

UNOFFICIAL COPY

97635934

DEPT-01 RECORDING \$127.00
T#0012 TRAN 6483 08/28/97 14:56:00
#1044 # CG #-97-635934
COOK COUNTY RECORDER

MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (hereafter referred to as "Mortgage") made and entered into as of August 28, 1997 from AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but as Trustee under Trust Agreement dated December 2, 1985 and known as Trust No. 66149 ("Trustee") and 2901 LIMITED PARTNERSHIP an Illinois limited partnership ("Beneficiary") (hereafter Trustee and Beneficiary are collectively referred to as "Borrower"), to PEOPLES SECURITY LIFE INSURANCE COMPANY, a North Carolina corporation (hereafter referred to as "Lender"), whose address is c/o Providian Capital Management Real Estate Services, Inc., 400 West Market Street, Louisville, Jefferson County, Kentucky 40202,

12700
PP

WITNESSETH THAT:

FOR and in consideration of the premises, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereafter set forth, Borrower does hereby grant, bargain, sell, convey, mortgage, assign, transfer, pledge and set over unto Lender and the successors and assigns of Lender all of the following (hereafter collectively referred to as the "Property"):

(a) All that tract or parcel of land more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (hereafter referred to as the "Land");

This Instrument Prepared By and After Recording Return To:

Richard L. Wood
Brown, Todd & Heyburn PLLC
3200 Providian Center
Louisville, Kentucky 40202-3363

Address:
8901 Golf Road
Des Plaines, Cook
County, Illinois
P.I. Nos.:
09-15-201-008-0000
09-15-201-010-0000

Pay 733

97635934

D-1 76-74-16

3

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, pipes, heaters, furnaces, engines and machinery, escalators, boilers, ranges, elevators, motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus (including, without limitation humidity control equipment), refrigeration plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings, and storm sashes, alarm devices of any type, automatic sprinkler systems, carpet, cabinets and shelving, partitions, paneling, and wall covering, and windows of every type, which are or shall be attached to the Land or said buildings, structures, or improvements and all other fixtures, machinery, equipment, furniture, furnishings, appliances, vehicles, building supplies and materials, books and records, chattels, inventory, accounts, farm products, consumer goods, general intangibles and personal property of every kind and nature whatsoever (other than personal property which may be or deemed to be toxic or Hazardous Materials, as defined herein) now or hereafter owned by Borrower and located in, on, or about, or used or intended to be used with or in connection with the use, operation, or enjoyment of the Property, including all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions or proceeds from a sale of any of the foregoing and all right, title and interest of Borrower in any such fixtures, machinery, equipment, furniture, furnishings, appliances, vehicles and personal property subject to or covered by any prior security agreement, conditional sales contract, chattel mortgage or similar lien or claim, together with the benefit of any deposits or payments now or hereafter made by Borrower or on behalf of Borrower, all tradenames, trademarks, servicemarks, logos and goodwill which in any way are now owned or hereafter belong, relate or appertain to the Property or any part thereof or are now owned or hereafter acquired by Borrower; and all inventory, accounts, chattel paper, documents, equipment, fixtures, farm products, consumer goods and general intangibles constituting proceeds acquired with cash proceeds of any of the property described hereinabove, all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage;

(c) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, minerals, royalties, easements, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders whatsoever, in

07635934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

any way belonging, relating or appertaining to the Property or any part thereof or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(d) All present and future income, rents, issues, profits and revenues of the Property from time to time accruing (including, without limitation, all payments under leases or tenancies, unearned premiums on any insurance policy carried by Borrower for the benefit of Lender and/or the Property, tenant security deposits, escrow funds and all awards or payments, including interest thereon and the right to receive same, growing out of or as a result of any exercise of the right of eminent domain, including the taking of any part or all of the Property or payment for alteration of the grade of any street upon which said Property abuts, or any other injury to, taking of or decrease in the value of said Property to the extent of all amounts which may be owing on the indebtedness secured by this Mortgage at the date of receipt of any such award or payment by Borrower, and the reasonable attorneys' fees, costs and disbursements incurred by Lender in connection with the collection of such award or payment), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law or in equity, of Borrower of, in and to the same; reserving only the right to Borrower to collect the same as long as no default or event of default as defined in Paragraph 2.01 shall have occurred;

(e) All insurance policies and proceeds thereof, contracts, permits, licenses, plans or intangibles now or hereafter dealing with, affecting or concerning the Property, including, without limitation, all rights accruing to Borrower from any and all contracts with all contractors, architects, engineers or subcontractors relating to the construction of improvements on or upon the Property, including payment, performance and/or materialmen's bonds and any other related choses in action;

(f) All right, title and interest of Beneficiary in that certain Illinois land trust with Trustee, as trustee, under a Trust Agreement dated December 2, 1985 and known as Trust No. 66149 (the "Land Trust") including, without limitation, the beneficial interest thereunder, the power of direction, and all other rights, powers and privileges thereunder and all proceeds and avails of the foregoing; and

(g) Proceeds of any of the foregoing.

TO HAVE AND TO HOLD the Property and all parts, rights, members, and appurtenances thereof for the use, benefit and behoof of Lender and the successors and assigns of Lender, forever; and Borrower covenants that Borrower is lawfully seized and possessed of the Property as aforesaid, and has good right to convey and mortgage the same, that the same are unencumbered except as to those matters expressly set forth in Exhibit B, attached hereto and incorporated herein by this reference (hereafter referred to as the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

"Permitted Exceptions"), and that Borrower does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Exceptions.

This instrument is given to secure the payment of the following in such manner as Lender in its sole discretion shall determine (hereafter collectively referred to as the "Indebtedness"):

(a) The debt evidenced by that certain Promissory Note, a true and correct copy of each of which is attached hereto as Exhibit C and incorporated herein by this reference (hereafter referred to as the "Note") together with any and all renewals, extensions, substitutions, modifications and consolidations of the indebtedness evidenced by the Note;

(b) Any and all additional advances made by Lender to protect or preserve the Property or the security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereafter provided, or for performance of any of Borrower's obligations hereunder, or for any other purpose provided herein (whether or not the original Borrower remains the owner of the Property at the time of such advances), provided, however, nothing herein shall be deemed to obligate Lender to make any such advances;

(c) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, now existing or hereafter coming into existence, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent or due or to become due, and all renewals, extensions, substitutions, modifications and consolidations thereof; and

(d) Any and all obligations and covenants of Borrower under any other document, instrument or agreement now or hereafter evidencing, securing or otherwise relating to the Note secured hereby (the Note, this Mortgage, the Assignment of Leases and Rents, Assignment of Beneficial Interest, UCC Financing Statements, Beneficiary's Affidavit, Mortgage Loan Application/Commitment between Borrower and Providian Capital Management Real Estate Services, Inc. and subsequently assigned to Lender, as amended (hereafter referred to as the "Commitment") and all of such other documents, instruments and agreements are hereafter sometimes referred to collectively as the "Loan Documents"), and all costs of collection, including reasonable attorneys' fees.

Provided, always, and it is the true intent and meaning of the parties, that when Borrower shall pay or cause to be paid to Lender, its successors or assigns, the Indebtedness according to the conditions and agreements of the Note and of this Mortgage and shall keep, perform and observe all of the covenants, obligations and agreements contained in the Loan Documents, all without delay, as required thereunder and hereunder, then this Mortgage shall

07655934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

cease, terminate and be null and void; otherwise this Mortgage shall remain in full force and effect.

Borrower hereby further covenants and agrees with Lender as follows:

ARTICLE I

1.01 Payment of Indebtedness, Covenants and Warranties;

(a) Borrower will pay the Note according to the terms thereof and will pay all other sums now or hereafter secured hereby at the time and in the manner provided under the Note, this Mortgage, any instrument evidencing a future advance and any other Loan Document and Borrower will otherwise perform, comply with and abide by each and every one of the stipulations, agreements, conditions and covenants contained in the Note, this Mortgage and every other Loan Document and any lease or other agreement with respect to the Property to which Borrower is a party.

(b) Borrower shall protect, indemnify and hold Lender harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, attorneys' fees and court costs) imposed upon or incurred by Lender by reason of this Mortgage or in exercising, performing, enforcing, or protecting its rights, title, or interests set forth herein, and any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under this Mortgage. In addition, Borrower covenants and agrees that it shall:

(i) not initiate, join in or consent to any change in any covenant, zoning ordinance, easement or other public or private restriction, limiting or defining the uses which may be made of the Property, or any part thereof without Lender's prior written consent;

(ii) not take any action or fail to take any action which will result in any imposition affecting the Property, Borrower, the Note or this Mortgage;

(iii) indemnify and hold Lender harmless from any and all costs, damages or liabilities resulting from, arising out of or related to, the creation or existence of liens, impositions or encumbrances by or against Borrower or Borrower's predecessor in title, or the Property, other than the Permitted Exceptions; and

(iv) execute such additional documents as Lender may require to evidence and confirm this Mortgage.

(c) Borrower hereby represents, warrants, and agrees as follows:

97635034

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(i) Borrower has neither done any act nor failed to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Mortgage;

(ii) Neither the execution and delivery of this Mortgage, nor the performance of each and every covenant of Borrower under this Mortgage, nor the satisfaction of each and every condition contained in this Mortgage, conflicts with, or constitutes a breach or default under, any agreement, indenture, or other instrument to which Borrower is a party or is subject, or any law, ordinance, administrative regulation, or court decree which is applicable to Borrower;

(iii) No action has been brought or, to the best of Borrower's knowledge, is threatened, which would interfere in any way with the right of Borrower to execute this Mortgage and perform all of Borrower's obligations contained in this Mortgage;

(iv) This Mortgage and the Loan Documents, constitute legal, valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms;

(v) The financial statements submitted with the Commitment, and the representations and warranties of Borrower contained in this Mortgage and the Loan Documents, are true and correct as of the date of this Mortgage; and

(vi) There is no litigation, arbitration, investigation, or administrative proceeding of or before any court, arbitrator or governmental authority, pending or threatened (a) by or against Borrower, (b) with respect to or against the Property, (c) with respect to the Loan Documents, or (d) which could have a material adverse effect on the business, operations, property, or general condition of Borrower, any guarantor of the Note, or any principal of Borrower.

1.02 Taxes, Liens and Other Charges.

(a) In the event of the passage of any law, order, rule or regulation subsequent to the date hereof in any manner changing or modifying the taxation of mortgages or security agreements or debts secured thereby or the manner of collecting taxes so as to affect Lender adversely, Borrower shall promptly pay any such tax on or before the due date thereof. If Borrower fails to make such prompt payment or if in the opinion of Lender, any such law, order, rule or regulation prohibits Borrower from making such payment or would penalize Lender if Borrower makes such payment or if, in the opinion of Lender, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Indebtedness secured by this Mortgage and all accrued interest thereon shall, at the option of Lender, become immediately due and payable.

97635934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(b) Borrower shall pay, at least fifteen (15) days before the due date thereof, all taxes, levies, license fees, permit fees, liens, judgments, assessments and all other expenses, fees and charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever now or hereafter levied, assessed, confirmed or imposed on, or with respect to, or which may be a lien upon, the Property, or any part thereof or any estate, right, or interest therein, or upon the rents, issues, income or profits thereof or incurred in connection with the Note, the Indebtedness or any of the Loan Documents, and all premiums on policies of insurance covering, affecting, or relating to the Property, as required pursuant to Paragraph 1.03 hereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments, insurance premiums and other fees and charges as Lender may require.

(c) Borrower shall not suffer any mechanic's, materialman's, laborer's, statutory or other lien to be created, filed of record or to remain outstanding upon all or any part of the Property; provided, that Borrower shall have thirty (30) days after the filing of such lien to have such lien released or bonded off.

1.03 Insurance.

(a) Borrower shall, at its expenses, procure for, deliver to and maintain for the benefit of Lender until the Indebtedness is fully repaid, original, fully paid insurance policies, (or if such policy is a "blanket" policy which includes land, improvements, personalty, or income other than the Property or income derived from the Property, a certified copy of such blanket policy and an original certificate from the insurer evidencing the allocation of coverage to the Property and the income from the Property) providing the following types of insurance relating to the Property, issued by insurance companies with a Best's rating of "A" or better, in such amounts, in such form and content and with such expiration dates as are approved by Lender, in Lender's sole discretion, such policies to provide that the insurer shall give Lender at least thirty (30) days' prior written notice of cancellation, amendment, non-renewal or termination, in the manner provided for the giving of notices under Paragraph 3.05 hereof and to provide that no act done or omission by the insured shall invalidate or diminish the insurance provided to Lender and, except for liability policies, to contain a standard mortgagee clause satisfactory to Lender;

(i) Broad form property insurance against all risks of physical loss, including, without limitation, fire, extended coverage, vandalism, malicious mischief, earthquake, flood, and collapse, with waiver of subrogation, to the extent of the full replacement cost of the improvements to the Property, without deduction for depreciation, either without co-insurance requirements or with agreed amount endorsement attached;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(ii) Public liability insurance covering all liabilities incident to the ownership, possession, occupancy and operation of the Property and naming Lender as an additional insured thereunder, having limits of not less than \$1,000,000 each accident, \$1,000,000 each person, and \$500,000 property damage. Lender reserves the right to require increased coverage under this subparagraph (ii);

(iii) Rent or business interruption insurance against loss of income arising out of any hazard against which the Property is required to be insured under Subparagraph 1.03(a)(i) above, in an amount not less than six (6) months' gross rental income from the Property;

(iv) Flood hazard insurance, if the Property is in an area which is, at any time during the term of this Mortgage, identified by the Secretary of Housing & Urban Development as having special flood or mud slide hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended;

(v) Workers compensation insurance; and

(vi) Such other insurance with respect to the Property or any replacements or substitutions therefor, in such amounts as may from time to time be reasonably required by Lender, against other insurable casualties which at the time are commonly insured against in the case of properties of similar character.

(b) Borrower covenants and agrees that Lender is hereby authorized and empowered, at its option, to adjust, compromise or settle any loss under any insurance policies maintained pursuant hereto, and to collect and receive the proceeds from any policy or policies, provided that so long as no Event of Default has occurred and is continuing, Borrower shall have the right to adjust, compromise and settle any loss under any insurance policies maintained pursuant hereto with Lender's prior consent. If Borrower fails to commence any such adjustment, compromise or settlement with due diligence, Lender may adjust, compromise or settle any such loss. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender, instead of to Borrower and Lender jointly. In the event any insurance company fails to disburse directly and solely to Lender but disburses instead either solely to Borrower or to Borrower and Lender jointly, Borrower agrees immediately to endorse and transfer such proceeds to Lender. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsements or transfers for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as its agent and attorney-in-fact to do so. After deducting from said insurance proceeds all of its reasonable expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, Lender may apply the net proceeds or any part

97635934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

thereof at its sole option (i) to a prepayment of the Note without prepayment premium or penalty, (ii) to the repair and/or restoration of the Property, upon such conditions as Lender may determine, and/or (iii) for any other purposes or objects for which Lender is entitled to advance funds under this Mortgage, all without reducing or impairing the lien of this Mortgage or any obligations secured hereby. Any balance of such proceeds then remaining shall be paid to Borrower or the person or entity lawfully entitled thereto. Lender shall not be obligated to see to the proper application of any amount paid over to Borrower and shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy, regardless of the cause of such failure. Notwithstanding the above, the insurance proceeds shall be made available to Borrower for the restoration of the Property upon the satisfaction of all of the following conditions: (i) the Property, in Lender's discretion, is capable of being restored; (ii) the insurance proceeds, together with funds to be deposited by Borrower with Lender, are sufficient to restore the Property; (iii) there is no uncured default under the Loan Documents; (iv) the damage occurs prior to the last Loan Year (as defined in the Note); and (v) no lease shall have been terminated or shall have been subject to termination as a result of such damage, and no rent shall have been abated or shall be subject to abatement unless such rent is covered by rent loss or business interruption insurance.

(c) At least twenty (20) days prior to the expiration date of each policy maintained pursuant to this Paragraph 1.03, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender receipts evidencing the full payment of premiums for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Property in extinguishment or partial extinguishment of the Indebtedness, all right, title and interest of Borrower in and to all insurance policies maintained pursuant to this Paragraph 1.03 then in force shall belong to the purchaser and Lender is hereby irrevocably appointed by Borrower as attorney-in-fact for Borrower to assign any such policy to said purchaser, without accounting to Borrower for any unearned premiums therefor.

1.04 Monthly Deposits. Borrower shall deposit monthly with Lender, concurrently with each regular monthly loan payment, or at Lender's option, with an escrow agent designated by Lender, whose fee shall be paid by Borrower, until the Indebtedness is fully repaid, such sum or sums determined by Lender in its sole discretion to be sufficient to pay, at least thirty (30) days before due, all taxes, assessments, insurance premiums and similar charges (hereafter referred to as "Impositions") with respect to the Property. Said deposits shall be held by Lender or such escrow agent free of any liens or claims on the part of creditors of Borrower and as part of the security of Lender, to be used by

07635934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Lender to pay the Impositions as the same accrue and are payable. Nothing contained herein shall cause Lender to be deemed a trustee as to said deposits. Said deposits may be commingled with the general funds of Lender and no interest shall be payable thereon. If said funds are insufficient to pay the Impositions in full, as the same become payable, Borrower will deposit with Lender such additional sum or sums as may be required. Nothing contained herein shall cause Lender to be obligated to pay any amounts in excess of the amount of funds deposited with Lender pursuant to this paragraph. Should Borrower fail to deposit with Lender sums sufficient to pay in full the Impositions at least fifteen (15) days before the date when due, Lender, at Lender's election, but without any obligation so to do, may advance any amounts required to make up the deficiency, and any amounts so advanced shall be deemed part of the Indebtedness secured by the Loan Documents. Upon any default or event of default under this Mortgage or the Note or any other Loan Document Lender may, at its option, apply any money in the fund resulting from said deposits to the payment of the Indebtedness in such manner as it may elect. In the event of a foreclosure of this Mortgage, the purchaser of the Property shall succeed to all the rights of Borrower in and to such deposits. The collection of such deposits by Lender shall not relieve Borrower of any of the obligations of Borrower under Paragraph 1.02 or 1.03 or any other provision of this Mortgage, and under no circumstances shall Lender be liable for failure to make any payment on behalf of Borrower, including, without limitation, payments of taxes, assessments or insurance premiums. Lender hereby agrees to waive the escrow for Impositions so long as no event of default has occurred. From and after the occurrence of such an event, whether or not subsequently cured, such waiver shall be ineffective and Lender may require such escrow payments in accordance with this Paragraph.

1.05 Condemnation. If all or any portion of the Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or quasi-governmental authority and any transfer or grant by private sale made in anticipation of or in lieu thereof), either temporarily or permanently, then the entire indebtedness shall, at the option of Lender, become immediately due and payable without prepayment premium and without notice to Borrower or any other person or entity. Promptly upon learning of the institution or the proposed, contemplated or threatened institution of any condemnation proceeding, Borrower shall notify Lender of the pendency of such proceedings, and no settlement respecting awards in such proceedings shall be effected without the consent of Lender. Lender shall be entitled to receive all compensation, awards, proceeds and other payments or relief relating to or payable as a result of such condemnation. Lender is hereby authorized at its option, to commence, appear in and prosecute, in its own or in the name of Borrower, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith, provided that so long as no event of default has occurred and is continuing, Borrower shall have the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

right to prosecute any action relating to any condemnation and to settle or compromise any claim in connection therewith with Lender's prior consent. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender. If Lender does not elect to declare the entire Indebtedness immediately due and payable, as provided above, then Lender, after deducting from said condemnation proceeds all of its reasonable expenses incurred in the collection and administration of such sums, including, without limitation, attorneys' fees, may apply the net proceeds or any part thereof at its option, (i) to a prepayment of the Note, without prepayment premium, (ii) to the repair and/or restoration of the Property upon such conditions as Lender may determine, and/or (iii) for any other purposes or objects for which Lender is entitled to advance funds under this Mortgage, all without reducing or impairing the lien of this Mortgage, and any balance of such moneys then remaining shall be paid to Borrower or any other person or entity lawfully entitled thereto. Lender shall not be obligated to see to the proper application of any amount paid over to Borrower. Borrower agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Lender may require. If, prior to the receipt by Lender of such award or proceeds, the Property shall have been sold on foreclosure of this Mortgage, or as a result of other legal action relating to this Mortgage or the Note, Lender shall have the right to receive such award or proceeds to the extent of any unpaid Indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage or the Note shall have been sought or recovered, and to the extent of attorneys' fees, costs and disbursements incurred by Lender in connection with the collection of such award or proceeds. Notwithstanding the above, condemnation awards shall be made available to Borrower for the restoration of the Property upon the following conditions: (i) the Property, in Lender's discretion, is capable of being restored; (ii) the award, together with funds provided by Borrower, is sufficient to restore the Property; (iii) there is no uncured default under the Loan Documents; (iv) the condemnation occurs prior to the last Loan Year; (v) the remaining property shall comply with all applicable land use, zoning, and subdivision regulations or shall be a legal, non-conforming use; and (vi) no lease shall have been terminated or shall have been subject to termination as a result of such condemnation and no rent shall have been abated or subject to abatement unless such rent is fully covered by rent loss or business interruption insurance.

1.06 Care of Property.

(a) Borrower shall keep all improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, shall not commit or suffer any waste, and shall not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Property or any part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Property.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(b) Borrower shall not remove, demolish or materially alter, enlarge or change any structure or other improvement located on the Land without Lender's consent nor shall any new improvements be constructed on the Property without Lender's consent. Borrower shall not remove or permit to be removed from the Land any fixture, chattel or part of the Property without the consent of Lender, except where appropriate replacements are immediately made which are free of any lien, security interest or claim superior to that of this Mortgage and which have a value and utility at least equal to the value and utility of the fixture or chattel removed, which replacement shall, without further action, become subject to the lien of this Mortgage.

(c) Lender or its representative is hereby authorized to enter upon and inspect the Property at all reasonable times.

(d) Borrower will perform and comply promptly with, and cause the Property to be maintained, used and operated in accordance with, any and all (i) present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental or quasi-governmental authority or agency applicable to Borrower or the Property, including without limitation, all applicable federal, state and local laws pertaining to air and water quality, hazardous waste, waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and rules, regulations and ordinances of the United States Environmental Protection Agency and all other applicable federal, state and local agencies and bureaus having jurisdiction over the Property; (ii) similarly applicable orders, rules and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization or other body exercising similar functions having jurisdiction over the Property; (iii) similarly applicable duties or obligations of any kind imposed under any Permitted Exception, or otherwise by law, covenant, condition, agreement or easement, public or private; and (iv) policies of insurance at any time in force with respect to the Property. If Borrower receives any notice that Borrower or the Property is in default under or is not in compliance with any of the foregoing, or notice of any proceeding initiated under or with respect to any of the foregoing, Borrower will promptly furnish a copy of such notice to Lender.

(e) If all or any part of the Property shall be damaged by fire or other casualty, Borrower shall give immediate written notice thereof to Lender and shall promptly restore the Property to the equivalent of its original condition; and if a part of the Property shall be damaged through condemnation, Borrower shall promptly restore, repair or alter the remaining portions of the Property in a manner satisfactory to Lender. In the event all or any portion of the Property shall be damaged or destroyed by fire or other casualty or by condemnation, Borrower shall promptly deposit with Lender a sum equal to the amount by which the estimated cost of the restoration of the Property, as determined by Lender, exceeds the actual net insurance or condemnation proceeds received by Lender in connection with such damage or destruction.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(f) If any work required to be performed under this Paragraph 1.06 involves an estimated expenditure of more than five percent (5%) of the face amount of the Note secured hereby, no such work will be undertaken until plans and specifications therefor, prepared by an architect or engineer satisfactory to Lender, have been submitted to and approved by Lender.

1.07 Security Agreement

(a) With respect to the machinery, apparatus, equipment fittings, fixtures, building supplies and materials, articles of personal property, chattels, chattel paper, documents, inventory, accounts, farm products, consumer goods and general intangibles referred to or described in this Mortgage or in any way connected with the use and enjoyment of the Property, including any personal property or fixtures included within the definition of the term "Property" (other than any personal property which may be now or hereafter deemed to be toxic or Hazardous Materials) whether now owned or hereafter from time to time acquired, together with all substitutions, replacements, additions, attachments, accessories and all of the rents, issues, income, revenues and profits derived from the Property (hereafter collectively referred to as the "Collateral"), this Mortgage is hereby also made and declared to be a security agreement encumbering each and every item of such property comprising a part of the Collateral, in compliance with the provisions of the Uniform Commercial Code as enacted in the state where the Land is located, and Borrower hereby grants Lender a security interest in all such property. Upon request by Lender, at any time and from time to time, a financing statement or statements reciting this Mortgage to be a security agreement affecting all of such property shall be executed by Borrower and Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage shall include, but not be limited to those (i) prescribed herein, or (ii) prescribed by general law, or (iii) prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of any such financing statement or statements in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether any such item is physically attached to the improvements, serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Mortgage, or any such item is referred to or reflected in any such financing statement or statements so filed at any time. Similarly, the mention in any such financing statement or statements of the rights in and to (A) the proceeds of any insurance policy, or (B) any award in eminent domain proceedings for a taking or for loss of value, or (C)

97635934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Borrower's interest as landlord in any present or future lease or sublease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to a tenant lease of space in the Property or otherwise, shall not in any way alter any of the rights of Lender as determined by this Mortgage or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Lender in the event any court shall at any time hold with respect to the foregoing clauses (A), (B), or (C) of this sentence, that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. Said security interest shall attach thereto as soon as Borrower obtains any interest in any of the Collateral and before the Collateral becomes fixtures or before the Collateral is installed or affixed to other collateral for the benefit of Lender, to secure the Indebtedness, and all other sums and charges which may become due hereunder or thereunder. The security interest held by Lender shall cover cash and non-cash proceeds of the Collateral, but nothing contained herein shall be construed as authorizing, either expressly or by implication, the sale or other disposition of the Collateral by Borrower, which sale or other disposition is hereby expressly prohibited without the Lender's prior written consent, or as otherwise provided herein. No personal property or business equipment owned by any Tenants (as hereafter defined) holding under Borrower is included within this Mortgage, except to the extent of Borrower's landlord's lien with respect thereto.

In the event of default under this Mortgage, Lender, pursuant to said Uniform Commercial Code, shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies in respect of the real property, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that, in the event Lender elects to proceed with respect to the Collateral separately from the real property, the requirement of the Uniform Commercial Code as to reasonable notice of any proposed sale or disposition of the Collateral shall be met if such notice is mailed to the Borrower, as hereafter provided, at least five (5) days prior to the time of such sale or disposition. Borrower agrees that, without the prior written consent of Lender, Borrower will not remove or permit to be removed from the real property hereby conveyed, any of the Collateral unless the same is replaced immediately with unencumbered collateral of a quality and value equal or superior to that which it replaces. All such replacements, renewals and additions shall become and be immediately subject to the security interest of this Mortgage and be covered thereby. Borrower warrants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto will be, free and clear of liens, encumbrances or security interests of others, except as to the Permitted Exceptions.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(b) Borrower warrants that (i) Borrower's (that is, "Debtors") name, identity, and principal place of business are as referred to in the first paragraph of this Mortgage, (ii) Borrower (that is, "Debtor") has been using or operating under said name and identity without change since January 1, 1987 and (iii) the location of all tangible collateral is upon the Land. Borrower covenants and agrees that Borrower will furnish Lender with notice of any change in the matters addressed by clauses (i) or (iii) of this Subparagraph 1.07(b) within thirty (30) days of the effective date of any such change, and Borrower will promptly execute any financing statements or other instruments deemed necessary by Lender to prevent any filed financing statement from becoming misleading or losing its perfected status.

(c) Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage and Security Agreement shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Land is located. Information concerning the security interest created by this instrument may be obtained from the Lender, as "Secured Party," or Borrower, as "Debtor," at their respective mailing addresses set out in Paragraph 3.05 hereof.

(d) Borrower further covenants and agrees that all of the aforementioned personal property shall be owned by Borrower and shall not be the subject matter of any lease or other instrument, agreement or transaction whereby the ownership or beneficial interest thereof or therein shall be held by any person or entity other than Borrower, except to the extent Lender consents in writing to any lease of any of such property, which consent may be withheld or delayed in Lender's sole discretion; nor shall Borrower create or cause to be created any security interest covering any such property, other than (i) the security interest created herein in favor of Lender, (ii) the rights of tenants lawfully occupying the Property pursuant to leases approved by Lender, and (iii) the Permitted Exceptions.

1.08 Further Assurances; After-Acquired Property. At any time, and from time to time, at Borrower's expense and upon request by Lender, Borrower shall make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurances, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve, (i) the obligations of Borrower described in the Note and under this Mortgage and (ii) the lien of this Mortgage as a first and prior lien upon and security interest in and to all of the

97625934

97625934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property, whether now owned or hereafter acquired by Borrower, subject only to the Permitted Exceptions. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien and security interest hereof shall automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Property or any part thereof, to the extent permitted by law.

1.09 Expenses. Borrower shall pay or reimburse Lender, upon demand therefor, for all attorneys' fees, costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as a party plaintiff or defendant, affecting the Indebtedness, this Mortgage, or the interest created herein, or the Property, including, without limitation, any foreclosure proceedings, any condemnation action involving the Property, any federal bankruptcy proceeding or state insolvency proceeding involving the priorities or rights of creditors, any action to protect the security interest or any action or proceeding commenced by governmental authority with respect to the storage, disposal or clean-up of toxic or Hazardous Materials on, under or about the Property and any such amounts paid by Lender shall be added to the Indebtedness secured by the lien of this Mortgage and shall bear interest from and after the date when paid at the default rate in effect under the Note.

1.10 Subrogation. To the full extent of the Indebtedness, Lender is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each lien, claim, demand and other encumbrance on the Property which is paid or satisfied, in whole or in part, out of the proceeds of the Indebtedness, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Lender as additional collateral and further security for the Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Lender had they been duly and legally assigned, transferred, set over and delivered unto Lender by assignment, notwithstanding the fact that any instrument providing public notice of the same may be satisfied and canceled of record.

1.11 Transfer of the Property; Secondary Financing.

(a) The identity and expertise of Borrower were and continue to be material circumstances upon which Lender has relied in connection with, and which constitute valuable consideration to Lender for, extending the Indebtedness to Borrower, and any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Indebtedness. Borrower covenants and agrees with Lender, as part of the consideration for

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

extending the Indebtedness to Borrower, that without Lender's prior written consent, Borrower shall not voluntarily or by operation of law: (i) sell, transfer, convey, pledge, encumber, assign or otherwise hypothecate or dispose of, all or any part of the Property or any interest therein whether or not as collateral security for any other obligation of Borrower; (ii) (if Borrower is a corporation, limited liability company, partnership, trust, or other entity) sell, transfer, encumber or otherwise dispose of voting control or more than fifty percent (50%) of the financial interest in Borrower or change its general partners or managing members; nor (iii) cause or permit any junior encumbrance or lien to be placed on the Property or other security for the Indebtedness. Any purported transaction in violation of the foregoing shall be void and shall entitle Lender to declare the entire Indebtedness immediately due and payable without notice or demand. Such consent may be given or withheld by Lender in its sole discretion and may be conditioned upon payment to Lender of a fee for processing the request for consent and other administrative costs incurred in connection therewith, and/or an increase in the rate of interest on the unpaid balance of the Indebtedness to a then current market rate, and/or a change in the term of the Note, and/or other changes in the terms of the Loan Documents, all of which Borrower hereby agrees are reasonable conditions to the approval of any such transfer. In all events, if Lender consents to any such sale, transfer, conveyance, pledge, encumbrance, assignment, hypothecation or disposition, at the option of Lender the manager of the Property shall remain the same before and after the transfer and the transferee shall be a creditworthy person or entity of sound financial reputation. Notwithstanding the foregoing provisions of this subparagraph (a), limited partnership interests in Beneficiary may be transferred in whole or in part without the payment of a fee or change in the interest rate of the Note and without the need to secure Lender's consent provided that Noel S. Browdy remains at least a 20% general partner and the managing general partner of Beneficiary and documentation reflecting the transfer is provided to and satisfactory to Lender.

(b) Notwithstanding the provisions of Paragraph 1.11(a) of this Mortgage, Lender shall consent on one, and only one, occasion during the term of the Note to a transfer in fee simple of the Property provided that no event of default has occurred and is then continuing and provided further that all of the following conditions are satisfied as determined by Lender, in its sole discretion:

(i) Borrower shall have paid to Lender, prior to such transfer, a sum equal to one percent (1%) of the unpaid principal balance of the Note at the time of such transfer, as a consent fee and not as a partial prepayment of the principal balance of the Note;

(ii) Borrower shall have reimbursed Lender for Lender's reasonable and customary costs associated with the transfer and in

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

completing the same in accordance herewith, whether or not the transfer actually closes;

(iii) The transferee approved by Lender shall have assumed the obligations of Borrower under the Note, this Mortgage, and the other Loan Documents, and shall have executed such instruments, certificates, and other documents, in form and substance satisfactory to Lender, in its sole reasonable discretion, as specified by Lender to accomplish and to evidence such assumption;

(iv) Borrower shall have cured any deferred maintenance; and

(v) Borrower shall provide Lender an endorsement to Lender's title insurance policy insuring the continued first priority of the Mortgage subject to the Permitted Exceptions.

(c) The consent by Lender to any sale, transfer, conveyance, pledge, encumbrance, assignment, creation of a security interest in or other hypothecation or disposition of the Property or the beneficial interests of Borrower shall not be deemed to constitute a novation of the Indebtedness or a consent to any further sale, transfer, pledge, encumbrance, creation of a security interest or other hypothecation or disposition, or to waive Lender's right, at its option, to exercise its remedies for default, without notice to or demand upon Borrower or to any other person or entity upon any such sale, transfer, pledge, encumbrance, creation of a security interest in or other hypothecation, or disposition to which Lender shall not have consented.

1.12 Limit on Interest. If from any circumstances whatsoever, fulfillment of any provision of this Mortgage, the Note or any other Loan Document, at the time performance of such provision shall be due shall involve transcending the limit on interest presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then Lender may, at its option (i) reduce the obligations to be fulfilled to such limit on interest, or (ii) apply the amount that would exceed such limit on interest to the reduction of the outstanding principal balance of the Note, and not to the payment of interest, with the same force and effect as though Borrower had specifically designated such sums to be so applied to principal and Lender had agreed to accept such extra payment(s) as a premium-free prepayment, so that in no event shall any exaction be possible under the Note or Mortgage, that is in excess of the applicable limit on interest. It is the intention of Borrower and Lender not to create any obligation in excess of the amount allowable by applicable law. The provisions of this paragraph shall control every other provision of this Mortgage, and any provision of the Loan Documents in conflict with this Paragraph 1.12.

1.13 Performance by Lender of Defaults by Borrower. Borrower covenants and agrees that, if it shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, then Lender, at its option, but without obligation and without notice, may pay, perform or observe the same, and all payments made or costs incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender with interest thereon, from the date such payment is made or expense is incurred by Lender to the date Lender is reimbursed therefor, at the default rate provided in the Note. Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof Lender is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term without thereby becoming liable to Borrower or any person in possession of any portion of the Property holding under Borrower. Borrower expressly acknowledges and agrees, however, that notwithstanding anything contained in this Paragraph 1.13 to the contrary, Lender shall not be obligated under this Paragraph 1.13 to incur any expense or to perform any act whatsoever. Borrower further acknowledges that no performance by Lender of Borrower's obligations shall cure Borrower's default or release Borrower from those or any other obligations under this Mortgage. Borrower hereby indemnifies Lender against any and all costs, liabilities or damages, arising from or in any way related to the performance of Borrower's obligations by Lender.

1.14 Assignment of Leases and Rents.

(a) As additional collateral and to further secure the Indebtedness and other obligations of Borrower, Borrower does hereby absolutely, presently and irrevocably assign, grant, transfer, and convey to Lender, its successors and assigns, all of Borrower's right, title, and interest in, to, and under all leases, tenant contracts, construction contracts and other contracts, licenses and permits, whether written or oral, now or hereafter, affecting all or any part of the Property, and any agreement for the use or occupancy of all or any part of said Property which may have been made heretofore or which may be made hereafter, including any and all extensions, renewals, and modifications of the foregoing and guaranties of the performance or obligations of any tenants thereunder, and all other arrangements of any sort resulting in the payment of money to Borrower or in Borrower becoming entitled to the payment of money for the use of the Property or any part thereof whether such user or occupier is tenant, invitee, or licensee (all of the foregoing hereafter referred to collectively as the "Leases" and individually as a "Lease", and said tenants, invitees, and licensees are hereafter referred to collectively as "Tenants" and individually as "Tenant"

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

as the context requires), which Leases cover all or any portion of the Property; together with all of Borrower's right, title, and interest in and to all income, rents, issues, royalties, profits, rights and benefits and all Tenants' security and other similar deposits derived with respect to the Leases and with respect to the Property, including, without limitation, all base and minimum rents, percentage rents, additional rents, payments in lieu of rent, expense contributions, and other similar such payments (hereafter collectively referred to as "Income"), and the right to collect the same as they become due, it being the intention of the parties hereto to establish an absolute transfer and assignment of all of the Leases and the Income to Lender, and not just to create a security interest.

(b) Borrower hereby represents, warrants, and agrees as follows:

(i) Borrower is the sole holder of the landlord's interest under the Leases, is entitled to receive the Income from the Leases and from the Property, and has the full right to sell, assign, transfer, and set over the same and to grant to and confer upon Lender the rights, interests, powers, and authorities herein granted and conferred;

(ii) Borrower has made no pledge or assignment of the Leases or Income prior to the date hereof which remains in effect and Borrower shall not after the date hereof, make or permit any such pledge or assignment;

(iii) The Leases are valid, enforceable, and in full force and effect, and Borrower has delivered to Lender true, complete, and correct copies of all Leases with respect to the Property or any part thereof;

(iv) All Leases provide for rental to be paid monthly, in advance, and Borrower has not accepted, and shall not, after the date hereof accept or permit payment of rental or other Income under any of the Leases for more than one (1) month in advance of the due date thereof;

(v) No security deposit has been made by any Tenant under any Lease except as set forth in such Lease;

(vi) To the best of Borrower's knowledge, there exists no default or event of default or any state of facts which would or could, with the passage of time or the giving of notice, or both, constitute a default or event of default on the part of Borrower or by any Tenant under the terms of any of the Leases;

(vii) Neither the execution and delivery of any of the Leases, nor the performance of each and every covenant of Borrower under the Leases, nor the satisfaction of each and every condition contained in the Leases, conflicts with, or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

constitutes a breach or default under, any agreement, indenture, or other instrument to which Borrower is a party or is subject, or any law, ordinance, administrative regulation, or court decree which is applicable to Borrower;

(viii) No action has been brought or, to the best of Borrower's knowledge, is threatened, which would interfere in any way with the right of Borrower to execute the Leases and perform all of Borrower's obligations contained in the Leases; and

(ix) Neither this Mortgage nor the exercise of rights hereunder shall be deemed to make Lender a mortgagee in possession.

(c) Borrower hereby covenants and agrees as follows:

(i) Borrower shall (A) fulfill, perform, and observe each and every condition and covenant of landlord or lessor contained in each of the Leases; (B) give prompt notice to Lender of any claim of default under any of the Leases, whether given by a Tenant to Borrower, or given by Borrower to a Tenant, together with a complete copy of any such notice; (C) at no cost or expense to Lender, enforce the performance and observance of each and every covenant and condition of the Leases to be performed or observed by the Tenants thereunder; (D) diligently and in good faith enforce the Leases and all remedies available to Borrower against the Tenants in the event of default under any Lease by any Tenant (E) diligently and in good faith appear in and defend any action arising out of or in any manner connected with, any of the Leases, or the obligations or liabilities of Borrower as the landlord thereunder, or of the Tenant or any guarantors thereunder, and (F) execute such additional documents as Lender may require to evidence and confirm such Mortgage;

(ii) Borrower shall not, without the prior written consent of Lender, (A) enter into any lease of all or any part of the Property, (B) subject to the provisions of subparagraph (h) below, modify, amend, or alter, or agree to the modification, amendment, or alteration of any of the Leases; (C) terminate the term, accept the surrender of or otherwise cancel any of the Leases; (D) waive or release any Tenant from the performance or observance by such Tenant of any obligation or condition of any of the Leases; (E) discount any future accruing rents under the Leases or other Income; (F) give any consent to any assignment or sublease by any Tenant under any of the Leases; or (G) grant any rental concessions in connection with any of the Leases, and any attempt to violate the provisions of this subparagraph (ii) shall be void;

(iii) Borrower shall provide Lender with a certified copy of each Lease, amendment, modification or alteration thereto;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(iv) Borrower shall take no action that will cause or permit the estate of any Tenant under any of the Leases to merge with the interests of Borrower in the Property or any portion thereof;

(v) Borrower shall not do, or fail to do, any act if such action or failure would constitute a violation of any of the Leases, or commit any act or omission that may create in any Tenant a right to cease or reduce payment of rent or terminate its Lease or otherwise affect or impair the benefits of this Mortgage;

(vi) Borrower shall authorize and direct, and does hereby authorize and direct, each and every present and future Tenant of the whole or any part of the Property to pay all rental to Lender upon receipt of written demand from Lender to do so;

(vii) From and after the date hereof, Borrower shall require that each Tenant under its Lease shall execute an estoppel certificate with Lender, in form and content acceptable to Lender; and

(viii) Borrower shall furnish to Lender, within ten (10) days after a request by Lender to do so, a written affidavit sworn to and signed by Borrower setting forth the rent roll information specified in Paragraph 1.16 hereof and stating whether any defaults, off-sets or defenses exist or are claimed under or in connection with any of said Leases. Any and all Leases hereafter executed affecting the Property shall provide for the giving by the tenants thereunder of certificates with respect to the status of such Leases and Borrower shall exercise Borrower's right to request such certificates within five (5) days of any demand therefor by Lender.

(d) Although this Mortgage constitutes an absolute, present and current assignment of all Income, as long as no default or event of default as defined in Paragraph 2.01 below, on the part of Borrower, shall have occurred Lender shall not demand that such Income be paid directly to Lender, and Borrower shall have a license to collect, but not more than one (1) month prior to the due date thereof all such Income from the Property (including, without limitation, all rental payments under the Leases).

(e) Upon payment in full, as determined solely by Lender, to Lender in good and sufficient funds satisfactory in all respects to Lender of all amounts due under each of the Loan Documents and the satisfaction, as determined solely by Lender, of all terms, covenants, and conditions of each of the Loan Documents, Lender shall cancel this Mortgage.

(f) Each Lease pertaining to the Property, or any part thereof shall provide (or if such Lease does not so provide, shall be deemed to provide) that, in the event of the enforcement by

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Lender of the remedies provided by law or by this Mortgage, the Tenant thereunder will, upon request of Lender or any other person or entity succeeding to the interest of Lender as a result of such enforcement, automatically attorn to and become the tenant of Lender or said successor in interest without change in the terms or other provisions of said Lease; provided, however, that (i) neither Lender nor any such successor in interest shall be bound by (A) any payment of rental, additional rental or other income for more than one (1) month in advance, or (B) any amendment or modification of said Lease, made without the express written consent of Lender or said successor in interest; (ii) neither Lender nor such successor in interest will be liable for (A) any act or omission or warranties of any prior landlord (including Borrower), or (B) the breach of any warranties or obligations relating to construction of Improvements on the Property or any Tenant finish work performed or to have been performed by any prior landlord (including Borrower), or (C) the return of any security deposit, and (iii) neither Lender nor such successor in interest shall be subject to any offsets or defenses which the Tenant might have against any prior landlord (including Borrower). Each Lease pertaining to the Property shall also provide (or if such Lease does not so provide, shall be deemed to provide) that, upon request by said successor in interest, the Tenant thereunder shall deliver an instrument confirming such attornment (provided such instrument also provides that the Tenant's possession of the premises will not be disturbed so long as the Tenant is not in default under its Lease), and that such Tenant shall give Lender notice of any claim of Borrower's default and a reasonable opportunity to cure such default.

(g) At Lender's option any Lease may be required to be made superior to Lender's lien under this Mortgage.

(h) Notwithstanding the foregoing provisions of subparagraph (c)(ii) above, Borrower shall have the right to modify, amend, terminate, consent to subleases and assignments, and otherwise deal with all leases of office space in the Property without the consent of Lender provided that (i) this subparagraph (h) shall not be applicable to the lease to LGH-Golf ASTC Joint Venture of the first floor of the building; (ii) this subparagraph (h) shall not be applicable to the guaranty of any lease; (iii) no such modification shall be made without Lender's consent, if the effect of such modification will be to reduce the gross rents from the Property to an amount less than \$1,147,572; and (iv) Borrower is not in default under the Loan Documents beyond any applicable grace period.

1.15 Estoppel Affidavits. Borrower, upon ten (10) days' prior written notice, shall furnish Lender a written affidavit, sworn to and signed by Borrower, setting forth (i) the unpaid principal of and interest on, the Indebtedness, (ii) whether or not any off-sets or defenses exist against such principal and interest, (iii) whether or not any "default" or "event of default" (or any fact or circumstance that, with lapse of time or notice, or both, would constitute a "default" or "event of default") exists under any of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

the Loan Documents, and (iv) the then state of facts relative to the condition of the Property.

1.16 Books, Records, Accounts and Monthly Reports. Beneficiary shall keep and maintain, or shall cause to be kept and maintained, at Beneficiary's cost and expense, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Property and in connection with any services, equipment, or furnishings provided in connection with the operation of the Property. Lender and Lender's agents, accountants and attorneys shall have the right from time to time at all times during normal business hours after advance written notice to examine such books, records and accounts at the office of Beneficiary or such other person or entity maintaining such books, records or accounts and to make copies or extracts thereof as Lender shall desire and to discuss Beneficiary's affairs, finances and accounts with Borrower and with the officers and principals of Beneficiary, at such reasonable times as may be requested by Lender. Beneficiary shall furnish to Lender annually within ninety (90) days after the end of Beneficiary's fiscal year, at Beneficiary's expense, a statement of the operation of the Property for such fiscal year showing in detail all revenues derived from rents, profits and all other sources, and all expenses and disbursements made in connection with the Property, annual comparative balance sheets, profit and loss statements, and all supporting schedules covering the operation of the Property, together with a rent roll for the Property containing, at a minimum, the names of all tenants and guarantors of any Leases, the rentable square footage of each leased space, a schedule of past-due rents, dates of occupancy, terms of the Leases, base rents and base rents per rentable square foot, additional rent, rental concessions, security deposits, lease commissions outstanding, and renewal options under the Leases. From and after an event of default, Lender may require that any such statements shall be audited and/or prepared and certified by an independent certified public accountant selected or approved by Lender. All of the foregoing financial statements shall fairly and accurately present the financial condition of the subject thereof as of the dates thereof and shall be certified by Beneficiary's general partner. In the event that Borrower shall refuse or fail to furnish any statement as aforescribed, or in the event such statement shall be inaccurate or false, or in the event of failure of Borrower to permit Lender or its representatives to inspect the Property or the said books and records, such acts of Beneficiary shall be a default hereunder and Lender may proceed in accordance with the rights and remedies afforded it under the provisions hereof.

1.17 Hazardous Materials.

(a) Borrower represents and warrants that, to the best of Borrower's knowledge after diligent inquiry, no Hazardous Materials exist on, under or about the Property (except for biological wastes generated in the ordinary course of business by the medical offices of tenants of the Property and handled and disposed of in

07625934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

accordance with applicable law) or have been transported to or from the Property or used, generated, manufactured, stored or disposed of on, under or about the Property, and the Property is not in violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or the environmental conditions on, under or about the Property, including, without limitation, soil and groundwater conditions. Hazardous Materials shall include: (i) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other materials or pollutants which pose a hazard to the Property or to persons on or about the Property, cause the Property to be in violation of any local, state or federal law or regulation, or are defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to: (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601, et seq.; (B) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 1801, et seq.; (C) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq.; and (D) regulations adopted and publications promulgated pursuant to the aforesaid laws; (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million; and (iii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of property adjacent to or surrounding the Property.

(b) Borrower shall, at its sole cost and expense, prevent the imposition of any lien against the Property for the cleanup of any Hazardous Material, and shall comply and cause (i) all Tenants under any Lease or occupancy agreement affecting any portion of the Property, and (ii) any other person or entity on or occupying the Property, to comply with all federal, state and local laws, regulations, rules, ordinances and policies concerning the environment, health and safety and relating to the use, handling, production, disposal, discharge and storage of Hazardous Materials in, on or about the Property. Borrower hereby grants to Lender, its agents, employees, consultants and contractors an irrevocable license to enter upon the Property and to perform such tests on the Property as are reasonably necessary to conduct an investigation and/or review.

(c) Borrower shall promptly take any and all necessary remedial action in response to the presence, storage, use, disposal, transportation or discharge of any Hazardous Materials on, under or about the Property, provided, however that Borrower shall not, without Lender's prior written consent, take any

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

remedial action in response to the presence of any Hazardous Materials on, under, or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims, proceedings, lawsuits or actions, completed or threatened pursuant to any Hazardous Materials laws or in connection with any third party, if such remedial action, settlement, consent or compromise might, in Lender's sole determination, impair the value of Lender's security hereunder; Lender's prior consent shall not however, be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either (i) poses an immediate threat to the health, safety or welfare of any individual, or (ii) is of such a nature that an immediate remedial response is necessary and it is not possible to obtain Lender's consent prior to undertaking such action. In the event Borrower undertakes any remedial action with respect to any Hazardous Materials on, under or about the Property, Borrower shall immediately notify Lender of any such remedial action, and shall conduct and complete such remedial action (A) in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies, (B) to the satisfaction of Lender, and (C) in accordance with the orders and directives of all federal, state and local governmental authorities.

(d) Borrower shall protect, indemnify and hold Lender, its directors, officers, employees and agents, and any successors to Lender's interest in the Property, and any other person or entity who acquires any portion of the Property at a foreclosure sale, by the receipt of a deed in lieu of foreclosure, or otherwise through the exercise of Lender's rights and remedies under the Loan Documents, and any successors to any such other person or entity, and all directors, officers, employees and agents of all of the aforementioned indemnified parties, harmless from and against any and all claims, proceedings, lawsuits, liabilities, damages, losses, fines, penalties, judgments, awards, costs and expenses (including, without limitation, attorney fees and costs and expenses of investigation) which arise out of or relate in any way to any use, handling, production, transportation, disposal or storage of any Hazardous Materials in, on or about the Property whether by Borrower or any Tenant or any other person or entity, including, without limitation: (i) all foreseeable and all unforeseeable consequential damages directly or indirectly arising out of (A) the use, generation, storage, discharge or disposal of Hazardous Materials by Borrower, any prior owner or operator of the Property, or any person or entity on or about the Property, or (B) any residual contamination affecting any natural resource or the environment, and (ii) the costs of any required or necessary repair, cleanup, or detoxification of the Property and the preparation of any closure or other required plans (all such costs, damages, and expenses referred to in this Paragraph 1.17(d) hereafter referred to as "Expenses"). In addition, Borrower agrees that in the event any Hazardous Material is caused to be removed from the Property by Borrower, Lender, or any other person or entity, the number assigned by the Environmental Protection Agency to such Hazardous Material shall be solely in the name of Borrower

97635934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

and Borrower shall assume any and all liability for such removed Hazardous Material. In the event Lender pays any Expenses, such Expenses shall be additional Indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the default rate specified in the Note.

(e) In the event that Borrower shall fail to timely comply with the provisions of this Paragraph 1.17, Lender may either (i) declare that an event of default shall have occurred, and/or (ii) in addition to any rights granted to Lender hereunder, do or cause to be done whatever is necessary to cause the Property to comply with the applicable law, rule, regulation or order, and the cost thereof shall be additional Indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the default rate specified in the Note. Borrower shall give Lender and its agents and employees access to the Property for the purpose of effecting such compliance and hereby specifically grants to Lender an irrevocable license, effective (x) immediately if, in the opinion of Lender, irreparable harm to the environment, the Property, or persons or material amounts of property is imminent, or (y) otherwise, upon expiration of the applicable cure period, to do whatever necessary to cause the Property to so comply, including, without limitation, to enter the Property and remove therefrom any Hazardous Materials. Borrower shall pay or reimburse Lender for any and all loss, cost, damage and expense (including, without limitation, attorney fees and costs incurred in the investigation, defense and settlement of claims) that Lender may incur as a result of or in connection with the assertion against Lender of any claims relating to the presence or removal of any Hazardous Material, or compliance with any federal, state or local laws, rules, regulations or order relating thereto, and the amount(s) thereof shall be additional Indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the default rate specified in the Note.

1.18 Management of Property. Borrower represents and warrants that the Property is managed by Noel S. Browdy ("Browdy") and that there is no written management agreement. Borrower covenants and agrees that during the term of the Note Browdy shall be the property manager for the Property. If, for whatever reason, Browdy should cease, either temporarily or permanently, to act as property manager for the Property, Borrower covenants and agrees as follows:

- (a) Borrower shall immediately notify Lender of such event,
- (b) Borrower shall furnish to Lender, for its approval in its sole discretion, a copy of any agreement for the management of the Property,
- (c) Such agreement shall provide by its terms that it may be freely assigned to Lender,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(d) Borrower shall furnish the identity of any replacement manager of the Property, and such other information as Lender may require to Lender, for its approval in its sole discretion,

(e) At the option of Lender, Borrower shall cause such manager to enter into an assignment and subordination of such management agreement in form and substance satisfactory to Lender.

From and after an occurrence of an event of default under the Loan Documents, regardless of whether such default is cured or waived, Lender shall have the right, in its sole discretion, as agent of Borrower, to terminate any agreement for management of the Property and to hire and continue to employ a substitute property manager for the Property at Borrower's sole cost and expense.

ARTICLE II

2.01 Events of Default

(a) The terms "Default," "default," "Event of Default" or "event of default," wherever used in this Mortgage, shall mean any of the following events:

(i) Failure by Borrower to pay any installment of principal or interest under the Note or other indebtedness secured by this Mortgage or any other sum that may be due and payable under any of the Loan Documents, within (A) ten days after written notice in those circumstances where Borrower is entitled to notice of monetary default, provided that Borrower shall be entitled to notice of "monetary default" (i.e., the failure to pay any of the foregoing amounts when due) only once in any calendar year and only three times over the term of the Note, or (B) if Borrower is not entitled to any notice of monetary default, ten days from the due date of such amount;

(ii) Any prohibited transfer under Paragraph 1.11 to which Lender shall not have first consented in writing;

(iii) An event shall occur which under the specific terms of Paragraph 1.05 shall give the Lender the option to accelerate the maturity of the Indebtedness and Borrower fails to pay the Indebtedness in full within thirty (30) days after the date of acceleration;

(iv) Failure by Borrower duly to observe or perform any other term, covenant, condition or agreement of this Mortgage within thirty (30) days after written notice of such failure; provided, however, if such failure cannot be cured within such thirty (30) day period, then failure by Borrower to commence the curing thereof within such thirty (30) day period and diligently to prosecute such curing to completion within a reasonable time thereafter;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(v) The fact that any warranty of Borrower contained in this Mortgage or in any other Loan Document proves to be untrue or misleading in any respect as of the time made;

(vi) The occurrence of any default, event of default or Event of Default under any of the Loan Documents that is not cured within any applicable grace period;

(vii) The filing of any federal tax lien against the Property that is not released within thirty (30) days after Borrower has notice of such filing;

(viii) The filing by Borrower, any principal of Borrower, or any endorser or guarantor of the Note, of a voluntary petition in bankruptcy pursuant to any federal state or other statute law or regulation relating to bankruptcy, insolvency or other relief for debtors (hereafter referred to collectively as "Bankruptcy Law") or the issuing of an order for relief against Borrower, any principal of Borrower or any endorser or guarantor of the Note under any such Bankruptcy Law, or the filing by Borrower, any principal of Borrower or any endorser or guarantor of the Note of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future Bankruptcy Law;

(ix) Borrower's or any of its principal's or any such endorser's or guarantor's seeking or consenting to or acquiescing in the appointment of any trustee, custodian, receiver, or liquidator of Borrower, a principal, any such endorser or guarantor, or of all or any substantial part of the Property or of any or all of the income, rents, revenues, issues, earnings, profits or income thereof or of any other property or assets of Borrower, any principal of Borrower or of such endorser or guarantor, or the making by Borrower or any such endorser or guarantor of any general assignment for the benefit of creditors, or the admission in writing by Borrower or any such endorser or guarantor of its inability to pay its debts generally as they become due, or the commission by Borrower or any such endorser or guarantor of any act providing grounds for the entry of an order for relief under any Bankruptcy Law;

(x) Failure to cause the dismissal of any involuntary petition in bankruptcy brought against Borrower, any principal of Borrower or any endorser or guarantor of the Note within thirty (30) calendar days after the same is filed but in any event prior to the entry of an order, judgment, or decree approving such petition;

(xi) The Property is subjected to actual or threatened waste as prohibited herein, or any part thereof is removed,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

demolished, or altered without the prior written consent of Lender;

(xii) Borrower, any principal of Borrower or any endorser or guarantor of the Note (if a corporation) is liquidated or dissolved or its charter expires or is revoked, or Borrower or such endorser or guarantor (if a partnership or business association) is dissolved or partitioned, or Borrower or such endorser or guarantor (if a trust) is terminated or expires, or Borrower or such endorser or guarantor (if an individual) dies; or

(xiii) The filing by any person or entity of any claim in any legal or equitable proceeding challenging the first priority lien of this Mortgage, subject only to the Permitted Exceptions, that is not dismissed within sixty (60) days after filing.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Indebtedness shall, at the option of Lender, become immediately due and payable without notice or demand, which are hereby expressly waived, time being of the essence of this Mortgage and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

2.03 Lender's Right to Enter and Take Possession, Operate and Apply Revenues.

(a) If an Event of Default shall have occurred, Borrower upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Property and if and to the extent, permitted by law, Lender itself or by such officers or agents as it may appoint, may enter and take possession of all the Property without the appointment of a receiver, or an application therefor, and may exclude Borrower and its respective agents and employees wholly therefrom, and may have joint access with Borrower to the books, papers and accounts of Borrower.

(b) If Borrower shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Property to Lender, to the entry of which judgment or decree Borrower hereby specifically consents. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents; and all such expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Property and conduct the business thereof and, from time to time

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

(i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Property insured; (iii) manage and operate the Property and exercise all the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender from time to time may determine to be in its best interest; and (v) perform all acts required of Borrower as lessor under any lease of all or any part of the Property, all as Lender may from time to time determine to be to its best advantage. Lender may collect and receive all the income, rents, issues, profits and revenues from the Property, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Property or any part thereof and (F) the compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the moneys and proceeds so received by Lender to the payment of principal and interest in whatever order or priority Lender may elect. Anything in this Paragraph 2.03 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as the result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues, profits, and revenues actually received by Lender.

(d) For the purpose of carrying out the provisions of this Paragraph 2.03, Borrower hereby irrevocably constitutes and appoints Lender the true and lawful attorney-in-fact of Borrower to do and perform, from time to time, any and all actions necessary and incidental to such purpose, and Borrower does, by these presents, ratify and confirm any and all actions of said attorney-in-fact.

(e) In the event that all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage, shall have been paid and all Events of Default cured and satisfied, and as a result thereof Lender surrenders possession of the Property to Borrower, the same right of taking possession shall exist if any subsequent Event of Default shall occur.

2.04 Receiver. If an Event of Default shall have occurred, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

without regard to the sufficiency or value of any security for the Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the income, rents, issues, profits, and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state within which the Land is located. Borrower shall pay to Lender upon demand all expenses, including receiver's fees, attorneys' fees, costs, and agent's compensation, incurred pursuant to the provisions of this Paragraph 2.04; and all such expenses shall be secured by this Mortgage.

2.05 Enforcement

(a) If a Default shall have occurred, Lender, at its option, may institute legal proceedings for the foreclosure of this Mortgage.

(b) Lender shall have the right from time to time to enforce any legal or equitable remedy against Borrower, including, without limitation, suing for any sums, whether interest, principal or any installment of either or both, taxes, penalties or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not all of the Indebtedness shall then be due, and without prejudice to the right of Lender thereafter to enforce any other remedy, including, without limitation, an action of foreclosure, whether or not such other remedy be based upon a Default which existed at the time of commencement of an earlier or pending action, and whether or not such other remedy be based upon the same Default upon which an earlier or pending action is based.

2.06 Purchase by Lender. Upon any foreclosure sale, Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

2.07 Application of Proceeds of Sale. In the event of a foreclosure sale of all or any portion of the Property, the proceeds of said sale shall be applied, in whatever order Lender in its sole discretion may decide, to the expenses of such sale and of all proceedings in connection therewith, including attorneys' fees, to insurance premiums, liens, assessments, taxes and charges, including utility charges, advanced by Lender, to payment of the outstanding principal balance of the Indebtedness, together with any prepayment premiums, fees or charges herein or in the Note provided, or to the accrued interest on all of the foregoing, and finally the remainder, if any, shall be paid to Borrower.

2.08 Borrower as Tenant Holding Over. In the event of any such foreclosure sale by Lender, Borrower shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.09 Leases. Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the Indebtedness.

2.10 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceeding shall have been withdrawn, discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then in every such case (i) Borrower and Lender shall be restored to their former positions and rights, (ii) all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken, (iii) each and every Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall be deemed to be a continuing Default, and (iv) neither this Mortgage, nor the Note, nor the Indebtedness, nor any other of the Loan Documents shall be or shall be deemed to have been released or otherwise affected by such withdrawal, discontinuance or abandonment; and Borrower hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the above.

2.11 No Reinstatement. If a Default under Paragraph 2.01(a)(i) shall have occurred and Lender shall have proceeded to enforce any right, power or remedy permitted hereunder, then a tender of payment by Borrower or by anyone on behalf of Borrower of the amount necessary to satisfy all sums due hereunder made at any time prior to foreclosure, or the acceptance by Lender of any such payment so tendered, shall not constitute a reinstatement of the Note or this Mortgage.

2.12 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender by this Mortgage or any other Loan Document is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.13 Suits to Protect the Property. Lender shall have the power (i) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or in violation of this Mortgage, (ii) to preserve or protect its interest in the Property and in the income, rents, issues, profits and revenues arising therefrom, and (iii) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

2.14 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount of the Indebtedness at the date of the institution of such proceedings and for any additional amount of the Indebtedness after such date.

2.15 Marshalling. At any foreclosure sale, the Property may, at Lender's option, 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, Borrower hereby waiving the application of any doctrine of marshalling; and in case Lender, in the exercise of the power of sale herein given, elects to sell the Property 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 not previously sold shall have been sold.

2.16 Security Deposits. If Borrower shall obtain from a tenant or subtenant of the Property, or a part thereof a deposit to secure such tenant's or subtenant's obligations, such funds, following any default under this Mortgage, shall be deposited with Lender in an account maintained by Lender in its name; but any such deposit shall be returned to Borrower when required, by the terms of any such lease, sublease or occupancy agreement, to be paid over to the tenant or subtenant; and Borrower represents that the provisions of any applicable laws relating to security deposits have been satisfied with respect to each existing tenant, subtenant or occupant of the Property and agrees that they will be satisfied with respect to each new tenant, subtenant, or occupant of the Property; and Borrower will furnish details of such satisfaction from time to time upon the request of Lender in such detail as Lender may require.

2.17 Waiver of Appraisalment, Valuation, Etc.

(a) Borrower agrees, to the full extent permitted by law, that in case of a Default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any moratorium, reinstatement forbearance, appraisalment, valuation, stay, extension, homestead right, entitlement or exemption, or redemption 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 delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, 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

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

subject to the security interest of this Mortgage marshalled upon any foreclosure.

(b) Borrower acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law, which is referred to elsewhere in this Mortgage as the "Act") or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuations, appraisements, homestead exemption, stay, redemption, and moratorium laws under any state or federal law.

2.18 Waiver of Homestead. Borrower hereby waives and renounces all homestead right, entitlement, and exemption provided for by the Constitution and the laws of the United States of America and of any state, in and to the Property as against the collection of the Indebtedness, or any part hereof.

2.19 Compliance with Illinois Mortgage Foreclosure Law.

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

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

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

2.20 Maximum Amount Secured. The maximum aggregate amount of principal, interest, premium, if any, future advances, or other indebtedness (now owed or hereafter owed) secured by this Mortgage is \$10,000,000.00.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ARTICLE III

3.01 Successors and Assigns. Subject to Paragraph 1.11(a) hereof this Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective legal representatives, successors, and assigns. Whenever a reference is made in this Mortgage to Borrower or Lender, such reference shall be deemed to include a reference to the heirs, devisees, legal representatives, successors, and assigns of Borrower or Lender, whether so expressed or not.

3.02 Severability. If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.03 Applicable Law. This Mortgage shall be interpreted, construed and enforced according to the laws of the State of Illinois.

3.04 Notices, Demands, and Requests. All notices, demands or requests provided for or permitted to be given pursuant to this Mortgage shall be in writing and shall be delivered in person or sent by registered or certified United States mail, postage prepaid, return receipt requested, or by overnight courier, to the addresses set out below or to such other addresses as are specified by no less than (10) days' prior written notice delivered in accordance herewith:

LENDER: c/o Providian Capital
Management Real Estate Services
400 W. Market Street
Louisville, Kentucky 40202

BORROWER: c/o Dr. Noel S. Browdy
3179 Orange Brace
Riverwoods, Illinois 60015

With a copy to:

Mr. Henry M. Morris
Rosenthal and Schanfield
55 E. Monroe Street, 46th Floor
Chicago, Illinois 60603-5855

All such notices, demands and requests shall be deemed effectively given and delivered within three days after the postmark date of mailing, or one day after the date of delivery to the overnight courier or, if delivered personally, when received. Rejection or other refusal to accept or the inability to deliver because of a

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

changed address of which not notice was given shall be deemed to be receipt of the notice, demand, or request sent.

3.05 Consents and Approvals. All approvals and consents hereunder shall be in writing and no approval or consent shall be deemed to have been given hereunder unless evidenced in a writing signed by the party from whom the approval or consent is sought.

3.06 Waiver.

(a) No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, express or implied, by Lender to or of any breach or default by Borrower in the performance of the obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies consequent on any breach or default by Borrower.

(b) If Lender (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein or in the Note; (iv) releases any part of the Property from the lien of this Mortgage or otherwise changes any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consents to the filing of any map, plat or replat affecting the Property; or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, this Mortgage or any other obligation of Borrower or any subsequent purchaser of the Property or any part thereof or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of Borrower. In no event, however shall the provisions of this

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Paragraph 3.07(b) be construed in derogation of Paragraph 1.11 hereof.

3.07 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement or other security reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower will execute and deliver, in lieu thereof a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement Note.

3.08 Assignment. This Mortgage is assignable by Lender, and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

3.09 Time of the Essence. TIME IS OF THE ESSENCE with respect to each and every covenant, agreement, and obligation of Borrower under this Mortgage, the Note and any and all other Loan Documents.

3.10 Attorneys' Fees. The meaning of the terms "legal fees" or "attorneys' fees" or any other reference to the fees of attorneys or counsel, wherever used in this Mortgage, shall be deemed to include, without limitation, all legal fees relating to litigation or appeals at any and all levels of courts and administrative tribunals.

3.11 Covenants Run With the Land. All of the grants, covenants, terms, provisions and conditions herein contained shall run with the land and shall apply to, bind and inure to the benefit of the successors and assigns of Borrower and Lender.

3.12 Execution by Trustee. This instrument is executed by Trustee, not personally but as trustee under the Trust, in the exercise of the power and authority conferred upon and vested in it as such trustee (and Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing contained herein or in the Note or in any other Loan Document shall be construed as creating any liability on the part of Trustee personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being hereby expressly waived by Lender, and by every person now or hereafter claiming any right or security hereunder; and that so far as Lender and Trustee personally are concerned, Lender shall look solely to the Property for the payment of the Indebtedness or to the enforcement of the lien created in the manner herein and in the Note provided.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

ARTICLE IV

4.01 Exculpatory Provision. Except as hereafter provided, and subject to the provisions of any guaranties of the Note, Lender agrees that (i) Beneficiary shall be liable upon the Indebtedness to the full extent (but only to the extent) of the security for the payment of the Note, the same being all properties, rights, and estates described in the Loan Documents, (ii) if default occurs in the timely and proper payment of all or any part of such Indebtedness, any judicial proceedings brought by Lender against Beneficiary shall be limited to the preservation, enforcement and foreclosure, or any thereof of the liens, security titles, estates, assignment, rights and security interests now or at any time hereafter securing the payment of the Note, and no attachment execution or other writ of process shall be sought, issued or levied upon any assets, properties or funds of Beneficiary other than the properties, rights, estates and interests described in the Loan Documents, and (iii) in the event of a foreclosure of such liens, security titles, estates, assignments, rights and security interests securing the payment of the Note, no judgment for any deficiency upon such Indebtedness, shall be sought or obtained by Lender against Beneficiary; PROVIDED, HOWEVER, that, notwithstanding the foregoing provisions of this Paragraph, Beneficiary shall be fully and personally liable at all times (a) for any costs, expenses or liability, including attorneys fees, incurred by Lender arising from any order, consent decree, or settlement relating to the clean-up of toxic or Hazardous Materials or waste products that are introduced to the Property at any time prior to the date on which Lender (or any assignor of Lender or purchaser at a foreclosure sale) takes title to and possession of the Property, (b) for repayment of the entire unpaid balance of the Indebtedness in the event of fraud or material misrepresentations, (c) the entire amount of rent due under any tenant leases that are terminated by Beneficiary without Lender's consent (except as otherwise permitted herein), and (d) for the misapplication of (i) proceeds paid to Beneficiary under any insurance policies by reason of damage, loss or destruction to any portion of the Property, to the full extent of such proceeds, (ii) proceeds or awards paid to Beneficiary resulting from the condemnation or other taking in lieu of condemnation of any portion of the Property, to the full extent of such proceeds or awards, or (iii) from and after default, income, rents, issues, profits and revenues arising or issuing from or out of the Property or any portion thereof and which are not applied to debt service payments on the Note or to ordinary and customary operating expenses of the Property. Nothing contained in this Paragraph shall (i) be deemed to be a release or impairment of the Indebtedness or the Lien of the Loan Documents upon the Property (ii) preclude Lender from foreclosing the Loan Documents in case of any default or from enforcing any of the other rights of Lender except as expressly stated in this Paragraph, or (iii) preclude Lender from enforcing its rights under any guaranties of the Indebtedness, pursuant to the terms of said guaranties.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has executed, sealed and delivered this Mortgage the day, month, and year first above written.

BORROWER:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but as Trustee aforesaid

By 

Its: VP

8901 LIMITED PARTNERSHIP, an Illinois limited partnership

By Noel S. Browdy Noel S.
Noel S. Browdy, general partner

Property of Cook County Clerk's Office

9763593A

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

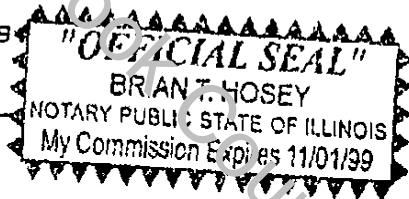
STATE OF ILLINOIS)
COUNTY OF COOK) SS.

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that J. MICHAEL WHELAN, VICE PRESIDENT and _____, Assistant Secretary of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO (the "Trustee"), personally known to me to be the same person whose name is subscribed to the foregoing instrument as such _____ and Assistant Secretary, appeared before me this day in person and each acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of the Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of AUG 21 1997, 1997.

Brian T. Hosey
Notary Public

My Commission Expires _____



976359

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

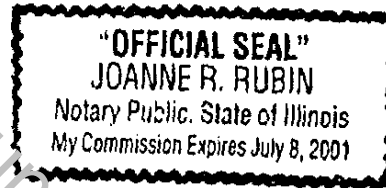
STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Noel S. Browdy, general partner of 8901 Limited Partnership, an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such general partner, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17 day of August, 1997.

Notary Public

My Commission Expires:



mlg:85
MCB.106564
F:\USERS\085\PROVIDIA\8901\MORTGAGE.CLN
8/7/97

97635934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit A

The East 1/4 of the North 1/4 of the West 1/2 of the East 1/2 of the Northeast 1/4 of Section 15, Township 41 North, Range 12 East of the Third Principal Meridian (except that part dedicated for public highway), in Cook County, Illinois.

mlg:85
MCB.106564
F:\USERS\085\PROVIDIA\8901\EXHIBIT.A
8/7/97

Property of Cook County Clerk's Office

07635934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT B

Permitted Title Exceptions

1. GENERAL REAL ESTATE TAXES FOR 1996 (SECOND INSTALLMENT) AND SUBSEQUENT YEARS.
2. EASEMENT TO INSTALL AND MAINTAIN ALL EQUIPMENT FOR THE PURPOSE OF SERVING THE LAND AND OTHER PROPERTY WITH TELEPHONE AND ELECTRIC SERVICE TOGETHER WITH RIGHT OF ACCESS TO SAID EQUIPMENT AS CREATED BY GRANT TO THE COMMONWEALTH EDISON COMPANY, CORPORATION OF ILLINOIS AND CENTEL TELEPHONE COMPANY, AN ILLINOIS CORPORATION, RECORDED MAY 11, 1988 AS DOCUMENT 88201892 IN, UPON, UNDER, OVER AND ALONG THE LAND SHOWN ON EXHIBIT A ATTACHED TO SUCH EASEMENT.

mlg:85
 MCB.106564
 F:\USERS\085\PROVIDIA.8901\PERMITTE.EXC
 8/17/97

Property of Cook County Clerk's Office

07635934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Exhibit C

\$4,000,000.00

August __, 1997

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, American National Bank and Trust Company of Chicago, not personally, but solely as Trustee under Trust Agreement dated December 2, 1985 and known as Trust No. 66149 ("Trustee") and 8901 Limited Partnership, an Illinois limited partnership (hereafter referred to as "Beneficiary") (hereafter Beneficiary and Trustee are collectively referred to as "Borrower") promise to pay to the order of Peoples Security Life Insurance Company, a North Carolina corporation (hereafter referred to as "Payee"; Payee and/or any subsequent holder(s) hereof, hereafter referred to as "Holder"), at Payee's address c/o Providian Capital Management Real Estate Services, Inc., Section #808, Louisville, Kentucky 40289, or at such other place as Holder shall designate from time to time in writing, the principal sum of FOUR MILLION AND NO/100 DOLLARS (\$4,000,000), together with interest on the unpaid principal balance of such indebtedness from time to time outstanding from the date of disbursement at the rates hereinafter set forth, in lawful money of the United States of America, such principal and interest being due and payable as follows:

1. INTEREST AND PAYMENTS:

A. INTEREST RATE: Interest shall accrue on the outstanding principal amount hereof at the rate of eight and three-tenths percent (8.30%) per annum commencing on the date of disbursement of funds of Payee hereunder (hereafter referred to as the "Closing") to and including the Final Maturity Date.

B. PAYMENT TERMS:

1. Interest only for the calendar month in which the Closing takes place through the ninth day of the following month shall be prorated on a daily basis as provided in subparagraph 1D hereof and shall be paid in advance at Closing. Thereafter, principal and interest shall be payable in equal installments of Thirty Four Thousand Two Hundred Eight and 27/100 Dollars (\$34,208.27), such installments to be due on the tenth (10th) day of each calendar month during the term hereof, commencing on the tenth (10th) day of the second calendar month following the Closing.
2. The entire outstanding principal balance of the indebtedness evidenced hereby, plus all accrued but

07635934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

unpaid interest thereon, shall be due and payable on August 10, 2007 (hereafter referred to as "Final Maturity Date"). Borrower acknowledges that because the monthly payments hereunder are based on an amortization period that is longer than the term of this Note, a substantial portion of the principal balance of this Note will be due on the Final Maturity Date.

- C. BASIS POINT: As used in this Note, the term "Basis Point" shall mean one one-hundredth (1/100th) of one percentage point of interest.
- D. CALCULATION OF INTEREST: All interest on any indebtedness evidenced by this Note shall be calculated on the basis of a three hundred sixty (360)-day year composed of twelve (12) thirty (30)-day months. Interest for partial months shall be calculated by multiplying the principal balance of this Note by the applicable per annum rate, dividing the product so obtained by 360, and multiplying the result by the actual number of days elapsed.
2. APPLICATION OF PAYMENTS: All payments made under this Note shall be applied first in reduction of any late charges, next in reduction of any sums advanced by Holder to cure defaults under the Mortgage (defined below), next in reduction of current interest, and any remaining amount in reduction of the outstanding principal balance.
3. COLLATERAL: The indebtedness evidenced by this Note is secured by, among other things, that certain mortgage or deed of trust (hereafter referred to as the "Mortgage") between Borrower, as mortgagor or trustor, and Payee, as mortgagee or beneficiary, conveying Borrower's right, title and interest in property lying and being in Cook County, Illinois, as the same is more particularly described in the Mortgage, to Payee as security for the performance by Borrower of its obligations hereunder, an Assignment of Leases and Rents, any cash deposit, certificate of deposit or letter of credit given in connection with this Note, any Loan Agreement, and any other document executed in connection with this Note. All of the property encumbered by the Mortgage or any other Loan Document (defined below) is hereafter referred to as the "Property".
4. LATE CHARGE: Borrower shall pay to Holder a late charge equal to four percent (4%) of any amount, including any interest, not paid within five (5) days of the due date of such amount without regard to the grace period provided in Paragraph 5 below, not as a penalty, but as compensation to Holder for the cost of collecting and processing such late payment. Borrower

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

agrees that such late charge represents a good faith reasonable estimate of the probable cost to Holder of such delinquency. Holder shall have no obligation to accept any late payment not accompanied by said late charge, but if Holder does so, Holder shall not thereby waive its right to the late charge.

5. INTEREST UPON DEFAULT; ACCELERATION: In the event that any payment of principal, interest, late charge or prepayment premium under this Note is not paid within ten (10) days after written notice in those circumstances where Borrower is entitled to notice of a monetary default or ten (10) days from the due date of such amount if Borrower is not entitled to any notice of monetary default, whether or not by reason of acceleration, such failure shall constitute a default hereunder, and such amount shall bear interest from the due date thereof until paid at the per annum rate which is three hundred (300) Basis Points above the interest rate otherwise in effect hereunder. Borrower shall be entitled to notice of "monetary default" (i.e., failure to pay any of the foregoing amounts or any other monetary amount to be paid by Borrower under the Loan Documents when due) only once in any calendar year and only three times over the term of this Note. In the event of such failure to pay, and/or if there occurs a default under the Mortgage, the Assignment of Leases and Rents, the Loan Agreement, if any, or in or under any other document or instrument evidencing, securing, or otherwise relating to the indebtedness evidenced hereby (this Note, the Mortgage, the Assignment of Leases and Rents, the Loan Agreement, if any, any Escrow Agreement, and such other documents and instruments are collectively referred to as "Loan Documents"), which default is not cured within the applicable notice and/or grace period, if any, expressly provided therefor, Holder may at its option, in addition to any other remedies to which it may be entitled, declare the total unpaid principal balance of the indebtedness evidenced hereby, together with all accrued but unpaid interest thereon and any applicable prepayment premium and all other sums owing, immediately due and payable.
6. PREPAYMENT: For purposes of this Note, a "Loan Year" shall refer to each twelve (12)-month period during the term of this Note commencing on the first day of the first full calendar month after the date hereof, and each anniversary thereof, except that the first Loan Year shall include the time period between the date hereof and the first day of the next succeeding calendar month. Borrower shall have no right to prepay the indebtedness evidenced by this Note during the first five Loan Years. Commencing with the first (1st) day of the sixth Loan Year, and at any time thereafter, Borrower may prepay the indebtedness evidenced by this Note in whole or in part, at any time and from time to time, provided (i) each

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

such prepayment is accompanied by the applicable prepayment premium set out below, (ii) notice of the amount of such prepayment is given to Holder at least forty-five (45) days prior to any such prepayment, (iii) no partial prepayment shall entitle Borrower to the release of any collateral securing this Note, and (iv) any partial prepayment is made in multiples of \$10,000. All partial prepayments shall be applied in the manner provided in Paragraph 2 above. Borrower expressly waives any right to prepay the indebtedness evidenced hereby, except as specifically provided above in this Paragraph 6 and in Paragraph 7 hereof. Therefore, if the maturity of this Note is accelerated by reason of any default hereunder or under any other Loan Document, Borrower agrees that any prepayment of the indebtedness evidenced hereby resulting from such default, including any redemption following foreclosure of the Mortgage, shall constitute a breach of the restrictions on prepayment set forth herein. Borrower recognizes that prepayment of this Note as a result of foreclosure and sale, or as a result of sale under a power of sale, will result in damages to Holder due to Holder's failure to receive the benefit of its investment as contracted for in this Note. Further, Borrower recognizes that it is extremely difficult and impractical to ascertain the extent of such damages. Accordingly, to the extent permitted by law, Holder may impose as a condition to accepting any such prepayment, and may bid at any foreclosure sale under the Mortgage or pursuant to any power of sale granted under the Mortgage, the prepayment premium that would otherwise have been due in connection with a voluntary prepayment made on such date. If no prepayment is permitted at the time of such foreclosure sale, or prepayment of the indebtedness evidenced hereby results from such default, the prepayment premium shall be an amount equal to the present value (using a discount fraction equal to the interest rate on this Note) of a series of Monthly Payments (defined below) payable from the date of such prepayment to the maturity date of this Note. Each Monthly Payment is equal to one-twelfth of the product of the Annual Yield Differential (defined below) multiplied by the outstanding principal amount of this Note that would have been outstanding on the date of each subsequent payment if this Note had not been accelerated. Borrower acknowledges that it is a knowledgeable real estate developer or investor that fully understands the effect of the waiver contained above, considers that making of the loan of Holder at the interest rate set forth above is sufficient consideration for such waiver, and understands that Holder would not make this loan without such waiver. Any breach of this clause will constitute a default hereunder and will render the indebtedness evidenced by this Note payable on demand without notice.

07635934

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

7. PREPAYMENT PREMIUM: Commencing with the first (1st) day of the sixth Loan Year, Borrower shall pay to Holder with each prepayment, a prepayment premium of the greater of one percent (1%) of the outstanding principal amount of this Note so then prepaid or an amount equal to the present value (using a discount factor equal to the interest rate on this Note) of a series of monthly payments ("Monthly Payments") payable from the date of such prepayment to the maturity date of this Note. Each Monthly Payment is equal to one-twelfth of the product of the Annual Yield Differential multiplied by the outstanding principal amount of this Note that would have been outstanding on the date of each subsequent payment if this Note had not been prepaid. The "Annual Yield Differential" is the excess, if any, of the interest rate on this Note over a rate which is seventy five (75) Basis Points above the interest rate on the U.S. Treasury Constant Maturity having the closest matching maturity to the maturity date of this Note as reported in Federal Reserve Statistical Release H.15 - Selected Interest Rates for the week preceding such prepayment date.
8. ATTORNEYS' FEES: If this Note is placed in the hands of an attorney for collection or is collected through any legal or administrative proceeding, including without limitation bankruptcy or insolvency proceedings, or if Holder shall engage counsel in any matters relating to a default in the performance of obligations to Holder under this Note, or any of the Loan Documents, Borrower promises to pay, in addition to costs and disbursements otherwise allowed, to the extent permitted by law, reasonable attorneys' fees, including fees incurred for trial and appellate proceedings.
9. WAIVER: Borrower hereby waives presentment for payment, demand, protest, notice of nonpayment, demand, default, dishonor, and protest.
10. FORBEARANCE: Holder shall not be deemed to have waived any of Holder's rights or remedies under this Note unless such waiver is express and in a writing signed by Holder, and no delay or omission by Holder in exercising, or failure by Holder on any one or more occasions to exercise, any of Holder's rights hereunder or under the Loan Documents, or at law or in equity, including, without limitation, Holder's right, after any default by Borrower, to declare the entire indebtedness evidenced hereby immediately due and payable, shall be construed as a novation of this Note or shall operate as a waiver or prevent the subsequent exercise of any or all of such rights. Acceptance by Holder of any portion or all of any sum payable hereunder whether before, on or after the due date of such payment, shall not be a waiver of Holder's right either to require prompt payment when due of all other sums payable hereunder or to exercise any of Holder's rights,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

powers and remedies hereunder or under the Loan Documents. A waiver of any right on one occasion shall not be construed as a waiver of Holder's right to insist thereafter upon strict compliance with the terms hereof without previous notice of such intention being given to Borrower, and no exercise of any right by Holder shall constitute or be deemed to constitute an election of remedies by Holder precluding the subsequent exercise by Holder of any or all of the rights, powers and remedies available to it hereunder, under any of the other Loan Documents, or at law or in equity. Borrower expressly waives the benefit of any statute or rule of law or equity now provided or which may hereafter be provided, which would produce a result contrary to, or in conflict with, the foregoing. Borrower consents to any and all renewals and extensions in the time of payment hereof without in any way affecting the liability of Borrower or any person liable or to become liable with respect to any indebtedness evidenced hereby. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part, unless Holder agrees otherwise in writing.

11. RENUNCIATION AND ASSIGNMENT OF EXEMPTIONS: Borrower hereby waives and renounces for itself, its legal representatives, successors and assigns, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisement, exemption, and homestead right, entitlement, or exemption now provided, or which may hereafter be provided, by the Constitution or laws of the United States of America or of any state thereof, both as to itself and in and to all of its property, real and personal, against the enforcement and collection of the obligations evidenced by this Note. Borrower hereby transfers, conveys and assigns to Holder a sufficient amount of such homestead right, entitlement, or exemption as may be set apart in bankruptcy, to pay this Note in full, with all costs of collection, and does hereby direct any trustee in bankruptcy having possession of such homestead right, entitlement, or exemption to deliver to Holder a sufficient amount of property or money set apart as exempt to pay the indebtedness evidenced hereby, or any renewal thereof, and does hereby appoint Holder the attorney-in-fact for Borrower to claim any and all homestead right, entitlement, or other exemptions allowed by law.
12. APPLICABLE LAW: This Note shall be governed by, enforced under and interpreted in accordance with the laws of the State of Illinois.

UNOFFICIAL COPY

Property of Cook County Clerk's Office