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Cook County Recorder

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MORTGAGE

THIS INDENTURE, made as of the first day of July, 1998, by Diamond Properties, Inc., an Illinois corporation (hereinafter referred to as "Mortgagor"), to and for the benefit of Elizabeth Bucchi, Trustee of the Elizabeth Bucchi Self Declaration of Trust dated August 26, 1994, having its principal place of business at Wildspring Court, Unit 10-1, Itasca, Illinois 60143 (hereinafter referred to as "Mortgagee");

DEC CC125043 mc

WITNESSETH:

Mortgagor is justly indebted to Mortgagee in the principal sum of Seven Hundred Eighty-Five Thousand Dollars (\$785,000.00) evidenced by a certain Mortgage Note (the "Note") of even date herewith in that amount, made by Mortgagor which Note Mortgagor promises to pay the said principal sum and interest in the manner and at the rate as provided therein, and which Note is personally and unconditionally guaranteed by the Guarantors (as such term as defined in the Note). The unpaid principal amount and all accrued and unpaid interest due under the Note, if not sooner paid, shall be due on June 1, 2013. All such payments on account of the indebtedness evidenced by the Note shall be first applied to interest on the unpaid principal balance and the remainder to principal and all of said principal and interest being made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, 288 Wildspring Court, Itasca, Illinois 60143. 22

NOW, THEREFORE, Mortgagor, to secure: (i) the payment of said principal sum of money and all interest and other indebtedness evidenced by the Note, together with any extensions, renewals or refinancings thereof, (ii) the performance and observance of the covenants, conditions and agreements contained in the Note, this Mortgage and the Loan Documents (as hereinafter defined); and (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the Loan Documents with interest thereon as provided herein or therein; and also in consideration of the sum of Ten Dollars (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto Mortgagee, its successors and assigns, the real estate and all of its estate, right, title and interest therein situated, located in the City of Hoffman Estates, Cook County, Illinois and legally described on attached Exhibit "A" which together with the property hereinafter described, is referred to herein as the "Land":

TOGETHER with all buildings and improvements now or hereafter constructed upon or erected upon or located on the real estate legally described in Exhibit "A" attached hereto, all tenements, easements, rights-of-way and rights used as a means of access thereon, fixtures and appurtenances thereto now or hereafter belonging or pertaining to the real estate legally described in Exhibit "A" attached hereto, and all rents, issues royalties, income, proceeds, profits and other benefits thereof for so long and during all such times as Mortgagor may be entitled thereon (which are pledged primarily and on a parity with said real estate and not secondarily), and all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain and drapery fixtures, partitions, attached floor covering, now or hereafter

This instrument was prepared
by and, after recording, return to:
Attorney Michael J. Polachek
Damali, Polachek & Krantz
2121 West Army Trail Road, Suite 105
Addison, Illinois 60101

Permanent Index No.
07-15-200-032
Street Addresses:
105 E. Golf Road
Hoffman Estates, Illinois 60173

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therein or thereon, and all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing): all fixtures, apparatus, equipment and articles other than such as constitute trade fixtures used in the operation of any business conducted upon the Land as distinguished from fixtures which relate to the use, occupancy and enjoyment of the Land and other than such as are owned by any tenant of all or any portion of the Land, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared, to the maximum extent permitted by law, to form a part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby.

TO HAVE AND TO HOLD the Land unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Land after any Event of Default (as hereinafter defined).

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.** Mortgagor represents to and covenants with Mortgagee that (a) Mortgagor holds fee simple title to the Land, free and clear of all liens and encumbrances, except such liens and encumbrances as shall have been expressly approved in writing by Mortgagee, and (b) Mortgagor has power and authority to mortgage and convey the Land.
2. **Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, etc.** Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Land which may become damaged or be destroyed; (b) keep the Land in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, subject to Mortgagor's right to contest the same by appropriate legal proceedings diligently prosecuted, but only if Mortgagor shall furnish to the title company such security or indemnity as the title company requires to induce it to issue an endorsement to the title policy insuring over the exception created by such lien; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Land superior or inferior to the lien hereof (no such superior or inferior lien to be permitted hereunder), and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) complete within a reasonable time any buildings or buildings now or at any time in process of construction upon the Land; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Land, and the use, development and sale thereof, including without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) make no structural or non-structural alterations to the Land or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Mortgagee; (g) not permit the Land to be used other than for manufacturing plant purposes without the prior written consent of Mortgagee; (h) initiate or acquiesce in no zoning reclassification without the prior written consent of Mortgagee; (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note; and (j) duly perform and observe all of the covenants, terms, provisions and agreements herein, in the Note or in the Loan Documents on the part of Mortgagor to be performed and observed. As used in this Paragraph and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Note, or sums at any time secured by this Mortgage.

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3. **Payment of Taxes and Assessments.** Mortgagor shall pay before any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges and all other liens or charges levied or assessed against the Land, and any interest thereon, of any nature whatsoever when due, and shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to delinquency. With respect to any tax or assessment which Mortgagor may desire to contest, Mortgagor shall pay such tax or assessment in full under protest in order to prevent a default under this Mortgage on account thereof.

4. **Tax Deposits.** Upon the occurrence of an Event of Default and upon Mortgagee's request, Mortgagor covenants and agrees to deposit with Mortgagee monthly until the indebtedness secured by this Mortgage is fully paid, a sum equal to (i) one-twelfth (1/12th) of the annual taxes and assessments for the last ascertainable year (general and special) on the Land (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed), and (ii) one-twelfth (1/12th) of the annual premiums payable for the insurance required to be maintained in accordance with Paragraph 6 hereof. In addition to the foregoing, if requested by Mortgagee, Mortgagor shall deposit with Mortgagee an amount of money, which together with the aggregate of the monthly deposits to be made pursuant to (i) above as of one month prior to the date on which the total annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full the total annual taxes and assessments estimated by Mortgagee to become due and payable with respect to the Land for the current calendar year, and an amount of money, when together with the aggregate deposits to be made pursuant to (ii) above as of one month prior to the date on which the next annual insurance premium becomes due, shall be sufficient to pay in full the annual insurance premium estimated by Mortgagee to next become due and payable with respect to the Land. Such deposits are to be held without any allowance of interest and are to be used for the payment of taxes and assessments (general and special) and insurance premiums, respectively, on the Land next due and payable when they become due. Mortgagee may, at its option, itself pay such taxes, assessments and insurance premiums when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for payment of such taxes and assessments. If the funds so deposited are insufficient to pay any such taxes and assessments (general or special) and premiums for any year when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes, assessments (general and special) and premiums in full. If the funds so deposited exceed the amount required to pay such taxes, assessments (general and special) and premiums for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee.

5. **Mortgagee's Interest In and Use of Deposits.** In the event of an Event of Default in any of the provisions contained in this Mortgage or the Note secured hereby, the Mortgagee may at its option, without being required so to do, apply any monies at the time on deposit pursuant to Paragraph 4 hereof, on any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder

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and shall be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor, provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of which they were deposited, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

6. **Insurance.** Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Land insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee, including without limitation: (a) all-risk fire and extended coverage insurance with vandalism and malicious mischief endorsements, for the full replacement value of the improvements on the Land with inflation guard endorsements; (b) if there are tenants under leases at the Land, rent or business loss insurance for the same perils described in (a) above payable at the rate per month and for the period specified from time to time by Mortgagee; (c) if the Land are located in a flood hazard district, flood insurance whenever in the opinion of Mortgagee such protection is necessary and is available; and (d) such other insurance as Mortgagee may from time to time require. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workmen's compensation insurance covering the Land and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may require. All policies of insurance to be furnished hereunder shall be in forms and with companies, amounts and deductibles satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee. Mortgagor immediately shall notify Mortgagee whenever any such separate insurance is taken out and promptly shall deliver to Mortgagee the policy or policies of such insurance.

In the event of loss Mortgagor will give immediate notice by mail to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and the insurance proceeds, or any part thereof, shall be applied by Mortgagee to the restoration or repair of the property damaged as provided in Paragraph 22 hereof. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale. Mortgagor shall furnish Mortgagee, without cost to Mortgagee at the request of Mortgagee, from time to time, evidence of the replacement value of the Land. Mortgagee agrees that prior to the occurrence of an Event of Default, Mortgagee shall not settle any insurance claims without Mortgagor's consent.

7. **Condemnation.** If all or any part of the Land are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid

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indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its expenses, including costs and attorneys' fees, to the restoration or repair of the property damaged as provided in Paragraph 22 hereof, if in Mortgagee's reasonable determination, the property can be restored or repaired to the condition existing immediately prior to the taking. In the event the said property cannot be restored or repaired to the condition existing immediately prior to the taking, then such award or monies received after the payment of expenses of Mortgagee as aforesaid shall be applied on account of the unpaid principal balance of the Note, at Mortgagee's sole discretion, irrespective of whether such principal balance is then due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Note, at Mortgagee's sole discretion, irrespective of whether such principal balance is then due and payable. Mortgagee agrees that prior to the occurrence of an Event of Default, Mortgagee shall not settle any claim for compensation for the whole or partial condemnation (or other similar taking) of the Land without Mortgagor's consent.

8. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage or the issuance of the Note hereby secured, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note secured hereby.
9. **Observance of Lease Agreement.** As additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, Mortgagor, as lessor, has assigned to Mortgagee all of its right, title and interest as lessor in and to all leases which now or hereafter affect the Land pursuant to the Assignment of Rents and Lessor's Interest in Leases of even date herewith.

Mortgagor will not, without Mortgagee's prior written consent, (i) execute an assignment or pledge of any rents and/or any leases affecting all or any portion of the Land; or (ii) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, other than security and other deposits.

Mortgagor at its sole cost and expense will (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases affecting all or any portion of the Land, on the part of the lessor thereunder, to be kept and performed; (ii) use its best efforts to enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the lessees to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of the lessor or of the lessees thereunder; (iv) as additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, transfer and assign to Mortgagee any lease or leases of the land heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) give written notice to Mortgagee within five (5) days of the occurrence of any material default under any lease affecting all or any portion of the Land; and (vi) exercise within five (5) days of any demand therefor by

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Mortgagee any right to request from the lessee under any lease affecting all or any portion of the Land a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as lessor under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by lessor, each and all of which covenants and payments Mortgagor agrees to perform and pay.

In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each lease affecting all or any portion of the Land shall, at the option of Mortgagee, attorn to any person succeeding to the interest of Mortgagor as a result of such enforcement and shall recognize such successor in interest as lessor under such lease without change in the terms or other provisions thereof, provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the consent of Mortgagee or said successor in interest. Each lessee, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

Mortgagee shall have the option to declare this Mortgage in default because of a material default of the lessor in any lease affecting all or any portion of the Land. It is covenanted and agreed that a default remaining uncured after the expiration of any applicable cure periods expressly provided for under the Assignment of Rents and Lessor's Interest in Leases referred to in the first grammatical paragraph of this Paragraph 9 or under any assignment of leases executed pursuant to this Paragraph 9 shall constitute a default hereunder on account of which the whole of the indebtedness secured hereby shall at once, at the option of Mortgagee, become immediately due and payable to Mortgagor.

10. **Effect of Extensions of Time.** If the payment of said indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in the Land or having an interest in Mortgagor or in the beneficiary of Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons in accordance with the terms and conditions of the Loan Documents being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.
11. **Effect of Changes in Laws Regarding Taxation.** In the event of the enactment after this date of any law of the State in which the Land are located deducting from the value of the Land for the purpose of taxation any lien thereon or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Land, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holders thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor, provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee (a) it is unlawful to require Mortgagor to make such payment or (b) the making of such payment will result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of

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the indebtedness secured hereby to be and become due and payable thirty (30) days from the giving of such notice.

12. **Mortgagee's Performance of Defaulted Acts.** Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Land or consent to any tax or assessment or cure any default of Landlord in any lease of all or any part of the Land. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraph 7 above or to protect the Land or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at an annual rate (the "Default Rate") equal to two percent (2%) plus the Loan Rate (as defined in the Note) then in effect under the Note. In addition to the foregoing, any costs, expenses and fees, including attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting and enforcing any of Mortgagee's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this Mortgage, the Land, or any co-maker of the Note or this Mortgage, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the loan evidenced by the Note, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Land or any part thereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment. Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to Five Million (5,000,000) Dollars (\$5,000,000).
13. **Mortgagee's Reliance on Tax Bills, etc.** Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof, or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, provided that Mortgagee shall give to Mortgagor five (5) days' prior written notice thereof.
14. **Acceleration of Indebtedness in Event of Default.** Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

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- (a) The failure by Mortgagor to pay within five (5) days of the date when due (i) any installment of principal or interest payable pursuant to the Note or this Mortgage, or (ii) any other amount payable pursuant to the Note, this Mortgage or any of the other Loan Documents;
- (b) The failure by Mortgagor to promptly perform any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under this Mortgage; provided, however, that unless and until the continued operation or safety of the Land, or the priority, validity or enforceability of this Mortgage or the lien hereof or the lien of any other security granted to Mortgagee or the value of the Land is immediately threatened or jeopardized, Mortgagor shall have a period not to exceed thirty (30) days after written notice of such failure of performance or observance to cure the same; provided further that if such failure is not susceptible to cure within such 30-day period, Mortgagor shall have an additional reasonable period of time (in no event more than thirty (30) additional days) to cure such failure so long as Mortgagor has commenced cure within the original 30-day period and thereafter diligently pursues such cure;
- (c) Any material inaccuracy or untruth arises at any time in any representation, covenant or warranty made in this Mortgage or any of the other Loan Documents made by Mortgagor, or Guarantors (as defined in the respective Note) or of any statement or certification as to facts delivered to Mortgagee pursuant to the Loan Documents;
- (d) At any time, Mortgagor or Guarantors (as defined in the Note) files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal, state or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Mortgagor or Guarantors of all or any substantial part of the property of Mortgagor or Guarantors or any of the Land;
- (e) The commencement of any involuntary petition in bankruptcy against Mortgagor or Guarantors or the institution against Mortgagor or Guarantors of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor or Guarantors, which shall remain undismissed or undischarged for a period of sixty (60) days;
- (f) The levy against the Land, or any portion thereof, or any execution, attachment, sequestration or any other writ which is not released within thirty (30) days after the date created.
- (g) Any sale, transfer, lease, assignment, conveyance, pledge, lien or encumbrance made in violation of Paragraph 27 of this Mortgage; or
- (h) The occurrence of any Event of Default under (i) the Note, (ii) the Security Agreement made by Golf-Rose Automat, Inc., an Illinois corporation and tenant upon the Land to Mortgagee, (iii) the Assignment of Rents and Lessor's Interest in Leases made by Mortgagor to Mortgagee, or (iv) any other document or instrument evidencing or securing the Note delivered to Mortgagee to induce Mortgagee to disburse the proceeds thereof (this Mortgage and the documents described in

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clauses (ii) and (iii) above, inclusive, and the documents described in clause (iv) above are hereinafter collectively referred to as the "Loan Documents"), which Event of Default is not cured within the grace or cure period, if any applicable thereto.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate. If while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Land, as set forth in Paragraph 22 hereof, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of indebtedness then due hereunder shall be returned to Mortgagor or any party entitled in re to without interest.

15. Foreclosure Expense of Litigation. When the indebtedness hereby secured, or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Land. All expenditures and expenses of the nature in this paragraph mentioned and such expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Land and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in connection therewith or in any litigation or proceeding affecting this Mortgage, the Note or said Land, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

16. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Land shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 15 hereof; second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided and all principal and interest remaining unpaid on the Note; and third, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

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17. **Appointment of Receiver.** Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Land. Such appointment may be made either before or after sale, without notice to Mortgagor, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Land or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Land during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Land during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and/or (b) the deficiency in case of a sale and deficiency.
18. **Mortgagee's Right of Possession in Case of an Event of Default.** In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, Mortgagor shall forthwith and upon demand of Mortgagee, surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Land or any part thereof personally, or by its agents or attorneys, as for condition broken. Mortgagee's rights and remedies under this Paragraph 18 shall be effective whether before or after the whole principal sum secured hereby is declared to be immediately due and provided hereunder, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder. In the event Mortgagee is entitled to take possession of the Land, Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said Land, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Land relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom. In such case, Mortgagee under the powers herein granted, may hold, operate, manage and control the Land and conduct the business, if any, thereof, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issue, and profits of the Land, including actions for the recovery of rent, actions, in forcible detainer and actions in distress for rent. Mortgagee shall have full power:
- (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
 - (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
 - (c) to extend or modify any then existing leases and to enter new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests

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in the Land are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment or issuance of any certificate of sale or deed to any purchaser,

- (d) to make any repairs, decorating renewals, replacements, alterations, additions, betterments and improvements to the Land as to it may seem judicious;
- (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and
- (f) to receive all of such avails, rents issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter without notice to Mortgagor.

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

19. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it shall have full power to use and apply the avails, rents, issues and profits of the Land to the payment of or on account of the following, in such order as Mortgagee may determine:

- (a) to the payment of the operating expenses of said property, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions (but not with respect to the renewal of existing leases unless provided for therein) and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;
- (b) to the payment of taxes and special assessments now due or which may hereafter become due on the Land; and, if this is a leasehold mortgage, of all rents due or which may become hereafter due under the underlying lease;
- (c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Land, including the cost from time to time of installing or replacing refrigeration and gas or electric stoves therein, and of placing the Land in such condition as will, in the judgment of Mortgagee, make them readily rentable; and
- (d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

20. Rights Cumulative. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given

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- (c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Land as provided in Paragraphs 6 and 7 there shall have been delivered to Mortgagee the following:
- (i) A waiver of subrogation from any insurer who claims that no liability exists as to Mortgagor or the then owner or other insured under the policy of insurance in question;
 - (ii) Such plans and specifications, such performance and payment bonds, and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Mortgagee.
- (d) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Land within a reasonable time, then Mortgagee, at its option and upon not less than thirty (30) days' written notice to Mortgagor, may commence to restore, repair or rebuild the said improvements for or on behalf of Mortgagor, and for such purpose, may perform all necessary acts to accomplish such restoration, repair or rebuilding. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Land, such excess shall be applied on account of the unpaid principal balance of the Note, at Mortgagee's sole discretion irrespective of whether such principal is then due and payable.
- (e) In the event Mortgagor commences the repair or rebuilding of the improvements located on the Land, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 22; or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Land within a reasonable time, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above, then Mortgagee may, at its option, accelerate the indebtedness evidenced by the Note and apply all or any part of the insurance proceeds or condemnation award against the indebtedness secured hereby.
23. Release Upon Payment and Discharge of Mortgagor's Obligations. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including the payment of all reasonable expenses incurred by Mortgagee in connection with the execution of such release.
24. Notices. Any notice or demand required or permitted to be given under this Mortgage shall be in writing and shall be personally delivered or mailed by United States registered or certified mail, return receipt requested, addressed as follows:

To Mortgagee:

Elizabeth Bucchi, Trustee of the
Elizabeth Bucchi Self Declaration
of Trust dated August 26, 1994
288 Wildspring Court
Itasca, Illinois 60143

With copy to:

Attorney Michael J. Polachek
Damall, Polachek & Krantz
2121 West Army Trail Road, Suite 105
Addison, Illinois 60101

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UNOFFICIAL COPY**To Mortgagor:**

Diamond Properties, Inc., an Illinois corporation
 105 E. Golf Road
 Hoffman Estates, Illinois 60173

With copy to:

Attorney Michael Hirschtick
 6321 North Avondale, Suite 210
 Chicago, Illinois 60631

Either party may designate a different address for notice purposes by giving notice thereof in accordance with this Paragraph 24; provided, however, that such notice shall not be deemed given until actually received by the addressee. Any notice or demand given by United States mail shall be deemed given on the second business day after the same is deposited in the United States mail as registered or certified mail, addressed as above provided with postage thereon fully prepaid.

25. **Waiver of Defenses.** No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.
26. **Waiver of Rights.** To the extent permitted by law, Mortgagor shall not and will not apply for or avail itself of any abatement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. To the extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Land marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Land sold as an entirety.
27. **Transfer of Land; Further Encumbrance.** In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor and the Guarantors, found it acceptable and relied and continues to rely upon same as the means of repayment of the Note. Mortgagee also evaluated the background and experience of Mortgagor and the Guarantors in owning and operating property such as the Land, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Land which is Mortgagee's security for the Note. The Guarantors are well-experienced in borrowing money and owning and operating property such as the Land, were ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor and the Guarantors recognize that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on loans, the security for which is purchased by a party. Mortgagor and the Guarantors further recognize that any secondary or junior financing placed upon the Land (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Land should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Land.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by the Mortgagor and of value of the Land; (ii) giving Mortgagee the full

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benefit of its bargain and contract with Mortgagor, (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Land free of subordinate financing liens, Mortgagor and the Guarantors agree that if this paragraph be deemed a restraint on alienation that it is a reasonable one and that, any sale, conveyance, assignment, further encumbrance or other transfer of title to the Land, the beneficial interest in Mortgagor or any interest in the Beneficiary or any interest in the Land therein (whether voluntary or by operation of law), including without limitation the entering into of an installment agreement for the sale of the Land or the beneficial interest in Mortgagor, the placement or granting of liens on all or any part of the Land (fee title to which is vested in Mortgagor), or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create a lien on the personal property utilized in the operation of the Land, or the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, without Mortgagee's prior written consent shall be an Event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of the following events shall be deemed to be an unpermitted transfer of title to the Land and therefore an Event of Default hereunder:

- (a) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Land or the assumption by a third party of all right, title interest and obligations of Mortgagee under the Loan Documents; or
- (b) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in any Shares of the Mortgagor or Guarantors.

Any consent by Mortgagee, or any waiver of an Event of Default, under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent Event of Default under this Paragraph 27. Mortgagor acknowledges that any agreements, liens or encumbrances created or entered into in violation of the provisions of this Paragraph 27 shall be void and of no force or effect. Mortgagee, at its sole election, and at Mortgagor's sole cost and expense, but not more than once each year, may conduct a tract book search on the Land and may at any time inspect the corporate book of Mortgagor.

28. Expenses Relating to Note and Mortgage. Mortgagor will pay all expenses, charges, costs and fees relating to the loan evidenced by the Note and secured by this Mortgage or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration or recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

- (a) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Land are involved directly or indirectly;
- (b) May make preparations following an Event of Default for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

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- (c) May make preparations following an Event of Default for, and do work in connection with, Mortgagee's taking possession of and managing the Land, which event may or may not actually occur;
- (d) May make preparations for and commence other private or public actions to remedy an Event of Default, which other actions may or may not be actually commenced;
- (e) May enter into negotiations with Mortgagor, the Guarantors, or any of their respective agents, employees or attorneys, in connection with the existence or curing of any Event of Default hereunder, the sale of the Land, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Land in lieu of foreclosure; or
- (f) May enter into negotiations with Mortgagor, the Guarantors, or any of their respective agents, authorized employees or attorneys, pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor or the Guarantors which approval is required by the terms of this Mortgage. All expenses, charges, costs and fees described in this Paragraph 28 shall be so much additional indebtedness secured hereby, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.
29. **Business Purpose.** Mortgagor covenants that the proceeds of the loan evidenced by the Note and secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(c), as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of said paragraph.
30. **Financial Statements: Accounts.** Mortgagor shall cause to be delivered to Mortgagee, within ninety (90) days after the close of each calendar year, ending during the term of this Mortgage, annual financial statements of the Mortgagor and each Guarantor on forms approved by Mortgagee setting forth the information therein as of the immediately preceding year, as applicable, containing income and expense statements and a balance sheet, prepared by an independent certified public accounting firm. All such balance sheets and statements shall be prepared in accordance with generally accepted accounting principles consistently applied and certified to be true, complete and correct by the person or entity to which they apply and in such detail as Mortgagee may reasonably require. At any time and from time to time within ten (10) days after written request therefor has been made, Mortgagor shall cause Mortgagee to be furnished with a copy of the most recent unaudited interim statement of the earnings and operating expenses of the Land and of the tenant.
31. **Statement of Indebtedness.** Mortgagor, within seven (7) days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against the Mortgagee debt or, if such offsets or defenses are alleged to exist, the nature thereof.
32. **Further Instruments.** Upon request of Mortgagee, Mortgagor will execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

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33. **Indemnity.** Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: the making of the loan evidenced by the Note and secured by this Mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; the offer for sale or sale of all or any portion of the Land; and/or the ownership, leasing, use, operation or maintenance of the Land. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable and with interest at the Default Rate.
34. **Waiver of Right of Redemption.** Mortgagor hereby releases and waives any and all rights to retain possession of the Land after the occurrence of an Event of Default and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Mortgagor, the trust estate of Mortgagor, all persons and entities interested beneficially in Mortgagor and each and every person acquiring any interest in, or title to, the premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of 735 ILCS 5/12-122 or other applicable law or replacement title.
35. **Miscellaneous.**
- (a) **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its successors, grantees and assigns, any subsequent owner or owners of the Land who acquire the Land subject to this Mortgage and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness of any part thereof, whether or not such persons shall have executed the Note or this Mortgage. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.
- (b) **Invalidity of Provisions.** In the event one or more of the provisions contained in this Mortgage or the Note secured hereby or in any security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. This Mortgage and the Note it secures are to be construed and governed by the laws of the State of Illinois.
- (c) **Municipal and Zoning Requirements.** Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Land or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Land or any interest therein to be so used.

Similarly, no building shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement.

Mortgagor shall not by act or omission impair the integrity of the Land as a single

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zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

- (d) **Time of the Essence.** Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage.
- (e) **Rights of Tenants.** Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of any tenant or tenants of the Land. The failure to join any such tenant or tenants as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Land, any statute or rule of law at any time existing to the contrary notwithstanding.
- (f) **Option of Mortgagee to Subordinate.** At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Land upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the Land are situated, of a unilateral declaration to that effect.
- (g) **Use of Proceeds.** Mortgagor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.
- (h) **Value for Purposes of Insurance.** Upon request by Mortgagee, Mortgagor agrees to furnish evidence of replacement value, without cost to Mortgagee, of the type which is regularly and ordinarily made for insurance companies, with respect to the buildings and improvements on the Land.
- (i) **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Land by Mortgagee pursuant to this Mortgage.
- (j) **Relationship of Mortgagee and Mortgagor.** Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses.
- (k) **No Merger.** It being the desire and intention of the parties hereto that the Mortgage and the lien thereof not merge in fee simple title to the Land, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Land or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

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- (l) **Late Charges.** The Note secured hereby requires the payment of a late charge in the event any installment of principal and/or interest due thereunder and/or any escrow fund payment for taxes and insurance due hereunder shall become overdue for a period in excess of ten (10) days. Said Note requires the payment to Mortgagee of a late charge of four (4) cents for each dollar so overdue to defray part of the cost of collection. Said late charge shall be secured hereby as indebtedness as that term is defined in Paragraph 2 hereof.
- (m) **Fixture Financing Statement.** This Mortgage is intended to be a financing statement within the purview of Section 9-402(b) of the Uniform Commercial Code with respect to those items of equipment, goods or inventory which are fixtures on the Land. The addresses of the Mortgagor (Debtor) and Mortgagee (Secured Party) are herein set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the county where the Land is located. The Mortgagor is the record owner of the Land.
36. **Subordination of Property Managers' Lien.** Any property management agreement for the Land entered into hereafter by Mortgagor with a property manager, shall contain a "no lien" provision whereby the property manager waives and releases any and all mechanic's lien rights that the property manager or anyone claiming by, through or under the property manager may have pursuant to 770 ILCS 60/1. Such property management agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the county where the Land is located. In addition, Mortgagor shall cause the property manager to enter into a Subordination of Management Agreement with Mortgagee, in recordable form, whereby the property manager subordinates present and future lien rights and those of any party claiming by, through or under the property manager, to the lien of this Mortgage.
37. **Compliance with Environmental Laws.** In addition to all other provisions of this Mortgage, Mortgagor, at its cost and expense, shall comply with all laws, statutes, ordinances, rules and regulations of any governmental authority ("Agency") having jurisdiction thereof concerning environmental matters, including, but not limited to, any discharge (whether before or after the date of this Mortgage) into the air, waterways, sewers, soil or ground water or any substance or "pollutant". Mortgagee and its agents and representatives shall have access to the Land and to the books and records of Mortgagor, the tenant, and any occupant of the Land claiming under Mortgagor or the tenant, for the purpose of ascertaining the nature of the activities being conducted on the Land and to determine the type, kind and quantity of all products, materials and substances brought onto the Land or made or produced thereon. Such access shall be granted only upon reasonable advance written notice to the Mortgagor, the tenant, and any occupant of the Land claiming under the Mortgagor or the tenant and shall be granted only during normal business hours and in a manner that will not unreasonably interfere with the operations of the Mortgagor, the tenant or any occupant of the Land claiming under the Mortgagor or the tenant. Mortgagor and all occupants of the Land claiming under Mortgagor or the tenant shall provide to the Mortgagee copies of all manifests, schedules, correspondence and other documents of all types and kinds (collectively "Documents") when filed or provided to an Agency or as such are received from any Agency. Mortgagee and its agents and representatives shall have the right to take samples in quantity sufficient for scientific analysis of all products, materials and substances present on the Land including, but not limited to, samples of products, materials or substances brought onto or made or produced on the Land by the Mortgagor, the tenant or an occupant claiming under Mortgagor or the tenant or otherwise present on the Land.

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38. Compliance with Illinois Foreclosure Law.

- (a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Foreclosure Law, 735 ILCS 5/15-1101 *et seq.*, (herein called the "Act"), the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.
- (b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon the default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.
- (c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Section 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraph 12 or 15 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

IN WITNESS WHEREOF, Mortgagor, by its duly authorized President and Secretary, has executed this instrument the day and year first above written.

DIAMOND PROPERTIES, INC., an Illinois corporation

By *Patrick Bucchi*
Patrick Bucchi, Its President

Attest: *Patrick Bucchi*
Patrick Bucchi, Its Secretary

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STATE OF ILLINOIS)
) ss.
 COUNTY OF ~~COOK~~)
 DUPAGE

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Patrick Bucchi, personally known to me to be the President and Secretary of Diamond Properties, Inc., and 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 as such President and Secretary, he signed and delivered the said instrument, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal,
 this 1 day of July, 1998.

[Signature]
 Notary Public

(SEAL)



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Exhibit A

That part of LOT FOURTEEN (14) in Block 1 in Hoffman Estates 1 (hereinafter described) more particularly described as follows: Beginning at the North East corner of said LOT 14, being the North West corner of LOT 13 of said Block 1; thence Southward along the West line of Lots 12 and 13 of said Block 1, South 00°24'39" East, a distance of 200.00 feet; thence South 89°35'21" West a distance of 102.36 feet; thence North 3°07'51" East, a distance of 200.07 feet to a point on the North line of said Lot 14, being the Southerly right-of-way line of Golf Road; thence Eastward along the said North line of Lot 14, North 89°23'37" East, a distance of 90.0 feet to the point of beginning.

Said Hoffman Estates 1 being a Subdivision of that part of the West Half (1/2) of the Northwest Quarter (1/4) and that part of the Northwest Quarter (1/4) of the Southwest Quarter (1/4) of Section 14, Township 41 North, Range 10, East of the Third Principal Meridian, lying North of Higgins Road, together with that part of the Northeast Quarter (1/4) of Section 15, Township 41 North, Range 10, East of the Third Principal Meridian, lying North of Higgins Road, according to Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois, on August 5, 1955, as Document Number 1612242.

EXCEPT,

The North ten (10) feet of that part of Lot Fourteen (14) in Block One (1) in Hoffman Estates Number One, being a Subdivision of that part of the West half of the Northwest Quarter and that part of the Northwest Quarter of the Southwest Quarter of Section Fourteen (14), Township Forty-one (41) North, Range Ten (10), East of the Third Principal Meridian, lying North of Higgins Road, together with that part of the Northeast Quarter of Section Fifteen (15), Township Forty One (41) North, Range Ten (10), East of the Third Principal Meridian, lying North of Higgins Road, according to Plat thereof registered in the Office of the Registrar of Titles of Cook County, Illinois on August 5, 1955, as Document Number LR 1612242, described as follows:

Beginning at the North East corner of said Lot 14, being the North West corner of Lot 13 of said Block 1; thence Southward along the West line of Lots 12 and 13 of said Block 1 South 00 degrees, 24 minutes, 39 seconds East a distance of 200 feet; thence South 89 degrees, 35 minutes, 21 seconds West a distance of 102.36 feet; thence North 3 degrees, 07 minutes 51 seconds East a distance of 200.07 feet to a point on the North line of said Lot 14, being the Southerly right of way line of Golf Road; thence Eastward along the said North line of Lot 14 North 89 degrees, 23 minutes 37 seconds East a distance of 90 feet to the Place of Beginning, in Cook County, Illinois.

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