburse Mortgagee shall be reasonable.

4.3. Loan Documents. Mortgagor covenants that it will timely and fully perform and satisfy all the terms, covenants and conditions of any and all Loan Documents under which it is obligated.

4.4. Security Agreement: Fixture Filing. This Mortgage, to the extent that it conveys or otherwise deals with personal property or with items of personal property which are or may become fixtures, shall also be construed as a security agreement under the Uniform Commercial Code as in effect in the state in which the Premises are located, and this Mortgage constitutes a financing statement filed as a fixture filing in the Official Records of the County Recorder of the County in which the Premises are located with respect to any and all fixtures included within the term "Collateral" as used herein and with respect to any Goods or other personal property that may now be or hereafter become such fixtures.

4.5. Defeasance. Upon full payment of all indebtedness secured hereby and satisfaction of all the Liabilities in accordance with their respective terms and at the time and in the manner provided, and when Mortgagee has no further obligation to make any advance, or extend any credit hereunder, under the Note or any of the Loan Documents, this conveyance shall be null and void, and thereafter, upon demand therefor, an appropriate instrument of reconveyance or release shall in due course be made by Mortgagee to Mortgagor upon payment by Mortgagor to Mortgagee of a reasonable release fee.

4.6. Partial Release. If the Premises are submitted to the provisions of the Illinois Condominium Property Act, then in that event, Mortgagee will release any unit sold upon receipt of the greater of the Net Proceeds of sale of such unit as hereinafter defined, or Two Hundred Seventy Thousand and No/100 Dollars (\$270,000.00). Net proceeds of sale are gross sales price, less:

- (a) Title and Escrow charges;
- (b) Sales Commissions;
- (c) Reasonable Legal Fees;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

- (d) Customary Prorations; and
- (e) Documentary Stamps.

4.7. Notices. Except as otherwise provided herein, all notices or other communications hereunder shall be sufficiently given and shall be deemed given when delivered by hand delivery, overnight courier service, or on the second day after being sent, by registered or certified mail, first class postage prepaid, return receipt requested, addressed to the addresses set forth below, whether or not actually received or accepted by the addressee. Such notices shall be given as follows:

If to Mortgagor: Stonegate Development L.L.C.
c/o Metropolitan Real Estate Co.
2000 Spring Road
Oak Brook, Illinois 60521

with a copy to: Marjorie C. Howard
Katz, Randall & Weinberg
333 W. Wacker Drive, Suite 1800
Chicago, IL 60606

If to Mortgagee: Highland Community Bank
1701 W. 87th Street
Chicago, Illinois 60620
Attention: Daniel A. Smith

with a copy to: Sachnoff & Weaver, Ltd
30 South Wacker Drive
Suite 2900
Chicago, Illinois 60606
Attn: Ernest D. Simon, Esq.

Any party hereto may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Notices delivered by facsimile or telecopy shall not be deemed sufficient.

4.8. Successors; Mortgagor; Gender. All provisions hereof shall inure to and bind the parties and their respective successors, vendees and assigns. The word "Mortgagor" shall include all persons claiming under or through Mortgagor and all persons liable for the payment or performance of any of the Liabilities whether or not such persons shall have executed the Note or this Mortgage. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

96099419

UNOFFICIAL COPY

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

4.10. Application of Payments. Notwithstanding anything to the contrary contained herein or in any other Loan Document, Mortgagee shall have the sole, exclusive and unreviewable right unilaterally (and without notice to or the consent of any person) to allocate any and all payments which may be received by or tendered to Mortgagee made by the Mortgagor or any other person (including, without limitation, any guarantor now or hereafter existing) at any time or from time to time and which relate in any way to the sums advanced under the Note, hereunder or any of the other Loan Documents in any order of priority as Holder, in its sole and exclusive discretion determine to: (i) the payment of any costs and expenses incurred by Holder hereof to enforce any rights hereunder or under the other Loan Documents or to preserve or protect the Property, (ii) accrued but unpaid interest, penalties and late payment fees, (iii) principal.

4.11. Representation by Counsel. Mortgagor hereby represents and warrants that Mortgagor has been represented by competent counsel of its choice in the negotiation and execution of this Mortgage, the Note and the other Loan Documents, and that Mortgagor has read and understood this Mortgage, the Note and the other Loan Documents and intends to be bound hereby.

4.12. No Obligation on Mortgagee. This Mortgage is intended only as security for the Liabilities. Anything herein to the contrary notwithstanding, (i) Mortgagor shall be and remain liable under and with respect to the Collateral to perform all of the obligations assumed by it under or with respect to each thereof, (ii) Mortgagee shall have no obligation or liability under or with respect to the Collateral by reason of or arising out of this Mortgage, and (iii) Mortgagee shall not be required or obligated in any manner to perform or fulfill any of the obligations of Mortgagor under, pursuant to or with respect to any of the Collateral.

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

4.14. Governing Law. The parties agree that the Federal or state courts in Illinois are a proper forum and shall be the only forum for the resolution of any and all disputes of any nature which may arise between the parties to this Mortgage. No party to this Mortgage shall

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

attempt to change venue from a court in Illinois to a court in any other jurisdiction. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

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

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

4.17. Mortgagee Not a Joint Venturer or Partner. Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor. Without limitation of the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Liabilities secured hereby, or otherwise.

4.18. Time of Essence. Time is declared to be of the essence in this Mortgage, the Note, and any Loan Documents and of every part hereof and thereof.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

4.19. Construction Loan Agreement. Mortgagor has executed and delivered to and with the Mortgagee the Loan Agreement in connection with the construction and erection of certain improvements upon the Real Estate and the disbursement of all or any part of the indebtedness for the purpose of financing the costs thereof, a portion of which loan may be disbursed on a revolving basis. The Loan Agreement is hereby incorporated herein by this reference as fully and with the same effect as if set forth herein at length. Mortgagor hereby agrees to duly and punctually perform, observe and pay or cause to be duly performed, observed and paid all of the terms, conditions, provisions and payments provided for in the Loan Agreement to be performed, observed or paid by any party thereto other than Mortgagee. If there shall be any inconsistency between provisions of this Mortgage and the Loan Agreement, Mortgagee shall have the option of determining which of such inconsistent provisions shall prevail.

4.20. Construction Mortgage Obligatory Future Advances.

(a) Mortgagor covenants and agrees that, in accordance with the provisions of the Loan Agreement, all of the funds advanced and to be advanced hereunder and thereunder have been and will be used exclusively to pay the costs of acquiring the Land and the construction of the Improvements and that this instrument constitutes a "Construction Mortgage" within the meaning of Section 9.313(c) of the Illinois Uniform Commercial Code. All advances and indebtedness arising or accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the Loan Amount or the face amount of the Note, shall be secured hereby. If there shall be any inconsistency between provisions of this Mortgage and the Loan Agreement, Mortgagee shall have the option of determining which of such inconsistent provisions shall prevail.

(b) This Mortgage is granted to secure future advances and loans from Mortgagee to Mortgagor as provided in the Loan Agreement and costs and expenses of enforcing Mortgagor's obligations under this Mortgage and the other Loan Documents. All advances, disbursements or other payments required by the Loan Agreement are obligatory advances up to the credit limits established therein and shall, to the fullest extent permitted by law, have priority over any and all mechanics' liens and other liens and encumbrances arising after this Mortgage is recorded.

4.21. Fees, Costs and Expenses. Any fees, costs or expenses for which Mortgagor is required to reimburse Mortgagee shall be in a reasonable amount.

IN WITNESS WHEREOF, the undersigned have executed and delivered this Mortgage in Chicago, Illinois on the day and year first above written.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

000000000000


UNOFFICIAL COPY

THE ENDS ATTACHED HERETO AND MADE A PART HEREOF.

IN WITNESS WHEREOF, LaSalle National Trust N.A. not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its Vice Presidents or Assistant Vice Presidents and its corporate seal to be hereunto affixed and attested by its Assistant Secretary, the day and year first above written.

By: 
Vice President

ATTEST:

Attest 
Assistant Secretary

Property of Cook County Clerk's Office

UNOFFICIAL COPY

COOK COUNTY CLERK'S OFFICE

Property of Cook County Clerk's Office

UNOFFICIAL COPY

RIDER ATTACHED TO AND MADE A PART OF THE TRUST DEED OR MORTGAGE
DATED February 5, 1996 UNDER TRUST NO. 119986

This Mortgage or Trust Deed in the nature of a mortgage is executed by LA SALLE NATIONAL TRUST, N.A., not personally, but as Trustee under Trust No. 119986 in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said LA SALLE NATIONAL TRUST, N.A. hereby warrants that it possesses full power and authority to execute the Instrument) and it is expressly understood and agreed that nothing contained herein or in the note, or in any other instrument given to evidence the indebtedness secured hereby shall be construed as creating any liability on the part of said mortgagor or grantor, or on said LA SALLE NATIONAL TRUST, N.A. personally to pay said note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being hereby expressly waived by the mortgagor or Trustee under said Trust Deed, the legal owners or holders of the note, and by every person now or hereafter obtaining any right or security hereunder; and that so far as the mortgagor or grantor and said LA SALLE NATIONAL TRUST, N.A. personally are concerned, the legal holders of the note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby mortgaged or conveyed for the payment thereof by the enforcement of the lien created in the manner herein and in said note provided or by action to enforce the personal liability of the guarantor or guarantors, if any. Trustee does not warrant, indemnify, defend title nor is it responsible for any environmental damage.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

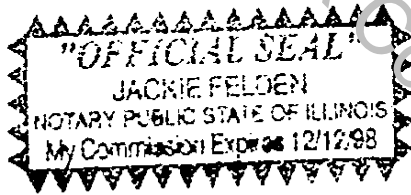
UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY, that the above named Vice President and Assistant Secretary of the LaSalle National Trust N.A., a National Banking Association, personally known to me to be the same person whose names are subscribed to the foregoing instrument as such Vice President and Assistant Secretary respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said National Banking Association, as Trustee, for the uses and purposes therein set forth, and the said Assistant Secretary then and there acknowledged that said Assistant Secretary, as custodian of the corporate seal of said National Banking Association, caused the corporate seal of said National Banking Association to be affixed to said instrument as said Assistant Secretary's own free and voluntary act and as the free and voluntary act of said National Banking Association for the uses and purposes therein set forth.

Given under my hand and Notarial Seal

Date 2/5/96



Jackie Felden
Notary Public

Cook County Clerk's Office

96099419

UNOFFICIAL COPY

EXHIBIT A

Description of the Land

P.I.N.: 14-33-316-014 AND 015

Commonly Known As: 1725-27 N. Mohawk
Chicago, Illinois

LOT 36 AND 37 IN CHARLES J. HOBBS SUBDIVISION OF BLOCK 52 OF CANAL TRUSTEES' SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

Permitted Exceptions

1995 Real Estate Taxes

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT C

PROMISSORY NOTE

LASALLE NATIONAL TRUST N.A. TRUST NO. 119986

\$1,600,000.00
January 21, 1996

Chicago, Illinois

FOR VALUE RECEIVED, the undersigned, LaSalle National Trust, N.A. as Trustee, and not individually, under a Trust Agreement dated December 15, 1995 and known as Trust No. 119986, ("Maker") hereby promises to pay to the order of Highland Community Bank, ("Holder"), at Holder's principal office at 1701 W. 87th Street, Chicago, Illinois 60620-4899 or at such other place or places as Holder hereof may from time to time designate in writing, the principal sum of One Million Six Hundred Thousand and no/100 Dollars (\$1,600,000.00) or so much thereof as may from time to time be advanced hereunder, with interest on the principal balance outstanding from time to time, all as hereinafter set forth.

I. Interest Rate: Monthly Payments.

- (a) Interest Rate. From the date of disbursement of funds until the occurrence of an event set forth in subsection 1(b) below, the principal balance from time to time unpaid shall bear interest at the rate of One (1%) per annum in excess of Holder's prime rate adjusted from time to time as Holder adjusts its prime rate (the "Interest Rate"). The prime rate is not necessarily the lowest rate Holder charges its customers. If funds are disbursed into an escrow in the direction of Maker, interest shall be charged from the date of deposit into the escrow.
- (b) Default Rate. After the earlier of (i) the Maturity Date (as hereafter defined), whether by acceleration or otherwise, or (ii) upon the occurrence of any default in the payment of any installment of principal and/or interest on the date due and payable, or (iii) the occurrence of any other Event of Default (as hereafter defined) hereunder, the total unpaid indebtedness hereunder shall bear interest at the greater of the rate of eighteen percent (18%) per annum or the Interest Rate plus four (4%) percent (the "Default Rate").
- (c) Computation of Interest. Interest shall be computed on the basis of a 360 day year and charged for the actual number of days elapsed.
- (d) Monthly Payments. Maker shall make successive monthly installment payments of interest only commencing on the first day of the month following the initial disbursement of funds hereunder, and on the 1st day of each and every month thereafter through and including January 21, 1997.

96099419

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(e) Late Payment Fee. Maker acknowledges that any late payment by the Maker to Holder of principal, interest or any other amount required to be paid under this Note or the other Loan Documents (defined below) will cause Holder to incur costs not contemplated by this Note or the other Loan Documents the exact amount of which is difficult and impractical to ascertain. Maker shall pay Holder a late payment fee of five percent (5%) of any payment of principal, interest or other amount to be paid under this Note or any other Loan Document which is not received by Holder on the date when due. The late payment fee provided for herein shall be in addition to any interest owed at the Default Rate and shall be payable for each month or partial month during which payment is late.

(f) Mandatory Payment of Principal. Borrower shall pay to Bank, as a mandatory payment, the proceeds of insurance set forth in Section 4(c) of the Loan Agreement. All mandatory payments made pursuant to this Section (f) shall be applied to the Liabilities in accordance with the terms hereof, shall be in addition to and not in lieu of the monthly installments of interest set forth herein, and shall not reduce the monthly installment of interest set forth in Section 1(d) hereof.

2. Maturity Date. Extensions.

(a) Maturity Date. The entire principal balance of this Note then outstanding, plus any accrued and unpaid interest thereon shall be due and payable on February 1, 1997 or such earlier date on which said amount shall become due and payable on account of acceleration by Holder (the "Maturity Date"). Maker promises to pay to Holder hereof principal and interest in the amounts and at the times provided in Section 1 above. Maker agrees that, on the Maturity Date, Maker will pay to Holder the entire principal balance of this Note then outstanding, together with all accrued and unpaid interest, all penalties and late payment fees hereunder.

3. Payment Prior to Maturity Date. This Note may be prepaid in whole or in part upon two (2) days prior written notice to Holder without penalty.

4. Making of Payments. Each payment (including prepayments) of principal, interest, or any other amounts of any kind with respect to, this Note shall be made by the Maker to Holder hereof at Holder's office in Chicago, Illinois (or at any other place which Holder may hereafter designate for such purpose in a notice duly given to the Maker hereunder), not later than one-thirty p.m., Chicago time, on the date due therefor; and funds received after that hour shall be deemed to have been received by Holder on the next following business day. Whenever any payment to be made under this Note shall be stated to be due on a date which is not a business day, the due date therefor shall be extended to the next succeeding business day. Unless Maker is otherwise directed in writing by Holder, all payments and prepayments hereunder shall be paid in immediately available funds in Chicago, Illinois.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

5. Default; Remedies. Any one of the following occurrences shall constitute an "Event of Default" under this Note:

(i) failure by the Maker to make any payment of principal, interest or late payment fee when the same becomes due and payable and such failure continues for a period of ten (10) days after the due date thereof;

(ii) failure by Maker to perform any obligation under, or the occurrence of any other default with respect to any provision of this Note (other than as specifically described in any other provision of this Section 5) and the continuation of such default for a period of thirty (30) days after written notice thereof to the Maker. If Borrower is diligently nursing a cure of the default this period shall be extended by an additional thirty (30) days;

(iii) The occurrence of any Event of Default with respect to any provision of any other Loan Document (other than as specifically described in any other clause of this section 5), which is not cured within the time period provided therefor, if any. With respect to any event or occurrence which constitutes an Event of Default hereunder solely by reason of its constituting a default or Event of Default under another document or instrument, to the extent (if any) that such other document or instrument provides a grace or cure period with respect to such default, the same grace or cure period, and only such period, shall apply with respect thereto under this Note.

(iv) If Maker:

(A) except for sales of individual condominium units, directly or indirectly sells, contracts to sell, assigns, transfers, conveys, leases (other than in the ordinary course of business) or disposes of the Property (defined below), or any part thereof or any interest or estate therein, whether legal, equitable, beneficial or possessory (including (i) any conveyance into trust or (ii) any conveyance, sale or assignment of the beneficial interest in any trust holding title to the Property;

(B) subjects or permits the Property, or any portion thereof or interest (whether legal, equitable, beneficial or otherwise) or estate in any thereof (including the right to receive the rents and profits therefrom) directly or indirectly, to any mortgage, deed of trust, lien, claim, security interest, encumbrance or right (whether senior or junior to, or on a parity with, the Mortgage), except any such security interest in favor of Holder;

(C) subjects the beneficial interest under any trust holding title to the Property, or any portion thereof or interest therein (whether legal, equitable, beneficial or otherwise) or estate in any thereof (or permit the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

same to be subjected), directly or indirectly, to any mortgage, deed of trust, lien, claim, security interest, encumbrance, collateral assignment or right, except any such assignment in favor of Holder.

- (v) If Maker, any guarantor of the indebtedness, or any one or more of them shall fail to pay its debts, make an assignment for the benefit of its creditors, or shall commit an act of bankruptcy, or shall admit in writing its inability to pay its debts as they become due, or shall seek a composition, readjustment, arrangement, liquidation, dissolution or insolvency proceeding under any present or future statute or law, or shall file a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, or shall become "insolvent" as that term is generally defined under the Federal Bankruptcy Code, or shall in any involuntary bankruptcy case commenced against it file an answer admitting insolvency or inability to pay its debts as they become due, or shall fail to obtain a dismissal of such case within forty-five (45) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or shall have a custodian, trustee or receiver appoint for, or have any court take jurisdiction of its property, or any part hereof, in any proceeding for the purpose of reorganization, arrangement, dissolution or liquidation, and such custodian, trustee, liquidator or receiver shall not be discharged, or such jurisdiction shall not be relinquished, vacated or stayed within sixty (60) days of the appointment.

Upon the occurrence of any Event of Default hereunder, the entire outstanding principal balance and any unpaid interest, penalties or late payment fees then accrued under this Note, shall, at the option of Holder hereof and without demand or notice of any kind to the undersigned or any other person (including, but not limited to, any guarantor now or hereafter existing), immediately become and be due and payable in full. In such event, Holder shall have and may exercise any and all rights and remedies available at law or in equity in addition to any and all rights and remedies provided in any of the other Loan Documents.

6. Application of Payments. Holder shall have the sole, exclusive and unreviewable right unilaterally (and without notice to or the consent of any person) to allocate any and all payments which may be received by or tendered to Holder made by the Maker or any other person (including, without limitation, any guarantor now or hereafter existing) at any time or from time to time and which relate in any way to the sums advanced hereunder or any of the other Loan Documents in any order of priority as Holder, in its sole and exclusive discretion determine to: (i) the payment of any costs and expenses incurred by Holder hereof to enforce any rights hereunder or under the other Loan Documents or to preserve or protect the Property, (ii) accrued but unpaid interest, penalties and late payment fees, and (iii) principal.

Notwithstanding the foregoing, in the event Maker makes a payment at any time during the term hereof in excess of the amount then due and at the time of such payment no interest,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

fees, or penalties are then accrued and unpaid, the amount of such payment shall be applied to principal.

7. Captions. Any headings or captions in this Note are inserted for convenience of reference only. Such headings or captions shall not be deemed to constitute a part hereof, nor shall they be used to construe or interpret the provisions of this Note. As used herein, the term Holder refers to Highland Community Bank, Bank, its successors, assignees and any person claiming by, through or under said entity.

8. Waiver. Maker, for itself and for its successors, transferees and assigns hereby irrevocably (i) waives diligence, presentment and demand for payment, protest, notice, notice of protest and nonpayment, dishonor and notice of dishonor and all other demands or notices of any and every kind whatsoever, and (ii) agrees that this Note and any or all payments coming due hereunder or under any of the other Loan Documents may be extended from time to time in the sole discretion of Holder hereof without in any way affecting or diminishing Maker's liability hereunder.

No extension of the time for any payment due hereunder or under any of the other Loan Documents made by agreement with any person now or hereafter liable for payment of this Note or any other Loan Document shall operate to release, discharge, modify, change or affect the original liability under this Note or any other Loan Document, either in whole or in part.

No delay in the exercise of any right or remedy hereunder by Holder shall be deemed to be a waiver of such right or remedy, nor shall the exercise of any right or remedy hereunder by Holder be deemed an election of remedies or a waiver of any other right or remedy. Without limiting the generality of the foregoing, the failure of Holder promptly after the occurrence of any default hereunder to exercise its right to declare the indebtedness remaining unmatured hereunder to be immediately due and payable shall not constitute a waiver of such right while such default continues nor a waiver of such right in connection with any future default.

No waiver or limitation of any right or remedy hereunder by Holder shall be effective unless (and any such waiver or limitation shall be effective only to the extent) expressly set forth in a writing, signed and delivered by Holder to Maker. No notice to or demand on Maker in any case shall entitle Maker to any other notice or demand in similar or other circumstances, nor shall such notice or demand constitute a waiver of any rights or remedy of Holder to any other or further actions. In its sole discretion, Holder may, at any time and from time to time, waive any one or more of the rights or remedies contained herein, but such waiver in any instance or under any particular circumstance shall not be deemed to be a waiver of such rights or remedies in any other instance or under any other circumstance.

9. Payment of Costs. The undersigned hereby expressly agrees that upon the occurrence of any Event of Default under this Note, the undersigned will pay to Holder, on demand, all costs of collection and enforcement of every kind, including (but not limited to) all reasonable attorneys' fees, court costs, and other costs and expenses of every kind incurred by

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Holder in connection with the enforcement hereof or the protection or realization of any or all of the security for this Note, whether or not any lawsuit is filed with respect thereto.

10. Security.

(a) This Note is secured by, inter alia, a Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement bearing even date herewith (the "Mortgage"), made and granted by Maker, as mortgagor, to Holder, as mortgagee, which is a lien on real estate in Cook County, Illinois (the "Property"), and which also creates a security interest in personal property located thereon or utilized in connection therewith. The indebtedness evidenced by this Note is further evidenced and secured by that certain Construction Loan Agreement by and between Holder and Maker dated even date herewith (the "Loan Agreement"). This Note, Mortgage, the Loan Agreement, together with all such agreements, loan agreements, security agreements, assignments, certificates, indemnifications, documents, notes, guarantees, pledges, consents, contracts, notices, financing statements, hypothecation agreements, collateral assignments, assignments, mortgages, chattel mortgages, and instruments given to evidence or secure the indebtedness evidenced by the Note and all other written matter and all amendments, modifications, supplements, extensions and restatements thereof and thereto, and all agreements, notes, documents or instruments delivered in substitution therefor or in lieu thereof, whether heretofore, now or hereafter executed by or on behalf of Maker, guarantor, any one or more of them, or any other person or entity, delivered to Lender or any participant with respect to this Note and the loan evidenced hereby are collectively referred to herein as the "Loan Documents." Reference is hereby made to the Mortgage, the Loan Agreement and the other Loan Documents for a statement of certain circumstances under which amounts due pursuant to this Note may be accelerated and for a description of the property covered thereby and the nature and extent of the security granted pursuant thereto.

11. Notices. Any notice, demand, request or other communication desired to be given or required pursuant to the terms hereof shall be in writing and shall be delivered by personal service or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address as the parties hereto may designate in writing from time to time:

If to Maker: Stonegate Development L.L.C
c/o Metropolitan Real Estate Co.
2000 Spring Road
Oak Brook, IL 60521

With a Copy to: Marjorie C. Howard
Katz, Randall & Weinberg
333 W. Wacker Drive, Suite 1800
Chicago, IL 60606

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

If to Holder: Highland Community Bank
1701 W. 87th Street
Chicago, IL 60620
Attn: Daniel A. Smith

With a Copy to: Sachnoff & Weaver, Ltd.
30 S. Wacker Drive
Chicago, IL 60606
Attn: Ernest D. Simon, Esq.

Any such notice, demand, request or other communication shall be deemed given when personally delivered or if mailed two (2) days after deposit in the mail.

12. Time of the Essence. Time is hereby declared to be of the essence of this Note and of every part hereof.

13. Governing Law and Jurisdiction. This Note has been executed and delivered at Chicago, Illinois, and shall be governed by and construed in accordance with the internal laws of the State of Illinois. In any controversy, dispute or question arising hereunder or under the other Loan Documents, Maker hereby consents to the exercise of jurisdiction over its person and property by any court of competent jurisdiction situated in the State of Illinois (whether it be a court of such State, or a court of the United States of America situated in such State). In connection therewith, Maker agrees to submit to, and be bound by, the jurisdiction of such court upon Holder's mailing of process by registered or certified mail, return receipt requested, postage prepaid, to the Maker at its address for receipt of notices under this Note.

14. Holder Not Partner of Maker. Under no circumstances whatsoever shall Holder of this Note be deemed to be a partner or a co-venturer with Maker. Maker shall not represent to any person that Maker and Holder are partners or co-venturers. Any and all actions by Holder in exercising any rights, remedies or privileges hereunder or in enforcing this Note or the other Loan Documents shall be exercised by Holder solely in furtherance of its role as a secured lender.

15. Severability. In the event any one or more of the provisions of this Note shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event any one or more of the provisions of this Note operate or would prospectively operate to invalidate this Note, then, and in either of such events, such provision or provisions only shall be deemed null and void and shall not affect any other provision of this Note and the remaining provisions of this Note shall remain operative and in full force and effect.

16. Joint and Several Liability. All obligations, liabilities, covenants and agreements of Maker hereunder are joint and several.

17. Usury. The provisions of this Section 17 shall govern and control over any irreconcilably inconsistent provision contained in this Note or in any other document evidencing

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

or securing the indebtedness evidenced hereby. Holder hereof shall never be entitled to receive, collect, or apply as interest hereon (for purposes of this Section 17, the word "interest" shall be deemed to include any sums treated as interest under applicable law governing matters of usury and unlawful interest), any amount in excess of the Highest Lawful Rate (hereinafter defined) and, in the event Holder ever receives, collects, or applies as interest any such excess, such amount which would be excessive interest shall be deemed a partial prepayment of principal and shall be treated hereunder as such; and, if the principal of this Note is paid in full, any remaining excess shall forthwith be paid to Maker. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the Highest Lawful Rate, Maker and Holder shall, to the maximum extent permitted under applicable law, (i) characterize any non-principal payment as an expense, fee or premium rather than as interest, (ii) exclude voluntary prepayments and the effects thereof, and (iii) spread the total amount of interest throughout the entire contemplated term of this Note provided, that if this Note is paid and performed in full prior to the end of the full contemplated term hereof, and if the interest received for the actual period of existence hereof exceeds the Highest Lawful Rate, Holder shall refund to Maker the amount of such excess or credit the amount of such excess against the principal of this Note, and, in such event, Holder shall not be subject to any penalties provided by any laws for contracting for, charging or receiving interest in excess of the Highest Lawful Rate. "Highest Lawful Rate" shall mean the maximum rate of interest which Holder is allowed to contract for, charge, take, reserve or receive under applicable law after taking into account, to the extent required by applicable law, any and all relevant payments or charges hereunder.

18. Waiver of Jury Trial. MAKER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE OR ANY OTHER LOAN DOCUMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. MAKER HEREBY EXPRESSLY ACKNOWLEDGES THIS WAIVER IS A MATERIAL INDUCEMENT FOR HOLDER TO ACCEPT THIS NOTE AND TO MAKE THE LOAN EVIDENCED HEREBY AND BY THE OTHER LOAN DOCUMENTS.

19. Representation by Counsel. Maker hereby represents and warrants that it has consulted and conferred with competent legal counsel of its choice before executing this Note and all other Loan Documents. Maker further represents and warrants that it has read and understood the terms of this Note and intends to be bound hereby.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

This note is executed by LaSalle National Trust N.A., not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in them as such Trustee, and is payable only out of the property specifically described in said Mortgage securing the payment hereof, by the enforcement of the provisions contained in said Mortgage. No personal liability shall be asserted or be enforceable against the promisor or any person interested beneficially or otherwise in said property specifically described in said Mortgage given to secure the payment hereof, or in the property or funds at any time subject to said trust agreement, because or in respect of this note or the making, issue or transfer thereof, all such liability, if any, being expressly waived by each taker and holder hereof, but nothing herein contained shall modify or discharge the personal liability expressly assumed by the guarantor hereof, if any, and each original and successive holder of this note accepts the same upon the express condition that no duty shall rest upon the undersigned to sequester the rents, issues and profits arising from the property described in said Mortgage, or the proceeds arising from the sale or other disposition thereof, but that in case of default in the payment of this note or of any instalment hereof, the sole remedy of the holder hereof shall be by foreclosure of the said Mortgage given to secure the indebtedness evidenced by this note, in accordance with the terms and provisions in said Mortgage set forth or by action to enforce the personal liability of the guarantor, if any, of the payment hereof, or both.

LASALLE NATIONAL TRUST N.A. AS
TRUSTEE UNDER TRUST AGREEMENT
DATED DECEMBER 15, 1995 AND
KNOWN AS TRUST 119986 AND NOT
INDIVIDUALLY

By: _____
Name: _____
Title: _____

ATTEST:

Name: _____
Title: _____

UNOFFICIAL COPY

Property of Cook County Clerk's Office