

THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Carole K. Towne, Esq  
GOLDBERG, KOHN, BELL, BLACK,  
ROSENBLUM & MORITZ, LTD.  
55 East Monroe Street  
Suite 3700  
Chicago, Illinois 60603

7741630 DZ 40F5

**MORTGAGE AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage"), made as of July 1, 1998, is made and executed by THE CHURCH STREET L.L.C., an Illinois limited liability company, having an address at 1007 Church Street, Evanston, Illinois 60201 ("Mortgagor"), in favor of SANWA BUSINESS CREDIT CORPORATION, having an office at One South Wacker Drive, Chicago, Illinois 60606-4614 ("Lender").

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**RECITALS**

I. Mortgagor is the owner of the land described on Exhibit A attached hereto, together with all improvements thereon. Subject to certain terms and conditions, Lender has agreed to lend to Mortgagor an amount equal to \$11,000,000 (the "Loan").

II Mortgagor executed and delivered to Lender a Note of even date herewith in the original principal amount of \$11,000,000 (the "Note"), the form of which is attached hereto as Schedule 1, bearing interest at the rates per annum set forth therein. Upon the occurrence of an Event of Default (under and as defined herein), interest under the terms of the Note is charged at a default rate of interest set forth therein (the "Default Rate").

**GRANTING CLAUSES**

To secure the payment of the indebtedness evidenced by the Note and the payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Mortgage, the Note, that certain Loan Agreement of even date herewith by and between Mortgagor and Lender (the "Loan Agreement"), any and all other mortgages, security agreements, assignments of leases and rents, guaranties, and any other documents and instruments now or hereafter executed by Mortgagor, or any party related thereto or affiliated therewith to evidence, secure or guarantee the payment of all or any portion of the indebtedness under the Note and any and all renewals, extensions, amendments and replacements of this Mortgage, the Note, and any such other documents and instruments (the Note, this Mortgage, such other mortgages, security agreements, assignments of leases and rents, guaranties, reimbursement agreements and

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any other documents and instruments now or hereafter executed and delivered in connection with the Loan, and any and all amendments, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the "Loan Instruments" and individually as a "Loan Instrument") (all indebtedness and liabilities secured hereby being hereinafter sometimes referred to as "Borrower's Liabilities," which indebtedness and liabilities being secured hereby shall, in no event, exceed \$100,000,000), Mortgagor does hereby convey, mortgage and warrant, assign, transfer, pledge and deliver to Lender the following described property subject to the terms and conditions herein:

(A) The land located in Cook County, Illinois, legally described in attached Exhibit A ("Land");

(B) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land; and, to the extent not owned by tenants of the Mortgaged Property, all machinery, appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Land, buildings, structures, improvements or fixtures now or hereafter located or to be located on the Land, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, improvements, substitutions and replacements to any of the foregoing ("Improvements");

(C) All building materials and goods which are procured or to be procured for use on or in connection with the Improvements or the construction of additional Improvements, whether or not such materials and goods have been delivered to the Land ("Materials");

(D) All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses of the Land or the Improvements, contracts for services to be rendered to Mortgagor or otherwise in connection with the Improvements and all other property, contracts, reports, proposals and other materials now or hereafter existing in any way relating to the Land or the Improvements or the construction of additional Improvements;

(E) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired, including without limitation that certain Parking Easement Agreement (hereinafter defined) ("Appurtenances");

(F) (i) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land,

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Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(ii) All compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage or taking, pursuant to the power of eminent domain, of the Land, Improvements, Appurtenances or Materials or any part thereof, or (b) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances, Materials or any part thereof; and, except as otherwise provided herein, Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as otherwise provided herein, to apply the same toward the payment of the indebtedness and other sums secured hereby;

(iii) All contract rights, option rights, purchase contracts accounts and monies held by Lender for the benefit of Mortgagor, general intangibles, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Land, Improvements, Appurtenances or Materials; and

(iv) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or Materials;

(G) All rents, issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the "Rents"); it being intended that this Granting Clause shall constitute an absolute and present assignment of the Rents, subject, however, to the conditional permission given to Mortgagor to collect and use the Rents as provided in this Mortgage;

(H) Any and all leases, licenses and other occupancy agreements now or hereafter affecting the Land, Improvements, Appurtenances or Materials, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor which contain evidence of payments made under the leases and all security given therefor (collectively, the "Leases"), subject, however, to the conditional permission given in this Mortgage to Mortgagor to collect the Rents arising under the Leases as provided in this Mortgage;

(I) Any and all escrow accounts held by Lender or Lender's agent pursuant to any provision of this Mortgage;

(J) Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding Granting Clauses; and

(K) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses;

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All of the Mortgaged Property described in the Granting Clauses, together with all real and personal, tangible and intangible property pledged in, or to which a security interest attaches pursuant to, any of the Loan Instruments is sometimes referred to collectively as the "Mortgaged Property." The Rents and Leases are pledged on a parity with the Land and Improvements and not secondarily.

**ARTICLE ONE  
COVENANTS OF MORTGAGOR**

Mortgagor covenants and agrees with Lender as follows:

**1.1. Performance under Note, Mortgage and Other Loan Instruments.**

Mortgagor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner all provisions hereof and of the Note, every other Loan Instrument and every instrument evidencing or securing Borrower's Liabilities and will promptly pay or cause to be paid to Lender when due the principal with interest thereon and all other sums required to be paid by Mortgagor pursuant to the Note, this Mortgage, every other Loan Instrument and every other instrument evidencing or securing Borrower's Liabilities.

**1.2. General Covenants and Representations.** Mortgagor covenants and

represents that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Illinois, (b) Mortgagor is seized of an indefeasible estate in fee simple in that portion of the Mortgaged Property which is real property, and has good and absolute title to it and the balance of the Mortgaged Property free and clear of all liens, security interests, charges and encumbrances whatsoever, except those set forth in Exhibit B attached hereto (the "Permitted Encumbrances"); (c) Mortgagor has good right, full power and lawful authority to mortgage and pledge the Mortgaged Property as provided herein; (d) upon the occurrence of an Event of Default, Lender may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof; and (e) Mortgagor will maintain and preserve the lien of this Mortgage as a first and paramount lien on the Mortgaged Property subject only to the Permitted Encumbrances until Borrower's Liabilities have been paid in full.

**1.3. Compliance with Laws and Other Restrictions.** Mortgagor covenants

and represents that the Land and the Improvements and the use thereof presently comply with, and will during the full term of this Mortgage continue to comply with, all applicable restrictive covenants, zoning and subdivision ordinances and building codes, licenses, health and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations. If any federal, state or other governmental body or any court issues any notice or order to the effect that the Mortgaged Property or any part thereof is not in compliance with any such covenant, ordinance, code, law or regulation, Mortgagor will promptly provide Lender with a copy of such notice or order and will immediately commence and diligently

perform all such actions as are necessary to comply therewith or otherwise correct such non-compliance. Mortgagor shall not, without the prior written consent of Lender, petition for or otherwise seek any change in the zoning ordinances or other public or private restrictions applicable to the Mortgaged Property on the date hereof.

**1.4. Taxes and Other Charges.**

**1.4.1. Taxes and Assessments.** Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or Borrower's Liabilities or upon or against the interest of Lender in the Mortgaged Property, as well as all taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality or other taxing authority upon or in respect of the Mortgaged Property or any part thereof ("Impositions") provided, however, that unless compliance with applicable laws requires that taxes, assessments or other charges must be paid as a condition to protesting or contesting the amount thereof, Mortgagor may in good faith, by appropriate proceedings commenced within ninety (90) days of the due date of such amounts and thereafter diligently pursued, contest the validity, applicability or amount of any asserted tax, assessment or other charge and pending such contest Mortgagor shall not be deemed in default hereunder if on or before the due date of the asserted tax or assessment, Mortgagor shall first deposit with Lender in cash in good current funds 110% of the amount of such tax or assessment together with all interest and penalties in connection therewith and all charges which may or might be assessed against or become a charge upon the Mortgaged Property or any part thereof in such proceedings. Mortgagor shall pay the disputed or contested tax, assessment or other charge and all interest and penalties due in respect thereof on or before the date any adjudication of the validity or amount thereof becomes final and in any event no less than thirty (30) days prior to any forfeiture or sale of the Mortgaged Property by reason of such non-payment. Upon such payment, Lender shall return any amount deposited with it with respect to such imposition. Lender shall, if requested by Mortgagor, disburse said moneys on deposit with it directly to the imposing authority to whom such Imposition is payable. Upon failure of Mortgagor so to do, the amount theretofore deposited may be applied by Lender to the payment, removal and discharge of such Imposition, the interest and penalties in connection therewith and any costs, fees (including reasonable attorney's fees) or other liability accruing in any such proceedings. The balance, if any, shall be returned to Mortgagor and the deficiency, if any, shall be paid by Mortgagor to Lender within five (5) days after demand therefor. Upon Lender's request, Mortgagor will promptly file, if it has not heretofore filed, such petition, application or other instrument as is necessary to cause the Land and Improvements to be taxed as a



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separate parcel or parcels which include no property not a part of the Mortgaged Property.

**1.4.2. Taxes Affecting Lender's Interest.** If any state, federal, municipal or other governmental law, order, rule or regulation, which becomes effective subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes, so as to impose on Lender a tax by reason of its ownership of any or all of the Loan Instruments or measured by the principal amount of the Note, requires or has the practical effect of requiring Lender to pay any portion of the real estate taxes levied in respect of the Mortgaged Property, to pay any tax levied in whole or in part in substitution for real estate taxes or otherwise affects materially and adversely the rights of Lender in respect of the Note, this Mortgage or the other Loan Instruments, Borrower's Liabilities and all interest accrued thereon shall, upon thirty (30) days' notice, become due and payable forthwith at the option of Lender, whether or not there shall have occurred an Event of Default, provided, however, that, if Mortgagor may, without violating or causing a violation of such law, order, rule or regulation, pay such taxes or other sums as are necessary to eliminate such adverse effect upon the rights of Lender, and does pay such taxes or other sums when due, Lender may not elect to declare due Borrower's Liabilities by reason of the provisions of this Section 1.4.2.

**1.4.3. Tax Escrow.** Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Section 1.4, but not in lieu of such obligations, deposit with Lender, on the first day of each calendar month throughout the term of the Loan, such amount as Lender may from time to time specify in a written notice to Mortgagor, to pay all annual ad valorem taxes, assessments and charges of the nature described in Section 1.4.1 as such taxes, assessments and other charges become due and payable. Without limitation of the foregoing, Mortgagor shall make an initial deposit into such tax escrow of such amount as Lender may reasonably determine is necessary to pay the next installment of such taxes, assessments and other charges as they become due and payable. Mortgagor hereby pledges to Lender, and grants to Lender a security interest in, any and all such deposits as security for the Loan. The taxes, assessments and charges for purposes of this Section 1.4.3 shall, if Lender so elects, include, without limitation, water and sewer rents. Mortgagor shall procure and deliver to Lender when issued all statements or bills for such obligations. Upon demand by Lender, Mortgagor shall deliver to Lender such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges thirty (30) days prior to the date they become delinquent. Lender shall pay such taxes, assessments and other charges as they become due to the extent of the funds on deposit with Lender from time to time and provided Mortgagor has delivered to Lender the statements or bills therefor. In making any such payments, Lender shall be entitled to rely on any bill issued in respect of any such taxes, assessments or

charges without inquiry into the validity, propriety or amount thereof and whether delivered to Lender by Mortgagor or otherwise obtained by Lender. Any deposits received pursuant to this Section 1.4.3 shall not be, nor be deemed to be, trust funds, and may be commingled with the general funds of Lender. Lender shall pay interest at a rate of three and one-half percent (3.5%) per annum on amounts deposited with Lender pursuant to this Section 1.4.3 and such interest shall be added to the deposits held by Lender pursuant to this Section 1.4.3. If any Event of Default occurs, Lender shall have no obligation to pay interest on such deposits and any part or all of the amounts then on deposit or thereafter deposited with Lender under this Section 1.4.3 may at Lender's option be applied to payment of Borrower's Liabilities in such order as Lender may determine.

**1.4.4. No Credit Against the Indebtedness Secured Hereby.** Mortgagor shall not claim, demand or be entitled to receive any credit against the principal or interest payable under the terms of the Note or on any of Borrower's Liabilities for any of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof or that are applicable to Borrower's Liabilities or to Lender's interest in the Mortgaged Property.

**1.5. Mechanic's and Other Liens.** Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due and the Permitted Encumbrances) to be created upon or against the Mortgaged Property provided, however, that Mortgagor may in good faith, by appropriate proceedings diligently prosecuted, contest the validity, applicability or amount of any asserted lien, if Mortgagor shall first obtain an endorsement, in form and substance satisfactory to Lender, to the loan policy of title insurance issued to Lender insuring the lien of this Mortgage, insuring over such asserted lien. **ALL CONTRACTORS, SUBCONTRACTORS, AND OTHER PARTIES DEALING WITH THE MORTGAGED PROPERTY OR WITH ANY PARTIES INTERESTED THEREIN ARE HEREBY REQUIRED TO TAKE NOTICE OF THIS PROVISION.**

**1.6. Insurance and Condemnation.**

**1.6.1. Hazard Insurance.** Mortgagor shall, at its sole cost and expense, obtain for, deliver to, assign to and maintain for the benefit of Lender, until Borrower's Liabilities are paid in full, policies of hazard insurance, in an amount which shall be not less than 100% of the full insurable replacement cost of the Mortgaged Property (except the Land), insuring on a replacement cost basis the Mortgaged Property with "causes of loss-special form" coverage and insuring against such other hazards, casualties and contingencies as Lender may require, including without limitation, if requested by Lender, earthquake, and, if all or any part of the Mortgaged Property shall at any time be located within an area identified by the government of the United States or any agency thereof as having special flood hazards and for which flood insurance is available, flood. If any such policy shall contain a co-

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insurance clause it shall also contain an agreed amount or stipulated value endorsement. All policies of hazard insurance shall contain a "lender's loss payable" endorsement and shall provide that no losses shall be payable to any other parties without Lender's prior written consent. The form of such policies, the amounts and the companies issuing them shall be acceptable to Lender. Originals or certified copies of all policies shall be delivered to and retained by Lender. Mortgagor shall pay on or before the due dates thereof premiums on all insurance policies and on any renewals thereof. In the event of loss, Mortgagor will give immediate written notice to Lender and Lender may make proof of loss if not made promptly by Mortgagor (for which purpose Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact). In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in full or partial satisfaction of Borrower's Liabilities, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee. All such policies shall provide that they shall not be modified, cancelled or terminated without at least thirty (30) days' prior written notice to Lender from the insurer. To the extent permitted by law, Mortgagor agrees to hold Lender harmless against and from, and to reimburse Lender for, all claims, costs and expenses, including, without limitation, attorneys' fees which may be imposed upon, asserted against, or incurred or paid by lender by reason of or in connection with any bodily injury, death or property damage in or upon the vicinity of the Mortgaged Property through any cause whatsoever, or asserted against Lender on account of any transaction arising out of or in any way connected with the Mortgaged Property, this Mortgage, the other Loan Instruments, any of the indebtedness evidenced by the Note or any of Borrower's Liabilities.

**1.6.2. Other Insurance.** Mortgagor shall, at its sole cost and expense, obtain for, deliver to, assign to and maintain for the benefit of, Lender, until Borrower's Liabilities are paid for in full, (i) comprehensive general liability insurance in such amounts as Lender may specify, together with worker's compensation and employer's liability insurance, naming Lender as additional insured, (ii) a business interruption insurance policy covering loss of rents at a limit of 100%, in an amount not less than all rent and other charges payable by the tenants of the Mortgaged Property (based on a fully leased building) for a period of one (1) year, together with such assignments of the proceeds of such policy as Lender may require, (iii) boiler and machinery insurance, if requested by Lender, (iv) builder's risk insurance during the course of any construction or repair of the Mortgaged Property or any part thereof, (v) worker's compensation insurance covering Mortgagor's employees in such amounts as may be required by applicable law and (vi) such other policies of insurance relating to the Mortgaged Property and the use and operation thereof as Lender may require, including dramshop, all in form and amounts, and issued by such companies as are acceptable to Lender.

**1.6.3. Adjustment of Loss.** Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance

policies covering or relating to the Mortgaged Property and to collect and receive the proceeds from any such policy or policies (and deposit such proceeds as provided in Section 1.6.5). Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. After deducting from such insurance proceeds any expenses incurred by Lender in the collection and settlement thereof, including without limitation attorneys' and adjusters' fees and charges, Lender shall apply the net proceeds as provided in Section 1.6.5. Lender shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

**1.6.4 Condemnation Awards.** Lender shall be entitled to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Mortgaged Property or any part thereof, (ii) damage to the Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of other property, or (iii) the alteration of the grade of any street or highway on or about the Mortgaged Property. Lender is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Lender, after deducting from such compensation, awards, damages, claims, rights of action and proceeds all its expenses, including attorneys' fees, may apply such net proceeds (except as otherwise provided in Section 1.6.5 of this Mortgage) to payment of Borrower's Liabilities in such order and manner as Lender may elect. Mortgagor agrees to execute such further assignments of any compensation awards, damages, claims, rights of action and proceeds as Lender may require.

**1.6.5. Repair; Proceeds of Casualty Insurance and Eminent Domain.** If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Section 1.6.4, Mortgagor shall promptly and with all due diligence restore and repair the Mortgaged Property, whether or not the proceeds, award or other compensation are sufficient to pay the cost of such restoration or repair. At Lender's election, to be exercised by written notice to Mortgagor within thirty (30) days following Lender's unrestricted receipt in cash or the equivalent thereof of said proceeds, award or other compensation, the entire amount of said proceeds, award or compensation shall either (i) be applied to Borrower's Liabilities in such order and manner as Lender may elect or (ii) be made available to Mortgagor on such terms and conditions as Lender may impose, including without limitation the terms and conditions set forth in this Section 1.6.5, for the purpose of financing the cost of restoration or repair with any excess to be applied to Borrower's Liabilities. In the event Lender requires that such proceeds, award or compensation be applied to Borrower's Liabilities, no premium, penalty or prepayment fee or Breakage

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Costs (as defined in the Note) shall be payable in connection with such application. If the amount of proceeds to be made available to Mortgagor pursuant to this Section 1.6.5 is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Mortgagor shall cause to be deposited with Lender the amount of such deficiency within thirty (30) days of Lender's written request therefor (but in no event later than the commencement of the work) and Mortgagor's deposited funds shall be disbursed prior to any such insurance proceeds. If Mortgagor is required to deposit funds under this Section 1.6.5, the deposit of such funds shall be a condition precedent to Lender's obligation to disburse any insurance proceeds held by Lender hereunder. Without limitation of Lender's rights hereunder, it shall be an additional condition precedent to any disbursement of insurance proceeds held by Lender hereunder that Lender shall have approved all plans and specifications for any proposed repair or restoration. The amount of proceeds, award or compensation which is to be made available to Mortgagor, together with any deposits made by Mortgagor hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either, at Lender's option, to Mortgagor or directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof. Lender may commingle any such funds held by it with its other general funds. Lender shall not be obligated to pay interest in respect of any such funds held by it, nor shall Mortgagor be entitled to a credit against any of Borrower's Liabilities except and to the extent the funds are applied thereto pursuant to this Section 1.6.5. Notwithstanding any other provision of this Section 1.6.5, if an Event of Default shall be existing at the time of such casualty, taking or other event or if an Event of Default occurs thereafter, Lender shall have the right to immediately apply all insurance proceeds, awards or compensation to the payment of Borrower's Liabilities in such order and manner as Lender may determine.

**1.6.6. Proceeds of Business Interruption and Rental Insurance.** The net proceeds of business interruption and rental insurance shall be paid to Lender for application first to Borrower's Liabilities in such order and manner as Lender may elect and then to the creation of reserves for future payments of Borrower's Liabilities in such amounts as Lender deems necessary with the balance to be remitted to Mortgagor subject to such controls as Lender may deem necessary to assure that said balance is used to discharge accrued and to be accrued expenses of operation and maintenance of the Mortgaged Property.

**1.6.7. Renewal of Policies.** At least thirty (30) days prior to the expiration date of any policy evidencing insurance required under this Section 1.6.7, a renewal thereof satisfactory to Lender shall be delivered to Lender or substitution therefor, together with receipts or other evidence of the payment of any premiums then due on such renewal policy or substitute policy.



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**1.6.8. Intentionally deleted.**

**1.7. Non-Impairment of Lender's Rights.** Nothing contained in this Mortgage shall be deemed to limit or otherwise affect any right or remedy of Lender under any provision of this Mortgage or of any statute or rule of law to pay and, upon Mortgagor's failure to pay the same, Lender may pay any amount required to be paid by Mortgagor under Sections 1.4, 1.5 and 1.6 and the amount so paid by Lender shall bear interest at the Default Rate, and, together with interest, shall be added to Borrower's Liabilities. Mortgagor shall pay to Lender on demand the amount so paid by Lender, together with all accrued and unpaid interest thereon. The provisions of Section 1.4.3 are solely for the added protection of Lender and entail no responsibility on Lender's part beyond the allowing of due credit as specifically provided therein. Upon assignment of this Mortgage, any funds on hand shall be turned over to the assignee and any responsibility of Lender with respect to such funds shall terminate.

**1.8. Care of the Mortgaged Property.** Mortgagor shall preserve and maintain the Mortgaged Property in good and first class condition and repair. Mortgagor shall not, without the prior written consent of Lender, permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof. Except as otherwise provided in this Mortgage, no new improvements shall be constructed on the Mortgaged Property and no part of the Mortgaged Property shall be removed, demolished or altered in any material manner without the prior written consent of Lender.

**1.9. Transfer or Encumbrance of the Mortgaged Property.** Mortgagor shall not permit or suffer to occur (a) any sale, assignment, conveyance, transfer, mortgage, lease (other than leases made in accordance with the provisions of this Mortgage) or encumbrance of, or any contract for any of the foregoing on an installment basis or otherwise pertaining to (i) the Mortgaged Property or any part thereof, (ii) any interest in or by any entity which owns all or part of the Mortgaged Property which would result in Charles H. Braun, Lawrence Hearn, Kenneth Kliner or SGH Limited Liability Company (collectively, the Members") owning, in the aggregate, less than fifty-one percent (51%) of the voting control of Borrower, whether by operation of law or otherwise, nor shall any person or entity other than SGH Limited Liability Company become the managing member of Borrower without the prior written consent of Lender having been obtained (i) to the sale, assignment, conveyance, mortgage, lease, option, encumbrance or other transfer and (ii) to the form and substance of any instrument evidencing or contracting for any such sale, assignment, conveyance, mortgage, lease, option, encumbrance or other transfer. Any violation of the prohibitions contained in the immediately preceding sentence shall be a "Prohibited Transfer." Notwithstanding the foregoing, any Member owning twenty-five percent (25%) or more of the membership interests of Borrower may become the managing member of Borrower without the prior written consent of Lender having been obtained and such action shall not be a Prohibited Transfer. Mortgagor shall not, without the prior written consent of Lender, further assign or permit to be assigned the rents from the Mortgaged Property, and any such

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assignment without the prior express written consent of Lender shall be null and void. Mortgagor shall not permit any interest in any lease of the Mortgaged Property to be subordinated to any encumbrance on the Mortgaged Property other than the Loan Instruments and any such subordination shall be null and void. Mortgagor agrees that in the event the ownership of the Mortgaged Property, any interest therein or any part thereof becomes vested in a person other than Mortgagor, Lender may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the Note, the Loan Instruments and Borrower's Liabilities without in any way vitiating or discharging Mortgagor's liability hereunder or Borrower's Liabilities. No sale of the Mortgaged Property, no forbearance to any person with respect to this Mortgage, and no extension to any person of the time for payment of the Note or any other Borrower's Liabilities given by Lender shall operate to release, discharge, modify, change or affect the original liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by Lender.

**1.10. Further Assurances.** At any time and from time to time, upon Lender's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Lender, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such further mortgages, security agreements, financing statements, instruments of further assurance, certificates and other documents as Lender may consider necessary or desirable in order to effectuate or perfect, or to continue and preserve the obligations under, the Note, this Mortgage, any other Loan Instrument and any instrument evidencing or securing Borrower's Liabilities, and the lien of this Mortgage as a lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor, and unto all and every person or persons deriving any estate, right, title or interest under this Mortgage. Upon any failure by Mortgagor to do so, Lender may make, execute, record, register, file, re-record, re-register or re-file any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor to do so.

**1.11. Security Agreement and Financing Statements.**

(a) Mortgagor (as debtor) hereby grants to Lender (as creditor and secured party) a security interest under the Uniform Commercial Code in all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever constituting part of the Mortgaged Property. Mortgagor shall execute any and all documents, including without limitation financing statements pursuant to the Uniform Commercial Code, as Lender may request to preserve, maintain and perfect the priority of the first lien and security interest created hereby on property which may be deemed personal property or fixtures, and shall pay to Lender on demand any expenses incurred by Lender in connection with the preparation, execution and filing of any such documents. Mortgagor hereby authorizes and empowers Lender and

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irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor to execute and file, on Mortgagor's behalf, all financing statements and refilings and continuations thereof as Lender deems necessary or advisable to create, preserve and protect such lien. This appointment is a power coupled with an interest and is therefore irrevocable. When and if Mortgagor and Lender shall respectively become the debtor and secured party in any Uniform Commercial Code financing statement affecting the Mortgaged Property (or Lender takes possession of personal property delivered by Mortgagor where possession is the means of perfection of the security interest), then, at Lender's sole election, this Mortgage shall be deemed a security agreement as defined in such Uniform Commercial Code, and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law, or, as to such part of the security which is also reflected in such financing statement, by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code.

(b) Without limitation of the foregoing, if an Event of Default occurs, Lender shall be entitled immediately to exercise all remedies available to it under the Uniform Commercial Code and this Section 1.11. Mortgagor shall, in such event and if Lender so requests, assemble the tangible personal property at Mortgagor's expense, at a convenient place designated by Lender. Lender may publicly or privately sell or otherwise dispose of such fixtures, machinery, appliances, equipment, furniture and personal property upon such terms and in such manner as Lender may require. Mortgagor shall pay all expenses incurred by Lender in the collection of such indebtedness, including attorneys' fees and legal expenses, and in the repair of any real estate or other property to which any of the tangible personal property may be affixed. If any notification of intended disposition of any of the personal property is required by law, such notification shall be deemed reasonable and proper if given at least ten (10) days before such disposition. Any proceeds of the disposition of any of the personal property may be applied by Lender to the payment of the reasonable expenses of retaking, holding, preparing for sale and selling the personal property, including attorneys' fees and legal expenses, and any balance of such proceeds may be applied by Lender toward the payment of such of Borrower's Liabilities, and in such order of application, as Lender may from time to time elect. If an Event of Default occurs, Lender shall have the right to exercise and shall automatically succeed to all rights of Mortgagor with respect to intangible personal property subject to the security interest granted herein. Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Lender without the necessity of any further notice or action by Mortgagor. Lender shall not by reason of this Mortgage or the exercise of any right granted hereby be obligated to perform any obligation of Mortgagor with respect to any portion of the personal property nor shall Lender be responsible for any act committed by Mortgagor,

or any breach or failure to perform by Mortgagor with respect to any portion of the personal property.

**1.12. Assignment of Rents.**

(a) The assignment of rents, income and other benefits contained in Section (G) of the Granting Clauses of this Mortgage shall be fully operative without any further action on the part of either party, and, specifically, Lender shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to all rents, income and other benefits from the Mortgaged Property, whether or not Lender takes possession of such property. Mortgagor hereby further grants to Lender the right effective upon the occurrence of an Event of Default to do any or all of the following, at Lender's option: (i) enter upon and take possession of the Mortgaged Property for the purpose of collecting the rents, income and other benefits; (ii) dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Lender; (iii) lease the Mortgaged Property or any part thereof; (iv) repair, restore and improve the Mortgaged Property; and (v) apply the rents, income and other benefits, after payment of certain expenses and capital expenditures relating to the Mortgaged Property, on account of Borrower's Liabilities in such order and manner as Lender may elect. Such assignment and grant shall continue in effect until Borrower's Liabilities are paid in full, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Lender pursuant to such grant, whether or not foreclosure proceedings have been instituted. Neither the exercise of any rights under this section by Lender nor the application of any such rents, income or other benefits to payment of Borrower's Liabilities shall cure or waive any Event of Default or notice provided for hereunder, or invalidate any act done pursuant hereto or pursuant to any such notice, but shall be cumulative of all other rights and remedies. Mortgagor has executed and delivered to Lender an Assignment of Leases and Rents of even date herewith, and, to the extent that the provisions of this Section 1.12 or Section 1.14 are inconsistent with the provisions of said Assignment of Leases and Rents, the provisions of said Assignment of Leases and Rents shall control. Notwithstanding the foregoing, so long as no Event of Default has occurred or is continuing, Mortgagor shall have the right and authority to continue to collect the rents, income and other benefits from the Mortgaged Property as they become due and payable but not more than thirty (30) days prior to the due date thereof. The existence or exercise of such right of Mortgagor to collect said rents, income and other benefits shall not operate to subordinate this assignment to any subsequent assignment of said rents, income or other benefits, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Lender hereunder.

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(b) Mortgagor shall not permit any rent under any lease of the Mortgaged Property to be collected more than thirty (30) days in advance of the due date thereof and, upon any receiver, Lender, anyone claiming by, through or under Lender or any purchaser at a foreclosure sale coming into possession of the Mortgaged Property, no tenant shall be given credit for any rent paid more than thirty (30) days in advance of the due date thereof. Mortgagor shall act promptly to enforce all available remedies against any delinquent lessee so as to protect the interest of the lessor under the leases and to preserve the value of the Mortgaged Property.

**1.13. After-Acquired Property.** To the extent permitted by, and subject to, applicable law, the lien of this Mortgage, including without limitation the security interest created under Section 1.11, shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof.

**1.14. Lease Affecting Mortgaged Property.**

(a) Mortgagor shall comply with and perform in a complete and timely manner all of its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. Mortgagor shall give notice to Lender of any default by the landlord under any lease affecting the Mortgaged Property promptly upon the occurrence of such default, but, in any event, in such time to afford Lender an opportunity to cure any such default prior to the tenant having any right to terminate the lease. Each of the leases shall contain a provision requiring the tenant to notify Lender of any default by landlord and granting an opportunity for a reasonable time after such notice to cure such default prior to any right accruing to the tenant to terminate such lease. Mortgagor, if requested by Lender, shall furnish promptly to Lender (i) original or certified copies of all such leases now existing or hereafter created, as amended from time to time, and (ii) a current rent roll in form satisfactory to Lender. Lender shall have the right to notify at any time and from time to time any tenant of the Mortgaged Property of any provision of this Mortgage.

(b) The assignment contained in Section (H) of the Granting Clauses shall not be deemed to impose upon Lender any of the obligations or duties of the landlord or Mortgagor provided in any lease, including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage. Mortgagor hereby acknowledges and agrees that Mortgagor is and will remain liable under such leases to the same extent as though the assignment contained in Section (H) of the Granting Clauses had not been made. Lender disclaims any assumption of the obligations imposed upon the landlord or Mortgagor under the leases, except as

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to such obligations which arise after such time as Lender shall have exercised the rights and privileges conferred upon it by the assignment contained in Section (H) of the Granting Clauses and assumed full and indefeasible ownership of the collateral thereby assigned.

**1.15 Management of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property to be managed by a competent and reputable managing agent acceptable affiliate to Lender pursuant to a management agreement approved by Lender in writing in advance of execution thereof by Mortgagor, or anyone acting on behalf of Mortgagor. Following such approval, Mortgagor shall not permit the management agreement to be terminated (except for good cause after notice to Lender), modified, amended or extended, or permit a change in the identity of the management agent, without Lender's prior written consent. Each management agreement shall be subject in all respects to the lien of this Mortgage and the rights of Lender hereunder and, at Lender's request, Mortgagor shall cause the manager under such management agreement to subordinate its right to any lien or claim of lien encumbering the Mortgaged Property and to execute such subordination in recordable form.

**1.16 Execution of Leases.** Mortgagor shall not permit any leases to be made of the Mortgaged Property or existing leases to be modified, terminated, extended or renewed without the prior written consent of Lender. If Lender consents to any new lease or the renewal of any existing lease, at Lender's request, Mortgagor shall cause the tenant thereunder to execute a subordination and attornment agreement in form and substance satisfactory to Lender. Notwithstanding the foregoing, Mortgagor may execute from time to time any lease of 5,000 square feet or less, provided that the rent under each such lease is equal or greater than the market rate for similar properties located in Evanston, Illinois, requires payment of rent on a "gross" basis, is on the standard form approved by Lender and does not include any rent abatements or credits.

**1.17 Expenses.** Mortgagor shall pay when due and payable, and otherwise on demand made by Lender, all loan fees, appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title insurance fees, escrow fees, attorneys' fees, court costs, documentary and expert evidence, fees of inspecting architects and engineers, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with any of the following:

- (a) the preparation, execution, delivery and performance of the Loan Instruments;
- (b) the funding of the Loan;
- (c) any court or administrative proceeding involving Mortgagor, the Mortgaged Property or the Loan Instruments to which Lender is made a party or is subject to a subpoena by reason of its being a holder of any of the Loan Instruments, including without limitation bankruptcy, insolvency,

reorganization, probate, eminent domain, condemnation, building code and zoning proceedings;

(d) any court or administrative proceeding undertaken by Lender to enforce any remedy or collect any indebtedness due under this Mortgage or any of the other Loan Instruments, following a default, including a foreclosure of this Mortgage or a public or private sale under the Uniform Commercial Code;

(e) any remedy exercised by Lender following an Event of Default including foreclosure of this Mortgage and actions in connection with taking possession of the Mortgaged Property or collecting rents assigned hereby and by the Assignment of Leases and Rents;

(f) any activity in connection with any request by Mortgagor or anyone acting on behalf of Mortgagor that Lender consent to a proposed action which, pursuant to this Mortgage or the other Loan Instruments may be undertaken or consummated only with the prior written consent of Lender, whether or not such consent is granted; or

(g) any negotiation undertaken between Lender and Mortgagor or anyone acting on behalf of Mortgagor pertaining to the existence or cure of any default under or modification or extension of any of the Loan Instruments.

If Mortgagor fails to pay said costs and expenses, Lender may elect to pay the same, in which event such amounts, together with interest at the Default Rate, shall be added to Borrower's Liabilities

1.18. **Lender's Performance of Mortgagor's Obligations.** If Mortgagor fails to pay any tax, assessment, encumbrance or other imposition, or to perform any other covenant, condition or term in this Mortgage, the Note or any other Loan Instrument, Lender may, but shall not be obligated to, pay, obtain or perform the same. All payments made, whether such payments are regular or accelerated payments, and costs and expenses incurred or paid by Lender in connection therewith shall be due and payable immediately. The amounts so incurred or paid by Lender shall bear interest at the Default Rate and, together with interest, shall be added to Borrower's Liabilities. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any covenant, condition or term that Mortgagor has failed to perform or observe, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Performance or payment by Lender of any obligation of Mortgagor shall not relieve Mortgagor of such obligation or of the consequences of having failed to perform or pay the same and shall not effect the cure of any Event of Default. Additionally, if Mortgagor fails to furnish insurance, Lender may purchase insurance at Mortgagor's expense to protect Lender's interest in the Mortgaged Property. This insurance

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may, but need not, protect Mortgagor's interest. The coverage that Lender purchases may not pay any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required by the Mortgage. If Lender purchases insurance for the Mortgaged Property, Mortgagor is responsible for the costs of that insurance, including interest and any other charges Lender may impose in connection with the placement of insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Borrower's Liabilities. The costs of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

**1.19. Payment of Superior Liens.** To the extent that Lender, after the date hereof, pays any sum due under any provision of law or instrument or document creating any lien superior or equal in priority in whole or in part to the lien of this Mortgage, Lender shall have and be entitled to a lien on the premises equal in parity with that discharged, and Lender shall be subrogated to and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Lender to secure the Note and all obligations and liabilities secured hereby. Lender shall be subrogated, notwithstanding their release of record, to mortgages, trust deeds, superior titles, vendors' liens, mechanics' and materialmen's liens, charges, encumbrances, rights and equities on the Mortgaged Property to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances under the Note or other indebtedness secured hereby.

**1.20. Books and Records.** Mortgagor shall keep and maintain at all times complete, true and accurate books of account and records reflecting the results of the operation of the Mortgaged Property. Mortgagor shall furnish to Lender (a) within thirty (30) days after the end of each calendar month, a statement of income and expenses relating to the Mortgaged Property for the month then ended and a current rent roll; and (b) within ninety (90) days after the end of each calendar year, financial statements of the Mortgaged Property, Mortgagor, each Member and Stephen G. Hearn, including without limitation (i) an operating statement and rent roll pertaining to the Mortgaged Property, (ii) a balance sheet and the most recently filed Federal income tax returns for Mortgagor, each Member and Stephen G. Hearn and (iii) a balance sheet and income statement for Mortgagor. All balance sheets shall state annual income and all contingent liabilities. All statements shall be prepared in accordance with generally accepted accounting principles and otherwise in form specified by Lender. Statements pertaining to Mortgagor or the Mortgaged Property shall be certified by a member of Mortgagor as being true, correct and complete. Mortgagor shall cause statements pertaining to any Member or Stephen G. Hearn to be certified by such member or Stephen G. Hearn, as the case may be, as being true, correct and complete. In the event that Mortgagor fails to comply with the requirements set forth above, Lender shall have the right to have Mortgagor's books and records audited by an independent certified public accountant, and the cost of such audit shall be the obligation of Mortgagor. Lender and its designated agents shall have the right to inspect Mortgagor's books and records with respect to the Mortgaged

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Property at all reasonable times. In the event of a foreclosure of this Mortgage, all of Mortgagor's books and records maintained in connection with the Mortgaged Property shall be made available to the successful bidder at the foreclosure sale for inspection and copying for a period of not less than three (3) years following said sale.

1.21. **Estoppel.** Mortgagor, within fifteen (15) days after written request from Lender, shall furnish a written statement executed by Mortgagor setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses are claimed to exist against the payment of such principal and interest or other sums and, if any such offsets or defenses are claimed, the specific basis and amount of each such claim. If Mortgagor objects to the principal, interest or escrow amount or the application of any payment shown on any written statement, receipt, invoice or other written notice received by Mortgagor, or any partner or officer of Mortgagor, Mortgagor shall raise such objection by written notice to Lender within ninety (90) days following receipt of such statement, receipt, invoice or other written notice or else such objection shall be deemed waived by Mortgagor and such other parties.

1.22. **Use of the Mortgaged Property.** The Mortgaged Property shall be used only as an office building. Without limitation of the foregoing, Mortgagor shall not suffer or permit the Mortgaged Property, or any portion thereof, to be used by the public in such manner as might unreasonably tend to impair Mortgagor's title to the Mortgaged Property or any portion thereof, or in such manner as might reasonably make possible a claim or claims of easement by prescription or adverse possession by the public, as such, or of implied dedication of the Mortgaged Property or any portion thereof. Further, without limitation of the foregoing, Mortgagor shall not use or permit the use of the Mortgaged Property or any portion thereof for any unlawful purpose.

1.23. **Litigation Involving Mortgaged Property.** Mortgagor shall promptly notify Lender of any litigation, administrative procedure or proposed legislative action initiated against Mortgagor or the Mortgaged Property or in which the Mortgaged Property is directly or indirectly affected including any proceedings which seek to (i) enforce any lien against the Mortgaged Property, (ii) correct, change or prohibit any existing condition, feature or use of the Mortgaged Property, (iii) condemn or demolish the Mortgaged Property, (iv) take, by the power of eminent domain, any portion of the Mortgaged Property or any property which would damage the Mortgaged Property, (v) modify the zoning applicable to the Mortgaged Property, or (vi) otherwise adversely affect the Mortgaged Property. Mortgagor shall initiate or appear in any legal action or other appropriate proceedings when necessary to protect the Mortgaged Property from damage. Mortgagor shall, upon written request of Lender, represent and defend the interests of Lender in any proceedings described in this Section 1.23 or, at Lender's election, pay the fees and expenses of any counsel retained by Lender to represent the interest of Lender in any such proceedings, in which event such fees and expenses shall be added to Borrower's Liabilities and shall bear interest at the Default Rate.



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**1.24 Environmental Conditions**

(a) Mortgagor represents, to the best of its knowledge, and covenants that there are no, nor will there, for so long as any of Borrower's Liabilities remain outstanding, be, any Hazardous Materials (as hereinafter defined) generated, released, stored, buried or deposited over, beneath, in or upon the Mortgaged Property, and that no underground storage tanks are or will be located at the Mortgaged property. For purposes of this Mortgage, "Hazardous Materials" shall mean and include any asbestos containing materials, polychlorinated biphenyls ("PCBs"), petroleum products, lead based paint, radioactive materials and any other hazardous, special or toxic materials, wastes and substances which are defined, determined or identified as such in any federal, state or local laws, rules, regulations, ordinances, orders, codes, statutes or guidelines in each case as amended (whether now existing or hereafter enacted or promulgated) including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C. Sec. 6901 et seq.), Toxic Substances Control Act (15 U.S.C. Sec. 2601), Clean Air Act (42 U.S.C. Sec. 7401 et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq.) and any law, statute, rule or ordinance of the State of Illinois, and any other governmental entity with jurisdiction over the Mortgaged Property, or any part thereof, concerning such Hazardous Materials or any judicial or administrative interpretation of such laws, rules, regulations (all of the foregoing being herein collectively called the "Hazardous Materials Laws").

(b) Mortgagor shall, and Mortgagor shall use its best efforts to cause all employees, agents, contractors and subcontractors of Mortgagor and any other persons from time to time present on or occupying the Mortgaged Property to, keep and maintain the Mortgaged Property in compliance with, and not cause or knowingly permit the Mortgaged Property to be in violation of, any applicable Hazardous Materials Laws. Neither Mortgagor nor any employees, agents, contractors or subcontractors of Mortgagor or any other persons occupying or present on the Mortgaged Property shall use, generate, manufacture, store or dispose of on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Materials.

(c) Mortgagor shall immediately advise Lender in writing of:  
(i) any notices received by Mortgagor (whether such notices are from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation occurring on or about the Mortgaged Property of any applicable Hazardous Materials Laws; (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Hazardous Materials Laws; (iii) all claims made or threatened

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by any third party against Mortgagor or the Mortgaged Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses, (ii) and (iii) above are hereinafter referred to as "Hazardous Materials Claims"); and (iv) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any Hazardous Materials Claims. Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and Mortgagor shall pay to Lender, upon demand, all attorneys' and consultants' fees incurred by Lender in connection therewith.

(d) Mortgagor shall be solely responsible for, and shall indemnify and hold harmless Lender, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence (whether prior to or during the term of the Loan or otherwise and regardless of by whom caused, whether by Mortgagor or any predecessor in title or any owner of land adjacent to the Mortgaged Property or any other third party, or any employee, agent, contractor or subcontractor of Mortgagor or any predecessor in title or any such adjacent land owner or any third person) of Hazardous Materials on, under or about the Mortgaged Property, including, without limitation: (i) claims of third parties (including governmental agencies) for damages, penalties, losses, costs, fees, expenses, damages, injunctive or other relief; (ii) response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; and (iii) any and all expenses or obligations, including attorneys' fees, incurred at, before and after any trial or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses. The obligations of Mortgagor under this subsection shall survive any of the foreclosure of this Mortgage, the repayment of Borrower's Liabilities, or other satisfaction of the indebtedness secured by this Mortgage, whether by deed in lieu of foreclosure or otherwise, unless such obligation is attributed to the negligent acts of Lender.

(e) Mortgagor hereby represents, warrants and certifies that, to the best of its knowledge, (i) the execution and delivery of the Loan Instruments is not a transfer of "real property", as "real property" is defined in the Illinois Responsible Property Transfer Act (765 ILCS 90/1 et seq.), as amended from time to time ("RPTA"); (ii) there are no underground storage

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tanks located on, under or about the Mortgaged Property which are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act, as now or hereafter amended (42 U.S.C. § 6991); and (iii) there is no facility located on or at the Mortgaged Property which is subject to the reporting requirements of Section 312 of the federal Emergency Planning and Community Right to Know Act of 1986 and the federal regulations promulgated thereunder (42 U.S.C. § 11022), as "facility" is defined in RPTA).

(f) Any loss, damage, cost, expense or liability incurred by Lender as a result of a breach or misrepresentation by Mortgagor or for which Mortgagor is responsible or for which Mortgagor has indemnified Lender shall be paid to Lender on demand, and, failing prompt reimbursement, such amounts shall, together with interest thereon at the Default Rate from the date incurred by Lender until paid by Mortgagor, be added to Borrower's Liabilities, be immediately due and payable and be secured by the lien of this Mortgage and the other Loan Instruments.

(g) Lender may, in its sole discretion, require Mortgagor, at Mortgagor's sole cost and expense, from time to time to perform or cause to be performed, such studies or assessments of the Mortgaged Property, as Lender may deem necessary or appropriate or desirable, to determine the status of environmental conditions on and about the Mortgaged Property, which such studies and assessments shall be for the benefit of, and be prepared in accordance with the specifications established by, Lender.

(h) Mortgagor hereby grants and agrees to provide to Lender, its agents, employees and contractors, access to the Mortgaged Property, from time to time upon prior written notice, for the purpose of either taking such action as Lender shall determine to be appropriate to respond to a release, threatened release, or the presence of Hazardous Materials, or any related condition, on or about the Mortgaged Property; or conducting such studies or assessments of the Mortgaged Property, as Lender may deem necessary or appropriate or desirable.

1.25. **Easement Agreement.** Mortgagor shall not suffer or permit any amendment or modification of that certain Easement Agreement which is referred to in Parcel 3 described in Exhibit A attached hereto.

**ARTICLE TWO  
DEFAULTS**

**2.1 Event of Default.** The term "Event of Default," wherever used in this Mortgage, shall mean any one or more of the following events:

(a) The failure by Mortgagor: (i) to pay or deposit when due (A) any payment of principal within five (5) days following the date when such payment shall become due and payable under the Note whether at maturity or otherwise; (B) any payment of interest under the Note within five (5) days following the date when such payment shall become due and payable; or (C) any deposit for taxes and assessments due hereunder within ten (10) days after such deposit is due hereunder; or (ii) to keep, perform, observe or cause to remain true any covenant, condition, agreement, representation or warranty on the part of Mortgagor in this Mortgage contained in Sections 1.4.1, 1.6.1, 1.6.2, 1.9 or 1.24 hereof; or (iii) to keep, perform, observe or cause to remain true any other covenant, condition, agreement, representation or warranty on the part of Mortgagor in this Mortgage and such failure shall continue for five (5) days following the delivery of written notice to Mortgagor; provided, however, if such default is of the kind or nature that (in Lender's judgment) it is curable but is not capable of being cured within five (5) days, and provided, further, that Mortgagor has promptly commenced and is diligently proceeding to cure, then if such default is not cured within thirty (30) days following the delivery of such notice.

(b) The occurrence of a default under any of the Loan Instruments not cured within such cure, grace or other period, if any, provided in such Loan Instrument.

(c) The occurrence of an Event of Default under and as defined in any of the Loan Instruments.

(d) Any warranty or representation made herein or in any affidavit or certificate executed by Mortgagor or any person acting on behalf of Mortgagor in connection with the Loan, the application therefor or the disbursement thereof proves to be false or misleading in any material respect as of the time the same was made.

(e) An uninsured loss, damage, destruction or taking by eminent domain or other condemnation proceedings of any substantial portion of the Mortgaged Property or any part of the Mortgaged Property which materially impairs any of the intended uses of the Mortgaged Property.

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(f) The appointment of a receiver, trustee or conservator of Mortgagor, all or any part of the Mortgaged Property or Mortgagor's business pertaining to the operation of the Mortgaged Property.

(g) The occurrence of any of the following events:

(i) An admission in writing by a Party in Interest (as hereinafter defined) of its inability to pay debts as they become due;

(ii) The institution by a Party in Interest of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal bankruptcy statutes or any similar law (state or federal) now or hereafter existing;

(iii) The institution against a Party in Interest of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal bankruptcy statutes or any similar law (state or federal) now or hereafter existing which proceedings are not dismissed within sixty (60) days of filing;

(iv) The making of a general assignment for the benefit of creditors by a Party in Interest;

(v) The declaration by any court, government or governmental agency of the bankruptcy or insolvency of a Party in Interest;

(vi) The entry of a final judgment against a Party in Interest for \$25,000 or more which is not satisfied within thirty (30) days of the date on which such judgment shall have become final and all stays of execution pending appeal or otherwise shall have expired;

(vii) The issuance of a writ or warrant of attachment, levy, seizure or distraint or any similar process against a Party in Interest or all or a material part of the Mortgaged Property which is not stayed within sixty (60) days of issuance or the lapse of any such stay;

(viii) Any amendment of the agreement creating or governing a Party in Interest, without Lender's prior written consent; or

(ix) A default by a Party in Interest in the payment of any indebtedness for borrowed money in an aggregate principal amount outstanding in excess of \$25,000 under any agreement (other than the Loan Instruments) and the effect of such default is to enable the holder thereof to accelerate the maturity of such indebtedness unless the same is waived or otherwise ceases to exist.

For purposes of the foregoing clauses (i) through (ix), "a Party in Interest" shall mean Mortgagee, or any Member or Stephen G. Hearn.

(h) The occurrence of any event which, pursuant to the terms of the Loan Instruments, allows Lender to accelerate the maturity of Borrower's Liabilities.

(i) Lender, in its sole discretion, shall not be satisfied with the results of any audits or assessments conducted pursuant to Section 1.24(g).

### ARTICLE THREE REMEDIES

3.1. **Acceleration of Maturity.** If an Event of Default shall have occurred, Lender may declare the outstanding principal amount of the Note and the interest accrued thereon and any other of Borrower's Liabilities to be immediately due and payable, and upon such declaration such principal and interest and other Borrower's Liabilities declared due shall immediately become and be due and payable without further demand or notice.

3.2. **Lender's Power of Enforcement.** If an Event of Default shall have occurred, Lender may, either with or without entry or taking possession as provided in this Mortgage or otherwise, and without regard to whether or not Borrower's Liabilities shall have been accelerated, and without prejudice to the right of Lender thereafter to bring an action of foreclosure or any other action for any default existing at the time such earlier action was commenced or arising thereafter, proceed by any appropriate action or proceeding: (a) to enforce payment of the Note and/or any other of Borrower's Liabilities or the performance of any term hereof or any of the other Loan Instruments; (b) to foreclose this Mortgage and to have sold, as an entirety or in separate lots or parcels, the Mortgaged Property; and (c) to pursue any other remedy available to it. Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Lender may determine. Without limitation of the foregoing, if an Event of Default shall have occurred, as an alternative to the right of foreclosure for the full indebtedness evidenced by the Note and the interest accrued thereon and any other Borrower's Liabilities, after acceleration thereof, Lender shall have the right to institute partial foreclosure proceedings with respect to the portion of Borrower's Liabilities so in default, as if under a full foreclosure, and without declaring all of Borrower's Liabilities to be immediately due and payable (such proceedings being referred to herein as "partial foreclosure"), and provided that, if Lender

has not elected to accelerate all of Borrower's Liabilities and a foreclosure sale is made because of default in payment of only a part of Borrower's Liabilities, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of Borrower's Liabilities. Any sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured portion of Borrower's Liabilities, but as to such unmatured portion, this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Lender may elect, at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate Borrower's Liabilities by reason of any Event of Default upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. Lender may proceed with one or more partial foreclosures without exhausting its right to proceed with a full or partial foreclosure sale for any unmatured portion of Borrower's Liabilities, it being the purpose to permit, from time to time a partial foreclosure sale for any matured portion of Borrower's Liabilities without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any partial foreclosure in respect of any other portion of Borrower's Liabilities, whether matured at the time or subsequently maturing, and without exhausting at any time the right of acceleration and the right to proceed with a full foreclosure.

**3.3. Lender's Right to Enter and Take Possession, Operate and Apply Income.**

(a) If an Event of Default shall have occurred, Mortgagor, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property, and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, is hereby expressly authorized to enter and take possession of all or any portion of the Mortgaged Property and may exclude Mortgagor and Mortgagor's agents and employees wholly therefrom and shall have joint access with Mortgagor to the books, papers and accounts of Mortgagor and notwithstanding the provisions of any lease or other agreement to the contrary, Mortgagor shall pay monthly in advance to Lender, on Lender's entry into possession, or to any receiver appointed to collect the rents, income and other benefits of the Mortgaged Property, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Mortgagor, or any entity affiliated with or controlled by Mortgagor, and upon default in any such payment Mortgagor shall, vacate and surrender possession of such part of the Mortgaged Property to Lender or to such receiver, and in default thereof Mortgagor may be evicted by summary proceedings or otherwise.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Lender's demand, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring Mortgagor to deliver immediate possession

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of all or part of the Mortgaged Property to Lender, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Lender, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Lender, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

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

(i) perform such construction, make all necessary and proper maintenance, repairs, renewals, replacements, additions and improvements thereto and thereon, and purchase or otherwise acquire fixtures and personal property;

(ii) insure or keep the Mortgaged Property insured;

(iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor, on its behalf or otherwise, with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted Lender, all as Lender from time to time may determine; and Lender may collect and receive all the rents, income and other benefits of the Mortgaged Property, including those past due as well as those accruing thereafter; and shall apply the monies so received to Lender, in such order and manner as Lender may determine, to the payment of interest, principal and other payments due and payable on the Note or pursuant to this Mortgage or to any other Borrower's Liabilities, deposits for taxes and assessments, the payment or creation of reserves for payment of insurance, taxes, assessments and other proper charges or liens or encumbrances upon the Mortgaged Property or any part thereof, and the compensation, expenses and disbursements of the agents, attorneys and other representatives of Lender; and

(v) exercise such remedies as are available to Lender under the Loan Instruments or at law or in equity.

Lender shall surrender possession of the Mortgaged Property to Mortgagor only when all of Borrower's Liabilities shall have been paid in full and all other defaults have been cured. However, the same right to take possession shall exist if any subsequent Event of Default shall occur.

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**3.4. Leases.** Lender is authorized to foreclose this Mortgage subject to the rights, if any, of any or all tenants of the Mortgaged Property, even if the rights of any such tenants are or would be subordinate to the lien of this Mortgage. Lender may elect to foreclose the rights of some subordinate tenants while foreclosing subject to the rights of other subordinate tenants. The failure to make any subordinate tenant a party defendant to any foreclosure proceedings and to foreclose its rights (i) will not be, nor be asserted by Mortgagor, any junior lien holder, any tenant or any other party claiming by, through or under Mortgagor to be, a defense to any such foreclosure proceeding or any other proceedings instituted by Lender to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property and (ii) will not, nor shall any tenant assert that, such failure will, have the effect of giving such tenant any right to vacate the leased premises or of creating a tenancy other than set forth in the applicable lease. Each lease entered into by Mortgagor subsequent to the date hereof shall provide that, and any tenant under any such lease shall be subject to the following provisions whether or not such lease shall so provide: (i) Lender, at its election, may execute and record an instrument which shall be deemed to cause such lease to be either prior or subordinate (whichever Lender elects) to the lien of this Mortgage, (ii) upon any foreclosure hereof or the acceptance of a deed in lieu of foreclosure, the tenant under any such lease (other than a lease which is subordinate to the lien hereof and which is foreclosed in such foreclosure proceedings) shall attorn to the grantee in the deed or other purchaser at the sale and (iii) the tenant thereunder shall execute and deliver any confirmatory instruments which Lender may request in connection therewith. A failure by any such tenant to comply with any of the foregoing provisions shall constitute a default under such lease. Lender shall be made, constituted and irrevocably appointed as such tenant's attorney-in-fact so to do in the event that tenant shall fail to comply within ten (10) days after written demand from Lender. The omission of any such provision from any such lease or the failure to record any such instrument shall not affect Lender's rights under this Section.

**3.5. Purchase by Lender.** Upon any foreclosure sale, Lender may bid for and purchase all or any portion of the Mortgaged Property and, upon compliance with the terms of the sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

**3.6. Application of Foreclosure Sale Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property or any part thereof received by Lender shall be applied by Lender to the indebtedness secured hereby in such order and manner as Lender may elect in a written notice to Mortgagor given on or before sixty (60) days following confirmation of the sale and, in the absence of such election, first to the expenses of sale, then to expenses including attorneys' fees of the foreclosure proceeding, then to interest and then to principal.

**3.7. Application of Indebtedness Toward Purchase Price.** Upon any foreclosure sale, Lender may apply any or all of the indebtedness and other sums due to

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Lender under the Note, this Mortgage or any other Loan Instrument to the price paid by Lender at the foreclosure sale.

**3.8. Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws.** Mortgagor hereby waives any and all rights of redemption. Mortgagor further agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any reinstatement, appraisement, valuation, stay or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereof. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15 - 1101 et seq.) (herein called the "Act")) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601 of the Act.

**3.9. Receiver - Lender in Possession.** If an Event of Default shall have occurred, Lender, to the extent permitted by law and without regard to the value of the Mortgaged Property or the adequacy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right and without any additional showing or proof, at Lender's election, to either the appointment by the court of a receiver (without the necessity of Lender posting a bond) to enter upon and take possession of the Mortgaged Property and to collect all rents, income and other benefits thereof and apply the same as the court may direct or to be placed by the court into possession of the Mortgaged Property as mortgagee in possession with the same power herein granted to a receiver and with all other rights and privileges of a mortgagee in possession under law. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect all rents, income and other benefits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently therewith or independently thereof. Lender shall be liable to account only for such rents, income and other benefits actually received by Lender, whether received pursuant to this Section 3.9 or Section 3.3. Notwithstanding the appointment of any receiver or other custodian, Lender shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Lender.

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3.10. **Suits to Protect the Mortgaged Property.** Lender shall have the power and authority (but not the duty) to institute and maintain any suits and proceedings as Lender may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or which violate the terms of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, or (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Lender's interest.

3.11. **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amounts due and payable under the Note, this Mortgage and any other Loan Instrument, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

3.12. **Mortgagor to Pay Borrower's Liabilities in Event of Default; Application of Monies by Lender.**

(a) Upon occurrence of an Event of Default, Lender shall be entitled to sue for and to recover judgment against Mortgagor for Borrower's Liabilities due and unpaid together with costs and expenses, including, without limitation, the reasonable compensation, expenses and disbursements of Lender's agents, attorneys and other representatives, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage; and the right of Lender to recover such judgment shall not be affected by any taking of possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of Borrower's Liabilities, Lender shall be entitled to enforce all other rights and remedies under the Loan Instruments.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any judgment by Lender under any of the Loan Instruments, and no attachment or levy of execution upon any of the Mortgaged Property or any other property of Mortgagor, shall (except as otherwise provided by law) in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Lender hereunder, but

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such lien, rights, powers and remedies shall continue unimpaired as before until Borrower's Liabilities are paid in full.

(d) Any monies collected or received by Lender under this Section 3.12 shall be applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Lender, and the balance remaining shall be applied to the payment of Borrower's Liabilities, in such order and manner as Lender may elect, and any surplus, after payment of all Borrower's Liabilities, shall be paid to Mortgagor.

**3.13. Delay or Omission.** No delay or omission of Lender in the exercise of any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

**3.14. Waiver of Default.** No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies in respect thereof. If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby, (b) takes other or additional security for the payment thereof, (c) waives or does not exercise any right granted in the Note, this Mortgage or any other Loan Instrument, (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other Loan Instrument, (e) consents to the filing of any map, plat or replat of the Land, (f) consents to the granting of any easement on the Land, or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the lien of this Mortgage or any other Loan Instrument or the liability under the Note or other Loan Instruments of Mortgagor, any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, except as otherwise expressly provided in an instrument or instruments executed by Lender. Except as otherwise expressly provided in an instrument or instruments executed by Lender, no such act or omission shall preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor shall the lien of this Mortgage be altered thereby, except to the extent of any releases as described in clause (d), above, of this Section.

**3.15. Discontinuance of Proceedings; Position of Parties Restored.** If Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Lender, then and in every such case Mortgagor and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred or had been taken.

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3.16. **Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Lender by the Note, this Mortgage or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities, or now or hereafter existing at law, in equity or by statute.

3.17. **Interest After Event of Default.** If an Event of Default shall have occurred, all sums outstanding and unpaid under the Note and all other Borrower's Liabilities shall, to the extent permitted by law, bear interest thereafter at the Default Rate until such Event of Default is cured.

#### ARTICLE FOUR MISCELLANEOUS PROVISIONS

4.1. **Heirs, Successors and Assigns Included in Parties.** Whenever Mortgagor or Lender is named or referred to herein, heirs and successors and assigns of such person or entity shall be included, and all covenants and agreements contained in this Mortgage shall bind the successors and assigns of Mortgagor, including any subsequent owner of all or any part of the Mortgagor's Property and inure to the benefit of the successors and assigns of Lender. This Section shall not be construed to permit an assignment, transfer, conveyance, encumbrance or other disposition otherwise prohibited by this Mortgage.

4.2. **Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be personally delivered, sent by overnight courier, sent by United States certified or registered mail, return receipt requested, or sent by United States First Class Mail, addressed to the parties at the following addresses:

If to Lender: Sanwa Business Credit Corporation  
One South Wacker Drive  
Chicago, Illinois 60606  
Attention: Mr. Leonard Dzielski

with a copy to: Goldberg, Kohn, Bell, Black,  
Rosenbloom & Moritz, Ltd.  
55 East Monroe Street  
Suite 3700  
Chicago, Illinois 60603  
Attention: Carole K. Towne, Esq.

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If to Mortgagor: The Church Street L.L.C.  
1007 Church Street  
Evanston, Illinois 60201  
Attention: Mr. Stephen G. Hearn

with a copy to: Charles H. Braun & Associates, Ltd.  
100 North LaSalle Street, Suite 2500  
Chicago, Illinois 60602  
Attention: Charles H. Braun, Esq.

Notices shall be deemed received on the earlier of (i) three days after deposit, postage prepaid, in the United States mail, if sent by United States first class, certified, or registered mail; (ii) the next day after delivery to an overnight courier, or (iii) the date of actual delivery if delivered by hand. Either party may change the address to which any such notice, report, demand or other instrument is to be delivered by furnishing written notice of such change to the other party in compliance with the foregoing provisions.

**4.3. Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

**4.4. Invalid Provisions.** In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or in any other Loan Instrument shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other Loan Instrument (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

**4.5. Changes.** Neither this Mortgage nor any term hereof may be released, changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by Mortgagor and Lender relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance. Any holder of a lien or encumbrance junior to the lien of this Mortgage shall take its lien subject to the right of Lender to amend, modify or supplement this Mortgage, the Note or any of the other Loan Instruments, to extend the maturity of Borrower's Liabilities or any portion thereof, to vary the rate of interest chargeable under the Note and to increase the amount of the indebtedness secured hereby, in each and every case without obtaining the consent of the holder of such

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junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

4.6. **Governing Law.** This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Illinois.

4.7. **Required Notices.** Mortgagor shall notify Lender promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to the violation of any rule, regulation, law or ordinance, the enforcement of which would materially and adversely affect the Mortgaged Property; (ii) material default by any tenant in the performance of its obligations under any lease of all or any portion of the Mortgaged Property or receipt of any notice from any such tenant claiming that a default by landlord in the performance of its obligations under any such lease has occurred; or (iii) commencement of any judicial or administrative proceedings by or against or otherwise adversely affecting Mortgagor or the Mortgaged Property.

4.8. **Future Advances.** This Mortgage is given to secure not only existing indebtedness, but also future advances (whether such advances are obligatory or are to be made at the option of Lender, or otherwise) made by Lender under the Note, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all indebtedness secured hereby shall, in no event, exceed five (5) times the aggregate face amount of the Note.

4.9. **Release.** Upon full payment and satisfaction of Borrower's Liabilities and the termination of all of Lender's obligations under the Loan Agreement, Lender shall issue to Mortgagor an appropriate release deed in recordable form.

4.10. **Attorneys' Fees.** Whenever reference is made herein to the payment or reimbursement of attorneys' fees, such fees shall be deemed to include compensation to staff counsel, if any, of Lender in addition to the fees of any other attorneys engaged by Lender. All attorneys' fees incurred by Lender in connection with the foreclosure of this Mortgage shall be recoverable in foreclosure.

4.11. **Compliance with Illinois Mortgage Foreclosure Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or

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after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

**4.12. WAIVER OF TRIAL BY JURY.** TO INDUCE LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDINGS IN WHICH MORTGAGOR AND LENDER ARE ADVERSE PARTIES, IN CONNECTION WITH THE NOTE, THIS MORTGAGE OR ANY OF THE OTHER LOAN INSTRUMENTS.

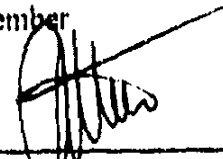
**4.13. Single Asset Entity.** Mortgagor shall not (a) have any ownership interest in any real property other than the Mortgaged Property; (b) own a general partnership interest in any entity which acquires or has an ownership interest in any property other than the Mortgaged Property; or (c) conduct any business other than the ownership and operation of the Mortgaged Property.

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officers as of the day and year first above written.

MORTGAGOR:

THE CHURCH STREET L.L.C., an Illinois limited liability company

By: SGH Limited Liability Company, an Illinois limited liability company, its managing member

By:   
Name: Stephen G. Hearn  
Its: Managing Member

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ACKNOWLEDGMENT

STATE OF Illinois )  
COUNTY OF Cook ) SS.

I, Debra G. Evensen, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Stephen J. Hagan, the President of SGH Limited Liability Company, an Illinois limited liability company, the managing member of Church Street L.L.C., personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25th day of June, 1998.

Debra G. Evensen  
Notary Public

My Commission Expires:



Debra G. Evensen, Notary Public, Cook County Clerk's Office



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## EXHIBIT A

Legal Description

## PARCEL 1:

THAT PART OF LOTS 6, 7, 8, 9, 10, 11 AND 12 (INCLUDING PART OF THE EAST AND WEST VACATED ALLEY SOUTH OF LOT 6 AND NORTH OF LOTS 7 TO 11), EXCEPTING THEREFROM THAT PART OF SAID LOTS 11 AND 12 DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 12; THENCE WEST ALONG THE SOUTH LINE OF SAID LOT, 14.0 FEET; THENCE NORTHWESTERLY TO A POINT ON THE NORTH LINE OF SAID LOT 11 WHICH IS 5.0 FEET WEST OF THE NORTHEASTERLY LINE THEREOF; THENCE EAST 5.0 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 11, BEING ALSO THE WESTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID LOTS 11 AND 12 TO THE POINT OF BEGINNING, ALL IN BLOCK 3 OF E.A. PRATT'S ADDITION TO EVANSTON, BEING A SUBDIVISION OF THAT PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF RIDGE ROAD AND WEST OF THE CHICAGO AND NORTHWESTERN RAILROAD, IN THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS; SAID LOTS, PARTS OF LOTS AND VACATED ALLEY TAKEN AS A SINGLE TRACT AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 6 AND THE EAST LINE OF OAK AVENUE, 171.50 FEET NORTH OF THE SOUTHWEST CORNER OF LOT 7 IN SAID BLOCK 3; THENCE EAST PARALLEL TO THE NORTH LINE OF CHURCH STREET, 148.0 FEET; THENCE NORTH PARALLEL TO THE EAST LINE OF OAK AVENUE, 15.0 FEET; THENCE EAST PARALLEL TO THE NORTH LINE OF CHURCH STREET, 57.51 FEET TO THE EAST LINE OF LOT 6, BEING ALSO THE WESTERLY LINE OF THE RIGHT OF WAY OF SAID CHICAGO AND NORTHWESTERN RAILWAY COMPANY; THENCE SOUTHEASTERLY ALONG THE EASTERLY LINE OF SAID LOT 6 AND SOUTH WASTERLY LINE EXTENDED SOUTH, 70.40 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 11; THENCE WEST ON THE NORTH LINE OF SAID LOT 11, 5.0 FEET; THENCE SOUTHEASTERLY TO A POINT ON THE SOUTH LINE OF SAID LOT 12 WHICH IS 14.0 FEET WEST OF THE SOUTHEAST CORNER THEREOF; THENCE WEST ON THE SOUTH LINES OF SAID LOTS 7, 8, 9, 10, 11 AND 12 AND THE NORTH LINE OF CHURCH STREET, 311.14 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7 AND THE EAST LINE OF OAK AVENUE; THENCE NORTH, 171.50 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

THAT PART OF LOTS 1, 2, 3, 4, 5, AND 6 (TAKEN AS A SINGLE TRACT) IN BLOCK 3 OF E.A. PRATT'S ADDITION TO EVANSTON, BEING A SUBDIVISION OF THAT PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF RIDGE ROAD AND WEST OF THE CHICAGO AND NORTHWESTERN RAILROAD, IN THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 6 AND THE EAST LINE OF OAK AVENUE, 171.50 FEET NORTH OF THE SOUTHWEST CORNER OF LOT 7 IN SAID BLOCK 3; THENCE EAST PARALLEL TO THE NORTH LINE OF CHURCH STREET, 148.0 FEET; THENCE NORTH

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PARALLEL TO THE EAST LINE OF OAK AVENUE, 13.0 FEET; THENCE EAST PARALLEL TO THE NORTH LINE OF CHURCH STREET, 87.51 FEET TO THE EAST LINE OF SAID LOT 6, BEING ALSO THE WESTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY; THENCE NORTHWESTERLY ALONG THE EASTERLY LINE OF SAID LOTS 1, 2, 3, 4, 5, AND 6, 382.62 FEET TO THE NORTHEAST CORNER OF SAID LOT; THENCE WEST 8.26 FEET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE SOUTH ON THE EAST LINE OF OAK AVENUE, 317.22 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT APPURTENANT TO AND FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT AGREEMENT BY AND BETWEEN AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED FEBRUARY 1, 1963 AND KNOWN AS TRUST NUMBER 86801, GRANTOR, AND AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 1982 AND KNOWN AS TRUST NUMBER 85371, GRANTEE, DATED MARCH 1, 1983 AND RECORDED MARCH 16, 1983 AS DOCUMENT NUMBER 26538092 AND FILED AS DOCUMENT NUMBER LR3298366 AND AMENDMENT NO. 1 TO EASEMENT AGREEMENT DATED AUGUST 1, 1985 AND RECORDED AUGUST 18, 1985 AS DOCUMENT NUMBER 88149741, AMENDMENT NO. 2 TO EASEMENT AGREEMENT DATED \_\_\_\_\_, 1998 MADE BY OAK STREET LLC, AN ILLINOIS LIMITED LIABILITY COMPANY, SUCCESSOR TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 1, 1963 AND KNOWN AS TRUST NUMBER 86801 AND THE CHURCH STREET L.L.C., BEING THE SUCCESSOR TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 1982 AND KNOWN AS TRUST NUMBER 85371, RECORDED \_\_\_\_\_, 1998 AS DOCUMENT 98 \_\_\_\_\_; FOR AUTOMOBILE AND VEHICULAR PARKING PURPOSES OVER AND ACROSS THE FOLLOWING DESCRIBED PROPERTY:

LOTS 1 AND 2 (EXCEPT THE WESTERLY 31 FEET), LOT 3 (EXCEPT THE WESTERLY 11 FEET OF THE NORTHERLY 12 FEET), LOTS 4 AND 5 AND THE NORTH 2 FEET OF LOT 6 AND ALL OF LOTS 16, 17, 18, 19 AND 20 AND 21 (EXCEPT THAT PART OF LOT 21 WHICH LIES NORTH AND EAST OF A STRAIGHT LINE DRAWN FROM THE SOUTHEAST CORNER OF SAID LOT 21 TO A POINT ON THE NORTH LINE OF AND 50 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 21), THE VACATED NORTH AND SOUTH PUBLIC ALLEY LYING BETWEEN SAID LOTS 1 TO 6 INCLUSIVE AND LOTS 16 TO 21 INCLUSIVE; THAT PART OF THE VACATED SOUTH 8 FEET OF CLARK STREET WHICH LIES EAST OF THE WEST LINE OF SAID LOTS 1 TO 6 INCLUSIVE EXTENDED IN A NORTHEASTERLY DIRECTION AND WEST OF THE SAID LINE DRAWN FROM THE SOUTHEAST CORNER OF SAID LOT 21 TO A POINT ON THE NORTH LINE OF AND 50 FEET WEST OF THE NORTHEAST CORNER OF SAID LOT 21 EXTENDED IN A NORTHWESTERLY DIRECTION; ALSO LOTS A, B, C AND D (EXCEPT THE WEST 25 FEET OF LOT D) IN GROVER AND CURREY'S SUBDIVISION OF LOTS 6, 7 AND 8 (EXCEPT THE NORTH 2 FEET OF LOT 8 THEREOF) ALL OF THE AFORESAID PROPERTY BEING LOCATED IN BLOCK 2 IN E.A. PRATT'S ADDITION TO EVANSTON, A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF RIDGE ROAD AND WEST OF MILWAUKEE DIVISION OF THE CHICAGO AND NORTHWESTERN RAILWAY, IN COOK COUNTY, ILLINOIS.

Address: 1007 Church Street, Evanston, Illinois 60201

PIN No.: 11-18-123-012-0000

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**EXHIBIT B**

**Permitted Encumbrances**

1. Real estate taxes not yet due and payable.
2. Terms, provisions and conditions relating to the Parking Easement described as Parcel 3 contained in the instrument creating such easement.
3. Rights of the City of Evanston relative to maintenance of underground transformer vault and basement space under sidewalk on the east side of Oak Avenue as disclosed by Document No. 14851344.
4. Encroachment of patio area and a concrete slab onto property adjoining on the north, as shown on survey by B.H. Suhr & Company No. 85-281.

(Affects Parcel 1)

License Agreement dated August 1, 1985 recorded August 16, 1985 as Document No. 85149740 by and between American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated February 1, 1983 known as Trust No. 56801, and American National Bank and Trust Company of Chicago as Trustee under Trust Agreement dated June 1, 1982 known as Trust No. 55371 relating to encroachment noted above.

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## NOTE

THIS NOTE (the "Note") dated as of \_\_\_\_\_, 1998, is made and executed in Chicago, Illinois, by THE CHURCH STREET L.L.C., an Illinois limited liability company ("Mortgagor"), is in the original principal amount of \$11,000,000, with interest as provided herein, and is payable to the order of SANWA BUSINESS CREDIT CORPORATION ("Lender").

## RECITALS

I. Lender has agreed, subject to certain terms and conditions, to make a loan to Mortgagor in an amount not to exceed the principal amount hereof (the "Loan"). A portion of the proceeds of the Loan in the amount of \$9,000,000 (the "Initial Disbursement") is being funded as an initial disbursement. The balance of the proceeds of the Loan in the amount of \$2,000,000 (the "Subsequent Advances") shall be disbursed periodically in accordance with the terms of that certain Loan Agreement by and between Mortgagor and Lender of even date herewith (the "Loan Agreement") to pay the cost of certain tenant improvements and leasing commissions contemplated in the Loan Agreement. This Note evidences Mortgagor's unconditional obligation to repay the Loan.

II. The payment of this Note is secured by (a) a Mortgage and Security Agreement (the "Mortgage") executed by Mortgagor on certain real estate in Cook County, Illinois (the "Mortgaged Property") of even date herewith; (b) an Assignment of Leases and Rents pertaining to the Mortgaged Property of even date herewith; and (c) a Security Agreement of even date herewith. This Note, the Mortgage, and the Loan Agreement together with any and all other agreements, mortgages, security agreements, assignments of leases and rents, guaranties, reimbursement agreements executed in connection with any letters of credit issued by Lender at the request of Mortgagor and any other documents and instruments now or hereafter executed and delivered in connection with the Loan, and any and all amendments, renewals, extensions and replacements hereof and thereof, are hereafter collectively referred to herein as the "Loan Instruments." The terms of the other Loan Instruments are hereby incorporated, by reference, in this Note.

## I PAYMENT TERMS

### 1.1. The Promise to Pay.

(a) **Initial Disbursement.** Mortgagor hereby promises to pay to the order of Lender the principal amount of the Initial Disbursement or such lesser amount of the Initial Disbursement as may be outstanding hereunder, together with interest on the principal amount of the Initial Disbursement from time to



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time outstanding at a fixed rate per annum of seven and one-half percent (7.50%) (the "Initial Disbursement Interest Rate").

(b) **Subsequent Advances.** Mortgagor hereby promises to pay to the order of Lender the principal amount of the Subsequent Advances made from time to time, or such lesser amount as may be outstanding hereunder, together with interest on the principal amount of the Subsequent Advances from time to time outstanding, for such Interest Period (as hereinafter defined) as Mortgagor may from time to time elect, at a fixed rate per annum equal to 2.25% above the LIBOR Rate (as hereinafter defined) determined on the date and as hereinafter provided. For the purposes of this Note, the LIBOR Rate is the London Interbank Offered Rate (rounded upwards to the nearest whole multiple of 1/16th of 1%) ("LIBOR Rate") as quoted on page No. 3750 of the Telerate Data Information Service, on the second business day prior to the LIBOR Reset Date (as defined herein), for obligations of U.S. dollars with maturities of thirty (30), ninety (90), one hundred eighty (180) or three hundred sixty (360) days. If the Telerate System page is unavailable on the date which is two business days prior to the next LIBOR Reset Date due to technical malfunction or discontinuation of such service, the LIBOR Rate used shall be determined by Lender to be the arithmetic mean (rounded upwards to the nearest whole multiple of 1/16th of 1%) of the offered rates quoted in London, England through other verifiable sources, for deposits in U.S. dollars in amounts substantially equal to the maximum principal amount of the Subsequent Advances having a thirty (30), ninety (90), one hundred eighty (180) or three hundred sixty (360) day maturity by prime banks in the London inter-bank market at 11:00 a.m. London Time, two business days prior to the beginning of such LIBOR Reset Date. As used herein, the "LIBOR Reset Date" shall mean, from time to time, either the date of the first disbursement of all or any of the proceeds of the Loan (the "Disbursement Date"), or the date on which the then current LIBOR Rate expires. Mortgagor acknowledges that Lender has made no representations that the LIBOR Rate (or any other rate) is the interest rate actually charged on other loans of Lender or is the lowest interest rate charged on other loans of Lender. Any designation made by Mortgagor in accordance with the terms of this Section 1.1(b) is hereinafter referred to as a "LIBOR Election." The term "Interest Period" shall mean the period commencing on the date that a LIBOR Election goes into effect and ending, at the option of Mortgagor, thirty (30), ninety (90), one hundred eighty (180) or three hundred sixty (360) days thereafter; provided, however, that (i) in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date on which the next preceding Interest Period expires and (ii) if any Interest Period would otherwise end on a day that is not a business day, such Interest Period shall be extended to the next succeeding business day unless the result of such extension would be to extend such Interest Period into another calendar month, in which event such Interest Period

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shall end on the immediately preceding business day. The term "business day" shall mean any day that Lender is open for business. A notice of a LIBOR Election given by Mortgagor shall set forth (i) a portion of the outstanding principal balance of the Loan, and (ii) the period of time, either thirty (30), ninety (90), one hundred eighty (180) or three hundred sixty (360) days thereafter, as available to Lender, but in no event shall the period of time extend past the Maturity Date (as hereinafter defined). A LIBOR Election shall be made by Mortgagor's delivery to Lender of such written notice executed by Mortgagor (which written notice may be delivered to Lender by telecopy notwithstanding the provisions of Section 2.6 hereof) prior to the date that such LIBOR Election is to take effect. Notwithstanding anything to the contrary herein, if an Event of Default (as hereinafter defined) shall have occurred hereunder or under any other Loan Instrument and is continuing, or if any event, fact or circumstance shall have occurred and be continuing which, with the giving of notice or the passage of time, would constitute an Event of Default, then Mortgagor shall have no right to make any LIBOR Election. If Mortgagor shall have made a LIBOR Election and Lender determines (which determination shall be conclusive and binding upon Mortgagor) either that (i) by reason of circumstance affecting the Interbank eurodollar market adequate and reasonable means do not exist for ascertaining the LIBOR Rate applicable for the next succeeding Interest Period as set forth above, or (ii) United States Dollar Deposits in immediately available funds are not readily available to Lender for delivery on the first day of any Interest Period, then, notwithstanding anything to the contrary herein, such LIBOR Election shall not be effective and the portion of the Subsequent Advances designated in Mortgagor's notice shall bear interest at a floating rate equal to the Prime Rate of interest announced from time to time by Citibank or any other bank designated by Lender (the "Prime Rate"), which rate shall change as and when the Prime Rate changes, Lender not being required to give Mortgagor notice of such change. In no event shall there be more than one LIBOR Election in effect at any one time. Any portion of the outstanding principal balance of the Subsequent Advances for which no LIBOR Election is in effect shall bear interest at the floating Prime Rate. Notwithstanding the foregoing, in the event that the Disbursement Date occurs on a day which is not the first day of the calendar month, the first Interest Period designated by Mortgagor shall be for the number of days remaining in the calendar month in which the Disbursement Date occurs.

## **1.2. Special Provisions Regarding Interest Rate.**

(a) All payments made by Mortgagor on account of the Loan shall be made free and clear of, and without deduction for or on account of, any present or future stamp or other taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions of any nature whatsoever

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now or hereafter imposed, levied, collected, withheld or assessed by any country (or by any political subdivision or taxing authority thereof or therein), excluding income and franchise taxes now or hereafter imposed by the United States or any political subdivision or taxing authority thereof or therein (such non-excluded taxes being called "Taxes"). If any Taxes are required to be withheld from any amounts payable to Lender pursuant to the Loan Instruments, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified herein. Whenever any Taxes are payable by Mortgagor, as promptly as possible thereafter Mortgagor shall send to Lender an original official receipt showing payment thereof. Mortgagor shall indemnify Lender for any incremental taxes, interest or penalties that may become payable by Lender as a consequence of the failure of Mortgagor to deliver to Lender an original official receipt thereof upon delivery of same to Mortgagor. Mortgagor shall indemnify Lender for and hold Lender harmless from any present or future claim of liability for any registration charge or any stamp, excise or similar taxes, including any interest equalization tax, and any penalties or interest with respect thereto, that may be imposed by any jurisdiction in connection with the Loan.

(b) Notwithstanding any other provisions herein, if any requirement of law, regulation, order, decree, treaty or directive or any change therein or in the interpretation or application thereof becoming effective after the date hereof makes it unlawful for Lender to make, calculate, convert to or maintain loans at a rate based on the LIBOR Rate, (i) the commitment of Lender hereunder to make, calculate, convert to or maintain the Subsequent Advances, or any portion thereof, at a rate based on the LIBOR Rate shall be canceled and (ii) the interest rate on the Loan shall, on the earlier to occur of the last day of the then current Interest Period, if any, or the last date on which Lender shall lawfully be permitted to maintain the Subsequent Advances portion of the Loan, be converted automatically to the floating Prime Rate. Mortgagor shall pay Lender promptly, upon its demand, any Breakage Costs (as hereinafter defined) incurred by Lender in making any conversion in accordance with this subsection. If any such event shall occur, then, notwithstanding anything to the contrary herein, Mortgagor may, at its election, pay the entire indebtedness evidenced by this Note without premium, penalty or prepayment fee.

(c) If, after the date hereof, there shall become effective any change in any law or regulation, or in the application or interpretation thereof by a governmental authority, which imposes upon Lender or upon the London Interbank market any penalty with respect to any of the foregoing, or any other condition with respect to the Subsequent Advances portion of the Loan, and the result of any of the foregoing shall be an increase in the actual cost to Lender of providing Mortgagor with a rate of interest based on the LIBOR Rate, or to

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reduce the amount of any payment (whether of principal or interest or otherwise) received or receivable by Lender, or to require Lender to make any payment in connection with the LIBOR Elections then in effect, in each case by or in an amount which Lender, in its sole discretion, shall deem material, then, in each such case, Mortgagor shall pay to Lender (without benefit of, or credit for, any prorations, exemption, credits or other offsets available under any such laws, treaties, regulations, guidelines or interpretations thereof) such amount as shall be necessary to compensate Lender for such cost, reduction or payment or, at Mortgagor's option, Mortgagor may pay the entire indebtedness evidenced by this Note without premium, penalty or prepayment fee.

(d) In the event that any payment of any portion of the outstanding principal balance of the Subsequent Advances bearing interest at a rate based on the LIBOR Rate is prepaid or is paid on a date other than the last day of the applicable Interest Period for any reason, whether or not such payment is required or permitted by any provisions of any of the Loan Instruments, or in the event that Mortgagor fails to proceed with a LIBOR Election, then Mortgagor shall pay to Lender a fee, reasonably determined by Lender (which shall, absent manifest error, be presumed correct and binding) equal to all losses, costs, expenses, charges or penalties (including any loss of profit) which Lender sustains in breaking or unwinding any LIBOR Rate funding contract, including any "swap" contract or other interest rate protection contract relating thereto, including without limitation all losses, costs, expenses, charges or penalties incurred by reason of the liquidation or re-employment of deposits or other funds acquired or contracted to be acquired by Lender to give effect to any LIBOR Election or by reason of any contract or agreement to acquire such deposit or other funds or the re-lending or re-investing of such deposits or amounts paid or prepaid to Lender and all actual out-of-pocket expenses which Lender sustains or incurs in connection with such payment (the fee equal to all such losses, costs, expenses, charges or penalties being hereinafter referred to as the "Breakage Costs"). Notwithstanding the foregoing or any thing to the contrary in this Note, no Breakage Costs shall be payable if the applicable Interest Period is thirty (30) days.

(e) Lender may, from time to time, deliver to Mortgagor one or more remittance forms setting forth the amounts due to Lender under this Section 1.2. Such remittance forms shall be conclusive and binding upon Mortgagor with respect to the amounts set forth therein in the absence of manifest error. Mortgagor shall pay to Lender the amounts shown as due on any such remittance form within five (5) days following the date such notice is given. No failure on the part of Lender to request payment under this Section 1.2 shall constitute a waiver of Lender's right to demand such compensation on any other occasion.



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(f) At any time subsequent to the final disbursement of the Subsequent Advances, Mortgagor may, upon thirty (30) days written notice to Lender, fix the interest rate payable on the Subsequent Advances at a rate equal to the Treasury Note Rate plus two percent (2%). The term "Treasury Note Rate" means a fixed rate of interest equal to the "This Week" rate for U.S. Treasury Notes, Constant Maturity Yields with a term closest to but not less than the term of the Loan in Statistical Release H.15 (519) published by the Board of Governors of the Federal Reserve System for the week in which the Disbursement Date occurs. In the event the Board of Governors ceases publishing H.15(519), the applicable Treasury Note Rate will be determined using a comparable index chosen by Lender in good faith. In the event Mortgagor exercises this option, Mortgagor and Lender shall amend this Note and such other Loan Instruments as are necessary to reflect the new interest rate to be paid on the Subsequent Advances.

1.3. **Payment Terms.** Payments of principal and interest, if not sooner declared to be due in accordance with the provisions hereof, shall be made as follows:

(a) Commencing on the first day of the second full calendar month following the Disbursement Date (the "First Payment Date"), and on the first day of each calendar month occurring thereafter for the next succeeding eleven (11) calendar months, Mortgagor shall pay an installment of interest only on the principal balance of the Initial Disbursement and the Subsequent Advances from time to time outstanding;

(b) On the first anniversary of the First Payment Date and on the first day of each calendar month occurring thereafter until the principal balance hereof is paid in full, Mortgagor shall make successive monthly installment payments of principal (in accordance with the amortization schedule attached hereto as Schedule 1), together with interest thereon at the rate or rates set forth herein; and

(c) On June 30, 2003, the entire outstanding principal balance of the Loan and all accrued but unpaid interest thereon, together with all fees and charges payable under the Loan Instruments. The maturity date in effect from time to time in accordance with the terms of this Note is hereinafter referred to as the "Maturity Date."

All payments shall be applied first to any late charges payable hereunder, then in reduction of any sums advanced by Lender to satisfy any obligation of Mortgagor under any of the Loan Instruments, then in reduction of any prepayment fee payable under Section 1.5 of this Note, next in reduction of accrued interest due on the Loan in such order and manner as Lender may elect and then to principal in such order and manner as Lender may elect. Interest on the disbursement of proceeds of the Loan shall accrue from the Disbursement Date and shall be

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computed on the basis of a three hundred sixty (360) day year and charged for the actual number of days elapsed.

**1.4. Option to Extend.** At the election of Mortgagor, the Maturity Date of the Loan may be extended for one (1) five year period, from June 30, 2003 through June 30, 2008, by the delivery of a written notice by Mortgagor to Lender given not later than ninety (90) days prior to the Maturity Date then in effect, accompanied by the payment of an extension fee of one-half of one percent (0.50%) of the outstanding principal balance of the Loan calculated as of the date such notice is given, provided that Lender is satisfied in its sole and absolute discretion that (i) no Event of Default under and as defined in this Note or any of the other Loan Instruments has occurred prior to the Maturity Date then in effect and there is no event, fact, or circumstance which, with the giving of notice or passage of time, would become an Event of Default under and as defined in this Note or any of the other Loan Instruments prior to the Maturity Date then in effect, (ii) Lender is satisfied in its sole and absolute discretion that the projected "debt service coverage ratio" for the elected one year extension period, as determined by Lender, shall be no less than 1.15:1, and (iii) Shand Morahan & Company shall have extended the term of its lease existing on the date hereof (the "Shand Morahan Space") to at least April 30, 2010 on terms and conditions satisfactory to Lender or, if such lease shall not have been extended as herein provided, Mortgagor shall have leased the Shand Morahan Space to one or more new tenants on terms and conditions acceptable to Lender in its sole and absolute discretion. The term "debt service coverage ratio" shall mean the projected annual net operating income of the Mortgaged Property, as determined by Lender, less an amount equal to \$1.00 per square foot for 153,271 rentable square feet for tenant improvements, leasing commissions and capital expenditures, divided by the amount of annual debt service payable by Mortgagor for such period. No election made by Mortgagor under this Section 1.4 shall be effective unless and until Lender shall have given Mortgagor a notice confirming the extension of the Maturity Date on or prior to the Maturity Date then in effect. If Mortgagor's election to extend is not confirmed, Lender shall return any extension fee received by Lender.

**1.5. Payment Prior to Maturity Date.** Subject to the provisions contained herein, Mortgagor shall have the right to prepay this Note, in whole but not in part, upon not less than thirty (30) days advance written notice to Lender specifying the date of prepayment (which date shall be the first day of a calendar month), provided that such prepayments are accompanied by the prepayment fee set forth below. Except for Involuntary Prepayments (as defined herein), if, during the term of this Note, Mortgagor shall prepay the indebtedness due Lender hereunder, whether voluntarily or involuntarily and whether before or after acceleration of such indebtedness, Mortgagor shall pay to Lender, as liquidated damages, an amount equal to (i) 3% of the amount prepaid in the first Loan Year (defined below); or (ii) 2% of the amount prepaid in the second Loan Year, as applicable; or (iii) 1% of the amount prepaid in the third Loan Year or any subsequent Loan Year up to and until the ninetieth (90th) day prior to the Maturity Date, as applicable. Thereafter, no prepayment fee shall be payable. All prepayments made by Mortgagor hereunder shall be applied to scheduled monthly installments of principal payable hereunder in the inverse order of the

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maturity thereof. For purposes hereof, the term "Involuntary Prepayments" shall mean all prepayments of principal due to the application of proceeds from the casualty loss and eminent domain provisions contained herein and in the Loan Instruments. For purposes hereof, the term "Loan Year" shall mean initially, that period of time commencing on the Disbursement Date and ending one day prior to the first anniversary of the Disbursement Date, and thereafter each period of one year commencing on the day after the last day of the immediately preceding Loan Year and ending one day prior to the anniversary of such date. Without limitation of the foregoing, all prepayments shall include any applicable Breakage Costs. In addition to the foregoing, provided no Event of Default under and as defined in this Note or any of the other Loan Instruments has occurred prior to the Maturity Date then in effect and there is no event, fact or circumstance which, with the giving of notice or the passage of time, would become an Event of Default under and as defined in this Note or any of the other Loan Instruments prior to the Maturity Date then in effect, on or after the first (1st) day of the third Loan Year, Mortgagor may refinance the Loan through Lender's conduit loan program on a best efforts basis (provided such program is available) at par without a prepayment fee.

1.6. **Place and Manner of Payment.** The payment of all amounts due under this Note and under the Mortgage shall be made in immediately available funds and shall be deemed received only when actually received by Lender at One South Wacker Drive, Chicago, Illinois 60606-4617. Payments received after 1:00 p.m. in said location shall be deemed received on the next day Lender is open for business. At Lender's option, Lender may accept payments by check or in form other than immediately available funds, but such payments shall be accepted subject to collection and, at Lender's option, shall be deemed received only when collected. Acceptance by Lender of payments in other than immediately available funds shall not constitute a waiver by Lender of its rights to insist that any subsequent payment be made in immediately available funds.

1.7. **Late Payment Fee.** In the event any payment due hereunder or any payment or deposit due under the Mortgage is not made within five (5) days of the date when due, Lender, at its option and in addition to any other remedy available to Lender, may impose a late payment fee, which Mortgagor covenants to pay upon demand, in an amount equal to five percent (5%) of the amount of such delinquent payment. Any payment or deposit received by Lender may, at the option of Lender, be applied first to any accrued but unpaid late payment fee and then as otherwise provided in this Note or in any of the Loan Instruments.

## II ADDITIONAL COVENANTS

2.1. **Acceleration.** If any payment due under this Note is not made within five (5) days following the due date thereof, such failure to pay shall be an "Event of Default" under this Note. If an Event of Default shall occur hereunder or under and as defined in any of the Loan Instruments, or if the right to foreclose the Mortgage shall accrue to the holder

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thereof (whether or not foreclosure proceedings have been commenced), then, at the election of the holder of this Note and without notice, the unpaid principal sum, together with accrued interest thereon, shall at once become due and payable and, notwithstanding anything to the contrary herein, shall bear interest at the Disbursement Funds Interest Rate chargeable plus five percent (5%) (the "Default Rate"). Lender may, and Mortgagor hereby authorizes Lender to, charge any account of Mortgagor held by Lender and apply any and all balances, credits, deposits, accounts, monies, certificates of deposit, cash equivalents and other assets of or in the name of Mortgagor held by Lender to the indebtedness evidenced hereby, and Lender may pursue all its rights and remedies against Mortgagor under the Loan Instruments.

2.2. **Waivers.** Mortgagor and any other parties hereafter liable for the debt (including, without restricting the foregoing, any endorsers, sureties and guarantors) represented by this Note, hereby (a) waive presentment for payment, notice of dishonor, protest and notice of protest, and (b) agree that the time of payment of that debt or any part thereof may be extended from time to time without modifying or releasing the lien of the Loan Instruments or the liability of Mortgagor or any such other parties, the right of recourse against any such parties being hereby reserved by the holder hereof.

2.3. **Collection.** In the event of a default in the payment of any amount due hereunder, the holder hereof may exercise any remedy or remedies, in any combination whatsoever, available by operation of law or under any instrument given as security for this Note and such holder shall be entitled to collect its reasonable costs of collection, including attorneys' fees, which shall be additional indebtedness hereunder. For purposes of the preceding sentence, Lender's attorneys' fees shall be deemed to include compensation to staff counsel, if any, of Lender in addition to the fees of any other attorneys engaged by Lender.

2.4. **Consent to Jurisdiction.** This Note has been delivered for acceptance by Lender in Chicago, Illinois and shall be governed by and construed in accordance with the internal laws (as opposed to the conflicts of law provisions) of the State of Illinois. Mortgagor hereby (i) waives any right to a trial by jury in any action or proceeding arising from or related to this Note or any of the Loan Instruments, (ii) irrevocably submits to the jurisdiction of any state or federal court located in Cook County, Illinois, over any action or proceeding arising from or related to this Note or any of the Loan Instruments, (iii) irrevocably waives, to the fullest extent Mortgagor may effectively do so, the defense of an inconvenient forum to the maintenance of any such action or proceeding, (iv) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law and (v) agrees not to institute any legal action or proceeding against Lender or any of Lender's directors, officers, employees, agents or property in any court other than one located in Cook County, Illinois. Nothing in this paragraph shall affect or impair Lender's right to serve legal process in any action or proceeding against Mortgagor or its property (including, but not limited to, the Mortgaged Property) in the courts of any other jurisdiction.



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**2.5. Severability.** If any term, restriction or covenant of this instrument is deemed illegal or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstance is deemed illegal, the application of such term, restriction or covenant to other persons and circumstances shall remain unaffected to the extent permitted by law.

**2.6. Notices.** All notices, requests, reports, demands or other instruments required or contemplated to be given or furnished under this Note to Mortgagor or Lender shall be in writing and shall be personally delivered, sent by overnight courier, sent by United States certified or registered mail, return receipt requested, or sent by United States first class mail, addressed to the parties at the following addresses:

If to Lender: Sanwa Business Credit Corporation  
One South Wacker Drive  
Chicago, Illinois 60606  
Attention: Mr. Leonard Dzielski

With a copy to: Goldberg, Kohn, Bell, Black,  
Rosenbloom & Moritz, Ltd.  
55 East Monroe Street, Suite 3700  
Chicago, Illinois 60603  
Attention: Carole K. Towne, Esq.

If to Mortgagor: The Church Street L.L.C.  
1007 Church Street  
Evanston, Illinois 60201  
Attention: Mr. Stephen G. Hearn

With a copy to: Charles H. Braun & Associates, Ltd.  
100 North LaSalle Street, Suite 2500  
Chicago, Illinois 60602  
Attention: Charles H. Braun, Esq.

Notices shall be deemed received on the earlier of (i) three days after deposit, postage prepaid, in the United States mail, if sent by United States, first class, certified, or registered mail, (ii) the next day after delivery to an overnight courier, expenses prepaid, or (iii) the date of actual delivery if delivered by hand. Any party may change the address to which any such notice is to be delivered by furnishing written notice of such change to the other party in compliance with the foregoing provisions.

**2.7. Business Loan.** Mortgagor represents that the proceeds of the indebtedness evidenced by this Note will be used to further the business purposes and business objectives of Mortgagor in connection with a parcel of real estate owned and

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operated by it in Hoffman Estates, Illinois. Mortgagor further represents that the loan evidenced by this Note and secured by the Mortgage is a business purpose loan in accordance with 815 ILCS 205/4(1)(c), Illinois Compiled Statutes. Mortgagor further represents that no proceeds of the indebtedness evidenced by this Note will be used to purchase or carry any margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any margin stock.

2.8. **Governing Law.** This Note shall be governed by the laws of the State of Illinois.

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IN WITNESS WHEREOF, the undersigned has executed this Note as of the date first above written.

**THE CHURCH STREET L.L.C., an Illinois limited liability company**

**By: SGH Limited Liability Company,  
an Illinois limited liability company,  
its managing member**

**By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Managing Member**

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