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973784

THIS MORTGAGE DRAFTED BY: *mail to:*
RAYMOND J. WALSHLAGER, ESQ.
GMAC COMMERCIAL MORTGAGE CORPORATION
SUITE 400, 100 SOUTH WACKER DRIVE
CHICAGO, ILLINOIS 60606

MORTGAGE

THIS MORTGAGE made this 17th day of December, 1997, between COLE TAYLOR BANK, not personally, but as successor to Harris Trust and Savings Bank, as Trustee under Trust Agreement dated October 31, 1986 and known as Trust No. 43948 (hereinafter referred to as "Mortgagor") and COUNTRY LIFE INSURANCE COMPANY, an Illinois corporation, with its principal place of business located at 1701 Towanda Avenue, Bloomington, Illinois 61701, hereinafter referred to as "Mortgagee".

W I T N E S S E T H:

That Mortgagor is justly indebted to Mortgagee for money borrowed in the amount of TWO MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$2,800,000.00) as evidenced by a Promissory Note (which Note together with any and all other notes executed and delivered in substitution, renewal, or extension thereof, in whole or in part, are collectively referred to as "Note") executed by Mortgagor of even date herewith, made payable to the order of and delivered to Mortgagee, by the provisions of which Mortgagor promises to pay to Mortgagee the principal amount of Note and interest thereon as provided in Note together with all other sums (up to but not exceeding two hundred percent (200%) of the principal amount of Note) advanced by Mortgagee to protect the "Mortgaged Premises" (hereafter defined) to preserve the priority of the lien established hereby ("Other Sums"), at the place or places set forth in Note. The principal amount of Note, interest due thereon and Other Sums are collectively referred to as "Indebtedness" and the Note has a final installment of principal and interest due and payable on the first day of January, 2008.

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NOW, THEREFORE, Mortgagor to secure the payment of Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein and in Note, and any other document executed and delivered to secure Indebtedness (collectively "Other Loan Documents"), DOES, by these presents, MORTGAGE, GRANT, SELL AND CONVEY unto Mortgagee, its successors and assigns, forever, the following described land situated in the County of Cook and State of Illinois ("Land"):

Lots 10, 11 and 12 in Krohn's Chestnut Avenue Subdivision of Part of the Northwest Quarter of Section 26 and the Northeast Quarter of Section 27, Township 42 North, Range 12 East of the Third Principal Meridian, all in Cook County, Illinois

1997-2019 Johns Drive, Glenview, Illinois
1941-1989 Johns Drive, Glenview, Illinois

Tax Identification Nos. 04-27-203-009
04-27-203-010
04-27-203-008

TOGETHER WITH (collectively "Other Interests"):

- A. All right, title and interest of the Mortgagor including any after-acquired title or reversion, in and to the beds of ways, roads, streets, avenues and alleys adjoining Land.
- B. All and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water rights, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining, including any other claim at law or in equity as well as any after-acquired title, franchise or license and the reversion and reversions and remainder and remainders thereof.
- C. All buildings and improvements of every kind and description now or hereafter located or placed upon Land ("Improvements") and all materials intended for construction, re-construction, alteration and repairs of Improvements all of which materials shall be deemed a part thereof immediately upon the delivery of same, and all fixtures and articles of personal property now or hereafter owned by the Mortgagor and attached to or contained in and used in connection with Land and Improvements, including but not limited to all furniture, furnishings, apparatus, machinery, motors, elevators, fittings, radiators, gas ranges, ice boxes, mechanical refrigerators, awnings, shades, screens, blinds, office equipment, carpeting and other furnishings, and all

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plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto, and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are or shall be attached to Improvements in any manner ("Personal Property"), excepting therefrom, however, any furniture, fixtures, equipment and articles of personal property, regardless of the manner or mode of attachment, belonging to any present or future tenant or lessee of Land and Improvements (any reference hereafter made to furniture, fixtures, equipment or personal property shall be deemed to exclude the same); IT BEING MUTUALLY AGREED that all the aforesaid property owned by Mortgagor and placed by it on Land and Improvements shall, so far as permitted by law, be deemed to be fixtures and a part of the realty and security for the payment of Indebtedness and, as to any such property not deemed to be fixtures and a part of "Mortgaged Premises" (hereafter defined), this Mortgage shall be and is a security agreement for the purpose of establishing a security interest in said property, pursuant to the Uniform Commercial Code of the State of Illinois, and additional security for the payment of Indebtedness and the performance of all other obligations of Mortgagor herein.

D. All rents, issues, proceeds and profits accruing and to accrue from Mortgaged Premises and all right, title and interest of Mortgagor in and to any and all leases approved by Mortgagee now or hereafter on or affecting Mortgaged Premises, whether written or oral, and all other leases and agreements for the use thereof ("Leases"), together with all security therefore and all monies payable thereunder, subject, however, to the conditional permission of Mortgagee given to Mortgagor to collect, receive, take, use and enjoy the rentals, issues, proceeds and profits to be paid pursuant thereto.

E. All:

- (1) proceeds heretofore or hereafter paid to Mortgagor and all subsequent owners of Mortgaged Premises ("Proceeds") by reason of loss or damage by fire and such other hazards, casualties and contingencies ("Casualty") insured pursuant to "Insurance Policies" (hereafter defined); and
- (2) awards and other compensation heretofore or hereafter to be made to Mortgagor and all subsequent owners of Mortgaged Premises ("Awards") for any taking by condemnation or

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eminent domain proceedings, either permanent or temporary ("Condemnation"), of all or any part of Mortgaged Premises or any easement or appurtenance thereof, including consequential damage and change in grade of streets;

which Proceeds or Awards are hereby assigned to Mortgagee (Mortgagor hereby appoints Mortgagee its attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney-in-fact, at its option, on behalf of Mortgagor its personal representatives, successors and assigns, to adjust or compromise the claim for Proceeds or Awards and to collect and receive the proceeds thereof, to give proper receipts and acquittances therefore and, after deducting expenses of collection, to apply the net proceeds received therefrom as a credit upon any part, as may be selected by Mortgagee, of Indebtedness, notwithstanding that the amount owing thereon may not then be due and payable or that the same is otherwise adequately secured).

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

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

MORTGAGOR HEREBY FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. PRIORITY OF LIEN AND SUBORDINATE ENCUMBRANCES: This Mortgage is and shall remain a valid first mortgage lien of Mortgaged Premises until the payment in full of Indebtedness. Without the specific prior written consent of Mortgagee, Mortgagor shall keep Mortgaged Premises free and clear of superior or subordinate liens or claims of every nature and kind and shall not execute, deliver or grant any other mortgage, trust deed or security interest encumbering Mortgaged Premises, now or at any time hereafter.

2. SUBROGATION: To the extent Mortgagee, following the date hereof, pays any sum due pursuant to any provision of law, instrument or document establishing any lien prior or superior to

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the lien of this Mortgage, Mortgagee shall have and be entitled to a lien on Mortgaged Premises equal in parity to that discharged and Mortgagee shall be subrogated to, receive and enjoy all rights and liens possessed, held or enjoyed by the holder of such lien, which shall remain in existence and benefit Mortgagee to secure the payment of Indebtedness. Mortgagee shall be subrogated, notwithstanding its release of record, to mortgages, trust deeds, superior titles, vendors' liens, and other liens, charges, encumbrances, rights and equities on Mortgage Premises to the extent that any obligation thereunder is paid or discharged from the principal sum secured hereby.

3. PROMPT PAYMENT: Mortgagor shall promptly pay Indebtedness at the times and in the manner provided in Note and this Mortgage.

4. TAX AND INSURANCE DEPOSITS AND APPLICATION: In addition to the payment of Indebtedness, Mortgagor shall pay to Mortgagee, concurrently with the payments required pursuant to Note, an amount equal to the real estate taxes and special assessments, if any, next due on Mortgaged Premises, plus the premiums that will next become due and payable on Insurance Policies, as estimated by Mortgagee, less all sums already paid therefore, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become delinquent. Any funds held by Mortgagee, or its duly authorized agent under the provisions of this paragraph, will be held in trust to pay real estate taxes, assessments and insurance premiums when the same become due and payable, and no interest will accrue or be allowed to Mortgagor.

In the event the amount deposited with Mortgagee as required in the paragraph immediately preceding this paragraph shall not be sufficient to pay said real estate taxes, assessments or insurance premiums in full when due, Mortgagor shall deposit with Mortgagee or its duly authorized agent, an amount sufficient to pay the same. Default in making any of the said payments required for the purpose of providing funds for the payment of taxes, assessments and insurance premiums as aforesaid shall at the option of the Mortgagee, if such default continues for thirty (30) days after written notice from Mortgagee to Mortgagor, mature the entire Indebtedness secured hereby.

In the event the amount deposited with Mortgagee as hereinabove required exceeds the amount required to pay such real estate taxes, assessments and insurance premiums, the surplus shall, upon the written demand of Mortgagor, be refunded to Mortgagor provided no Monetary Default or Non-Monetary Default shall exist.

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

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If as a result of a Monetary Default or Non-Monetary Default, Mortgaged Premises are sold, foreclosed upon or Mortgagee acquires Mortgaged Premises otherwise after such Monetary Default or Non-Monetary Default, it shall apply, at the time of commencement of such proceedings, or at the time Mortgaged Premises are otherwise acquired, the balance then remaining of the funds accumulated under the provisions of this paragraph, as a credit against the amount of said principal sum then remaining unpaid under Note.

5. PAYMENT OF TAXES AND OTHER IMPOSITIONS: Mortgagor shall promptly pay, when due and payable, all ground rents, if any, and all taxes and assessments (general and special), water and sewer charges, public impositions, levies, dues and other charges, of whatever nature (collectively "Impositions"), which are now or shall hereafter be levied or assessed or which may otherwise be or become a lien upon or against Mortgaged Premises, or any part thereof, other than matters expressly permitted herein.

6. INSURANCE POLICIES, PAYMENT AND APPLICATION OF PROCEEDS AND SETTLEMENT OF CLAIMS: Until Indebtedness is fully paid, Mortgagor shall keep Mortgaged Premises continuously insured against Casualty by policies of insurance hereafter set forth, in such amounts, in such forms and for such periods as may, from time to time, be required by Mortgagee ("Insurance Policies") which Insurance Policies shall be written in standard policies and by insurance companies acceptable to Mortgagee, and all Insurance Policies and renewals thereof shall have attached thereto standard noncontributory mortgage clauses, which shall provide that such coverage cannot be terminated as to Mortgagee, except upon thirty (30) days written notice. At Mortgagee's option all Insurance Policies shall, with all premiums fully paid, be delivered to Mortgagee as issued at least thirty (30) days before the expiration of old Insurance Policies and shall be held by Mortgagee until Indebtedness is fully paid. In case of sale pursuant to a foreclosure of this Mortgage or other transfer of title to Mortgaged Premises and extinguishment of Indebtedness, complete title to all Insurance Policies held by Mortgagee (or the certificates of insurance held by Mortgagee in lieu thereof) and to all prepaid or unearned premiums thereon shall pass to and vest to the purchaser or grantee. If any renewal Insurance Policy or certificate thereof is not delivered to Mortgagee thirty (30) days before the expiration of any existing Insurance Policy, with evidence of premium paid, Mortgagee may obtain the required insurance on behalf of Mortgagor (or insurance in favor of Mortgagee alone) and pay the premiums thereon. Any monies so advanced shall be so much additional Indebtedness secured hereby and shall become immediately due and payable with interest thereon at the Default Rate (hereafter defined). Mortgagee shall not by reason of accepting, rejecting, approving or obtaining insurance incur any liability for payment of losses.

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

1. Standard all risk property insurance policy, (including vandalism and malicious mischief), pressure vessel insurance, boiler insurance, and sprinkler insurance (if applicable), for an amount, at a minimum, equal to the full replacement cost of the Mortgaged Premises (excluding Land), written on a replacement cost basis or with a replacement cost endorsement. If at any time a dispute arises with respect to replacement cost, Mortgagor agrees to provide at Mortgagor's expense, an insurance appraisal prepared by an insurance appraiser approved by Mortgagee, establishing the full replacement cost in a manner satisfactory to the insurance carrier;
2. Comprehensive General Public Liability and Property Damage Insurance for an amount not less than \$1,000,000 combined single limit for claims arising from any accident or occurrence in or upon the subject property;
3. Flood Insurance whenever in the opinion of Mortgagee such protection is necessary and is available;
4. Rent insurance in an amount sufficient to cover the loss of rents from Mortgaged Premises for a period of twelve (12) months;
5. Such other Insurance Policies as may be reasonably required from time to time by Mortgagee, upon written notice from Mortgagee to Mortgagor.

In the event any, or all, of the Insurance Policies required above is furnished by a lessee occupying space within Mortgaged Premises, Mortgagor agrees to provide Mortgagee with duplicate original Insurance Policies, if obtainable, or certificates evidencing such coverages. Such certificates are subject to Mortgagee's approval, and shall at Mortgagee's option, have attached thereto mortgage clauses in favor of and in form and content satisfactory to Mortgagee, or name Mortgagee as an additional insured, and contain thirty (30) days notice of cancellation clauses.

Mortgagor shall not purchase separate insurance, concurrent in form or contributing in the event of loss with Insurance Policies unless Mortgagee is included thereon pursuant to a standard mortgagee clause acceptable to Mortgagee, and in the event Mortgagor does purchase such separate insurance, Mortgagor shall immediately

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notify Mortgagee thereof and promptly deliver to Mortgagee such policy or policies.

In case of loss by any Casualty insured against, Mortgagor is hereby authorized to settle and adjust any claim under Insurance Policies with the consent of Mortgagee, which consent Mortgagee shall not unreasonably withhold. Mortgagee is authorized to collect and receipt for Proceeds and Proceeds may, at the sole discretion of Mortgagee, either be applied in reduction of Indebtedness, whether due or not, but free of any prepayment premium (and in the event Proceeds are insufficient to pay Indebtedness in full, Mortgagor shall have the right to pay the balance of Indebtedness then due free of any prepayment premium) or be held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoring Mortgaged Premises.

In the event Mortgagee elects to permit the use of Proceeds for rebuilding or restoring Mortgaged Premises, Mortgaged Premises shall be so rebuilt or restored so as to be as similar, as is reasonably possible, to the condition which existed prior to such Casualty. Proceeds shall be made available to Mortgagor, from time to time, upon the delivery to Mortgagee of satisfactory evidence of the estimated cost of completing such rebuilding or restoration, together with such architect's certificates, contractor's sworn statements, waivers of lien and other evidence of cost and payments as Mortgagee may reasonably require and approve. No payment made prior to final completion of such repair or restoration shall exceed ninety per cent (90%) of the value thereof, and at all times, the undisbursed balance of Proceeds shall be at least sufficient to pay for the cost of completion thereof, free and clear of liens. In the event Proceeds are insufficient to cover the cost of such rebuilding or restoring, Mortgagor shall pay such excess costs prior to any disbursement of Proceeds to it. Any surplus Proceeds, after the payment of all costs of rebuilding or restoring shall, at the option of Mortgagee, be applied on account of Indebtedness or paid to Mortgagor.

7. CONDEMNATION: In the event Mortgaged Premises, or any part thereof, is taken by Condemnation, Mortgagor is hereby authorized to settle and adjust any Awards with the consent of Mortgagee, which consent Mortgagee shall not unreasonably withhold. Mortgagee is hereby empowered to collect and receive Awards, which shall be forthwith applied by Mortgagee, as it may elect, to the payment of Indebtedness, free of any prepayment premium, (and in the event Awards are insufficient to pay Indebtedness in full, Mortgagor shall have the right to pay the balance of Indebtedness then due free of any prepayment premium) or to the repair and restoration of that part of Mortgaged Premises so taken or damaged.

In the event Mortgagee elects to permit the use of Awards for rebuilding or restoring Mortgaged Premises, Mortgaged Premises shall be so rebuilt or restored so as to be as similar, as is

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reasonably possible, to the condition which existed prior to such Condemnation. In the event Mortgagor is entitled to reimbursement out of Awards, the proceeds of same shall be paid in the same manner as provided in paragraph 6 hereof with respect to a loss by Casualty. In the event Awards are insufficient to cover the cost of such rebuilding or restoring, Mortgagor shall pay such excess costs prior to any disbursement of Awards to it. Any surplus Awards, after the payment of all costs of rebuilding or restoring shall, at the option of Mortgagee, be applied on account of Indebtedness or paid to Mortgagor.

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

9. MORTGAGEE'S LIABILITY FOR COLLECTION OF PROCEEDS OR AWARDS: Mortgagee shall not be held liable for any failure to collect Proceeds or Awards, regardless of the cause of such failure and:

- a). the power and authority granted to Mortgagee to collect Proceeds or Awards is irrevocable and coupled with an interest and shall, in no way, affect the security of this Mortgage or the liability of Mortgagor for payment of Indebtedness; and
- b). the entry of a decree of foreclosure of the lien hereof shall not affect or impair said power and authority.

In the event of the payment of Proceeds or Awards to Mortgagee and Mortgagee's election to apply the same to Indebtedness, Mortgagee agrees that such application will be free of any prepayment premium or fee.

10. USE, CARE OR WASTE: Mortgagor shall:

- a). not abandon Mortgaged Premises or do or suffer anything to be done which would depreciate or materially impair the value thereof or the security of this Mortgage;
- b). not remove or demolish any part of Improvements of a structural nature which would adversely affect the value of Mortgaged Premises;

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- c). not make nor permit or suffer any tenant to make any changes, additions or alterations to Mortgaged Premises of a structural nature which would adversely affect the value thereof, except as required by any applicable statute, law or ordinance of any governmental authority having jurisdiction over Mortgaged Premises and the intended use thereof, or as otherwise approved in writing by Mortgagee, which approval will not be unreasonably withheld;
- d). maintain, preserve and keep Mortgaged Premises in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear and tear, damage, obsolescence or destruction;
- e). promptly restore and replace any Improvements or Other Interests which are destroyed or damaged; and
- f). not commit or permit to exist any waste of Mortgaged Premises.

Mortgagor shall comply with and cause Mortgaged Premises, and the use and condition thereof, to comply with all statutes, ordinances, requirements, regulations, orders and decrees relating to Mortgagor or Mortgaged Premises, or the use thereof, by any federal, state, county or other governmental authority and with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises and concessions (including), without limitation, those relating to land use and development, construction, access, water rights, noise and pollution) which are applicable to Mortgagor or have been granted for Mortgaged Premises, or the use thereof.

11. HAZARDOUS OR TOXIC SUBSTANCES: Mortgagor, and by directing the Mortgagee to execute this Mortgage, the beneficiary of Mortgage ("Beneficiary"), represent that, to the best of their knowledge and belief the Mortgaged Premises is currently in compliance with, and shall continue to comply and cause tenants of the Mortgaged Premises, or any part thereof, to comply with any and all Environmental Laws, hereinafter defined, and any other laws, regulations, or orders with respect to the discharge and removal of Hazardous Substances, hereinafter defined, and shall pay immediately when due, the costs of any removal of any Hazardous Substances and shall keep the Mortgaged Premises free of any lien imposed pursuant to Environmental Laws or any other laws, regulations or orders. In the event Mortgagor or Beneficiary shall fail to do so, after notice to Mortgagor or Beneficiary and the expiration of the later of (i) applicable cure periods hereunder, or (ii) the cure period permitted under applicable Environmental

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Laws or any other laws, regulations or orders with respect to Hazardous Substances, Mortgagee may either declare a Non-Monetary Default under this Mortgage or cause the Mortgaged Premises to be freed from the Hazardous Substances with the cost of the removal added to the Indebtedness. Mortgagor and Beneficiary further agree to keep the Mortgaged Premises and the ground water of the Mortgaged Premises free of Hazardous Substances and not to permit any tenant or third party to use, generate, manufacture, store, release, threaten the release, or dispose of any Hazardous Substances at the Mortgaged Premises or in the ground water of the Mortgaged Premises without the express written approval of Mortgagee, and any such release or disposal will be in compliance with all applicable laws and regulations. Mortgagor shall give Mortgagee prompt written notice of any claim by any person, entity or governmental agency that a release or disposal of Hazardous Substances has occurred at the Mortgaged Premises. Mortgagor and Beneficiary, through its professional engineers and at its sole cost and expense, shall promptly and thoroughly investigate suspected contamination of the Mortgaged Premises by Hazardous Substances. Mortgagee shall have the right at any time to conduct a detailed inspection of the Mortgaged Premises during reasonable business hours and with reasonable notice and Mortgagor shall cooperate in the conduct thereof. The Mortgagor shall pay the Mortgagee's standard fee for this inspection. After the occurrence of a Monetary Default or Non-Monetary Default, Mortgagor shall give Mortgagee and its agents and its employees reasonable access to the Mortgaged Premises to remove Hazardous Substances if legally required or if reasonably necessary to prevent the existence of dangerous conditions, and Beneficiary agrees to indemnify and hold Mortgagee free and harmless from and against all loss, costs, damage, expense (including attorney's fees and costs) Mortgagee may sustain by reason of the assertion by any party of any claim in connection with such Hazardous Substances. The foregoing indemnification shall survive repayment of Indebtedness.

Beneficiary of Mortgagor agrees that it will not install, or permit to be installed in the Mortgaged Premises, friable asbestos or any other Hazardous Substance, and with respect to any such material currently present in the Mortgaged Premises, Beneficiary shall promptly either remove any Hazardous Substance which any Environmental Law or any other law, regulation or order require to be removed or otherwise comply with such Environmental Law, other law, regulation or order. If Beneficiary fails to so remove or otherwise comply, Mortgagee may declare a Non-Monetary Default under this Mortgage and upon the expiration of applicable cure periods do whatever is necessary to eliminate the Hazardous Substances from the Mortgaged Premises or otherwise comply with applicable laws, regulations, or orders; and the costs thereof shall be added to the Indebtedness. In such event, Mortgagor shall give Mortgagee and its agents and employees reasonable access to the Mortgaged Premises to remove said asbestos or other Hazardous Substances. Beneficiary of Mortgagor shall defend, indemnify, and

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save Mortgagee harmless from all costs and expenses (including consequential damages) asserted or proven against Mortgagee by any party, as a result of the presence of such Hazardous Substances and any removal or compliance with applicable Environmental Laws. The foregoing indemnification shall survive the repayment of Indebtedness.

Either Mortgagor, or Beneficiary, as the case may be, shall send to Mortgagee, within five (5) days of any receipt thereof, any citation, notice of violation, or other notice of potential liability relating to the Mortgaged Premises from any governmental or quasi-governmental authority regarding any Environmental Law or Hazardous Substance.

For the purpose hereof,

The term "Environmental Law(s)" shall mean and include, any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Mortgaged Premises, including without limitation each of the following: the Comprehensive Environmental Response, Compensation and Recovery Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.; Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601 et seq.; the Clean Air Act, as amended, 42 U.S.C. Section 1857, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq.; the Federal Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; the Illinois Environmental Protection Act, as amended, Ill. Rev. Stat., ch. 111-1/2, par. 1001 et seq.; the Illinois Responsible Property Transfer Act of 1988, as amended, Ill. Rev. Stat., ch. 30, par 901 et seq.; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency and of all other federal, state and local agencies, boards, commissions, bodies and officers having jurisdiction over the Mortgaged Premises and improvements or the use or operation thereof.

The term "Hazardous Substance(s)" shall mean and include, without limitation:

Those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substance" or "solid waste" in any Environmental Law.

Those substances listed in the U.S. Department of Transportation Table or amendments thereto (49 CFR 172.101) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto);

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Those other substances, materials and wastes which are or become regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and

any material, waste or substance which is any of the following: (A) asbestos; (B) polychlorinated biphenyl; (C) designated or listed as a "hazardous substance" pursuant to Sections 307 or 311 of the Clean Water Act (33 U.S.C. Section 1251 et seq.); (D) explosive; or (E) radioactive.

By its directing of Mortgagor to execute this Mortgage, the Note and Other Loan Documents, Beneficiary of Mortgagor hereby covenants and agrees to comply with any and all Federal, State or Local legislation, rules and regulations relating to environmental protection including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986, and such other legislation, rules and regulations as are in, or may come into, effect and apply to the Mortgagor, the Mortgagee, the transactions contemplated hereby or the collateral or any occupant, users of Mortgaged Premises, whether as lessees, tenants, licensees, or otherwise. The Beneficiary of Mortgagor shall indemnify and hold Mortgagee harmless against any and all claims, costs or expenses relating to such environmental protection provisions notwithstanding any exculpatory or non-recourse provisions contained herein, or contained in the Note or Other Loan Documents.

12. MORTGAGEE'S PERFORMANCE OF MORTGAGOR'S OBLIGATIONS: In the event of a default by Mortgagor in:

- a. the prompt discharge of any liens or encumbrances;
- b. defending the title to Mortgaged Premises;
- c. the payment of any Impositions;
- d. diligently and continuously pursuing the rebuilding or restoration of Mortgaged Premises in the event of loss by Casualty or Condemnation;
- e. the procurement and maintenance of Insurance Policies;
- f. the proper maintenance and preservation of Mortgaged Premises, including, but not limited to, the maintenance of the Mortgaged Premises free from

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all Hazardous Substances as described in Paragraph 11 herein;

and such default is not cured or otherwise secured against, to the satisfaction of Mortgagee, Mortgagee may, at its election and without further demand or notice, pay and discharge such lien or encumbrance, defend the title to Mortgaged Premises, pay such Impositions (plus any interest and penalties thereon), procure Insurance Policies and pay the premiums therefore, complete such rebuilding or restoration and maintain and preserve Mortgaged Premises, in which event, all expenditures therefore, including attorneys' fees incurred by Mortgagee shall forthwith become due and payable to Mortgagee, together with interest thereon at Default Rate, which shall be added to and become a part of Indebtedness and shall be secured by the lien of this Mortgage, all without prejudice to the right of Mortgagee to declare Indebtedness immediately due and payable by reason of Mortgagor's Non-Monetary Default and breach of the terms, covenants, conditions and agreements herein contained. Mortgagee shall have the right of determination as to the validity of any lien, encumbrance or Imposition attributable to or assessed against Mortgaged Premises and the payment thereof by Mortgagee shall establish its right to recover the amount so paid, with interest at Default Rate, subject to the provisions of Paragraph 13 following.

13. CONTEST OF LIENS OR ENCUMBRANCES: In the event Mortgagor desires to contest the validity of a lien, encumbrance or Imposition attributable to or assessed against Mortgaged Premises, and the aggregate amount of such liens exceed \$10,000.00, it will:

- a. on or before thirty (30) days prior to the due date thereof, notify Mortgagee in writing that it intends to so contest the same, or cause the same to be contested;
- b. on or before the due date thereof, on demand, deposit with Mortgagee or a depository acceptable to Mortgagee, insurance over any such lien, encumbrance or Imposition or other security (in form and content satisfactory to Mortgagee) which is sufficient in Mortgagee's judgment for the payment of the full amount of such lien, encumbrance or Imposition, or any balance thereof then remaining unpaid (or provide to Mortgagee such other indemnity as may be reasonably acceptable to it); and
- c. from time to time deposit additional security or indemnity, so that, at all times adequate security or indemnity will be available for the payment of the full amount of the lien, encumbrance or Imposition remaining unpaid, together with all

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interest, penalties, costs and charges accrued or accumulated thereon.

If the foregoing deposits are made and Mortgagor continues, in good faith, to contest the validity of such lien, encumbrance or Imposition, by appropriate legal proceedings which shall operate to prevent the collection thereof and the sale of the Mortgaged Premises or any part thereof, to satisfy the same, Mortgagor shall be under no obligation to pay such lien, encumbrance or Imposition until such time as the same have been decreed, by court order, to be a valid lien on Mortgaged Premises. Mortgagee shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to payment of any unpaid lien, encumbrance or Imposition after the same have been decreed by court order to be a valid lien on Mortgaged Premises to prevent the sale or forfeiture of Mortgaged Premises for non-payment thereof, without liability on said Mortgagee for failure to apply the security or indemnity so deposited, unless Mortgagor, in writing, requests the application thereof to the payment of the particular lien, encumbrance or Imposition for which such deposit was made. Any surplus deposit retained by Mortgagee after the payment of the lien, encumbrance or Imposition for which the same was made, shall be repaid to the Mortgagor unless a Default shall exist, in which event, such surplus shall be applied by Mortgagee towards the cure of same.

14. WAIVERS: To the full extent permitted by law, Mortgagor:

- a. shall not, at any time, insist upon or plead or, in any manner whatsoever, claim, or take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" (now or at any time hereafter in force) nor claim, take or insist upon any benefit or advantage of or from any law (now or hereafter in force) providing for the valuation or appraisement of Mortgaged Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to any decree, judgment or order of any court of competent jurisdiction or after such sale or sales, claim or exercise any rights pursuant to any statute now or hereafter in force to redeem Mortgaged Premises so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof;
- b. hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf, and on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person

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acquiring any interest in or title to the Mortgaged Premises subsequent to the date hereof, it being the intent of Mortgagor hereby that any and all such rights of redemption of Mortgagor and all other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law; and

- c. agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws has, have been or will have been made or enacted.

15. UNPERMITTED TRANSFERS: Mortgagor and Beneficiary covenant and agree that Mortgagee's willingness to enter into the financial transaction represented by the Note and secured by this Mortgage and Other Loan Documents, was expressly based, in part, upon the consideration of Mortgagor's and Beneficiary's covenants contained herein and contained in Note and Other Loan Documents, and upon Beneficiary's financial strength and ability to develop, improve, maintain, operate and manage Mortgaged Premises and retire Indebtedness. Further, Mortgagor and Beneficiary acknowledge and agree that these considerations are material considerations in the transaction out of which this Mortgage arises. Therefore, Mortgagor and Beneficiary, for the purpose of protecting the Mortgagee's security in Mortgaged Premises and keeping Mortgaged Premises free from subordinate financing liens, agree that except as specifically set forth below, any sale, conveyance, transfer, lease (which is substantially equivalent to a sale), further encumbrance or pledge, or any other transfer of title to Mortgaged Premises, or any interest therein, including a further assignment of the rents due under leases pertaining to all or any part of Mortgaged Premises, without Mortgagee's prior written approval, shall be deemed to be an unpermitted transfer ("Unpermitted Transfer") and, therefore, a Non-Monetary Default.

Nothing contained herein shall require Mortgagee to consent to any Unpermitted Transfer, and Mortgagee may condition any such consent it may elect to give upon the payment to it of a non-refundable administrative fee not exceeding one percent (1%) of the then unpaid principal balance of Indebtedness ("Transfer Fee"). Any such consent by Mortgagee to an Unpermitted Transfer, or any waiver of a default under this Paragraph No. 15 shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent default under this Paragraph 15. No consent of the Mortgagee, even if granted, shall release Mortgagor or any other person liable for any Indebtedness or any other sums secured hereby.

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Notwithstanding anything contained in this Paragraph No. 15 to the contrary, Mortgagee shall agree to a one time transfer of the Mortgaged Premises by the original Mortgagor to a purchaser ("One Time Purchaser") who is not a public syndicator or public syndication, who has a net worth acceptable to Mortgagee, and who has, in Mortgagee's sole discretion, a proven industrial building management experience, with no change in the terms of the Note, this Mortgage or Other Loan Documents, provided:

no default shall exist under the Note, this Mortgage, or any Other Loan Document;

One Time Purchaser shall execute and deliver to Mortgagee such assumption documents (including, but not limited to, an endorsement to Mortgagee's Mortgage Title Insurance Policy effective as of the closing date of such assumption) as may be reasonably required by Mortgagee, including, but not limited to, such indemnifications as were executed by the Beneficiary of the original Mortgagor;

the then unpaid principal balance of the Note shall not exceed seventy-five percent (75%) of the purchase price to be paid by One Time Purchaser (and if the then unpaid principal balance of the Note shall exceed seventy-five percent (75%) of the purchase price to be paid by One Time Purchaser, Mortgagee agrees to accept a prepayment, free of any prepayment premium, in an amount necessary to reduce the Note to an amount equal to seventy-five percent (75%) of the said purchase price);

Mortgagee shall be paid a processing and assumption fee equal to one percent (1%) of the then unpaid principal balance of the Note, and

Mortgagor shall reimburse Mortgagee for all its reasonable costs and expenses, including attorneys' fees, incurred by Mortgagee with respect to the assumption of the loan evidenced by Note and secured by this Mortgage and Other Loan Documents, and the purchase of Mortgaged Premises.

Mortgagee agrees that for the purpose of the one time transfer described above, Mortgagor shall have the right to separate the parcels herein described, subject to Mortgagee's approval, and Mortgagee shall determine the release price of such parcel at the time Mortgagor requests to make such one time transfer.

16. DEFAULT: If default be made in the:

a). payment of the whole or any part of any of the several installments of the Note, when due, and

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such default shall continue for ten (10) days after the due date of same ("Monetary Default"); or

- b). performance of any of the terms, agreements, covenants or conditions contained in this Mortgage or in the performance of any of the terms, agreements, covenants or conditions contained in Other Loan Documents and such default shall continue after thirty (30) days' prior written notice to Mortgagor ("Non-Monetary Default");

then, or at any time thereafter during the continuance of any Monetary Default or Non-Monetary Default, as the case may be, the entire Indebtedness, together with interest accrued thereon, shall, at the election of Mortgagee, without notice of such election and without demand or presentment, become immediately due and payable, anything contained herein or in the Note secured hereby to the contrary notwithstanding, and the principal balance so accelerated and declared due as aforesaid shall thereafter bear interest at the rate of eleven and eighty one-hundredths percent (11.80%) per annum ("Default Rate").

17. REMEDIES: Upon the occurrence of a Monetary Default or Non-Monetary Default, Mortgagee shall have the right to immediately foreclose this Mortgage. Upon the filing of any complaint by reason thereof, the court in which the same is filed may:

- a). upon application of Mortgagee or at any time thereafter;
- b). either before or after foreclosure sale;
- c). without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of Indebtedness, or any part thereof;
- d). without regard to the then value of Mortgaged Premises or whether the same shall then be occupied in whole or in part, as a homestead by the owner of the equity of redemption; and
- e). without requiring any bond from the complaint in such proceedings;

appoint a receiver for the benefit of Mortgagee, with power to take possession, charge and control of Mortgaged Premises, to lease the same, keep Mortgaged Premises insured and in good repair and collect all rentals during the pendency of such foreclosure suit and, in the event of foreclosure sale and a deficiency in the proceeds received therefrom, during any period of redemption. The court may, from time to time, authorize such receiver to apply the

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net amounts remaining in its possession, after deducting reasonable compensation for itself and its counsel to be allowed by the court, in payment (in whole or in part) of any part or all of Indebtedness, including, without limitation, the following, in such order of application as Mortgagee may elect:

- i). to the payment of Indebtedness;
- ii). to any amount due upon any decree entered in any suit foreclosing this Mortgage;
- iii). to costs and expenses of foreclosure and litigation upon Mortgaged Premises including, but not limited to reasonable attorneys' fees, 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 order or judgment) 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 as Mortgagee may deem reasonably necessary either to prosecute such civil actions or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition of the title to or the value of the Premises;
- iv). to the payment of premiums due on Insurance Policies, repairs Impositions (and any interest, penalties and costs thereon) or any other lien or charge upon Mortgaged Premises which may be or become superior to the lien of this Mortgage or of any decree foreclosing the same; and
- v). to the payment of all sums advanced by Mortgagee to cure or attempt to cure any Non-Monetary Default by Mortgagor in the performance of any obligation or condition contained herein, in Note, Other Loan Documents or otherwise, to protect the security provided herein and therein, with interest on such advances at Default Rate.

Any surplus of the proceeds of foreclosure sale shall then be paid to Mortgagor. This Mortgage may be foreclosed at any time against all or successively against any part or parts of Mortgaged Premises, as Mortgagee may elect and this Mortgage and the right of foreclosure hereunder shall not be impaired or exhausted by one or any foreclosure or by one or any sale and may be foreclosed

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successively and in parts until all of Mortgaged Premises shall have been foreclosed and sold. In the event of any foreclosure of Mortgaged Premises (or commencement of or preparation for the same) in any court, all expenses of every kind paid or incurred by Mortgagee for the enforcement, protection or collection of this security, including reasonable costs, attorneys' fees, stenographers' fees, costs of advertising, title charges and other reasonable costs and expenses shall be paid by Mortgagor.

18. REMEDIES NOT EXCLUSIVE: No remedy or right of Mortgagee hereunder or pursuant to Note or Other Loan Documents or otherwise available under applicable law, shall be exclusive of any other remedy or right but each such remedy or right shall be in addition to every other remedy or right now or hereinafter existing at law or in equity pursuant thereto. No delay in the exercise of or omission to exercise any remedy or right accruing upon the event of a Monetary Default or Non-Monetary Default shall impair any such remedy or right or be construed to be a waiver of any such default or an acquiescence therein nor shall the same affect any subsequent Monetary Default or Non-Monetary Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by Mortgagee. All obligations of Mortgagor and all rights, powers and remedies of Mortgagee expressed herein shall be in addition to and not in limitation of those provided by law in this Mortgage and Other Loan Documents.

19. POSSESSORY RIGHTS OF MORTGAGEE: Upon the occurrence of a Monetary Default or Non-Monetary Default, after the institution of legal proceedings to foreclose the lien of this Mortgage or any sale thereunder, Mortgagee shall be entitled, in its sole discretion, to perform any of the following:

- a). subject to the rights of identified in provision 25 hereof enter and take actual possession of Mortgaged Premises, Leases and the rents payable pursuant thereto, personally or by its agents or attorneys and excluding Mortgagor therefrom;
- b). with process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating thereto;
- c). as attorney-in-fact or agent of Mortgagor, or in its own name as Mortgagee and pursuant to the powers herein granted, hold, operate, manage and control Mortgaged Premises and Leases and collect all rentals payable pursuant thereto and conduct the business, if any, thereof, either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as,

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in its discretion, may be deemed proper or necessary to enforce the terms and conditions of Leases and the rentals payable pursuant thereto (including actions for the recovery of rents, actions in forcible detainer and actions in distress of rent);

- d). cancel or terminate any Lease or sublease for any cause or for any reason which would entitle Mortgagor to cancel the same;
- e). elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof;
- f). make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to Mortgaged Premises which, in Mortgagee's sole discretion, may seem appropriate;
- g). insure and re-insure Mortgaged Premises against all risks incidental to Mortgagee's possession, operation and management thereof; and
- h). perform such other acts in connection with the management and operation of Mortgaged Premises as Mortgagee, in its sole discretion, may deem reasonable and proper.

Mortgagor hereby granting full power and authority to Mortgagee to exercise each and every of the rights, privileges and powers contained herein at any and all times following the occurrence of a Monetary Default or Non-Monetary Default.

Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the rentals collected by it to the payment or on account of the following, in such order as it may determine:

- i). operating expenses of Mortgaged Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and reasonable leasing commissions and other reasonable compensation and expenses in seeking and procuring tenants and entering into Leases), established claims for damages, if any, and premiums on Insurance Policies;

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- ii). Impositions, costs of repairs, decorating renewals, replacements, alterations, additions or betterments and improvements of Mortgaged Premises, including the cost, from time to time, of installing, replacing or repairing Mortgaged Premises and of placing Mortgaged Premises in such condition as will, in the reasonable judgment of Mortgagee, make the same readily rentable; and
- iii). Indebtedness, or any part thereof.

20. OTHER REMEDIES: Whenever any Monetary Default or Non-Monetary Default shall be existing, Mortgagee may exercise, from time to time, any rights and remedies available to it pursuant to applicable law as permitted in this Mortgage. Mortgagor shall, promptly upon request by Mortgagee, assemble all Personal Property owned by Mortgagor within Mortgaged Premises and make the same available to Mortgagee at such place or places reasonably convenient for Mortgagee and Mortgagor, as Mortgagee shall designate. Any notification required by law of intended disposition by Mortgagor of any part of Mortgaged Premises shall be deemed reasonably and properly given if mailed as herein provided at least twenty (20) days prior to such disposition. Without limiting the foregoing, whenever a Monetary Default or Non-Monetary Default shall exist, Mortgagee may, with respect to Personal Property, without further notice, advertisement, hearing or process of law of any kind:

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

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- f). bid for and purchase any part or all of Personal Property at any such sale.

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

Mortgagor hereby constitutes Mortgagee its attorney-in-fact, with full power of substitution, to take possession of Personal Property upon the occurrence of a Monetary Default or Non-Monetary Default hereunder, as Mortgagee, in its sole discretion (reasonably exercised) deems necessary or proper, to execute and deliver all instruments required by Mortgagor to accomplish the disposition of Personal Property, or any part thereof, which power of attorney is a power coupled with an interest, irrevocable until such time as Indebtedness is paid in full.

21. NON-LIABILITY OF MORTGAGEE: Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligations, duty or liability of Mortgagor pursuant to Leases or otherwise and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur pursuant thereto or by reason of its exercise of its rights hereunder and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings, on its part, to perform or discharge any of the terms, covenants or agreements with respect to Mortgaged Premises except in the event such loss, liability or damage is caused by the willful misconduct, bad faith or negligence of Mortgagee, its employees or agents. Mortgagee shall not have responsibility for the control, care, management or repair of Mortgaged Premises nor shall Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of Mortgaged Premises resulting in loss, injury or death to any tenants, licensee, employee or stranger upon Mortgaged Premises. No liability shall be enforced or asserted against Mortgagee in the exercise of the powers herein granted to it and Mortgagor expressly waives and releases any such liability.

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In the event Mortgagee incurs any such liability, loss or damage, pursuant hereto and to any Lease or in the defense of any claim or demand, Mortgagor agrees to reimburse mortgagee, immediately upon demand, for the amount thereof, including costs, expenses and reasonable attorneys' fees, except in the event such liability, loss or damage is caused by the willful misconduct, bad faith or negligence of Mortgagee, its employees or agents.

22. CHANGE OF LAW: In the event of an enactment, following the date hereof, of any law in the State of Illinois deducting from the value of Mortgaged Premises, for the purpose of real estate taxation, the amount of any lien, encumbrance or Imposition or imposing upon Mortgagee the payment of the whole or any part thereof or changing, in any way, the laws relating to the taxation of mortgages or debts secured by mortgages or the manner of collection of liens, encumbrances or Impositions, so as to substantially affect this Mortgage, Indebtedness or Mortgagee, Mortgagor shall, in any such event, upon demand by Mortgagee, pay such liens, encumbrances or Impositions or reimburse Mortgagee therefor; PROVIDED, HOWEVER, that if, in the opinion of counsel for Mortgagee:

- a). it may be unlawful to require Mortgagor to make such payment or reimbursement; or
- b). the making of such payment may result in the payment 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 Indebtedness, together with interest thereon, to be and become due and payable within six (6) months from the giving of such notice free of any Prepayment Premium, provided, however that said six month period shall be extended for an additional three (3) months if within said six month period Mortgagor has pursued obtaining refinancing diligently and reasonably expect to consummate such refinancing within the next three month period. Notwithstanding the foregoing, it is understood and agreed that Mortgagor is not obligated to pay any part of Mortgagee's federal or state income tax.

23. COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW: In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq.) (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

If any provision of this Mortgage shall grant to Mortgagee any

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rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 18 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

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

25. ASSIGNMENT OF LEASES AND RENTS: In addition, Mortgagor covenants and agrees that upon the request of the Mortgagee, to assign to Mortgagee, any and all present and/or future leases of all or any part of Mortgaged Premises as additional security for the payment of Indebtedness.

26. SECURITY AGREEMENT: This Mortgage shall be deemed a security agreement, as defined in the Illinois Uniform Commercial Code, and establishes a security interest, in favor of Mortgagee, and in and to all Personal Property owned by Mortgagor and situated on Mortgaged Premises, including all Personal Property affecting Mortgaged Premises, either referred to or described herein or in any way connected with the use or enjoyment thereof owned by Mortgagor.

27. EXECUTION OF SEPARATE SECURITY AGREEMENT AND FINANCING STATEMENTS: In addition to this Mortgage being deemed a Security Agreement as set forth in the preceding paragraph, Mortgagor has, as additional security for the payment of Indebtedness, executed and delivered to the Mortgagee a Security Agreement granting to Mortgagee a security interest in and to:

- a). Personal Property;
- b). all of the rents, issues and profits due, or which may hereafter become due or payable under the terms and provisions of the leases described and assigned under Paragraph numbered 25 hereinabove;

and further, executed and delivered Financing Statements pursuant to the Uniform Commercial Code, State of Illinois. Mortgagor

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agrees from time to time to execute such additional Security Agreements and Financing Statements as may be necessary to vest in Mortgagee a security interest in and to the property hereinabove described, the leases assigned under Paragraph numbered 25 above, until Indebtedness be paid in full.

28. FINANCIAL STATEMENTS: Within ninety (90) days of the end of each of Beneficiary's fiscal years, Mortgagor or Beneficiary shall furnish Mortgagee with annual audited financial statements pertaining to the operation of Mortgaged Premises.

29. PAYMENT AND PERFORMANCE BY MORTGAGOR: In the event Mortgagor shall fail to pay or perform any of its obligations herein contained (including the payment of expenses of foreclosure and court costs), Mortgagee may, but need not, following the occurrence of a Monetary or Non-Monetary Default, make payment or perform (or cause to be paid or performed) any obligation of Mortgagor hereunder, in any form and manner deemed reasonably expedient by Mortgagee, as agent or attorney-in-fact of Mortgagor, and any amount so paid or expended (plus reasonable compensation to Mortgagee for its out-of-pocket and other expenses for each matter for which it acts hereunder), with interest thereon at Default Rate, shall be and become a part of Indebtedness and shall be paid to Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not:

- a). collect rentals due and owing pursuant to Leases and prosecute the collection of Personal Property or the proceeds thereof;
- b). purchase, discharge, compromise or settle any Imposition, lien or any other lien, encumbrance, suit, proceeding, title or claim thereof; and
- c). redeem from any tax sale or forfeiture affecting Mortgaged Premises or contest any Imposition.

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

30. RELEASE: Upon payment in full of Indebtedness, at the time and in the manner herein provided, this conveyance shall be null and void and an appropriate instrument of reconveyance or release shall promptly be made by Mortgagee to Mortgagor, at Mortgagor's expense.

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

Any consent or approval required of and granted by Mortgagee pursuant hereto shall:

- a) be narrowly construed to be applicable only to Mortgagor and the facts identified in such consent or approval and no third party shall claim any benefit by reason thereof; and
- b) not be deemed to constitute Mortgagee a venturer or partner with Mortgagor whatsoever nor shall privity of contract be presumed to have been established with any such third party.

If, to consider a request by Mortgagor it is necessary that Mortgagee deem it to be to its best interests to retain the assistance of any person, firm or corporation (such as, but not limited to, attorneys, appraisers, engineers, surveyors, etc.) Mortgagor shall reimburse Mortgagee for all costs incurred in connection with the employment of such parties.

32. CARE: Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any part of Mortgaged Premises in its possession if it takes such action for that purpose, as Mortgagor requests in writing, but failure of Mortgagee to comply with such request shall not, of itself, be deemed a failure to exercise reasonable care and no failure of Mortgagee to preserve or protect any rights with respect to Mortgaged Premises against prior parties or do any act with respect to the preservation thereof not so requested by Mortgagor shall be deemed a failure to exercise reasonable care in the custody or preservation of Mortgaged Premises.

33. MORTGAGOR'S CONTINUING LIABILITY: This Mortgage is intended only as security for Indebtedness and anything herein contained to the contrary notwithstanding:

- a). Mortgagor shall be and remain liable to perform all of the obligations assumed by it pursuant hereto; and
- b). Mortgagee shall have no obligation or liability by reason of or arising out of this Mortgage and shall not be required or obligated, in any manner, to perform or fulfill any of the obligations of Mortgagor pursuant hereto.

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34. MECHANICS' LIENS: The lien of any mechanic or materialman shall not be permitted to attach to or remain against Mortgaged Premises unless the same is insured to Mortgagee's reasonable satisfaction.

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

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

37. BUSINESS LOAN: Mortgagor represents and agrees that the proceeds of the loan evidenced by Note and secured by this Mortgage will be used for business purposes and this Mortgage is exempt from limitations upon lawful interest, pursuant to the terms of Section 815 ILCS 205/4.

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

39. MARSHALLING OF ASSETS: At any foreclosure sale, the Mortgaged Premises may, at Mortgagee's option, be offered for sale for one total price, and the proceeds of such sale accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling.

40. TIME IS OF THE ESSENCE: It is specifically agreed that time is of the essence of this Mortgage and that the waiver of the options, or obligations secured hereby, shall not at any time thereafter be held to be abandonment of such rights. Notice of the exercise of any option granted to the Mortgagee herein, or in the Note secured hereby, is not required to be given.

41. ADDITIONAL DOCUMENTS; POWER OF ATTORNEY: Mortgagor, from time to time, will execute, acknowledge and deliver to Mortgagee upon request, and if appropriate file and record, such security agreements, assignments for security purposes, assignments

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absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Mortgagee, as Mortgagee may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Mortgage or Other Loan Documents, and the priority thereof. Mortgagor will pay to Mortgagee upon request

therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

42. CORRECTIVE DOCUMENTS: Mortgagor shall, at the request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by Mortgagee to correct such defect, error or omission.

43. PROHIBITION AGAINST SUBMITTING MORTGAGED PREMISES TO CONDOMINIUM PROPERTY ACT: Mortgagor shall not, without the prior written consent of Mortgagee, submit Mortgaged Premises to the Condominium Property Act of the State of Illinois or to any similar act or statute or otherwise permit cooperative ownership or the further subdivision thereof.

44. NOTICES: All notices given under this Mortgage shall be in writing to the other party at its address set forth below or at such other address as such party may designate by notice to the other party and shall be deemed given (i) three (3) Business Days (as defined below) after mailing, by certified or registered U.S. mail, return receipt requested, postage prepaid, (ii) one (1) Business Day after delivery, fee prepaid, to a national overnight delivery service (such as Federal Express, Purolator Courier, U.P.S. Next Day Air), (iii) when received, if delivered by hand, as evidenced by a signed receipt, or (iv) the date of transmission of notice sent by telecopier or facsimile machine (with a copy thereof sent in accordance with clause (ii) above) provided notice was transmitted on a Business Day otherwise notice shall be deemed given on the next Business Day:

If to Mortgagor: Creek Partners, L.L.C. and Wendell Properties c/o William E. Haworth, 2103 West Bartlett Road, Bartlett, Illinois 60103

with a copy to: Georges D. Maurides, 311 South Wacker Drive, Suite 2600, Chicago, Illinois 60606

If to Mortgagee: GMAC Commercial Mortgage Corporation, 100 South Wacker Drive, Suite 400, Chicago, Illinois 60606.
Attention: Ann Cassidy, Senior Vice President, Loan Servicing, Telecopy Number 312-845-8617.

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A "Business Day" is any day that Mortgagee is open for business.

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

This Mortgage is executed by the Mortgagor COLE TAYLOR BANK, not personally, but as successor to Harris Trust and Savings Bank, as Trustee under Trust Agreement dated October 31, 1986 and known as Trust No. 43948 solely in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Mortgagor hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that in the event of any Monetary Default or Non-Monetary Default under the terms of this Mortgage, or the Note secured hereby, or Other Loan Documents, Mortgagee agrees that it shall neither seek nor take any deficiency or monetary judgment against Mortgagor or mortgagor's Beneficiary, or against any property of Mortgagor or Beneficiary other than the property described herein and in Other Loan Documents, and nothing herein contained or contained in said Note or Other Loan Documents shall be construed as creating any personal liability on the Mortgagor, its agents, or employees, nor, except as hereinafter set forth, Beneficiary, all such personal liability being expressly waived by the Mortgagee for itself and its successors and assigns, and that so far as Mortgagor, Beneficiary and their respective successors in trust personally are concerned, except as hereinafter set forth, Mortgagee, its successors and assigns, shall look solely to the Mortgaged Premises, and to the income, proceeds and avails thereof for the payment of Indebtedness.

It is further understood and agreed, however, that nothing contained in the preceding paragraph or any Other Loan Document or Guaranty Agreement shall in any manner or way release, affect or impair:

- a). the existence of the debt evidenced by Note;
- b). the enforceability of the liens and security interests created by this Mortgage and Other Loan Documents;
- c). the right of the Mortgagee to recover or receive from Beneficiary, (or to recover or receive other property of Beneficiary in lieu thereof):
 - (1) all funds, damages or costs (including without limitation, attorney's fees) incurred by Mortgagee as a result of fraud or material misrepresentation by or on behalf of Mortgagor or Beneficiary; or

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- (2) all Awards or Proceeds which are not utilized in accordance with the terms and conditions of this Mortgage; or
- (3) all rents, revenues, income, issues, proceeds or profits of the Mortgaged Premises held or collected by or on behalf of Mortgagor or Beneficiary following the occurrence of a Monetary Default or Non-Monetary Default and not applied to Indebtedness; or
- (4) all funds, damages or costs incurred by Mortgagee as a result of any material waste of the Mortgaged Premises; or
- (5) any and all costs, expenses, damages or liabilities incurred by Mortgagee, including, but not limited to, all reasonable attorney's fees, arising directly or indirectly from or out of, or in any way connected with, or resulting from any spill of, or use of Hazardous Substances affecting the Mortgaged Premises and originating from Mortgagor and/or any tenant's use of the Mortgaged Premises, provided, however, Mortgagee agrees that Mortgagor and Beneficiary shall not be liable for any spill of or use of Hazardous Substances affecting the Mortgaged Premises which spill or use first occurs after Mortgagor and Beneficiary no longer have any legal or equitable interest in the Mortgaged Premises; or
- (6) any action to enforce the personal liability of any guarantor of Note, if any.

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

COLE TAYLOR BANK, not personally, but as successor to Harris Trust and Savings Bank, as Trustee under Trust Agreement dated October 31, 1986 and known as Trust No. 43946,

By: [Signature]
 Title: Vice-President

Attest: [Signature]
 Title: TRUST OFFICER

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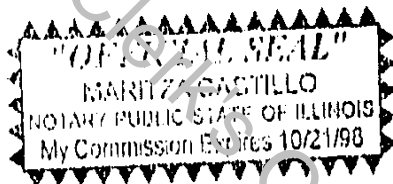
STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, MARITZA CASTILLO, a Notary Public in and for and residing in said County, in the state aforesaid, DO HEREBY CERTIFY that KENNETH W. BIEKUP Vice President of COLE TAYLOR BANK, as Trustee under Trust No. 43948, and JACKIE BIEKUP TRUST OFFICER, Assistant Secretary of said Corporation, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as Vice President and Assistant Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation, as Trustee as aforesaid, for the uses and purposes therein set forth; and the said Assistant Secretary did also then and there acknowledge that (she) (he), as custodian of the corporate seal of said Corporation, did affix the said corporate seal of said Corporation to said instrument as his own free and voluntary act and as the free and voluntary act of said Corporation, as Trustee as aforesaid, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 7th day of December, 1997.

MARITZA CASTILLO
Notary Public

My commission expires: 10.21.98



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