

Property of Cook County Clerk's Office

42

MORTGAGE

D 1 76 92 435
JFZ

THIS MORTGAGE is made as of the 14th day of November, 1997, by ROB ROY COMMERCIAL JOINT VENTURE LIMITED PARTNERSHIP, an Illinois limited partnership ("Mortgagor"), to LASALLE NATIONAL BANK, a national banking association doing business in Chicago, Illinois ("Mortgagee").

Recitals

A. Mortgagor holds fee simple title to certain improved land in Chicago, Illinois (the "Land"), commonly known as 2744-2754 North Clark Street and 635-647 West Diversey Parkway and legally described in EXHIBIT A attached hereto and made a part hereof. The Land is improved with a two-story retail/office building and related improvements. Such Land, facility and improvements are collectively referred to herein as the "Real Estate."

B. Mortgagee has made a loan to Mortgagor in the amount of TWO MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$2,850,000.00) (the "Loan").

C. As evidence of the Loan, Mortgagor has executed and delivered to Mortgagee a certain Mortgage Note of even date herewith (the "Note"), made payable to the order of and delivered to Mortgagee, in and by which Note Mortgagor promises to pay the said principal sum of the Loan and interest at the rate and in installments as provided in the Note.

NOV 19 1997

UNOFFICIAL COPY

Property of Cook County Clerk's Office

with the final payment due on December 1, 2001, or on such earlier date as may be provided in the Note. All of said principal and interest are made payable at such place as the holder or holders of the Note (the "Holders") may from time to time in writing appoint, and in absence of such appointment, then at the offices of Mortgagee in Chicago, Illinois.

D. The Note is secured by this Mortgage, a Security Agreement, an Assignment of Rents and Leases, an Environmental Indemnity Agreement, a Collateral Assignment of Permits, Licenses, Approvals and Contracts, a Payment Guaranty executed by Harold Eisenberg, Wayne Moretti and Ronald Benach (the "Guarantors"), and Financing Statements on Illinois forms UCC-1 and UCC-2 (collectively with the Note, the "Loan Documents").

Agreements

NOW, THEREFORE, Mortgagor, in consideration of the Loan and the Recitals set forth above and to secure the timely payment of both principal and interest thereof, in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this Mortgage, and to secure the performance of the covenants and agreements herein and in the Note and the other Loan Documents contained and to be performed by Mortgagor does by these presents MORTGAGE, WARRANT, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto Mortgagee, its successors and assigns, the Real Estate and all of its estate, right, title and interest therein;

TOGETHER with all and singular the easements, rights-of-way, licenses, privileges, tenements, appendages, hereditaments, waters, water courses, riparian rights, appurtenances, other rights, liberties and privileges thereunto belonging or in any wise appertaining, including without limitation any claim at law or in equity as well as any after-acquired title, franchise or license and the reversions and remainders thereof; and also all the rents, issues, proceeds and profits now or hereafter accruing therefrom;

TOGETHER with all rents, issues, profits, revenues, royalties, bonuses, receipts, rights and benefits due, payable or accruing or to accrue (including without limitation all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof of, or under any contracts or options for the sale of all or any part of the Real Estate (including without limitation those accruing during any period allowed by law for the redemption of the Real Estate after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness secured hereby and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee;

TOGETHER with all the estate, right, title and interest, if any, of Mortgagor (including without limitation any after-acquired title, franchise or license and the reversions and remainders thereof), in and to the land lying within any alley, way, street, roadway, strips and gores, or beds adjoining the Real Estate;

TOGETHER with all property and rights, if any, which by the express provisions of this instrument are required to be subjected to the lien hereof and any additional property and rights that from time to time hereafter, by installation or writing of any kind, may be subjected to the lien hereof by Mortgagor or by anyone on Mortgagor's behalf;

TOGETHER with all rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after acquired title or reversion with respect thereto;

TOGETHER with all building, structures and improvements now or hereafter erected or placed on the Real Estate, and all materials intended for construction, reconstruction, alteration and repair thereof, all of which materials shall be included with the Real Estate and subjected to the lien hereof immediately upon the delivery thereof to the Real Estate, and, also, together with all machinery, equipment, apparatus, goods, systems, fixtures and items of personal property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Real Estate or the building or improvements located thereon which are owned by Mortgagor, or any part thereof, and used or usable in connection with any present or future operation of the Real Estate, including without limitation all heating, lighting, incinerating, refrigerating, ventilating, air-conditioning, air-cooling, lifting, fire extinguishing, plumbing, cleaning, electrical, communication and power equipment, systems and apparatus; all gas, water and electrical equipment, system, fixtures and apparatus; and all elevators, escalators, switchboards, computers, engines, motors, tanks, pumps, screens, storm doors, storm windows, shades, blinds, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing (all such machinery, equipment, apparatus, goods, systems, fixtures, renewals, additions, accessories, replacements and substitutions are a part of the Real Estate and are declared to be a portion of the security for the indebtedness secured hereby whether in single units or centrally controlled, and whether physically attached to the Real Estate or the building or improvements thereon, or not; and the enumeration of any specific items of property shall in no wise exclude or be held to exclude any items of property not specifically enumerated; and all revenues, receivables, income and accounts now or hereafter acquired and arising from any or all of the foregoing; and the proceeds of any and all of the foregoing;

TOGETHER with all judgments, settlements, awards and other compensation heretofore made or hereafter to be made to the present and all subsequent owners of the Real Estate for any taking by eminent domain, either permanent or temporary, of all or any part of the Real Estate or any easement or appurtenance thereof, including without limitation for severance and consequential damage therefor or for change in grade of streets. All of the foregoing enumerated in the preceding six Sections, together with the Real Estate, are herein sometimes collectively referred to as the "premises". All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby. As to any of the property

aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as Secured Party (as said term is defined in the Uniform Commercial Code), securing said indebtedness and obligations. Mortgagor covenants that it is lawfully seized of the premises, that the same are unencumbered (except as herein provided in Section 1 below), and that it has good right, full power and lawful authority to convey and mortgage the same.

TO HAVE AND TO HOLD the premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

REPRESENTATIONS, COVENANTS AND AGREEMENTS OF MORTGAGOR

Mortgagor represents, covenants and agrees with the Mortgagee as follows:

1. Title Mortgagor has good and marketable fee simple title to the premises, subject only to those title exceptions appearing in the ALTA Loan Title Insurance Policy issued to Mortgagee in connection with the Loan (the "Permitted Exceptions"), and is lawfully seized and possessed of the same, and has the full power, authority and right to convey the same and to execute and deliver this Mortgage; and the premises are unencumbered except as may be herein expressly provided.

2. Covenants of Mortgagor. Mortgagor hereby covenants and agrees with Mortgagee as follows:

(a) Without the prior written consent of Mortgagee, which consent Mortgagee may withhold in its sole discretion as to (1) below, and which consent shall not be unreasonably withheld as to (2) below, (1) Mortgagor shall not, directly or indirectly or by operation of law, liquidate, dissolve, merge into or be merged into, acquire or be acquired, buy substantially all of the assets or stock of any entity or sell all or a major portion of its assets, or enter into an installment agreement or land contract for the sale of all or any part of the premises, or pledge, mortgage or encumber Mortgagor's right, title or interest in the premises (except for the sale of personal property in the ordinary course of business); and (2) there shall be no sale, assignment, pledge, hypothecation, encumbrance or transfer of any general or limited partnership interests in Mortgagor. A breach of the provisions of this Section 2(a) shall be an Event of Default under this Mortgage.

(b) Mortgagor shall take all actions necessary to maintain or cause to be maintained Mortgagor in existence, registered and in good standing under the laws of the State of Illinois and qualified to do business under the laws of such states as to which such qualification is required by law.

(c) Mortgagor shall maintain at all times its status for tax purposes as a partnership within the meaning of Subchapter K of the Internal Revenue Code.

(d) Without the prior written consent of Mortgagee, Mortgagor shall not agree to or permit any amendment of the limited partnership agreement of Mortgagor, which amendment adversely affects (1) the ability of Mortgagor to repay the Loan in a timely fashion or perform its obligations under the Loan Documents, or (2) the premises.

(e) Mortgagor shall not, except as permitted hereunder, modify, amend or terminate (other than by full performance thereof) any Loan Document without the prior written consent of Mortgagee.

(f) Subject to the provisions of Section 37 hereof, if at any time or times after the date of this Mortgage, Mortgagee: (1) employs counsel which Mortgagee reasonably believes is necessary for advice or other representation (i) with respect to this Mortgage, the Note or any of the other Loan Documents following an Event of Default or, event which, with the passage of time, the giving of notice, or both would constitute an Event of Default, (ii) to represent Mortgagee in any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute or proceeding (whether instituted by Mortgagee, Mortgagor or any other person) in any way or respect relating to this Mortgage or any of the other Loan Documents, or (iii) to enforce any rights of the Mortgagee against Mortgagor; (2) takes any action to protect, collect, sell, liquidate or otherwise dispose of any collateral securing the Note; and/or (3) attempts to or enforces any of the Mortgagee's rights and remedies against Mortgagor, the reasonable costs and expenses incurred by Mortgagee in any manner or way with respect to the foregoing shall be part of the indebtedness secured by this Mortgage, payable by Mortgagor to Mortgagee on demand. Without limiting the generality of the foregoing, such expenses and costs include: court costs, reasonable attorneys' fees and expenses (including paralegal costs) and reasonable accountants' fees and expenses.

(g) Mortgagor agrees that in the event Mortgagor shall (1) file with any bankruptcy court of competent jurisdiction or be the subject for a period exceeding 90 days of any petition under the United States Bankruptcy Code (the "Bankruptcy Code"), (2) for a period exceeding 90 days, be the subject of any order for relief issued under the Bankruptcy Code, (3) file or, for a period exceeding 90 days, be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (4) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator of itself or of all or any substantial part of its properties or any part of the premises, or (5) be the subject for a period exceeding 60 days of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, then, subject to court approval, Mortgagee shall thereupon to the extent permitted by law be entitled and Mortgagor irrevocably consents to relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Mortgagee as provided in the Loan

Documents, and as otherwise provided by law, and to the extent permitted by law Mortgagor hereby irrevocably waives its respective rights to object to such relief.

(h) Mortgagor shall promptly upon receipt deliver to Mortgagee copies of all notices with regard to any alleged or potential material violation of any Requirement (as hereinafter defined). Mortgagor shall promptly and fully respond to any inquiry by Mortgagee with respect thereto and shall permit Mortgagee to participate in any inquiry, hearing or meeting (other than meetings between Mortgagor and its attorneys or consultants) with regard to any of the foregoing.

(i) Subject to Section 2(q) hereof, Mortgagor shall comply in all material respects with all Requirements applicable to the premises, and shall cause the premises to be in compliance in all material respects with all Requirements. Mortgagor shall at all times keep and maintain for the benefit of the premises and its Lessees, access and availability to all utilities, including without limitation water, gas, electricity, sewer and telephone service, required for the operation of the premises as it is currently used and as Mortgagor intends to use the premises subject to the provisions hereof.

(j) Mortgagor shall keep or cause to be kept all Permits (as hereinafter defined) in full force and effect, shall promptly comply with all conditions thereof, and upon Mortgagee's request shall promptly deliver to Mortgagee evidence of such compliance as Mortgagee may reasonably require.

(k) Mortgagor shall not file for or seek any subdivision approval for the premises or file or record any subdivision or parcel map or accept any subdivision approval, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld.

(l) Mortgagor shall not file for or seek any zoning change, special use permit, variance or other zoning action affecting the premises, or enter into any annexation agreement or amendments thereto, or any other agreement with a Governmental Authority (as hereinafter defined) that affects or pertains to the premises, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld.

(m) Mortgagor, at its sole cost and expense, shall keep the premises in good order, condition, and repair, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. Mortgagor shall abstain from, and not permit, the commission of waste in or about the premises.

(n) Mortgagor will use the premises as a retail/office building, in compliance with all Requirements, and for no other purpose without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld. Mortgagor shall not use or permit the use of the premises, or any part thereof, for any illegal purpose.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(o) All management, maintenance, brokerage or other similar agreements that materially affect the premises shall be terminable on 30 days' notice and shall be for a market rate of compensation.

(p) Mortgagor shall keep the premises free from mechanics' liens or other liens or claims for lien (collectively called "Liens"), subject, however, to the liens created by the Loan Documents and the rights of Mortgagor set forth in Section 2(q) hereof.

(q) Anything in Section 2(p) of this Mortgage to the contrary notwithstanding, Mortgagee may, in good faith and with reasonable diligence, contest the validity or amount of any Lien, and defer payment and discharge thereof during the pending of such contest, and may, in good faith and with reasonable diligence, contest the imposition or a violation of a Requirement asserted by a Governmental Authority (a "violation"), provided: (1) that such contest shall have the effect of preventing the sale or forfeiture of the premises or any part thereof, or any interest therein, to satisfy such Lien or cure such Violation; (2) that, within 30 days after Mortgagor has been notified of the assertion of such Lien or Violation, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien or Violation; and (3) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, either (i) a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such Lien or cure such Violation and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable; or (ii) with respect to a Lien, an endorsement to the Mortgagee's title insurance policy issued in favor of Mortgagee in connection with the Loan (the "Title Policy"), in form and substance reasonably acceptable to Mortgagee, insuring Mortgagee against any loss or damage that may be incurred as a result of or in connection with such Lien. In case Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the Lien plus any interest finally determined to be due upon the conclusion of such contest, or cure such Violation, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien or to cure such Violation, or that part thereof then unpaid, together with all interest thereon. Mortgagee will give Mortgagor notice within 30 days after such application that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money on deposit. If the amount of money so deposited shall be insufficient for the payment in full of such Lien or to cure such violation, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or in full payment of work performed to cure such Violation, or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(r) Mortgagor, at its sole cost and expense and without the consent of Mortgagee, shall (or in the case of clause (3) may) make any and all alterations to the premises or any component located thereon, (1) to comply with this Mortgage, (2) to comply with Requirements and (3) otherwise without limitation or restriction so long as no Event of Default shall have occurred and be continuing and such alterations, when complete, do not materially adversely affect the electrical, mechanical (including HVAC), plumbing systems, or the structural integrity of the premises; *provided that* (i) the work shall be completed in a good and workmanlike manner by using reputable and experienced contractors and in compliance with all applicable Requirements, as well as the requirements of all insurance policies maintained by Mortgagor hereunder and shall not result in an encroachment over the boundary of the premises or any easement areas (except to the extent any permission has been granted and is in a form acceptable to Mortgagee); (ii) any plans and specifications (to the extent that the same shall exist) shall be in conformity with recognized sound and prudent engineering and architectural standards for comparable properties in the Chicago, Illinois metropolitan area and all work shall be pursuant to such plans and specifications; (iii) no alterations shall be undertaken until Mortgagor shall have procured and paid for, so far as the same may be required from time to time, all permits and authorizations relating to such alterations of all Governmental Authorities having jurisdiction over the premises; (iv) the cost of all alterations shall be paid by Mortgagor when due so that the premises shall at all times be free of Liens; and (v) the alterations, when complete, shall not have a material adverse effect on the character, value or useful life of the premises. Mortgagor shall deliver to Mortgagee copies of all such plans and specifications before commencement of construction. In the event Mortgagor wishes to make any alterations that do not comply with the foregoing clause (1), (2) or (3), Mortgagor may proceed with such alterations only upon the consent of the Mortgagee, which consent shall not be unreasonably withheld.

(s) For the purposes of this Mortgage and the other Loan Documents, (1) "Governmental Authority" means the United States of America, the State of Illinois, any county, city or village in which any of the premises are located, and any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of them, and (2) "Requirement" means any law, ordinance, order, rule or regulation of a Governmental Authority.

3 Payment of Taxes.

(a) Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises (collectively, the "Taxes") when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. *Provided no Event of Default or event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default, has occurred and is continuing*, Mortgagor shall apply the amounts held by Mortgagee pursuant to Section 3(b) hereof to the payment of Taxes. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such Taxes *provided: (1) that if Mortgagor has not paid in full the Taxes subject to such contest, such contest shall have the effect of preventing the collection of the Tax so contested and the sale or forfeiture of the premises or any part thereof, or any interest therein, to satisfy the same; (2) that Mortgagor has, before such Taxes shall have been increased by any interest, penalties or costs,*

UNOFFICIAL COPY

Property of Cook County Clerk's Office

notified Mortgagee in writing of the intention of Mortgagor to contest the same; and (3) unless such sum is already on deposit with Mortgagee pursuant to Section 3(b) hereof, or has been paid in full by Mortgagor, that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and, in the absence of such appointment, then at the place of payment designated in the Note, a sum of money which (when added to funds, if any, then on deposit for such Taxes) shall be sufficient in the judgment of Mortgagee to pay in full such contested Taxes and all penalties and interest that might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional penalties and interest whenever, in the judgment of Mortgagee, such increase is advisable. In lieu of such deposit, Mortgagor may deliver to Mortgagee an endorsement to the Title Policy, in form and substance reasonably acceptable to Mortgagee, insuring Mortgagee against any loss or damage that may be incurred as a result of or in connection with such Taxes. In case Mortgagor shall fail to prosecute such objections with reasonable diligence or shall fail to maintain sufficient funds on deposit as herein above provided, Mortgagee may at its option apply the money so deposited in payment of or on account of such Taxes, or that part thereof then unpaid, together with all penalties and interest thereon. Mortgagee will give Mortgagor notice within 10 days after such application that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money on deposit. If the amount of the money so deposited shall be insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, Mortgagor shall forthwith upon demand either (i) deposit with Mortgagee a sum which when added to the funds then on deposit shall be sufficient to make such payment in full, or (ii) in case Mortgagee shall have applied funds on deposit on account of such Taxes, restore said deposit to a sufficient amount. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Taxes or that part thereof then unpaid, together with all penalties and interest thereon (provided Mortgagor is not then in default) when so requested in writing by Mortgagor and furnished with sufficient funds to make such payment in full and with an official bill for such Taxes.

(b) Upon the written request of Mortgagee, Mortgagor shall deposit with Mortgagee on the first day of each month until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth of the last total annual Taxes (unless said Taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimates as to the amount of Taxes to be levied and assessed). Such deposits are to be held in an interest-bearing account and are to be used for the payment of Taxes next due and payable when they become due. All amounts on deposit shall constitute additional security for the Loan. If the funds so deposited are, as of the date 45 days prior to the due date, insufficient to pay any such Taxes when the same shall become due and payable, Mortgagor shall within 30 days after receipt of demand therefor, deposit such additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied on a subsequent deposit or deposits of Taxes.

4. Representations and Warranties of Mortgagor. Mortgagor represents and warrants to Mortgagee as follows:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

4.1 Mortgagor's Organization and the Loan Transaction.

(a) Mortgagor is a limited partnership, duly organized and existing under the laws of the State of Illinois, is fully authorized to do business in the State of Illinois, and has full power and authority to carry on its business now conducted, to consummate the transactions contemplated hereby, and to perform its covenants and agreements under each of the Loan Documents and each other agreement, instrument and document to be executed and delivered by it pursuant to the Loan Documents. Loan Documents executed by Mortgagor have been duly executed and delivered and constitute the valid and binding obligations of Mortgagor, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, reorganization, moratorium and similar laws affecting the rights of creditors generally, and general equitable principles regardless of whether such enforceability is considered in any proceeding in equity or at law.

(b) Mortgagor has delivered to Mortgagee a true, complete and correct copy of Mortgagor's limited partnership agreement and certificate of limited partnership. Such limited partnership agreement and certificate have been duly executed by the parties thereto, are in full force and effect and there exist no defaults thereunder or any event that with the passage of time or the giving of notice or both would constitute a default thereunder.

(c) Mortgagor has delivered to Mortgagee true, correct and complete copies of current audited financial statements of Mortgagor. To the best knowledge of Mortgagor such financial statements are true and correct in all material respects and fairly present the financial condition of the subjects thereof, and no materially adverse change has occurred in the financial condition reflected therein since the last date included therein.

(d) Mortgagor is not insolvent (as such term is defined in Section 101(29) of the United States Bankruptcy Code) and will not be rendered insolvent (as so defined) by execution of this Mortgage or any other Loan Document to which it is a party or by the consummation of the transactions contemplated thereby. Mortgagor has capital not unreasonably small in relation to its business or any contemplated or undertaken transaction and has assets having a value both at fair valuation and at present fair salable value greater than the amount required to pay its debts as they become due. Mortgagor does not intend to incur debts beyond its ability to pay such debts as they become due. Mortgagor does not plan to hinder, delay or defraud its creditors through the execution, delivery and performance of its obligations under the Loan Documents to which it is a party. Mortgagor has not filed a voluntary petition in bankruptcy or been adjudicated a bankrupt or insolvent, or filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any Federal or state bankruptcy, insolvency, or other law relating to relief for debtors, or sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any part of its properties or its interest in the premises. No court of competent jurisdiction has entered an order, judgment, or decree approving a petition filed against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any Federal bankruptcy or insolvency act or other law relating to relief for debtors, and no other liquidator has been appointed for Mortgagor of all or any part of its properties or its interest

in the premises, and no such action is pending. Mortgagor has not given notice to any governmental authority of insolvency or pending insolvency, or suspension or pending suspension of operations.

(e) There are no actions, suits or proceedings pending, or to the best knowledge of Mortgagor, threatened, against or affecting Mortgagor which could have a material adverse effect on Mortgagor or the premises, or involving the validity or enforceability of this Mortgage, or the priority of the lien hereof, at law or in equity, or involving the ability of Mortgagor to perform its obligations under the Loan Documents. Mortgagor is not operating under or subject to, nor is in default of or in violation with respect to any order, writ, injunction, decree or demand of any court or any Governmental Authority which could materially adversely affect its obligations hereunder or under any other Loan Document.

(f) The consummation of the transactions contemplated hereby and the performance by Mortgagor of its obligations under this Mortgage, the Note, or any other Loan Document will not result in any breach of, or constitute a default under, any mortgage, deed of trust, indenture, lease, bank loan or credit agreement, limited partnership agreement, or other agreement or instrument to which Mortgagor is a party or by which Mortgagor may be bound or affected.

(g) Neither the execution and delivery hereof, nor the consummation of the transactions contemplated hereby, nor compliance by it with any of the terms and provisions hereof (1) requires any approval of members of, or approval or consent of any trustee or holders of any indebtedness or obligations of, Mortgagor, except for such approvals and consents as have been duly obtained and are in full force and effect, (2) contravenes any laws applicable to or binding on Mortgagor or the premises, (3) results in any breach of, or requires any consent (except for those as have been duly obtained and are in full force and effect) or constitutes any default under, or results in the creation of any lien (other than liens created by the Loan Documents or the Permitted Exceptions) upon any of its property under any indenture, mortgage, chattel mortgage, deed of trust, conditional sales contract, bank loan or credit agreement, corporate charter, by-law or other agreement or instrument to which it is a party, by which it may be bound or affected or by which the premises may be affected or (4) requires any governmental action by any Governmental Authority other than the filings and recordations referred to in Section 4(j) hereof.

(h) There is no Event of Default on the part of Mortgagor with respect to this Mortgage, the Note, or any other Loan Document, and no event has occurred and is continuing which with the giving of notice or the passage of time or both would constitute an Event of Default under any of the aforesaid documents.

(i) Mortgagor has no counterclaims, offsets or defenses with respect to the Loan, the Note or any other Loan Document to which it is a party.

(j) Subject to Mortgagor's right to contest set forth herein, Mortgagee will upon recording of the Mortgage and the filing of all required Financing Statements have a good and valid first lien (subject to the Permitted Exceptions) on the premises, and have a perfected,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

good and valid first security interest in all items of personal property described in the granting clause of this Mortgage, the Security Agreement and the Assignment of Rents and Leases, and in all collateral described in the Collateral Assignment of Permits, Licenses, Approvals and Contracts. Mortgagor has neither created nor allowed any other mortgages or security interests in the premises or any such personal property or collateral.

(k) Neither Mortgagor's borrowing of the Loan nor any other transaction by Mortgagor relating to the premises, will constitute or result in a prohibited transaction within the meaning of Section 406 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or Section 4975 of the Internal Revenue Code of 1986, as amended. Mortgagor does not have a defined pension plan under ERISA and there presently are no unfunded liabilities of such a plan which upon termination could be held to be a liability of Mortgagor by the Pension Benefit Guarantor Corporation.

(l) Mortgagor has not committed any act or omission affording any Governmental Authority the right and/or the remedy of forfeiture as against the premises or any part thereof, or as against any amounts paid in performance of Mortgagor's obligations under any of the Loan Documents.

(m) Neither Mortgagor nor any agent acting on its behalf has taken or will take, directly or indirectly, any action that would subject the issuance or sale of partnership interests in Mortgagor to the registration provisions of Section 5 of the Securities Act of 1933 or to the registration provisions of any securities or blue sky law of any applicable jurisdiction.

(n) Mortgagor has not retained the services of a broker in connection with the Loan.

(o) There is no fact known to Mortgagor (other than facts relating to the general state of the economy) which Mortgagor has not disclosed in writing to the Mortgagee prior to execution and delivery of this Mortgage which in Mortgagor's opinion could have a material adverse effect on the business, operations or financial condition of Mortgagor or on Mortgagor's ability to use the premises for its intended purposes or ability to perform its obligations under the Loan Documents.

(p) Mortgagor has not taken or will not take in connection with any of the transactions contemplated by any of the Loan Documents any action which would involve or result in a violation of Regulation G, T, U, or X, or any other regulation of the Board of Governors of the Federal Reserve System.

(q) Mortgagor is not an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended. Mortgagor is not a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of a "holding company" or a "public utility company" as defined in Section 2(a) of the Public Utility Holding Company Act of 1935, as amended, or a "public utility" as defined in Section 824(e) of the Federal Power Act, as amended.

4.2 The Premises.

(a) Mortgagor has not received any written notice of, and has no knowledge of, any actual, proposed or threatened exercise of the power of eminent domain or other taking by any Governmental Authority or quasi-governmental body or agency of all or any portion of the premises or any interest therein.

(b) The premises has not suffered any material casualty since the date of the appraisal delivered to Mortgagee with respect to the Loan.

(c) The premises has direct access to the public roads, streets and sidewalks which are adjacent to the premises.

(d) No portion of the premises is located in a flood zone (other than Flood Zone C, area of minimal flooding), flood plain, floodway or wetlands; no portion of the premises is located on or adjacent to navigable waters; and no portion of the Land consists of filled-in land.

(e) The premises and the personalty and the improvements constructed thereon comply in all material respects with all Requirements; and no written notices, complaints or orders of violation or non-compliance of any nature whatsoever have been received by Mortgagor, or, to Mortgagor's best knowledge, threatened or contemplated orally or in writing by any Governmental Authorities with respect to the premises or any present or intended future use thereof. The location, construction, occupancy, operations and use of the premises complies, and the intended future use of the premises, complies in all respects with all Requirements the violation of which could have a material adverse effect on the business, operations or financial condition of Mortgagor or on its ability to use such premises for its intended purpose or its ability to perform its obligations under the Loan Documents. The representations in this Section 4.2(e) shall not include any Requirements dealing with Hazardous Materials, as described in the Environmental Indemnity Agreement.

(f) All utilities, including, without limitation, water, gas, electric, sewer and telephone, required for the operation of the premises, as it is currently used and as Mortgagor intends to use the premises, are available as of the date hereof, without installation or connection charges payable by Mortgagor.

(g) All permits, licenses and authorizations of a material nature necessary for the operation of the premises as a retail/office building, including without limitation environmental, land use, planning, zoning and building permits, licenses and authorizations, and required under any one of the Requirements to be held by or issued to Mortgagor have been required by Mortgagor and are in full force and effect (the "Permits"). There are currently no Permits required or issued for the use or operation of the premises by Mortgagor. Mortgagor has not received any written notice of a revocation, termination or violation of any Permit and has no knowledge of any such revocation, termination or violation. To the best of Mortgagor's knowledge, all material agreements, easements and other rights (except for any certificates of occupancy as are necessary in connection with the premises), public or private, which are

UNOFFICIAL COPY

Property of Cook County Clerk's Office

necessary to permit the lawful use and operation of the premises by Mortgagor and the Lessees and which are necessary to permit the lawful intended use and operation of all presently existing and planned utilities, driveways, roads and other means of egress and ingress to and from the same have been obtained and are in full force and effect and Mortgagor has not received notice of any pending modification or cancellation of any of the same; the use of the premises does (and the intended use of the premises by Mortgagor will not) in any material respect depend on any variance, special exception or other municipal approval, permit or consent that has not been obtained for its continuing legal use.

(h) All Taxes which could become a Lien against the premises have been paid, except for those Taxes not yet due and payable.

(i) Mortgagor has delivered to Mortgagee true, complete and correct copies of (A) the rent roll for the premises. The Leases have been duly executed by the parties thereto, and are in full force and effect.

(j) No default or breach exists by Mortgagor, under any covenant, condition, restriction, right-of-way, easement or other agreement affecting all or any portion of the premises which is to be performed or complied with by the owner or occupant of the premises the nonperformance of which would have a material adverse affect on the ability to use the premises for its intended purpose or the ability of Mortgagor to perform its obligations under the Loan Documents.

(k) Mortgagor is not a party to any contract or agreement to sell any interest in the premises. Other than Mortgagor or any Lessee, there are no persons other than Mortgagor in possession of the premises and no person has been granted any license, lease or other right to the use or possession of the premises.

(l) To the best of Mortgagor's knowledge, there are no public improvements pending or intended that would result in any charge or special assessment against the premises.

(m) To the best of Mortgagor's knowledge, the electrical, plumbing, heating, drainage, air conditioning, ventilation and other mechanical and electrical systems on and in the premises are in good working order and repair in all material respects and are adequate in quality and quantity for Mortgagor's operation of the Building; the Building and improvements on the premises is otherwise in good and safe condition and in compliance in all material respects with all Requirements, and there are no structural or other material patent defects in the roofs, and other structural portions of the Building and improvement, including walls, pillars, supporting columns and foundations.

5. Insurance. Mortgagor will insure the premises against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time reasonably require, and in any event will continuously maintain at a minimum the following described policies of insurance (individually an "Insurance Policy" and collectively the "Insurance Policies"):

(a) During all periods in which any construction is taking place on or about the premises, All Risk Builder's Risk Insurance (non-reporting Form) for 100% of the completed value of the Improvements, insuring the premises, including without limitation materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, "X," "C" and "U" coverage, vandalism and malicious mischief coverage, and bearing a replacement cost agreed upon endorsement;

(b) Casualty insurance against loss and damage by all risks of physical loss or damage, including without limitation fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, flood (if all or any portion of the premises is located in a flood plain), and other risks covered by so-called "all risk" policies and extended coverage endorsements, and against loss or damage by malicious mischief, vandalism and sprinkler leakage in amounts not less than the full insurable replacement value of all Improvements, fixtures and equipment from time to time on the premises, but in any event in an amount sufficient to prevent Mortgagor from becoming a co-insurer of any partial loss under the applicable Insurance Policies, which shall be written on a replacement cost basis and any such Insurance Policies shall contain an "agreed amount endorsement" and Mortgagor shall have the appraisal on which this agreed amount is based updated not less than annually and a new agreed amount endorsement issued;

(c) Comprehensive general public liability insurance (including contractual liability coverage) against death, bodily injury and property damage in a base amount not less than \$5,000,000 combined single limit (which may be in the form of \$2,000,000 of base coverage and a \$3,000,000 umbrella policy);

(d) Steam boiler, machinery and pressurized vessel insurance, if any;

(e) If the Federal Insurance Administration or the Secretary of Housing and Urban Development has designated the premises to be in a special flood hazard area and designated the community in which the premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available;

(f) All other types and amounts of coverage as are customarily maintained by owners or operators of like properties; and

(g) Workers' compensation insurance covering all liability arising from claims of employees and other persons performing any work or services upon, in, about or with respect to the premises, which insurance shall be maintained so as to comply with all applicable legal requirements.

Mortgagor will cause Mortgagee to be shown as an additional insured under all policies, and the property insurance described in Section 5(b) above shall include a mortgagee loss payable clause or endorsement in form and substance acceptable to Mortgagee. Mortgagor will deliver such policy or policies to Mortgagee at its principal office or at such other place as it may designate in writing; and likewise will deliver to Mortgagee renewals of such policy or policies 30 days in advance of the expiration of the same, stamped "Paid" by the agent or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

company issuing same. Premiums on policies so furnished shall not be financed in any manner whereby any Mortgagee, upon default or otherwise, shall have the right or privilege of surrendering the policies for cancellation. All insurance furnished hereunder shall be subject to the reasonable approval of Mortgagee as to insurance companies, amounts, contents, substance, forms of policies and expiration dates. All insurance required by this Section 5 shall provide by endorsement or other manner that same may not be canceled or amended without at least 30 days prior written notice to Mortgagee. Mortgagor shall not carry separate insurance concurrent in kind or form and contributing, in the event of loss, with any insurance required hereunder. If Mortgagor fails to procure and maintain any insurance required under this Mortgage, Mortgagee may (but shall not be obligated to) upon prior written notice to Mortgagor, procure and maintain such insurance at Mortgagor's expense, in the amounts provided above or in such lesser amounts as Mortgagee may deem appropriate, in order to protect Mortgagee's interest in the premises. Such insurance may, but need not, protect Mortgagor's interest in the premises. Such insurance purchased by Mortgagee may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence acceptable to Mortgagee that Mortgagor has obtained and paid for such insurance as required under this Mortgage. If Mortgagee procures and maintain such insurance, Mortgagor shall be responsible for the costs of such insurance, including interest as described in Section 12 hereof and any other charges Mortgagee may impose in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. All such costs, interest and charges shall become immediately due and payable by Mortgagor and shall be secured by this Mortgage. Such costs may be more than the cost of insurance Mortgagor may be able to obtain on its own.

6. Covenant to Rebuild.

(a) Upon any loss or damage, Mortgagor shall immediately notify Mortgagee in writing, and the loss, if any, under each Insurance Policy shall be adjusted with the insurance company reasonably and in good faith jointly by Mortgagor and Mortgagee and all insurance proceeds shall be paid directly and solely to Mortgagee and applied in accordance with the provisions of this Section 6. Each insurance company is authorized and directed to make such adjustment with Mortgagor and Mortgagee, and payment directly and solely to Mortgagee, and the Insurance Policies shall so stipulate, subject to the provisions set forth below. Mortgagor and Mortgagee shall sign all receipts, vouchers and releases required by the insurance companies in respect of the foregoing. Mortgagee shall not incur any liability in connection with the adjustment or collection of insurance claims and proceeds (or the failure thereof) regardless of the cause of such failure. If any sum or sums of money are received by Mortgagee by reason of any such insurance as aforesaid (the "insurance proceeds"), Mortgagee at its sole option may elect to apply such monies in payment or reduction of the indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, then Mortgagee at its option declare the balance remaining unpaid on the Note and this Mortgage to be forthwith and avail itself of any of the remedies provided herein or in the Note as in a case of default.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Notwithstanding the foregoing, if the premises or any portion thereof, or any other structure or improvement, is damaged by fire or other casualty, then provided:

(i) no Event of Default (as hereinafter defined), or event which with the lapse of time or the giving of notice or both shall constitute an Event of Default, has occurred and is continuing; and

(ii) the time required to complete repairs to or replacement or restoration of the damaged or destroyed premises shall not, in the reasonable estimation of Mortgagee, extend beyond six months prior to the Loan Maturity Date.

then Mortgagor may rebuild or restore the Building and improvements on the premises and Mortgagee shall make the insurance proceeds available to pay the cost thereof in accordance with this Section 6. Mortgagor shall notify Mortgagee of Mortgagor's election to rebuild or restore within sixty (60) days after the occurrence of such loss or damage. If Mortgagor fails to so notify Mortgagee within such time period, Mortgagor shall be conclusively deemed to have elected not to restore or rebuild.

(b) Upon any damage to or destruction of the premises, if Mortgagor elects to rebuild or restore, the premises shall be restored or rebuilt so as to be of at least equal value and quality as the premises were prior to such damage or destruction. In the case of loss or damage to the Building, structures or improvements, regardless of whether Mortgagor elects to restore or rebuild, Mortgagor shall make emergency, temporary repairs in order to reduce or prevent further loss or so as not to impede or interfere with the normal operation of the premises.

(c) Repair or reconstruction shall be effected in accordance with plans as approved by Mortgagee, which approval shall not be unreasonably withheld or unduly delayed.

(d) No later than thirty (30) days after Mortgagor has notified Mortgagee of its election to restore or rebuild, Mortgagor shall furnish Mortgagee with an estimate of the cost of repairs, rebuilding and replacement (hereinafter called "restoration") prepared by an architect or other experienced construction cost estimator selected by Mortgagor and approved by Mortgagee, which approval shall not be unreasonably withheld or unduly delayed. If Mortgagee elects or is required to reimburse Mortgagor out of insurance proceeds, and the insurance proceeds in the hands of Mortgagee (after deducting all costs incurred by Mortgagee in collecting said insurance proceeds) are not sufficient to pay for the cost of restoration as so estimated, Mortgagor forthwith shall deposit with Mortgagee the amount estimated to be necessary to complete restoration, taking into account the amount of the insurance proceeds held by Mortgagee, and such amount deposited by Mortgagor shall be similarly held in trust by Mortgagee and disbursed as hereinafter provided. If Mortgagor shall fail to deposit the estimated amount necessary to complete restoration as aforesaid within thirty (30) days after receipt of said insurance proceeds, Mortgagee at its option shall have the right immediately to rescind its election to reimburse Mortgagor out of insurance proceeds, and to apply such proceeds to the payment of the indebtedness secured hereby, and if the same are insufficient to pay such amount in full, then Mortgagee may at its option declare the balance remaining unpaid on the Note and

this Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein on the Note as in a case of default.

(e) If Mortgagee elects or is required to reimburse Mortgagor out of insurance proceeds, and if the insurance proceeds held by Mortgagee are estimated to be sufficient to pay for the restoration or, if such proceeds are insufficient and Mortgagor has deposited with Mortgagee an additional amount sufficient to pay for the restoration, Mortgagee shall pay out from time to time, but not more frequently than monthly, as restoration progresses, the cost of such restoration work which has been completed. Such payments shall be subject to the condition that Mortgagee shall have been furnished with satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments, and such endorsements to the Title Policy, as Mortgagee may reasonably require and approve. No payment made prior to completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. Upon completion of the restoration any monies held by Mortgagee and not required to be applied to the restoration as aforesaid shall be applied first to the payment of accrued and unpaid interest on the outstanding principal balance of the Loan. The balance, if any, shall be paid to Mortgagor.

(f) In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the Building or improvements, shall be applied in payment or reduction of the indebtedness secured hereby or in payment or reduction of the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if it shall then be entitled to the same or as the court may direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause, if any, attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then, and in every such case, each successive redemption may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redemption. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

7. Mortgagee's Interest In and Use of Deposits. Upon the occurrence of an Event of Default hereunder, Mortgagee may at its option, without being required to do so, apply any monies at the time on deposit pursuant to any provision of this Mortgage against any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect, provided that any sum held by Mortgagee pursuant to Section 3(b) shall be applied

UNOFFICIAL COPY

Property of Cook County Clerk's Office

against Taxes only. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that neither Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments or insurance premiums any amount so deposited unless Mortgagor, while an Event of Default has occurred and is continuing, shall have requested said depository in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes and assessments or insurance premiums.

8. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, or recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note, or recording of this Mortgage.

9. Prepayment of Note. Mortgagor shall have the right to prepay the Note in full (in addition to the required payments), in accordance with the terms and subject to the conditions and limitations set forth in the Note.

10. Effect of Extensions of Time and Amendments. If the payment of the indebtedness secured by this Mortgage or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

Any person or entity taking a junior mortgage or other lien upon the premises or any interest therein shall take said lien subject to the rights of Mortgagor and Mortgagee herein by mutual agreement or as otherwise expressly provided in the Loan Documents to amend, modify, and supplement this Mortgage, the Note, the other Loan Documents, or any other document or instrument evidencing, securing, or guaranteeing the indebtedness hereby secured and securing, or guaranteeing the indebtedness hereby secured and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of said indebtedness, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section 10 contained shall be construed as waiving any provision contained

herein which provides, among other things, that it shall constitute an Event of Default if the premises be sold, conveyed, or encumbered.

11. Effect of Changes in Laws Regarding Taxation. In the event of the enactment after this date of any law of the State of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagee's interest in the premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the Holders, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable 90 days from the giving of such notice.

12. Mortgagee's Performance of Defaulted Acts; Subrogation. In case a default hereunder shall occur and not be cured on or before the expiration of any applicable grace or cure period, Mortgagee may, but need not, make any payment or perform any act herein or in any Loan Documents evidencing or securing the indebtedness secured hereby or any indebtedness secured by a prior encumbrance, required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and, if this is a leasehold mortgage, make payments of any rents due or to become due or perform any act under any underlying lease, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable upon demand and with interest thereon at the Default Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien encumbrance upon the premises or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, the Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Mortgagee's Reliance on Tax Bills, Etc. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any

UNOFFICIAL COPY

Property of Cook County Clerk's Office

bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

14. Events of Default. Each of the following events shall constitute an "Event of Default" hereunder, except as may be otherwise specifically provided in this Section 14:

(a) Default under this Mortgage. Default in the performance or observance of any covenant, term, provision, condition or agreement of this Mortgage or any other Loan Document to be performed or observed by Mortgagor which is not otherwise expressly specified in this Section 14 or elsewhere in this Mortgage, or is not specified in the Note or any of the other Loan Documents, as an Event of Default, provided, however, that (i) with respect to a monetary default, such default shall have continued for five days after written notice thereof, and (ii) with respect to a non-monetary default that is not an emergency, no Event of Default shall exist under this Subsection unless Mortgagor has failed to cure such non-monetary default within 30 days after service of written notice thereof.

(b) Default under Other Loan Documents. The occurrence of an Event of Default under and as otherwise defined in this Mortgage, the Note, or any other Loan Document.

(c) Breach of Representation or Warranty. Breach in any material respect of any representation or warranty of Mortgagor herein or if at any time any representation or warranty made by Mortgagor herein shall be incorrect in any material respect, and, if the same is curable, it is not cured after notice thereof within the time period provided in Section 14(a)(ii) above as to non-monetary defaults.

(d) Security Interest in Personal Property. If Mortgagor executes to a person or entity other than Mortgagee any conditional bill of sale, chattel mortgage or other security instrument covering any materials, fixtures or articles intended to be incorporated in the premises or the appurtenances thereto, or if any of such materials, fixtures or articles are not purchased so that the ownership thereof will vest unconditionally in Mortgagor, free from encumbrances upon delivery at the premises and corresponding payment therefor.

(e) Bankruptcy and Insolvency. If at any time Mortgagor shall: (i) file a voluntary petition in bankruptcy; (ii) be adjudicated a bankrupt or insolvent; (iii) file any petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal, state or other bankruptcy act or code or any other present or future applicable and similar federal, state or other statute or law; (iv) seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of it, or of all or any substantial part of its properties or of any of the premises; or (v) make any general assignment for the benefit of creditors, or admit in writing its insolvency or inability to pay its debts generally as they become due.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(f) Dismissal of Proceedings. If within 60 days after the commencement of any proceeding at any time against Mortgagor, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal, state or other bankruptcy act or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed or stayed (and prior to expiration of the stay shall not have been dismissed), or if, within 90 days after the appointment of any trustee, receiver or liquidator of it (without the consent or acquiescence of such party) or of all or any substantial part of its respective properties or any of the premises, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within ten business days after the expiration of any such stay, such appointment shall not have been vacated.

(g) Default under Other Agreements. Default by Mortgagor in the performance of any covenant, term, provision or condition of any agreement with any person or entity which default materially and adversely affects the premises or any portion thereof, and the expiration of any applicable grace or notice period pertaining to said default, unless Mortgagor obtains or arranges for substitute performance under circumstances reasonably satisfactory to Mortgagee within 30 days, or longer if reasonably acceptable to Mortgagee; or the termination (other than as a result of full performance) of any contract that materially and adversely affects the premises, and within 30 days thereafter a substitute reasonably satisfactory to Mortgagee has not been obtained.

(h) Injunctions. If Mortgagor is enjoined, restrained or in any way prevented by court order from conducting all or a substantial part of its business affairs, and such restriction is not released or stayed within 30 days after the entry of such order, and if stayed is not released prior to the expiration of the stay.

(i) Seizure of Assets. If all or a substantial part of the assets of Mortgagor are attached, seized, subjected to a writ or distress warrant, or levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and said assets are not released within 30 days of such action.

(j) Garnishment. If all or any portion of the funds of Mortgagor held by Mortgagee shall be garnished, attached or levied upon in any manner by a creditor of Mortgagor and said funds are not released within 30 days after such garnishment, attachment or levy.

(k) Abandonment. If the premises shall be abandoned.

(l) Insurance. If Mortgagor shall fail to maintain the insurance policies described in Section 5 hereof.

15 Foreclosure; Expenses of Litigation. If an Event of Default has occurred hereunder, or when the indebtedness hereby secured, or any part thereof, shall become due, either (a) by lapse of time; (b) by acceleration under any of the provisions of the Note, of this Mortgage or of any other instrument evidencing or securing the Loan; or (c) otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and to exercise any one or more of the remedies provided in the Illinois Mortgage Foreclosure Law, 735 ILCS

UNOFFICIAL COPY

Property of Cook County Clerk's Office

5.15-1101, et seq., as in effect from time to time (the "Act"). It is further agreed that if default be made in the payment of any part of the secured indebtedness and such default shall not be cured on or before the expiration of any applicable grace or cure period, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right, to the extent permitted by law, to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the premises pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

In connection with any foreclosure of the lien hereof (including any partial foreclosure) or to enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all reasonable expenditures and expenses which may be paid or incurred, whether by force or after the entry of any decree or judgment of foreclosure, by or on behalf of Mortgagee for reasonable attorneys' fees and expenses, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or

UNOFFICIAL COPY

Property of Cook County Clerk's Office

proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

Without limiting the liability of Mortgagor as set forth above, Mortgagor shall indemnify Mortgagee and its officers, directors, employees and agents, and hold them harmless from and against all claims, injury, damage, loss and liability of any and every kind, except those arising from Mortgagee's gross negligence or willful misconduct, to any persons or property by reason of (i) the operation or maintenance of the premises; or (ii) any other action or inaction by, or matter which is the responsibility of, Mortgagor.

16. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order:

First, on account of all reasonable costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Section hereof; *Second*, whether incurred before or after the entry of any decree or judgment of foreclosure, the reasonable expenses of securing possession before sale, holding, maintaining and preparing the real estate for sale including, without limitation, payment of taxes and other governmental charges, premiums on hazard and liability insurance, receiver's and management fees, reasonable attorneys' fees and other legal expenses incurred by Mortgagee, and all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; *Third*, all principal and interest remaining unpaid on the Note; *Fourth*, satisfaction of claims in order of priority adjudicated in the judgment of foreclosure or order confirming the sale; and *Fifth*, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

17. Appointment of Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, wherever Mortgagee is entitled to possession of the premises, at Mortgagee's request, the court in which such complaint is filed shall appoint a receiver of the premises. Mortgagee shall be entitled to designate the receiver. Such appointment may be made either before or after sale, without notice to the extent permitted by law, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any Holders may be appointed as such receiver. Such receiver shall have possession of the premises and other property subject to this Mortgage during the foreclosure, shall have the full power and authority to operate, manage and conserve such property, and shall have the usual powers of receivers in like cases. Without limiting the foregoing, such receiver shall have the power and authority: (a) to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide, subject to court approval, for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the

indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (c) insure the premises against loss by fire or other casualty; (d) employ counsel, custodian, janitors or other help; (e) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period; and (f) as specified in § 15-1704 of the Act. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (x) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (y) the deficiency in case of a sale and deficiency.

18. Observance of Lease Assignment. If an Event of Default shall occur under the provisions of the Assignment of Rents and Leases of even date herewith made by Mortgagor to Mortgagee as security for the Loan, then, and in any such event, such breach or default shall constitute an Event of Default hereunder and at the option of Mortgagee, and without notice to Mortgagor, all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable as in the case of other Events of Default.

19. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises or any part thereof personally, or by its agent or attorneys, as for condition broke). In such event Mortgagee, in its discretion, upon request may, with or without force and with or without process of law, to the extent permitted by law, enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof to the extent provided by any non-disturbance agreements; (c) to extend or modify any then

UNOFFICIAL COPY

Property of Cook County Clerk's Office

existing leases and to make new leases, which extensions, modifications and new leases may, subject to court approval, provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; (f) to receive all of such avails, rents, issues and profits; and (g) during the pendency of legal proceedings to foreclose the lien hereof to exercise the powers specified in § 15-1703 of the Act; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, except any such liability, loss, damage, claim or demand arising from the gross negligence or willful misconduct of Mortgagee. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

Notwithstanding any provisions of this Section to the contrary, during the pendency of legal proceedings to foreclose the lien hereof, Mortgagee's right to possession shall be subject to the provisions of § 15-1701 of the Act.

20. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 19 hereof, shall after the occurrence of an Event of Default and to the extent permitted by law, have full power to use and apply the avails, rents, issues and profits of the premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the premises, including cost of management, sales and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring

tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the premises;

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the premises, and of placing the premises in such condition as will, in the reasonable judgment of Mortgagee, make it readily marketable; and

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

21. Mortgagee's Right of Inspection. Subject to the rights of Lessees under Leases, and provided Mortgagee makes reasonable efforts to avoid interference with such Lessee's and Mortgagor's respective businesses, Mortgagee shall have the right to inspect the premises at all reasonable times upon at least one day's prior notice (except in cases of an emergency, in which event no prior notice shall be required), and access thereto shall be permitted for that purpose. The Mortgagee may also inspect at its expense or, if at such time an Event of Default shall have occurred and be continuing, at the sole expense of Mortgagor, the books and records of Mortgagor relating to the premises and make copies and abstracts therefrom, but only after material related to matters other than the premises shall have been redacted by Mortgagor therefrom. Mortgagor shall furnish to the Mortgagee statements accurate in all material respects regarding the condition and state of repair of the premises, all at such times and as often as may be reasonably requested. The Mortgagee shall have no duty to make any such inspection or inquiry and the Mortgagee shall not incur any liability or obligation by reason of not making any such inspection or inquiry. The Mortgagee shall not incur any liability or obligation by reason of making any such inspection or inquiry unless and to the extent the Mortgagee causes damage to the premises or any property of Mortgagor or any other person during the course of such inspection.

22. Condemnation. Mortgagor shall give Mortgagee prompt notice of any proceedings, instituted or threatened, of which Mortgagor has knowledge, seeking condemnation or taking by eminent domain or any like process (a "Taking") of all or any part of the premises or having a material, adverse effect on any easement thereon (including severance of, consequential damage to, or change in grade of streets) and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceeding.

Mortgagor hereby assigns, transfers and sets over to Mortgagee the entire proceeds of any and all awards resulting from any Taking. Mortgagee is hereby authorized to collect and receive from the condemning Governmental Authority such award and is further authorized to give appropriate receipts and acquittances therefor.

If all or a substantial part of the premises is taken pursuant to a Taking, the proceeds of the award shall be applied to payment of the indebtedness secured hereby, whether

due or not, and if the same is insufficient to pay such amount in full, the balance remaining unpaid on the Note and this Mortgage shall be due and payable forthwith, and Mortgagee may avail itself of any of the remedies provided herein or in the Note as in the case of an Event of Default.

If less than a substantial part of the premises is taken pursuant to a Taking, Mortgagee may elect to apply the proceeds of the award to payment of the indebtedness secured hereby, whether due or not, and if the same is insufficient to pay such amount in full, the balance remaining unpaid on the Note and this Mortgage shall be due and payable forthwith, and Mortgagee may avail itself of any of the remedies provided herein or in the Note as in the case of an Event of Default.

Notwithstanding the foregoing, if the premises or any portion thereof, or any other structure or improvement, is taken or damaged in the manner described above, then provided:

(i) no Event of Default or event which with the lapse of time or the giving of notice or both shall constitute an Event of Default has occurred and is continuing;

(ii) the time required to complete repairs to or replacement or restoration of the premises shall not, in the reasonable estimation of Mortgagee, extend beyond six months prior to the Loan Maturity Date; and

(iii) the premises are capable of being restored to an architecturally complete structure,

then Mortgagor may rebuild or restore the Building and improvements on the premises, the proceeds shall be made available by Mortgagee to pay for the cost thereof, in accordance with the plans as approved by Mortgagee, which approval shall not be unreasonably withheld or unduly delayed, and a material adverse financial change shall be conclusively deemed not to have occurred as a result of such Taking. The proceeds of the award shall be paid out in the same manner and subject to the same conditions as is provided in Section 6 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagor shall pay such cost in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall be applied first to the payment of accrued and unpaid interest on the outstanding principal balance of the Loan. The balance shall be paid to Mortgagor.

Regardless of whether Mortgagor elects to rebuild or restore, Mortgagor shall make emergency temporary repairs in order to reduce or prevent further loss or so as not to impede or interfere with the normal operations of the premises.

23. Release upon Payment and Discharge of Mortgagor's Obligations. If Mortgagor shall fully pay all principal and interest on the Note, and all other indebtedness secured hereby and comply with all of the other terms and provisions hereof to be performed and

UNOFFICIAL COPY

Property of Cook County Clerk's Office

complied with by Mortgagor, then this Mortgage shall be null and void. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Mortgagee for the execution of such release.

24. Giving of Notice. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a) if delivered by messenger, when delivered, (b) if mailed, on the third business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, (c) if telexed, telegraphed or telecopied, four hours after being dispatched by telex, telegram or telecopy, if such fourth hour falls on a business day within the hours of 9:00 a.m. through 5:00 p.m. of the time in effect at the place of receipt, or at 9:00 a.m. on the next business day thereafter if such fourth hour is later than 5:00 p.m., or (d) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier; in every case addressed to the party to be notified as follows:

In the case of Mortgagor, to: Rob Roy Commercial Joint Venture Limited Partnership
1540 East Dundee Road
Suite 350
Palatine, Illinois 60097
Attn: Max Plzak
Fax: (847) 776-0371

with copies to: Jeffrey B. Gurian
Becker & Gurian
513 Central Avenue
Highland Park, Illinois 60055
Fax: (847) 433-6735

and Harold Eisenberg
119 Ridge Road
Highland Park, Illinois 60535
Fax: (847) 831-8837

In the case of Mortgagee, to LaSalle National Bank
135 South LaSalle Street
Chicago, Illinois 60603
Attn: Mr. John Heiberger
Fax: (312) 750-6467

UNOFFICIAL COPY

Property of Cook County Clerk's Office

with a copy to:

Terrence E. Budny
Bell, Boyd & Lloyd
Three First National Plaza
Suite 3100
Chicago, Illinois 60602
Fax: (312) 372-2098

or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection or refusal to accept or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

25. Waiver of Defense; Remedies Not Exclusive. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given hereby to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. No waiver of any default of Mortgagor hereunder shall be implied from any omission by the Mortgagee or Holders to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the penalty or Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee or Holders at any time thereafter to demand and collect payment of interest at such post maturity or penalty rate or of late charges, if any.

26. Compliance With Illinois Mortgage Foreclosure Law.

(a) In the event that any provisions 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 Act.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(b) Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law, except such rights as are expressly limited by the provisions of this Mortgage.

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

27. Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in § 15-1201 of the Act) or residential real estate (as defined in § 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement, to redemption as allowed by § 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisement, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

28. Furnishing of Financial Statements to Mortgagee. Mortgagor shall maintain a standard and modern system for accounting in accordance with proper accounting methods consistently applied and shall furnish to Mortgagee, or cause to be furnished to Mortgagee and cause Guarantor to furnish Mortgagee the following:

(a) as soon as available, but no later than 60 days after the close of each calendar quarter, a copy of Mortgagor's unaudited operating statements for the 12 month period ending on the last day of such calendar quarter, certified as being accurate and complete, and as soon as available, but no later than 120 days after the close of each calendar year, a copy of Mortgagor's annual audited operating statements, which statements shall be accompanied by an opinion (without significant qualification) of an independent certified public accountant reasonably acceptable to Mortgagee;

(b) with the annual statements required by Subsection (a) above, (and, if requested by Mortgagee, with the quarterly statements required by Subsection (a) above), the certificate of a general partner of Mortgagor, certifying that he has obtained no knowledge of the occurrence of any condition, event or act which, with or without notice or lapse of time or both, would constitute an Event of Default, or if such officer or partner, as appropriate, has obtained knowledge of any such violation, condition, event or act, he shall specify in such certificate all such violations, conditions, events and acts and the nature and status thereof.

(c) as soon as available, but no later than 30 days after the end of each calendar year, a rent roll and occupancy report with respect to the premises covering the calendar year just ended, in such form as Mortgagee may reasonably approve, and from time to time such information concerning the respective affairs and property of Mortgagor relating to the premises and operation thereof as Mortgagee may reasonably request, including without limitation a current rent roll and occupancy report as of the month just ended;

(d) notice of any condition or event which constitutes (or which upon the giving of notice or lapse of time or both would constitute) an Event of Default under this Mortgage, or a breach or event of default of any term, condition, warranty, representation or provision of this Mortgage or of any of the Loan Documents;

(f) notice of any "material adverse financial change" in the financial condition of the Mortgagor; and

(g) notice of any "materially adverse financial change" in operation of the premises.

Any "material adverse financial change" in the Mortgagor or in the operation of the premises, shall constitute an Event of Default under this Mortgage and under each of the Loan Documents. A "material adverse financial change" occurs if in Mortgagee's reasonable judgment, an adverse financial change has occurred which will prevent timely repayment of the Loan.

29. Binding on Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of the Holders from time to time and of the successors and assigns of the Mortgagee.

30. Definitions of "Mortgagor" and "Mortgagee." The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof; (b) said original Mortgagor's successors and assigns; and (c) all owners from time to time of the premises. The words "Holders" and "Mortgagee" when used herein shall include all successors and assigns of the original Holders and Mortgagee identified in the preambles hereof.

31. Captions. The captions and headings of various Sections of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

32. Conflicts between Loan Documents. If there shall be conflict in the provisions between or within any one or more of this Mortgage, the Note, or other Loan Documents or instruments executed or delivered in connection herewith, the provisions of this Mortgage shall control; provided, however, that neither this provision nor any other provision of this Mortgage shall be deemed to limit, abrogate or impair any provision in any one or more of the Note, or other Loan Documents providing more extensive requirements or restrictions upon

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Mortgagor or more extensive or expansive rights or remedies on behalf of Mortgagee, or less burdensome requirements or restrictions on Mortgagee, than are contained in this Mortgage.

33. Mortgagee's Right to Assign. Mortgagee shall have the right to assign, transfer, sell, negotiate, pledge or otherwise hypothecate this Mortgage and any of its rights and security hereunder, including the Note and any other Loan Documents. Upon such assignment the assignor shall be released from its obligations and liability hereunder, provided the assignee assumes all such liability. Mortgagor hereby agrees that all of the rights and remedies of Mortgagee in connection with the interest so assigned shall be enforceable against Mortgagor by such assignee with the same force and effect and to the same extent as the same would have been enforceable by Mortgagee but for such assignment. Mortgagee shall have the right to sell participations in the Loan without the consent of Mortgagor.

34. Prohibition of Assignments by Mortgagor. Mortgagor shall not assign or attempt to assign its rights under this Mortgage.

35. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

36. Consent to Jurisdiction. Mortgagor hereby submits to personal jurisdiction in the State of Illinois for the enforcement of this Mortgage and all of the Loan Documents and waives any and all personal rights to object to such jurisdiction for the purposes of litigation to enforce this Mortgage and any of the Loan Documents. In the event such litigation is commenced at any time when Mortgagor is not permanently domiciled in the State of Illinois, Mortgagor agrees that service of process may be made and personal jurisdiction over Mortgagor obtained, by service of a copy of the summons, complaint, and other pleadings required to commence such litigation upon an appointed agent for Service of Process in the State of Illinois, which Mortgagor hereby designates to be Wayne Moretti. Mortgagor agrees that this appointment of an agent for service of process is made for the mutual benefit of Mortgagor and Mortgagee and may not be revoked or changed without Mortgagee's consent, which consent shall not be unreasonably withheld. Mortgagor hereby agrees and consents that any such service of process upon such agent shall be taken and held to be valid personal service upon Mortgagor whether or not Mortgagor shall be then physically present, residing within, or doing business within the State of Illinois, and that any such service of process shall be of the same force and validity as if service were made upon Mortgagor when physically present, residing within, or doing business in the State of Illinois. Mortgagor waives all claim of error by reason of any such service. Mortgagor hereby consents to the jurisdiction of either the Circuit Court of Cook

UNOFFICIAL COPY

Property of Cook County Clerk's Office

County, Illinois, or the United States District Court for the Northern District of Illinois, Eastern Division, in any action, suit, or proceeding which Mortgagee may at any time wish to file in connection with this Mortgage or any of the Loan Documents. Mortgagor hereby agrees that an action, suit, or proceeding to enforce this Mortgage or any of the Loan Documents may be brought in any State or Federal Court in the State of Illinois and hereby waives any objection which Mortgagor may have to the laying of the venue of any such action, suit, or proceeding in any such Court, provided, however, that if jurisdiction or venue does not lay in either of the courts described above, the provisions of this Section shall not be deemed to preclude Mortgagee from filing any such action, suit, or proceeding in any other appropriate forum.

37. **Indemnification.** Mortgagor shall and hereby agrees to indemnify and hold Mortgagee, its affiliates, participants, officers, shareholders, directors, employees and agents, and their respective successors and assigns (each an "Indemnified Party") harmless from and against all obligations, liabilities, losses, reasonable costs, claims, reasonable expenses, fines, penalties and damages (including reasonable attorneys' fees and expenses) which an Indemnified Party may incur (a) by reason of this Mortgage; or (b) with regard to the premises (or any portion thereof), excluding those that may arise as a result of the gross negligence or willful misconduct of Mortgagee or such Indemnified Party. Should an Indemnified Party incur any such obligation, liability, loss, reasonable cost, reasonable expense, fined penalty or damage, then Mortgagor shall reimburse such Indemnified Party for such amounts upon demand and upon the failure of Mortgagee so to do Mortgagee may, at its option, declare the entire indebtedness secured hereby immediately due and payable. In case any action, suit or proceeding shall be brought against any Indemnified Party, such Indemnified Party shall notify Mortgagee of the commencement thereof, and Mortgagee shall be entitled, at its expense, acting through counsel reasonably acceptable to such Indemnified Party, to participate in, and, to the extent that Mortgagee desires to (but only if it has provided a written acknowledgment to such Indemnified Party that it is obligated to indemnify such Indemnified Party with respect to such claim), assume and control the defense thereof; provided, however, that Mortgagee shall not be entitled to assume and control the defense of any such action, suit or proceeding if and to the extent that, (i) in the reasonable opinion of such Indemnified Party (A) the control of such action, suit or proceeding would involve Mortgagee in a bona fide conflict of interest or (B) such action, suit or proceeding involves a potential imposition of criminal liability or material civil liability (whether or not indemnified hereunder) on such Indemnified Party, (ii) such proceeding involves claims not fully indemnified by Mortgagee which Mortgagee and such Indemnified Party have been unable to sever from the indemnified claim(s), (iii) an Event of Default, or an event which, with the passage of time, the giving of notice, or both would constitute an Event of Default and which is related to or arises from the matter being indemnified hereunder shall have occurred and be continuing, or (iv) such action, suit or proceeding involves matters which extend beyond or are unrelated to the Mortgage or the premises and if determined adversely could be materially detrimental to the interests of such Indemnified Party notwithstanding indemnification by Mortgagee, in which case the Indemnified Party shall be entitled to assume and take control of the defense thereof at Mortgagee's expense. The Indemnified Party may participate in a reasonable manner at its own expense and with its own counsel in any proceeding conducted by Mortgagee in accordance with the foregoing. The foregoing indemnification agreement shall also include all costs incurred by such Indemnified Party in connection with the enforcement of

said indemnification agreement. Any amounts owed to Mortgagee under this Section 37 shall bear interest at the Default Rate and, to the extent permissible under applicable law, shall be added to the indebtedness secured hereby and shall be secured hereby as fully and effectively as every other obligation of Mortgagor hereunder. The provisions of this Section 37 shall survive payment of the principal indebtedness evidenced by the Note and secured by this Mortgage.

38. Waiver of Trial by Jury. MORTGAGOR AND MORTGAGEE EACH HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS AS ARISING FROM THE LENDING RELATIONSHIP EVIDENCED BY THE LOAN DOCUMENTS, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

39. Business Loan Recital. Mortgagor represents and agrees that the obligation secured hereby: (a) constitutes a business loan which comes within the purview of 815 H.C.S. 205-4(i)(c); and (b) is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, et seq.

40. Execution of Separate Security Agreement, Financial Statements, Etc. Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee a Security Agreement, Financing Statement or other similar security instruments, in form reasonably satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor, as the case may be, which in the reasonable opinion of Mortgagee is essential to the operation of the premises and which constitutes goods within the meaning of the Uniform Commercial Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this Mortgage under the laws of the state in which the premises are located, and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all reasonable costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document.

41. Partial Invalidity; Maximum Allowable Rate of Interest. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage and the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed

UNOFFICIAL COPY

Property of Cook County Clerk's Office

as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. All agreements herein and in the Note are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to the Holders for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, in fact, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the Holders shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

42. Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the loan to be secured hereby all in accordance with the application and loan commitment issued in connection with this transaction; provided, however, that in no event shall the total amount of loan proceeds disbursed plus such additional amounts exceed 150% of the face amount of the Note.

43. Applicable Law. This Mortgage, the Note and all other instruments evidencing and securing the loan secured hereby shall be construed, interpreted and governed by the laws of the State of Illinois.

44. Further Assurances. At any time and from time to time, upon request by Mortgagee, Mortgagor shall promptly make, execute and deliver, or cause to be made, executed and delivered, to Mortgagee 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 reasonably be deemed desirable by Mortgagee (in its sole and absolute discretion), any and all such other and further amendments, assignments, mortgages, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as Mortgagee may, in its sole and absolute discretion, deem desirable to (a) enable Mortgagee to negotiate the Note and to assign this Mortgage and all of the other Loan Documents, and/or (b) enable Mortgagee to sell participations in the indebtedness secured hereby. Any failure by Mortgagor to comply with any request pursuant to this Section 44 within 10 days after such request is made by Mortgagee, shall be an Event of Default hereunder and upon such Event of Default, Mortgagee may make, execute, record, file, re-record and/or refile any and all such amendments, assignments, mortgages, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee Mortgagor's attorney-in-fact, with full power of substitution, to take such actions (on behalf of and in the name of Mortgagor) as Mortgagee, in its sole and absolute discretion, may deem necessary or desirable to effectuate the intent of this Section 44. This power of attorney, being coupled with an interest shall be irrevocable until all of the indebtedness secured hereby, is fully paid and performed and shall not be affected by any disability or incapacity which Mortgagor may suffer and shall survive the same. The power of attorney conferred on Mortgagee pursuant to the provisions of this Section 44 is provided solely to protect the interests of Mortgagee and shall not impose any duty on Mortgagee to exercise any such power, and neither Mortgagee nor such attorney-in-fact shall be liable for any act, omission, error in judgment or mistake of law, except as the same may result from its gross negligence or willful misconduct.

45. Interpretation; Definitions.

45.1. With respect to each of the Loan Documents:

(a) Headings and captions are inserted for reference only and shall not be deemed to limit or construe the Sections or sections to which they apply or otherwise affect the interpretation thereof.

(b) The terms "hereby," "hereto," "herein," "hereunder" and similar terms refer to such Loan Document as a whole, and not to any specific Section or section unless expressly stated otherwise; "at any time" means at any time and from time to time, "any" means any and all, "including" means including but not limited to, "may" is permissive and not obligatory, and "will" and "shall" are each mandatory; all references to Sections or sections are references to Sections and sections of such Loan Document unless expressly provided otherwise.

(c) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number and vice versa.

(d) Unless otherwise indicated, all references to "days" shall mean calendar days. Whenever the time for performance of a covenant or condition falls on a Saturday, Sunday or legal or banking holiday in the State of Illinois, such time for performance shall be extended to the next business day. All references herein to "business days" shall mean days on which state and national banks situated in the State of Illinois are required to be open for business.

(e) Definitions which identify documents shall be deemed to include all amendments and supplements to such documents from the date thereof, and all future amendments and supplements thereto entered into from time to time to satisfy the requirements of the Loan Documents or otherwise with the consent of the Mortgagee.

(f) Time is of the essence of each of the Loan Documents.

(g) The Loan Documents shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily

UNOFFICIAL COPY

Property of Cook County Clerk's Office

by counsel for one of the parties, it being recognized that both Mortgagor and Mortgagee have contributed substantially and materially to the preparation of the Loan Documents.

(h) Each reference to "Dollars" or "\$" refers to lawful currency of the United States of America.

(i) Wherever Mortgagee is required to act reasonably, (1) Mortgagee shall be deemed to have satisfied such requirement if Mortgagee acts in good faith and as a prudent, reasonable mortgage Mortgagee (taking into consideration the amount of the Loan and the nature of the premises), and (2) Mortgagee shall not unreasonably withheld or delay the required action.

(j) Wherever under the provisions of the Loan Documents Mortgagee or of any of is entitled to act in its sole discretion or in its absolute discretion, Mortgagee shall be entitled to exercise its discretion arbitrarily.

(k) Each of the Loan Documents may be executed in counterparts, each of which shall constitute an original (although it may not be executed by all parties), and all of which taken together shall constitute one and the same instrument.

45.2 The following terms have the meanings set forth below:

(a) "Lease" means a written lease for a portion of the retail or office space on the premises, which written lease either was in existence as of the date of this Mortgage, or is entered into by Mortgagor after the date of this Mortgage pursuant to the terms of the Loan Documents.

(b) "Lessee" means a lessee under a Lease

46. Due on Sale. If Mortgagor sells, assigns, transfers or conveys all or any part of its right, title or interest in fee title to all or any part of the premises (excluding a Permitted Transfer), then the outstanding principal balance of the Note, all interest thereon, and all other sums due and payable to Mortgagee under the Note, this Mortgage and the other Loan Documents, including without limitation the Prepayment Premium, as defined in the Note, shall become immediately due and payable in full. Mortgagor shall provide Mortgagee no less than thirty (30) days' prior notice of the date of closing on such sale, assignment, transfer or conveyance. The amounts due Mortgagee under this Section 46 shall be paid in full upon the Mortgagor's delivery of the deed or other document of sale, assignment, transfer or conveyance. Failure of Mortgagor to comply with the provisions of this Section 46 shall constitute an Event of Default.

47. Permitted Transfer. Mortgagor shall have the option, which may be exercised only once during the term of the Loan, to convey fee title to the premises to an Illinois limited liability company of which Wayne Moretti, Harold Eisenberg and Ronald Benach are the sole members (the "Permitted Transferee"). The Permitted Transferee shall be a single-purpose entity, the sole purpose of which shall be to own, lease and operate the premises. Mortgagor may exercise such option by giving Mortgagee no less than thirty (30) days' prior written notice

UNOFFICIAL COPY

Property of Cook County Clerk's Office

thereof. The conveyance (the "Permitted Transfer") shall be subject to the following conditions precedent:

- (a) An Event of Default shall not have occurred, and an event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default, shall not have occurred and be continuing, at the time such notice is given or on the closing of the Permitted Transfer;
- (b) Mortgagor shall have delivered to Mortgagee, and Mortgagee shall have approved, the organizational documents of the Permitted Transferee;
- (c) The Permitted Transferee shall have executed and delivered to Mortgagee an assumption agreement, in form and substance acceptable to Mortgagee, pursuant to which Permitted Transferee assumes all liability of Mortgagor under this Mortgage, the Note and the other Loan Documents;
- (d) The Guarantors shall have executed and delivered to Mortgagee a reaffirmation agreement, in form and substance acceptable to Mortgagee, pursuant to which the Guarantors reaffirm their respective obligations under the Payment Guaranty and the Environmental Indemnity Agreement;
- (e) Mortgagor shall have delivered to Mortgagee an endorsement to the Loan Title Insurance Policy issued to Mortgagee in connection with the Loan, pursuant to which the Loan Title Insurance Policy is updated, and containing such other coverages as Mortgagee may reasonable require in connection with the Permitted Transfer;
- (f) Permitted Transferee shall have delivered endorsements to the insurance policies described in Section 5 of this Mortgage covering Permitted Transferee as the owner of the premises;
- (g) The representations and warranties set forth in Section 4.1 shall be true and correct as to the Permitted Transferee (with such revisions to Section 4.1(a) and (b) as may be necessary to accommodate Permitted Transferee's limited liability company structure) on the closing date of the Permitted Transfer, as if made by Permitted Transferee on such date; and
- (h) Mortgagor and Permitted Transferee shall have executed and delivered to Mortgagee such additional documents as may reasonably be required by Mortgagee with respect to such Permitted Transfer.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

IN WITNESS WHEREOF, Mortgagor has caused these presents to be executed, on the day and year first above written.

MORTGAGOR:

ROB ROY COMMERCIAL JOINT VENTURE
LIMITED PARTNERSHIP

By: FAI II, Inc., an Illinois corporation, its
general partner

By: [Signature]
Name: WAYNE MORETTI
Title: President

Property of Cook County Clerk's Office

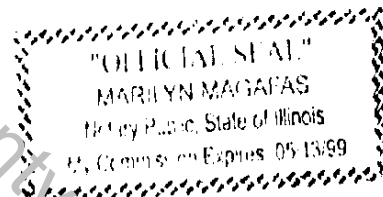
STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

I, Marilyn Magafas, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Wayne Mroetz, President of F.M. II, Inc., an Illinois corporation, which is the general partner of ROB ROY COMMERCIAL JOINT VENTURE LIMITED PARTNERSHIP, an Illinois limited partnership, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, 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, and of said corporation as general partner of said partnership, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 11th day of November 1997

Marilyn Magafas
Notary Public

My commission expires 5-13-99



This instrument was prepared by
and when recorded return to:

Terrence Budny
Bell, Boyd & Lloyd
Three First National Plaza
Suite 3100
Chicago, Illinois 60602

UNOFFICIAL COPY

37992167

EXHIBIT A

Legal Description

Lots 1 and 15 in Siebert Spondly Resubdivision of Lots 1 to 5 inclusive in Block 11 in Wrightwood, a Subdivision of the South West 1/4 of Section 28, Township 40 North, Range 14, East of the Third Principal Meridian, according to the Plat recorded July 29, 1912 as Document Number 5014225, in Book 122 of Plats, in Cook County, Illinois.

PIN: 14-28-301-017-0000

Address: 2744-2754 North Clark Street and
625-645 West Diversey Parkway
Chicago, Illinois

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office