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97252987

David G. Spak, Esq.  
One Northfield Plaza  
Suite 300  
Northfield, Illinois 60093  
847-948-1324

DEPT-01 RECORDING \$83.00  
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COOK COUNTY RECORDER

Property Address:  
2475 North Lincoln Avenue  
845 West Altgeld Street  
Chicago, Illinois 60614

Property Identification Numbers:  
14-29-424-001  
14-29-424-002

## MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

Dated as of April 10, 1997

in the amount of: \$2,100,000.00

from First Bank and Trust Company of Illinois,  
not personally, but solely as Trustee under  
Trust Agreement dated July 8, 1995 and  
known as Trust No. 10-2049,  
("Mortgagor")

to First Bank and Trust Company of Illinois,  
a state chartered bank, having an office at  
300 East Northwest Highway, Palatine, Illinois 60067  
("Mortgagee")

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## MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING

**THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES AND FIXTURE FILING** (this "Mortgage"), made as of this 10th day of April, 1997 by First Bank and Trust Company of Illinois ("Mortgagor" or "Trustee"), not personally, but solely as Trustee under Trust Agreement dated July 8, 1996 (the "Trust Agreement") and known as Trust No. 10-2049 (the "Trust"), having an office at 300 East Northwest Highway, Palatine, Illinois 60067, to First Bank and Trust Company of Illinois, a state chartered bank ("Mortgagee"), having an office at 300 East Northwest Highway, Palatine, Illinois 60067.

**WITNESSETH**, that to secure the payment of an indebtedness in the maximum principal sum of Two Million One Hundred Thousand and 00/100 Dollars (\$2,100,000.00) at any one time outstanding in lawful money of the United States (the "Loan"), to be paid according to (i) that certain Promissory Note dated as of the date hereof in the maximum principal amount of \$2,100,000.00 (the "Note") at any one time outstanding made by Mortgagor, A. L.L.C. ("Beneficiary"), an Illinois limited liability company, BAFCOR, Inc. ("Bafcor"), an Illinois corporation, and Bruce A. Fogelson ("Guarantor") (Mortgagor, Beneficiary, Bafcor and Guarantor are sometimes collectively referred to herein as "Borrower") and payable to the order of Mortgagee and by this reference made a part hereof, and all other amounts, obligations and liabilities due or to become due Mortgagee hereunder and under (i) that certain Loan Agreement dated as of the date hereof (the "Loan Agreement") by and among Borrower and Mortgagee, (ii) that certain Assignment of Rents and Leases dated as of the date hereof (the "Assignment of Rents") by and among Borrower and Mortgagee, (iii) that certain Guaranty of Payment and Performance dated as of the date hereof (the "Guaranty") by Guarantor in favor of Mortgagee, (iv) that certain Environmental Indemnity Agreement dated as of the date hereof (the "Indemnity") by and among Beneficiary, Bafcor and Mortgagee, and (v) all other documents evidencing, securing or entered into in connection with the Loan (the Note, this Mortgage, the Assignment of Rents, the Guaranty, the Indemnity and all other documents evidencing, securing or entered into in connection with the Loan are collectively referred to herein as the "Loan Documents"); all amounts, sums and expenses paid hereunder by Mortgagee according to the terms hereof and all other obligations and liabilities of Mortgagor under this Mortgage, the Note and the other Loan Documents together with all interest on the said indebtedness, obligations, liabilities, amounts, sums and expenses (all of the aforesaid are hereinafter collectively referred to as the "Indebtedness"), Mortgagor hereby mortgages, grants, bargains, sells, warrants, conveys, aliens, demises, releases, assigns, sets over and confirms to Mortgagee, its successors and assigns, with **MORTGAGE COVENANTS**:

All Mortgagor's right, title and interest in and to that certain property located at and known as 2475 North Lincoln Avenue, Chicago, Cook County, Illinois and described on **Exhibit A** attached hereto and by this reference made a part hereof (the "Real Estate");

**TOGETHER** with Mortgagor's interest in and to all the improvements now or hereafter erected on the Real Estate, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the Real Estate. All replacements and additions shall be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Premises." Mortgagor hereby grants to Mortgagee a security interest in all of Mortgagor's right, title and interest in and to all such present and future personal property, including, without limitation, all "fixtures," "equipment," "proceeds," "accounts" and "general intangibles" (as said quoted terms are defined in the Uniform Commercial Code of the State wherein the Premises is located), (the Premises and said fixtures and articles of personal property and said "fixtures," "equipment," "proceeds," "accounts," "general intangibles" and Deposits encumbered and conveyed hereby are hereinafter sometimes called the "Mortgaged Property") and Mortgagee shall have, in addition to all rights and remedies provided herein, and in any other agreements, commitments and undertakings made by Mortgagor to Mortgagee, all of the rights and remedies of a "secured party" under the said Uniform Commercial Code. To the extent permitted under applicable law, this Mortgage shall be deemed to be a "security agreement" (as defined in the aforesaid Uniform Commercial Code);

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**TOGETHER** with all leases, subleases, lettings, concessions, and licenses (or any modifications or extensions thereto) of the Premises or any part thereof and all management agreements and other agreements relating to the use and occupancy of the Premises or any portion thereof, now or hereafter entered into and all right, title and interest of Mortgagor thereunder, including, without limitation, cash and securities deposited thereunder and the right to receive and collect the rents, issues and profits payable thereunder (which, are pledged primarily and on a parity with said land and not secondarily);

**TOGETHER** with all of Mortgagor's right, title and interest in and to unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Mortgagor and all proceeds of the conversion, voluntary or involuntary, of the Mortgaged Property or any part thereof into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Mortgaged Property by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Mortgaged Property or any easement therein, including awards for any change of grade of streets and awards for severance damages;

**TOGETHER** with all right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, Mortgagor or constructed, assembled or placed by Mortgagor on the Mortgaged Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described herein.

**TO HAVE AND TO HOLD** the Mortgaged Property unto Mortgagee and its successors and assigns until the Indebtedness is paid in full.

AND Mortgagor covenants and agrees with Mortgagee as follows:

## ARTICLE I COVENANTS OF MORTGAGOR

**Section 1.01. Payment of the Indebtedness.** Mortgagor will punctually pay the Indebtedness in immediately available funds as provided herein, in the Note and in the other Loan Documents, all in the coin and currency of the United States of America which is legal tender for the payment of public and private debts.

**Section 1.02. Title to the Mortgaged Property.** Mortgagor represents and warrants that: (i) it has good and marketable title to the Mortgaged Property, subject only to those items listed on Exhibit B attached hereto (the "Permitted Exceptions"); (ii) it has full power and lawful authority to encumber the Mortgaged Property in the manner and form herein set forth, (iii) except for property owned by tenants or that used in connection with constructing improvements to the Mortgaged Property and property that is replaced pursuant to purchase contracts, it will own all fixtures and articles of personal property now or hereafter affixed and/or used in connection with the Premises, including any substitutions or replacements thereof, free and clear of liens and claims other than the Permitted Exceptions; (iv) this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property; and (v) it will preserve such title, and will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever, subject only to the Permitted Exceptions.

**Section 1.03. Maintenance of the Mortgaged Property.** Mortgagor shall construct any improvements in a good and workmanlike manner and pursuant to a budget to be approved by Mortgagee, and maintain the Mortgaged Property in good repair, shall comply with the requirements, regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court jurisdiction claiming jurisdiction over the Premises (collectively, the

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"Requirements" and individually a "Requirement") within thirty (30) days after an order containing such Requirement has been issued by any such authority and shall permit Mortgagee to enter upon the Premises and inspect the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, threaten, commit, permit or suffer to occur any waste, material alteration, demolition or removal of the Mortgaged Property or any part thereof; provided, however, that fixtures and articles of personal property may be removed from the Premises if Mortgagor concurrently therewith replaces the same with similar items of equal or greater value and utility, free of any lien, charge or claim of superior title. Mortgagor shall not, without the prior written consent of Mortgagee (i) initiate or acquiesce in any zoning variation or reclassification, or (ii) suffer or permit any change in the general nature of the occupancy of the Premises.

**Section 1.04. Insurance: Restoration.** Mortgagor shall be required to maintain any and all insurance coverage required to comply with the following terms of this Section 1.04:

(a) Mortgagor shall provide public liability insurance with respect to the Premises providing for limits of liability of not less than \$2,000,000 per occurrence for both injury to or death of a person and for property damage.

(b) Such other insurance, including, without limitations, builder's risk insurance and insurance required pursuant to the Declaration of Condominium applicable to the Premises, as Mortgagee shall reasonably require.

(c) All insurance policies required pursuant to this Section 1.04 shall be endorsed to name Mortgagee as an insured thereunder, as its interest may appear, with loss payable to Mortgagee, without contribution, under a standard mortgagee loss payable clause, to be named as additional insureds and loss payees. All such insurance policies and endorsements shall be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State of Illinois, with a rating of "A" or better as established by Best's Rating Guide or an equivalent rating with such other publication of a similar nature as shall be in current use, as shall be approved by Mortgagee. Without limiting the foregoing, each policy shall provide that such policy may not be canceled or materially changed except upon thirty (30) days' prior written notice of intention of non-renewal, cancellation or material change to Mortgagee and that no act or thing done by Mortgagor shall invalidate the policy as against Mortgagee. If Mortgagor fails to maintain insurance in compliance with this Section 1.04, Mortgagee may, but shall not be obligated to, obtain such insurance and pay the premium therefor and Mortgagor shall, on demand, reimburse Mortgagee for all sums, advances and expenses incurred in connection therewith together with interest thereon computed at the Delinquency Rate (as defined in the Note). Mortgagor shall deliver copies of all original policies (including renewal policies), certified by the insurance company or authorized agent as being true copies to Mortgagee together with the endorsements thereto required hereunder. Notwithstanding anything to the contrary contained herein or in any other provision of applicable law, the proceeds of insurance policies coming into the possession of Mortgagee shall not be deemed trust funds and Mortgagee shall be entitled to dispose of such proceeds as herein provided.

(d) Mortgagee agrees that Mortgagor's existing insurance for the Mortgaged Property, as described on the certificate of insurance deposited by Mortgagor with Mortgagee as of the date hereof satisfies the requirements of this Section 1.04.

(e) Subject to the Illinois Condominium Property Act, if and when applicable, Mortgagee is authorized in its reasonable discretion: (A) to settle and adjust any claim under insurance policies which insure against such risks; or (B) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In all events, Mortgagee is authorized to collect and receipt for any such insurance monies, and such insurance proceeds may, at the option of Mortgagee, exercisable in Mortgagee's sole and absolute discretion, be: (i) applied in reduction of the liabilities under the Loan Documents, whether due or not; or (ii) held by Mortgagee and applied to pay for the cost of repair, rebuilding or restoration of the buildings and other improvements on the Premises. Notwithstanding the foregoing, if there is a casualty to the Premises and the damage therefrom can be repaired, rebuilt or restored for a cost equal to or less than \$50,000.00, and provided that no Event of Default exists and is continuing, Mortgagor shall have the right to settle and adjust any claim for insurance proceeds and subject to the provisions of



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Section 1.04(f) hereof, to use the insurance proceeds to pay the cost of repairing, rebuilding or restoring the Premises. Mortgagor also shall have the right to use the insurance proceeds to pay the cost of repairing, rebuilding or restoring the Premises if no Event of Default exists and is continuing, there are sufficient insurance proceeds to pay the cost of repairing, rebuilding or restoring the Premises (or, if such proceeds are not sufficient, Mortgagee, Beneficiary and/or Guarantor have deposited with Mortgagee all other amounts required to pay such cost) and no tenant of the Premises has elected to terminate its tenancy as a result of the casualty. For purposes of determining the projected cost of repairing, rebuilding or restoring the Premises, Mortgagor shall retain, within 30 days of the casualty, an independent insurance adjustor, acceptable to Mortgagee in its reasonable discretion, which insurance adjustor shall project such cost.

(f) If Mortgagee elects to allow the use of such proceeds for the restoration of the Premises or if Mortgagor is otherwise allowed to so use such proceeds under Section 1.04(e) hereof, then such use of the proceeds shall be governed as hereinafter provided.

(i) If there is damage to or destruction of the Premises, Mortgagor shall give prompt written notice thereof to Mortgagee and shall promptly commence and diligently continue to perform repair, restoration and rebuilding of the Premises so damaged or destroyed (hereinafter referred to as the "Work") to restore the Premises in full compliance with all legal requirements and so that the Premises shall be at least equal in value, quality and general utility as they were prior to the damage or destruction, and if the Work to be done is structural or if the cost of the Work as estimated by Mortgagee shall exceed \$50,000.00 (hereinafter referred to as "Major Work"), then Mortgagor shall, prior to the commencement of the Work, furnish to Mortgagee: (1) complete plans and specifications for the Work (approved by all governmental authorities whose approval is required), for Mortgagee's approval, which approval shall not be unreasonably withheld. Said plans and specifications shall bear the signed approval thereof by an architect satisfactory to Mortgagee (hereinafter referred to as the "Architect") and shall be accompanied by the Architect's signed estimate, bearing the Architect's seal, of the entire cost of completing the Work; and (2) certified or photostatic copies of all permits and approvals required by law in connection with the commencement and conduct of the Work.

(ii) Mortgagor shall not commence any of the Work until Mortgagor shall have complied with the applicable requirements referred to in subparagraph (i) above, and after commencing the Work Mortgagor shall perform the Work diligently and in good faith in accordance with the plans and specifications referred to in subparagraph (i) above, if applicable.

(iii) If Mortgagee elects to apply insurance proceeds to the restoration of the Premises or if Mortgagor has the right to so use the insurance proceeds, such insurance proceeds recovered by Mortgagee on account of damage or destruction to the Premises, less the cost, if any, to Mortgagee of such recovery and of paying out such proceeds (including attorneys' fees and costs allocable to inspecting the Work and the plans and specifications therefor), shall, upon the written request of Mortgagor, be applied by Mortgagee to the payment of the cost of the Work referred to in subparagraph (i) above and shall be paid out from time to time to Mortgagor and/or, at Mortgagee's option exercised from time to time, directly to the contractor, subcontractors, materialmen, laborers, engineers, architects and other persons rendering services or materials for the Work, as the Work progresses except as otherwise hereinafter provided, but subject to the following conditions, any of which Mortgagee may waive:

1. If the Work to be done is structural or if it is Major Work, as determined by Mortgagee, the Architect shall be in charge of the Work;
2. Each request for payment shall be made on 7 days' prior written notice to Mortgagee and shall be accompanied by a certificate of the Architect if one be required under subparagraph (i) above, otherwise by a beneficiary of the Trust, stating (x) that all of the Work completed has been done in compliance with the approved plans and specifications, if any are required under said subparagraph (i) above, and in accordance with all provisions of law and any agency having jurisdiction over the Mortgaged Property; (y) that the sum

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requested is justly required to reimburse Mortgagor for payments made by Mortgagor to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (and giving a brief description of such services and materials), and that when added to all sums, if any, previously paid out by Mortgagee does not exceed the value of the Work done to the date of such certificate: and (z) that the amount of such proceeds remaining in the hands of Mortgagee, together with any deficiency deposits made by Mortgagor pursuant hereto, will be sufficient on completion of the Work to pay for the same in full (and giving in such reasonable detail as Mortgagee may require an estimate of the cost of such completion);

3. Each request shall be accompanied by waivers of liens satisfactory to Mortgagee covering that part of the Work previously paid for, if any, and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to Mortgagee, and there shall not have been filed with respect to the Premises any notice of contract, mechanic's lien or other lien or instrument for the retention of title in respect of any part of the Work which has not been discharged of record and no encumbrances shall exist on or affecting the Premises other than the Permitted Exceptions;

4. There shall be no default on the part of Mortgagor under this Mortgage or the Note or any other Loan Document, which has not been cured within any applicable cure period;

5. The request for any payment after the Work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the Premises legal;

6. The Premises can be restored to economic viability and to the same condition as existed before such casualty within a reasonable period of time, but in any event no later than the Maturity Date, as set forth in the Note; and

7. The Work shall be completed in accordance with subparagraph (i) above.

If the sum of (i) proceeds of fire or casualty insurance, and (ii) deficiency deposits previously made by Mortgagor to Mortgagee and not previously expended are, in Mortgagee's reasonable judgment, insufficient to complete the repair and restoration of the buildings, structures and other improvements constituting the Premises, then Mortgagor shall promptly deposit with Mortgagee the amount of such deficiency.

Upon completion of the Work and payment in full therefor, or upon failure on the part of Mortgagor promptly to commence or diligently to continue the Work, Mortgagee may, upon notice to Mortgagor, apply the amount of any such proceeds then or thereafter in the hands of Mortgagee to the payment of the Indebtedness, provided, however, that nothing herein contained shall prevent Mortgagee from applying at any time the whole or any part of such proceeds to the curing of any Event of Default under this Mortgage or the Note or any other Loan Document.

(iv) If the Work to be done is not Major Work, then the net insurance proceeds held by Mortgagee for application thereto shall be paid to Mortgagor by Mortgagee upon completion of the Work, subject to the provisions of the foregoing subparagraphs (i), (ii) and (iii) except those which are applicable only if the work to be done is Major Work.

(v) If within 120 days after the occurrence of any damage or destruction to the Premises requiring Major Work in order to restore the Premises, Mortgagor shall not have submitted to Mortgagee and received Mortgagee's approval of plans and specifications for the Restoration (approved by the Architect and by all governmental authorities whose approval is required), or if, after such plans and specifications are approved by all such governmental authorities and Mortgagee, Mortgagor shall fail to commence promptly the Restoration, or if thereafter Mortgagor fails diligently to continue the restoration or is delinquent in the

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payment to mechanics, materialmen or others of the costs incurred in connection with such Work, or, in the case of any damage or destruction not Major Work, as determined by Mortgagee in order to restore the Premises, if Mortgagor shall fail to restore promptly the Premises so damaged or destroyed then, in addition to all other rights herein set forth, and after giving Mortgagor 30 days' written notice of the nonfulfillment of one or more of the foregoing conditions, Mortgagee, or any lawfully appointed receiver of the Premises, may at their respective options, perform or cause to be performed the restoration, and may take such other steps as they deem advisable to perform the restoration, and Mortgagor hereby waives, for Mortgagor and all others holding under Mortgagor, any claim against Mortgagee and such receiver arising out of anything done by Mortgagee or such receiver pursuant hereto, and Mortgagee may apply insurance proceeds (without the need to fulfill any other requirements of this Section 1.04) to reimburse Mortgagee, and/or such receiver, for all amounts expended or incurred by them, respectively, in connection with the performance of the Work, and any excess costs shall be paid by Mortgagor to Mortgagee upon demand together with interest computed at the Delinquency Rate.

**Section 1.05. Maintenance of Existence.** Mortgagor will, so long as it is owner of the Mortgaged Property, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the state of its formation, and will comply with all Requirements applicable to Mortgagor or to the Mortgaged Property or any part thereof.

**Section 1.06. Taxes and Other Charges.** (a) Mortgagor shall pay and discharge when due all taxes of every kind and nature, water rates, sewer rents and assessments (including, association assessments), levies, permits, inspection and license fees and all other charges imposed upon or assessed against the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Premises or arising in respect of the occupancy, use or possession thereof (collectively, the "Impositions") and, unless Mortgagor is making monthly deposits with Mortgagee in accordance with Section 1.14 hereof with respect to any such amount, Mortgagor shall exhibit to Mortgagee within five (5) days after the same shall have become due, validated receipts showing the payment of such Impositions. Should Mortgagor default in the payment of any of the foregoing Impositions, Mortgagee may, but shall not be obligated to, after ten (10) days prior written notice to Mortgagor, pay the same or any part thereof and Mortgagor shall, on demand, reimburse Mortgagee for all amounts so paid together with interest computed at the Delinquency Rate.

(b) Nothing in this Section 1.06 shall require the payment or discharge of an obligation imposed upon Mortgagor by subparagraph (a) of this Section 1.06 so long as Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which proceedings must operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided that (i) Mortgagor has notified Mortgagee in writing in advance of its intent to contest such taxes, and (ii) during such contest Mortgagor shall, at the option of Mortgagee, provide security satisfactory to Mortgagee, assuring the discharge of Mortgagor's obligation hereunder and of any additional interest charge, penalty or expense arising from or incurred as a result of such contest; and provided, further, that if at any time payment of any obligation imposed upon Mortgagor by subsection (a) of this Section 1.06 shall become necessary to prevent the delivery of a deed conveying the Mortgaged Property or any portion thereof because of non-payment then Mortgagor shall pay the same in sufficient time to prevent the delivery of such deed.

**Section 1.07. Mechanics' and Other Liens.** (a) Mortgagor shall pay, from time to time when the same shall become due, all claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income or profits arising therefrom and, in general, Mortgagor shall do, or cause to be done, at the cost of Mortgagor and without expense to Mortgagee, everything necessary to fully preserve the lien of this Mortgage. If Mortgagor fails to make payment of such claims and demands, Mortgagee may, but shall not be obligated to, after ten (10) days prior written notice to Mortgagor, make payment thereof, and Mortgagor shall, on demand, reimburse Mortgagee for all sums so expended together with interest computed at the Delinquency Rate.

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(b) Nothing in this Section 1.07 shall require the payment or discharge of an obligation imposed upon Mortgagor by subparagraph (a) of this Section 1.07 so long as Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings which proceedings must operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Mortgaged Property or any part thereof to satisfy the same; provided that (i) Mortgagor has notified Mortgagee in writing, in advance of its intent to contest such liens, and (ii) during such contest the Mortgagor shall, at the option of Mortgagee, provide security satisfactory to the Mortgagee, assuring the discharge of Mortgagor's obligations hereunder and of any additional interest charge or expense arising from or incurred as a result of such contest; and provided further, that if at any time payment of any obligation imposed upon the Mortgagor by subsection (a) of this Section 1.07 shall become necessary to prevent the delivery of a deed conveying the Mortgaged Property or any portion thereof because of non-payment, then Mortgagor shall pay the same in sufficient time to prevent the delivery of such deed.

**Section 1.08. Condemnation Awards.** The proceeds of any award or claim for damages, direct or consequential, payable to Mortgagor in connection with any condemnation or other taking of all or any part of the Mortgaged Property or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Mortgagee. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness, whether due or not, or to require Mortgagor to restore or rebuild, in which event the proceeds shall be held by Mortgagee and used to reimburse Mortgagor for costs incurred in connection with the rebuilding or restoring the Premises or the improvements thereon in accordance with the procedures set forth in Section 1.04 hereof. 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, at the option of Mortgagee, be applied on account of the Indebtedness, or be paid to any other party entitled thereto.

**Section 1.09. Mortgage Authorized.** This Mortgage has been duly executed and delivered pursuant to authority legally adequate therefor; Mortgagor has been and is authorized and empowered by all necessary persons having the power of direction over it to execute and deliver said instrument; said instrument is a legal, valid and binding obligation of Mortgagor, enforceable in accordance with the terms, subject, however, to bankruptcy and other law, decisional or statutory, of general application affecting the enforcement of creditors' rights, and to the fact that the availability of the remedy of specific performance or of injunctive relief in equity is subject to the discretion of the court before which any proceeding therefor may be brought.

**Section 1.10. Costs of Defending and Upholding the Lien.** If any action or proceeding is commenced to which action or proceeding Mortgagee is made a party or in which it becomes necessary to defend or uphold the lien of this Mortgage, Mortgagor shall, on demand, reimburse Mortgagee for all expenses (including, without limitation, reasonable attorneys' fees and reasonable appellate attorneys' fees) incurred by Mortgagee in any such action or proceeding to the extent that Mortgagee is the successful party in any such action or proceeding. In any action or proceeding to foreclose this Mortgage or to recover or collect the Indebtedness, the provisions of law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

**Section 1.11. Additional Advances and Disbursements.** Except as otherwise permitted hereunder, Mortgagor shall pay when due all payments and charges on all liens, encumbrances, ground and other leases, and security interests which may be or become superior or inferior to the lien of this Mortgage, and in default thereof, Mortgagee shall have the right, but shall not be obligated, to pay, upon ten (10) days written notice to Mortgagor, such payments and charges and Mortgagor shall, on demand, reimburse Mortgagee for amounts so paid and all costs and expenses incurred in connection therewith together with interest thereon at the Delinquency Rate from the date such payments and charges are so advanced until the same are paid to Mortgagee in good and immediately available funds. In addition, upon default of Mortgagor in the performance of any other terms, covenants, conditions or obligations by it to be performed under any such prior or subordinate lien, encumbrance, lease or security interest following any applicable grace or cure period therein provided, Mortgagee shall have the right, but shall not be obligated upon ten (10) days prior written notice to Mortgagor, to cure such default in the name and on behalf of the Mortgagor. All sums



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advanced and reasonable expenses incurred at any time by Mortgagee pursuant to this Section 1.11 or as otherwise provided under the terms and provisions of this Mortgage or under applicable law shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at a rate equal to the Delinquency Rate. Mortgagor agrees that any such charge shall not be deemed to be additional interest or a penalty, but shall be deemed to be liquidated damages because of the difficulty in computing the actual amount of damages in advance, and all such advances or disbursements together with interest thereon as provided in this Section 1.11 shall be secured by the lien of this Mortgage.

**Section 1.12. Costs of Enforcement.** Mortgagor agrees to bear and pay all expenses (including reasonable attorneys' fees and reasonable appellate attorneys' fees) of or incidental to the enforcement of any provision hereof, or the enforcement, compromise or settlement of this Mortgage or the Indebtedness, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise to the extent that Mortgagee is the successful party in any such action or proceeding. All rights and remedies of Mortgagee shall be cumulative and may be exercised singly or concurrently. Notwithstanding anything herein contained to the contrary, Mortgagor: (a) ~~HEREBY WAIVES TRIAL BY JURY~~; (b) will not (i) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Mortgaged Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor (ii) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction, nor (iii) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof (Mortgagor hereby irrevocably waiving all rights of redemption pursuant to the provisions of the Illinois Foreclosure Act, 735 ILCS 5/15-1501 *et seq.* (the "Act")); (c) hereby expressly waives, for itself and all who may claim under it, all benefit or advantage of any such law or laws; and (d) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property marshaled upon any foreclosure hereof. Mortgagor acknowledges that the Premises do not constitute agricultural real estate, as said term is defined in the Act or residential real estate as defined in the Act.

**Section 1.13. Mortgage Taxes.** Mortgagor shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Mortgagee by reason of its ownership of the Note or this Mortgage or any mortgage supplemental hereto, any security instrument with respect to any fixtures or personal property owned by Mortgagor at the Premises and any instrument of further assurance, other than income, franchise and doing business taxes, and shall pay all stamp taxes and other taxes required to be paid on the Note. If Mortgagor fails to make such payment within five (5) days after written notice thereof from Mortgagee, then Mortgagee shall have the right, but shall not be obligated, to pay the amount due, and Mortgagee shall, on demand, reimburse Mortgagee for said amount, together with interest at the Delinquency Rate computed from the date of payment by Mortgagee.

**Section 1.14. Escrow Deposits.** As additional security for the Loan, Mortgagor covenants and agrees to deposit at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee commencing on the first day of the first month following execution hereof, and on the first day of each month thereafter until the indebtedness secured by this Mortgage is fully paid, and all other obligations secured by this Mortgage are fully discharged, a sum equal to one-twelfth of the last total annual taxes and assessments for the last ascertainable year (general and special) on the Premises (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 estimate as to the amount of taxes and assessments to be levied and assessed). In addition, Mortgagor shall, except as hereinafter provided, concurrently with the disbursement of the Loan, also deposit with Mortgagee an amount, based upon the taxes and assessments so ascertainable or so estimated by Mortgagee, as the case may be, for taxes and assessments on the Premises, on an accrual basis, for the period from

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January 1 of the year in which the Loan was initially disbursed to and including the date of the first monthly deposit made pursuant to this Section 1.14. Such deposits are to be held without any allowance of interest and need not be kept separate and apart, and are to be used for the payment of taxes and assessments (general and special) on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of demand therefor, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on subsequent deposit or deposits. Mortgagee shall apply such deposits to the obligations set forth in this Section 1.14.

**Section 1.15. Restrictive Covenants.** Borrower shall not, without the prior written consent of Mortgagee: (i) execute or permit to exist any lease of all or a substantial portion of the Premises except for occupancy by the lessee thereunder; (ii) except for modifications done in the ordinary issue of business or in the operation of the Premises, modify any lease affecting the Premises resulting in terms less favorable than those existing as of the date hereof; (iii) discount any rent, more than one month or collect the same for a period of more than one month in advance; (iv) execute any conditional bill of sale, chattel mortgage or other security instruments covering any furniture, furnishings, fixtures and equipment, intended to be incorporated in the Premises or the appurtenances thereto, or covering articles of personal property placed in the Premises or purchase any of such furniture, furnishings, fixtures and equipment so that ownership of the same will not vest unconditionally in Mortgagor, free from encumbrances on delivery to the Premises; (v) further assign the leases and rents affecting the Premises; or (vi) execute any further leases of any portion of the Premises unless the form and content of such lease has been approved in writing by Mortgagee.

(b) Mortgagor agrees that in determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Borrower in owning and operating property such as the Premises, found them acceptable and relied and continues to rely upon the same as the means of maintaining the value of the Premises which is Mortgagee's primary security for the Note. Borrower is experienced in borrowing money and owning and operating property such as the Premises, have been ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and having bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by, among other things, making new loans at such rates. Mortgagor further recognizes that any further financing placed upon the Premises (1) could divert funds which would otherwise be used to pay the Indebtedness, (2) could result in acceleration and foreclosure of said further encumbrance which would force Mortgagee to take measures and incur expenses to protect its security, (3) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling the same, and (4) would impair Mortgagee's right to accept a deed in lieu of foreclosure, because a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (1) protecting Mortgagee's security for the repayment of the Loan, the value of the Premises and the payment of the Indebtedness and the performance of Borrower's obligations under the Loan Documents; (2) giving Mortgagee the full benefit of its bargain and contract with Borrower; and (3) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this Section 1.15(b) be deemed a restraint on alienation, that it is a reasonable one, and that Borrower shall not, without the prior written consent of Mortgagee, create, effect, consent to, suffer or permit any "Prohibited Transfer" (as defined herein). A "Prohibited Transfer" shall include any sale or other conveyance, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation, including but not limited to the entering into of any contract, sale, installment sale or sale under articles of agreement, the placement or granting of liens or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create a lien, the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, on any of the following properties, rights, or interests which occurs, is granted, accomplished, attempted or effectuated without the prior written consent of Mortgagee:

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(i) the Premises, or any part thereof or interest therein (including the sale, transfer or assignment of any leasehold or subleasehold interest in the Premises), excepting only sales or other dispositions of personalty located on the Premises which are permitted under the express terms of the Security Agreement;

(ii) all or any portion of the beneficial interest or power of direction in or to the Trust; or

(iii) all or any part of Bafcor's or Guarantor's membership interest, stock, control, or other ownership interest of Beneficiary or Bafcor;

in each case whether any such conveyance, sale (installment or otherwise), assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section 1.15(b) shall not apply to (i) liens securing the Indebtedness, (ii) the lien of current taxes and assessments not yet due and payable, (iii) Permitted Exceptions, (iv) liens being contested in accordance with the terms of this Mortgage, (v) contracts for the sale of condominiums on the Premises entered into in the ordinary course of business, (vi) residential leases with terms thereof not to exceed one (1) year and commercial leases for the office/commercial space in the Premises with terms and for amounts which are commercially reasonable and are consistent with the terms and amounts of similar leases in similar properties in the area of the Premises and on such terms approved by Mortgagee, provided that such leases and contracts have been entered into in conformity with this Mortgage, the Assignment of Rents and the other Loan Documents and (vii) transfers of Guarantor's interest in Beneficiary to family members of Beneficiary's existing members accomplished solely for purposes of estate planning, provided the same are reviewed by counsel for Mortgagee and provided, further, that all parties involved in such transfers execute all documents required by mortgagee's counsel to maintain Mortgagee's collateral position as the first lien holder of the Premises. Any consent by Mortgagee or any waiver of any condition or Event of Default under this Section 1.15(b) shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent Event of Default under this Section 1.15(b). Mortgagor acknowledges that any agreements, liens or encumbrances created in violation of the provisions of this Section 1.15(b) shall, at the option of Mortgagee, be voidable and, if Mortgagee exercises the option to void such agreement, lien or encumbrance, it shall be of no further force or effect, and to the extent the provisions of this Section 1.15(b) conflict with or are inconsistent with similar provisions of the Note or any of the Loan Documents, the provisions of this Section 1.15 shall govern and control.

**Section 1.16. Estoppel Certificate.** Mortgagor, within three (3) days upon request in person or within five (5) days upon request by mail, shall furnish to Mortgagee a written statement, duly acknowledged, setting forth the amount due on this Mortgage, the terms of payment and maturity date of the Note, the date to which interest has been paid, whether any offsets or defenses exist against the Indebtedness and, if any are alleged to exist, the nature thereof shall be set forth in detail.

**Section 1.17. Indemnity.** Mortgagor hereby represents that it has dealt with no broker, finder or like agent in connection with the Indebtedness. In addition to any other indemnity provisions of this Mortgage, Mortgagor will indemnify and hold Mortgagee harmless against any loss or liability, cost or expense, including, without limitation, any judgments, attorney's fees, costs of appeal bonds and printing costs, arising out of or relating to any claim by any such broker, finder or like agent who shall claim to have dealt with Mortgagor.

**Section 1.18. Mortgagee's Performance of Defaulted Acts; Protective Advances; Subrogation; Reliance on Bills.** In case Mortgagor fails to perform any of its covenants and agreements herein, in the Note or in any of the other Loan Documents following the expiration of applicable grace or cure periods, Mortgagee may, but need not, make any payment or perform any act herein or therein 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 any Prior Encumbrances (as hereinafter defined), if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale on, forfeiture affecting the Premises or contest any tax or assessment.



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All advances, disbursements and expenditures (collectively "Advances") made by Mortgagee before and during foreclosure, prior to sale, and where applicable, after sale, for the following purposes, including interest thereon at the Delinquency Rate, are hereinafter referred to as "Protective Advances";

- (a) Advances pursuant to this Section 1.18 and Sections 1.04, 1.07, 1.11 and 1.13 of this Mortgage;
- (b) Advances in accordance with the terms of this Mortgage to: (i) protect, preserve or restore the Premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage;
- (c) payments of (i) installments of principal and interest, when due, or other obligations in accordance with the terms of any Prior Encumbrance; (ii) installments of real estate taxes and other Impositions when due; (iii) other obligations authorized by this Mortgage; or (iv) with court approval any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, all as referred to in the first paragraph of this Section 1.18;
- (d) reasonable attorneys' fees and other costs incurred in connection with the foreclosure of this Mortgage and in connection with any other litigation or administrative proceeding to which Mortgagee may be or become or be threatened or contemplated to be a party, including probate and bankruptcy proceedings, or in the preparation for the commencement or defense of any such suit or proceeding: including filing fees, appraisers' fees, outlays for documents and expert evidence, witness fees, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title charges and examinations, foreclosure minutes, title insurance policies, appraisals, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute or defend such suit or, in case of foreclosure, to evidence to bidders at any sale which may be had pursuant to the foreclosure judgment the true condition of the title to or the value of the Premises;
- (e) Mortgagee's fees and costs arising between the entry of judgment of foreclosure and the confirmation hearing;
- (f) Mortgagee's advances of any amount required to make up a deficiency in deposits for installments of Impositions;
- (g) advances to cure defaults under any other financing relating to or secured by the Premises or to prevent any lender from foreclosing its mortgage or other security interest and impairing the lien of this Mortgage;
- (h) expenses deductible from proceeds of sale; and expenses incurred and expenditures made by Mortgagee for any one or more of the following:
  - (i) if any of the Premises consists of an interest in a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease;
  - (ii) premiums upon casualty and liability insurance made by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, without regard to the limitation to maintaining of insurance in effect at the time any receiver or mortgagee takes possession of the Premises;
  - (iii) payments required or deemed by Mortgagee to be for the benefit of the Premises or required to be made by the owner of the Premises under any grant or declaration of easement, easement agreement, reciprocal easement agreement, agreement with any adjoining land owners or other instruments creating covenants or restrictions for the benefit of or affecting the Premises; and

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(iv) operating deficits incurred by Mortgagee in possession or reimbursed by Mortgagee to any receiver.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded. Mortgagee shall endeavor, but not be required, to give Mortgagor notice of Protective Advances prior to the institution of any action to foreclose this Mortgage.

The Protective Advances shall, except to the extent, if any, that any of the same is expressly contrary to or inconsistent with the provisions of the Act, be included in:

- (a) determination of the amount of Indebtedness secured by this Mortgage at any time;
- (b) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent amendment of such judgment, supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after entry of such judgment, it being hereby agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (c) if right of redemption has not been waived by this Mortgage, computation of the amount required to redeem;
- (d) determination of amounts deductible from sale proceeds; and
- (e) determination of the application of income in the hands of any receiver or mortgagee in possession.

All moneys paid for Protective Advances or any of the other purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other moneys advanced by Mortgagee to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby and shall become part of the Indebtedness, and shall become immediately due and payable without notice and with interest thereon at the Delinquency 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 senior mortgage or any other lien or encumbrance upon the Premises or any part thereof on a parity with or prior or superior to the lien hereof (a "Prior Encumbrance"), then as additional security hereunder, 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.

Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any 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.

**Section 1.19. Environmental Protection.** (a) Mortgagor represents, warrants and covenants to the best of its knowledge that:

(i) the Premises has been, at all times during Mortgagor's ownership thereof, and is presently in a clean, safe and healthful condition and free of contamination from any substance or material presently identified to be toxic or hazardous according to, and in violation of, any applicable federal, state or local statute, rule or regulation (collectively, the "Environmental Law") (including, without limitation, any asbestos,

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polychlorinated biphenyls ("PCBs"), radioactive substance, methane, volatile hydrocarbons, industrial solvents, oil, petroleum or chemical liquids and hazardous wastes whether solid, liquid or gaseous) or any other material or substance which has in the past or could presently or at any time in the future cause or constitute a health, safety or other environmental hazard to any person or property (collectively, "Hazardous Substances");

(ii) Mortgagor has no knowledge of and has not caused or suffered to occur and Mortgagor will not hereafter cause or suffer to occur, any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration (each, a "Release") of any Hazardous Substance at, upon, under or within the Premises in violation of any Environmental Law;

(iii) Mortgagor has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Premises in violation of any Environmental Law;

(iv) neither Mortgagor nor, to the best of Mortgagor's knowledge, any other party has been, is or will be involved in operations at or near the Premises which could lead to the imposition on Mortgagor or any subsequent or former owner of the Premises of liability or the creation of a lien on the Premises or any part thereof, under any Environmental Law or under any similar applicable laws or regulations;

(v) Mortgagor has not permitted and will not permit any tenant or occupant of the Premises to engage in any activity that could lead to the imposition of liability on such tenant or occupant, the Mortgagor or any subsequent or former owner of any of the Premises, or the creation of a lien on the Premises or any part thereof, under any Environmental Law or any similar applicable laws or regulations; and

(vi) Mortgagor has made "appropriate inquiry" into the previous ownership and uses of the Premises, as set forth in the Superfund Amendments and Reauthorization Act of 1986, amending 42 U.S.C. Section 9600 *et seq.*

(b) Mortgagor shall comply strictly and in all respects with the requirements of the Environmental Law and shall notify Mortgagee promptly in the event of any Release or the discovery of any Hazardous Substance contamination at, under, within or upon the Premises in violation of any Environmental Law and shall promptly forward to Mortgagee copies of all orders, notices, permits, applications or other communications and reports in connection with any such Release or the presence of any Hazardous Substance or any other matters relating to the Environmental Law, as they may affect the Premises.

(c) Mortgagor, promptly upon the written request of Mortgagee at any time when Mortgagee has reason to believe there is a violation of any Environmental Law at the Premises, shall, at Mortgagor's sole cost and expense, provide Mortgagee with an environmental site assessment or environmental audit report, or an update of such an assessment or report, prepared by an environmental engineering firm and otherwise in scope, form and content satisfactory to Mortgagee.

(d) Excluding costs and expenses arising out of the gross negligence or wilful misconduct of Mortgagee, Mortgagor shall indemnify and defend Mortgagee and hold Mortgagee harmless from and against any and all claims, suits, actions, debt, costs, obligations, judgments, charges, loss, liability, damage and expense of any nature whatsoever, including clean up costs, reasonable attorneys' fees and environmental consultants' fees, suffered or incurred by Mortgagee, whether as holder of this Mortgage, as mortgagee in possession or as successor in interest to Mortgagor as owner of the Premises by virtue of foreclosure or acceptance of a deed in lieu of foreclosure:

(i) under or on account of the Environmental Law or related regulations or any similar applicable laws or regulations, including the assertion of any lien thereunder;

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(ii) any Release of Hazardous Substances, the threat of a discharge of a Release of any Hazardous Substances, or the presence of any Hazardous Substances affecting the Premises, in each instance in violation of any Environmental Law, whether or not the same originates or emanates from the Premises or any contiguous real estate including any loss of value of the Premises as a result of any of the foregoing;

(iii) any costs of removal or remedial action incurred by the United States Government or any costs incurred by any other person or damages from injury to, destruction of, or loss of natural resources, including reasonable costs of assessing such injury, destruction or loss incurred pursuant to the Environmental Law;

(iv) liability for personal injury or property damage arising under any statutory or common law tort theory, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Premises; and

(v) any other environmental matter affecting the Premises within the jurisdiction of the Environmental Protection Agency, any other federal agency, or any state or local environmental agency.

Mortgagor's obligations under this Section 1.19 shall arise upon the discovery of the presence of any Hazardous Substance in violation of any Environmental Law, whether or not the Environmental Protection Agency, any other federal agency or any state or local environmental agency has taken or threatened any action in connection with the presence of any Hazardous Substances.

(e) If there is any Release or the presence of any Hazardous Substance affecting the Premises, whether or not the same originates or emanates from the Premises or any contiguous real estate, and/or if Mortgagor shall fail to comply with any of the requirements of the Environmental Law or related regulations or any other environmental law or regulation, Mortgagee may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Premises and/or take any and all other actions as Mortgagee shall deem necessary or advisable in order to remedy said Release or Hazardous Substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Delinquency Rate (as prescribed in the Note) from the date of payment by Mortgagee shall be immediately due and payable by Mortgagor to Mortgagee and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof.

(f) All of the representations, warranties, covenants and indemnities contained in this Section 1.19 shall survive the repayment of the Note and/or the release of the lien of this Mortgage and shall survive the transfer of any or all right, title and interest in and to the Premises by Mortgagor to any party, whether or not affiliated with Mortgagor.

**Section 1.20. Further Representations.** Beneficiary (i) is an Illinois limited liability company, duly organized and validly existing under the laws of the State of Illinois and is in good standing in the State of Illinois; (ii) has the power and authority to own its properties and to carry on its business as now being conducted; and (iii) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it. Bafcor (i) is an Illinois corporation, duly organized and validly existing under the laws of the State of Illinois and is in good standing in the State of Illinois; (ii) has the power and authority to own its properties and to carry on its business as now being conducted; and (iii) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it. Beneficiary has delivered certified copies of Beneficiary's operating agreement, articles of organization and certified resolutions to Mortgagee, all of which documents remain in force and have not been amended as of the date hereof. Bafcor has delivered certified copies of Bafcor's articles of incorporation, by-laws and certified resolutions to Mortgagee, all of which documents remain in force and have not been amended as of the date hereof. Beneficiary and Bafcor will not permit amendment of said documents without Mortgagee's prior written consent. The execution, delivery and performance of the Note, this Mortgage, and the other loan documents: (i) have received all necessary trust and entity approval; (ii) do not violate any provisions of any law, any order of any court or agency of government or any indenture, agreement or other instrument to which any of the parties comprising Borrower is a party, or by which it or any portion of the Mortgage Property is bound; and (iii) are not in conflict with, nor will result in a breach of, or



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constitute (with due notice or lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, upon any of its property or assets, except as contemplated by the provisions of this Mortgage.

## ARTICLE II DEFAULT AND REMEDIES

**Section 2.01. Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default" under this Mortgage:

(a) default when and as the same shall become due and payable in payment of amounts required to be paid hereunder, under the Note, or under any other Loan Document, whether by maturity or acceleration; or

(b) default in the due observance or performance of any of the terms, covenants or conditions contained in this Mortgage or in any other Loan Document which continues for more than thirty (30) days after receipt from Mortgagee of written notice of such default; provided, however, that unless and until the continued operation or safety of the Mortgaged Property, or the priority, validity or enforceability of this Mortgage or any other security for the Loan or the lien thereof or the value of the Mortgaged Property is immediately threatened or jeopardized, Mortgagor shall have a period not to exceed thirty (30) days after written notice of any such failure of performance to cure the same and if said thirty (30) days is not sufficient to cure the same despite Mortgagor's diligent efforts, Mortgagor shall have not more than an additional ninety (90) days to cure the same, provided Mortgagor continues such diligent efforts; or

(c) should any representation or warranty made herein or any other Loan Document prove to be untrue in any material respect; or

(d) default beyond any applicable grace or cure period under any obligation set forth in the Note or in any of the other Loan Documents; or

(e) default beyond all applicable grace or cure periods, if any, under any other financing relating to or secured by the Premises; or

(f) the further assignment or encumbrance by Mortgagor of the leases or rents of the Premises or any part thereof without the prior written consent of Mortgagee and to the extent not otherwise permitted hereunder or under any of the other Loan Documents; or

(g) except as otherwise expressly permitted pursuant to Section 1.06(b) hereof, the failure of Mortgagor to pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto all franchise taxes and charges, and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including, but not limited to, assessments for public improvements or benefits which are assessed, levied, confirmed, imposed or become a lien upon the Mortgaged Property or become payable during the term of the Note or this Mortgage or Mortgagor enters into any agreement either written or oral, which has the effect of deferring the payment of any taxes or other charges which are or can be assessed, levied, confirmed, imposed or become a lien on the Mortgaged Property or become payable during the term of the Note or this Mortgage; or

(h) if a receiver, liquidator or trustee of Mortgagor, Guarantor, Bafcor or Beneficiary or of any of their respective properties, shall be appointed, and same is not discharged within thirty (30) days; or

(i) if a petition in bankruptcy, an insolvency proceeding or a petition for reorganization shall have been filed against Mortgagor, Guarantor, Bafcor or Beneficiary and same is not withdrawn, dismissed, canceled or terminated within thirty (30) days; or

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(j) if Mortgagor, Guarantor, Bafcor or Beneficiary is adjudicated insolvent or a petition for reorganization is granted (without regard for any grace period provided for herein); or

(k) if there is an attachment or sequestration of any of the property of Mortgagor, Guarantor, Bafcor or Beneficiary and same is not discharged or bonded within thirty (30) days thereof; or

(l) if Mortgagor, Guarantor, Bafcor or Beneficiary files or consents to the filing of any petition in bankruptcy or commences or consents to the commencement of any proceeding under the Federal Bankruptcy Code or any other law, now or hereafter in effect, relating to the reorganization of Mortgagor, Guarantor, Bafcor or Beneficiary or the arrangement or readjustment of the debts of Mortgagor, Guarantor, Bafcor or Beneficiary; or

(m) if Mortgagor, Guarantor, Bafcor or Beneficiary shall make an assignment for the benefit of its creditors or shall admit in writing the inability to pay its debts generally as they become due or shall consent to the appointment of a receiver, trustee or liquidator of Mortgagor, Bafcor or Beneficiary or of all or any part of its, or Guarantor's property; or

(n) if Mortgagor, Guarantor, Bafcor or Beneficiary shall cause or institute any proceeding for the dissolution or termination of Mortgagor, the Trust, Bafcor or Beneficiary; or

(o) if Mortgagor, Guarantor, Bafcor or Beneficiary ceases to do business or terminates its business as presently conducted for any reason whatsoever;

(p) there occurs a Prohibited Transfer pursuant to Section 1.15(b) hereof; or

(q) if a default shall occur under any mortgage which is subordinate to the lien of this Mortgage or the mortgagee under any subordinate mortgage shall commence a foreclosure action in connection with said mortgage, provided that this provision shall not be deemed to be a waiver of the provisions of Sections 1.15, 1.16, 1.18 or any other section of this Mortgage.

## Section 2.02. Remedies.

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(i) declare a portion of or the entire unpaid Indebtedness to be immediately due and payable without any presentment, demand, protest or notice of any kind to Mortgagor; or

(ii) enter into or upon the Premises, either personally or by its agents, nominees or attorneys and dispossess Mortgagee and its agents and servants therefrom, and thereupon Mortgagee may

(1) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat;

(2) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property;

(3) exercise all rights and powers of Mortgagor with respect to the Premises, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or

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modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof;

(4) apply the receipts from the Premises to the payment of the Indebtedness, after deducting therefrom all expenses (including attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees; and

(5) exercise all rights and powers provided in the Act; or

(iii) institute proceedings for the complete foreclosure of this Mortgage (in which case the Mortgaged Property may be sold for cash or upon credit in one or more parcels) and pursue all remedies afforded to a mortgagee under and pursuant to the Act; or

(iv) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable, subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due and payable; or

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in any other Loan Document; or

(vi) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage; or

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of Mortgagor, or of any person, firm or other entity liable for the payment of the Indebtedness; or

(viii) pursue such other remedies as Mortgagee may have under applicable law; or

(ix) exercise any cure rights; or

(x) exercise any other remedies under the other Loan Documents.

(b) The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the provisions of the Act. The judgment of foreclosure or order confirming the sale shall provide for application of sale proceeds in the following order of priority; first, all items not covered by the provisions of said Subsections (a) and (b), which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; and second, all principal and interest remaining unpaid on the Note.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Article II, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the

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true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. The foregoing appointment is coupled with an interest and may not be revoked as long as the Indebtedness or any portion thereof remains unpaid. Any such sale or sales made under or by virtue of this Article II, whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagee.

(e) Upon any sale made under or by virtue of this Article II (whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

**Section 2.03. Possession of the Premises.** Upon the occurrence of any Event of Default hereunder, it is agreed that the then owner of the Premises, if it is the occupant of the Premises or any part thereof, shall immediately surrender possession of the Premises so occupied to Mortgagee, and if such occupant is permitted to remain in possession, the possession shall be as tenant of Mortgagee and, on demand, such occupant (a) shall pay to Mortgagee monthly, in advance, a reasonable rental for the space so occupied and in default thereof, and/or (b) may be dispossessed by the usual summary proceedings. The covenants herein contained may be enforced by a receiver of the Mortgaged Property or any part thereof. Nothing in this Section 2.03 shall be deemed to be a waiver of the provisions of this Mortgage prohibiting the sale or other disposition of the Premises without the Mortgagee's consent.

**Section 2.04. Interest After Default.** If any payment due hereunder, under the Note or any other Loan Document is not paid when due, either at stated or accelerated maturity or pursuant to any of the terms hereof, then and in such event, Mortgagor shall pay interest thereon from and after the date on which such payment first becomes due at the interest rate provided for in Section 1.11 hereof and such interest shall be due and payable, on demand, at such rate until the entire amount due is paid to Mortgagee, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclose this Mortgage. Nothing in this Section 2.04 or in any other provision of this Mortgage shall constitute an extension of the time of payment of the Indebtedness.

**Section 2.05. Mortgagor's Actions After Default.** After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by Mortgagee to obtain judgment for the Indebtedness, or of any other nature in aid of the enforcement of the Note or of this Mortgage or any other Loan Document, Mortgagor will (a) waive the issuance and service of process and enter its voluntary appearance in such action, suit or proceeding, and (b) if required by Mortgagee, consent to the appointment of a receiver or receivers of the Mortgaged Property and of all the earnings, revenues, rents, issues, profits and income thereof. The court in which such action, suit or legal proceeding is commenced shall appoint a receiver of the Premises whenever Mortgagee so requests pursuant to the Act or when such appointment is otherwise authorized by operation of law. Such receiver shall have all powers and duties prescribed by the Act. In addition, such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of the period of receivership. The court from time to time, either before or after entry of judgment of foreclosure, may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a)

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the indebtedness secured hereby, or by or included in any judgment of foreclosure or supplemental judgment or other item for which Mortgagee is authorized to make a Protective Advance: and (b) the deficiency in case of a sale and deficiency. Mortgagee's right to the appointment of a receiver under this Section 2.05 is an absolute right and shall not be affected by adequacy of security or solvency of Mortgagor.

**Section 2.06. Control by Mortgagee After Default.** Notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor, or of any of its property, or of the Mortgaged Property or any part thereof, Mortgagee shall be entitled to retain possession and control of all property now and hereafter covered by this Mortgage.

**Section 2.07. Assignment of Rents and Leases.** To further secure the Indebtedness, Mortgagor hereby sells, assigns and transfers unto Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute present transfer and assignment of all such leases and agreements, and all the avails thereunder, to Mortgagee and not merely the passing of a security interest. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney in its name and deed (with or without taking possession of the Premises as provided herein) to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases and agreements, written or verbal, or other tenancy existing, or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions hereof. As between Mortgagor and Mortgagee, Mortgagor waives any rights of set off against any person in possession of any portion of the Premises.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to this Mortgage. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

Mortgagor further agrees to assign and transfer to Mortgagee all future leases and contracts for the sale of condominium units and all future leases of office/commercial space, whether or not included in the condominium portion thereof, upon all or any part of the Premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Premises as Mortgagee shall from time to time reasonably require.

Although it is the intention of the parties that the assignment contained in this Section 2.07 shall be a present absolute assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section 2.07 until an Event of Default shall have occurred under this Mortgage, the Note, the other Loan Documents or any other instrument evidencing or securing the indebtedness secured hereby or delivered pursuant to the Loan and the Event of Default shall not have been cured within the applicable grace period provided therefor, if any.

**Section 2.08. Mortgagee's Right of Possession in Case of Default.** 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 by reason of its performance of any action authorized under Sections 2.02(a)(2), 2.03 and 2.07 hereof 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 of Mortgagor, except to the extent caused by or resulting from the gross negligence or willful misconduct of Mortgagee, its agents, employees or representatives or the failure of Mortgagee to materially comply with the terms hereof. Should Mortgagee incur any such liability, loss or damage, by its performance or

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nonperformance of actions authorized by this Section, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest on any such amount at the Delinquency Rate shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

**Section 2.09. Application of Income Received by Mortgagee.** Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Sections 2.02(a)(2), 2.03, 2.06 and 2.07 hereof, shall 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 and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents if management be delegated to an agent or agents), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of Protective Advances; and

(c) to the payment of any other Indebtedness in such order as Mortgagee shall determine or any deficiency which may result from any foreclosure sale.

Mortgagee and any receiver of the Mortgaged Property or any part thereof, shall be liable to account for only those rents, issues and profits actually received by it.

## ARTICLE III MISCELLANEOUS

**Section 3.01. No Release.** Mortgagor agrees, that if the Mortgaged Property is sold and Mortgagee enters into any agreement with the then owner of the Mortgaged Property extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof, Mortgagor shall continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by Mortgagee.

**Section 3.02. Notices.** Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if sent by telecopier with conformation of receipt, if hand delivered, if sent by reputable overnight courier (effective the business day following delivery to such courier) or if mailed (effective two business days after mailing) by United States registered or certified mail, postage prepaid, return receipt requested:

If to Mortgagor: First Bank and Trust Company of Illinois  
Trust No. 10-2049  
c/o Bafcor, Inc.  
2501 North Lincoln Avenue  
#225  
Chicago, Illinois 60614  
Attention: Bruce A. Fogelson  
Telecopier Number: 773-528-8848

with copy to: David G. Spak, Esq.  
One Northfield Plaza  
Suite 300  
Northfield, Illinois 60093  
Telecopier Number: 847-441-3235

If to Mortgagee: First Bank and Trust Company of Illinois

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300 East Northwest Highway  
Palatine, Illinois 60067  
Attention: Mr. Michael C. Winter  
Telecopier Number: 847-358-8991

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. Notices given in any other fashion shall be deemed effective only upon receipt.

**Section 3.03. Binding Obligations.** The provisions and covenants of this Mortgage shall run with the land, shall be binding upon Mortgagor and shall inure to the benefit of Mortgagee, subsequent holders of this Mortgage and their respective successors and assigns. For the purpose of this Mortgage, the term "Mortgagor" shall mean Mortgagor named herein, any subsequent owner of the Mortgaged Property, and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, all their undertakings hereunder shall be deemed joint and several.

**Section 3.04. Captions.** The captions of the Articles and Sections of this Mortgage are for the purpose of convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

**Section 3.05. Further Assurances.** Mortgagor shall do, execute, acknowledge and deliver, at the sole cost and expense of Mortgagor, all and every such further acts, deeds, conveyances, mortgages, assignments, security agreements, financing statements, continuation statements, estoppel certificates, notices of assignment, transfers and assurances as Mortgagee may reasonably require from time to time in order to better assure, convey, assign, transfer and confirm unto Mortgagee, the rights now or hereafter intended to be granted to Mortgagee under this Mortgage, any other instrument executed in connection with this Mortgage or any other instrument under which the Mortgagor may be or may hereafter become bound to convey, mortgage or assign to Mortgagee for carrying out the intention of facilitating the performance of the terms of this Mortgage.

**Section 3.06. Severability.** Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

**Section 3.07. General Conditions.**

(a) This Mortgage cannot be altered, amended, modified or discharged orally and no executory agreement shall be effective to modify or discharge it in whole or in part, unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment or discharge is sought.

(b) No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy 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. No delay or omission of Mortgagee in exercising any right or power accruing upon any default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such default or Event of Default, or any acquiescence therein. Acceptance of any payment after the occurrence of an Event of Default shall not be deemed to waive or cure such Event of Default; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. No acceptance of any payment of any one or more delinquent installments which does not include interest at the penalty or Delinquency Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee at any time thereafter to demand and collect payment of interest at such Delinquency Rate or of late charges, if any. Nothing in this Mortgage or in the Note or in any of the

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other Loan Documents shall affect the obligation of Mortgagor to pay the Indebtedness in the manner and at the time and place therein respectively expressed.

(c) No waiver by Mortgagee will be effective unless it is in writing and then only to the extent specifically stated. Without limiting the generality of the foregoing, any payment made by Mortgagee for insurance premiums, taxes, assessments, water rates, sewer rentals or any other charges affecting the Mortgaged Property, shall not constitute a waiver of Mortgagor's default in making such payments and shall not obligate Mortgagee to make any further payments.

(d) Mortgagee shall have the right to appear in and defend any action or proceeding, in the name and on behalf of Mortgagor which Mortgagee, in its discretion, feels may adversely affect the Mortgaged Property or this Mortgage. Mortgagee shall also have the right to institute any action or proceeding which Mortgagee, in its discretion, feels should be brought to protect its interest in the Mortgaged Property or its rights hereunder. All costs and expenses incurred by Mortgagee in connection with such actions or proceedings, including, without limitation, reasonable attorneys' fees and appellate attorneys' fees, shall be paid by Mortgagor, on demand, in good and immediately available funds.

(e) In the event of the passage after the date of this Mortgage of any law of any governmental authority having jurisdiction, deducting from the value of land for the purpose of taxation, any lien or encumbrance 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 of the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the property for federal, state or local purposes, or the manner of the collection of any such taxes, so as to affect this Mortgage or the indebtedness secured hereby, Mortgagee shall promptly pay to Mortgagor, on demand, all taxes, costs and charges for which Mortgagee is or may be liable as a result thereof, provided said payment shall not be prohibited by law or render the Note usurious, in which event Mortgagee may declare the Indebtedness to be immediately due and payable.

(f) The information set forth on the cover hereof and/or added by schedules, addenda or exhibits are hereby incorporated herein by this reference as fully and with the same force and effect as if repeated herein at length.

(g) Mortgagor acknowledges that it has received a true copy of this Mortgage.

(h) For the purposes of this Mortgage, all defined terms contained herein shall be construed, whenever the context of this Mortgage so requires, so that the singular shall be construed as the plural and so that the masculine shall be construed as the feminine.

(i) This Mortgage contains a final and complete integration of all prior expressions by the parties hereto with respect to the subject matter hereof and shall constitute the entire agreement among the parties hereto with respect to the subject matter hereof, superseding all prior oral or written understandings.

(j) In the event of a conflict between the provisions hereof and of the Note, the provisions of the Note shall control; provided, however, that if the Note is silent as to a particular matter which is covered by this Mortgage, this Mortgage shall control.

**Section 3.08. Promotional Material.** Mortgagor authorizes Mortgagee to issue press releases, advertisements and other promotional materials in connection with Mortgagee's own business promotional and marketing activities, describing the loan referred to in this Mortgage and the matters giving rise to such loan.

**Section 3.09. Legal Construction.** The enforcement of this Mortgage shall be governed, construed and interpreted by the laws of the State of Illinois. Nothing in this Mortgage, the Note or in any other agreement between Mortgagor and Mortgagee shall require Mortgagor to pay, or Mortgagee to accept, interest in an amount which would subject Mortgagee to any penalty under applicable law. If the payment of any interest due hereunder or under the Note

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or any such other agreement or a payment which is deemed interest, exceeds the maximum amount payable as interest under the applicable usury laws, then such excess amount shall be applied to the reduction of the principal amount of the Indebtedness, or if such excess interest exceeds the then unpaid balance of the principal amount of the Indebtedness, the excess shall be applicable to the payment of such other portions of the Indebtedness then outstanding and upon payment in full of the Indebtedness, shall be deemed to be a payment made by mistake and shall be refunded to Mortgagor.

**Section 3.10. Credits Waived.** Mortgagor will not claim nor demand nor be entitled to any credit or credits against the Indebtedness for so much of the taxes assessed against the Mortgaged Property or any part thereof as is equal to the tax rate applied to the amount due on this Mortgage or any part thereof, and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property or any part thereof by reason of this Mortgage or the Indebtedness.

**Section 3.11. No Joint Venture or Partnership.** Mortgagor and Mortgagee intend that the relationship created hereunder, under the Note and the other Loan Documents be solely that of mortgagor and mortgagee or borrower and lender, as the case may be. Nothing herein is intended to create, nor shall create nor be deemed to create a joint venture, partnership or tenancy relationship between Mortgagor and Mortgagee nor to grant Mortgagee any interest in the Mortgaged Property other than that of mortgagee or lender.

**Section 3.12. Failure to Consent.** If Mortgagor shall seek the approval by or the consent of Mortgagee hereunder or under the Note, or any of the other Loan Documents and Mortgagee shall fail or refuse to give such consent or approval, Mortgagor shall not be entitled to any damages for any withholding or delay of such approval or consent by Mortgagee, it being intended that Mortgagor's sole remedy shall be to bring an action for an injunction or specific performance with remedy or injunction or specific performance shall be available only in those cases where Mortgagee has expressly agreed hereunder or under the Note or under any of the other Loan Documents not to unreasonably withhold or delay its consent or approval.

**Section 3.13. Power of Attorney.** Wherever in this Mortgage or in any of the other Loan Documents Mortgagee is appointed to act as attorney-in-fact for Mortgagor, such appointment may be exercised by any Officer of Mortgagee. The powers granted to Mortgagee herein and in the other Loan Documents are coupled with interests.

**Section 3.14. 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, if any, 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 Mortgagee herein 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 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 3.14 shall be construed as waiving any provision contained in this Mortgage which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed, or encumbered.

**Section 3.15. Fixtures.** Mortgagor and Mortgagee agree, to the extent permitted by law, that:

(a) all of the goods described within the definition of the word "Premises" herein are or are to become fixtures on the property described in Exhibit A;

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(b) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code; and

(c) Mortgagor is the record owner of the Real Estate.

**Section 3.16. Declaration of Subordination to Leases.** At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation proceeds), to any and all leases of all or any part of the Premises upon the execution by Mortgagee, and recording thereof, at any time hereafter in the appropriate official records of the county wherein the Premises are situated, of a unilateral declaration to that effect.

**Section 3.17. Reasonableness.** Unless expressly provided to the contrary herein, all provisions of this Mortgage which require the action, consent, approval, acceptance or discretion of the Mortgagee shall be construed to require the reasonable action, consent, approval, acceptance or discretion of the Mortgagee.

**Section 3.18. Maximum Indebtedness.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Indebtedness the payment of all loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by Mortgagee, including, but not limited to, all Protective Advances in connection with the Indebtedness, all in accordance with the Note, the Loan Agreement and this Mortgage; provided, however, that in no event shall the total amount of the Indebtedness, including loan proceeds disbursed plus any additional charges, exceed Twenty Million and 00/100 Dollars (\$20,000,000.00). All such advances are intended by the parties hereto to be a lien on the premises from the time this Mortgage is recorded, as provided in the Act.

**Section 3.19. Partial Releases.** Notwithstanding anything to the contrary contained herein, Mortgagee acknowledges and agrees that all or a portion of the Mortgaged Property has been or will be submitted to the provisions of the Illinois Condominium Property Act (the "Condominium Act"), whereby twelve (12) separate condominium units (the "Units") were or will be created and Mortgagor plans to sell the individual Units. In connection therewith, Mortgagor and Mortgagee agree as follows:

(a) Mortgagee agrees to release individual Units from the lien of this Mortgage pursuant to the following terms and provisions:

(i) That Mortgagee shall not be obligated to provide a partial release for the sale of any Unit except pursuant to a Valid Sales Contracts (as hereinafter defined);

(ii) That at the time Mortgagor requests any partial release, if there exists an Event of Default or any condition or circumstance which, with the passage of time and/or giving of notice, would constitute an Event of Default, under the Note, this Mortgage or any of the other Loan Documents Mortgagor shall deliver to Mortgagee ninety-five percent (95%) of the Net Sales Proceeds (as defined in the Note);

(iii) That, absent an Event of Default or any condition or circumstance which, with the passage of time and/or giving of notice, would constitute an Event of Default, Mortgagor shall deliver to Mortgagee the payments required pursuant to the Note, as the release price for each such Unit, together with a release fee in the amount of Two Hundred and 00/100 Dollars (\$200.00) per Unit which amounts shall be applied pursuant to the terms of the Note; and

(iv) That any and all documents and agreements required or used in connection with any partial release pursuant to this Section 3.19, including any and all title endorsements required by Mortgagee, shall be in form and substance reasonably satisfactory to Mortgagee to provide for the release of the appropriate portion

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of the Mortgaged Property and all costs incurred by Mortgagee shall be paid by Mortgagor and shall become additional indebtedness secured hereby.

(b) As used in this Mortgage, the term "Valid Sales Contracts" shall refer to the bona fide arm's length contracts, in a form approved by Mortgagee in writing, in its sole and absolute discretion, for the sale of Units and meeting all of the following conditions:

(i) The Gross Sales Price for each Unit shall be in an amount not less than ninety-five percent (95%) of the sales price for such Unit as set forth on Exhibit C attached hereto (the "Gross Sales Price"). Notwithstanding the foregoing, if the Gross Sales Price for any such Unit contained in a proposed sales contract does not equal or exceed the Gross Sales Price for such Unit as set forth in the Sales Schedule, Mortgagor must obtain Mortgagee's consent before entering into said sales contract;

(ii) The purchaser under said sales contract shall have deposited earnest money in an amount of (i) not less than five percent (5%) of the Gross Sales Price, as evidenced by copies of the earnest money check and deposit ticket evidencing that such funds have been deposited, as well as written confirmation from the real estate agent holding said earnest money that said funds have been received;

(iii) The sale contract shall set forth a closing date no later than the Maturity Date;

(iv) Any and all contingencies of the purchaser under said contract shall have been fulfilled. If any mortgage contingency appears in said sales contract, Mortgagor shall provide Mortgagee with a copy of a fully executed unconditional commitment letter from a bank or other financial institution acceptable to Mortgagee executed by the proposed lender; and


(v) Not more than three (3) Units may be sold to the same third party purchaser, its affiliates or assignees.

**3.20 Deposit and Use of Equity.** Mortgagee must receive evidence that Borrower has at least \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00) in equity invested in the Premises. To the extent such equity is not used to acquire the Premises, such amounts shall be held in an interest bearing checking account with Mortgagee (the "Pledge Account"). Disbursements from the Pledge Account shall be made not more frequently than once every calendar month, for the costs and expenses set forth in the Budget, which Budget shall be provided by Mortgagor and approved by Mortgagee prior to the initial Disbursement, in accordance with the Budget.

**Section 3.21. Trustee's Exculpation.** This Mortgage is executed by **FIRST BANK AND TRUST COMPANY OF ILLINOIS**, not personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed hereunder (whether or not the same are expressed in the terms of covenants, promises or agreements) by the named bank as trust company, are undertaken by it solely as trustee under the Trust Agreement, and not individually, and no personal liability shall be asserted or be enforceable against said named bank or trust company by reason of any of the terms, provisions, stipulations, covenants and conditions contained in this Mortgage.

IN WITNESS WHEREOF, this Mortgage has been duly executed as of the day and year first above written.

First Bank and Trust Company of Illinois, not personally, but as Trustee under Trust Agreement dated July 8, 1996 and known as Trust No. 10-2049

By:   
Its: \_\_\_\_\_

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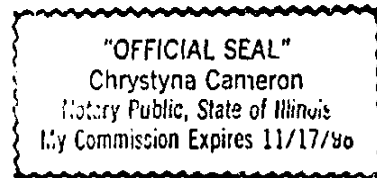
STATE OF ILLINOIS )  
 )SS.  
COUNTY OF COOK )

I, Chrystyna Cameron, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Michael J. Winter, President of the First Bank and Trust Company of Illinois, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such \_\_\_\_\_, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of the said Bank, as Trustee as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 10<sup>th</sup> day of April 1997.

Chrystyna Cameron  
Notary Public

My Commission Expires: \_\_\_\_\_



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## JOINDER

The undersigned, being the owner of one hundred percent (100%) of the beneficial interest in, and being the sole beneficiary of the Trust of which Trustee of which is Mortgagor under the foregoing Mortgage, hereby consents to and joins in the terms and provisions of the foregoing Mortgage, intending hereby to bind any interest its heirs, executors, administrators, successors or assigns may have in the collateral described in the foregoing Mortgage, as fully with the same effect as if the undersigned was named as Mortgagor in said Mortgage.

Dated as of: April 10, 1997

A. L.L.C., an Illinois limited liability company

By: BAFCOR, INC., an Illinois corporation, its  
Manager

By: 

Bruce A. Fogelson, its President

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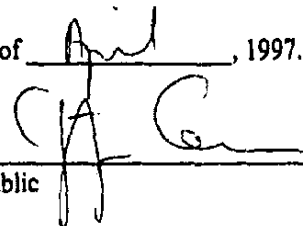
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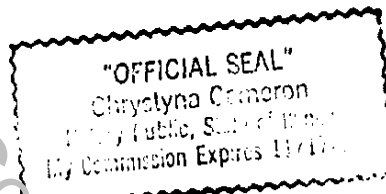
STATE OF ILLINOIS )  
                                  ) SS.  
COUNTY OF COOK    )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Bruce A. Fogelson, President of BAFCOR, Inc., an Illinois corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, as the free and voluntary act of said corporation and as the free and voluntary act of A. L.L.C., an Illinois limited liability company of which said corporation is the Manager, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 4<sup>th</sup> day of April, 1997.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:



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## EXHIBIT A

TO

MORTGAGE DATED AS OF APRIL 10, 1997

## LEGAL DESCRIPTION

LOTS 1 AND 2 IN QUEENY'S SUBDIVISION OF LOTS 11, 12 AND 13 IN DUNNING'S SUBDIVISION OF BLOCK 20 IN CANAL TRUSTEE'S SUBDIVISION OF THE EAST HALF OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

Property Address: 2475 North Lincoln Avenue and 845 West Altgeld Street, Chicago, Illinois

Property Identification Numbers: 14-29-424-001  
14-29-424-002

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EXHIBIT B

PERMITTED EXCEPTIONS

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## EXHIBIT C

### MINIMUM RELEASE SALES SCHEDULE

<u>Unit</u>	<u>Gross Sales Price</u>
A-2	\$249,500
A-3	\$254,500
A-4	\$259,500
B-2	\$191,500
B-3	\$196,500
B-4	\$199,500
C-2	\$224,500
C-3	\$229,500
C-4	\$234,500
D-2	\$295,500
D-3	\$309,500
D-4	\$319,500

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