

UNOFFICIAL COPY

96288668

Prepared by and upon recording return to:

John R. Grier, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, IL 60601

. DEPT-01 RECORDING 159.00
. T#0012 TRAN 0180 04/17/96 10:56:00
. 49972 + ER #-96-288668
. COOK COUNTY RECORDER

(For Recorder's Use Only)

5909

MORTGAGE AND SECURITY AGREEMENT

By

GREAT LAKES REIT, INC.,
a Maryland corporation

Mortgagor

To

THE FIRST NATIONAL BANK OF BOSTON,
a national banking association, as Agent

Mortgagee

Relating to Premises in:

Des Plaines, Cook County, Illinois

96288668

BOX 333-CTI

SR 147
7602390 10F2

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

This MORTGAGE AND SECURITY AGREEMENT ("Mortgage") dated as of the 12th day of April, 1996, is from GREAT LAKES REIT, INC., a Maryland corporation, having an office at 2311 West 22nd Street, Suite 109, Oak Brook, Illinois 60521 ("Mortgagor"), to THE FIRST NATIONAL BANK OF BOSTON, a national banking association, having its principal office at 100 Federal Street, Boston, Massachusetts 02110, as Agent for the "Banks" as defined in the Loan Agreement (hereinafter referred to as "Mortgagee").

WHEREAS, Mortgagor is justly indebted to Mortgagee for the payment and performance of the Obligations as defined below;

§1. Granting Clause

NOW THIS INDENTURE WITNESSETH, that Mortgagor, in consideration of the indebtedness, and to secure the payment to Mortgagee of the principal evidenced by the Note (as herein defined) with interest, and all other sums provided for in the Obligations, and in this Mortgage, according to their respective terms and conditions, and for performance of the agreements, conditions, covenants, provisions and stipulations contained herein and therein, and in certain other agreements and instruments made and given or to be given by Mortgagor to Mortgagee in connection therewith, including, without limitation, financing statements and any assignment of rents and leases, does hereby grant, bargain, convey, warrant, assign, transfer mortgage, pledge and set over unto Mortgagee and its successors and assigns all of the property described in Schedule A attached hereto and incorporated herein by reference as if fully set out herein (the "Property").

§2. Certain Covenants and Conditions

The Mortgagor covenants and agrees as follows.

§2.1. Governmental Charges. Subject to Mortgagor's right of contest pursuant to Section 7.A of the Loan Agreement, Mortgagor shall pay before the same become delinquent all taxes, charges, sewer use fees, water rates and assessments of every name and nature, whether or not assessed against Mortgagor, if applicable or related to the Property, or any interest therein, or applicable or related to any of the Obligations, which, if unpaid, might by law become a lien or charge upon all or any part of the Property.

§2.2. Provision for Payment of Governmental Charges and Other Obligations. To assure the payment of all taxes, charges, sewer use fees, water rates, ground rents and assessments of every name and nature, or any other obligations which may have or acquire priority over this Mortgage, and which are assessed

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

or payable with reference to the Property, the Mortgagor, if so requested by the Mortgagee, shall deposit with the Mortgagee, on the first day of each month, a sum determined by the Mortgagee to be sufficient to provide, in the aggregate, a fund adequate to pay any such amounts at least one (1) month before the same become delinquent; and whenever the Mortgagee determines sums accumulated under the provisions of this §2.2 are insufficient to meet the obligation for which Borrower's deposits were made, the Mortgagor shall pay, on the demand of the Mortgagee, any amount required to cover the deficiency therein. Every such deposit may, at the option of the Mortgagee, be applied directly against the obligation with reference to which it was made, or, to the fullest extent permissible according to law, any other obligation of the Mortgagor secured hereby. Such deposits may, to the fullest extent permitted by law, be commingled with other assets of the Mortgagee and, in the discretion of the Mortgagee, invested by the Mortgagee for its own account, without any obligation to pay income from such investment, or interest on such deposits, to the Mortgagor, or to account to Mortgagor for such income in any manner.

§2.3.

Maintenance of Property; Alterations; Compliance with Law. Mortgagor shall keep and maintain the Property in as good repair and condition as the same now is or may hereafter be put (ordinary wear and tear excepted), damage from casualty expressly not excepted, shall make all such needful and proper repairs, replacements, additions and improvements thereto as shall be necessary for the proper conduct of its business thereon, and shall not permit or commit waste on the Property. Mortgagor will make or cause to be made, as and when the same shall become necessary, all structural and non-structural, exterior and interior, ordinary and extraordinary, foreseen and unforeseen repairs, renewals and replacements necessary to that end. Mortgagor shall not permit removal or alteration of anything which constitutes a part of the Property without the consent of the Mortgagee except that Mortgagor may remove personal property or fixtures which have become obsolete provided that Mortgagor shall substitute personal property or fixtures of equal utility and equal or greater value for the items so removed. Mortgagor shall permit the Mortgagee to enter the Property, at any reasonable time to determine whether Mortgagor is in compliance with its obligations

96288668

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

under this Mortgage. All construction on the Property shall comply with, and each and every part of the Property shall be maintained and used in accordance with, all applicable federal, state and local laws and governmental regulations, and any lawful private restrictions or other requirements or provisions, relating to the maintenance or use thereof.

§2.4. Hazard and Other Insurance. Mortgagor, at its expense, shall procure and maintain for the benefit of Mortgagor and Mortgagee, the insurance policies described in the Loan Agreement.

§2.5. Casualties and Takings. All proceeds of any property or casualty insurance shall be paid to the Mortgagee and applied as set forth in the Loan Agreement. All awards of damages on account of any taking or condemnation for public use of or injury to the Property shall be paid to the Mortgagee. In the case of a taking, the Mortgagee may, in its sole discretion, apply such proceeds to or toward the Obligations or release to Mortgagor such portion of the proceeds paid to it as Mortgagee shall in its sole discretion determine to be necessary and appropriate for the repair or restoration of that part of the Property remaining after such taking, such proceeds to be advanced in accordance with and subject to the requirements of Mortgagee's usual procedures for funding construction advances and to be applied to the cost of repairing and restoring the remaining portion thereof, with any balance remaining to be applied to or toward the Obligations.

§2.6. Notice of Condemnation. Mortgagor, immediately upon obtaining knowledge of the institution of any proceeding for the condemnation or requisition of the Property or any portion thereof, shall notify the Mortgagee of the pendency of such proceeding. The Mortgagee may participate in such proceeding, and the Mortgagor from time to time shall deliver to the Mortgagee all instruments requested by the Mortgagee to permit such participation.

§2.7. Hazardous Materials: Asbestos. With respect to environmental matters, the provisions of Section 6.18 of the Loan Agreement shall be incorporated herein and made a part hereof as though fully set forth herein.

§2.8. Leases; Assignments; Subordination. As part of the consideration for the Obligations, Mortgagor has absolutely and unconditionally assigned and transferred to Mortgagee all of Mortgagor's right,

96288668

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

title and interest in and to the leases of the Property and the rents and profits therefrom pursuant to that certain Collateral Assignment of Leases and Rents of even date herewith. Mortgagee shall have no obligations or liabilities to tenants under any such leases unless and until the Mortgagee takes actual possession of the Property after the occurrence of an Event of Default, in which case the obligations of the Mortgagee will be limited to those arising after the Mortgagee takes possession of the Property. Until Mortgagee has taken possession or has given Mortgagor notice of termination of any such rights the Mortgagor may exercise all rights of landlord under such leases except as expressly limited hereunder or under the other Security Documents. At any time and from time to time upon the request of the Mortgagee, Mortgagor shall submit to the Mortgagee true, correct and complete copies of all leases so requested. The Mortgagee shall have the right, by the execution of suitable written instruments from time to time, to subordinate this Mortgage, and the rights of the Mortgagee hereunder, to any lease or leases from time to time in force with reference to the Property, and, on the execution of any such instrument, this Mortgage shall be subordinate to the lease for which such subordination is applicable with the same force and effect as if such lease had been executed and delivered, and a notice thereof recorded to the extent required to give notice to third persons, prior to the execution, delivery and recording of this Mortgage.

- §2.9. Prior Mortgages. If this Mortgage, by its terms, is now, or at any time hereafter, becomes subject or subordinate to a prior mortgage, Mortgagor shall fully perform its obligations under such prior mortgage and shall not, without the consent of the Mortgagee, agree to the modification, amendment or extension of the terms or conditions of such prior mortgage. Nothing contained in this §2.9 is intended, nor shall it be deemed, to constitute consent by the Mortgagee to a subordination of the lien of this Mortgage.
- §2.10. Encumbrances. Mortgagor shall not create or permit to be created or permit to exist any encumbrance on the Property (other than any lien for property taxes not yet due and payable and the Permitted Encumbrances) even if such encumbrance is inferior to this Mortgage, without the prior express written consent of Mortgagee.
- §2.11. Transfers of Ownership. Mortgagor shall not sell or permit any transfer of any interest in the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property, or any part thereof, without the prior express written consent of Mortgagee, except as permitted under Section 8.8 of the Loan Agreement.

§2.12. Expenses. Mortgagor shall pay when due all fees and charges (including reasonable attorneys' fees) incurred by the Mortgagee incident to the transactions evidenced by the Obligations and secured by this Mortgage, the assurance of the security represented by this Mortgage, and incident to the enforcement of the Obligations and this Mortgage, including without limitation, all filing, registration, recording, search, appraisal and information fees, all title insurance premiums, all transfer taxes and expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the Obligations, and all federal, state, county, municipal and other taxes, duties, stamps, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage and the instruments evidencing the Obligations. Such fees and charges shall be secured by the lien of this Mortgage and shall accrue interest at the rate set forth in the Note.

§2.13. Priority of Lien; After-Acquired Property. This Mortgage is and will be maintained as a valid mortgage lien on the Property subject only to the Permitted Encumbrances. All property of every kind acquired by the Mortgagor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Mortgage shall, immediately upon the acquisition thereof by the Mortgagor, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien of this Mortgage. The Mortgagor will do, execute, acknowledge and deliver all and every such further conveyances, mortgages, and assurances as the Mortgagee shall reasonably require for accomplishing the purposes of this Mortgage. If any action or proceeding shall be instituted to recover possession of the Property or for the foreclosure of any other mortgage or for any other purpose affecting the Property or this Mortgage, the Mortgagor will immediately, upon service thereof on or by the Mortgagor, deliver to the Mortgagee a true copy of each precept, petition, summons, complaint, notice of motion, order to show cause, and all other process, pleadings and papers, however designated, served in any such action or proceeding.

§2.14. Waiver and Modification. Whether or not for additional interest or other consideration paid or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

payable to the Mortgagee, no forbearance on the part of the Mortgagee or extension of the time for the payment of the whole or any part of the Obligations secured hereby, whether oral or in writing, or any other indulgence given by the Mortgagee to Mortgagor or to any other party claiming any interest in or to the Property, shall operate to release or in any manner affect the original liability of Mortgagor, or the priority of this Mortgage or to limit, prejudice or impair any right of the Mortgagee, including, without limitation, the right to realize upon the security, or any part thereof, for the Obligations secured hereby or any of them, notice of any such extension, forbearance or indulgence being hereby waived by Mortgagor and all those claiming by, through or under Mortgagor. No consent or waiver, express or implied, by the Mortgagee to or of any default by Mortgagor shall be construed as a consent or waiver to or of any further default in the same or any other term, condition, covenant or provision of this Mortgage or of the Obligations secured hereby.

§2.15. Fixtures and Equipment; Financing Statement. This Mortgage constitutes a security agreement under the Uniform Commercial Code, and Mortgagor hereby grants to the Mortgagee to secure the payment and performance of the Obligations and also to secure the performance of all agreements and covenants herein contained, a security interest in all fixtures, Building Service Equipment and any other property included in the Property, now owned or hereafter acquired by Mortgagor, which might otherwise be deemed "personal property" (and all accessions thereto and the proceeds thereof). The Mortgagor covenants and agrees that, upon the subsequent acquisition of fixtures or Building Service Equipment, it will provide to the Mortgagee such further assurances as may be required by the Mortgagee to establish the Mortgagee's first and prior security interest in such fixtures and Building Service Equipment. IT IS INTENDED BY MORTGAGOR AND THE MORTGAGEE THAT THIS MORTGAGE BE EFFECTIVE AS A FINANCING STATEMENT FILED WITH THE REAL ESTATE RECORDS AS A FIXTURE FILING. Mortgagor shall execute, deliver and cause to be recorded and filed from time to time with all necessary public offices, at Mortgagor's sole cost and expense, continuances and such other instruments as will maintain the Mortgagee's priority of security in all fixtures and Building Service Equipment.

§3. Default and Remedies.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

§3.1. Default; Acceleration of Obligations. If an Event of Default shall occur the Mortgagee may exercise any and all remedies provided under this Mortgage, under the Note, and under any and all other instruments and documents providing security for the Obligations, or any other remedies available under applicable law or any one or more of such remedies.

§3.2. Power of Sale; Other Remedies. This Mortgage is upon the condition that all covenants and agreements on the part of the Mortgagor herein undertaken shall be kept and fully and seasonably performed and that no breach of any of the covenants or conditions specified in this Mortgage shall be permitted, for any breach of which, upon the occurrence of an Event of Default, the Mortgagee shall have the power to sell all or any portion of the Property, pursuant to and to the extent permitted by applicable law, together with all other remedies now or hereafter permitted by law. Such remedies shall include the right to collect and receive the rents and profits from the leases of the Property assigned to the Mortgagee. Mortgagor agrees that neither the prior assignment of the leases to Mortgagee nor the exercise of any of Mortgagee's rights and remedies shall be deemed to make Mortgagee a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the leases, the Property or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until Mortgagee, in person or by agent, assumes actual possession thereof. No remedy herein conferred on the Mortgagee is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing.

§3.3. Right of Mortgagee to Cure an Event of Default. If an Event of Default shall occur the Mortgagee shall have the right, but without any obligation so to do, to cure such default for the account of the Mortgagor and to make any payment or take any action necessary to effect such cure. Without limiting the generality of the foregoing, the Mortgagor hereby authorizes the Mortgagee to pay all taxes, sewer use fees, water rates and assessments, with interest, costs and charges accrued thereon, which may at any time be a lien upon the Property, or any part thereof; to pay the premiums for any insurance required hereunder; to incur and pay reasonable expenses in protecting its rights hereunder and the security hereby granted;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

and to pay any balance due under any security agreement on any fixtures and equipment included as a part of the Property; and the payment of all amounts so incurred shall be secured hereby as fully and effectually as any other obligation of the Mortgagor secured hereby. If Mortgagee shall make any payment or take action in accordance with this section, Mortgagee will give to Mortgagor written notice of the making of any such payment or the taking of any such action. In any such event, Mortgagee and any person designated by the Mortgagee shall have, and is hereby granted, the right to enter upon the demised premises at reasonable times and from any time and from time to time for the purpose of taking any such action, and all monies expended by Mortgagee in connection therewith (including, but not limited to, reasonable legal expenses and disbursements), together with interest thereon at an annual rate of interest equal to the rate applicable to overdue payments under the Note (or the highest rate permitted by law, whichever shall be less), from the date of each such expenditure, shall be paid by Mortgagor to Mortgagee forthwith upon demand by Mortgagee, and shall be secured by this Mortgage, and Mortgagee shall have, in addition to any other right or remedy of Mortgagee, the same rights and remedies in the event of non-payment of any such sums by Mortgagor as in the case of a default by Mortgagor in the payment of any installment of principal or interest due and payable under the Note.

§3.4.

Receiver. Upon the occurrence of an Event of Default, or any actual or threatened waste to all or any part of the Property, or at any time while a suit is pending to foreclose or reform this Mortgage or to enforce any provision hereof, Mortgagee shall have the right to apply, with notice if required by applicable law, for the appointment of a receiver of all or any part of the Property and the rents and profits thereof, and such receiver shall have all the broad and effective functions and powers anywhere entrusted by a court to a receiver. Mortgagee shall be entitled to the appointment of such receiver forthwith as a matter of absolute right, without regard to the adequacy or inadequacy of the value of the Property or the solvency or insolvency of Mortgagor or any other defendant, and Mortgagor hereby waives any right to object to the appointment of such receiver and expressly consents thereto. The income, profits, rents, issues and revenues from the Property shall be applied by such receiver according to the provisions of this

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Mortgage and the practice of the court appointing such receiver.

§3.5. Certain Terms of Foreclosure Sale. At any foreclosure sale, any combination, or all, of the Property or security given to secure the indebtedness secured hereby, may be offered for sale for one total price, and the proceeds of such sale accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling; and, in case the Mortgagee, in the exercise of the power of sale herein given, elects to sell in parts or parcels, said sales may be held from time to time, and the power shall not be fully executed until all of the property or security not previously sold shall have been sold.

§3.6. Uniform Commercial Code. If the provisions of the Uniform Commercial Code as adopted in the State are applicable to any property or security given to secure the indebtedness secured hereby which is sold in combination with or as a part of the Property, or any part thereof, at one or more foreclosure sales, any notice required under such provisions shall be fully satisfied by the notice of acceleration of the Obligations.

§4. Definitions

The following terms as used herein shall have the following meanings:

"Building Service Equipment" shall mean all apparatus, fixtures and articles of personal property owned by the Mortgagor now or hereafter attached to or used or procured for use in connection with the operation or maintenance of any building, structure or other improvement located on or included in the Property, including, but without limiting the generality of the foregoing, all engines, furnaces, boilers, stokers, pumps, heaters, tanks, dynamos, motors, generators, switchboards, electrical equipment, heating, plumbing, lifting and ventilating apparatus, air-cooling and air-conditioning apparatus, gas and electric fixtures, elevators, escalators, fittings, and machinery and all other equipment of every kind and description, used or procured for use in the operation of the building standing on the mortgaged Property (except apparatus, fixtures or articles of personal property belonging to lessees or other occupants of such building or to persons other than the Mortgagor unless the same be abandoned by

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

any such lessee or other occupant or person), together with any and all replacements thereof and additions thereto.

"Default" shall mean any event which, with the giving of notice or the lapse of time, or both, would become an Event of Default.

"Event of Default" shall mean any Event of Default under the Loan Agreement, as defined therein.

"Improvements" shall mean all buildings, structures and other improvements located on the Premises.

"Loan Agreement" shall mean the Revolving Credit Agreement dated as of April 12, 1996 between Mortgagor and Mortgagee, as originally executed, pursuant to which Mortgagee and the Banks have agreed to make certain loans and/or extensions of credit available to Mortgagor in a principal amount not to exceed \$35,000,000 at any one time outstanding (or such lesser amount as set forth in the Loan Agreement), or if varied, extended, supplemented, consolidated, amended or restated from time to time as so varied, extended, supplemented, consolidated, amended or restated.

"Loan Documents" shall mean this Mortgage, the Note, the Security Documents, the Loan Agreement, and any other agreements, documents or instruments now or hereafter executed in connection therewith.

"Mortgage". See page 1 of this instrument.

"Mortgagee" shall mean the Mortgagee named at the beginning of this instrument, and any subsequent holder or holders of this Mortgage.

"Mortgagor" shall mean the person or persons named at the beginning of this instrument as the Mortgagor, and any subsequent owner or owners of the equity of redemption of the Property.

"Note" shall collectively mean the note or notes from the Mortgagor to the Mortgagee dated the date hereof and all subsequent notes executed pursuant to the Loan Agreement which note or notes may bear interest at a variable rate or rates as provided in the Loan Agreement, each as originally executed, evidencing certain loans or extensions of credit which are made available to Mortgagor in a principal amount not to exceed \$35,000,000 at any one time outstanding (or such lesser amount as set forth in the Loan Agreement), or if varied, extended, supplemented, consolidated, amended or restated from time to time as so varied, extended, supplemented, consolidated, amended or restated.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

"Obligations" shall mean all indebtedness, obligations and liabilities of Mortgagor to Mortgagee existing on the date hereof or arising or incurred hereafter under the Loan Agreement, the Note, any other Loan Documents, or other instruments at any time evidencing any thereof, whether individually or collectively, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising thereunder or hereunder by contract, operation of law or otherwise.

"Permitted Encumbrances" shall mean the encumbrances listed on Schedule C hereto.

"Premises" shall have the meaning assigned to that term in Schedule B hereto, which is incorporated herein by reference as if fully set forth herein.

"Property" shall have the meaning set forth in Schedule A to this Mortgage.

"Security Documents" shall mean this Mortgage and any collateral assignment of leases and rents delivered pursuant to this Mortgage or the Loan Agreement.

"State" shall mean the State in which the Premises are located.

§5. Miscellaneous

- §5.1. Notices. Any and all notices, elections, demands or requests provided for or permitted to be given pursuant to this Mortgage (hereinafter in this §5.1 referred to as "Notice") must be in writing and shall be deemed to have been properly given or served by personal delivery or sending same by overnight courier or by depositing same in the United States Mail, postpaid and registered or certified, return receipt requested, and addressed to the addresses hereinafter set forth. All Notices shall be effective upon being personally delivered or upon being sent by overnight courier or upon being deposited in the United States Mail as aforesaid. The time period in which a response to such Notice must be given or any action taken with respect thereto (if any), however, shall commence to run from the date of receipt if personally delivered or sent by overnight courier or, if so deposited in the United States Mail, the earlier of three (3) business days following such deposit and the date of receipt as disclosed on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address for which no Notice was given shall be deemed to be receipt of the Notice sent. By

96285668

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

giving at least fifteen (15) days prior Notice thereof, Mortgagor or Mortgagee shall have the right from time to time and at any time during the term of this Mortgage to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America. For the purposes of this Mortgage:

(a) The Address of the Mortgagor is:

Great Lakes REIT, Inc.
2311 West 22nd Street
Suite 109
Oak Brook, Illinois 60521
Attention: Jim Hicks
Telecopy No: (847) 368-2929

With a copy to:

McBride Baker & Coles
500 West Madison Street, 40th Floor
Chicago, Illinois 60661-2511
Attention: Anne Hamblin Schaive
Telecopy No.: (312) 993-9350

(b) The Address of the Mortgagee is:

The First National Bank of Boston
100 Federal Street
Boston, Massachusetts 02110
Attention: Michael J. Corbett
Telecopy No. (617) 434-3660

with a copy to:

The First National Bank of Boston
400 Perimeter Center Terrace
Suite 745
Atlanta, Georgia 30346
Attention: Lori Y. Litow
Telecopy No.: (770) 390-8434

with a copy to:

Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601
Attention: Charles E. Stahl
Telecopy No.: (312) 558-5700

§5.2. Successors and Assigns; Joint and Several Liability; Partial Invalidity. All the covenants and agreements of the Mortgagor herein contained

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

shall be binding upon the Mortgagor and the successors and assigns of the Mortgagor. In case any one or more of the provisions of this Mortgage may be found to be invalid, or unenforceable for any reason or in any respect, such invalidity or unenforceability shall not limit or impair enforcement of any other provision thereof.

§5.3. Modification. No change, amendment, modification, cancellation or discharge of this Mortgage, or any part hereof, shall be valid unless in writing and signed by the parties hereto or their respective successors and assigns.

§5.4. Captions. Section headings are inserted for convenience of reference only, do not form part of this Mortgage and shall be disregarded for purposes of the interpretation of the terms of this Mortgage.

§5.5. Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the State.

§5.6. Mortgagee's Remedies against Multiple Parcels. The Obligations hereby secured are also secured by other properties, lots, parcels or leasehold estates covered by other mortgages or deeds of trust ("Other Mortgages") within and/or outside the State. If this Mortgage or any of the Other Mortgages is foreclosed upon, or if judgment is entered upon any Obligations secured hereby, or if Mortgagee exercises its power of sale, execution may be made upon or Mortgagee may exercise its remedies (including any power of sale) against any one or more of the properties, lots or parcels and not upon the others, or upon all of such properties or parcels, either together or separately, and at different times or at the same time, and the exercise of such remedies, execution sales or sales under the power of sale herein granted may likewise be conducted separately or concurrently, in each case at Mortgagee's election. No event of enforcement taking place against any property other than the Property (whether within or outside the State), and no failure to prosecute any such other enforcement, shall in any way stay, preclude or bar enforcement of this Mortgage and Mortgagee may pursue any or all of Mortgagee's rights and remedies under this Mortgage to the maximum extent permitted by State law until the Obligations are paid and discharged in full.

§5.7. Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Mortgagor agrees, to the full

96288668

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

extent permitted by law, that in case of a default, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, or extension laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Property marshalled upon any foreclosure of the lien hereof and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Property in part or as an entirety. Mortgagor represents that it has been authorized to, and Mortgagor does hereby, waive to the full extent permitted by law any and all statutory or other rights of redemption from sale under power of sale or from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof.

- §5.8. Future Advances. The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of loan advances and other extensions of credit made after this Mortgage is delivered to the appropriate recording offices of the State, whether made pursuant to an obligation of Mortgagee or otherwise, and such future advances shall be secured to the same extent as if such advances were made on the date hereof, although there may be no advance made at the time of the execution hereof and although there may be no indebtedness outstanding at the time any advance is made. Such unpaid balances of loan advances and other extensions of credit may or may not be evidenced by notes executed pursuant to the Loan Agreement.
- §5.9. Interpretation with Other Documents. Notwithstanding anything in this Mortgage to the contrary, in the event of an express conflict or inconsistency between this Mortgage and the provisions of the Loan Agreement, the provisions of the Loan Agreement shall govern.
- §5.10. Maximum Indebtedness Secured. Notwithstanding anything contained in this Mortgage to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to \$70,000,000.

96288668

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, this Mortgage and Security Agreement has been executed as a sealed instrument this 12th day of April, 1996.

GREAT LAKES REIT, INC.

By: *Richard L. Rasley*
Richard L. Rasley
Its: Secretary

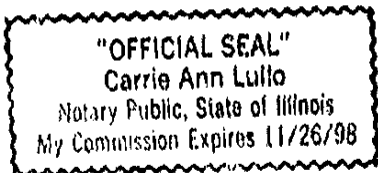
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Richard L. Rasley whose name as Secretary of Great Lakes REIT, Inc., a Maryland corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and Official seal this 12th day of April, 1996.

Carrie Ann Lullo
Notary Public

(Seal)



My Commission Expires: _____

11/26/98
My County of Residence: _____

Will
Notary Public in and for the
State of Illinois

96288668

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(Fee)

Schedule A

(a) All that certain tract or parcel of land more particularly described and set forth in Schedule B attached hereto and made a part hereof (the "Premises");

(b) All and singular the tenements, hereditaments, easements, appurtenances, passages (and all waters, water courses and riparian rights, if any), pipes, conduits, electrical and other utility lines, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to the Premises, including any other claim at law or in equity as well as any after acquired title, franchise or license and the reversion and reversions and remainder and remainders thereof, and all of the estate, right, title, claim or demand whatsoever of Mortgagor therein and in the streets, ways and areas adjacent thereto;

(c) All buildings and other improvements of every kind and description now or hereafter erected or placed on the Premises or any part thereof owned by the Mortgagor, and all of the right, title and interest of Mortgagor in and to all materials intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Premises, and all fixtures, Building Service Equipment, and all renewals or replacements thereof or articles in substitution therefor; it being mutually agreed that all the aforesaid property owned or to be owned by Mortgagor and placed by it on the Premises and such buildings and improvements shall, so far as permitted by law, be deemed to be affixed thereto and covered by this Mortgage;

(d) All of the estate, right, title and interest now owned or hereafter acquired by Mortgagor in and to any and all sidewalks and alleys, and all strips and gores of land, adjacent to or in connection with the Premises;

(e) All present and future leases and licenses of space in the buildings and improvements now or hereafter erected on the Premises (collectively "leases", and individually "lease") and the rents, revenues, income, issues and profits thereunder subject, however, to the right of Mortgagor to receive and use the same and to exercise all rights and privileges as landlord under all of the leases until an Event of Default shall have occurred and be continuing under this Mortgage, together with all the rights and privileges of the Mortgagor as landlord thereunder;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(f) All unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Mortgagor pursuant to the provisions of the Mortgage;

(g) All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, but without limitation, proceeds of insurance provided for in this Mortgage and proceeds of condemnation awards and awards for restriction of access to, or change of grade of, streets;

(h) All transferable building service, building maintenance, construction, management and other similar agreements and contracts, written or oral, express or implied, now or hereafter entered into arising or in any manner related to the construction, design, improvement, use, operation, occupation, enjoyment, sale, conversion or other disposition (voluntary or involuntary) of the Premises, or the buildings and improvements now or hereafter located thereon, or any other interest in the Premises, or any combination thereof, including all property management agreements, sales contracts, contract deposits, earnest money deposits, prepaid items and payments due and to become due thereunder, and further including all payment and performance bonds, construction guaranties, warranties, construction contracts, architects agreements, general contract agreements, design agreements, engineering agreements, technical service agreements, architectural plans and specifications, sewer and water and other utility agreements, permits, approvals, licenses, building permits, service contracts, advertising contracts, purchase orders and equipment leases; and

(i) All proceeds and products of the foregoing of every type.

All of the foregoing described property, rights, privileges, interests and franchises more particularly described in paragraphs (a) through (i) above herein granted are intended to be, and are collectively referred to herein as, the "Property."

96288668

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2800 River Road, Des Plaines, IL

SCHEDULE B

THAT PART OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 33 AND THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED BY A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 33, DISTANT 52.14 FEET SOUTH OF THE NORTH WEST CORNER OF SAID EAST 1/2 OF THE SOUTH EAST 1/4; THENCE SOUTH, 352.98 FEET ALONG THE WEST LINE OF SAID EAST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION 33; THENCE NORTH 87 DEGREES 35 MINUTES 30 SECONDS EAST, 1519.75 FEET TO THE CENTER OF RIVER ROAD; THENCE NORTHERLY ALONG THE CENTER OF SAID RIVER ROAD, 372.91 FEET; THENCE WEST ON A LINE PARALLEL TO AND 52.14 FEET SOUTH OF THE NORTH LINE OF THE SOUTH EAST 1/4 OF SECTION 33 AFORESAID; AND SAID NORTH LINE PRODUCED EAST TO THE CENTER OF SAID RIVER ROAD, 1363.63 FEET TO THE PLACE OF BEGINNING

(EXCEPTING FROM SAID TRACT THAT PART THEREOF DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF SAID TRACT, 1086.69 FEET EAST OF THE WEST LINE OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION 33; THENCE EAST ALONG THE NORTH LINE OF SAID TRACT, 296.94 FEET; THENCE SOUTHEASTERLY, 42.30 FEET ALONG THE CENTER OF DES PLAINES RIVER ROAD; THENCE WESTERLY, 299.39 FEET ALONG A LINE WHICH MAKES AN ANGLE OF 108 DEGREES 57 MINUTES 52 SECONDS TO THE RIGHT OF THE AFORESAID CENTER LINE OF DES PLAINES RIVER ROAD, EXTENDED; THENCE NORTHWESTERLY 41.57 FEET ALONG A LINE TO THE POINT OF BEGINNING AND ALSO EXCEPTING ALL THAT PART OF SAID TRACT LYING WEST OF A LINE DESCRIBED AS COMMENCING AT A POINT ON THE NORTH LINE OF SAID TRACT, 1086.69 FEET EAST OF THE WEST LINE OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION 33; THENCE SOUTHEASTERLY 366.48 FEET ALONG A LINE WHICH MAKES AN ANGLE OF 74 DEGREES 13 MINUTES 08 SECONDS FROM EAST TO SOUTH WITH THE NORTH LINE OF SAID TRACT TO A POINT ON THE SOUTH LINE OF SAID TRACT WHICH IS 1201.12 FEET EAST OF THE WEST LINE OF THE EAST 1/2 OF THE SOUTH EAST 1/4 OF SECTION 33) IN COOK COUNTY, ILLINOIS

P.I.N.: 09-33-401-013
09-34-300-018

96289668

Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

DES PLAINES, ILLINOIS

SCHEDULE C

LIST OF PERMITTED EXCEPTIONS

1. TAXES FOR THE YEAR 1996 NOT YET DUE, PAYABLE OR DELINQUENT.
2. EXISTING UNRECORDED LEASES, AS DISCLOSED BY RENT ROLL (AS DEFINED IN THE LOAN AGREEMENT).
3. RIGHTS OF THE PUBLIC, THE STATE OF ILLINOIS AND THE MUNICIPALITY IN AND TO THAT PART OF THE LAND TAKEN OR USED FOR RIVER ROAD.
4. EASEMENT FOR CONSTRUCTING AND MAINTAINING A SEWER UNDER THE NORTH 10 FEET OF LAND AS CONTAINED IN GRANT DATED OCTOBER 28, 1954 AND RECORDED NOVEMBER 18, 1954 AS DOCUMENT 16076197 FROM MARION MACK TO TOWNSHIP SCHOOL TRUSTEES OF TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS FOR THE USE OF THE BOARD OF EDUCATION OF SCHOOL DISTRICT NUMBER 66 IN COOK COUNTY, ILLINOIS.

96258668

UNOFFICIAL COPY

Property of Cook County Clerk's Office