



Ex 990240 28/4

mail

Express Title Services  
1000 Plaza Dr. #325  
Schaumburg, IL 60173  
847-969-1090

MORTGAGE

PARTIES

This MORTGAGE made as of the 21st day of May, 1999, by HARRY SMITH, UNMARRIED, having an address at 4002 WEST WEST END AVENUE, CHICAGO, Illinois, 60624 (the "Mortgagor"), to Alliance Funding, a Division of Superior Bank, FSB a Federal savings bank organized and existing under the laws of the United States of America, having its principal place of business and office at 1101 Perimeter Drive, Suite 830, Schaumburg, Illinois 60173 (the "Mortgagee").

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GRANT OF MORTGAGE AND SECURITY INTEREST

WITNESSETH, that to secure the payment of an indebtedness in the principal sum of **One Hundred Sixteen Thousand Two Hundred Fifty dollars and Zero cents (\$116,250.00)**, lawful money of the United States, to be paid according to a certain bond, note or obligation made by the Mortgagor to the Mortgagee, bearing even date herewith and by this reference made a part hereof (as such bond, note or obligation may hereafter be modified, amended, extended, renewed or substituted for, collectively, the "Note"), and any and all sums, amounts and expenses incurred hereunder by the Mortgagee according to the terms hereof and all other obligations and liabilities of the Mortgagor under this Mortgage and the Note, together with interest thereon (all of the aforesaid are collectively, the "Indebtedness"), the Mortgagor hereby mortgages, grants, bargains, sells, warrants, conveys, alienates, remises, releases, assigns, sets over and confirms to the Mortgagee and grants to the Mortgagee a security interest in all right, title and interest of the Mortgagor now owned or hereafter acquired in and to the following.

I. All that certain lot, piece or parcel of land (the "Real Property") as more particularly described on Schedule "A" annexed hereto and made a part hereof; and

II. All buildings and improvements now or hereafter located on the Real Property (collectively, together with all Building Equipment (as hereinafter defined), the "Improvements") and all of the Mortgagor's right, title and interest in and to the streets and roads abutting the Real Property to the center lines thereof, and strips and gores within or adjoining the Real Property, the air space and the right to use such air space above the Real Property, all development rights, all rights of ingress and egress by motor vehicles to parking facilities now or hereafter located on or within the Real Property and all rights of ingress and egress by pedestrians to and from the Real Property, all easements now or hereafter benefitting the Real Property or the Improvements, all royalties and all rights appertaining to the use, enjoyment and employment of the Real Property or the Improvements, including, without limitation, alley, drainage, crop, timber, agricultural, horticultural, mineral, water, oil and gas rights; and

III. All fixtures, chattels and articles of personal property and all appurtenances and additions thereto and substitutions for or replacements thereof, now or hereafter attached to or contained in the Real Property and/or the

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Improvements or placed on any part thereof, though not attached thereto, which are owned by the Mortgagor, and used or useable in connection with the present or future operation or letting of the Real Property and/or the Improvements or the activities at any time conducted therein and all other property used in connection with the production of income from the Real Property and the Improvements or adapted for use therein and/or which is described or reflected in this Mortgage, including, but not limited to, all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerator and/or compacting and elevator plants, boilers, tankers, compressors, stoves, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings and fixtures, and the trade names, good will and books and records relating to the business operated on the Real Property and/or the Improvements (collectively, the "Building Equipment"). Without limiting the foregoing, the Mortgagor hereby grants to the Mortgagee a security interest in all of its present and future "accounts", "equipment" and "general intangibles" (as such quoted terms are defined in the Uniform Commercial Code of the State of Illinois) and contract rights arising from or related to the Premises (as hereinafter defined) or the operation thereof, and the Mortgagee shall have, in addition to all rights and remedies provided herein, and in any other agreements, commitments and undertakings made by the Mortgagor to the Mortgagee, all of the rights and remedies of a "secured party" under such Uniform Commercial Code. To the extent permitted under applicable law, this Mortgage shall be deemed to be a "security agreement" (as such quoted term is defined in such Uniform Commercial Code); and

IV. All leases, lettings, occupancy agreements and licenses (collectively, the "Leases") of the Real Property and/or the Improvements or any part thereof now or hereafter entered into and all right, title and interest of the Mortgagor thereunder, including, without limitation, cash, letters of credit and securities deposited thereunder, the right to receive and collect the rents, issues and profits payable thereunder and the right to enforce, at law or in equity, all provisions, covenants and agreements thereof; and

V. All operating contracts, concessionaire agreements, franchise agreements, licenses, permits, management agreements, zoning, land use, air rights and development agreements, service contracts, supply and maintenance contracts, equipment leases, warranties, guaranties and all other agreements affecting the Real Property and/or the Improvements and/or used in connection with the operation thereof and all contract rights of the Mortgagor thereunder, together with all of the rights, revisions and/or equities now or hereafter relating thereto (collectively, the "Agreements"); and

VI. All refunds of Taxes (as hereinafter defined) all unearned premiums, accrued, accruing or to accrue under any and all insurance policies now or hereafter obtained by the Mortgagor, and all proceeds of the conversion, voluntary or involuntary, of the Real Property, the Improvements and/or any other property or rights encumbered or conveyed hereby, or any part thereof, into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards and compensation hereafter made in respect of the Real Property, the Improvements and/or any other property or rights encumbered or conveyed hereby by any governmental or other lawful authority for the taking by eminent domain, condemnation or otherwise, of all or any part of the Real Property, the Improvements and/or any other property or rights encumbered or conveyed hereby or any easement benefitting the foregoing, including, but not limited to, awards for any change of grade of streets (collectively, the "Proceeds"); and

VII. All extensions, improvements, betterments, renewals, substitutions and replacements of and all additions and appurtenances to the Real Property, the Improvements and/or any other property or rights encumbered or conveyed hereby or hereafter acquired by or released to the Mortgagor or constructed, assembled or placed by the Mortgagor on the Real Property and/or the Improvements (collectively, the "Appurtenances") and all conversions of the security constituted thereby which, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described herein (the Real Property and the Improvements, together with the Building Equipment, the Leases, the Agreements, the Proceeds, the Appurtenances and all other property, rights, privileges and interests encumbered or conveyed hereby are hereinafter collectively, the "Premises").

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TO HAVE AND TO HOLD the Premises unto the Mortgagee and its successors and assigns until the Indebtedness is indefeasibly paid in full.

SUBJECT only to those exceptions to title which are described in Section 1.1 of this Mortgage.

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

## ARTICLE I.

### Representations and Warranties of the Mortgagor

The Mortgagor [*and each such Mortgagor, if more than one*] hereby represents and warrants to the Mortgagee as follows:

#### SECTION 1.1. Warranty of Title.

(a) The Mortgagor warrants that it has good and marketable title to an indefeasible estate in the Real Property and the Improvements subject only to those exceptions to title (i) set forth in the marked title insurance binder redated as of the date hereof insuring the interest of the Mortgagee under this Mortgage which are approved by the Mortgagee or (ii) expressly agreed to in writing by the Mortgagee.

(b) The Mortgagor owns all Building Equipment now or hereafter located on the Premises (subject to the rights of space tenants, if any, in and to any such Building Equipment) free and clear of all liens and claims other than the matters set forth in this Section 1.1.

*[SECTION 1.2. Due Execution. Mortgagor represents and warrants that Mortgagor has duly executed and delivered this Mortgage, the Note and all other documents, instruments, and agreements executed and delivered by Mortgagor (which such documents, instruments and agreements executed and delivered by Mortgagor together with all other documents, instruments and agreements, evidencing, securing or otherwise relating to the loan evidenced by the Note (the "Loan") comprise the "Loan Documents").*

*[SECTION 1.2. Due Execution and Authorization. The execution and delivery of this Mortgage, the Note and all other documents, instruments, and agreements, executed and delivered in connection with the loan evidenced by the Note (the "Loan"), and any amendments, modifications, renewals, extensions, increases, replacements, additions, consolidations, readvances or substitutions thereof (all of the foregoing collectively, the "Loan Documents") have been duly authorized [by the shareholders and directors of the Mortgagor] [by all the requisite partners comprising the Mortgagor][by all the requisite managers and members of the Mortgagor] [and there is no provision of the certificate of incorporation or by-laws of the Mortgagor] [and there is no provision of the partnership agreement of the Mortgagor] [and there is no provision in the operating agreement or articles of organization of the Mortgagor] requiring further consent for such action by any other entity or person from whom such consent has not been obtained. The Mortgagor is duly organized, validly existing and in good standing under the laws of the state of its formation and the state in which the Real Property is situate, and has (i) all necessary licenses, authorizations, registrations, permits and approvals and (ii) full power and authority to own its properties and carry on its business as presently conducted and to enter into and perform under and in accordance with the Loan Documents.]*

#### SECTION 1.3. Operation of the Premises.

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(a) The Mortgagor has and will maintain during the time any of the Indebtedness is outstanding, all necessary certificates, licenses, authorizations, registrations, permits and approvals necessary for the operation of the Premises and each part thereof, including, but not limited to, a permanent certificate of occupancy and, if applicable, a Board of Fire Underwriters Certificate for the entirety of the Improvements and each applicable part thereof, and all required environmental, zoning and other permits and approvals (collectively, the "Permits and Approvals"), all of which as of the date hereof are in full force and effect and not subject to any revocation, termination, amendment, release, suspension, forfeiture or the like. In the event, during the time any of the Indebtedness is outstanding, the use, maintenance or operation of the Premises requires that Mortgagor obtain for itself or the Premises or any part thereof, any other Permits and Approvals, Mortgagor will promptly obtain and maintain, at its expense, all such additional Permits and Approvals.

(b) The present use and occupancy of the Premises does not conflict with or violate any of the Permits and Approvals or any applicable law, ordinance, statute, rule, administrative or judicial order, requirement or regulation. The Mortgagor will not and will not permit any tenant or occupant of the Premises to utilize any portion of the Premises in violation of any Permit or Approvals or requirements therefor or in violation of any applicable law, ordinance, statute, rule, administrative or judicial order, requirement or regulation.

(c) The Mortgagor has delivered to the Mortgagee copies of all of the Permits and Approvals, certified by the Mortgagor to be true, correct and complete copies thereof.

(d) The Mortgagor will not materially change nor permit any material change in the use and operation of the Premises without the Mortgagee's prior written consent.

**SECTION 1.4. No Actions or Proceedings.** There are no actions, suits or proceedings (including any bankruptcy, insolvency or similar proceedings) pending, or to the best knowledge of the Mortgagor, threatened or contemplated by or against or affecting the Mortgagor, any guarantor of the Note or the Premises, or which involve or might involve the validity or enforceability of this Mortgage or the priority of the lien hereof, at law or in equity, or before or by any governmental body, agency or authority and, neither the Mortgagor nor, to the best of the Mortgagor's knowledge, any guarantor, is in default with respect to any order, writ, injunction, decree or demand of any court, arbitration body or governmental body, agency or authority.

## **SECTION 1.5. Margin Stock; Investment Company.**

(a) The Mortgagor is not engaged, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" (as such quoted terms are defined or used in Regulations G, T, U or X of the Board of Governors of the Federal Reserve System).

(b) The Mortgagor is not directly or indirectly controlled by, or acting on behalf of, any person or entity which is an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

## **[SECTION 1.6. Land Trust.**

The Trust Agreement under which Mortgagor is acting as trustee constitutes a "land trust" as that term is defined in Section 15-1205 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/1101, et seq.]

## **ARTICLE II.**

### **Covenants of the Mortgagor**

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The Mortgagor [*jointly and severally, if more than one*] hereby covenants for the benefit of the Mortgagee as follows:

**SECTION 2.1. Payment of the Indebtedness.** The Mortgagor shall pay the Indebtedness in same day funds at the time and in the manner set forth herein and in the Note.

**SECTION 2.2. Compliance with Laws.**

(a) The Mortgagor shall maintain the Improvements in good condition and repair and shall comply with the requirements of any governmental authority claiming jurisdiction over the Premises within the lesser of (i) the time required pursuant to the terms of an order (an "Order") issued by any such authority or (ii) thirty (30) days after an Order containing such requirement has been issued by such authority; provided, however, that if compliance cannot reasonably be effected within such thirty (30) day period, the Mortgagor shall be entitled to such longer period as is reasonably necessary to effect compliance provided that the Mortgagor diligently and continuously prosecutes to completion such compliance within the time required pursuant to such Order and prior to the imposition of any fines, penalties, interest, late charges or liens in connection therewith. If the Premises are now or at any time in the future become subject to the terms of any rent control or rent stabilization statute, ordinance, rule or regulation, the Mortgagor shall promptly comply and/or cause the Premises to comply with the terms and requirements thereof and shall promptly notify the Mortgagee of the occurrence thereof and its compliance therewith.

(b) Nothing contained in this Section 2.2 shall require the compliance by the Mortgagor with any Order so long as (i) the failure to so comply shall not be a default or event of default under any mortgage or security agreement affecting the Premises or any interest therein, (ii) the failure to so comply shall not result in the voiding, rescission or invalidation of any of the Permits and Approvals, (iii) the failure to so comply shall not prevent, hinder or interfere with the lawful use and occupancy of the entirety (or any part) of the Improvements for their present use and occupancy, (iv) the failure to so comply shall not void or invalidate any insurance maintained by the Mortgagor in respect of the Premises or result in an increase of any premium therefor or a decrease in any coverage provided thereby and (v) the Mortgagor shall, in good faith and at its sole cost and expense, diligently contest the Order or the validity thereof by appropriate legal proceedings. Such legal proceedings must operate to prevent (A) the occurrence of any of the events described in clauses (i) through (iv) above and (B) the collection or other realization of any sums due or payable as a consequence of the Order, the sale or forfeiture of the Premises or any part thereof or interest therein; provided, however, that during such contest the Mortgagor shall, at the option of the Mortgagee, provide security reasonably satisfactory to the Mortgagee assuring the discharge of the Mortgagor's obligations hereunder and of any interest, charge, fine, penalty, fee or expense arising from or incurred as a result of such contest and provided, further, that if at any time compliance with any obligation imposed upon the Mortgagor by the Order shall become necessary to prevent (x) the occurrence of any of the events described in clauses (i) through (iv) above, or (y) the delivery of a deed conveying the Premises or any portion thereof because of non-compliance or the sale of a lien in connection therewith, or (z) the imposition of any penalty, fine, charge, fee, cost or expense on the Mortgagee, then the Mortgagor shall comply with the Order in sufficient time to prevent the occurrence of any of the foregoing.

(c) Mortgagor represents that Mortgagor has filed all federal, state and local income tax returns which Mortgagor was required to file through and including the date of this Mortgage and has paid all taxes as shown on such returns to the extent that such taxes have become due. Mortgagor warrants that Mortgagor will timely file all federal, state and local income tax returns which Mortgagor is required to file after the date of this Mortgage and will timely pay all taxes as shown on such returns when due.

**SECTION 2.3. Insurance.**

(a) The Mortgagor shall keep the Improvements insured against damage by fire and other hazards covered by a comprehensive extended coverage "all risk" property insurance policy providing coverage in an amount equal to 100% of the replacement cost of the Improvements, without depreciation. Such insurance policy shall contain



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an inflation rider, if available, and such policy, together with the boiler and machinery explosion insurance required pursuant to Section 2.3(c), shall name the Mortgagee as an additional insured and loss payee pursuant to a Standard Illinois Mortgagee Clause (non-contributing).

(b) All insurance policies and endorsements required pursuant to this Section 2.3 shall be fully paid for, nonassessable and contain such provisions (including, without limitation, a replacement cost endorsement) and such expiration dates, and shall be in such form and amounts and issued by such insurance companies licensed to do business in the state of Illinois with a rating of "A-XI" or better as established by Best's Rating Guide (or an equivalent rating with such other publication of a similar nature as shall be in current use and chosen by Mortgagee, in Mortgagee's discretion), or such other companies as shall be approved by the Mortgagee. The Mortgagor shall pay when due all premiums for fire, hazard and other insurance required to be maintained by the Mortgagor in respect of the Premises pursuant to the terms of this Mortgage.

(c) In addition to the insurance policies above described, the Mortgagor shall keep and maintain in effect insurance policies in respect of rental loss, Worker's Compensation, employees' liability coverage, comprehensive public liability insurance (including, without limitation, contractual coverage), boiler and machinery explosion insurance on a replacement cost form (including, without limitation, business interruption and extra expense coverage) and such other insurance as the Mortgagee may reasonably require from time to time for such other risks (including without limitation, risks of war and nuclear explosion) which are commonly insured against for comparable properties in the geographic vicinity of the Real Property, all in such form, with such coverage, in such amounts and issued by such insurance companies with a rating of "A-XI" or better as established by Best's Rating Guide (or an equivalent rating with such other publication of a similar nature as shall be in current use and chosen by Mortgagee, in Mortgagee's discretion), or such other companies as shall be approved by the Mortgagee, and shall name the Mortgagee as an additional insured thereunder.

(d) Without limiting the foregoing, each policy of insurance required hereunder shall be issued on an occurrence basis form and provide that such policy may not be canceled, expire or be terminated (whether due to nonpayment of premiums, surrender by the insured or otherwise) except upon not less than thirty (30) days' prior written notice to the Mortgagee and that no act or thing done by the Mortgagor shall invalidate the policy as against the Mortgagee. The Mortgagor shall additionally keep the Improvements insured against loss by flood if the Premises are located in an area (a "Flood Hazard Area") identified by the Federal Emergency Management Agency or other applicable authority as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 and/or the Flood Disaster Protection Act of 1973 and/or the National Flood Insurance Reform Act of 1994, as the same may have been or may hereafter be amended, modified or supplemented, in an amount at least equal to the lesser of (i) the outstanding Indebtedness (but not less than the amount of coverage necessary to prevent the Mortgagor from being a co-insurer of a partial loss) or (ii) the maximum limit of coverage available with respect to the Improvements under such Acts, and by a company or companies to be approved by the Mortgagee.

(e) In all events and without modifying or limiting the foregoing, the Mortgagor will assign and deliver the policy or policies (or true copies thereof) of all such insurance to the Mortgagee in such manner and form so that the Mortgagee and its successors and assigns shall at all times have and hold such policy or policies as collateral and further security for the payment of the Indebtedness until the Indebtedness shall be paid in full; provided, however, that if the insurance required hereunder shall be effected by blanket policies in accordance with the provisions hereof, the Mortgagor shall furnish to the Mortgagee certified copies or duplicate originals thereof in place of the original blanket policy, with schedules thereto showing the amount of insurance afforded by such blanket policies in respect of the Premises. The Mortgagor shall not take out or permit any separate or additional insurance which is contributing in the event of loss unless it is endorsed in favor of the Mortgagee in accordance with the requirements hereof and otherwise satisfactory to the Mortgagee in all respects. The insurance required hereunder may be carried by the Mortgagor pursuant to blanket policies, provided that such blanket policies contain separately scheduled located amounts that satisfy the requirements of this Section 2.3. The proceeds of insurance paid on account of any damage or destruction to

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the Premises or any part thereof coming into the possession of the Mortgagee shall not be deemed trust funds and the Mortgagee shall be entitled to dispose of such proceeds as hereinafter provided in Section 2.4.

**SECTION 2.4. Insurance Proceeds.** The Mortgagee shall have the right, in its sole discretion, to apply any insurance proceeds it may receive pursuant to Section 2.3 or otherwise to the payment of the Indebtedness. In the event any such insurance proceeds shall be used to reduce the Indebtedness, the same shall be applied by the Mortgagee, after the deduction therefrom and repayment to the Mortgagee of any and all costs, fees and expenses incurred by the Mortgagee in the recovery thereof, including, without limitation, attorneys' fees and disbursements and other professional fees and disbursements, in any manner it shall designate, including, but not limited to, the application of such proceeds to the then unpaid principal balance of the Indebtedness.

**[SECTION 2.5. Maintenance of Existence.** *The Mortgagor will, so long as any part of the Indebtedness remains outstanding, do all things necessary to preserve and keep in full force and effect (and in good standing) Mortgagor's existence, franchises, rights and privileges under the laws of the state of Mortgagor's formation and the law of the state in which the Real Property is located, and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Mortgagor, or to the Premises or any part thereof.*]

**SECTION 2.6. Taxes and Other Charges.**

(a) The Mortgagor shall pay and discharge by the last day payable without penalty, premium, interest or late charges, all taxes of every kind and nature, water rates, sewer rents and assessments, levies, permit, inspection and license fees, all charges and fees imposed by the municipality in which the Real Property is located for the use of vaults, walks, chutes, areas and other space beyond the lot line and on or abutting the public sidewalks and in front of or adjoining the Real Property and all other charges imposed upon or assessed against the Premises or any part thereof or upon the revenues, rents, issues, income and profits of the Premises or arising in respect of the occupancy, use or possession thereof or any payments in lieu of any of the foregoing (collectively, the "Taxes"). The Mortgagor shall exhibit to the Mortgagee upon request receipts or other evidence satisfactory to the Mortgagee evidencing the payment of the Taxes. The Mortgagor shall not, without the prior consent of the Mortgagee, enter into any agreement which has the effect of deferring the payment of any Taxes.

(b) Nothing contained in this Section 2.6 shall require the payment or discharge of any obligation imposed upon the Mortgagor by this Section 2.6 so long as the Mortgagor shall in good faith and at its sole cost and expense diligently contest the same or the validity thereof by appropriate legal proceedings, which proceedings must operate to prevent the collection thereof or other realization thereon, the sale of the lien thereof and the sale or forfeiture of the Premises or any part thereof to satisfy the same; provided, however, that during such contest the Mortgagor shall, at the option of the Mortgagee, provide security satisfactory to the Mortgagee assuring the discharge of the Mortgagor's obligations hereunder and of any additional interest, charge, fine, penalty, fee or expense arising from or incurred as a result of such contest and provided, further, that if at any time the payment of any obligation imposed upon the Mortgagor by this Section 2.6 shall become necessary to prevent (i) the delivery of a tax deed conveying the Premises or any portion thereof, or (ii) the sale of the tax lien therefor because of non-payment or (iii) the imposition of any penalty, fine, charge, fee, cost or expense on the Mortgagee, then the Mortgagor shall pay the same in sufficient time to prevent the occurrence of any of the foregoing.

(c) All refunds of Taxes payable to the Mortgagor in respect of any tax certiorari or any other tax reduction or abatement proceeding relating to all or any portion of the Premises (individually, a "Tax Proceeding") are hereby assigned to and shall be paid to the Mortgagee and applied on account of the Indebtedness in such manner as the Mortgagee may from time to time determine in its sole discretion. The foregoing assignment shall continue in effect until the Indebtedness is indefeasibly paid in full. However, until the occurrence of the earlier of (i) an Event of Default or (ii) [the maturity date of] [the "Maturity Date" of and as defined in] the Note, the Mortgagor shall have a revocable license to receive such refunds. Such revocable license of the Mortgagor to collect and receive any such refunds shall be deemed automatically revoked upon the occurrence of the earlier of (i) an Event of Default or (ii) [the maturity date

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of] [the "Maturity Date" of and as defined in ] the Note. Provided that the Mortgagee has theretofore approved the retainer agreement between the Mortgagor and its Tax Proceeding counsel, the Mortgagee agrees to pay the fees of such counsel out of any such refund to the extent provided by such retainer agreement, prior to applying the balance on account of the Indebtedness. The Mortgagor, upon request by the Mortgagee, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of such refunds to the Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. The Mortgagor hereby irrevocably appoints the Mortgagee as its attorney-in-fact (which appointment shall be deemed coupled with an interest) for the purpose of confirming the assignment of such refunds to the Mortgagee. The provisions of this Section 2.6(c) shall survive (i) the foreclosure of this Mortgage, and any refunds shall be applied toward the satisfaction of any foreclosure judgment and/or any deficiency judgment in respect thereof, and (ii) any release(s) from time to time of any portion of the Premises. In the event that the Mortgagee or its designee accepts a deed in lieu of foreclosure, such refunds are automatically assigned to the Mortgagee or its designee without the necessity of further action by the Mortgagee or the Mortgagor.

**SECTION 2.7. Liens.** The Mortgagor shall pay, bond or discharge of record all liens and all claims and demands of mechanics, materialmen, laborers or others, which, if unpaid, might result in or permit the creation of a lien on or affecting the Premises or part thereof, or on or affecting the revenues, rents, issues, income or profits arising therefrom and the Mortgagor forthwith shall do, at the sole cost and expense of the Mortgagor, everything necessary to fully preserve the lien of this Mortgage and priority hereof.

**SECTION 2.8. Condemnation Awards.**

(a) The Mortgagor, promptly upon obtaining notice of the institution of any proceedings for the appropriation or condemnation of the Premises or any portion thereof, will notify the Mortgagee of the pendency of such proceedings. The Mortgagee may participate in any such proceedings and the Mortgagor shall, from time to time, deliver to the Mortgagee any and all instruments required by it to permit such participation. As of the date hereof the Mortgagor knows of no actual or proposed condemnation or eminent domain proceeding or settlement in lieu thereof which may affect the Premises of any part thereof.

(b) The Mortgagor shall continue to pay the Indebtedness at the time and in the manner provided for in the Note and in this Mortgage and the Indebtedness shall not be reduced until any award or payment therefor shall have been actually received and applied by the Mortgagee on account of the Indebtedness. If the Premises are sold, through foreclosure or otherwise, prior to the receipt by the Mortgagee of such award or payment, the Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment or portion thereof sufficient to pay the Indebtedness, whichever is less. The Mortgagor, after obtaining the prior written consent of the Mortgagee, shall file and prosecute its claim for any such award or payment in good faith and with due diligence and shall cause the same to be collected and paid over to the Mortgagee. In connection therewith, the Mortgagor hereby irrevocably authorizes and empowers the Mortgagee, in the name of the Mortgagor or otherwise, to collect and receipt for any such award or payment and to file and prosecute any such claim. It is hereby expressly agreed that the Mortgagor shall, upon demand of the Mortgagee, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to the Mortgagee, free and clear of any liens, charges or encumbrances of any kind or nature whatsoever.

(c) All awards and compensation payable to the Mortgagor as a result of any appropriation or condemnation or other taking or purchase in lieu thereof of the Premises or any part thereof, are hereby assigned to and shall be paid to the Mortgagee. The Mortgagor hereby authorizes the Mortgagee to collect and receive such awards and compensation, to give proper receipts and acquittances therefor and, in the Mortgagee's sole discretion, to apply the same toward the payment of the Indebtedness, notwithstanding the fact that the Indebtedness may not then be due and payable. In the event any condemnation awards or compensation shall be used to reduce the Indebtedness, the same shall be applied by the Mortgagee, after the deduction therefrom and repayment to the Mortgagee of any and all costs,



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fees and expenses incurred by the Mortgagee in the recovery thereof, including, without limitation, attorneys' fees and disbursements and other professional fees and disbursements, in any manner the Mortgagee shall designate, including, but not limited to, the principal balance of the Indebtedness. The Mortgagor, upon request by the Mortgagee, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of such awards and compensation to the Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. The Mortgagor hereby expressly agrees that the Mortgagee shall not be limited to the interest paid on the proceeds of any such awards or compensation and further agrees to pay to the Mortgagee the difference, if any, between (i) the interest received by the Mortgagee on such awards or compensation and (ii) the applicable rate of interest provided in the Note from the date of the appropriation, condemnation or other taking of the Premises or any portion thereof to the date of payment in full of the Note. The obligations and agreements of the Mortgagor contained in this paragraph shall survive the payment to the Mortgagee of any awards or compensation for an appropriation, condemnation or other taking and shall terminate only upon payment in full by the Mortgagor to the Mortgagee of the sums referred to herein.

**SECTION 2.9. Payment of Charges.** The Mortgagor shall pay, by the last day payable without premium, penalty, interest or late charges, all payments and charges on all liens, encumbrances, ground and other leases and security interests which affect or may attach to the Premises, or any part thereof.

**SECTION 2.10. Costs of Enforcement.** The Mortgagor shall, on demand, reimburse the Mortgagee for all of the Mortgagee's costs and expenses (including, without limitation, attorneys' fees and disbursements and other professional fees and disbursements) of or incidental to (i) the entering into and administration of the Note and the enforcement, compromise or settlement of any of the terms or provisions of this Mortgage or any of the Loan Documents, (ii) defending or asserting the rights and claims of the Mortgagee in respect thereof, by litigation or otherwise, including, without limitation, the commencement and prosecution of a foreclosure action and (iii) any action or proceeding in which the Mortgagee is made a party or in which it becomes necessary or advisable for the Mortgagee to defend or uphold the lien of this Mortgage. All rights and remedies of the Mortgagee shall be cumulative and may be exercised individually or concurrently. To the extent not prohibited by public policy, the Mortgagor (A) will not (1) at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium, any exemption from execution or sale of the Premises or any part thereof, now or hereafter in effect, which may affect the covenants and terms of performance of this Mortgage or any of the Loan Documents, nor (2) claim, take or insist upon any benefit or advantage of any law now or hereafter in effect providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision hereof, or pursuant to the decree, judgment or order of any court of competent jurisdiction, nor (3) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof, (B) hereby expressly waives all benefit or advantage of any of the foregoing, (C) covenants not to hinder, delay or impede the execution of any power herein granted to the Mortgagee, and covenants to suffer and permit the execution of every power as though none of the foregoing had been made or enacted and (D) hereby waives all right to have the Premises or any part thereof marshalled upon any foreclosure hereof.

**SECTION 2.11. Filing Charges; Recording Fees; Taxes.** The Mortgagor shall pay any and all taxes, mortgage recording taxes, charges, filing, registration and recording fees, excises and levies imposed upon the Mortgagee by reason of its ownership of the Note or this Mortgage or any mortgage supplemental hereto, any security instrument with respect to any interest of the Mortgagor in and to any Building Equipment or any instrument of further assurance, or by reason of the recording and/or filing of any of the foregoing, other than income, franchise, succession, inheritance, business and similar taxes personal to the Mortgagee, and shall pay all other taxes, if any, required to be paid on the Loan.

**SECTION 2.12. Tax, Insurance and Other Deposits.** The Mortgagor shall deposit with the Mortgagee on the same day of each calendar month as Mortgagor's monthly payment under the Note is due one-twelfth (1/12th) of the annual Taxes, ground rent (if applicable) and charges for insurance premiums (collectively, the "Impositions"). In addition, if required by the Mortgagee, the Mortgagor shall simultaneously therewith deposit with

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the Mortgagee a sum of money which together with the monthly installments aforementioned will be sufficient to pay the Impositions at least thirty (30) days prior to the date the payment thereof is due. If the amount of the Impositions are not ascertainable at the time any deposit is required to be made with the Mortgagee, the deposit shall be made on the basis of a reasonable estimate made by the Mortgagee, and when the charges are fixed for the then current year, the Mortgagor shall promptly deposit any deficiency with the Mortgagee. All funds so deposited with the Mortgagee may be commingled with other funds of the Mortgagee and shall be held by it without interest (except to the extent required by applicable law) and, provided that no Event of Default (as hereinafter defined) shall have occurred, shall be applied in payment of the charges aforementioned when and as payable, to the extent the Mortgagee shall have such funds on hand. Upon the occurrence of an Event of Default, the funds deposited with the Mortgagee may, in the Mortgagee's sole discretion, be applied in payment of the Impositions or to the payment of the Indebtedness or any other charges affecting the security of the Mortgagee, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by the Mortgagee as herein provided, nor shall any application be deemed to affect any right or remedy of the Mortgagee hereunder or under any statute or law. The Mortgagor shall furnish the Mortgagee with bills for the charges for which such deposits are required to be made hereunder and/or such other documents necessary for the payment of the same, at least fifteen (15) days prior to the date on which the charges first become payable. No trust fund shall be created as a result of such deposits made by the Mortgagor.

**SECTION 2.13. Financial Statements.** Commencing with the current fiscal year of Mortgagor and continuing until the Indebtedness is paid in full, the Mortgagor shall furnish to the Mortgagee (i) within ninety (90) days of the close of each calendar year, in such form as Mortgagee shall require including, if Mortgagee shall so require, compiled or reviewed or audited or reported upon by an independent certified public accountant satisfactory to Lender, (a) a statement of the income and expenses of the Premises for such year prepared on an accrual basis in accordance with generally accepted accounting principles, consistently applied, and certified as true and correct by the Mortgagor, (b) a balance sheet of the Mortgagor for such fiscal year, and (ii) as promptly as reasonably possible, such interim financial or other information with respect to the operation of the Premises, any guarantor and the Mortgagor as the Mortgagee may reasonably request, certified as true and correct by the Mortgagor and any such guarantor, as applicable, and with respect to the Premises, a rent roll schedule, certified as aforesaid by the Mortgagor showing the names of all tenants at the Premises, the space occupied by each tenant, the rent paid by each tenant (gross and per square foot), the amount of lease security, the lease or occupancy expiration dates, any options for renewal, the renewal term rent, any cancellation provisions and other relevant information requested by Mortgagee. In addition, the Mortgagor shall permit access to the Mortgagee or its authorized agents to the Premises and the Mortgagor's offices during normal business hours to examine, and to make extracts and/or copies of such records, books, and papers of the Mortgagor and any guarantor of the Note, which reflect upon the financial condition of the Mortgagor and any such guarantor and/or the income and expenses relating to the Premises and/or the business conducted at the Premises as the Mortgagee shall determine from time to time to be necessary or appropriate.

**SECTION 2.14. Restrictions on Leasing and Further Encumbrances.**

(a) Without the prior written consent of the Mortgagee in each instance, the Mortgagor shall not (i) modify, amend, cancel or abridge any Lease or Agreement, (ii) grant any rent concessions or abatements, or discount any rents, or collect any rents for a period of more than one month in advance, (iii) execute any conditional bill of sale, chattel mortgage or other security instrument covering any Building Equipment or purchase any Building Equipment in such a manner that ownership thereof will not vest unconditionally in the Mortgagor, free from any liens or encumbrances, (other than the lien and encumbrances created under this Mortgage) on delivery to the Premises, (iv) further assign the Leases, the Agreements or the rents, issues and profits derived from the Premises, (v) further mortgage, encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever in the Premises or any part thereof or in the Mortgagor or (vi) amend, consolidate, extend, modify, renew, increase, replace or substitute any permitted mortgage, pledge or encumbrance.

(b) Prior to entering into any new Lease for the Premises or any [commercial space] [portion of the Premises] the Mortgagor shall submit to the Mortgagee, for its approval, (i) a copy of each such new proposed Lease, unless the Mortgagee shall have previously reviewed and approved the proposed form of lease or occupancy agreement

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to be used in connection with the leasing or occupancy of the Premises, in which event, the Mortgagor shall submit the proposed changes, if any, from such lease form, (ii) a financial statement for each proposed tenant prepared by an independent certified public accountant, and in a manner, acceptable to the Mortgagee and (iii) a summary of the principal economic terms of each such new Lease.

**SECTION 2.15. Restrictions on Sales and Transfers.** Without the prior written consent of the Mortgagee in each instance, neither the Mortgagor shall not, directly or indirectly, sell, transfer, alienate, grant, convey, assign, ground lease, pledge, hypothecate or transfer as security for debt or otherwise, the Premises or any interest therein or any part thereof.

**SECTION 2.16. Restrictive Covenants.**

(a) The Mortgagor shall not, without the prior written consent of the Mortgagee in each instance, initiate, join in or consent to any restrictive covenant, zoning ordinance, zoning, land use, air rights and development agreements or any other public or private restrictions (or to any changes to any of the foregoing), limiting or defining the uses which may be made of the Real Property and/or the Improvements or any part thereof.

(b) Without the prior written consent of the Mortgagee, there shall be no drilling or exploring for, or extraction, removal or production of minerals, gases, liquids and other natural resources from, the surface or subsurface of the Premises. The term "minerals" as used herein shall include without limitation, oil, natural gas, casinghead gas, coal, lignite, hydrocarbons, methane, carbon dioxide, helium, uranium and all other natural elements, compounds and substances, including sand and gravel.

**SECTION 2.17. Trust Funds.**

All lease securities of tenants at the Premises shall be treated as trust funds not to be commingled with any other funds of the Mortgagor and such lease securities shall be deposited in a segregated tenants' security account to be maintained by the Mortgagor at a depository designated or approved by the Mortgagee. Within ten (10) days after request by the Mortgagee, the Mortgagor shall furnish to the Mortgagee satisfactory evidence of compliance with this Section 2.17, together with a statement of all Lease securities deposited by tenants and copies of all Leases not theretofore delivered to the Mortgagee which are required to be provided under this Mortgage, certified by [a senior officer of] [managing general partner of] [senior officer of the managing general partner of] [a managing member of] the Mortgagor to be true, correct and complete copies thereof.

**SECTION 2.18. Assignment of Leases and Agreements.**

(a) The Mortgagor hereby assigns to the Mortgagee, as further security for the payment of the Indebtedness, all of Mortgagor's right, title and interest in (i) the rents, issues and profits of the Premises, (ii) all Leases now or hereafter in effect, (iii) any and all deposits held as security or prepayments of rent under the Leases and (iv) all of the Agreements and shall, upon demand, deliver to the Mortgagee a copy of each Lease and Agreement to which it is a party certified by [a senior officer of] [senior officer of the managing general partner of] [the managing general partner of] [the managing member of] the Mortgagor to be a true, correct and complete copy thereof. Nothing contained in the foregoing sentence shall be construed to bind the Mortgagee to the performance of any of the covenants, conditions or provisions contained in any Lease or Agreement or otherwise to impose any obligation on the Mortgagee (including, without limitation, any liability under the covenant of quiet enjoyment in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Premises), except that the Mortgagee shall be accountable for any money actually received pursuant to this assignment. The Mortgagor hereby further grants to the Mortgagee the right to (i) enter upon and take possession of the Premises for the purpose of collecting such rents, issues and profits, (ii) dispossess by summary proceeding any tenant defaulting under the terms of its respective Lease, (iii) let the Premises, or any part thereof and (iv) apply such rents, issues and profits, after payment of all necessary charges and expenses, on account of the Indebtedness.

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(b) The foregoing assignment shall continue in effect until the Indebtedness is paid in full, the execution of this Mortgage constituting and evidencing the irrevocable consent of the Mortgagor to the entry upon and taking possession of the Premises by the Mortgagee pursuant to such assignments, whether or not foreclosure has been instituted and without applying for a receiver. However, until the occurrence of an Event of Default, the Mortgagor shall have a revocable license to receive such rents, issues and profits and to exercise its right under the Leases and the Agreements. The Mortgagor agrees to hold such rents, issues and profits in trust and to use the same first, in payment of the cost of improvements, and second, in payment of the Indebtedness and the Impositions. Such revocable license of the Mortgagor to collect and receive the rents, issues and profits and to exercise its rights in respect of the Leases and the Agreements may be revoked by the Mortgagee upon the occurrence of an Event of Default by Mortgagee giving written notice of such revocation. The Mortgagor hereby irrevocably appoints the Mortgagee as Mortgagor's true and lawful attorney-in-fact (which appointment shall be deemed coupled with an interest) to receive and collect all rent, additional rent and other sums due under the Leases and to exercise all rights, and receive all payments under or in respect of the Agreements, as the case may be, and to direct any such tenant, occupant or other party, by written notice or otherwise, to forward such rent, additional rent or other sums to the Mortgagee.

(c) Upon notice and demand, the Mortgagor will, from time to time, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered to the Mortgagee, in form and substance satisfactory to the Mortgagee, one or more separate assignments confirmatory of the general assignment provided for in Section 2.18(a) of the Mortgagor's interest in any Lease now or hereafter affecting the Premises or any part thereof, and one or more agreements restricting the Mortgagor's right or power, as against the Mortgagee, without its consent, to cancel, abridge or otherwise modify, or accept prepayments of installments of rent to become due under any Lease or any other document hereafter in existence. The Mortgagor shall pay to the Mortgagee on demand all expenses incurred by the Mortgagee in connection with the preparation and recording of any such assignment and/or agreement (including, without limitation, attorneys' fees and disbursements).

**SECTION 2.19. Security Agreement.** This Mortgage is and shall be deemed to be a Security Agreement as defined in the Uniform Commercial Code of the State of Illinois and the remedies for any violation of the covenants, terms and conditions of the agreement herein contained shall be (i) as prescribed herein, (ii) as prescribed by general law or (iii) as to such part of the security which is also reflected in any Uniform Commercial Code Financing Statement ("Financing Statement") affecting any of the property referred to or described herein in which the Mortgagor and the Mortgagee are respectively named as Debtor and Secured Party, as prescribed by the specific statutory consequences now or hereafter enacted and specified in such Uniform Commercial Code, all at the Mortgagee's sole election. The filing of such a Financing Statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing this declaration and hereby stated intention of the parties hereto, that all Building Equipment is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as part of the real estate irrespective of whether or not (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain items of equipment capable of being thus identified in a recital contained herein or in any list filed with the Mortgagee or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (i) the rights in or the proceeds of any fire and/or hazard insurance policy, (ii) any award in eminent domain proceedings for a taking or for loss of value or (iii) the Mortgagor's interest as lessor in any present or future Lease or rights to income growing out of the use or occupancy of the Premises, whether pursuant to a Lease or otherwise, shall not be construed as in any way altering any of the rights of the Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in any such Financing Statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold, with respect to clauses (i), (ii), or (iii), that notice of the Mortgagee's priority of interest, to be effective against a particular class of persons, including, but not limited to, the Federal Government, must be filed in the Uniform Commercial Code records. Pursuant to Section 9-402(2)(e) of the Uniform Commercial Code of the State of Illinois, the Mortgagor hereby authorizes the Mortgagee, without the signature of the Mortgagor, to execute and file Financing Statements and continuation statements if the Mortgagee shall determine that the same are necessary or advisable in order to perfect or continue the perfection of the Mortgagee's security interest in any Building



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Equipment, and shall pay to the Mortgagee on demand all expenses incurred by the Mortgagee in connection with the preparation, execution and filing of any such Financing Statements and any continuation statements that may be filed by the Mortgagee.

## **SECTION 2.20. Indemnity; Protective Advances.**

(a) The Mortgagor shall absolutely and unconditionally indemnify, defend and hold harmless the Mortgagee from and against all loss, liability, obligation, claim, damage, penalty, cause of action, cost and expense, including, without limitation, any assessments, levies, impositions, judgments, attorneys' fees and disbursements and other professional fees and disbursements, costs of appeal bonds and printing costs, imposed upon or incurred by or asserted against the Mortgagee by reason of (i) Mortgagee's ownership of this Mortgage, (ii) any accident, injury to or death of persons or loss of or damage to property occurring on or about the Premises, (iii) any use, nonuse or condition of the Premises, (iv) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part for maintenance or otherwise, (v) the imposition of any mortgage, real estate or governmental tax incurred as a result of this Mortgage or the Note, other than income tax payable by, or other taxes personal to, the Mortgagee, (vi) any violation or alleged violation by the Mortgagor of any law or (vii) misapplication of tenant security deposits in respect of the Premises. Any amounts payable under this Section 2.20 shall be due and payable on demand. If any action is brought against the Mortgagee by reason of any of the foregoing occurrences, the Mortgagor will, upon the Mortgagee's request, defend and resist such action, suit or proceeding, at the Mortgagor's sole cost and expense, by counsel approved by the Mortgagee.

(b) The Mortgagor shall pay, and agrees that it shall absolutely and unconditionally indemnify, defend and hold harmless the Mortgagee from and against, any and all fees, costs, expenses and charges incurred in the procuring and making of this Mortgage and the Loan including, without limitation, attorneys' fees and disbursements and other professional fees and disbursements, charges for appraisals, fees and expenses relating to inspection, consulting (including, without limitation, environmental and insurance consultants), market studies and engineering reports, fees for the review of plans and specifications, if applicable, costs of environmental surveys and reports, title examination, search and insurance charges, survey charges, closing costs, mortgage recording, documentary, transfer or other similar charges, taxes and revenue stamps, including, without limitation, any transfer taxes payable pursuant to applicable law in connection with the acquisition or disposition of the Premises or any part thereof pursuant to foreclosure or a deed (or assignment) in lieu of foreclosure and brokerage and finders' fees and commissions arising out of or in connection with the Note or any Leases, occupancy agreements or licenses entered into from time to time affecting all or any portion of the Premises.

(c) Upon default of the Mortgagor in the payment or performance of any of the terms, covenants, conditions or obligations to be performed by the Mortgagor hereunder or under any lien, encumbrance, lease or security interest which affects or may affect or attach or may attach to the Premises or any part thereof, the Mortgagee shall have the right, but shall not be obligated, to pay, perform or cure such default in the name and on behalf of the Mortgagor. All sums advanced and payments made at any time by the Mortgagee as provided under this Mortgage or under applicable law shall bear interest at the rate at which interest accrues under the Note or after the occurrence of an Event of Default (at the Default Rate) from the date that any such sums are advanced or payments are made, as applicable, to and including the date of reimbursement. Any sums advanced or paid by the Mortgagee, together with interest thereon at the Note Rate shall be payable on demand, shall be secured by this Mortgage and shall be part of the Indebtedness. The election by Mortgagee to make any advance or payment or to cure any matter that is or would otherwise be a default by Mortgagor shall not cure nor constitute a waiver by Mortgagee of any matter that is or would, with the passage of time or giving of notice or both, constitute an Event of Default under this Mortgage.

**SECTION 2.21. Avoidance of Waste; Replacement of Building Equipment; Inspection of Premises.** The Mortgagor shall not, without the prior written consent of the Mortgagee, threaten, commit, permit or suffer to occur any waste, alteration, demolition or removal of the Improvements or any part thereof; provided, however, that Building Equipment may be removed from the Improvements if the Mortgagor concurrently therewith replaces the same with equivalent items which do not reduce the value or general utility of the Premises, free of any

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lien, charge or claim superior to the lien and/or security interest created hereby and provided, further, that any damage caused by the removal thereof shall promptly be repaired by the Mortgagor, at Mortgagor's sole cost and expense, in accordance with all applicable laws, rules and regulations. The Mortgagee shall have the right to enter upon and inspect the Premises at all reasonable times without prior notice to Mortgagor.

**SECTION 2.22. Estoppel Certificates.** The Mortgagor shall, within ten (10) days after request, furnish to the Mortgagee a written statement, duly acknowledged, setting forth the amount due on this Mortgage, the terms of payment and the maturity date of the Note, the date to which interest has been paid, whether any offsets or defenses exist against the Indebtedness and, if any are alleged to exist, a detailed description of the nature thereof.

**SECTION 2.23. Margin Stock.** The Mortgagor shall not directly or indirectly apply any part of the proceeds of the Loan to the purchasing or carrying of any "margin stock" within the meaning of Regulations G, U, T or X of the Board of Governors of the Federal Reserve System, or any regulations, interpretations or rulings thereunder.

**SECTION 2.24. Compliance with Environmental Laws/Indemnity.**

(a) The federal laws and the state and local laws of the jurisdiction where the Premises are located, now in effect and hereafter adopted or enacted, that relate to health, safety or environmental protection are called "Environmental Laws." The Mortgagor represents and warrants to the Mortgagee that the Mortgagor has not and shall not do anything affecting the Premises that violates Environmental Laws, and the Mortgagor shall not allow anyone else to do so. The Mortgagor further represents to the Mortgagee that the Premises have not been used for any activities involving, directly or indirectly, the discharge, release, use, generation, storage, treatment, transportation, disposal or handling of Hazardous Substances (as defined in Section 2.24 (b)).

(b) Environmental Laws classify certain substances as toxic or hazardous. There are other substances that are considered hazardous for purposes of this Section 2.24. These are gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, polychlorinated biphenyls, urea formaldehyde insulation, materials containing asbestos or formaldehyde, lead based paint and radioactive materials. The substances defined as toxic or hazardous by Environmental Laws and the substances considered hazardous for purposes of this Section 2.24 are called "Hazardous Substances."

(c) The Mortgagor shall not permit Hazardous Substances to be present on the Premises. The Mortgagor shall not use or store Hazardous Substances on the Premises, and the Mortgagor shall not allow anyone else to do so. The Mortgagor also shall not dispose of Hazardous Substances on the Premises, or release any Hazardous Substance in proper storage containers on the Premises, and the Mortgagor shall not allow anyone else to do so. However, the Mortgagor may permit the presence on the Premises of small quantities of Hazardous Substances that are generally recognized as appropriate for normal residential use and maintenance of the Premises, and the Mortgagor may use or store these small quantities on the Premises in accordance with procedure permitted by Environmental Laws. In addition, unless the law requires removal or other action, the buildings, the improvements and the fixtures on the Premises are permitted to contain asbestos and asbestos-containing materials if the asbestos and asbestos-containing materials are undisturbed and "non-friable" (that is, not easily crumbled by hand pressure). Anything herein contained to the contrary notwithstanding Mortgagor shall strictly comply and shall cause the Premises to be at all times in strict compliance with, all applicable Environmental Laws relating to lead based paint.

(d) If the Mortgagor knows of any investigation, claim, demand, lawsuit or other action by any federal, state or local government or by a private party involving the Premises and any Hazardous Substance or Environmental Laws, the Mortgagor shall promptly notify the Mortgagee. If the government notifies the Mortgagor that it is necessary to remove a Hazardous Substance affecting the Premises or to take other remedial actions, the Mortgagor shall promptly take all necessary remedial actions as required by Environmental Laws. The Mortgagor agrees to indemnify and hold the Mortgagee harmless from and against any and all claims, demands, causes of action, damages, expenses, losses, liabilities, damages to property or individuals, fines and penalties, including but not limited to, attorneys',

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consultants' and other professional fees and costs (i) arising by reason of any failure by the Mortgagor to comply with an Environmental Law applicable to the Premises or any portion of the Premises, or (ii) arising out of the existence of any Hazardous Substances on, about or affecting the Premises or any portion of the Premises. This indemnity shall survive and continue in full force and effect, even after payment in full of the Indebtedness, and/or discharge of this Mortgage, and after foreclosure of the Mortgage and sale of the Premises, and after acquisition of the Premises by Mortgagee or any affiliate of Mortgagee by deed in lieu of foreclosure, whether or not the Premises is acquired by the Mortgagee, any affiliate of the Mortgagee or a person or entity not affiliated with the Mortgagee.

(e) The provisions of any separate environmental agreement, indemnity, environmental guaranty or other guaranty or indemnity provided by the Mortgagor and/or any guarantor and/or any indemnitor in favor of Mortgagee and any other parties are supplemental to and shall not impair, limit or otherwise affect the benefits accruing to the Mortgagee and any other benefitted parties under the provisions of this Section 2.24. The provisions of this Section 2.24 are supplemental to and shall not impair, limit or otherwise affect the benefits accruing to Mortgagee or any other benefitted party under any environmental agreement, indemnity, environment guaranty or indemnity or other guaranty or indemnity provided by Mortgagor and/or any guarantor and/or indemnitor in favor of Mortgagee and any other benefitted party.

## ARTICLE III.

### Defaults and Remedies

**SECTION 3.1. Events of Default.** Each of the following shall constitute an event of default (an "Event of Default") under this Mortgage:

(a) default in the payment of any amount required to be paid hereunder or under any of the other Loan Documents for fifteen (15) days after the same shall be due and payable by the Mortgagor;

(b) default in the observance or performance of any of the other terms, covenants or conditions contained herein (except for the covenants of the Mortgagor set forth in Sections 2.3, 2.14 and 2.15 hereof) or in any of the other Loan Documents for thirty (30) days after the giving by the Mortgagee to the Mortgagor of written notice thereof (or, with respect to a default which, in the reasonable judgment of the Mortgagee, shall be of such a nature that it cannot reasonably be cured or remedied within a thirty (30) day period, if the Mortgagor shall not (x) promptly commence within such thirty (30) day period and thereafter exercise due diligence and continuous effort to remedy the same or (y) cure such default within ninety (90) days after the giving by the Mortgagee to the Mortgagor of written notice thereof) or default for such lesser time period as may be specified in any of the Loan Documents other than with respect to (i) the payment of money and (ii) the matters hereinafter specified in this Section 3.1;

(c) default in the observance or performance of any of the covenants of the Mortgagor set forth in Sections 2.3, 2.14 or 2.15 hereof;

(d) should any representation, warranty or statement made by Mortgagor herein or by the Mortgagor or any guarantor or indemnitor in any of the other Loan Documents prove to be untrue in any material respect at the time when made;

(e) the occurrence, in the judgment of the Mortgagee, of a material adverse change in the identity, control, financial condition or operation of the Mortgagor, or any guarantor [or any controlling shareholder] [or constituent partner] [or managing member] of the Mortgagor;

(f) if, upon application by the Mortgagee to two (2) or more fire insurance companies which are lawfully doing business in the State of Illinois and which are issuing policies of fire insurance upon buildings situated within the area wherein the Real Property is situated, such companies shall refuse to issue such policies with respect to the Improvements;

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(g) if the Mortgagor or any guarantor shall (i) admit in writing [its] [her] [his] inability, or be generally unable, to pay [its] [her] [his] debts as they become due, (ii) commence a voluntary case under the Federal Bankruptcy Code, as now or hereafter in effect and including any successor legislation thereto (the "Code"), (iii) make a general assignment for the benefit of creditors, (iv) apply for, consent to, or acquiesce in, the appointment of or the taking of possession by a receiver, custodian, liquidator or trustee of itself or the whole or any substantial part of its properties or assets, (v) file a petition or answer seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, arrangement, composition, adjustment of debts, liquidation, dissolution, or similar relief, (vi) fail to controvert in a timely or appropriate manner, or shall acquiesce in writing to, any petition filed against [it] [her] [him] in an involuntary case under the Code or (vii) take any action for the purposes of effecting any of the foregoing;

(h) (i) if, without the Mortgagor's or any guarantor's consent or acquiescence, as the case may be, a proceeding or case shall be commenced in a court of competent jurisdiction seeking the appointment of a receiver, liquidator, custodian, trustee or the like of the Mortgagor or any guarantor of the Note, or of the whole or any substantial part of the property or assets of the Mortgagor and/or any such guarantor and such order, judgment or decree shall remain unvacated, or not set aside, or unstayed for ninety (90) days from commencement of such proceeding or case, or (ii) if a petition, proceeding or case shall be filed against the Mortgagor or any guarantor seeking reorganization, arrangement, composition, readjustment, liquidation, winding up, dissolution or similar relief under the federal bankruptcy laws or any other applicable law and such petition shall remain undismissed for ninety (90) days from commencement of such proceeding or case or (iii) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Mortgagor or any guarantor or of the whole or any substantial part of [its] [her] [his] property or assets and such custody or control shall remain unterminated or unstayed for ninety (90) days, or an order for relief against the Mortgagor or any such guarantor shall be entered in an involuntary case under the Code;

(i) if there is an attachment or sequestration of any of the property of the Mortgagor or any guarantor (or if the guarantor is a partnership or a corporation any constituent partner or shareholder of any guarantor) and same is not discharged or bonded within ninety (90) days;

(j) after thirty (30) days notice to the Mortgagor, in the event of the passage of any law deducting from the value of land for the purposes of taxation any lien thereon, or changing in any way the taxation of mortgages or debts secured thereby for state or local purposes, or the manner of collecting such taxes and imposing a tax, either directly or indirectly, on this Mortgage or the Note;

(k) if a default beyond any applicable notice and/or grace period occurs under any other mortgage or security agreement now or hereafter encumbering or affecting all or any part of the Premises;

(l) if judgment for five thousand dollars and no cents (\$5000.00) or more rendered against the Mortgagor and/or any guarantor shall not fully be discharged or bonded pending appeal within thirty (30) days from the entry thereof and prior to any execution thereon;

*[(m) if the Mortgagor or any guarantor (if not an individual) shall be dissolved, terminated, liquidated, merged, consolidated or cease to exist or not be in good standing under the laws of any one or more of the (i) jurisdiction under whose laws it is organized, (ii) any jurisdiction under whose laws it has been qualified, (iii) any jurisdiction in which it is operating, conducting business or doing business, or (iv) the jurisdiction in which the Real Property is located;]*

(n) if any guarantor shall default in the performance or observance of any agreement, covenant, term or condition contained in any guaranty or any indemnity executed in connection with the Note beyond any applicable notice and/or grace period;



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*[(o) if title holder ceases to be and remain responsible for the management and control of the Mortgagor or if title holder at any time owns less than 100% of the issued and outstanding [capital stock] [or partnership interests] [or membership interests] of the Mortgagor;] and*

*[(p) if (i) the Mortgagor or any guarantor of the Note or indemnitor under any of the Loan Documents shall default in the observance or performance, when due, of any of the terms, covenants or conditions of any agreement between the Mortgagor and/or any such guarantor and/or any such indemnitor in favor of or for the benefit of the Mortgagee or (ii) if the Mortgagor or any guarantor or indemnitor shall fail to duly and timely observe or perform any other obligation owed by the Mortgagor or any such guarantor or any such indemnitor to the Mortgagee.]*

## **SECTION 3.2. Remedies.**

(a) Upon the occurrence of an Event of Default, the Mortgagee may, at its option, in addition to any rights or remedies available to it hereunder or under applicable law, take such action as it deems necessary or advisable to protect and enforce its rights against the Mortgagor and in and to the Premises, including, but not limited to, the following actions, each of which may be pursued individually concurrently or otherwise, at such time and in such order as the Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Mortgagee:

(i) declare the entire unpaid Indebtedness to be immediately due and payable;

(ii) enter into or upon the Premises, either personally or by its agents or nominees, and dispossess the Mortgagor and its agents and servants therefrom, and thereupon the Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat, (B) if applicable, complete any construction on the Premises in such manner and form as the Mortgagee deems advisable, (C) make alterations, additions, renewals, replacements and improvements to or on the Premises, (D) exercise all rights and powers of the Mortgagor with respect to the Premises, whether in the name of the Mortgagor or otherwise including, without limitation, the right to make, cancel, enforce or modify any Leases, obtain and evict tenants, and sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and (E) apply the receipts from the Premises to the payment of the Indebtedness, after deducting therefrom all costs and expenses (including, without limitation, attorneys' fees and disbursements and other professional fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Impositions and other charges in connection with the Premises, as well as just and reasonable compensation for the services of the Mortgagee, its counsel, agents and employees;

(iii) institute proceedings for the complete foreclosure of this Mortgage in which case the Premises may be sold in one or more parcels;

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

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

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

(vii) have a receiver appointed in any action to foreclose this Mortgage without notice or bond;

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(viii) pursue such other remedies as the Mortgagee may have under applicable law.

(b) The avails of any sale made under or by virtue of this Article III, together with any other sums which then may be held by the Mortgagee under this Mortgage, shall be applied as follows:

**First:** To the payment of the costs and expenses of any such sale, and, to the fullest extent permitted by law, the costs and expenses of entering upon, taking possession of, removing others from, holding, operating, and managing the Premises or any part thereof, as the case may be, including, without limitation, the costs and expenses of any judicial proceedings wherein the same may be made, and of all costs, fees, expenses, liabilities and advances made or incurred by the Mortgagee under this Mortgage, together with interest thereon at the Default Rate.

**Second:** To the payment of the amount then due, owing or unpaid upon the Note for principal and interest, with interest on the unpaid principal at the Default Rate until the same is paid.

**Third:** To the payment of any other sums required to be paid by the Mortgagor pursuant to any provision of this Mortgage or any of the Loan Documents.

**Fourth:** To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same. The Mortgagee and any receiver of the Premises or any part thereof shall be liable to account for only those rents, issues and profits actually received by it.

(c) Any sale or sales made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under the Mortgagor.

(d) Upon any sale made under or by virtue of this Article III (whether made by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the Mortgagee may bid for and acquire the Premises or any part thereof or interest therein and in lieu of paying cash therefor may make settlement for the purchase price by crediting against the Indebtedness of the Mortgagor secured by this Mortgage the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Mortgagee is authorized to deduct under this Mortgage and/or applicable law.

(e) In the event that the Mortgagee purchases the Premises pursuant to a foreclosure sale, or accepts a deed in lieu of foreclosure, the Mortgagor hereby authorizes the Mortgagee to withhold the amount of tax, if any, required to be withheld under Section 1445 of the Internal Revenue Code of 1986, as amended, modified or supplemented, out of any sums payable to the Mortgagor from such foreclosure sale or deed in lieu thereof, as the case may be, after payment to all parties other than the Mortgagor who are entitled to be paid out of any foreclosure or deed in lieu proceeds, as if the Mortgagor were a foreign person, unless the Mortgagor certifies its non-foreign status at the time of such foreclosure sale or deed in lieu, as the case may be, by executing and delivering to the Mortgagee a certificate satisfactory to the Mortgagee.

**SECTION 3.3. Possession of the Premises.** Upon the occurrence of an Event of Default hereunder, it is agreed that the Mortgagor, if it is the occupant of the Premises or any part thereof, shall immediately surrender possession of the Premises so occupied to the Mortgagee and, on demand, Mortgagor shall pay to the Mortgagee monthly, in advance, a reasonable rental for the space so occupied (as determined by the Mortgagee) and, in default thereof, Mortgagor may be dispossessed by the usual summary proceedings. The covenants herein contained may be enforced by a receiver of the Premises or any part thereof.

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**SECTION 3.4. Service of Process.** The Mortgagor hereby agrees to submit to personal jurisdiction in the State of Illinois any action or proceeding arising out of any of the Loan Documents or otherwise in connection with the Loan and, in furtherance of such agreement, the Mortgagor hereby designates self, as Mortgagor's agent for the service of process by certified mail return receipt requested or by personal service in any such action or proceeding.

**SECTION 3.5. Right of Set-Off.** The Mortgagor hereby irrevocably authorizes and directs the Mortgagee, from time to time after the occurrence of an Event of Default, to charge the Mortgagor's accounts and deposits with the Mortgagee or any affiliate or subsidiary of the Mortgagee (general or special, time or demand, provisional or final), other than tenant security accounts and other trust accounts maintained for the beneficial interest of persons or entities other than the Mortgagor or any guarantors, maintained with the Mortgagee or any affiliate or subsidiary of the Mortgagee and to pay over to the Mortgagee an amount equal to any amounts from time to time due and payable to the Mortgagee hereunder or under any of the other Loan Documents.

## ARTICLE IV.

### Miscellaneous

**SECTION 4.1. No Releases.** The Mortgagor agrees, that in the event the Premises (or any part thereof or interest therein) are sold and the Mortgagee, in its sole discretion, enters into any agreement with the then owner of the Premises extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof, the Mortgagor shall continue to be liable to pay the Indebtedness according to the terms of any such agreement unless expressly released and discharged in writing by the Mortgagee.

**SECTION 4.2. Notices.** All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when sent by United States registered mail, return receipt requested, postage prepaid, to any party hereto at its address above stated and, in the case of the Mortgagee, to the attention of Alliance Funding Company, A Division of Superior Bank, Servicing Division, 1 Maynard Drive, Park Ridge, New Jersey, 07656, and in the case of the Mortgagor, to the attention of as address as first stated above or at such other address of which it shall have notified the party giving such notice in writing as aforesaid. All such notices shall be deemed given three (3) business days after delivery to the United States Post Office registry clerk.

**SECTION 4.3. Binding Obligations.** The provisions and covenants of this Mortgage shall run with the land, shall be binding upon the Mortgagor and shall inure to the benefit of the Mortgagee, subsequent holders of this Mortgage and the respective successors and assigns of the foregoing. Mortgagor acknowledges and agrees that this Mortgage and any of the Loan Documents may be sold, assigned, pledged, conveyed and otherwise dealt with by the Mortgagee and any subsequent holders of this Mortgage and that the Mortgagee and any subsequent holders of this Mortgage or any of the Loan Documents may sell, assign, pledge, or convey one or more participations or other interests in this Mortgage and/or the Loan Documents at any time and from time to time, all without notice to the Mortgagor and all without in any way limiting, impairing, or modifying in any way this Mortgage or any of the Loan Documents or the Mortgagor's obligations hereunder and thereunder. Mortgagee shall have the right to split and sever the lien of this Mortgage. For the purpose of this Mortgage, the term "Mortgagor" shall include and refer to the Mortgagor named herein, any and all beneficial owners of Mortgagor, any subsequent owners of the Premises (or any part thereof or interest therein), and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, each and all of such Mortgagors agree that their obligations, agreements and undertakings in and under this Mortgage are joint and several.

**SECTION 4.4. LEGAL CONSTRUCTION. THIS MORTGAGE SHALL BE GOVERNED, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS, EXCEPT TO THE EXTENT, IF ANY, PREEMPTED BY THE FEDERAL LAW OF THE UNITED STATES, WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAWS.** Nothing contained in this Mortgage, the Note or any of the other Loan Documents shall require the Mortgagor to pay,

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or the Mortgagee to accept, interest in an amount which would subject the Mortgagee to any penalty or forfeiture under applicable law. Notwithstanding that it is not intended hereby to charge interest at a rate in excess of the maximum legal rate of interest permitted to be charged to the Mortgagor under applicable law, if interest in excess of such maximum legal rate shall be payable hereunder, then ipso facto such rate shall be reduced to the highest lawful rate so that no amounts shall be charged which are in excess thereof, and, in the event it should be determined that any excess over such highest lawful rate has been received, such excess shall be applied by the Mortgagee in reduction of the outstanding Indebtedness or, at the Mortgagee's option, refunded by the Mortgagee.

**SECTION 4.5. Captions.** The captions of the Articles and Sections of this Mortgage are for the purpose of convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

**SECTION 4.6. Further Assurances.** The Mortgagor shall do, execute, acknowledge and deliver, at the sole cost and expense of the Mortgagor, all and every such further act, deed, conveyance, mortgage, assignment, estoppel certificate, notice of assignment, transfer and assurance as the Mortgagee may require, from time to time, in order to better assure, convey, grant, assign, transfer and confirm unto the Mortgagee, the rights now or hereafter intended to be granted to the Mortgagee under this Mortgage, any other instrument or document executed in connection with this Mortgage or any other instrument or document under which the Mortgagor may be or may hereafter become bound to convey, mortgage or assign to the Mortgagee for carrying out the intention of facilitating the performance of the terms of this Mortgage. The Mortgagor hereby appoints the Mortgagee its true and lawful attorney-in-fact to execute, acknowledge, and deliver for and in the name of the Mortgagor any and all of the instruments, documents, etc., mentioned in this Section 4.6 and this power, being coupled with an interest, shall be irrevocable as long as any part of the Indebtedness remains unpaid.

**SECTION 4.7. Severability.** Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction or prohibited or unenforceable as to any person or entity shall, as to such jurisdiction, person or entity be ineffective only to the extent of such prohibition or unenforceability without invalidating or impairing the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction or as to any other person or entity.

## **SECTION 4.8. General Conditions.**

(a) The terms and provisions of this Mortgage shall be construed as affording to the Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of applicable law.

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

(c) No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive or any other remedy, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission of the Mortgagee in exercising any right or power accruing upon any default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such default or Event of Default, or any acquiescence thereto. Acceptance of any payment after the occurrence of an Event of Default shall not be deemed a waiver of or a cure of such Event of Default and every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee.

(d) The Mortgagee shall have the right to appear in and defend any action or proceeding, in the name and on behalf of the Mortgagor, which may adversely affect the Premises or this Mortgage. The Mortgagee shall also have the right to institute any action or proceeding which the Mortgagee, in its sole discretion, determines should be brought to protect its interest in the Premises or its rights hereunder.



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(e) Supplementing Section 3.1(j) hereof, the Mortgagor shall, unless prohibited by law, promptly pay to the Mortgagee, on demand, all taxes, costs and charges for which the Mortgagee is or may be liable as a result of any such event set forth in such Section 3.1(j).

(f) For purposes of this Mortgage, whenever the circumstances or the context of this Mortgage so requires, the singular shall be construed as the plural, the masculine shall be construed as the feminine and/or the neuter and vice versa.

(g) The additional clauses and covenants contained in this Mortgage shall afford rights supplemental to and not exclusive of the rights conferred by relevant laws, statutes, regulations ordinances and case law, and, shall not impair, modify, alter or defeat such rights notwithstanding that such additional clauses and covenants may relate to the same subject matter or provide for different or additional rights. The rights of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others and no act of the Mortgagee shall be construed as an election to proceed under any one provision of this Mortgage to the exclusion of any other provision, anything contained herein or otherwise to the contrary notwithstanding.

(h) Wherever used in this Mortgage, each of the terms guarantor, surety and indemnitor respectively means and includes any and all persons or entities who or which have, or in the future may (i) execute and deliver in favor of the Mortgagee (x) a guaranty of the obligations of the Mortgagor under any of one or more of the Note, this Mortgage or the other Loan Documents, and/or (y) an indemnity against losses, liabilities, costs, expenses and other matters that may be incurred by or asserted or assessed against Mortgagee as of a result of or related to the transactions provided for or contemplated by or related to the Loan Documents, and/or (ii) pledge, assign or otherwise deliver or provide security for repayment of the Loan and/or the payment and performance of all or any part of the obligations under any of the Loan Documents, including any guaranty thereof or indemnity with respect thereto.

**SECTION 4.9. WAIVER OF JURY TRIAL. BOTH THE MORTGAGOR AND THE MORTGAGEE HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS MORTGAGE. BOTH THE MORTGAGOR AND THE MORTGAGEE HEREBY IRREVOCABLY WAIVE ANY SPECIAL, EXEMPLARY, PUNITIVE AND CONSEQUENTIAL DAMAGES.**

**SECTION 4.10. Commercial Use.** The Loan Proceeds are to be used for commercial purposes. No portion of the proceeds of the Loan are to be used for any consumer purpose for the acquisition of goods or services for personal, family or household purposes.

**SECTION 4.11. Non-Merger.** The Mortgage shall not merge in the fee estate of the Property if the Mortgagee acquires title to the Property, unless the Mortgage is discharged of record.

**SECTION 4.12. Entire Agreement.** The Mortgage and the other Loan Documents constitute the sole agreement of the parties with respect to the transaction and supercede all oral negotiations and prior writings in connection therewith.

**SECTION 4.13. Secondary Market.** Lender may, at any time, sell, transfer or assign the Loan, the Loan Documents, and any or all servicing rights with respect to the Loan, grant participations in the Loan or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in the Loan or issue mortgage pass-through certificates or other securities evidencing a beneficial interest in the Loan in a rated or unrated public offering or private placement (the "Securities") and may forward to each purchaser, transferee, assignee, servicer, participant, investor in such Securities or any credit rating agency rating such Securities (collectively, the "Investor") or prospective Investor, all documents and information Lender has with respect to the Loan as Lender deems necessary or desirable. Borrower and the Guarantors,

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if any, shall furnish and consent to Lender furnishing to such Investors or such prospective Investors all information concerning the Loan, the Property, the Leases and the financial condition of Borrower, any Guarantor and the Property in such form, substance and detail as Lender, such Investor, or such prospective Investor may request. Upon any such transfer, Borrower and the Guarantors shall provide an estoppel certificate to the Investor or any prospective Investor, together with such other documents as Lender may reasonably require.

**SECTION 4.14. Authorization to Issue Opinion of Counsel to the Mortgagee.** The Mortgagor hereby authorizes and directs its counsel to prepare and deliver to the Mortgagee and the Mortgagee's counsel one or more opinion letters in connection with the making of the Loan.

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## SCHEDULE A

### LEGAL DESCRIPTION

LOT 15 AND THE SOUTH 8.00 FEET OF LOT 14 IN F.S. TYRRELL'S SUBDIVISION OF BLOCK 17, IN WEST CHICAGOLAND COMPANY'S SUBDIVISION OF THE SOUTH 1/2 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

16-10-417-024

4002 08 WEST WEST END AVENUE, CHICAGO, Illinois, 60624

Property of Cook County Clerk's Office

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## Mortgage

**HARRY SMITH**  
as Mortgagor

to

**Alliance Funding Company a Division of Superior Bank, FSB,**  
as Mortgagee

**Permanent Index Number: 16-10-417-024**

**Dated: May 21, 1999**

**This instrument was prepared by:**

**Law Offices of Samuel M. Einhorn**  
5600 N. River Rd  
Rosemont, Illinois 60018

**Record And Return By Mail To:**

**Alliance Funding Company, a division of Superior Bank FSB**  
135 Chestnut Ridge Road  
Montvale, NJ 06745

