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Omaha, Nebraska 68154

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. COOK COUNTY RECORDER

MORTGAGE, SECURITY AGREEMENT

AND

ASSIGNMENT OF RENTS

89 v

LAKE MANAWA - CHICAGO - FPIII, L.P., a Nebraska limited partnership,

as Mortgagor,

and

FIRST NATIONAL BANK OF OMAHA,

as Mortgagee

Dated as of February 14<sup>th</sup>, 1996

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## MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (this "Mortgage") is made as of the 14<sup>th</sup> day of February, 1996, by and between LAKE MANAWA - CHICAGO - FPIII, L.P., a Nebraska limited partnership ("Mortgagor"), whose mailing address is c/o Dial Companies, 11506 Nicholas Street, Omaha, Nebraska 68154 and FIRST NATIONAL BANK OF OMAHA, a national banking association, Omaha, Nebraska ("Mortgagee"), whose mailing address is One First National Center, Omaha, Nebraska 68102.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged.

I. Mortgagor hereby irrevocably mortgages and warrants, grants, bargains, sells, transfers, conveys and assigns to Mortgagee, subject to the terms and conditions hereinafter set forth, all of the following-described estate, property and interests of Mortgagor now or hereafter acquired, together with all cash and non-cash proceeds thereof, which may be referred to herein collectively as the "Real Property":

A. The "Property" being the real property located in the City of Forest Park, County of Cook, State of Illinois, described on Exhibit "A" attached hereto and by this reference incorporated herein, together with all rents, issues, profits, royalties, income and other benefits derived from the Property (collectively the "rents"); all estate, right, title and interest of Mortgagor in and to all leases or subleases covering the Property, or any portion thereof, now or hereafter existing or entered into, including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature; all right, title and interest of Mortgagor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired; all interests, estate or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Property; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property;

B. Any and all buildings and improvements now or hereafter erected on the Property, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to such buildings and improvements (the "Improvements");

II. Mortgagor further grants Mortgagee a security interest in the following (the "Personal Property") to Mortgagee:

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A. All right, title and interest of Mortgagor in and to all tangible personal property now owned or hereafter acquired by Mortgagor and now or at any time hereafter located on or at the Property or used in connection therewith, including, but not limited to: all building materials stored on the Property, goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating and refrigerating equipment, equipment for electronic monitoring, entertainment, recreation, window or structural cleaning, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage, all kitchen equipment, and all other equipment of every kind), other than such property owned by tenants of Mortgagor;

B. All of Mortgagor's interest in all existing and future accounts, contract rights, general intangibles, files, books of account, agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the Mortgaged Property (as defined below), whether now existing or entered into or obtained after the date hereof;

C. All the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereafter acquire in the Mortgaged Property, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages; and Mortgagor hereby authorizes, directs and empowers Mortgagee, at its option, on Mortgagor's behalf, or on behalf of the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds and to give proper receipts and acquittances therefor.

The foregoing items of Real Property and Personal Property are hereinafter called the "Mortgaged Property."

PROVIDED, HOWEVER, that if the obligations secured hereby shall be paid when due, and if the Mortgagor shall keep, perform and observe all and singular the obligations, covenants, agreements and provisions in this Mortgage expressed to be kept, performed by and observed by or on the part of the Mortgagor and all obligations of the Mortgagee under the Building Loan Agreement have been terminated, then the Mortgagee, its successors and assigns, shall reconvey and release the Mortgaged Property.

THIS MORTGAGE SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS:

(i) Payment of indebtedness evidenced by that certain Promissory Note dated February 4, 1996 (the "Promissory Note"), executed by Mortgagor in favor of Mortgagee in the principal amount of \$3,350,000.00 bearing interest at the rate of Nine Percent (9.00%) per annum, having an intended maturity date of February 3, 1997, and being payable as

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provided therein, according to its terms, and all extensions and renewals thereof;

(ii) Payment of all other indebtedness and performance of all obligations and covenants of Mortgagor under each of the "Loan Documents," as hereinafter defined; and

(iii) Payment of all of the principal of and interest on any future advances under the Loan Documents, and all sums advanced by Mortgagee to protect the Mortgaged Property, with interest thereon at the rate of Nine Percent (9.00%) per annum from the date of advance by Mortgagee to the date of payment by Mortgagor and Thirteen Percent (13.00%) per annum following an Event of Default.

PROVIDED HOWEVER, that the indebtedness and obligations secured by this Mortgage shall never exceed \$5,000,000.00.

The indebtedness and the obligations secured by this Mortgage which are described in (i) through (iii) above may be referred to herein as the "Secured Obligations."

The indebtedness secured hereby is further evidenced and secured by the following, dated of even date herewith, which, with this Mortgage and the Promissory Note, are hereinafter referred to collectively as the "Loan Documents:"

- (a) an Assignment of Rents and Leases;
- (b) a Building Loan Agreement;
- (c) an Environmental Indemnity Agreement;
- (d) UCC Financing Statements; and
- (e) such other Loan Documents as Lender, in its sole and absolute discretion, shall require,

and is guaranteed by an instrument entitled "Guaranty of Completion and Payment," executed by Donald F. Day, Terry L. Clauff, James M. Thorburn, Christopher R. Held, Richard N. Cooper, Patrick G. Day, Robert I. Welstead and Miracle Hills II, Inc., a Nebraska corporation, dated of even date herewith.

## ARTICLE I

### REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF MORTGAGOR

Mortgagor hereby represents, warrants, covenants and agrees:

Section 1.01. Payment of Secured Obligations. Mortgagor hereby grants this Mortgage to secure the payment and performance when due of the Secured

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Obligations. The consideration received by Mortgagor to execute and deliver this Mortgage and the liens and security interests created herein are sufficient and will provide a direct economic benefit to Mortgagor.

Section 1.02. Title of Mortgagor. Mortgagor has, subject to Permitted Encumbrances set forth in Exhibit "B" hereto, in its own right, good, marketable and indefeasible title in fee simple to the Mortgaged Property, which is free from encumbrance superior to the encumbrance of this Mortgage and has full right to make this conveyance.

Section 1.03. Construction of Improvements. To complete in good and workmanlike manner any building or improvement or repair relating thereto which may be begun on the Property or contemplated by the loan secured hereby, to pay when due all costs and liabilities incurred therefor, and not to permit any mechanic's or materialmen's lien against the Property. Mortgagor also agrees, anything in this Mortgage to the contrary notwithstanding:

(a) to promptly commence work and to complete the proposed improvements promptly;

(b) to complete same in accordance with plans and specifications as approved by Mortgagee;

(c) to comply with all of the terms of the Building Loan Agreement between Mortgagor and Mortgagee;

(d) to allow Mortgagee to inspect the Property at all times during construction; and

(e) to replace any work or materials unsatisfactory to Mortgagee, within fifteen (15) days after written notice from Mortgagee of such fact, which notice may be given to Mortgagor by registered or certified mail, sent to its last known address, or by personal service of the same.

Section 1.04. Maintenance, Repair, Alterations. Mortgagor shall: (i) keep the Mortgaged Property in good condition and repair, subject to reasonable and ordinary wear and tear; not remove, demolish or substantially alter (except such alterations as may be required by the Building Loan Agreement or by laws, ordinances or regulations) any of the Improvements; (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon, subject to the provisions of Section 1.07, and to pay when due all claims for labor performed and materials furnished therefor; (iii) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Property, or any part thereof, or requiring any alterations or improvements; not to commit or permit any waste or deterioration of the Mortgaged Property; (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; (v) comply with the provisions of any lease, if this Mortgage is on a leasehold; and (vi) not commit, suffer or permit any act to be

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done in or upon the Mortgaged Property in violation of any law, ordinance or regulation.

Section 1.05. Required Insurance. Mortgagor shall provide, maintain and keep at all times in force the following policies of insurance:

(a) Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type now known as "fire and extended coverage" in an amount not less than the original amount of the Promissory Note or the full replacement cost of the Improvements and Personal Property, whichever is greater; and with a deductible from the loss payable for any casualty in amounts acceptable to Mortgagee. The policies of insurance carried in accordance with this subparagraph (a) shall contain the "Replacement Cost Endorsement";

(b) Loss of rent insurance for at least six (6) months;

(c) Comprehensive general liability insurance (including coverage for elevators and escalators, if any, on the Mortgaged Property and, if any construction of new Improvements occurs after execution of this Mortgage, completed operations coverage for two years after construction of the Improvements has been completed) on an "occurrence basis" against claims for "personal injury," including, without limitation, bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit satisfactory to Mortgagee and in no event less than \$1,000,000.00 with respect to personal injury or death to any one or more persons or damage to property;

(d) Workers' compensation insurance (including employer's liability insurance, if required by Mortgagee) for all employees of Mortgagor engaged on or with respect to the mortgaged Property in such amount as is satisfactory to Mortgagee, or, if such limits are established by law, in such amounts;

(e) During the course of any construction or repair of Improvements on the Property, builder's completed value risk insurance against "all risks of physical loss," including collapse and transit coverage, during construction of such Improvements, with deductibles acceptable to Mortgagee, in non-reporting form, covering the total value of work performed and equipment, supplies and materials furnished;

(f) If requested by Mortgagee, boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment, provided the Improvements contain equipment of such nature, and insurance against loss of occupancy or use arising from any such breakdown, in such amounts as are satisfactory to Mortgagee;

(g) If requested by Mortgagee, flood insurance if the Property is in an area identified as a special flood hazard area pursuant to the Flood

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Disaster Protection Act of 1973, as amended, or other applicable law, with such insurance to be at least the amount available under the National Flood Insurance Act of 1968 and, if available under other policies issued by other sources, then in such additional amounts as Mortgagee may reasonably require; and

(h) Such other insurance, including, without limitation, earthquake insurance, as may from time to time be required by Mortgagee, in such amounts and against such hazards and risks, as is commonly obtained by prudent owners of property similar in use to the Mortgaged Property and located in the same area in which the Property is located.

All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy, notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Mortgagor.

Section 1.06. Delivery of Insurance Policies. Payment of Premiums. All policies of insurance shall be issued by companies and in amounts as required by the provisions of the Loan Documents and as otherwise satisfactory to Mortgagee. All policies of insurance shall name Mortgagee as a named insured, and shall have attached thereto a lender's loss payable endorsement for the benefit of Mortgagee, which endorsement indicates that all insurance proceeds are payable directly to Mortgagee, and shall be otherwise in form satisfactory to Mortgagee. Mortgagor shall furnish Mortgagee with an original or certified copy of all policies of required insurance.

Fifteen (15) days prior to the expiration of each such policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the reissuance of a policy continuing insurance in force as required by this Mortgage. All such policies shall contain a provision that such policies will not be canceled or materially amended in any manner, including, without limitation, amended to reduce the scope or limits of coverage, without thirty (30) days' prior written notice to Mortgagee and shall provide that no claims shall be paid thereunder without at least ten (10) days prior written notice to Mortgagee. In all cases, Mortgagor shall immediately give notice to Mortgagee of any notice received by Mortgagor of any expiration, cancellation or modification of, or material reduction of coverage under, any such policy.

In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Mortgage or make the deposits required hereunder, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor the amount of all such premiums, together with interest thereon at the Default Rate provided by the Promissory Note, shall be secured by this Mortgage.

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Mortgagor shall deposit with Mortgagee on the first business day of each and every calendar month, until all Secured Obligations are paid in full, a non-interest-bearing amount equal to one-twelfth of the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage. Mortgagor further agrees to cause all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and provided Mortgagor has deposited sufficient funds pursuant to this Section 1.06, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee may notify Mortgagor and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of such funds or to be obligated to expend any amounts in excess of the amount of funds so deposited, pursuant to this Section 1.06. In its sole discretion, Mortgagee may waive Mortgagor's obligation to comply with the deposit requirements of this Section 1.06, provided that Mortgagee may, at any time thereafter, in its sole discretion, rescind such waiver by notice, whereupon Mortgagor shall resume depositing such amounts in the manner required hereunder. If Mortgagee waives Mortgagor's obligation to deposit amounts in the manner described above, Mortgagor shall pay all insurance premiums at least thirty (30) days prior to their due dates and shall, within ten (10) days of such payment, deliver proof thereof to Mortgagee.

Mortgagee may, at any time at Mortgagee's option, apply any sums or amounts received pursuant hereto, or as rents or income of the Mortgaged Property or otherwise, upon any Secured Obligation in such manner and order as Mortgagee may elect. The receipt, use or application of any such sums by Mortgagee hereunder shall not be construed to affect the maturity of any Secured Obligation or any of the rights or powers of Mortgagee under the terms of the Loan Documents or any of the obligations of Mortgagor or any guarantor under the Loan Documents.

Section 1.07. Insurance Proceeds. After the occurrence of any casualty to the Mortgaged Property, or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee and each insurer and promptly submit a claim to insurer for payment of insurance proceeds; Mortgagor shall provide Mortgagee with a copy of such claim.

(a) All proceeds of insurance paid or payable under any insurance policy (the "Insurance Proceeds") with respect to the Mortgaged Property shall be paid to Mortgagee; each insurer is hereby authorized and directed to make payment for any such loss directly to Mortgagee instead of payment to Mortgagor. Any Insurance Proceeds shall be applied first to the payment of all costs and expenses incurred by Mortgagee in obtaining such proceeds. Provided no Event of Default has occurred hereunder, or an event which, with the passage of time or the giving of notice, would constitute an Event of Default hereunder, the balance of the proceeds, if any, shall be (i) applied by Mortgagee toward altering, restoring or rebuilding the Mortgaged Property or such portion thereof that may have been altered, damaged or destroyed, and (ii) the balance against sum

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secured hereby, in such order as Mortgagee may in its absolute discretion elect. Such damage or destruction shall not affect the lien of this Mortgage or the obligations of Mortgagor hereunder, and Mortgagee is authorized at Mortgagee's option to compromise and settle all loss claims on said policies if not adjusted promptly by Mortgagor. The application of Insurance Proceeds in the manner set forth above shall be conditional upon Mortgagor first depositing with Mortgagee such amount as Mortgagee may, in its reasonable discretion, determine to be required beyond the Insurance Proceeds to complete the altering, restoring or rebuilding of the Mortgaged Property, or such portion thereof as may have been altered, damaged or destroyed ("Additional Funds"). Disbursement of Insurance Proceeds, together with the Additional Funds, if any, required to be so deposited by Mortgagor with Mortgagee shall be in accordance with Mortgagee's then current construction loan procedures applicable to projects located in the State of Illinois. If, however, an Event of Default has occurred which was not cured within the applicable cure period, if any, or Mortgagor has failed to provide the deposit of the Additional Funds within thirty (30) days following the date of receipt of the Insurance Proceeds, then the balance of the proceeds, if any, may be applied at the option of Mortgagee, (i) toward altering, restoring or rebuilding the Mortgaged Property or such portion thereof that may have been altered, damaged or destroyed, or (ii) against sums secured hereby in such order as Mortgagee may in its absolute discretion elect.

(b) Notwithstanding the application of Insurance Proceeds to the payment of a portion of the Secured Obligations, any unpaid portion of the Secured Obligations shall remain in full force and effect, and Mortgagor shall not be excused in the payment thereof. If any act or occurrence of any kind or nature on which insurance was not obtained or obtainable shall result in damage to or loss or destruction of the Mortgaged Property, Mortgagor shall give immediate notice thereof to Mortgagee and, unless otherwise so instructed by Mortgagee, shall promptly, at Mortgagor's sole cost and expense, whether or not the Insurance Proceeds are adequate to cover such cost and expense, restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction, in accordance with plans and specifications submitted to and approved by Mortgagee.

(c) Except as provided below, nothing contained in this Mortgage shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Property as provided in Section 1.04 hereof. The application or release by Mortgagee of any Insurance Proceeds shall not cure or waive any Event of Default or notice of default under this Mortgage or invalidate any act done pursuant to such notice. If Mortgagee elects not to so apply the Insurance Proceeds to the restoration, rebuilding or repair of the Mortgaged Property pursuant to Section 1.07(a) hereof, Mortgagor shall not be required to restore, rebuild or repair the portion of the Mortgaged Property damaged or destroyed, and the failure to do so shall not constitute an Event of Default under this Mortgage.

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Section 1.08. Assignment of Policies Upon Foreclosure. In the event of the foreclosure of this Mortgage, or other transfer of title to the Mortgaged Property, or any part thereof, the purchaser of the Mortgaged Property, or such part thereof, shall succeed to all of Mortgagor's rights, including any rights to unexpired insurance and unearned or returnable premiums, in and to all insurance policies required by Section 1.05, subject to limitations on assignment of blanket policies, and limited to such rights as relate to the Mortgaged Property or such part thereof. If Mortgagee acquires title to the Mortgaged Property, or any part thereof, in any manner, it shall thereupon (as between Mortgagor and Mortgagee) become the sole and absolute owner of the insurance policies, and all proceeds payable thereunder with respect to the Mortgaged Property, or such part thereof, required by Section 1.05, with the sole right to collect and retain all unearned or returnable premiums thereon with respect to the Mortgaged Property, or such part thereof, if any.

Section 1.09. Indemnification; Subrogation; Waiver of Offset.

(a) If Mortgagee is made a party defendant to any litigation concerning this Mortgage or the Mortgaged Property, or any part thereof or interest therein, or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify and hold Mortgagee harmless from all liability by reason of such litigation, including all attorneys' fees and expenses incurred by Mortgagee in any such litigation, whether or not any such litigation is prosecuted to judgment. Upon an Event of Default, Mortgagee may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following an Event of Default, Mortgagor shall pay all attorneys' fees and expenses incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor by reason of an Event of Default.

(b) Mortgagor waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives, for loss of or damage to Mortgagor, the Mortgaged Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

(c) All sums payable by Mortgagor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the Secured Obligations of Mortgagor hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property, or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements, or any part thereof, by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagor, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagor, or by any court, in any such proceeding; or (v) any

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other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Mortgagor shall have notice or knowledge of any of the foregoing. To the extent permitted by law, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any Secured Obligation.

## Section 1.10. Taxes and Impositions.

(a) Mortgagor agrees to pay, when due, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Property, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental and nongovernmental charges of like nature are hereinafter referred to as "Impositions").

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Property in lieu of or in addition to the Impositions payable by Mortgagor pursuant to subparagraph (a) hereof, or (ii) a license fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part upon the amount of the outstanding Secured Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Mortgagor shall pay and discharge the same as herein provided with respect to the payment of Impositions. In addition to the other remedies of Mortgagee under Article V of this Mortgage, at the option of Mortgagee, all Secured Obligations, together with all accrued interest thereon, shall become due and payable one hundred eighty (180) days after Mortgagor receives written notice thereof in the event that Mortgagor shall not be permitted to pay such fees, taxes or assessments on behalf of Mortgagee.

(c) Subject to the provisions of subparagraph (d) of this Section 1.10, Mortgagor covenants to furnish Mortgagee within thirty (30) days after the date upon which any such Imposition is due and payable by Mortgagor, official receipts of the appropriate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payment thereof.

(d) Subject to the applicable state law provisions, Mortgagor shall have the right to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Mortgagor's covenant to pay any such Imposition, when due, at the time and in the manner provided in this Section 1.10.

(e) Mortgagor shall deposit with Mortgagee on the first business day of each and every calendar month, until all Secured Obligations are paid in full, an amount equal to one-twelfth of the annual Impositions

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estimated by Mortgagee to be next due on the Mortgaged Property. Mortgagor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and provided Mortgagor has deposited sufficient funds pursuant to this Section 1.10(e), Mortgagee may pay such amounts as may be due thereunder out of the funds so deposited. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Mortgagor, and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. In its sole discretion, Mortgagee may waive Mortgagor's obligation to comply with the deposit requirements of this Section 1.10(e), provided that Mortgagee may at any time, in its sole discretion, rescind such waiver by notice, whereupon Mortgagor shall resume depositing such amounts in the manner required herein.

Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of such funds or to be obligated to expend any amounts in excess of the amount of funds so deposited pursuant to this Section 1.10(e). Mortgagee may impound or reserve for future payment of Impositions such portion of such payments as Mortgagee may in its absolute discretion deem proper, applying the balance on the Secured Obligations. If Mortgagor fails to deposit sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Mortgagee may, at Mortgagee's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Mortgagee as herein elsewhere provided, or at the option of Mortgagee, Mortgagee may, without making any advance whatever, apply any sums held by it upon any Secured Obligation.

(f) Mortgagor covenants and agrees not to suffer, permit or initiate the joint assessment of the Real Property and Personal Property, or any other procedure whereby the lien of the Real Property taxes and the lien of the Personal Property taxes shall be assessed, levied or charged to the Mortgaged Property as a single lien.

(g) If requested by Mortgagee, Mortgagor shall cause to be furnished to Mortgagee, at Mortgagor's expense, a tax reporting service covering the Mortgaged Property of the type and duration and with a company satisfactory to Mortgagee.

Section 1.11. Utilities. Mortgagor shall pay when due all utility charges which are incurred for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property for gas, electricity, water or sewer services furnished to the Mortgaged Property and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

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Section 1.12. Actions Affecting Mortgaged Property. Mortgagor shall appear in and contest any action or proceeding purporting to affect the title of Mortgagor in the Mortgaged Property or security hereof or the rights or powers of Mortgagee; and Mortgagor shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Mortgagee may appear.

Section 1.13. Actions by Mortgagee to Preserve Mortgaged Property. Should Mortgagor fail to make any payment or to do any act as and in the manner provided in this Mortgage, Mortgagee, in its sole discretion, without obligation to do so and without notice to or demand upon Mortgagor and without releasing Mortgagor from any Secured Obligation, may make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation: (i) to enter upon and take possession of the Mortgaged Property; (ii) to direct Mortgagor to terminate any management agent and to employ such management agent as Mortgagee may determine in its sole discretion; (iii) to make additions, alterations, repairs and improvements to the Mortgaged Property which it may consider necessary or proper to keep the Mortgaged Property in good condition and repair; (iv) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Mortgagee may affect or appears to affect the security of this Mortgage or be prior or superior hereto; and (vi) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Mortgagor shall immediately upon demand therefor by Mortgagee pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

Section 1.14. Survival of Warranties. Mortgagor shall fully and faithfully satisfy and perform the Secured Obligations. All representations, warranties and covenants of Mortgagor contained herein shall remain continuing obligations, warranties and representations of Mortgagor during any time when any portion of the Secured Obligations remain outstanding.

Section 1.15. Eminent Domain. Should the Mortgaged Property, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Mortgagor receive any notice or other information regarding such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee. Mortgagee is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Mortgagor hereby irrevocably appoints Mortgagee as its attorney in fact for such purposes. All proceeds of Condemnation awards or proceeds of sale in lieu of Condemnation with respect to the Mortgaged Property and all judgments, decrees and awards for injury or damage to the Mortgaged Property or any part thereof or interest therein shall be paid to Mortgagee and shall be applied first to all costs and

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expenses incurred by Mortgagee in obtaining the proceeds. Provided no Event of Default has occurred hereunder and no event has occurred which, with the passage of time or the giving of notice, or both, would constitute an Event of Default, the balance of the proceeds, if any, shall be applied at the option of Mortgagee (i) toward altering, restoring or rebuilding the Mortgaged Property, or such portion thereof that may have been altered, damaged or destroyed, or (ii) against sums secured hereby in such order as Mortgagee may in its absolute discretion elect. If Mortgagee elects not to apply all of the Condemnation proceeds for the restoration or repair of the Mortgaged Property, Mortgagor shall not be required to repair or restore that portion of the Mortgaged Property affected by Mortgagee's election and the failure to do so shall not constitute a breach by Mortgagor of its obligation to maintain the Mortgaged Property set forth in Section 1.14 hereof.

Mortgagor hereby assigns and transfers to Mortgagee, and agrees to execute such further assignments of, all such proceeds, judgments, decrees and awards as Mortgagee may request. Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Mortgagee shall not be, in any event or circumstance, liable or responsible for failure to collect or exercise diligence in the collection of any proceeds, judgments, decrees or awards.

Section 1.16. Additional Security. In the event Mortgagee at any time holds additional security for any of the Secured Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with or after any sale is made hereunder.

Section 1.17. Additional Indebtedness. Subject to Permitted Encumbrances, the Mortgagor shall not further encumber the Mortgaged Property or any portion thereof (including, without limitation, secured transactions under the UCC) without the prior written consent of Mortgagee.

Section 1.18. Successors and Assigns. This Mortgage applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The covenants and agreements of Mortgagor contained herein shall apply to and be binding upon any successor owner of the Mortgaged Property or any part thereof.

Section 1.19. Inspections. Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Property for the purpose of inspecting the same and all books, records and documents relating thereto, and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

Section 1.20. Liens. Mortgagor shall pay and promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property, or any part thereof or interest therein. Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amounts as Mortgagee

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shall require but not more than 175% of the amount of the claim plus costs (including attorneys' fees) and interest and provided further that Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail so to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, 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, either, by depositing in court a bond in the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Any cost incurred by Mortgagee in connection with any such payment or discharge shall be secured hereby and shall be immediately due and payable without notice or demand.

Section 1.21. Restrictions Affecting Title. Mortgagor shall perform when due all Secured Obligations required to be performed by Mortgagor by the provisions of any agreement affecting title to the Mortgaged Property.

Section 1.22. Further Assurances. Mortgagor shall take all action and do all things which it is authorized by law to take and do, and cooperate with Mortgagee as Mortgagee deems necessary or desirable, to insure the release of all encumbrances against the Mortgaged Property, except Permitted Encumbrances, existing prior to the date hereof.

So long as any Secured Obligation shall remain unpaid, Mortgagor shall execute, acknowledge, where appropriate, and deliver from time to time promptly at the request of Mortgagee all such instruments and documents as in the opinion of Mortgagee are necessary or desirable to preserve the first priority lien created by this Mortgage.

Section 1.23. Performance of Covenants. Mortgagor shall faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Loan Documents and in all of its proceedings pertaining to this Mortgage.

Section 1.24. No Event of Default Under Loan Documents. Mortgagor agrees to notify Mortgagee immediately in writing of any default by Mortgagor in the performance or observance of any covenant, agreement, representation, warranty or obligation of Mortgagor set forth in this Mortgage. Mortgagor shall also notify Mortgagee in writing of any event or condition which with the lapse of time or the giving of notice would constitute an Event of Default.

Section 1.25. Rules, Regulations, Environmental Laws. Mortgagor represents, warrants and covenants:

- (i) that the location, construction, occupancy, operation and use of the Mortgaged Property do not violate any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (record or otherwise) affecting the Mortgaged Property, including, without limitation, all applicable zoning ordinances and building codes, flood

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disaster laws and health and environmental laws and regulations (hereinafter sometimes collectively called Applicable Regulations");

(ii) that the Mortgaged Property and Mortgagor are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or to any remedial obligations under any Applicable Regulations pertaining to health or the environment (hereinafter sometimes collectively called "Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976 ("RCRA"), and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property. If any such investigation or inquiry is subsequently initiated, Mortgagor will promptly notify Mortgagees;

(iii) that Mortgagor has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Laws;

(iv) that Mortgagor has taken all steps to determine and has determined to its reasonable satisfaction that no hazardous substances or solid wastes have been disposed of or otherwise released on or about the Mortgaged Property;

(v) that the Mortgaged Property does not contain asbestos, ureaformaldehyde foam insulation or any other chemical, material or substance exposure to which may or could pose a health hazard, whether or not the substance is prohibited, limited or regulated by any governmental authority;

(vi) that the use which Mortgagor makes and intends to make of the Mortgaged Property will not result in the manufacturing, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Mortgaged Property. For purposes of this Section 1.25, the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the state where the Property is located establish a meaning for "hazardous substance," "release," "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply;

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(vii) Mortgagor agrees to promptly notify Mortgagee of any violation or alleged violation of any Applicable Environmental Laws of which Mortgagor becomes aware; and

(viii) Mortgagor agrees to indemnify and hold harmless Mortgagee from and against any and all liabilities, damages, claims, losses, judgments, causes of action, costs and expenses (including the reasonable fees and expenses of counsel) which may be incurred by Mortgagee relating to or arising out of the generation, storage, manufacturing, refining, releasing, transportation, treatment, disposal or other presence of hazardous substances on or about the Mortgaged Property occurring prior to the reconveyance of the Mortgaged Property, conveyance in lieu of foreclosure or the completion of foreclosure proceedings and termination of possession by Mortgagor.

Section 1.26. Organization; Due Authorization. Mortgagor is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Nebraska and has the requisite power, authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by the Loan Documents to which it is a party. The execution and delivery of the Loan Documents to which it is a party and the performance and observance of the provisions thereof have all been authorized by all necessary actions of Mortgagor.

Section 1.27. Liabilities; Compliance with Other Instruments. Mortgagor has no liabilities except hereunder and those incurred in the ordinary course of business and which are not delinquent or which are otherwise contemplated or permitted by this Mortgage and the other Loan Documents to which it is a party. Mortgagor is not in default (i) in the payment of any taxes levied or assessed against it or its assets, (ii) under any applicable statute, rule, order or regulation of any governmental authority, (iii) under this Mortgage or any of the other Loan Documents to which it is a party or (iv) under any other agreement to which it is a party or by which it or any of its properties are bound.

Neither the execution and delivery of this Mortgage or any of the other Loan Documents to which Mortgagor is a party, nor the consummation of the transaction herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, conflicts with or results or will result in a breach of any of the terms, conditions or provisions of the Limited Partnership Agreement of Mortgagor, any law, order, rule, regulation, writ, injunction or decree of any court or governmental authority, or any agreement or instrument to which Mortgagor is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder, or results or will result in the creation or imposition of any lien of any nature whatsoever upon any of its property or assets pursuant to the terms of any such agreement or instrument except the liens created or permitted by the Loan Documents to which it is a party.

Section 1.28. Enforceability. This Mortgage and each of the other Loan Documents to which Mortgagor is a party have been duly executed and delivered by Mortgagor and constitute valid and binding obligations of Mortgagor, enforceable

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(d) The current financial statement of each Guarantor and a copy each Guarantor's federal income tax return for the immediately preceding year; and

Mortgagor shall further provide Mortgagee such other and further financial information and data concerning Mortgagor and the Mortgaged Property as Mortgagee shall require from time to time.

All financial data required to be provided hereunder shall be in such form as Mortgagee shall approve.

## ARTICLE II

### MORTGAGEE'S POWERS

At any time, or from time to time, without liability, therefor, Mortgagee, without affecting the personal liability, if any, of any person for payment of the Secured Obligations or the effect of this Mortgage upon the remainder of said Mortgaged Property, may from time to time without notice (i) release any part of said Mortgaged Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof, (v) release any person so liable, (vi) extend the maturity or alter any of the terms of any Secured Obligations, (vii) grant other indulgences, (viii) take or release any other or additional security for any obligation herein mentioned, (ix) make compositions or other arrangements with debtors in relation thereto, or (x) advance additional funds to protect the security hereof and pay or discharge the Secured Obligations of Mortgagor hereunder, and all amounts so advanced, with interest thereon at the rate provided by the Promissory Note, shall be secured hereby.

## ARTICLE III

### ASSIGNMENT OF RENTS, ISSUES AND PROFITS

Section 3.01. Assignment of Rents. Mortgagor hereby absolutely assigns and transfers to Mortgagee all the rents, issues and profits of the Mortgaged Property. Notwithstanding that the assignment made hereby constitutes a present and absolute assignment, Mortgagor may collect the rents and manage the Mortgaged Property in the same manner as if such assignment had not been given, but only if and so long as an Event of Default has not occurred. If an Event of Default shall occur, the right of Mortgagor to collect the rents and to manage the Mortgaged Property shall thereupon automatically terminate and such right shall belong exclusively to Mortgagee. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, to take possession and control of the Mortgaged Property and to demand, receive and enforce payment, to give receipts, releases and satisfaction, and to sue, in the name of Mortgagor or Mortgagee, for all such rents, issues and profits and apply the same to the Secured Obligations. The assignment of the rents, issues and profits of the Mortgaged Property in this Article III is

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intended to be an absolute assignment from Mortgagor to Mortgagee and not merely the passing of a security interest.

Section 3.02. Collection Upon Default. Upon any Event of Default under any of the Loan Documents, Mortgagee may, at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Mortgaged Property, or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any Secured Obligations, and in such order as Mortgagee may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

## ARTICLE IV

### SECURITY AGREEMENT

Section 4.01. Creation of Security Interest. With respect to any portion of the Mortgaged Property which constitutes Personal Property, fixtures or other property governed by the Uniform Commercial Code of the state in which the Property is located ("UCC"), this Mortgage shall constitute a security agreement between Mortgagor as the debtor and Mortgagee as the secured party, and Mortgagor hereby grants to Mortgagee a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Mortgagee hereunder, Mortgagee shall have all of the rights conferred upon secured parties by the UCC. Mortgagor will execute and deliver to Mortgagee all financing statements that may from time to time be required by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all costs and expenses of any searches required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property, and it is expressly agreed that if upon an Event of Default Mortgagee should proceed to dispose of such property in accordance with the provisions of the UCC, ten (10) days notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Mortgagee may at its option dispose of such property in accordance with Mortgagee's rights and remedies with respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the UCC.

Mortgagor shall give advance notice in writing to Mortgagee of any proposed change in Mortgagor's name, identity, or business form or structure and will execute and deliver to Mortgagee, prior to or concurrently with the occurrence of any such change, all additional financing statements that Mortgagee may require to establish and maintain the validity and priority of Mortgagee's security interest with respect to any of the Mortgaged Property described or referred to herein.

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Some of the items of the Mortgaged Property described herein are goods that are or are to become fixtures related to the Property, and it is intended that as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Mortgagee, as secured party, at the address of Mortgagee stated in Section 6.05 of this Mortgage. The mailing address of Mortgagor, as debtor, is as stated in Section 6.05 of this Mortgage.

Section 4.02. Warranties, Representations and Covenants of Mortgagor. Mortgagor hereby warrants, represents and covenants, with respect to the Personal Property, as follows:

(a) except for the security interest granted hereby, Mortgagor is, and as to any of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever, except for Permitted Encumbrances. Mortgagor will notify Mortgagee of, and will defend the Personal Property against, all prohibited claims and demands of all persons at any time claiming the same or any interest therein;

(b) Mortgagor will not lease, sell, convey or in any manner transfer the Personal Property (except Personal Property transferred in the ordinary course of business and replaced by Personal Property of a similar nature and having at least the same value as the Personal Property replaced) without the prior written consent of Mortgagee;

(c) the Personal Property is not used or bought for personal, family or household purposes;

(d) the Personal Property will be kept on or at the Property and Mortgagor will not remove the Personal Property from the Property without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor with new items of equal or greater quality; and

(e) all covenants and obligations of Mortgagor contained herein relating to the Mortgaged Property shall be deemed to apply to the Personal Property, whether or not expressly referred to herein.

## ARTICLE V

### EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT

Section 5.01. Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default hereunder:

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(a) failure by Mortgagor to pay within ten (10) days of the date such payment is due and payable, except with respect to the final payment, for which there is no grace period, (i) any payment of principal of or interest on the Promissory Note or (ii) any other sum due hereunder or under any other Loan Document, together with interest thereon;

(b) failure by Mortgagor to punctually perform or observe any covenant or agreement contained in this Mortgage (other than the monetary obligations described in subparagraph (a) above) and such failure shall not have been cured within thirty (30) days after written notice from Mortgagee of such failure;

(c) the occurrence of a default, or an Event of Default, under any Loan Document (other than this Mortgage) or under any other obligation of Mortgagor to Mortgagee, whether or not existing on the date hereof or hereafter created or arising, and such default is not cured within the applicable cure period, if any.

(d) Mortgagor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof; or Mortgagor shall make any general assignment for the benefit of creditors, or shall admit in writing Mortgagor's inability to pay its debts generally as they become due;

(e) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Mortgagor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Mortgagor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Mortgagor and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive);

(f) a writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Property, or any judgment for monetary damages shall be entered against Mortgagor which shall become a lien on the Mortgaged Property, or any portion thereof or interest therein, and such execution, attachment or

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similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy;

(g) any suit or proceeding shall be filed against Mortgagor or any endorser or surety on any of the Loan Documents which, if adversely determined, could substantially impair the ability of Mortgagor or any endorser or surety to perform any of their obligations contained in the Loan Documents, as determined by Mortgagee in its sole and absolute discretion, provided that such suit or proceeding is not dismissed within thirty (30) days after service of summons upon such party;

(h) if, during the term of the Promissory Note, Mortgagor shall, without prior written approval of Mortgagee, sell, convey, alienate, mortgage or encumber the Mortgaged Property, or any part thereof or any interest therein, or shall be divested of its title or any interest therein, in any manner, whether voluntarily or involuntarily; or if there is any merger, consolidation or dissolution affecting Mortgagor;

(i) any assignment by Mortgagor of the whole or any part of the rents, issues or profits arising from the Mortgaged Property to any person without the consent of Mortgagee;

(j) at any time any representation, warranty or statement made by Mortgagor in any Loan Document, certificate or financial statement delivered by Mortgagor shall be incorrect or misleading in any material respect; or any material misrepresentation shall at any time be made to Mortgagee by Mortgagor; and

(k) if any of the events in (d), (e) or (f) shall occur with respect to any of the Guarantors of the Promissory Note.

Section 5.02. Acceleration. If an Event of Default shall have occurred, Mortgagee may declare the outstanding principal amount of the Promissory Note and the interest accrued thereon and any other of the Secured Obligations to be immediately due and payable, and upon such declaration such principal and interest and the other Secured Obligations declared due shall immediately become and be due and payable without further demand or notice.

Section 5.03. Mortgagee's Power of Enforcement. If an Event of Default shall have occurred, Mortgagee may, either with or without entry or taking possession as provided in this Mortgage or otherwise, and without regard to whether or not the Secured Obligations shall have been accelerated, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure or any other action for any default existing at the time such earlier action was commenced or arising thereafter, proceed by any appropriate action or proceeding: (a) to enforce payment of the Promissory Note and/or any other of the Secured Obligations or the performance of any term hereof or any of the other Loan Instruments; (b) to foreclose this Mortgage and to have sold, as an entirety or in separate lots or parcels, the Mortgaged Property; and (c) to pursue any other remedy available to it. Mortgagee may take action either by such proceedings or

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by the exercise of its powers with respect to entry or taking possession, or both, as Mortgagee may determine.

Section 5.04. Mortgagee's Right to Enter and Take Possession, Operate and Apply Income. If an Event of Default shall have occurred, (1) Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Mortgaged Property, and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, is hereby expressly authorized to enter and take possession of all or any portion of the Mortgaged Property. If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Mortgagee, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Mortgagee, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage. Upon every such entering upon taking of possession, Mortgagee, to the extent permitted by law, may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof.

Section 5.05. Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. Mortgagor hereby waives any and all rights of redemption. Mortgagor further agrees, to the full extent permitted by law, that in the case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any reinstatement, appraisement, valuation, stay or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereof. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 - 1101 et seq.) (herein called the "Act")) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601 of the Act.

Section 5.06. Receiver - Mortgagee in Possession. If an Event of Default shall have occurred, Mortgagee, to the extent permitted by law and without regard to the value of the Mortgaged Property or the adequacy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right and without any additional showing or proof, at Mortgagee's election, to either the appointment by the court of a receiver (without the

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necessity of Mortgagee posting a bond) to enter upon and take possession of the Mortgaged Property and to collect all rents, income and other benefits thereof and apply the same as the court may direct or to be placed by the court into possession of the Mortgaged Property as mortgagee in possession with the same power herein granted to a receiver and with all other rights and privileges of a mortgagee in possession under law. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect all rents, income and other benefits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, income and other benefits actually received by Mortgagee. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Mortgagee.

Section 5.07. Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of any Secured Obligations hereby and to exercise all rights and powers under this Mortgage, or under any Loan Documents, or the provisions of any applicable laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgagee, or to which Mortgagee may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee. Mortgagee may pursue inconsistent remedies.

The acceptance by Mortgagee of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a default as herein provided. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and failure of Mortgagor to pay such entire sum then due shall be and continue to be an Event of Default notwithstanding such acceptance of such amount on account, as aforesaid. Mortgagee shall be, at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in his instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Mortgagee to any action or

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inaction of Mortgagor which is subject to consent or approval of Mortgagee hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

## ARTICLE VI

### MISCELLANEOUS

Section 6.01. Governing Law. This Mortgage shall be governed by the laws of the state in which the Property is located. In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 6.02. Limitation of Interest. All agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Mortgagee for the use, forbearance, or detention of the money to be loaned pursuant to the Promissory Note or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, *ipso facto*, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Mortgagee or holder of the Promissory Note shall ever receive as interest under the Promissory Note or this Mortgage or otherwise anything of value which would exceed interest at the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Promissory Note or on account of other Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Promissory Note and such other Secured Obligations, such excess shall be refunded to Mortgagor, or to the maker of the Promissory Note, or other evidence of Secured Obligations, if other than Mortgagor. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Secured Obligations shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such obligations until payment in full so that the rate of interest on account of Secured Obligations is uniform throughout the term thereof. The terms and provisions of this paragraph shall control all agreements between Mortgagor, or the maker of the Promissory Note, or other evidence of Secured Obligations, if other than Mortgagor, and Mortgagee.

Section 6.03. Statements by Mortgagor. Mortgagor, within ten (10) days after being given notice, will furnish, or cause to be furnished, to Mortgagee a written statement stating the unpaid principal of and interest on the Promissory Note and any other amounts secured by this Mortgage and stating that

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no offset or defense exists against such amounts. Mortgagor will submit (i) annual and quarterly income and expense statements on the Mortgaged Property and (ii) upon request by Mortgagee, such other reports and statements which are prepared by Mortgagor and its representatives and agents in the ordinary course of business.

Section 6.04. Notices. Whenever Mortgagee or Mortgagor shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, each such notice, demand, request or other communication shall be in writing and shall be deemed to have been given if sent by hand delivery, overnight courier or certified mail, postage prepaid, addressed to the following addresses:

If to Mortgagor: Lake Manawa - Chicago - FPIII, L.P.  
c/o Dial Companies  
11506 Nicholas Street  
Omaha, Nebraska 68154

If to Mortgagee: First National Bank of Omaha  
One First National Center  
Omaha, Nebraska 68102  
Attn: Robert J. Horak,  
Vice President

With a copy to: Joseph Polack, Esquire  
Polack, Woolley & Forrest, P.C.  
420 First National Plaza  
11404 West Dodge Road  
Omaha, Nebraska 68154

Any party may at any time change its address for such notices by delivering to the other parties hereto, as aforesaid, a notice of such change.

Section 6.05. Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 6.06. Invalidity of Certain Provisions; Conflicting Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining and secured portion of the Secured Obligations, and all payments made on such obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Secured Obligations which is not secured or fully secured by the lien of this Mortgage. To the extent any conflict exists between the terms of the Commitment Letter and the terms of the other Loan Documents, the terms of the other Loan Documents will govern.

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Section 6.07. Subrogation. To the extent that proceeds of the Promissory Note or advances under this Mortgage are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Property, such proceeds or advances have been or will be advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released of record.

Section 6.08. Change in Ownership. If the ownership of the Mortgaged Property or any part thereof or interest therein becomes vested in a person other than Mortgagor owning the same on the date hereof, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and the Secured Obligations in the same manner as with Mortgagor without in any way violating or discharging Mortgagor's liability hereunder or upon the Secured Obligations. No sale of the Mortgaged Property, and no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Secured Obligations, given by Mortgagee, shall operate to release, discharge, modify, change or affect the original liability, if any, of Mortgagor or the liability of any guarantors or sureties of Mortgagor, either in whole or in part.

Section 6.09. Assignment of Mortgagee's Interest. It is expressly agreed that any and all terms of this Mortgage, the other Loan Documents and all other agreements made or executed by Mortgagor or others in favor of Mortgagee, and all rights, powers, privileges, options and remedies conferred upon Mortgagee herein and therein, shall inure to and be for the benefit of Mortgagee and may be exercised by Mortgagee, its successors and assigns, and the word "Mortgagee" shall also mean and include the successor or successors and the assign or assigns of Mortgagee and its successors and assigns. Mortgagor hereby specifically grants unto Mortgagee the right and privilege, at Mortgagee's option, to transfer and assign to any third person all or any part of Mortgagee's rights to receive funds or payments hereunder.

Section 6.10. Time Is of the Essence. Time is of the essence under this Mortgage and the other Loan Documents.

Section 6.11. Attorneys' Fees. All attorneys' fees incurred by Lender in connection with the foreclosure of this Mortgage shall be recoverable in foreclosure.

Section 6.12. Compliance with Illinois Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under

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## EXHIBIT "A"

### Legal Description

#### PARCEL 1

Lot 1 except that part lying North of a line 53 feet South of and parallel to the North line of said Section 24; and all of Lots 2, 3, 4 and 5 in Block 1 in Bradish and Mizner's Addition to Riverside, said Addition a Subdivision of the East 1/2 of the Northeast 1/4 of Section 24, Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

#### PARCEL 2

Lots 39 and 40 (except the North 20 feet thereof) in 12th Street Syndicate Subdivision in the Northeast 1/4 of Section 24, Township 39 North, Range 12 East of the Third Principal Meridian, in Cook County, Illinois.

#### PARCEL 3

Lots 41, 42 and 43 (except the North 20 feet of said Lots 41, 42 and 43 and except that part of Lots 41 and 42 conveyed to the people of the State of Illinois Department of Transportation by Document No. 95 403 130) in the 12th Street Syndicate Subdivision in the Northeast 1/4 of Section 24, Township 39 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

#### PARCEL 4

Lot 38 in the 12th Street Syndicate Subdivision in the Northeast 1/4 of Section 24, Township 39 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

#### PARCEL 5

Lot 37 in the 12th Street Syndicate Subdivision in the Northeast 1/4 of Section 24, Township 39 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

#### PARCEL 6

Lot 1 and 2 in 12th Street Syndicate Subdivision in the Northeast 1/4 of Section 24, Township 39 North, Range 12 East of the Third Principal Meridian in Cook County, Illinois.

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The common address of the Property is as follows:

2200-2212 ROOSEVELT 2200-2200 ST FEDERAL PARK IL  
2200 ROOSEVELT 2212 ROOSEVELT ST

and the tax identification numbers are as follows:

Parcel 1	15-24-204-020;
Parcel 2	15-24-204-005 and 004;
Parcel 3	15-24-204-003, 001
Parcel 4	15-24-204-006;
Parcel 5	15-24-204-007;
Parcel 6	15-24-204-043 and 042.

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## EXHIBIT "B"

### Permitted Encumbrances

1. Temporary Construction Easement for driveway reconstruction created by Instrument recorded as Document No. 95 403 131 (Affects Parcel 3).
2. Easements for Public Utilities and Drainage created by instrument recorded as Document Number 19463888. (Affects the Northerly 10 feet of Parcel 6)

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