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MORTGAGE AND SECURITY AGREEMENT (REVOLVING)

104/3/96

THIS MORTGAGE AND SECURITY AGREEMENT made this 15th day of February, 1996, by AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, as successor trustee to FIRST CHICAGO TRUST COMPANY OF ILLINOIS, a national banking association, not personally but solely as trustee pursuant to Trust Agreement dated August 20, 1993 and known as Trust Number RV-012195 ("Mortgagor"), in favor of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association ("Mortgagee");

WITNESSETH, THAT WHEREAS, Mortgagor is justly indebted to Mortgagee for money borrowed in the principal amount of ELEVEN MILLION AND 00/100 DOLLARS (\$11,000,000.00) ("Principal Amount"), as evidenced by note executed by Mortgagor of even date herewith, made payable to the order of and delivered to Mortgagee (which note, together with any and all other notes executed and delivered in substitution therefor or in renewal and extension thereof, in whole or in part, are herein collectively referred to as "Note"), by the provisions of which Mortgagor promises to pay, as designated by the legal owner and holder of Note, from time

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to time), Principal Amount, interest at the rate or rates specified in Note ("Note Rate") which varies from time to time in accordance with a specified percentage in addition to "prime rate" or "libor based rate", as provided in Note, and all other sums due and owing pursuant to Note, hereunder or under "Other Loan Documents" (as defined below) and advanced by Mortgagee to protect Mortgaged Premises or to preserve the priority of the lien established hereby, PROVIDED THAT such other sums shall not exceed one hundred fifty per cent [150%] of Principal Amount (collectively "Indebtedness"), from the date of disbursement of Principal Amount, in the installments set forth in Note, with a final payment of Indebtedness on December 31, 1997 ("Maturity Date").

NOW, THEREFORE, to secure the payment of Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein and any and all other documents executed and delivered to secure Indebtedness, including those executed by the owner of one hundred percent (100%) of the beneficial interest ("Beneficial Interest") in mortgage ("Beneficiary") and including any guaranty ("Other Loan Documents"), Mortgagor, by these presents, DOES HEREBY GRANT, BARGAIN, SELL AND CONVEY to Mortgagee, its successors and assigns, forever, the land legally described on Exhibit "A" attached hereto and made a part hereof ("Land"), situated in the City of Chicago, TOGETHER WITH THE FOLLOWING (collectively "Other Interests"):

- A. All right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the rights-of-way, roads, streets, avenues and alleys adjoining Land.
- B. All and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water rights, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including any other claim at law or in equity and any after-acquired title, franchise or license and the reversions and remainder and remainders thereof.
- C. All buildings and improvements, of every kind, nature and description, now or hereafter located and placed upon Land (collectively "Improvements") and all materials intended for construction, re-construction, alteration and repair of Improvements, which shall be deemed a part thereof immediately upon the delivery of the same, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with Land and Improvements, including, but not limited to, all furniture, furnishings, apparatus, machinery, motors, elevators, fittings, radiators, awnings, shades, screens, blinds, office equipment, carpeting and other furnishings and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning, electrical and sprinkler systems and equipment, if any, and fixtures and appurtenances thereto ("Personal Property") and all renewals or replacements of Personal Property or articles in substitution therefor, whether or

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not the same are or shall be attached to Improvements in any manner, excepting therefrom, however, any furniture, fixtures, equipment and articles of personal property, regardless of the manner or mode of attachment, belonging to any present or future tenant or lessee of Land and Improvements (collectively "Occupancy Tenants") (any reference hereafter made to Personal Property shall be deemed to exclude the same); IT BEING MUTUALLY AGREED that all of Personal Property owned by Mortgagor and placed by it on Land and Improvements shall, insofar as the same is permitted by law, be deemed to be fixtures and a part of the realty and security for the payment of Indebtedness and, as to any Personal Property not deemed to be fixtures and a part of Land and Improvements, this Mortgage and Security Agreement shall be and is a security agreement for the purpose of establishing a security interest in Personal Property, pursuant to the Uniform Commercial Code of the State of Illinois, and additional security for the payment of Indebtedness and the performance of all other obligations of Mortgagor herein and in Note and Other Loan Documents set forth.

- D. All rents, issues, proceeds and profits accruing and to accrue from Land and Improvements and all right, title and interest of Mortgagor in and to any and all leases executed now or hereafter on or affecting the same, whether written or oral, and all other leases and agreements for the use thereof (collectively "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission of Mortgagee given to Mortgagor to collect the rentals to be paid pursuant thereto.
- E. All proceeds heretofore or hereafter payable to Mortgagor and all subsequent owners of Land and Improvements ("Proceeds") by reason of loss or damage by fire and such other hazards, casualties and contingencies (collectively "Casualty") insured pursuant to Insurance Policies, and all awards and other compensation heretofore or hereafter payable to Mortgagor and all subsequent owners of Land and Improvements ("Awards") for any taking by condemnation or eminent domain proceedings, either permanent or temporary ("Condemnation"), of all or any part of Land and Improvements or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets. Proceeds and Awards are hereby assigned to Mortgagee as collateral and Mortgagor and authorizes, directs and empowers Mortgagee, at its option, on behalf of Mortgagor, its personal representatives, successors and assigns, to collect and receive the amounts thereof, to give proper receipts and acquittances therefor and, after deducting expenses of collection, to apply the net proceeds received therefrom as a credit upon any part, as may be selected by Mortgagee, of Indebtedness (notwithstanding that the amount owing thereon may not then be due and payable or that the same is otherwise adequately secured).

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For convenience, Land, Improvements and Other Interests are herein collectively referred to as "Mortgaged Premises".

TO HAVE AND TO HOLD Mortgaged Premises unto Mortgagee, its successors and assigns, forever, for the uses and purposes herein set forth (Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois); **PROVIDED, HOWEVER**, that if and when Mortgagor shall pay Indebtedness and shall perform all of the terms, covenants, conditions and agreements contained herein and in Note and Other Loan Documents, this Mortgage and Security Agreement, Note and Other Loan Documents shall be released at the sole cost and expense of Mortgagor; otherwise, the same shall be and remain in full force and effect.

MORTGAGOR HEREBY FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. **PRIORITY OF LIEN AND SUBORDINATE ENCUMBRANCES:** This Mortgage and Security Agreement is and shall remain a first and valid lien on Mortgaged Premises until the payment in full of Indebtedness and Mortgagor shall keep Mortgaged Premises free and clear of superior or, except as permitted hereby, subordinate liens or claims of every nature and kind, and, shall not execute, deliver or grant any other mortgage, trust deed or security interest encumbering Mortgaged Premises, now or at any time hereafter.

2. **SUBROGATION:** To the extent that any part of Indebtedness is applied in payment of any existing lien against Mortgaged Premises, or any part thereof, or, following the date hereof, Mortgagee pays any sum due pursuant to any provision of law or any instrument or document establishing any lien prior or superior to the lien of this Mortgage and Security Agreement, Mortgagee shall have and be entitled to a lien on Mortgaged Premises equal in parity to that discharged and Mortgagee shall be subrogated to, 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 to secure the payment of Indebtedness. Mortgagee shall be subrogated, notwithstanding its release of record, to mortgages, trust deeds, superior titles, vendors' liens, and other liens, charges, encumbrances, rights and equities on Mortgaged Premises to the extent that any obligation thereunder is paid or discharged from Indebtedness or other payments by Mortgagee.

3. **PROMPT PAYMENT AND PERFORMANCE OF COVENANTS:** Mortgagor shall promptly pay Indebtedness as the same becomes due and shall duly and punctually perform and observe all of the terms, covenants, conditions and agreements to be performed and observed by Mortgagor as provided herein and in Note and Other Loan Documents.

4. **TAX AND INSURANCE DEPOSITS AND APPLICATION:** In addition to the payment of Indebtedness, Mortgagor shall pay to Mortgagee, at Mortgagee's election, concurrently with the payments required pursuant to Note, an amount equal to the real estate taxes and special assessments, if any, next due on Mortgaged Premises, together with the premiums

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which will next become due and payable on Insurance Policies, as estimated by Mortgagee, less all sums previously paid therefor, divided by the number of months to elapse before one (1) month prior to the dates when such taxes, assessments and premiums will become delinquent. Any funds held by Mortgagee, or its duly authorized agent, will be held in trust for the purpose of paying said real estate taxes, assessments and insurance premiums when the same become due and payable, without any obligation of Mortgagee to pay interest thereon.

In the event that the amounts deposited with Mortgagee:

- a) shall not be sufficient to pay said real estate taxes, assessments or insurance premiums in full, when due, Mortgagor shall deposit with Mortgagee, or its duly authorized agent, such additional amounts as shall be sufficient to pay the same and if Mortgagor shall default in making such payments for fifteen (15) days following written notice from Mortgagee to Mortgagor, at the option of Mortgagee, Indebtedness shall become immediately due and payable; or
- b) are in excess of the amounts required to pay real estate taxes, assessments and insurance premiums, such excess shall, upon the written demand of Mortgagor, be refunded to Mortgagor, PROVIDED THAT no Monetary Default or Non-Monetary Default shall exist.

At such time as Indebtedness is paid in full, whether by reason of maturity or prepayment, as provided in Note, Mortgagee shall apply, as a credit against Indebtedness, all funds held by it pursuant to this Paragraph 4.

If, as a result of a Monetary Default or Non-Monetary Default, Mortgaged Premises are sold, foreclosed upon or otherwise acquired by Mortgagee following a Monetary Default or Non-Monetary Default, Mortgagee shall, concurrently with the commencement of proceedings for sale or foreclosure or at the time Mortgaged Premises are otherwise acquired, apply the balance of the funds deposited by Mortgagor pursuant hereto as a credit against such part of Indebtedness as Mortgagee may select.

5. PAYMENT OF TAXES AND OTHER IMPOSITIONS: Mortgagor shall promptly pay, when due and payable, all taxes and assessments (general and special), water and sewer charges, public impositions, levies, dues and other charges, of whatsoever nature, which are now or shall hereafter be levied or assessed or which may otherwise be or become a lien upon or against Mortgaged Premises, or any part thereof (collectively "Impositions"), and in the event that funds are deposited with Mortgagee for the payment of Impositions, the same will be applied for such purpose.

6. INSURANCE POLICIES, PAYMENT AND APPLICATION OF PROCEEDS AND SETTLEMENT OF CLAIMS: Until such time as Indebtedness shall have been paid in full,

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Mortgagor shall keep Mortgaged Premises continuously insured against Casualty by policies of insurance hereafter set forth, in such amounts and for such periods as may, from time to time, be required by Mortgagee ("Insurance Policies"), which Insurance Policies and all renewals thereof shall:

- a) be written with companies licensed to do business in the State of Illinois, having a Best's "General Policy Holder Rating" of A+ or better and a financial rating class of XII or better and, if written by a mutual company, the insurance policy holder or its mortgagee must not be assessable, the risk of any one (1) company shall not exceed ten per cent (10%) of the issuer's policyholders' surplus (including capital);
- b) be written with companies and in amounts acceptable to Mortgagee, provide replacement coverage and otherwise be in form satisfactory to Mortgagee;
- c) cite Mortgagee's interest in standard mortgage clauses effective as of Closing Date;
- d) be maintained to and including Maturity Date, without cost to Mortgagee;
- e) at the option of Mortgagee, be delivered to Mortgagee as issued (PROVIDED THAT Mortgagee will accept certificates thereof, in lieu of original Insurance Policies), together with evidence of payment of premiums therefor in full, not less than thirty (30) days prior to the expiration of the previous Insurance Policies; and
- f) contain a so-called "cut-through" endorsement, in the event that any part of the fire or other risks insured thereby is reinsured;

and the original Insurance Policies or certificates thereof shall be held by Mortgagee until such time as Indebtedness is paid in full.

In the event of a sale of Mortgaged Premises pursuant to foreclosure hereof or other transfer of title thereto and the extinguishment of Indebtedness, complete title to Insurance Policies and renewals thereof, together with all prepaid or unearned premiums thereon, in the possession of Mortgagee shall pass to and vest in the purchaser or grantee of Mortgaged Premises. If any renewal Insurance Policy or certificate thereof is not delivered to Mortgagee within thirty (30) days prior to the expiration of any existing Insurance Policy, with evidence of premium paid, Mortgagee may obtain the required insurance on behalf of Mortgagor (or in favor of Mortgagee only) and pay the premiums therefor, in which event any monies so advanced shall be so much additional Indebtedness secured hereby and shall become immediately due and payable, with interest thereon at the rate of four percent (4%) per annum above the Note Rate ("Default Rate").

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Mortgagee shall not, by reason of acceptance, rejection, approval or obtaining Insurance Policies, incur any liability for payment of losses.

Without, in any way, limiting the generality of the foregoing, Mortgagor agrees to maintain the following Insurance Policies on Mortgaged Premises:

<u>Insurance Policy</u>	<u>Amount</u>
a) Builder's Risk All Risk Property coverage including without limitation: (1) Replacement Cost Coverage Endorsement (2) Inflation Adjustment Endorsement (3) Standard Mortgagee clause naming Mortgagee as first mortgagee (4) Agreed Amount Endorsement	Reasonably satisfactory to Mortgagee
b) Flood Insurance (if Mortgaged Premises are within a Zone A designated "flood area") with clause naming Mortgagee as mortgagee	Reasonably satisfactory to Mortgagee
c) Rental Interruption (1) Standard Mortgagee clause naming Mortgagee as first mortgagee	Reasonably satisfactory to Mortgagee
d) Glass (1) Standard Mortgagee clause naming Mortgagee as first mortgagee	Reasonably satisfactory to Mortgagee
e) Comprehensive General Liability naming Mortgagee as Additional Insured	Reasonably satisfactory to Mortgagee
f) such other insurance policies, including liquor liability (if alcoholic beverages are dispensed on	

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Mortgaged Premises), as may be reasonably required, from time to time, by Mortgagee, upon written notice to Mortgagor.

If any part or all of Insurance Policies or other insurance coverages is furnished by Occupancy Tenants, Mortgagor shall furnish to Mortgagee duplicate original Insurance Policies or, with the consent of Mortgagee, certificates evidencing such coverages, which shall be subject to the approval of Mortgagee. Insurance Policies shall be in form and content satisfactory to Mortgagee and, at the option of Mortgagee, contain mortgage clauses in favor of or name Mortgagee as an additional insured and provide for not less than thirty (30) days' prior written notice to Mortgagee in the event of cancellation or material modification thereof.

Mortgagor shall not purchase separate insurance, concurrent in form or contributing in the event of Casualty, unless Mortgagee is included thereon pursuant to standard mortgagee clause acceptable to Mortgagee, and in the event Mortgagor does purchase such separate insurance, Mortgagor shall immediately notify Mortgagee thereof and promptly deliver to Mortgagee such policy or policies.

In the event of any loss sustained by Casualty for which Insurance Policies are in effect, Mortgagor may, with the consent of Mortgagee, settle, compromise and adjust any and all rights and claims pursuant to the provisions of Insurance Policies, PROVIDED THAT Proceeds shall be payable to Mortgagee. In the absence of such consent, Mortgagee is hereby authorized to settle, compromise and adjust such claims or rights and receive Proceeds, and, regardless of the party adjusting any claim, Proceeds shall be applied either on account of Indebtedness or on account of the costs of Repair or Restoration, at the sole election of Mortgagee.

If Mortgagee shall elect to apply Proceeds on account of the costs of repairs, rebuilding and restoration ("Repair or Restoration"), (1) that part of Mortgagee's Premises so damaged or destroyed shall be repaired or rebuilt, in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed) and all life, safety and environmental regulations, laws, ordinances (including zoning), rules and regulations of governmental authorities having jurisdiction thereover (collectively "Applicable Laws"), so as to be as similar, as is reasonably possible, to the condition which existed prior to such Casualty, and (2) the same shall be paid to Mortgagor, from time to time, upon the delivery to Mortgagee of satisfactory evidence of the estimated cost of completing Repair or Restoration, together with such architect's certificates, contractor's sworn statements, waivers of lien, title insurance policies or certifications and other evidences of cost and payments as Mortgagee may reasonably require and approve; PROVIDED, HOWEVER, that (aa) no payment made prior to final completion of Repair or Restoration shall exceed ninety per cent (90%) of the value thereof, (bb) at all times, the undisbursed balance of Proceeds shall not be less than the amount required to pay for the cost of completion thereof, free and clear of liens or encumbrances, (cc) in the event that, in the reasonable opinion of Mortgagee, Proceeds are

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insufficient to pay for all costs of Repair or Restoration, Mortgagor shall deposit with Mortgagee an amount equal to such excess costs prior to the disbursement of any part of Proceeds to it, and (dd) any surplus Proceeds, following the payment of all costs of Repair or Restoration, shall, at the option of Mortgagee, be applied on account of Indebtedness or paid to Mortgagor.

7. CONDEMNATION: In the event that:

- a) Mortgaged Premises, or any part thereof, is taken by Condemnation, Mortgagee is hereby empowered to collect and receive Awards, PROVIDED THAT that part thereof applicable to that part of Mortgaged Premises taken shall be applied on account of Indebtedness and that part of Awards applicable to damage to the remainder of Mortgaged Premises shall, at the election of Mortgagee, be applied to the payment of Indebtedness or on account of rebuilding or restoring that part of Mortgaged Premises not so taken or damaged ("Rebuilding or Restoration");
- b) Mortgagee elects to permit the use of Awards for Rebuilding or Restoration, Mortgaged Premises shall be so rebuilt or restored, in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed) and Applicable Laws, so as to be as similar, as is reasonably possible, to the condition which existed prior to Condemnation and all disbursements shall be paid in the same manner as provided in Paragraph 6 hereof with respect to a loss by Casualty;
- c) Awards are insufficient to pay for all costs of Rebuilding or Restoration, Mortgagor shall deposit with Mortgagee an amount equal to such excess costs prior to any disbursement of Awards to it; or
- d) Awards are in excess of Rebuilding or Restoration, any surplus Awards, following payment in full of all costs of Rebuilding or Restoration shall, at the option of Mortgagee, either be applied on account of Indebtedness or paid to Mortgagor.

8. CASUALTY OR CONDEMNATION AFTER FORECLOSURE: In the event of Casualty or Condemnation following the institution of foreclosure proceedings, Proceeds or Awards, if not applied as specified in Paragraphs 6 and 7, shall be used to pay the amounts due in accordance with any decree of foreclosure which may be entered in any such proceedings and the balance, if any, shall either be paid to the owner of the equity redemption, if such owner shall be entitled to the same, or as the court may direct.

9. MORTGAGEE'S LIABILITY FOR COLLECTION OF PROCEEDS OR AWARDS: Mortgagee shall not, except for its gross negligence or willful misconduct, be held

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responsible for any failure to collect Proceeds or Awards, regardless of the cause of such failure and the power and authority granted to Mortgagee to collect Proceeds or Awards is irrevocable and coupled with an interest and shall, in no way, affect the security of this Mortgage and Security Agreement or the liability of Mortgagor for payment of Indebtedness. The entry of a decree of foreclosure of the lien hereof shall not affect or impair the power and authority granted to Mortgagee pursuant to this Paragraph 9.

10. USE, CARE AND WASTE: Mortgagor:

a) Shall constantly maintain and not diminish, in any respect, or materially alter Improvements, or materially change the use of Mortgaged Premises so long as Indebtedness, or any part thereof, remains unpaid and shall not erect any buildings or improvements on Mortgaged Premises without the prior written consent of Mortgagee. Without, in any way, limiting the generality of the foregoing, Mortgagor shall:

- i) not abandon Mortgaged Premises or do or suffer anything to be done which would depreciate or impair the value thereof or the security of this Mortgage and Security Agreement;
- ii) not remove or demolish any part of Improvements which would adversely affect the value of Mortgaged Premises;
- iii) pay promptly all services, labor and material necessary and required to refurbish and renovate Improvements pursuant to contracts therefor;
- iv) maintain, preserve and keep Mortgaged Premises in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear and tear, damage, obsolescence or destruction;
- v) not make any changes, additions or alterations to Mortgaged Premises of a structural nature or which would materially adversely affect the value thereof, except as required by Applicable Laws or as otherwise approved in writing by Mortgagee (which approval shall not be unreasonably withheld or delayed);

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- vi) promptly commence and diligently pursue Repair or Restoration or Rebuilding or Restoration, as the case may be;
- vii) not commit or permit to exist any waste of Mortgaged Premises; and
- viii) maintain all interior or exterior planted or landscaped areas, adjoining plaza, if any, and abutting sidewalks in good and neat order and repair.

b) Represents to Mortgagee that:

- i) to the best knowledge of Mortgagor, no hazardous substances, hazardous waste, industrial waste, pollution control waste or toxic substances, within the meaning of any applicable statute or regulation (collectively "Hazardous Substances") are presently stored or otherwise located on Mortgaged Premises and that, within the definition of such statute, no part of Mortgaged Premises, including the ground-water located thereon, is presently contaminated by any Hazardous Substances;
 - ii) until Indebtedness is paid in full, all Hazardous Substances, which may be used by any person for any purpose upon Mortgaged Premises shall be used or stored thereon only in a safe, approved manner, in accordance with all industrial standards and all laws, regulations and requirements for such storage promulgated by any governmental authority;
 - iii) Mortgaged Premises will not be used for the principal purpose of storing Hazardous Substances and that no such storage or use will otherwise be allowed on Mortgaged Premises which will cause or increase the likelihood of causing the release of Hazardous Substances onto Mortgaged Premises; and
 - iv) Mortgagor shall promptly notify Mortgagee as soon as Mortgagor knows of or suspects that a Hazardous Substance has been released on Mortgaged Premises.
- c) Shall, in addition to the indemnification specified in Paragraph 36 hereof, indemnify and hold Mortgagee harmless of and from all loss, cost

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(including reasonable attorneys' fees), liability and damage whatsoever incurred by Mortgagee by reason of any violation of any applicable statute or regulation for the protection of the environment which occurs upon Mortgaged Premises or by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation; PROVIDED, HOWEVER, that to the extent Mortgagee is strictly liable pursuant to any such statute, Mortgagor's obligations to Mortgagee pursuant to this Mortgage and Security Agreement shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to Mortgagee.

- d) Shall comply with and cause Mortgaged Premises, and the use and condition thereof, to comply with Applicable Laws and with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including, without limitation, those relating to the operation of Mortgaged Premises as a retail shopping center, land use and development, construction, access, water rights, noise and pollution) which are applicable to Mortgagor or have been granted for Mortgaged Premises, or the use thereof.

11. MORTGAGEE'S PERFORMANCE OF CERTAIN OF MORTGAGOR'S OBLIGATIONS: In the event of the failure of Mortgagor in:

- a) the prompt discharge of any lien or encumbrance;
- b) defending the title to Mortgaged Premises;
- c) the payment of any Imposition;
- d) diligently and continuously pursuing Repair or Restoration or Rebuilding or Restoration, as the case may be;
- e) the proper maintenance and preservation of Mortgaged Premises; or
- f) the performance of any obligation specified in Paragraph 11 above;

and such failure is not cured to the reasonable satisfaction of Mortgagee or other satisfactory security is not furnished to Mortgagee within the time specified in any written notice served by Mortgagee to Mortgagor pursuant to Paragraph 17 hereof, or if Mortgagor shall fail to procure and maintain Insurance Policies, such failure, in any instance, shall be deemed to be a Non-Monetary Default and Mortgagee may, in addition to the exercise of all other remedies provided herein and in Note and Other Loan Documents, at its election and without further demand or notice, pay and discharge such lien or encumbrance, defend the title to Mortgaged Premises, pay

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such Impositions (plus any interest and penalties thereon), perform Rebuilding or Restoration or any obligation of Mortgagor specified in Paragraph 10 hereof, procure Insurance Policies and maintain and preserve Mortgaged Premises. All expenditures therefor, including reasonable attorneys' fees incurred by Mortgagee, shall forthwith become due and payable to Mortgagee, together with interest thereon at Default Rate, which shall be added to and become a part of Indebtedness and shall be secured by the lien of this Mortgage and Security Agreement, all without prejudice to the right of Mortgagee to declare Indebtedness immediately due and payable by reason of a Monetary Default or Non-Monetary Default. Mortgagee shall have the sole right of determination as to the validity of any lien, encumbrance or Imposition attributable to or assessed against Mortgaged Premises and payment thereof by Mortgagee shall establish its right to recover the amount so paid, with interest at Default Rate, subject to the provisions of Paragraph 12 following.

12. CONTEST OF LIENS OR ENCUMBRANCES: Mortgagor shall keep Mortgaged Premises free and clear of all liens for charges of services, labor, material and supplies furnished to or for its benefit and shall pay, as soon as the same become payable, all accruing taxes and special assessments thereon, PROVIDED, HOWEVER, that notwithstanding the foregoing, so long as no Monetary Default or Non-Monetary Default has occurred, Mortgagor and Beneficiary shall not be required to pay any lien claim, tax or assessment deemed excessive or invalid or otherwise contested by them so long as they shall, in good faith, object to or otherwise contest the validity of the same by appropriate legal proceedings and Mortgagor and Beneficiary shall, upon demand by Mortgagee, as protection and indemnity against loss or damage resulting therefrom, either:

- a) obtain title insurance from Chicago Title Insurance Company or such other title company acceptable to Mortgagee over such claim; or
- b) deposit cash, securities or a letter of credit acceptable to Mortgagee in an amount sufficient, in the reasonable judgment of Mortgagee, to pay the claim for lien or the unpaid or protested part of any such tax or assessment, together with any costs and penalties thereon which may thereafter accrue;

PROVIDED THAT, in any event, Mortgagor and Beneficiary shall pay any such lien claim, tax or assessment prior to any foreclosure sale foreclosing such lien or any tax sale relating to any such tax or assessment.

If the foregoing title insurance is obtained or deposits are made and Mortgagor continues, in good faith, to contest the validity of such lien, encumbrance or Imposition, by appropriate legal proceedings which shall operate to prevent the collection thereof and the sale of Mortgaged Premises, or any part thereof, to satisfy the same, Mortgagor shall be under no obligation to pay such lien, encumbrance or Imposition until such time as the same has been decreed, by court order, to be a valid lien on Mortgaged Premises. Mortgagee shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to the payment

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of any unpaid lien, encumbrance or Imposition to prevent the sale or forfeiture of Mortgaged Premises or non-payment of such lien, encumbrance or imposition, without liability on Mortgagee for any failure to apply the security or indemnity so deposited, unless Mortgagor, in writing, requests the application thereof to the payment of the particular lien, encumbrance or Imposition for which such deposit was made. Any surplus deposit retained by Mortgagee, after the payment of the lien, encumbrance or Imposition for which the same was made, shall be repaid to Mortgagor, unless Monetary Default or Non-Monetary Default exists, in which event, such surplus shall be applied by Mortgagee to cure such default.

13 WAIVERS: To the full extent permitted by law, Mortgagor:

- a) shall not, at any time, insist upon or plead or, in any manner whatsoever, claim, or take advantage of any stay, exemption or extension law or any so-called "Moratorium Law" (now or at any time hereafter in force) nor claim, take or insist upon any benefit or advantage of or from any law (now or hereafter in force) providing for the valuation or appraisal of Mortgaged Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to any decree, judgment or order of any court of competent jurisdiction or after such sale or sales, claim or exercise any rights pursuant to any statute now or hereafter in force to redeem Mortgaged Premises so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof;
- b) hereby expressly waives any and all statutory right of redemption on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to Mortgaged Premises subsequent to the date hereof, it being the intent of Mortgagor hereby that any and all such statutory rights of redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by Applicable Law;
- c) agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws has, have been or will have been made or enacted; and
- d) for itself and all who or which claim by, through or under Mortgagor, waives any and all right to have Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction

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to foreclose the lien of this Mortgage and Security Agreement may order Mortgaged Premises sold as an entirety.

- e) hereby waives any right to a trial by jury in any action or proceeding to enforce or defend any rights under this Mortgage and Security Agreement or any amendment, instrument, document or agreement which may be delivered in the future in connection herewith or arising from any banking relationship existing in connection with this Mortgage and Security Agreement, and agrees that any such action shall be tried before a court and not before a jury.

Mortgagor represents that the provisions of this Paragraph 13 (including the waiver of reinstatement and redemption rights) were made at the express direction of the Beneficiary and the persons having the power of direction over Mortgagor and are made on behalf of the trust estate of Mortgagor, the Beneficiary, as well as all other persons named above. The Mortgagor acknowledges that the transaction of which this Mortgage and Security Agreement is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act).

14. **UNPERMITTED TRANSFERS:** Except as permitted pursuant to paragraph 15 following, for the purpose of protecting Mortgagee's security, keeping Mortgaged Premises free from subordinate financing liens and/or permitting Mortgagee to raise the rate of interest due on Note and to collect assumption fees, Mortgagor agrees that any sale, installment sale, conveyance, assignment or other transfer of or grant of a security interest in and to all or any part of the:

- a) legal and/or equitable title to Mortgaged Premises; or
- b) legal and/or equitable title to Beneficial Interest or the beneficial interest of any trust which holds title to Mortgaged Premises;
- c) stock of any corporate owner of Mortgaged Premises or of any corporation which is the beneficiary of any trust which holds title to Mortgaged Premises, except for stock which is publicly-traded;
- d) partnership interests of the general partners of any partnership owning Mortgaged Premises or any general partnership which is the beneficiary of any trust which holds title to Mortgaged Premises;

shall be deemed to be an unpermitted transfer (collectively "Unpermitted Transfers").

Notwithstanding the foregoing, Mortgagee may condition its consent to an Unpermitted Transfer upon the payment of a fee to Mortgagee and/or an increase in the rate of interest due on Note and that prior to any transfer permitted by the Mortgagee the proposed documents of transfer

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are submitted to Mortgagee for its approval and, within ten (10) business days following such transfer, copies of the executed documents of transfer are delivered to Mortgagee. A consent by Mortgagee to an Unpermitted Transfer or a waiver of a default by reason thereof shall not constitute a consent to or waiver of any right, remedy or power accruing to Mortgagee by reason of any subsequent Unpermitted Transfer.

15. **PERMITTED TRANSFERS:** Provided there exists no Monetary Default or Non-Monetary Default, Mortgagee, for itself and its successors and assigns, agrees that, notwithstanding Unpermitted Transfers, the following transfers or assignments, upon written notice to Mortgagee, will be permitted without Mortgagee's prior written consent (collectively "Permitted Transfers"):

a) upon not less than forty-five (45) days prior written notice the execution of a mortgage or deed of trust subordinate to the lien of this Mortgage and Security Agreement, assignment of beneficial interest of Mortgagor and other customary loan documents, to secure an indebtedness ("Subordinate Financing"), provided that:

- i) the financial institution, documentation form and terms of Subordinate Financing are satisfactory to Mortgagee and all such documentation and information as Mortgagee may reasonably require shall be submitted to Mortgagee contemporaneous with Mortgagor's request
- ii) prior to the execution of such mortgage or trust deed, the Mortgagor shall demonstrate to the satisfaction of Mortgagee that all anticipated revenues to be derived from the operation of Mortgaged Premises, as adjusted by Mortgagee's customary underwriting standards including adjustments for vacancies (even if none exist) and reserves for maintenance ("Income") for the next succeeding twelve (12) calendar months exceeds the aggregate of:
 - (a) all anticipated real estate taxes, insurance premiums and all other expenses attributable to Mortgaged Premises; and
 - (b) one hundred fifteen per cent (115%) of:
 - (1) the "debt" service on Subordinate Financing; and
 - (2) the "debt" service on Indebtedness;

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[(a) and (b) are herein collectively referred to as "Expenses"] for the next succeeding twelve (12) month period;

- iii) the aggregate of Indebtedness and Subordinate Financing do not exceed an amount equal to seventy-five percent (75%) of the then current fair market value of Mortgaged Premises; and
- iv) Mortgagor shall pay Mortgagee all reasonable attorney's fees and other expenses incurred by Mortgagee in connection with Subordinate Financing;

16. **PROHIBITION AGAINST SUBMITTING MORTGAGED PREMISES TO CONDOMINIUM PROPERTY ACT:** Mortgagor shall not submit Mortgaged Premises to the Condominium Property Act of the State of Illinois or to any other cooperative ownership (except for owners' associations established pursuant to agreements approved by Mortgagee).

17. **DEFAULT:** In the event of a default by Mortgagor in the due and punctual payment of the whole or any part of the several installments due pursuant to Note and not cure the same within five (5) days of written notice and demand to cure served by Mortgagee upon Mortgagor or in the payment of all other fees, costs and expenses required to be paid by Mortgagor and Beneficiary pursuant to Note, Mortgage or Other Loan Documents or if any one (1) or more of the following events shall occur and, are continuing for thirty (30) days following written notice thereof from Mortgagee to Mortgagor, (provided, however, that such thirty (30) day time period shall be extended to a maximum of sixty (60) days so long as Mortgagor commences to cure such non-monetary default within the initial thirty (30) day time period and such default is not susceptible of a cure within such initial thirty (30) day time period) (collectively "Non-Monetary Defaults"):

- a) the failure of Mortgagor or Beneficiary to perform any of the terms, covenants, conditions and agreements required of them, pursuant hereto and to Mortgage and Other Loan Documents;
- b) any warranties and representations made by Mortgagor or Beneficiary are, is or shall become untrue;
- c) the order by the City, County, or the State of Illinois, alleging that any material part of Improvements is not in conformity with Applicable Laws and the failure of Beneficiary to commence to correct the same, to the satisfaction of Mortgagee;
- d) the bankruptcy or insolvency of the guarantor of Mortgagor's obligation and the failure of Beneficiary to procure a replacement satisfactory to Mortgagee to assume the obligations of the Guarantor;

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- e) any conveyance, transfer or assignment of Mortgaged Premises or Beneficial Interest, or any interest therein, except as permitted by the provisions hereof;
- f) the existence of any collusion, fraud, dishonesty or bad faith by or with the acquiescence of Mortgagor or Beneficiary which, in any way, relates to or affects Indebtedness;
- g) Beneficiary or Mortgagor shall:
 - i) have an order entered with respect to its or their relief pursuant to the Federal Bankruptcy Act;
 - ii) not pay, or admit in writing his or its inability to pay his or its debts as the same become due;
 - iii) make an assignment for the benefit of creditors;
 - iv) apply for, seek, consent to or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for him or it or for any substantial part of his or its property;
 - v) institute any proceeding seeking the entry of an order for relief pursuant to the Federal Bankruptcy Act to adjudicate him or it bankrupt or insolvent or seeking dissolution, winding-up, liquidation, reorganization, arrangement, adjustment or composition of him or it or his or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or failure to file an answer or other pleading denying the material allegations of any such proceeding filed against him or it; or
 - vi) take any action to authorize or effect any of the actions set forth herein or fail to contest in good faith any appointment or proceeding described in Subparagraph f) following;
- h) without the application, approval or consent of Mortgagor or Beneficiary, a receiver, trustee, examiner, liquidator or similar official shall be appointed for Trust or Beneficiary and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days;
- i) a material adverse misrepresentation in the financial statements to be furnished pursuant to Paragraph 29 hereof; or

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- j) a default by Mortgagor in the maintenance of any licenses which are necessary and required for the operation of Mortgaged Premises or the cancellation or any attempted assignment thereof without the prior written consent of Mortgagee;
- k) the death or incompetency of Guarantor and the failure of either the estate or the Beneficiary to provide a substitute guarantor satisfactory to Mortgagee or to cause the estate of the Guarantor to assume and agree to be liable for the Guarantor's Obligations pursuant to the Guaranty Agreement;

then, or at any time thereafter during the continuance of a Monetary Default or Non-Monetary Default, Mortgagee may declare Indebtedness immediately due and payable in full, without further notice thereof and without demand or presentment, anything contained herein or in Note or Other Loan Documents to the contrary notwithstanding, and Indebtedness so accelerated and declared due as aforesaid shall thereafter bear interest at Default Rate. For purposes hereof, the terms "Monetary Default" and "Non-Monetary Default" shall mean the failure to comply with the applicable term, covenant, condition or agreement, the service of the notice required by the terms of this Article 17 and the failure to cure such default within the applicable grace period.

In the event of a Monetary Default or Non-Monetary Default and immediately upon the commencement of any action, suit or other legal proceedings by Mortgagee to foreclose this Mortgage and Security Agreement, Mortgagor hereby unconditionally and irrevocably consents to the appointment of a receiver or receivers of Mortgaged Premises to receive all revenues from the operation of Mortgaged Premises, upon ten (10) days written notice to Mortgagor. Mortgagee shall be entitled to such appointment without regard to the adequacy of any security given for the payment of Indebtedness and said receiver or receivers shall be entitled to take possession of Mortgaged Premises from the owner, tenants and/or occupants of the whole or any part thereof and to collect and receive Income for the use and benefit of Mortgagee.

18. **REMEDIES NOT EXCLUSIVE:** No remedy or right of Mortgagor or Mortgagee hereunder or pursuant to Note or Other Loan Documents or otherwise available under applicable law, shall be exclusive of any other remedy or right but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing at law or in equity pursuant thereto. No delay in the exercise of or omission to exercise any remedy or right accruing by reason of a Monetary Default or a Non-Monetary Default shall impair any such remedy or right or be construed to be a waiver of any such default or an acquiescence therein nor shall the same affect any subsequent Monetary Default or Non-Monetary Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, 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, this Mortgage and Security Agreement and Other Loan Documents.

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If any provision in this Mortgage and Security Agreement shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage and Security Agreement, but shall not invalidate or render unenforceable any other provision of this Mortgage and Security Agreement that can be construed in a manner consistent with the Act. If any provision of this Mortgage and Security Agreement shall grant to Mortgagee any rights or remedies upon Default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provisions, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law. Mortgagor shall not be deemed to have waived a remedy available to it as a result of a delay in the exercise of such remedy.

19. **FORECLOSURE:** Upon the occurrence of a Monetary Default or a Non-Monetary Default (with the service of notes and expiration of the grace period), Mortgagee shall have the right to immediately foreclose the lien of this Mortgage and Security Agreement in accordance with the laws of the State of Illinois and to exercise any other remedies of Mortgagee provided in the Note, this Mortgage and Security Agreement or any of the Other Loan Documents, or which Mortgagee may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, Chapter 110, Sections 15-1101 et seq., Illinois Revised Statutes (1987) (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at sales which may be held pursuant to such decree the true conditions of the title to or the value of the Mortgaged Premises. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Premises and rents and income therefrom and the maintenance of the lien of this Mortgage and Security Agreement, including the fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage and Security Agreement, the Note, the Other Loan Documents or the Mortgaged Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be added to and become a part of the Indebtedness and secured hereby, and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid.

The proceeds of any foreclosure sale of the Mortgaged Premises shall be disbursed and applied in accordance with the provisions of subsection (c) of Section 15-1512 of the Act. The judgment of foreclosure or order the sale shall provide (after application pursuant to subsections (a) and (b) of said Section 15-1512) for application of such proceeds in the following order of priority: first to all items which are due to the Mortgagee pursuant to this Mortgage and Security

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Agreement and the Other Loan Documents other than Principal Amount and interest thereon in such order as Mortgagee may elect and then on account of interest and Principal Amount.

20. **POSSESSORY RIGHTS OF MORTGAGEE:** In addition to or concurrent with, and not in limitation of, the right set forth in Paragraph 19(a), upon the occurrence of a Monetary Default or a Non-Monetary Default (with the service of notice and expiration of the grace period), whether before or after the institution of proceedings to foreclose the lien of this Mortgage and Security Agreement, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Mortgaged Premises or any part thereof, personally, or by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in Section 15-1701 of the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in Section 15-1701 of the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Premises, together with all documents, books records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and:

- a) may, on behalf of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:
 - i) hold, operate, manage, and control all or any part of the Mortgaged Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;
 - ii) cancel or terminate any Lease or sublease of all or any part of the Mortgaged Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;
 - iii) after the appointment of a receiver or the appointment of Mortgagee as a mortgagee in possession, extend or modify any of the then existing Leases and make new Leases of all or any part of the Mortgaged Premises, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons

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whose interests in the Mortgaged Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Indebtedness satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

- iv) complete construction of Improvements, Repair or Restoration or Rebuilding or Restoration and make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to Mortgaged Premises which, in Mortgagee's sole discretion, may seem appropriate;
- v) insure and re-insure Mortgaged Premises against all risks incidental to Mortgagee's possession, operation and management thereof;
- vi) perform such other acts in connection with the management and operation of Mortgaged Premises as Mortgagee, in its sole discretion, may deem proper; and
- vii) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Premises, to the payment of Taxes, Premiums and other expenses applicable to the Mortgaged Premises, or in reduction of the Indebtedness in such order and manner as Mortgagee shall select.

Without limiting the generality of the foregoing provisions of this Paragraph 20, Mortgagee shall also have all power, authority and duties as provided in Section 15-1703 of the Act. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises.

- b) Upon the filing of a complaint to foreclose this Mortgage and Security Agreement or at any time thereafter, the court in which such complaint is filed may appoint upon petition of Mortgagee, and at Mortgagee's sole option, a receiver of the Mortgaged Premises pursuant to Section 15-1702 of the Act. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Mortgaged Premises or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act, including the power to make leases to be binding upon all parties, including

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the Mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Mortgaged Premises after entry of a judgment of foreclosure, all as provided in Subsection (g) of Section 15-1701 of the Act. In addition, such receiver shall also have the power to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other provisions to be contained therein, shall be binding upon Mortgagor and all the persons whose interest in the Mortgaged Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Indebtedness satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver shall have the power to collect the rents, issues and profits of the Mortgaged Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Mortgaged Premises in payment in whole or in part of: (i) the Indebtedness or the indebtedness secured by a decree foreclosing this Mortgage and Security Agreement, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (ii) the deficiency in case of a sale and deficiency.

21. **OTHER REMEDIES:** In the event of a Monetary Default or a Non-Monetary Default, Mortgagee may exercise, from time to time, any rights and remedies available to it pursuant to applicable law. Mortgagor shall, promptly upon request by Mortgagee, assemble Personal Property and make the same available to Mortgagee at such place or places reasonably convenient for Mortgagee and Mortgagor, as Mortgagee shall designate. Any notification required by law of intended disposition by Mortgagor of any part of Mortgaged Premises shall be deemed reasonably and properly given if served as herein provided at least ten (10) days prior to such disposition. Without limiting the foregoing, whenever a Monetary Default or Non-Monetary Default is existing, Mortgagee may, with respect to Personal Property, without further notice, advertisement, hearing, or process of law of any kind:

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- a) notify any person obligated on Personal Property to perform, directly for Mortgagee, its obligations thereunder;
- b) enforce collection of any part of Personal Property by suit or otherwise and surrender, release or exchange all or any part thereof or compromise, extend or renew, for any period (whether or not in excess of the original period), any obligations of any nature of any party with respect thereto;
- c) endorse any checks, drafts or other writings in the name of Mortgagor to permit collection of Personal Property and control of any proceeds thereof;
- d) enter upon any part of Mortgaged Premises where Personal Property may be located and take possession of and remove the same;
- e) sell any part or all of Personal Property free of all rights and claims of Mortgagor therein and thereto, at any public or private sale; and
- f) bid for and purchase any part or all of Personal Property at any such sale.

Any proceeds of any disposition by Mortgagee of any part of Personal Property may be applied by Mortgagee to the payment of expenses incurred in connection therewith, including reasonable attorneys' fees and legal expenses and any balance of such proceeds shall be applied by Mortgagee in the payment of such part of Indebtedness 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 pursuant to the Uniform Commercial Code, other applicable laws in effect from time to time or otherwise available to it by reason of any applicable law. Mortgagor hereby expressly waives presentment, demand, notice of dishonor and protest in connection with Indebtedness and, to the fullest extent permitted by applicable law, any and all other notices, advertisements, hearings or process of law in connection with the exercise by Mortgagee of any of its rights and remedies hereunder.

Mortgagor hereby consents to Mortgagee's taking of possession of Personal Property upon the occurrence of a Monetary Default or Non-Monetary Default, as Mortgagee, in its sole discretion (reasonably exercised) deems necessary or proper, and agrees to execute and deliver all instruments required by Mortgagee to accomplish the disposition of Personal Property, or any part thereof.

22. NON-LIABILITY OF 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 pursuant to Leases or otherwise and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur pursuant thereto or by reason of its exercise of its rights hereunder and of and from any and all claims and demands

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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 with respect to Mortgaged Premises. Mortgagee shall not have responsibility for the control, care, management or repair of Mortgaged Premises nor shall Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of Mortgaged Premises resulting in loss, injury or death to any Occupancy Tenant, licensee, employee or stranger upon Mortgaged Premises. No liability shall be enforced or asserted against Mortgagee in the exercise of the powers herein granted to it and Mortgagor expressly waives and releases any such liability. In the event Mortgagee incurs any such liability, loss or damage pursuant hereto and to any Lease or in the defense of any claim or demand, Mortgagor agrees to reimburse Mortgagee, immediately upon demand, for the amount thereof, including costs, expenses and reasonable attorneys' fees.

23. USURY: Mortgagor represents and agrees that Loan will be used for business purposes and this Mortgage and Security Agreement is exempt from limitations upon lawful interest, pursuant to the terms of the Illinois Revised Statutes, Chapter 17, Paragraph 6404.

24. CHANGE OF LAW: In the event of the enactment, following the date hereof, of any law in the State of Illinois deducting from the value of Mortgaged Premises, for the purpose of taxation, the amount of any lien, encumbrance or Imposition or imposing upon Mortgagee the payment of the whole or any part thereof or changing, in any way, the laws relating to the taxation of mortgages or debts secured by mortgages or the manner of collection of liens, encumbrances or Impositions, so as to affect this Mortgage and Security Agreement, Indebtedness or Mortgagee, Mortgagor shall, in any such event, upon demand by Mortgagee, pay such liens, encumbrances or Impositions or reimburse Mortgagee therefor. Notwithstanding the foregoing, it is understood and agreed that Mortgagor is not obligated to pay any part of Mortgagee's federal or state income tax.

25. COMPLIANCE WITH AGREEMENTS: Mortgagor shall pay promptly and keep, observe, perform and comply with all covenants, terms and provisions of operating agreements, Leases, instruments and documents relating to Mortgaged Premises or evidencing or securing any indebtedness secured thereby and shall observe all covenants, conditions and restrictions affecting the same.

26. LEASES AND RENTS: No rents, issues, profits, Leases or other contracts relative to Mortgaged Premises shall be assigned to any person, firm or corporation other than Mortgagee, without the prior written consent of Mortgagee. Mortgagor shall not and will not permit the leasing (within the meaning thereof in the law of landlord and tenant) of all or any part of Mortgaged Premises, except for Leases approved by Mortgagee.

27. SECURITY AGREEMENT: Mortgagor and Mortgagee agree that:

- a) this Mortgage and Security Agreement shall constitute a security agreement within the meaning of the Illinois Uniform Commercial Code ("Code") with

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respect to any and all sums at any time on deposit for the benefit of or held by Mortgagee (whether deposited by or on behalf of Mortgagor or others) pursuant to any provision of this Mortgage and Security Agreement, Note or Other Loan Documents and any personal property included in the granting clauses of this Mortgage and Security Agreement, which may not be deemed to be affixed to Mortgaged Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of Code) and all replacements thereof, substitutions therefor, additions thereto and the proceeds thereof (collectively "Collateral");

- b) a security interest in and to Collateral is hereby granted to Mortgagee;
- c) Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee to secure the payment of Indebtedness;
- d) all of the terms, provisions, conditions and agreements contained herein shall pertain and apply to Collateral as fully and to the same extent as the same apply to any other property comprising Mortgaged Premises; and
- e) the following provisions shall not limit the applicability of any other provision of this Mortgage and Security Agreement but shall be in addition thereto:
 - i) Mortgagor (being the "Debtor", as such term is defined in Code) is and will be the true and lawful owner of Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee only and liens and encumbrances, if any, expressly permitted pursuant hereto and to Note and Other Loan Documents;
 - ii) Collateral shall be used by Mortgagor solely for business purposes;
 - iii) Collateral shall be kept at Mortgaged Premises and, except for obsolete Collateral, will not be removed therefrom without the prior consent of Mortgagee (which consent shall not be unreasonably withheld or delayed);
 - iv) no financing statement (other than financing statements indicating Mortgagee as the sole "Secured Party" (as such term is defined in Code) or except as permitted in writing by Mortgagee or with respect to liens or encumbrances, if any, expressly permitted pursuant hereto and to Note and Other Loan Documents) applicable

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to any part of Collateral or any proceeds thereof is on file in any public office;

v) Mortgagor shall, upon demand and at its sole cost and expense, furnish to Mortgagee such further information, execute and deliver such financing statements and other documents (in form satisfactory to Mortgagee) and do all such acts and things as Mortgagee may, at any time or from time to time, request or as may be necessary or appropriate to establish and maintain a perfected security interest in Collateral as security for Indebtedness, free and clear of all liens or encumbrances other than liens or encumbrances benefitting Mortgagee only and liens and encumbrances, if any, expressly permitted hereby or pursuant to Note or Other Loan Documents and Mortgagor will pay the cost of filing or recording this Mortgage and Security and such financing statements or other documents in all public offices wherever filing or recording is deemed necessary or desirable by Mortgagee;

vi) In the event of the occurrence of a Monetary Default or a Non-Monetary Default (with the service of notice and the expiration of the grace period), Mortgagee: t). shall have the remedies of a Secured Party pursuant to Code, including, without limitation, the right to take immediate and exclusive possession of Collateral, or any part thereof and, for that purpose, may, insofar as Mortgagor can give authority therefor, with or without judicial process, enter (if the same can be done without breach of the peace) upon any place in which Collateral, or any part thereof, may be situated and remove the same therefrom (provided that if Collateral is affixed to real estate, such removal shall be subject to the conditions stated in Code); u). shall be entitled to hold, maintain, preserve and prepare Collateral for sale (until the disposition thereof) or may propose to retain the same subject to Mortgagor's right of redemption, in satisfaction of Mortgagor's obligations, as provided in Code; v). may render Collateral unusable without removal and may dispose of the same on Mortgaged Premises; w). may require Mortgagor to assemble Collateral and make the same available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both Mortgagee and Mortgagor; x). will furnish to Mortgagor not less than twenty (20) days' prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed by certified United

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States mail (or equivalent), postage prepaid, to the address of Mortgagor hereafter set forth; y). may purchase, at any public sale and, if Collateral is of a type customarily sold in a recognized market or the subject of widely distributed standard price quotations, Mortgagee may purchase Collateral at private sale, which sale may be held as a part of and in conjunction with any foreclosure sale of Mortgaged Premises and Collateral and Mortgaged Premises may be sold as one lot, if Mortgagee so elects, and the net proceeds realized upon any such disposition, after deduction for the expenses of re-taking, holding, preparing for sale, selling or the like, and reasonable attorneys' fees and legal expenses incurred by Mortgagee shall be applied against Indebtedness in such order or manner as Mortgagee shall select; and z). will account to Mortgagor for any surplus realized on such disposition;

- vii) the terms and provisions contained in this Paragraph 27 shall, unless the context otherwise requires, have the meanings contained and be construed as provided in Code;
- viii) this Mortgage and Security Agreement is intended to be a financing statement within the purview of Section 9-402(6) of Code with respect to Collateral and the goods described herein, which are or may become fixtures relating to Mortgaged Premises, and: (1) the addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereafter set forth; (2) this Mortgage and Security Agreement shall be filed or recorded with the Recorder of Deeds of Cook County, Illinois; and (3) Mortgagor is the record owner of Mortgaged Premises; and
- ix) to the extent permitted by applicable law, the security interest established hereby is specifically intended to cover and include all of the right, title and interest of Mortgagor, as landlord, in and to Leases, including all extended terms and extensions and renewals thereof, together with any amendments to or replacements thereof and all right, title and interest of Mortgagor, as landlord thereunder, including, without limitation, the present and continuing right to: x). make claim for, collect, receive and receipt for any and all rents, income, revenues, issues, profits and monies payable as damages or, in lieu of the rents and moneys payable, as the purchase price of Mortgaged Premises, or any part thereof or of awards or claims of money and other sums of money payable or receivable thereunder, howsoever payable; y). bring actions and proceedings thereunder or for the enforcement thereof; and z). do

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any and all things which Mortgagor or any landlord is or may become entitled to do pursuant to Leases.

28. **EXECUTION OF SEPARATE SECURITY AGREEMENT AND FINANCING STATEMENT:** In addition to this Mortgage and Security Agreement being deemed a security agreement, Mortgagor shall, upon the written request of Mortgagee, as additional security for the payment of Indebtedness and the performance of all of the terms, covenants, conditions and agreements set forth herein and in Note and Other Loan Documents, execute and deliver to Mortgagee a security agreement, granting to Mortgagee a first security interest in and to Collateral, all right, title and interest of Mortgagor, as landlord, in and to Leases and all rents, issues and profits due or which may hereafter become due and payable pursuant to the terms and provisions thereof; and, further, execute and deliver Financing Statements pursuant to the Uniform Commercial Code, State of Illinois. Mortgagor agrees, from time to time, to execute such additional Security Agreements and Financing Statements as may be necessary to vest in Mortgagee a security interest in and to Collateral and Leases until Indebtedness is paid in full.

29. **FINANCIAL STATEMENTS:** Within one hundred twenty (120) days following the close of each calendar year, Mortgagor shall furnish to Mortgagee financial statements of Beneficiary, prepared by a certified public accountant in accordance with generally accepted accounting principles, consistently applied, which shall be in such detail as Lender may require. Mortgagee shall have the right, at its expense, upon reasonable notice, to inspect and make copies of the books, records and income tax returns of Beneficiary with respect to Mortgaged Premises for any reasonable purpose.

30. **PAYMENT AND PERFORMANCE BY MORTGAGEE:** In the event that Mortgagor shall fail to pay or perform any of its obligations contained herein and in Note and Other Loan Documents (including the payment of expenses of foreclosure and court costs), Mortgagee, in addition to all other remedies provided in Note and Other Loan Documents, may, but need not, following the expiration of any applicable grace period provided therein, pay or perform (or cause to be paid or performed) any obligation of Mortgagor pursuant thereto, in any form and manner deemed reasonably expedient by Mortgagee, as agent or attorney-in-fact of Mortgagor, 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 hereunder), with interest thereon at Default Rate, shall be and become a part of Indebtedness and shall be paid to Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not:

- a) perform any obligation of Mortgagor or Beneficiary required pursuant to Leases;
- b) collect rentals due and owing pursuant to Leases and prosecute the collection of Collateral or the proceeds thereof;

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- c) purchase, discharge, compromise or settle any Imposition, lien or any other lien, encumbrance, suit, proceeding, title or claim thereof;
- d) redeem from any tax sale or forfeiture affecting Mortgaged Premises or contest any Imposition; and
- e) perform any act or deed reasonably necessary and required to protect the value of Mortgaged Premises and the security given for Indebtedness.

In making any payment or securing any performance relating to any obligation of Mortgagor hereunder, Mortgagee, so long as it acts in good faith, shall have the sole discretion as to the legality, validity and amount of any lien, encumbrance or Imposition and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee shall be considered a waiver of any right accruing to it on account of the occurrence of any Monetary Default or Non-Monetary Default.

31. **RELEASE:** Upon payment in full of Indebtedness, at the time and in the manner herein provided, this Mortgage and Security Agreement shall be null and void and, upon demand therefor following such payment, an appropriate instrument of reconveyance or release shall, in due course, be made by Mortgagee to Mortgagor, at Mortgagor's expense.

32. **CONSENT OF MORTGAGEE:** The consent by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent in any like matter arising at a subsequent date and the failure of Mortgagee to promptly exercise any right, power, remedy or consent provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy or consent at a later date.

Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party.

If Mortgagee deems it to be in its best interest to retain the assistance of persons, firms or corporations (including, but not limited to, attorneys, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all reasonable costs incurred in connection with the employment of such persons, firms or corporation.

33. **CARE:** Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any part of Mortgaged Premises 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

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request shall not, of itself, be deemed a failure to exercise reasonable care and no failure of Mortgagee to preserve or protect any rights with respect to Mortgaged Premises against prior parties or do any act with respect to the preservation thereof not so requested by Mortgagor shall be deemed a failure to exercise reasonable care in the custody or preservation of Mortgaged Premises.

34. **MORTGAGOR'S CONTINUING LIABILITY:** This Mortgage and Security Agreement is intended only as security for Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein and in Note and Other Loan Documents. Mortgagor shall be and remain liable to perform all of the obligations assumed by it pursuant hereto and Mortgagee shall have no obligation or liability by reason of or arising out of this Mortgage and Security Agreement and shall not be required or obligated, in any manner, to perform or fulfill any of the obligations of Mortgagor pursuant hereto, anything contained herein or in Note and Other Loan Documents to the contrary notwithstanding.

35. **INSPECTIONS:** Mortgagee, by any authorized agent or employee and for the protection of its interest in Mortgaged Premises, is hereby authorized and empowered to enter in and upon Mortgaged Premises at any and all reasonable times, for the purpose of inspecting the same and ascertaining the condition thereof.

36. **INDEMNIFICATION:** Mortgagor shall indemnify Mortgagee from all losses, damages and expenses, including reasonable attorneys' fees, incurred in connection with any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this Mortgage and Security Agreement.

37. **PERFORMANCE OF CONSTRUCTION CONTRACTS:** Mortgagor shall notify any person obligated to it or to Beneficiary pursuant to construction contracts applicable to Improvements of the existence of a Monetary Default or a Non-Monetary Default and require that performance of such contracts by it be made directly for the benefit of Mortgagee, at the expense of Mortgagor, and Mortgagor shall advance such sums as may be necessary or appropriate to satisfy Mortgagor's obligations thereunder.

38. **CORRECTIVE DOCUMENTS:** Mortgagor and Mortgagee shall, at the request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage and Security Agreement or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by Mortgagee or Mortgagor, as the case may be, to correct such defect, error or omission, and at the sole option of Mortgagee, Mortgagor will execute and deliver, at Mortgagee's expense, a note in substitution of Note, if lost or destroyed (provided Mortgagee has provided Mortgagor with adequate assurances that Mortgagor will not suffer adverse financial consequences as a result of the loss or destruction of the Note), and Mortgagor will execute and deliver, at Mortgagee's expense any required agreement modifying this Mortgage and Security

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Agreement or Other Loan Documents to reflect the substitution of such new note, provided that the terms and provisions of such new note shall not, in the aggregate, require payments in excess of what would be required under such replaced original Note, nor contain terms different from those of such replaced original Note.

39. MISCELLANEOUS:

- a) Mortgagor shall cause the Mortgaged Premises to be managed by a managing agent satisfactory to Mortgagee and shall not, without the consent of Mortgagee (and, for purposes hereof, Harry L. Langer is a satisfactory property manager), impose any restrictions, agreements or covenants which run with the land upon the Mortgaged Premises, nor plat, replat, subdivide or resubdivide the Land.
- b) Mortgagor shall not use any part of Indebtedness for the purchase or carrying of registered equity securities within the purview and operation of Regulation G issued by the Board of Governors of the Federal Reserve System.
- c) If the lien or security interest secured by this Mortgage and Security Agreement is invalid or unenforceable as to any part of the Indebtedness evidenced by Note and secured by this Mortgage and Security Agreement, or if such lien or security interest is invalid or unenforceable as to any part of the Mortgaged Premises, any unsecured portion of Indebtedness evidenced by Note and secured by this Mortgage and Security Agreement shall be completely paid prior to the payment of the remaining and secured or partially secured portion of Indebtedness evidenced by the Note. All payments made on the Indebtedness secured hereby, 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 Indebtedness evidenced by Note which is not secured by the lien or security interest of this Mortgage and Security Agreement.
- d) The invalidity or unenforceability in any particular circumstance of any provision of this Mortgage and Security Agreement shall not extend beyond such provision or such circumstance, and no other provision of this Mortgage and Security Agreement shall be affected thereby.
- e) Acceptance by Mortgagee of any payment in an amount less than the amount then due on the Indebtedness shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a default. Until the entire amount due on the Indebtedness has been paid, Mortgagee shall be entitled to exercise all rights conferred

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upon it in this Mortgage and Security Agreement upon the occurrence of a Monetary Default or Non-Monetary Default.

- f) All obligations contained herein or in the Other Loan Documents are intended by the parties to be, and shall be construed as, covenants running with the Mortgaged Premises.
- g) Any foreclosure sale of the Mortgaged Premises under this Mortgage and Security Agreement shall, without further notice create the relation of landlord and tenant at sufferance between the purchaser at such sale as landlord, and Mortgagor as tenant; and upon failure to surrender possession after acquisition of title by the Mortgagee and demand, Mortgagor may be removed by a writ of possession upon suit by such purchaser.

40. **MECHANIC'S LIENS:** The lien of any mechanic or materialman shall not be permitted to attach to or remain against Mortgaged Premises unless the same is being contested pursuant hereto.

41. **GOVERNING LAW:** This Mortgage and Security Agreement shall be construed in accordance with and governed by the laws of the State of Illinois. Whenever possible, each provision of this Mortgage and Security Agreement shall be interpreted in such a manner as to be effective and valid pursuant to applicable law, however, if any part thereof shall be prohibited by or invalid thereunder, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder thereof or the remaining provisions of this Mortgage and Security Agreement.

42. **REPRESENTATIONS:** Mortgagor unconditionally represents to Mortgagee as follows:

- a) Mortgagor has all requisite power, and has or will obtain and will maintain all governmental certificates of authority, licenses, permits, qualifications and documentation to own, lease and operate its properties and to carry on its business as now being, and as proposed to be, conducted. Mortgagor and Beneficiary are duly organized, validly existing and in good standing under applicable law;
- b) the execution, delivery and performance by Mortgagor under the Note, this Mortgage and Security Agreement and Other Loan Documents and the incurring of the indebtedness evidenced by the Note:
 - i) are within Mortgagor's powers and, where applicable, have been duly authorized by Beneficiary or other necessary parties, and all other requisite action for such authorization has been taken;

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- ii) have received any and all requisite prior governmental approval in order to be legally binding and enforceable in accordance with the terms thereof; and
- iii) will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under any legal requirement binding on Mortgagor or, to the knowledge of Mortgagor, Beneficiary, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property or assets. The Note, this Mortgage and Security Agreement and Other Loan Documents constitute the legal, valid and binding obligations of Mortgagor and others obligated thereunder in accordance with their respective terms;
- iv) all information, reports, papers and data given to Mortgagee by Mortgagor, or upon Mortgagor's request by Beneficiary, with respect to Mortgagor, Beneficiary and the Mortgaged Premises, are true, accurate, complete and correct in all material respects and do not omit any fact which must be included to prevent any other facts contained therein from being materially misleading or false;
- v) Mortgagor has not received written notice of any litigation or administrative proceeding of any kind pending nor, to the Mortgagor's knowledge is there any litigation or administrative proceeding threatened, in respect to the Mortgaged Premises or any part thereof or which, if adversely determined, would result in a material adverse change in the financial conditions, business operations or properties of Mortgagor, including, without limitation, the Mortgaged Premises or Mortgagor's ability to perform its obligations hereunder;
- vi) the Mortgaged Premises and the use and operation thereof are currently in compliance and will remain in compliance with all applicable environmental, health and safety laws, rules and regulations. The Mortgaged Premises presently contains no environmental, health or safety hazards. The Mortgaged Premises, to the best knowledge of Mortgagor, have never been used for a sanitary land fill, dump or for the disposal, generation or storage of any hazardous substances deposited or located in, under or upon the Mortgaged Premises, any parcels adjacent thereto, or on or affecting any part of the Mortgaged Premises or the business or operations conducted thereon, including, without limitation, with respect to the disposal of "Hazardous Material". No underground

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storage tanks are or have been located on the Mortgaged Premises. No portion of the Mortgaged Premises is presently contaminated by any Hazardous Material and no storage, treatment or disposal of any hazardous substance has occurred on or in the Mortgaged Premises. The Mortgagor, and to the knowledge of Mortgagor, the Partnership and Guarantor have not received any notice of any Hazardous Material in, under or upon the Mortgaged Premises or of any violation of any "Environmental Laws" or has any knowledge which would provide a basis for any such violation with respect to the Mortgaged Premises. Mortgagor has not received written notice of and there are no pending or, to the Mortgagor's knowledge, threatened actions or proceedings, or notices of potential actions or proceedings, from any governmental agency or any other entity regarding the condition or use of the Mortgaged Premises or regarding any Environmental Laws or health or safety laws. Mortgagor will promptly notify Mortgagee of any notices and any pending or threatened action or proceeding in the future, and Mortgagor will promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of Mortgagee.

- vii) until Indebtedness is paid in full, no Hazardous Material will be used by any person for any purpose upon the Mortgaged Premises or stored thereon without thirty (30) days written notice to and approval of Mortgagee. Mortgagor indemnifies and holds Mortgagee harmless from and against all loss, cost, including, without limitation, reasonable attorney fees, liability and damage whatsoever incurred by Mortgagee by reason of "Lender's Environmental Liability" or any violation of any applicable statute or regulation for the protection of the environment which occurs or has occurred upon the Mortgaged Premises, or by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation. Mortgagor's obligation to Mortgagee under the foregoing indemnity shall be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to Mortgagee. The release of this Mortgage and Security Agreement shall in no event terminate or otherwise affect the indemnity which is given under the terms and provisions of a certain Environmental Indemnity Agreement which is an Other Loan Document concerning Hazardous Material.

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43. **TAX SERVICE CONTRACT:** Mortgagor shall, at the request of Mortgagee, enter into a contract with a tax reporting agency approved by Mortgagee for the purpose of making annual tax searches to assure the prompt payment of real estate taxes and special assessments levied against Mortgaged Premises; PROVIDED, HOWEVER, that if Mortgagee does not require such an agency contract, Mortgagor shall reimburse Mortgagee or its loan servicing agent for the cost of such annual searches.

44. **LATE CHARGE:** In addition to the payment of Indebtedness, Mortgagee shall have the right to demand and Mortgagor shall pay a late charge equal to FOUR CENTS (\$.04) for each ONE DOLLAR (\$1.00) of payments due and owing on account of Indebtedness not made within fifteen (15) days of the date due.

45. **MECHANIC'S LIENS:** The lien of any mechanic or materialman shall not be permitted to attach to or remain against Mortgaged Premises unless the same is being contested pursuant hereto.

46. **SEVERABILITY:** In the event of any inconsistency among the terms hereof (including incorporated terms) or between such terms and the terms of Note or Other Loan Documents shall be applicable, govern and prevail, but no such application shall invalidate the Note or the validity or priority of the Mortgage or the Other Loan Documents. The whole or partial invalidity, illegality or unenforceability of any provision hereof at any time, whether pursuant to the terms of then applicable law or otherwise, shall not affect, in the instance of partial invalidity, illegality or unenforceability, the validity, legality or enforceability of such provision at such time except to the extent of such partial invalidity, illegality or unenforceability of such provision at any other time or of any other provision hereof at that or any other time.

47. **TIME OF THE ESSENCE:** It is specifically agreed that time is of the essence of this Mortgage and Security Agreement and that a waiver of the options or obligations secured hereby shall not, at any time thereafter, be held to be abandonment of such rights. Notice of the exercise of any option granted to Mortgagee pursuant hereto or to Note or Other Loan Documents is not required to be given.

48. **NOTICES:** Any notice, consent or other communication to be served hereunder or pursuant to Note or Other Loan Documents shall be deemed properly delivered if delivered personally or by Federal Express or comparable "over-night" courier service (which shall be deemed received on the date of delivery thereof), or mailed by United States certified or registered mail, postage prepaid (which shall be deemed received three [3] business days following the postmark date thereof), to Mortgagor, Mortgagee and Notice Receivers at the addresses set forth below or to such other address as Mortgagor, Mortgagee or Notice Receivers may direct in writing:

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If to Trust, 33 North LaSalle Street, Chicago, Illinois 60690, Attn: Land Trust Department, with copies thereof to Beneficiary at 3767 North Racine, Chicago, Illinois 60613, Attn: Harry L. Langer; and

If to Beneficiary, at 3767 North Racine, Chicago, Illinois 60613, Attn: Harry L. Langer; and

If to Lender, at 33 North LaSalle Street, Chicago, Illinois 60602, Attn: Bruce Martin.

49. **CAPTIONS:** The headings or captions of the paragraphs or subparagraphs hereof are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms of this Mortgage and Security Agreement.

50. **BENEFIT:** All grants, conditions and provisions hereof shall apply, extend to and be binding upon Mortgagor and all persons claiming any interest in Mortgaged Premises by, through or under Mortgagor and shall inure to the benefit of Mortgagee, its successors and assigns.

51. **REVOLVING LOAN:** Mortgagee agrees to lend Mortgagor, on a revolving basis, the sum of ELEVEN MILLION AND 00/100 DOLLARS (\$11,000,000.00). As Mortgagor repays the principal amount of Loan, it shall be permitted to reborrow such funds, provided that the maximum amount disbursed at any given time shall not exceed the amount of ELEVEN MILLION AND 00/100 DOLLARS (\$11,000,000.00).

Mortgagor agrees that all advances and indebtedness arising or accruing from time to time pursuant to the terms and conditions of the note ("Note") which evidences Loan and is secured by Mortgage and all other Loan Documents, whether or not the total amount of the advances may exceed the maximum amount specified herein or the face amount of the Note, shall be secured by Mortgage to the same extent as though Note were fully incorporated in Mortgage.

Mortgagor shall have the right, upon request and provided that no "Monetary" or "Non-Monetary Default" (as such terms are defined in Mortgage) shall have occurred, to additional advances of the proceeds of Loan pursuant to the terms of this Mortgage and Security Agreement notwithstanding that, pursuant to the provisions thereof, payments have been made on account of Loan;

Mortgagor agrees that Mortgagee is authorized, if Mortgagee so elects, to either maintain a separate schedule attached to Note, setting forth the date of each disbursement of the proceeds of Loan, the date of repayment thereof, from time to time, and the outstanding principal balance due and owing thereon on each date of disbursement, or record such disbursements, repayments and balances by computer record, provided that, in all events, notice of the principal balance due and owing on Loan shall be delivered to mortgagor not less frequently than monthly.

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Mortgagor acknowledges this Mortgage and Security Agreement, Note and any related Loan Documents constitutes a "revolving credit" as such term is defined in 205 Illinois Compiled Statutes (ILCS) 5/5d.

52. LOAN AGREEMENT; REVOLVING ADVANCES; OBLIGATORY FUTURE ADVANCES: Mortgagor:

- a) shall timely and fully perform and satisfy all the terms, covenants and conditions of the Loan Agreement to be performed by it;
- b) agrees that all advances and indebtedness arising or accruing pursuant to the terms and conditions of the Loan Agreement from time to time and relating to the "Revolving Portion" (as such term is defined in Loan Agreement), whether or not the total amount thereof may exceed the maximum amount specified in Loan Agreement or the face amount of the Note, shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Mortgage and Security Agreement and if there shall be any inconsistency between provisions of this Mortgage and Security Agreement and the Loan Agreement, the Mortgagee shall have the option of determining which of such inconsistent provisions shall prevail;
- c) shall have the right provided that no Monetary Default or Non-Monetary Default has occurred and provisions of Loan Agreement are complied with, to additional advances of the Proceeds of Revolving Portion notwithstanding that pursuant to the provisions of Loan Agreement payments have been made on account of Revolving Portion;
- d) agrees that this Mortgage and Security Agreement is granted to secure future advances and loans from the Mortgagee to the Mortgagor, as provided in the Loan Agreement and 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 and Security Agreement is recorded;
- e) agrees that Mortgagee is authorized, if Mortgagee so elects, to either maintain a separate schedule attached to Note, setting forth the date of each disbursement of the proceeds of "Development Portion" and Revolving Portion, the date of repayment thereof, from time to time, and the outstanding principal balance due and owing thereon on each date of disbursement, or record such disbursements, repayments and balances by computer record, PROVIDED THAT, in all events, notice of the principal balance due and

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owing on Revolving Portion shall be delivered or made available to Mortgagor not less frequently than monthly.

- f) acknowledges this Mortgage and Security Agreement, the Note, Loan Agreement and Other Loan Documents, evidence a "revolving credit" as such term is defined in Illinois Revised Statutes, Chapter 17, Paragraph 6405.

This Mortgage and Security Agreement is executed by Mortgagor, not personally but solely as trustee under the terms of the aforesaid Trust Agreement, solely in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Mortgagor hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed that nothing herein or in Note or Other Loan Documents contained shall be construed as establishing any personal liability upon Mortgagor, personally, to pay Indebtedness or to perform any of the terms, covenants, conditions and agreements herein or therein contained, all such personal liability being hereby expressly waived by Mortgagee; Mortgagee's only recourse against Mortgagor being against Mortgaged Premises and other property given as security for the payment of Indebtedness ("Other Security"), in the manner herein, in Note and Other Loan Documents and by law provided. Except as herein and in Mortgage and Other Loan Documents, including any guaranty, provided, Payee or Holder shall look solely to Mortgaged Premises, Other Security and the foreclosure of the lien of Mortgage and no deficiency judgment for Indebtedness (following the application of the proceeds thereof) shall be instituted, sought, taken or obtained against Maker, PROVIDED THAT nothing contained herein shall be deemed to prejudice the rights of Payee or Holder to recover from Beneficiary and others, except Maker:

- a) the full amount of Indebtedness;
- b) all actual losses, damages, costs and expenses (including, without limitation, attorneys fees) incurred by Mortgagee as a result of fraud, material misrepresentation made by Beneficiary or a breach of any warranty and representation contained in any document delivered to Payee or Holder by or at the request of Maker or Beneficiary or as a result of the intentional or negligent waste of Mortgaged Premises;
- c) all rents, revenues, issues and profits from Mortgaged Premises received during the period of any Monetary Default or Non-Monetary Default or after acceleration of Indebtedness and not applied to the payment of Indebtedness or the normal operating expenses of Mortgaged Premises;
- d) all rents from Mortgaged Premises collected more than one (1) month in advance which are not earned at the time of the occurrence of any Monetary Default or Non-Monetary Default and which are not applied to payment of Indebtedness or the normal operating expenses of Mortgaged Premises;

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- e) all Proceeds and Awards which are not applied in accordance with the provisions of Mortgage and Other Loan Documents; and
- f) all obligations owed pursuant to a certain "Environment Indemnity Agreement" of even date herewith.

Nothing contained herein or in Note and Other Loan Documents to the contrary notwithstanding shall be deemed to release, affect or impair Indebtedness or the rights of Mortgagee to enforce its remedies pursuant hereto and to Note and Other Loan Documents, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed by its duly authorized officers and its corporate seal to be hereunto affixed on the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO, a national banking
association, as successor trustee to
FIRST CHICAGO TRUST COMPANY OF ILLINOIS,
a national banking association,
not personally but solely as trustee aforesaid

By: [Signature]

Title: TRUST OFFICER

ATTEST:

Attestation not required by American National
Bank and Trust Company of Chicago By Law

Title:

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EXHIBIT "A" LEGAL DESCRIPTION OF LAND

PARCEL 1:

LOTS 5, 6 AND 7 IN EWING ADDITION OF CHICAGO, SAID ADDITION BEING A SUBDIVISION IN BLOCK 17 IN BUSHNELL'S ADDITION TO CHICAGO IN THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO PLAT THEREOF RECORDED OCTOBER 8, 1895 AS DOCUMENT 2288460.

PARCEL 2:

THE NORTH 20 FEET OF LOT 5 IN THE ASSESSOR'S DIVISION OF THE NORTH 200 FEET OF BLOCK 17 IN BUSHNELL'S ADDITION TO CHICAGO, SAID LAND BEING ALSO DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID BLOCK 175 FEET SOUTH OF THE NORTH LINE OF SAID BLOCK AND RUNNING THENCE SOUTH ALONG SAID WEST LINE 20 FEET MORE OR LESS THENCE EAST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID BLOCK, 143.8 FEET MORE OR LESS TO THE ALLEY; THENCE NORTH ALONG THE WEST LINE OF SAID ALLEY 20 FEET MORE OR LESS TO A POINT 175 FEET SOUTH FROM THE NORTH LINE OF SAID BLOCK; THENCE WEST PARALLEL WITH THE NORTH LINE OF SAID BLOCK, 148.8 FEET MORE OR LESS TO THE PLACE OF BEGINNING IN COOK COUNTY, ILLINOIS.

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CHICAGO, ILLINOIS

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