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Cook County Recorder 93.00



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Property of Cook County Clerk's Office

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## MORTGAGE AND SECURITY AGREEMENT

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THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") is made as of the 10<sup>th</sup> day of May, 1999, by FISHER BUILDING, L.L.C., an Illinois limited liability company ("Mortgagor"), to LASALLE BANK NATIONAL ASSOCIATION, a national banking association doing business in Chicago, Illinois ("Mortgagee").

### Recitals

A. Mortgagor is the owner of fee title to certain real estate (the "Land") legally described in EXHIBIT A attached hereto and made a part hereof and commonly known as 343 South Dearborn, Chicago, Illinois. The Land is improved with a 22-story office building commonly known as The Fisher Building, and related improvements.

B. Mortgagee has agreed to lend Mortgagor the principal amount of FIVE MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$5,800,000.00) (the "Loan").

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

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of the Loan and interest at the rate and in installments as provided in the Note, with a final payment of all principal and interest due and payable on June 10, 1999 subject to extension to July 9, 1999, and subject to acceleration as provided in the Note. All of said principal and interest are made payable at such place as the holder or holders of the Note (the "Holders") may from time to time in writing appoint, and in absence of such appointment, then at the offices of Mortgagee in Chicago, Illinois.

D. The Note is secured by this Mortgage, a Security Agreement, a Payment Guaranty, an Assignment of Rents and Leases, a Collateral Assignment of Permits, Licenses, Approvals and Contracts, an Environmental Indemnity Agreement, and Financing Statements on Illinois forms UCC-1 and UCC-2 (collectively, with all other documents and instruments executed and delivered in connection with the Loan, the "Loan Documents").

## Agreements

NOW, THEREFORE, Mortgagor, in consideration of said debt and the Recitals set forth above and to secure the timely payment of both principal and interest thereof, in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this Mortgage, and to secure the performance of the covenants and agreements herein and in the Note and the Loan Documents contained and to be performed by Mortgagor, does by these presents MORTGAGE, WARRANT, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto Mortgagee, its successors and assigns, the Land and all of its estate, right, title and interest therein, situate, lying and being in the City of Chicago, County of Cook and State of Illinois, which is referred to as the "Real Estate";

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

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

TOGETHER with all the estate, right, title and interest, if any, of Mortgagor (including without limitation any after-acquired title, franchise or license and the reversions and

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remainders thereof), in and to the land lying within any alley, way, street, roadway, strips and gores, or beds adjoining the Real Estate;

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

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

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

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

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

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

## REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF MORTGAGOR

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

1. Title. Mortgagor has good and marketable fee simple title to the premises, subject only to those title exceptions appearing in Schedule B of the Title Policy, and is lawfully seized and possessed of the same, and has the full power, authority and right to convey the same and to execute and deliver this Mortgage; and the premises are unencumbered except as may be herein expressly provided.

2. Covenants of Mortgagor. Mortgagor covenants and agrees as follows:

(a) Without the prior written consent of Mortgagee, which consent Mortgagee may withhold in its sole discretion, (1) Mortgagor shall not, directly or indirectly or by operation of law, liquidate, dissolve, merge into or be merged into, acquire or be acquired, buy the assets or stock of any entity or sell all or a major portion of its assets, or sell, assign, convey, pledge, mortgage or encumber its right, title or interest in the premises; and (2) there shall be no sale, assignment, pledge, hypothecation, encumbrance or transfer of the management rights and obligations of the managers of Mortgagor, or any membership interests in Mortgagor.

(b) Mortgagor shall remain in existence as a limited liability company, registered and in good standing under the laws of the State of Illinois and qualified to do business under the laws of such states as to which such qualification is required by law.

(c) Mortgagor shall not agree to nor permit any amendment or termination of its articles of organization or operating agreement.

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

(e) Mortgagor shall pay when due Mortgagee's reasonable counsel fees, all costs and expenses required to satisfy the conditions of this Mortgage and all reasonable costs and fees of whatever nature incurred by Mortgagee in connection with the negotiation, consummation, execution, administration and/or collection of the Loan. To the extent Mortgagee, after the funding of the Loan, reasonably deems it necessary to employ counsel and/or consultants for any reasonable and customary purpose relative to the premises, this Mortgage or any of the other Loan Documents, the reasonable fees and expenses of such counsel and/or consultants shall be borne by Mortgagor provided Mortgagor shall not be required to pay the fees, costs or expenses of Mortgagee's in-house counsel except those incurred during the continuance of an Event of Default. Any such reasonable fees and expenses incurred by Mortgagee are to be paid promptly by Mortgagor. Mortgagor hereby agrees to indemnify and hold Mortgagee harmless with respect to all of the foregoing costs, fees and expenses.

(f) Mortgagor shall apply all operating revenue from the premises first to the payment of current operating expenses, if any, and then to the payment of amounts then due under the Note, this Mortgage or any of the other Loan Documents. Mortgagor shall not make any distributions or loans or pay any dividends or return of capital to its members.

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

(h) Mortgagor shall promptly upon receipt deliver to Mortgagee copies of all notices with regard to any alleged or potential violation of any Requirement. Mortgagor shall promptly and fully respond to any inquiry by Mortgagee with respect thereto and shall permit Mortgagee to participate in any inquiry, hearing or meeting with regard to any of the foregoing

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and will furnish Mortgagee, on demand, proof of compliance reasonably satisfactory in all respects to Mortgagee.

(i) If at any time any Hazardous Substance or Hazardous Waste (both as defined in the Environmental Indemnity Agreement) shall be discovered buried under or stored on the Land, Mortgagor will comply with the provisions of the Environmental Indemnity Agreement regarding removal and remediation of same in accordance with all Requirements.

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

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

(l) Mortgagor shall not lease or license space in the Building to any Person, or allow any Person to use or occupy the premises except Persons currently occupying the Building under oral or written month-to-month leases, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld.

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

(n) Mortgagor shall at all times comply with all present or future Requirements affecting, or relating or in any way pertaining to, the premises and/or the use, operation and/or maintenance thereof, and shall furnish Mortgagee, on request, proof of such compliance. Mortgagor shall not use or permit the use of the premises, or any part thereof, for any illegal purpose. Mortgagor shall at all times keep and maintain for the benefit of the premises and its occupants, access and availability to all utilities, including without limitation, water, gas, electricity, sewer and telephone service, required for the operation of the premises as it is currently used and as Mortgagor intends to use the premises, subject to the provisions hereof and of the other Loan Documents.

(o) Mortgagor will not enter into, amend or terminate any development, leasing, management, maintenance or other similar agreement that is not terminable upon sixty (60) days' prior notice without the prior written consent of Mortgagee. All such agreements requiring Mortgagee's consent, shall provide, or prior to execution thereof Mortgagor shall deliver to Mortgagee a letter executed by the other party to such agreement to the effect, that upon a default under any Loan Document and Mortgagee's acquisition of possession or control of the premises, either personally or through an affiliate or receiver, through foreclosure sale or other means, such agreement shall terminate upon Mortgagee's request or shall be assumable at

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Mortgagee's option at no cost to Mortgagee and with no lien on the premises. In no event shall such agreements provide that the foreclosure, sale or other change in ownership, possession or control of the premises will result in a change of terms in such agreement adverse to Mortgagee or to the owner of the premises.

(p) Mortgagor shall not incur any Indebtedness other than the Loan. Mortgagor shall not agree to, assume, guarantee, endorse or otherwise in any way be or become responsible for any Contingent Obligations.

(q) Mortgagor shall not make any alterations, improvements or additions to the Land, including without limitation the Building, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld.

(r) At any time and from time to time, upon request by Mortgagee, Mortgagor shall promptly make, execute and deliver, or cause to be made, executed and delivered, to Mortgagee and, where appropriate, cause to be recorded and/or filed (and from time to time thereafter to be re-recorded and/or refiled) at such time and in such offices and places as shall be deemed desirable by Mortgagee (in its sole and absolute discretion), any and all such other and further amendments, assignments, deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as Mortgagee may, in its sole and absolute discretion, deem desirable to (i) enable Mortgagee to negotiate the Note and to assign this Mortgage and all of the other Loan Documents, (ii) enable Mortgagee to sell participations in the Loan (provided any and all costs of participating in the Loan shall be paid by Mortgagee), and/or (iii) effectuate, complete, or perfect, or to continue and preserve (1) the obligations of Mortgagor under this Mortgage, and (2) the security interests created by the Loan Documents as first and prior security interests upon the collateral subject thereto; provided, however, that no such additional document or other instrument requested by Mortgagee hereunder shall increase the Loan Amount (except as to the costs and expenses of the Mortgagee in connection therewith, subject to clause (ii) of this sentence). Any failure by Mortgagor to comply with any request pursuant to this Section 2(r) within thirty (30) days after such request is made by Mortgagee, shall be an Event of Default hereunder and upon such Event of Default, Mortgagee may make, execute, record, file, rerecord and/or refile any and all such amendments, assignments, deeds to secure debts, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee Mortgagor's attorney-in-fact, with full power of substitution, to take such actions (on behalf of and in the name of Mortgagor) as Mortgagee, in its sole and absolute discretion, may deem necessary or desirable to effectuate the intent of this Section 2(r). This power of attorney, being coupled with an interest, shall be irrevocable until the Loan is fully paid and performed and shall not be affected by any disability or incapacity which Mortgagor may suffer and shall survive the same. The power of attorney conferred on Mortgagee pursuant to the provisions of this Section 2(r) is provided solely to protect the interests of Mortgagee and shall not impose any duty on Mortgagee to exercise any such power, and neither Mortgagee nor such attorney-in-fact shall be liable for any act, omission, error in judgment or mistake of law, except as the same may result from its gross negligence or willful misconduct.

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(s) At Mortgagee's reasonable request, Mortgagor shall promptly provide Mortgagee with copies of all inspections, reports, test results and other material information received by Mortgagor from time to time from its employees, agents, representatives, architects, engineers, and any other parties involved with the premises, or the maintenance or operation of the premises, which in any way relate to the premises, or any part thereof. Mortgagor shall also provide Mortgagee with such monthly written reports as to status of the premises as Mortgagee may reasonably request.

(t) Mortgagor will devote all of its time, effort and energy to the premises as may be required to complete the matters contemplated hereby. Mortgagor shall not engage in any activity or investment other than the acquisition, ownership and operation of the premises.

(u) Mortgagor will comply with all of the covenants, terms, agreements and provisions of each of the Loan Documents to which it is a party, whether more or less restrictive than the covenants, terms, agreements and provisions herein contained.

(v) Mortgagor shall maintain all of its operating accounts with Mortgagee throughout the term of the Loan.

(w) Mortgagor has reviewed the areas within its business and operations which could be adversely affected by, and has developed or is developing a program to address on a timely basis, the Year 2000 Problem (as hereinafter defined) and has made related appropriate inquiry of material suppliers and vendors. Based on such review and program, Mortgagor believes that the Year 2000 Problem will not have a material adverse effect on Mortgagor. From time to time, at the request of Mortgagee, Mortgagor shall provide to Mortgagee such updated information or documentation as is requested regarding the status of Mortgagor's efforts to address the Year 2000 Problem. As used herein, the "Year 2000 Problem" means the risk that computer applications used by Mortgagor may be unable to recognize and perform properly date-sensitive functions involving certain dates prior to and any date on or after December 31, 1999.

(x) Mortgagor shall keep the premises free from mechanics' liens and other liens and claims for lien (each, a "Lien"). Notwithstanding the foregoing, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Lien whether or not expressly subordinated to the lien hereof, and defer payment and discharge thereof during the pending of such contest, provided (i) that such contest shall have the effect of preventing the sale or forfeiture of the premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) that, within ten days after Mortgagor has been notified of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien; and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, either (1) a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable; or (2) an endorsement to the Title Policy, in form and substance reasonably acceptable to Mortgagee,



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insuring Mortgagee against any loss or damage that may be incurred as a result of or in connection with such Lien. In case Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the Lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon, and promptly return any remaining portion of such deposit to Mortgagor. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money on deposit. If the amount of money so deposited shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with any additional funds necessary to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made, and promptly return any remaining portion of such deposit to Mortgagor.

3. Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments provided: (a) that such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the premises or any part thereof, or any interest therein, to satisfy the same; (b) that Mortgagor has, before such taxes or assessments shall have been increased by any interest, penalties or costs, notified Mortgagee in writing of the intention of Mortgagor to contest the same; and (c) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and, in the absence of such appointment, then at the place of payment designated in the Note, a sum of money which (when added to funds, if any, then on deposit for such taxes) shall be sufficient in the judgment of Mortgagee to pay in full such contested taxes and assessments and all penalties and interest that might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional penalties and interest whenever, in the judgment of Mortgagee, such increase is necessary. In case Mortgagor shall fail to prosecute such objections with reasonable diligence or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may at its option apply the money so deposited in payment of or on account of such taxes and assessments, or that part thereof then unpaid, together with all penalties and interest thereon, and promptly return any remaining portion of such deposit to Mortgagor. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money on deposit. If the amount of the money so deposited shall be insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Mortgagor shall forthwith upon demand either (i) deposit

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with Mortgagee a sum which when added to the funds then on deposit shall be sufficient to make such payment in full, or (ii) in case Mortgagee shall have applied funds on deposit on account of such taxes and assessments, restore said deposit to a sufficient amount. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such taxes and assessments or that part thereof then unpaid, together with all penalties and interest thereon (provided Mortgagee is not then in default) when so requested in writing by Mortgagor and furnished with any additional funds necessary to make such payment in full and with an official bill for such taxes, and promptly return any remaining portion of such deposit to Mortgagor.

4. Representations and Warranties of Mortgagor. To induce Mortgagee to make the Loan to Mortgagor, Mortgagor represents and warrants to Mortgagee and as to such representations and warranties, covenants and agrees, as follows:

(a) Mortgagor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, is fully qualified and authorized to do business in and is in good standing under the laws of the State of Illinois, and has full limited liability company power and authority to consummate the transactions contemplated hereby. Each of Harold Lichterman and Wayne Moretti is a member and manager of Mortgagor. All Loan Documents executed by Mortgagor have been duly executed and delivered and constitute the valid and binding obligations of Mortgagor enforceable against Mortgagor in accordance with their respective terms, subject to applicable bankruptcy, reorganization, moratorium and similar laws affecting the rights of creditors generally, and general equitable principles.

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

(c) Mortgagor has delivered to Mortgagee true, correct and complete copies of current unaudited Financial Statements of Guarantor. Such Financial Statements are true and correct in all material respects and fairly present the financial condition of the subject thereof, and no materially adverse change has occurred in the financial condition reflected therein since the last date included therein.

(d) Neither Mortgagor nor Guarantor is insolvent (as such term is defined in Section 101(32) of the Bankruptcy Code) and none of them will be rendered insolvent (as so defined) by execution of this Mortgage or any other Loan Document to which it is a party or by the consummation of the transactions contemplated thereby. Neither Mortgagor nor Guarantor, as of the date hereof or at any time prior hereto, (1) has filed a voluntary petition for relief or otherwise commenced a case pursuant to any federal or state statutes or rule of law seeking reorganization, arrangement, composition, adjustment, extension, liquidation, dissolution or similar relief, (2) has admitted in writing an inability generally to pay debts as they become due, (3) has made a general assignment for the benefit of creditors, (4) has sought, consented to or acquiesced in the appointment of a trustee, receiver or liquidator for Mortgagor or Guarantor or a

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substantial part of any of such Person's respective assets, or such Person's respective interests in the premises, or (5) has had an involuntary bankruptcy case or proceeding commenced against it seeking an order for relief or any reorganization, arrangement, composition, adjustment, extension, liquidation, dissolution or similar relief pursuant to any federal or state bankruptcy statutes or any other applicable federal, state or other law.

(e) There are no actions, suits or proceedings pending, or to the Knowledge of Mortgagor, threatened, against or affecting either Mortgagor or Guarantor, which could have a materially adverse effect on any of them or the premises, or involving the validity or enforceability of this Mortgage, or the priority of the lien thereof, at law or in equity, before or by any Governmental Authority. Neither Mortgagor nor Guarantor is operating under or subject to, or is in default of or in violation with respect to, any Requirement or any order, writ, injunction, decree or demand of any court or any Governmental Authority which could materially adversely affect its respective obligations hereunder or under any other Loan Documents.

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

(g) The consummation of the transactions contemplated hereby and the performance by the Guarantor of Guarantor's obligations under the Guaranty or any other Loan Document to which Guarantor is a party will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, or other agreement or instrument to which the Guarantor is a party or by which Guarantor may be bound or affected.

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

(i) The Loan is an exempted transaction under the federal Truth in Lending Act, and the Loan does not violate the provisions of the usury laws of the State of Illinois.

(j) Neither Mortgagor nor Guarantor has any counterclaims, offsets or defenses with respect to the Loan, the Note or any other Loan Document to which it is a party.

(k) Mortgagor does not maintain nor has it ever maintained an "employee benefit plan" as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") which is subject to the minimum funding requirements of ERISA the Internal Revenue Code of 1986, as amended, (the "Code"). No ERISA Affiliate (as defined below) has maintained or contributed to or currently maintains or contributes to an employee benefit plan subject to Title IV or ERISA. Neither Mortgagor nor any ERISA Affiliate has withdrawn or partially withdrawn from any "multiemployer plan", as defined in Section 3(37) of

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ERISA, which would give rise to the imposition of withdrawal liability from such plan. Mortgagor's borrowing of the Loan will not constitute or result in a prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code with respect to any employee benefit plan maintained by Mortgagor or an ERISA Affiliate. For the purposes of this Section 3 (k) only, the term "ERISA Affiliate" includes any business entity affiliated with Mortgagor within the meaning of Section 414(b), (c), (m) or (o) of the Code.

(l) Neither Mortgagor nor Guarantor has committed any act or omission affording any Governmental Authority the right and/or the remedy of forfeiture as against the premises or any part thereof, or as against any amounts paid in performance of Mortgagor's or the Guarantor's obligations under any of the Loan Documents.

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

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

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

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

(q) As of the date of this Mortgage, Mortgagor has not received any notice of, and has no Knowledge of, any actual, proposed or threatened exercise of the power of eminent

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domain or other taking by any Governmental Authority or quasi-governmental body or agency of all or any portion of the premises or any interest therein.

(r) As of the date of this Mortgage, the premises has not suffered any material casualty since the date of the appraisal required to be delivered to Mortgagee under the provisions of this Mortgage.

(s) The premises have direct access to the public roads, streets and sidewalks, if any, which are adjacent to the premises.

(t) No portion of the premises is located within a special flood hazard except area C, area of minimal flooding. To the Knowledge of Mortgagor, the premises is not located in an area containing significant prehistoric/historic archaeological resources and is subject to neither the provisions of the Illinois Archaeological and Paleontological Resources Protection Act nor the Illinois State Agency Historic Resources Preservation Act, and the premises does not contain any threatened or endangered species or natural areas as defined in the Illinois Endangered Species Protection Act.

(u) All utility services necessary for the premises and the operation thereof for its current purpose are available at the boundaries of the premises, including without limitation, water supply, storm and sanitary sewer facilities, electricity, gas, and telephone facilities, and are connected to the Building.

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

(w) As of the date of this Mortgage, Mortgagor has not received any written notices, complaints or orders of violation or non-compliance of any nature whatsoever that have not been corrected, and to Mortgagor's Knowledge, no such notices, complaints or orders have been threatened (orally or in writing) or contemplated by any Governmental Authorities with respect to the premises or any present or intended future use thereof.

(x) The Mortgagor is not a party to any contract or agreement to sell any interest in the premises, other than a contract to sell the premises to 343 South Dearborn II, L.L.C., dated \_\_\_\_\_, 1999, a true and correct copy of which Mortgagor has delivered to Mortgagee. There are no Persons in possession of the premises and no Person has been granted any license, lease or other right to the use or possession of the premises or any part thereof, except those Persons occupying the premises pursuant to oral or written month-to-month leases, none of which contain an option to purchase all or any part of the premises.

(y) To Mortgagor's Knowledge, as of the date of this Mortgage, there are no public improvements pending or intended that would result in any charge or special assessment against the premises.

(z) To Mortgagor's Knowledge, (1) the electrical, plumbing, heating, drainage, air conditioning, ventilation and other mechanical and electrical systems on and in the

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Building are in good working order and repair in all material respects and are adequate in quality and quantity for Mortgagor's operation of the premises, (2) the premises and improvements thereon are otherwise in good and safe condition and in compliance in all material respects with all Requirements, and (3) there are no structural or other material patent defects in the roof and other structural portions of the premises and improvements thereon, including walls, pillars, supporting columns and foundations.

(aa) The premises are zoned Residential-Business Planned Development Number 698. The premises currently are in compliance with and satisfy all requirements of such planned development, including without limitation parking, off-street loading, and floor area ratio requirements.

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

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

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

(c) Commercial general liability insurance (including contractual liability coverage) against death, bodily injury and property damage in a base amount not less than \$10,000,000 combined single limit;

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

(e) If the Federal Insurance Administration or the Secretary of Housing and Urban Development has designated the premises to be in a special flood hazard area and

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designated the community in which the premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available;

(f) business interruption (rent loss) insurance in an amount equal to twelve (12) months' net operating income;

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

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

Mortgagee may, at Mortgagor's expense as additional indebtedness hereby secured, procure and substitute for any and all of the policies of insurance required above such other policies of insurance, in such amounts, and carried in such companies, as it may select, and in such event, those policies of insurance shall be included within the definition of "Insurance Policies" set forth herein.

Mortgagor will procure, deliver to, and maintain for the benefit of Mortgagee such other insurance on the premises and in such amounts as from time to time Mortgagee may reasonably require against other casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of improvements, their construction, location, use and occupancy. Mortgagor will cause Mortgagee to be shown and carried as an additional insured under all such policies, and such policies shall also include a Mortgagee's loss payable clause naming Mortgagee as the mortgagee, modified as to be consistent with the provisions of Section 6 below. Mortgagor will deliver such policy or policies or certificates of same to Mortgagee at its principal office or at such other place as it may designate in writing; and likewise will deliver to Mortgagee renewals of such policy or policies 45 days in advance of the expiration of the same, stamped "Paid" by the agent or company issuing same. Premiums on policies so furnished shall not be financed in any manner whereby any lender, upon default or otherwise, shall have the right or privilege of surrendering the policies for cancellation. All insurance furnished hereunder shall be subject to the approval of Mortgagee as to insurance companies, amounts, contents, substance, forms of policies and expiration dates. All insurance required by this Section 5 shall provide by endorsement or other manner that same may not be canceled or amended without at least 30 days prior written notice to Mortgagee. If Mortgagor fails to procure and maintain any insurance required under this Mortgage, Mortgagee may (but shall not be obligated to) upon prior written notice to Mortgagor, procure and maintain such insurance, at Mortgagor's expense, in the amounts provided above or in such lesser amounts as Mortgagee may deem appropriate, in order to protect Mortgagee's interest in the premises. Such insurance may, but need not, protect Mortgagor's interest in the premises. Such insurance purchased by Mortgagee may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with

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evidence acceptable to Mortgagee that Mortgagor has obtained and paid for such insurance as required under this Mortgage. If Mortgagee procures and maintain such insurance, Mortgagor shall be responsible for the costs of such insurance, including interest as described in Section 12 hereof and any other charges Mortgagee may impose in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. All such costs, interest and charges shall become immediately due and payable by Mortgagor and shall be secured by this Mortgage. Such costs may be more than the cost of insurance Mortgagor may be able to obtain on its own.

## 6. Covenant to Rebuild.

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

(b) In case of loss after foreclosure proceedings have been instituted, the insurance proceeds shall be applied in payment or reduction of the indebtedness secured hereby or in payment or reduction of the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if it shall then be entitled to the same or as the court may direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then, and in every such case, each successive redemtor may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redemtor. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

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7. Mortgagee's Interest In and Use of Deposits. Upon the occurrence of an Event of Default hereunder, Mortgagee may at its option, without being required to do so, apply any monies of Mortgagor at the time on deposit pursuant to any provision of this Mortgage against any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that neither Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested said depository in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes and assessments or insurance premiums.

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

9. Prepayment of Note. Mortgagor shall at any time and from time to time have the right to prepay the Note (in addition to the required payments) in accordance with the terms and conditions set forth in the Note.

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

Any person or entity taking a junior mortgage or other lien upon the premises or any interest therein, shall take said lien subject to the rights of Mortgagee herein to amend, modify, and supplement this Mortgage, the Note, the Loan Documents, or any other document or instrument evidencing, securing, or guaranteeing the indebtedness hereby secured and securing, or guaranteeing the indebtedness hereby secured and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of said indebtedness, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the

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lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section 10 contained shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the premises be sold, conveyed, or encumbered.

11. Effect of Changes in Laws Regarding Taxation. In the event of the enactment after this date of any law of the State of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagee's interest in the premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the Holders, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable 60 days from the giving of such notice.

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

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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.

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

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

(b) Failure to pay when due (whether by lapse of time, acceleration or otherwise) any payment or payments of principal or interest provided for in the Note, and the continuance thereof following expiration of applicable grace or cure periods, if any, or failure to pay when due (and the continuance of such failure for five (5) days after service of written notice) any payment or payments of any other indebtedness evidenced hereby or pursuant hereto; or the occurrence of an Event of Default under and as otherwise defined in, the Note or any other Loan Document.

(c) Breach in any respect of any material representation or warranty of Mortgagor herein or in any other Loan Document, or if at any time any representation or warranty made by the Mortgagor herein or in any other Loan Document shall be incorrect in any material respect, and, if the same is curable, it is not cured after notice thereof within the time period provided in Section 14(a).

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

(e) If at any time either Mortgagor or Guarantor shall: (i) file a voluntary petition in bankruptcy; (ii) be adjudicated a bankrupt or insolvent; (iii) file any petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal, state or other bankruptcy act or code or any other present or future applicable and similar federal, state or other statute or law; (iv) seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of it, or of all or

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any substantial part of its properties or of any of the premises; or (v) make any general assignment for the benefit of creditors, or admit in writing its insolvency or inability to pay its debts generally as they become due.

(f) If (i) a final judgment (beyond all available appeal periods) in excess of \$500,000 shall be entered against Mortgagor, and shall not be covered by insurance and not paid within thirty (30) days after such final judgment is entered, or (ii) if Mortgagor shall default beyond any applicable grace period in the payment of any obligation in excess of \$500,000; provided, however, that an Event of Default shall not be deemed to have occurred if in Mortgagor's good faith judgment there exists a good faith dispute which is being diligently prosecuted by Mortgagor, as the case may be, and Mortgagor, as the case may be, has provided Mortgagor with such security as Mortgagor may reasonably require to assure Mortgagor that its security interests arising under the Loan Documents and the value of the premises shall not be jeopardized thereby.

(g) If within ninety (90) days after the commencement of any proceeding at any time against Mortgagor or Guarantor, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal, state or other bankruptcy act or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed or stayed (and prior to expiration of the stay shall not have been dismissed), or if, within ninety (90) days after the appointment of any trustee, receiver or liquidator of it (without the consent or acquiescence of such party) or of all or any substantial part of its respective properties or any of the premises, such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within ten (10) business days after the expiration of any such stay, such appointment shall not have been vacated.

(h) If Mortgagor is enjoined, restrained or in any way prevented by court order from conducting all or a substantial part of its business affairs, and such restriction is not released or stayed within sixty (60) days after the entry of such order, and if stayed is not released prior to the expiration of the stay.

(i) If all or a substantial part of the assets of Mortgagor or Guarantor are attached, seized, subjected to a writ or distress warrant, or levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors and said assets are not released within sixty (60) days of such action.

(j) If all or any portion of the funds of Mortgagor held by Mortgagor shall be garnished, attached or levied upon in any manner by a creditor of Mortgagor in an amount exceeding \$500,000 as to any one garnishment, attachment or levy, and said funds are not released within sixty (60) days after such garnishment, attachment or levy.

(k) The failure to maintain in full force and effect the insurance policies required to be maintained or obtained by Mortgagor under this Mortgage.

(l) If the Guaranty is not in full force and effect or ceases at any time to be valid, binding and enforceable against the Guarantor thereunder prior to termination thereof in

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accordance with its terms, or the Guarantor thereunder shall so assert in writing and not withdraw such assertion within twenty (20) days, or the Guaranty is determined by a court of competent jurisdiction to be unenforceable.

(m) If a Guarantor dies or is adjudged mentally or physically incompetent, and within sixty (60) days thereafter Mortgagor fails (i) to provide Mortgagee with a substitute guarantor reasonably acceptable to Mortgagee, which substitute guarantor shall execute and deliver the Guaranty to Mortgagee, or (ii) deliver to Mortgagee an irrevocable, stand-by letter of credit in the amount of \$5,800,000, in form and substance, and issued by a financial institution, acceptable to Mortgagee in its sole discretion. If Mortgagor provides, and Mortgagee approves, such letter of credit, then notwithstanding anything in this Mortgage to the contrary, Mortgagor shall be entitled to incur Indebtedness to the financial institution issuing the letter of credit in consideration of such issuance, provided that such Indebtedness shall be fully subordinated to the Loan on terms and conditions acceptable to Mortgagee in its sole discretion.

15. Foreclosure; Expense of Litigation. If an Event of Default has occurred hereunder, or when the indebtedness hereby secured, or any part thereof, shall become due, either (a) by lapse of time; (b) by acceleration under any of the provisions of the Note, of this Mortgage or of any other instrument evidencing or securing the Loan; or (c) otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and to exercise any one or more of the remedies provided in the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as in effect from time to time (the "Act"). It is further agreed that if default be made in the payment of any part of the secured indebtedness and such default shall not be cured on or before the expiration of any applicable grace or cure period, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right, to the extent permitted by law, to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmaturing part of the secured indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmaturing part of the secured indebtedness, but as to such unmaturing part this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmaturing part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness for any maturing portion of the secured indebtedness without exhausting the power to foreclose and to sell the premises pursuant to any such partial foreclosure for any other part of the secured indebtedness

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whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

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

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

17. Appointment of Receiver. After the occurrence of an Event of Default, prior to, upon, or at any time after, the filing of a complaint to foreclose this Mortgage, whenever Mortgagee is entitled to possession of the premises, at Mortgagee's request, the court in which such complaint is filed shall appoint a receiver of the premises. Mortgagee shall be entitled to designate the receiver. Such appointment may be made either before or after sale, without notice to the extent permitted by law, without regard to the solvency or insolvency of Mortgagor at the

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time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any Holders may be appointed as such receiver. Such receiver shall have possession of the premises and other property subject to this Mortgage during the foreclosure, shall have the full power and authority to operate, manage and conserve such property, and shall have the usual powers of receivers in like cases. Without limiting the foregoing, such receiver shall have the power and authority: (a) to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide, subject to court approval, for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (c) insure the premises against loss by fire or other casualty; (d) employ counsel, custodian, janitors or other help; (e) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period; and (f) as specified in ¶ 15-1704 of the Act. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (x) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (y) the deficiency in case of a sale and deficiency.

18. Observance of Lease Assignment. In the event Mortgagor, as additional security for the payment of the indebtedness described in and secured hereby, has sold, transferred and assigned, or may hereafter sell, transfer and assign, to Mortgagee its successors and assigns, any interest of Mortgagor as lessor in any lease or leases, Mortgagor expressly covenants and agrees that if Mortgagor, as lessor therein, shall fail to perform and fulfill any term, covenant, condition or provision in said lease or leases, or any of them, on Mortgagor's part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, and such failure continues for thirty (30) days after written notice thereof from Mortgagee to Mortgagor, or if an Event of Default shall occur under the provisions of the Assignment of Rents and Leases of even date herewith made by Mortgagor to Mortgagee as security for the Loan, then, and in any such event, such breach or default shall constitute an Event of Default hereunder and at the option of Mortgagee, and without notice to Mortgagor, all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable as in the case of other Events of Default.

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19. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises or any part thereof personally, or by its agent or attorneys, as for condition broken. In such event Mortgagee, in its discretion, upon request may, with or without force and with or without process of law, to the extent permitted by law, enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof to the extent provided by any non-disturbance agreements; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may, subject to court approval, provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; (f) to receive all of such avails, rents, issues and profits; and (g) during the pendency of legal proceedings to foreclose the lien hereof to exercise the powers specified in ¶ 15-1703 of the Act; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform

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or discharge any of the terms, covenants or agreements contained in said leases, except any such liability, loss, damage, claim or demand arising from the gross negligence or willful misconduct of Mortgagee. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

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

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

(a) to the payment of the operating expenses of the premises, including cost of management, sales and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

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

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

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

21. Mortgagee's Right of Inspection. Mortgagee shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose, subject to the rights of all Persons in possession of the premises as tenants, or otherwise, and in such a manner so as not to disturb such Persons.

22. Condemnation. Mortgagor shall give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the premises, including damages to grade, and Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or other payment (herein generally called an "Award") consequent upon any Taking. Mortgagee at its sole option may elect to apply the Award in payment or reduction of the indebtedness secured hereby, whether due or not, and if the same are insufficient

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to pay such amount in full, then at the option of Mortgagee the indebtedness secured hereby shall be immediately due and payable.

23. Release upon Payment and Discharge of Mortgagor's Obligations. If Mortgagor shall fully pay all principal and interest on the Note, and all other indebtedness secured hereby and comply with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, then Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby.

24. Giving of Notice. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a) if delivered by messenger, when delivered, (b) if mailed, on the third (3rd) business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, (c) if telexed, telegraphed or telecopied, two (2) hours after being dispatched by telex, telegram or telecopy, if such second (2nd) hour falls on a business day within the hours of 9:00 a.m. through 5:00 p.m. of the time in effect at the place of receipt, or at 9:00 a.m. on the next business day thereafter if such second (2nd) hour is later than 5:00 p.m., or (d) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier; in every case addressed to the party to be notified as follows:

In the case of Mortgagor, to:

Fisher Building, L.L.C.  
c/o Concord Development Corporation  
1540 East Dundee Road  
Suite 350  
Palatine, Illinois 60067  
Attention: Mr. Wayne Moretti  
Fax: (847) 776-0371

and to:

Fisher Building, L.L.C.  
c/o Kenard Corporation  
4242 North Sheridan Road  
Chicago, Illinois 60613  
Attention: Mr. Harold Lichterman  
Fax: (773) 244-1400

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with copies (which shall not constitute a required notice) to:

Deborah Tyler Haddad, Esq.  
Concord Development Corporation of Illinois  
1540 East Dundee Road  
Suite 350  
Palatine, Illinois 60067  
Fax: (708) 776-0371

and to:

Jeffrey S. Arnold, Esq.  
Rudrick & Wolfe  
203 North LaSalle Street  
Suite 1800  
Chicago, Illinois 60601  
Fax: (312) 630-5529

In the case of Mortgagee to:

LaSalle Bank National Association  
135 South LaSalle Street  
12th Floor  
Chicago, Illinois 60603  
Attention: Mr. Geoffrey Koss  
Fax: (312) 750-6467

with a copy (which shall not constitute a required notice) to

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

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

25. Waiver of Defense; Remedies Not Exclusive. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note.

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

26. Compliance With Illinois Mortgage Foreclosure Law.

(a) In the event that any provisions in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with Act.

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

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

27. Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself

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and all who may claim through or under it waives any and all right to have the property and estates comprising the premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in ¶ 15-1201 of the Act) or residential real estate (as defined in ¶ 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under ¶ 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law

28. Indemnification. Mortgagor shall and hereby agrees to indemnify and hold Mortgagee harmless from and against all obligations, liabilities, losses, costs, claims, expenses, fines, penalties and damages (including attorneys' fees and expenses) which Mortgagee may incur by reason of (a) the operation, management, marketing or maintenance of the premises, (b) any other action or inaction by, or matter which is the responsibility of Mortgagor, and (c) Mortgagor's breach of any of Mortgagor's representations or warranties or Mortgagor's failure to fulfill any of Mortgagor's obligations under this Mortgage or any other Loan Document, excluding those that may arise as a result of the gross negligence or willful misconduct of Mortgagee. Mortgagor shall defend Mortgagee against any claim or litigation involving Mortgagee for the same, with counsel approved by Mortgagee, and should Mortgagee incur any such obligation, liability, loss, cost, expense, fined penalty or damage, then Mortgagor shall reimburse Mortgagee for such amounts within thirty (30) days after demand and upon the failure of Mortgagor so to do may, at Mortgagee's option, constitute an Event of Default hereunder. Notwithstanding anything to the contrary contained herein, Mortgagee shall have the option of conducting its own defense with counsel of Mortgagee's selection, but at the expense of Mortgagor, if and to the extent that (i) in the reasonable opinion of Mortgagee, (A) the control of such action, suit or proceeding would involve the Mortgagor in a bona fide conflict of interest or (B) such action, suit or proceeding involves a potential imposition of criminal liability or material civil liability (whether or not indemnified hereunder) on Mortgagee; (ii) such proceeding involves claims not fully indemnified by the Mortgagor which the Mortgagor and Mortgagee have been unable to sever from the indemnified claim(s); (iii) an Event of Default shall have occurred and be continuing; or (iv) such action, suit or proceeding involves matters which extend beyond or are unrelated to the Loan and if determined adversely could be materially detrimental to the interests of Mortgagee notwithstanding indemnification by the Mortgagor. The foregoing indemnification agreement shall also include all costs incurred by Mortgagee in connection with the enforcement of said indemnification agreement. Any amounts owed to Mortgagee under this Section shall bear interest at the Default Interest Rate (as defined in the Note) from the date of demand if not paid within thirty (30) days after demand therefor, and, to the extent permissible under applicable law, shall be added to the Loan Amount and shall be secured by the Loan Documents as fully and effectively as every other obligation of Mortgagor hereunder. The provisions of this Section shall survive payment of the Loan.

29. Binding on Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor,

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and shall inure to the benefit of the Holders from time to time and of the successors and assigns of the Mortgagee.

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

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

32. Consent to Jurisdiction. Mortgagor hereby submits to personal jurisdiction in the State of Illinois for the enforcement of this Mortgage and all of the Loan Documents and waives any and all personal rights to object to such jurisdiction for the purposes of litigation to enforce this Mortgage and any of the Loan Documents. In the event such litigation is commenced at any time when Mortgagor is not permanently domiciled in the State of Illinois, Mortgagor agrees that service of process may be made and personal jurisdiction over Mortgagor obtained, by service of a copy of the summons, complaint, and other pleadings required to commence such litigation upon an appointed agent for Service of Process in the State of Illinois, which Mortgagor hereby designates to be Deborah Haddad, Esq. Mortgagor agrees that this appointment of an agent for service of process is made for the mutual benefit of Mortgagor and Mortgagee and may not be revoked or changed without Mortgagee's consent, which consent shall not be unreasonably withheld. Mortgagor hereby agrees and consents that any such service of process upon such agent shall be taken and held to be valid personal service upon Mortgagor whenever Mortgagor shall not then be physically present, residing within, or doing business within the State of Illinois, and that any such service of process shall be of the same force and validity as if service were made upon Mortgagor when physically present, residing within, or doing business in the State of Illinois. Mortgagor waives all claim of error by reason of any such service. Mortgagor hereby consents to the jurisdiction of either the Circuit Court of Cook County, Illinois, or the United States District Court for the Northern District of Illinois, Eastern Division, in any action, suit, or proceeding which Mortgagee may at any time wish to file in connection with this Mortgage or any of the Loan Documents. Mortgagor hereby agrees that an action, suit, or proceeding to enforce this Mortgage or any of the Loan Documents may be brought in any State or Federal Court in the State of Illinois and hereby waives any objection which Mortgagor may have to the laying of the venue of any such action, suit, or proceeding in any such Court; provided, however, that the provisions of this Section shall not be deemed to preclude Mortgagee from filing any such action, suit, or proceeding in any other appropriate forum.

33. Business Loan Recital. Mortgagor represents, warrants and agrees that the obligation secured hereby: (a) constitutes a business loan which comes within the purview of 815 ILCS 205/4 (1)(c); and (b) is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 et seq.

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

35. Partial Invalidity; Maximum Allowable Rate of Interest. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage and the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. All agreements herein and in the Note are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to the Holders for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the Holders shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

36. Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition

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to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the loan to be secured hereby, all in accordance with the application and loan commitment issued in connection with this transaction; provided, however, that in no event shall the total amount of loan proceeds disbursed plus such additional amounts exceed 200% of the face amount of the Note.

## 37. Definitions and Interpretation.

(a) Definitions. As used in this Mortgage, the following terms have the respective meanings indicated opposite each of them:

Bankruptcy Code. The United States Bankruptcy Code, 11 U.S.C. §101, et seq., and all regulations hereunder, as hereafter amended from time to time.

City. The City of Chicago, Illinois.

Contingent Obligation. As to any Person, any obligation of such Person guaranteeing any Indebtedness, leases, dividends or other contractual obligations ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including, without limitation, any obligation of such Person, whether or not contingent, (a) to purchase any such primary obligation, (b) to advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (d) otherwise to assure or hold harmless the owner or holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business.

ERISA. Has the meaning provided in Section 4(k).

Financial Statements. The financial statements of Mortgagor and Guarantor.

Governmental Authority. The United States, the State of Illinois, the County of Cook and the City of Chicago, and any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of them.

Guarantor. Ronald Benach, Wayne Moretti, Harold Lichterman and Geraldine Lichterman, both individually and collectively.

Indebtedness. Of a Person, at a particular date, the sum (without duplication) at such date of (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services or which is evidenced by a note, bond, debenture or similar instrument, (b) all obligations of such Person under capital leases and operating leases, except the

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Leases (as defined in the Assignment of Rents and Leases), (c) all obligations (contingent or otherwise) of such Person in respect of letters of credit, acceptances, or similar obligations issued or created for the account of such Person, (d) all Contingent Obligations of such person, and (e) all liabilities secured by any lien on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof; provided, however, that Indebtedness shall not be deemed to include (1) accounts payable or accrued expenses not evidenced by a note or similar instrument of such Person, (2) installment-type sales contracts and equipment leases entered into in the ordinary course of business; and (3) unsecured indebtedness to third party vendors incurred by Mortgagor in the ordinary course of business.

Knowledge. With respect to Mortgagor, (a) information appearing in documents in the custody or under the control of Mortgagor or Guarantor; (b) information actually known by Mortgagor or Guarantor; or (c) information in documents in the custody of individual attorneys representing Mortgagor or Guarantor and other information actually known by such individual attorneys (not only to the extent reflected in documents under the control of such individual attorneys or actually known by such individual attorneys representing Mortgagor or Guarantor in connection with the transactions contemplated by this Agreement).

Local Authority. Any Governmental Authority which exercises jurisdiction over the Premises or construction thereon

Person. Any natural person, partnership, joint venture, trust, corporation, limited liability company, Governmental Authority or other entity.

Title Insurer. Chicago Title Insurance Company or other title insurer reasonably satisfactory to Mortgagee.

Title Policy. The form ALTA Loan Title Insurance Policy, as revised through the date hereof, issued by Title Insurer for the Premises.

(b) Interpretation. The following govern the interpretation of this Mortgage and the Loan Documents.

(i) The table of contents, headings and captions are inserted for reference only and shall not be deemed to limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation thereof.

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

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

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

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

(vi) This Mortgage, the Note and the other Loan Documents shall be governed by and construed in accordance with the laws of the State of Illinois, without regard to conflict of laws rules, policies or principles.

(vii) Time is of the essence of this Mortgage, the Note and the other Loan Documents.

(viii) This Mortgage, the Note and the other Loan Documents shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties, it being recognized that both Mortgagor and Mortgagee have contributed substantially and materially to the preparation of this Mortgage, the Note and the other Loan Documents.

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

(x) Wherever under the provisions of this Mortgage, the Note or any of the Loan Documents, Mortgagee is required to act reasonably, (1) Mortgagee shall be deemed to have satisfied such requirement if Mortgagee acts in good faith and as a prudent, reasonable construction Mortgagee (taking into consideration the Loan Amount and the nature of the premises), and (2) Mortgagee shall not unreasonably delay the required action.

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

(xii) If any provision of this Mortgage, the Note or any of the other Loan Documents or the application of any such provision to any Person or circumstance, for any reason and to any extent, shall be held to be invalid or unenforceable neither the remainder of such Loan Document nor the application of such provision to any other Person or circumstance

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shall be affected thereby, but rather the same shall be enforced to the greatest extent permitted by law.

(xiii) This Mortgage and the Loan Documents may be executed, acknowledged and delivered in any number of counterparts, any or all of which may contain the signatures of less than all of the parties, and all of which shall be construed together as but a single instrument.

(xiv) Reference in this Mortgage, the Note or any of the other Loan Documents to Mortgagee's attorneys shall be deemed to include special counsel, local counsel and in-house counsel for Mortgagee, and paralegals engaged by any such counsel.

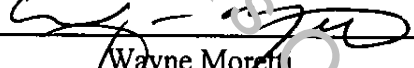
38. Applicable Law. This Mortgage, the Note and all other instruments evidencing and securing the loan secured hereby shall be construed, interpreted and governed by the laws of the State of Illinois.

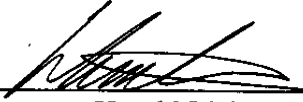
39. Waiver of Trial by Jury. MORTGAGOR AND MORTGAGEE EACH HEREBY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS AS ARISING FROM THE LENDING RELATIONSHIP EVIDENCED BY THE LOAN DOCUMENTS, AND AGREE THAT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

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

MORTGAGOR:

FISHER BUILDING, L.L.C., an Illinois limited liability company

By:   
Wayne Moretti  
Manager

By:   
Harold Lichterman  
Manager

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STATE OF ILLINOIS )  
COUNTY OF COOK ) SS

I, VICTORIA C. McELROY, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that Wayne Moretti and Harold Lichterman, the managers of FISHER BUILDING, L.L.C., an Illinois limited liability company (the "Company"), who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10th day of MAY, 1999

Victoria C. McElroy  
Notary Public

My commission expires \_\_\_\_\_

This instrument was prepared by  
and when recorded return to:

Terrence Budny  
Bell, Boyd & Lloyd  
Three First National Plaza  
Suite 3100  
Chicago, Illinois 60602-4207  
Box 136



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## EXHIBIT A

### LEGAL DESCRIPTION

Lots 18, 19 and 24 (except that part of said lots taken for Dearborn Street) in George W. Snow's Subdivision of Block 139 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

PIN: 17-16-234-005  
17-16-234-006

Address: 343 South Dearborn Street, Chicago, Illinois

Property of Cook County Clerk's Office

**99467457**