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Cook County Recorder 87.00

This instrument was prepared by and
when recorded mail original to:

Altheimer & Gray
Suite 4000
10 South Wacker Drive
Chicago, Illinois 60606
Attention: Lesli L. Mann, Esq.



99801260

SUBORDINATE CONTINGENT INTEREST MORTGAGE

THIS SUBORDINATE CONTINGENT INTEREST MORTGAGE (the "Mortgage") is made as of August 19, 1999 by and between **LASALLE NATIONAL BANK**, not personally, but solely as Trustee under Trust Agreement dated April 18, 1982 and known as Trust No. 104836 ("Mortgagor"), in favor of **RUDOLPH TESSLER**, a resident of the State of Illinois ("Mortgagee").

*LaSalle Bank National Association formerly
known as

WITNESSETH:

WHEREAS, Mortgagor owns the real property described in Exhibit A attached hereto and made a part hereof (the "Premises"); and

WHEREAS, Mortgagor executed and delivered to Mortgagee that certain Subordinate Contingent Interest Note (the "Contingent Interest Note") bearing even date herewith, wherein Mortgagor promised to pay to Mortgagee the principal sum of FOUR MILLION, SIX HUNDRED TWENTY-ONE THOUSAND AND NO/100 DOLLARS (\$4,621,000.00), in lawful money of the United States of America, owed by Mortgagor to Mortgagee, with interest thereon at the rate and times, in the manner and according to the terms and conditions specified in the Contingent Interest Note, all of which are incorporated herein by reference (all sums due at any time under the Contingent Interest Note and this Mortgage shall hereinafter be referred to collectively as the "Indebtedness").

NOW, THEREFORE, Mortgagor, in consideration of the Indebtedness, and to secure the timely payment of the Contingent Interest Note, as such Contingent Interest Note may be amended, modified, extended or replaced from time to time, in accordance with the terms and provisions of the Contingent Interest Note and in accordance with the terms, provisions and limitations of this Mortgage, and to secure the performance of the covenants and agreements contained herein and in the Contingent Interest Note, as well as the other Loan Documents (as such term is defined in the Contingent Interest Note) to be performed by Mortgagor, does by these presents MORTGAGE, GRANT, REMISE, ALIEN and CONVEY unto Mortgagee, its successors

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and assigns, the Premises and all of its estate, right, title and interest therein, which, with the property hereinafter described, is referred to as the "Mortgaged Property";

TOGETHER with all easements, rights of way, and rights used in connection therewith or to provide a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto pertaining or belonging, and all underground and overhead passageways and licenses in connection therewith;

TOGETHER with all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all accounts receivable derived from the operation of the Mortgaged Property, all of which are intended to be assigned presently and absolutely to Mortgagee as provided in and subject to Section 16 hereof, notwithstanding any language contained herein to the contrary;

TOGETHER with any and all buildings and improvements owned by Mortgagor now or hereafter erected on the Premises including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements and all tangible personal property owned by Mortgagor now or any time hereafter located on or at the Premises or used in connection therewith including, but not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating, boilers, refrigerating, electronic monitoring, water, lighting, power, sanitation, waste removal, entertainment and recreational equipment or facilities, window or structural cleaning rigs, maintenance and all other equipment of every kind), all indoor or outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), furnishings, inventory, rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, venetian blinds, partitions, chandeliers and other lighting fixtures, and all other fixtures, apparatus, equipment, and articles used in connection with the operation of a shopping center on the Premises, it being understood that the enumeration of any specific articles of property shall in nowise result in or be held to exclude any items of property not specifically mentioned;

TOGETHER with all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereinafter acquire in the Premises, and any and all awards made for the taking or eminent domain, or by any proceedings or purchase in lieu thereof, or of the whole or any part of the Premises, including without limitation any awards resulting from the change of grade of streets and awards for severance damages, subject to the provisions of Sections 6 and 21 hereof.

All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the real estate and to be appropriated to the use of the real

estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby.

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

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Maintenance, Repair and Restoration of Improvements, Payment of Liens, Etc. Mortgagor shall (a) as soon as practicable repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Mortgaged Property in good condition and repair, without waste, and free from mechanics' liens and other liens; provided, however, that Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim so long as the contest is by appropriate proceedings for which adequate reserves are being maintained and so long as a lien or forfeiture of any part of the Mortgaged Property will not result from Mortgagor's failure to pay such lien or claim; (c) operate the Mortgaged Property as a first class condominium in a manner similar to condominiums of similar age and quality; (d) comply with all requirements of law, municipal ordinances or restrictions of record with respect to the Mortgaged Property and the use thereof the non-compliance with which would have a material adverse effect on the business prospects, operations, results of operations, assets, liabilities, or condition (financial or otherwise) ("Material Adverse Effect") of the Mortgagor or the Mortgaged Property or could adversely affect the validity of the Loan Documents or the enforceability or priority of the liens evidenced thereby or the ability of Mortgagor to perform its obligations under the Loan Documents; (e) initiate or acquiesce in no zoning variation or reclassification without Mortgagee's written consent, which consent shall not be unreasonably withheld or delayed; (f) pay each item of Indebtedness secured by this Mortgage when due according to the terms hereof or of the Contingent Interest Note; and (g) deliver to Mortgagee copies of all written default or potential default notices received or given by Mortgagor (or its agents or representatives) under any of the leases of space at the Mortgaged Property within ten (10) days after such notice is given or received, as the case may be, and provide Mortgagee with copies of all written notices of violations or potential violations pertaining to the Mortgaged Property or any part thereof received by Mortgagor (or its agents or representatives) from any federal, state or local governmental official, body, board or department or from any insurance company providing insurance with respect to the Mortgaged Property within ten (10) days after written notice is received.

2. Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges and other charges against the Mortgaged Property when due and shall furnish to Mortgagee duplicate receipts therefor. To prevent default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may decide to contest, unless such payment would result in a loss by Mortgagor of the right to so contest, in which case Mortgagor

shall provide Mortgagee with such security with respect to such non-payment as may be reasonably required by Mortgagee.

3. Tax Deposits. Mortgagor covenants and agrees, if required by Mortgagee, to deposit on or before the first day of each calendar month at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of The Royal Imperial Group, 900 West Jackson Boulevard, Suite 8-E, Chicago, Illinois 60602, Attention: David Tessler, a sum equal to one-twelfth of the last total annual taxes and assessments for the last ascertainable year (general and special) on the Premises and improvements thereon (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Mortgagor, concurrently with the first monthly deposit of taxes required hereunder, will also: (a) deposit with Mortgagee an amount, based upon the taxes and assessments so ascertainable or so estimated by Mortgagee, as the case may be, for taxes and assessments on said Premises and improvements thereon, on the accrual basis, for the period commencing on January 1 of the year succeeding the most recent year for which all taxes and assessments have been paid, and terminating on the date of such first monthly deposit; or (b) provide Mortgagee with collateral or assurances reasonably satisfactory to Mortgagee, that the taxes and assessments referred to in this sentence will be paid when due. Such deposits shall be invested in an interest-bearing account with a financial institution and at a rate of interest chosen by Mortgagee in its reasonable discretion, and are to be used for the payment of taxes and assessments (general and special) on the Premises and improvements thereon next due and payable when they become due. Provided tax deposits are being made pursuant to this Section 3 and provided further that Mortgagee receives a bill for taxes and assessments due and owing at least fifteen (15) days prior to the delinquency date and sufficient funds have been deposited, Mortgagee agrees to pay such taxes and assessments to the appropriate taxing authority on Mortgagor's behalf from funds deposited pursuant to this Section 3. If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) for any year when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of demand therefor from Mortgagee, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess (including any interest) shall be applied toward a subsequent deposit or deposits due from Mortgagor. Mortgagor and Mortgagee hereby acknowledge and agree that the foregoing provisions of this Section 3 shall not be operative so long as no Event of Default (as herein defined) has occurred hereunder.

4. Insurance and Premium Deposits. Subject to the requirements of the Senior Instruments:

(a) Mortgagor shall maintain at all times the following insurance coverage with respect to the Mortgaged Property:

(i) All risk or the equivalent property insurance for an insured value of no less than 100% of the replacement cost value of the Mortgaged Property;

(ii) Boiler and machinery loss insurance containing a joint loss agreement;

(iii) Business interruption insurance in an amount equal to one year's anticipated income;

(iv) General liability insurance in an amount not less than Ten Million and No/100 Dollars (\$10,000,000.00) covering third party bodily injury and property damage with respect to the Mortgaged Property, and including contractual liability of Mortgagor and auto liability, if applicable; and

(v) Such other insurance as shall be required by law, or as may be reasonably required by Mortgagee and consistent with industry practice.

(b) All policies of insurance to be maintained hereunder shall be in forms, with companies, in amounts and with limits and deductibles reasonably satisfactory to Mortgagee. All policies of property insurance maintained hereunder shall (i) contain a standard mortgagee clause in form satisfactory to Mortgagee naming Mortgagee as mortgagee - loss payee and (ii) include an agreed amount endorsement and a joint loss agreement. The limit insured under any policy of property insurance, except for earthquake and flood insurance, shall not be reduced by any loss. All policies of liability insurance shall (x) name Mortgagee and its directors, officers, representatives, agents and employees as additional insureds, (y) provide that all of the provisions in the policy shall operate in the same manner as if there were a separate policy covering each additional insured without any obligation on the part of Mortgagee or any of its directors, officers, representatives, agents or employees to pay premiums (provided that such separate policies shall not operate to increase the insurer's limit of liability as set forth therein), and (z) provide that the insurer waives all rights of subrogation against Mortgagee and its directors, officers, representatives, agents and employees. Notwithstanding anything to the contrary herein contained, Mortgagor may, at its option, include any of the insurance coverage herein required in general or blanket policies of insurance.

(c) All policies of insurance required to be maintained herein shall contain provisions providing that (i) the coverage evidenced thereby will not be terminated, canceled or materially modified without thirty (30) days' prior written notice to Mortgagee, (ii) coverage will not be denied with respect to Mortgagee or any of its directors, officers, representatives, agents or employees by any act or omission by Mortgagor and (iii) the insurance provided thereunder is primary without right of contribution from any other insurance which may be carried by Mortgagee. Mortgagor shall deliver copies of all policies, including additional and renewal policies, together with evidence of payment of premiums thereon, to Mortgagee, and in the case of all insurance about to expire, shall deliver copies of renewal policies not less than thirty (30) days prior to their respective dates of expiration.

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

(e) Within ninety (90) days following the end of each fiscal year of Mortgagor, at the request of Mortgagee, Mortgagor agrees to furnish evidence of replacement costs, without cost to Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building(s) and other improvements on the Premises.

(f) If required by Mortgagee, Mortgagor covenants and agrees to deposit at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of The Royal Imperial Group, 900 West Jackson Boulevard, Suite 7-E, Chicago, Illinois 60602, Attention: David Tessler, an installment of the premium or premiums that will become due and payable to renew the insurance as required in Section 4(a) hereof. Each of such installments shall be in an amount which, by the payment of approximately equal installments, will result in there accumulating in the hands of the depositary a sufficient amount to pay renewal premiums upon such policies of insurance, at least one month prior to the expiration date or dates of the policy or policies to be renewed. Such deposits shall be invested in an interest-bearing account with a financial institution and at a rate of interest chosen by Mortgagee in its reasonable discretion, to be used for renewal of such insurance policies. Provided insurance deposits are made pursuant to this Section 4 and provided further that Mortgagee receives a bill for insurance premiums due and owing at least fifteen (15) days prior to the delinquency date and sufficient funds have been deposited, Mortgagee agrees to pay such insurance premiums to the appropriate insurance company on Mortgagor's behalf from funds deposited pursuant to this Section 4. If the funds so deposited are insufficient to pay all premiums for such renewals, Mortgagor shall within ten (10) days after receipt of demand therefor from Mortgagee, deposit such additional funds as may be necessary to pay such premiums. If the funds so deposited (including any interest) exceed the amount required to pay such premiums, the excess shall be applied toward a subsequent deposit or deposits due from Mortgagor. Mortgagor and Mortgagee hereby acknowledge and agree that the foregoing provisions of this Section 4(f) shall not be operative if the holder of the First Mortgage is requiring insurance premium deposits pursuant to the First Mortgage and, if not, so long as no Event of Default has occurred hereunder.

5. Mortgagee's Interest in and Use of Deposits. When the Indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to the party entitled thereto. Such deposits are hereby pledged as additional security for the Indebtedness secured hereby and shall be held to be irrevocably applied by the depositary for the purposes for which made hereunder; provided, however, that neither Mortgagee nor said depositary shall be liable for any failure to apply to the payment of taxes and assessments or insurance premiums any amount so deposited unless Mortgagor, provided no Event of Default has occurred and is continuing hereunder, shall have requested said depositary in writing to make application of such funds to the payment of the

particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes and assessments or insurance premiums.

6. Adjustment of Losses with Insurer and Application of Proceeds of Insurance.

(a) Mortgagor shall provide Mortgagee with prompt written notice of any loss or damage to any portion of the Mortgaged Property due to fire or other casualty. In the event of any such loss or damage, Mortgagee shall have the right (but not the obligation) to settle any insurance claim filed for more than \$50,000.00 and any claim filed for \$50,000.00 or less shall be adjusted and settled by Mortgagor; provided that Mortgagee shall have the right to settle any claims that Mortgagor has not settled on or before ninety (90) days after the date of such loss. If Mortgagee has not settled a claim in excess of \$50,000.00 on or before ninety (90) days after the date of such loss and Mortgagee is not proceeding with due diligence to reach a settlement of such claim, then Mortgagor shall have the right to settle such claim, provided that Mortgagor has given Mortgagee prior written notice of Mortgagor's intention to settle such claim. Subject to the rights of the holder of the Senior Instruments, any insurance proceeds collected by Mortgagee pursuant to this Section 6 shall be applied in accordance with the provisions of this Section 6, after deduction from such proceeds of all unpaid expenses of collection and settlement, including reasonable attorneys' and adjusters' fees and expenses.

(b) If Mortgagee is permitted under the provisions of this Section 6 and does elect to apply such proceeds in payment or reduction of the Indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, then Mortgagee may at its option declare the balance remaining unpaid on the Contingent Interest Note and this Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Contingent Interest Note as in the case of an Event of Default. Any proceeds remaining after application to the Indebtedness secured hereby shall be paid by Mortgagee to any party entitled thereto in the same manner as set forth in Section 14 hereof.

(c) If Mortgagee is not permitted to apply such insurance proceeds to the Indebtedness as set forth in the preceding clause (b), such insurance proceeds shall be used to reimburse Mortgagor for the cost of rebuilding or restoration of the Mortgaged Property. The Mortgaged Property shall be so restored or rebuilt as to be of at least equal value and quality and substantially the same character as the Mortgaged Property was prior to such damage or destruction. In the event Mortgagee is required to reimburse Mortgagor out of insurance proceeds, such proceeds shall be made available, from time to time, upon Mortgagee's being furnished with satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may reasonably require and approve. If the estimated cost of the work exceeds \$25,000.00, Mortgagee shall also be furnished with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and approve. All payments made prior to final completion of the work shall be subject to standard holdback provisions applicable to disbursements of construction

loan proceeds (which provisions typically require no more than a 10% holdback against payments to contractors). The undisbursed balance of insurance proceeds shall at all times be sufficient to pay for the cost of completion of the work free and clear of liens.

(d) Notwithstanding anything contained herein to the contrary, in the event that (i) the Mortgaged Property can be restored to an economically viable condominium within a reasonable period of time after a casualty, which period of time shall not extend beyond the date which is ninety (90) days prior to the Maturity Date (as such term is defined in the Contingent Interest Note), and (ii) after the work of restoration is completed, the Mortgaged Property will produce income sufficient to pay all costs of operations and maintenance and service all debts secured by the Mortgaged Property, Mortgagor shall have the right to use insurance proceeds to repair, rebuild or restore the Mortgaged Property if (x) no Event of Default has occurred and is continuing and (y) Mortgagor fully complies with the conditions of this Section 6. In all other cases, Mortgagee shall have the right (but not the obligation) to collect, retain and apply to the Indebtedness secured hereby all insurance proceeds (after deduction of all expenses of collection and settlement, including reasonable attorneys' and adjusters' fees and expenses).

(e) Mortgagee shall invest any insurance proceeds and all other amounts deposited by Mortgagor pursuant to clause (c) above in a manner approved by both Mortgagor and Mortgagee, and interest will not be paid on such proceeds and other amounts held by Mortgagee (except to the extent that interest is earned thereon as a result of such investment thereof in a manner approved by both Mortgagor and Mortgagee) nor will interest be owed by Mortgagor on such proceeds and other amounts (or the interest, if any, earned thereon) once disbursed.

(f) In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, shall be applied in payment or reduction of the Indebtedness secured hereby or in payment or reduction of the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to any party entitled thereto in the same manner as set forth in Section 14 hereof. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then and in every such case, each successive redemption may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

(g) Wherever provision is made in this Mortgage for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.

7. Stamp Tax. If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Contingent Interest Note or recording of this Mortgage (other than Mortgagee's income or franchise taxes), Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Contingent Interest Note or recording of this Mortgage.

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

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

10. Mortgagee's Performance of Defaulted Acts; Subrogation. In case Mortgagor fails to perform any of its covenants and agreements herein or in the Contingent Interest Note, which failure continues uncured beyond the applicable grace periods provided for therein, if any, Mortgagee may, but need not, make any payment or perform any act herein or therein required of Mortgagor, in any form and manner deemed expedient (including, without limitation, the purchase of insurance coverage required to be maintained hereunder), and may, but need not, make full or

partial payments of principal or interest on prior encumbrances, if any, purchase, discharge, compromise or settle any tax lien, mechanics' lien or other lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Mortgaged Property or contest any tax or assessment. All moneys paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other moneys advanced by Mortgagee to protect the Mortgaged Property and the lien hereof, shall be so much additional Indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate (as such term is defined in the Contingent Interest Note). Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

11. Mortgagee's Reliance on Tax Bills, Etc. Mortgagee in making any payment authorized by this Mortgage, after giving notice thereof to Mortgagor: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

12. Acceleration of Indebtedness in Case of Default. Any of the following events shall be deemed an "Event of Default" hereunder:

(a) If there shall be a Default under the Contingent Interest Note, or and Event of Default under the Pledge Agreement or the other Loan Documents; or

(b) If Mortgagor shall fail to perform any of its covenants, agreements and obligations hereunder involving the payment of money and such failure shall continue for a period in excess of ten (10) days following Mortgagor's receipt of written notice thereof from Mortgagee; provided, however, Mortgagee shall not be obligated to provide written notice to Mortgagor pursuant to this Section 12 more than two (2) times in any calendar year and after the second notice of default, Mortgagor shall be in default upon Mortgagor's failure to make payments hereunder within five (5) days following the date due; or

(c) If Mortgagor shall fail to perform any of its non-monetary covenants, agreements and obligations hereunder the breach of which is not otherwise specifically addressed in this Section 12 and such failure shall continue uncured for thirty (30) days after written notice thereof from Mortgagee (unless such default is susceptible to cure and cannot by its nature be cured within such thirty (30) day period, in which case no Event of Default shall be deemed to exist so long as Mortgagor shall have commenced curing the same within such thirty (30) day period and shall diligently and continuously prosecute same to completion within a reasonable period after the notice of such default); or

(d) If any written representation or warranty, statement, report or certificate required by this Mortgage now or hereafter made by Mortgagor is not true and correct in any material respect as of the date(s) made and shall not be corrected or remedied within thirty (30) days after written notice thereof from Mortgagee (unless the foregoing is susceptible to correction or remedy and cannot by its nature be accomplished within such thirty (30) day period, in which case no Event of Default shall be deemed to exist so long as Mortgagor shall have commenced correcting or remedying the same within such thirty (30) day period and shall diligently and continuously prosecute same to completion within a reasonable period after such notice); or

(e) If Mortgagor shall commence a voluntary case concerning Mortgagor under Title 11 of the United States Code entitled "Bankruptcy" as now or hereafter in effect, or any successor thereto or any other present or future bankruptcy or insolvency statute (the "Bankruptcy Code"); or an involuntary case is commenced against Mortgagor under the Bankruptcy Code and relief is ordered against Mortgagor or the petition is controverted but not dismissed within seventy-five (75) days after the commencement of the case; or Mortgagor is not generally paying its debts as such debts become due or admits in writing its inability to pay its debts generally as they become due; or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of, all or substantially all of the property of Mortgagor; or Mortgagor commences any other proceeding under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency, or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to Mortgagor; or there is commenced against Mortgagor any such proceeding which remains undismissed for a period of sixty (60) days; or Mortgagor is adjudicated insolvent or bankrupt; or Mortgagor fails to controvert in a timely manner any such case under the Bankruptcy Code or any such proceeding, or any order of relief or other order approving any such case or proceeding is entered; or Mortgagor by any act or failure to act indicates its consent to, approval of, or acquiescence in any such case or proceeding or the appointment of any custodian or the like of or for it for any substantial part of its property or suffers any such appointment to continue undischarged or unstayed for a period of sixty (60) days; or Mortgagor makes a general assignment for the benefit of creditors; or any action is taken by Mortgagor for the purpose of effecting any of the foregoing; or

(f) If any member of Mortgagor shall commence a voluntary case concerning such member under the Bankruptcy Code which is not dismissed within thirty (30) days of the commencement of the case; or any involuntary case is commenced against any member of Mortgagor under the Bankruptcy Code and relief is ordered against such member or the petition is controverted but not dismissed within seventy-five (75) days after the commencement of the case; or any member of Mortgagor is not generally paying its debts as such debts become due or admits in writing its inability to pay its debts generally as they become due; or a custodian (as defined in the Bankruptcy Code) is appointed for or takes charge of, all or substantially all of the property of any member of Mortgagor; or any member of Mortgagor commences any other proceeding under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency, or liquidation or similar law of any jurisdiction whether now or hereafter in effect with respect to such member; or there is commenced against any member of Mortgagor any such proceeding which

remains undismitted for a period of sixty (60) days; or any member of Mortgagor is adjudicated insolvent or bankrupt; or any member of Mortgagor fails to controvert in a timely manner any such case under the Bankruptcy Code or any such proceeding, or any order of relief or other order approving any such case or proceeding is entered; or any member of Mortgagor by any act or failure to act indicates its consent to, approval of, or acquiescence in any such case or proceeding or the appointment of any custodian or the like of or for it for all or substantially all of its property or suffers any such appointment to continue undischarged or unstayed for a period of sixty (60) days; or any member of Mortgagor makes a general assignment for the benefit of creditors; or any action is taken by any member of Mortgagor for the purpose of effecting any of the foregoing; or

(g) If all or substantially all of the assets of the Mortgagor or any member of Mortgagor are attached, seized, subjected to a writ of distress warrant, or are levied upon, or come into the possession of any receiver, trustee, custodian or assignee for the benefit of creditors, and the same is not vacated, stayed, dismissed, set aside or otherwise remedied within sixty (60) days after the occurrence thereof; or

(h) If Mortgagor is enjoined, restrained or in any way prevented by any court order from operating the Mortgaged Property, or if a notice of lien, levy or assessment is filed or recorded with respect to all or any part of the property of Mortgagor by any governmental department, office or agency, or if any proceeding is filed or commenced seeking to enjoin, restrain or in any way prevent the Mortgagor or any member of Mortgagor from conducting all or a substantial part of their respective business affairs and failure to vacate, stay, dismiss, set aside or remedy any of the foregoing within sixty (60) days after the occurrence thereof; or

(i) If Mortgagor causes, suffers or permits any event or condition which would have a material adverse effect on the Mortgaged Property or a material adverse effect upon Mortgagor's ability to comply with the terms, provisions and conditions of this Mortgage and all of the other Loan Documents, and such condition shall continue uncured for thirty (30) days after written notice thereof from Mortgagee (unless such condition is susceptible to cure and cannot by its nature be cured within such thirty (30) day period, in which case no Event of Default shall be deemed to exist so long as Mortgagor shall have commenced curing the same within such thirty (30) period and shall diligently and continuously prosecute same to completion within a reasonable period after notice of such condition); or

(j) The occurrence of any "Event of Default" under the Senior Instruments (as herein defined); or

(k) Any unpermitted transfer of title described in Section 31 hereof shall occur.

Upon the occurrence of any Event of Default hereunder, all amounts hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, without any presentment, demand, protest or notice of any kind to Mortgagor; provided, however, that such amounts shall automatically become immediately due and

payable without further action by Mortgagee upon the occurrence of any Event of Default described in clause (d) above.

Upon the occurrence of any Event of Default hereunder, Mortgagee shall further have the right (but not the obligation) to (i) use and apply any monies deposited by Mortgagor with Mortgagee (other than tenant security deposits), regardless of the purpose for which the same was deposited, to cure any such Event of Default or to apply on account of any Indebtedness secured hereby which is due and owing to Mortgagee and (ii) exercise or pursue any other right or remedy permitted under this Mortgage or the Contingent Interest Note or conferred upon Mortgagee by operation of law.

13. Foreclosure: Expense of Litigation. If an Event of Default has occurred hereunder, or when the Indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof.

It is further agreed that if default be made in the payment of any part of the secured Indebtedness (after giving effect to any applicable cure period), as an alternative to the right of foreclosure for the full secured Indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said Indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured Indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of such default of a part of the secured Indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured Indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured Indebtedness, but as to such unmatured part this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured Indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other uncured defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosure without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured Indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured Indebtedness for any matured portion of the secured Indebtedness without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any such partial foreclosure for any other part of the secured Indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

In connection with any foreclosure of the lien hereof or any action to enforce any other remedy of Mortgagee under this Mortgage or the Contingent Interest Note, Mortgagor agrees to pay all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee

for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Mortgaged Property and the right to such fees and expenses shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Contingent Interest Note or the Mortgaged Property (including without limitation the occupancy thereof or any construction work performed thereon), including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding whether or not an action is actually commenced, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate (as such term is defined in the Contingent Interest Note) and shall be secured by this Mortgage.

14. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in the following order of priority: First, on account of all costs and expenses mentioned in Section 13 above; second, all other items which under the terms hereof constitute secured Indebtedness additional to that evidenced by the Contingent Interest Note, with interest thereon as herein provided; third, all amounts remaining unpaid on the Contingent Interest Note; and fourth, any surplus to Mortgagor, its successor or assigns, as their rights may appear.

15. Appointment of Receiver. Upon, or at any time after an Event of Default has occurred, a receiver for the Mortgaged Property may be appointed. Such appointment may be made, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Mortgaged Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the Mortgaged Property; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date (as defined in the Contingent Interest Note) and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the mortgage Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) all other powers which may be necessary or are usual in such cases for the protection,

possession, control, management and operation of the Mortgaged Property. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (x) the Indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (y) the deficiency in case of a sale and deficiency.

16. Assignment of Rents and Leases. To further secure the Indebtedness secured hereby, Mortgagor hereby sells, assigns and transfers unto Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, and all accounts receivable now due or to become due derived from the operation of the Mortgaged Property, it being the intention hereby to establish an absolute transfer and assignment of all such leases and agreements, and all the avails thereunder to Mortgagee and not merely the passing of a security interest. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the Mortgaged Property as provided in Section 18 hereof) to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such terms as said Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases and agreements, written or verbal, or other tenancy existing, or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity, if any, as Mortgagee would have upon taking possession pursuant to the provisions of Section 18 hereof.

Mortgagor represents and agrees that, except as has been disclosed to Mortgagee in writing by Mortgagor in connection with the execution of the Loan Documents, no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the said Mortgaged Property will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor, except as may be approved in writing by Mortgagee. As between Mortgagor and Mortgagee, Mortgagor waives any rights of set off against any person in possession of any portion of the Mortgaged Property. Mortgagor agrees that it will not assign any of the rents or profits of the Mortgaged Property, except to a permitted purchaser or grantee of the Mortgaged Property.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to Section 18 hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, except with respect to acts of gross negligence or

willful misconduct by Mortgagee, all such liability being expressly waived and released by Mortgagor.

Mortgagor further agrees to assign and transfer to Mortgagee all future leases upon all or any part of the Mortgaged Property and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Mortgaged Property as Mortgagee shall from time to time reasonably require.

Although it is the intention of the parties that the assignment contained in this Section 16 shall be a present absolute assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this Section 16 until an Event of Default shall have occurred. Upon the occurrence of any such Event of Default and at Mortgagee's option, Mortgagee shall be entitled, in addition to its rights to pursue all rights or remedies available or at law or in equity, upon notice to the lessees of the Mortgaged Property, to collect and retain all rents and other amounts then due under the leases or thereafter accruing.

17. Enforcement of Leases. Mortgagor expressly covenants and agrees that it shall use reasonable efforts to enforce the leases of all or any portion of the Mortgaged Property if such enforcement is in the best interests of the Mortgaged Property. If Mortgagor determines in any instance that such enforcement is not in the best interests of the Mortgaged Property, it shall promptly give Mortgagee written notice of such determination, which notice shall include Mortgagor's analysis of the business judgment involved in its determination and shall inform Mortgagee of what action Mortgagor intends to pursue in lieu of such enforcement.

18. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the amounts secured hereby are declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor shall forthwith, upon demand of Mortgagee, surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally, or by its agent or attorneys. In such event Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said Mortgaged Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Mortgaged Property relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Mortgaged Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground

which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date (as defined in the Contingent Interest Note) and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, discharge of the mortgage Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to enter into any management, leasing or brokerage agreements covering the Mortgaged Property; (e) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Property as to it may seem judicious; (f) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (g) to receive all of such avails, rents, issues and profits; Mortgagor hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

Prior to taking possession, Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur by reason of its performance of any action authorized under this Section 18 and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements of Mortgagor; provided, however, that Mortgagee shall not be entitled to indemnification hereunder to the extent the foregoing liabilities, losses or damages or claims or demands resulted from Mortgagee's gross negligence or willful misconduct. Should Mortgagee incur any such liability, loss or damage, by its performance or nonperformance of actions authorized by this Section, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be due within thirty (30) days of demand. All such amounts shall bear interest from the date when due at the Default Rate (as defined in the Contingent Interest Note) until paid.

19. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 16 and Section 18 hereof, shall have full power to use and apply the avails, rents, issues and profits of the Mortgaged Property to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the Mortgaged Property, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and

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entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

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

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

(d) to the payment of any Indebtedness secured hereby or any deficiency which may result from any foreclosure sale. Any such amounts in excess of the foregoing shall be paid to the party entitled thereto.

20. Mortgagee's Right of Inspection. Subject to the limitations imposed upon Mortgagor by the terms of applicable leases affecting the Mortgaged Property, Mortgagee shall have the right, upon reasonable notice, to inspect the Mortgaged Property at all reasonable times and access thereto shall be permitted for that purpose.

21. Condemnation. To the extent of the Indebtedness secured hereby, Mortgagor hereby assigns, transfers and sets over unto Mortgagee its entire interest in the proceeds (the "Condemnation Proceeds") of any award or any claim for damages for any of the Mortgaged Property taken or damaged under the power of eminent domain or by condemnation or any transaction in lieu of condemnation ("Condemnation"). If the Condemnation relates to an insubstantial portion of the Mortgaged Property and in Mortgagee's reasonable judgment the Mortgaged Property can be restored to an economically viable condominium within a reasonable period of time, which period of time shall not extend beyond the date which is ninety (90) days prior to the Maturity Date (as such term is defined in the Contingent Interest Note), the Condemnation Proceeds shall be used to reimburse Mortgagor for the cost of rebuilding or restoring of buildings or improvements on the Mortgaged Property, provided no Event of Default has occurred and is continuing under this Mortgage. In all other cases Mortgagee shall have the right, at its option, to apply the Condemnation Proceeds upon or in reduction of the Indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, Mortgagee may at its option declare the balance remaining unpaid on the Contingent Interest Note and this Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Contingent Interest Note as in the case of an Event of Default. If the Condemnation Proceeds are required to be used as aforesaid to reimburse Mortgagor for the cost of rebuilding or restoring buildings or improvements on the Mortgaged Property, or if Mortgagee elects that the Condemnation Proceeds be so used, and the buildings and other improvements shall be rebuilt or restored, the Condemnation Proceeds shall be paid out in the same manner as is provided in Section 6 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration of such buildings and other improvements. Any surplus which may remain out of the Condemnation Proceeds after payment

of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the Indebtedness secured hereby or be paid to any other party entitled thereto in the same manner as set forth in Section 14 hereof.

22. Environmental Matters. Mortgagor represents and covenants and agrees that, it will manage and operate the Mortgaged Property and will cause each tenant to occupy its demised portion of the Mortgaged Property in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). Mortgagor further covenants and agrees that it shall not install or permit to be installed at the Mortgaged Property asbestos or any substance containing asbestos and deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders respecting such material. If Mortgagee so requires, Mortgagor shall remove from the Mortgaged Property and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulation or ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between Mortgagor, Mortgagee and/or any third party with respect to hazardous or toxic materials. Mortgagor shall send to Mortgagee within five (5) days of receipt thereof, any citation, notice of violation or other notice of potential liability from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to Mortgagee (at Mortgagor's sole cost), and hold Mortgagee harmless against any claim, response or other costs, damages, liability or demand (including, without limitation, reasonable attorneys' fees and costs incurred by Mortgagee) arising out of any claimed violation by Mortgagor of any of the foregoing laws, regulations or ordinances or breach of any of the foregoing covenants or agreements. The foregoing indemnity shall survive repayment of the Indebtedness.

23. Additional Covenants of Mortgagor, Mortgagee.

(a) Approvals. Mortgagee hereby acknowledges that it has reviewed and approved the budget for the Property dated as of August 16, 1999 (the "Approved Budget"); provided that any changes made by Mortgagor to the Approved Budget shall be subject to the written approval of Mortgagee, which approval shall not be unreasonably withheld or delayed. Mortgagee shall have approval rights with respect to the management and leasing of the Property and all third-party contracts entered into by Mortgagor in relation thereto.

(b) Additional Principal Advances. As of the date of this Mortgage, Mortgagee has advanced \$4,621,000.00 toward the purchase of the Property. Mortgagee agrees to loan such additional funds as are reasonably required for the operation of the Property to the Mortgagor, to the extent such amounts have not been recovered by Mortgagor out of sales proceeds received from the sale of any Unit ("Additional Principal Advances"). Additional Principal Advances made pursuant

to the preceding sentence shall be added to the balance of the Outstanding Principal Balance and shall be subject to the repayment provisions contained herein.

24. Recourse Liability of Mortgagor. Except as provided in the next paragraph, Mortgagee shall not be entitled to seek or enforce any personal money judgment against Mortgagor or any of its officers, directors, shareholders, employees or constituent members with respect to any claim arising out of or related to this Mortgage, the Contingent Interest Note or any of the other Loan Documents, except as expressly set forth below.

Mortgagor shall be liable for and shall indemnify Mortgagee against any and all loss, cost, damage, expense and liability incurred by Mortgagee including, without limitation, reasonable attorneys' fees and court costs, resulting directly or indirectly from any of the following: (a) fraud; (b) failure of Mortgagor or any of its successors and assigns (the "Responsible Parties") to apply the proceeds of insurance and condemnation awards in the manner set forth in the Loan Documents; (c) failure of the Responsible Parties to apply all rents or other income from the Mortgaged Property, including, toward the costs and expenses of maintenance and operation of the Mortgaged Property and to the payment of taxes, assessments, lien claims, insurance premiums, debt service and other obligations pertaining to the Mortgaged Property; provided that nothing herein shall prevent Mortgagor from making cash distributions in accordance with the Contingent Interest Note provided all of the foregoing costs and expenses are paid; (d) failure of the Responsible Parties to turn over security deposits on foreclosure, misapplication or misappropriation of security deposits, reserve accounts or prepaid rents; (e) failure of the Responsible Parties to turn over to Mortgagee all Net Operating Cash Flow and Net Capital Proceeds (as such terms are defined in the Contingent Interest Note) concurrently and pari passu with each and every distribution made by Mortgagor to its owners; (f) failure of Mortgagor to comply with the provisions of this Mortgage restricting encumbrance of the Mortgaged Property, as described in Section 31 herein; and (g) the forfeiture of or any other loss of title to the Mortgaged Property due to acts suffered or permitted by any of the Responsible Parties, other than as a result of foreclosure under the Senior Instruments or this Mortgage, involuntary bankruptcy of Mortgagor, or voluntary bankruptcy, a deed-in-lieu of foreclosure or the voluntary sale of the Mortgaged Property by Mortgagor, provided Mortgagee has given its prior written approval to such voluntary bankruptcy, deed-in-lieu of foreclosure or voluntary sale.

25. Releases.

(a) Lender, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the liens of Lender all or any part of the Mortgaged Property, or release from liability any person or entity obligated to repay any indebtedness secured hereby, without in any way affecting the liability of any party pursuant to the Contingent Interest Note, this Mortgage or any of the other Loan Documents, including, without limitation, any guaranty given as additional security for the indebtedness secured hereby, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such indebtedness. Any such agreement shall not in any way release or impair the lien

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created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest, subject to the indebtedness secured hereby, in the Mortgaged Property. Lender agrees that notwithstanding anything to the contrary contained herein, Lender shall make partial releases of the Mortgaged Property in accordance with the terms of subsection 25(b).

(b) Provided that there is not then existing any Default, Lender agrees to release individual Units from the lien of this Mortgage pursuant to the following terms and provisions:

(i) That at the time of such partial release, there shall be no default under the Contingent Interest Note, this Mortgage or any of the other Loan Documents which shall not have been cured within any applicable grace or cure period;

(ii) Borrower shall deliver to Lender a payment in the amount of one hundred percent (100%) of the Release Price (as defined in Section 1.20 of the Contingent Interest Note) for such Unit; and

(iii) That any and all documents and agreements used in connection with any partial release pursuant to this subsection 25(b) shall be in form and substance reasonably satisfactory to provide for the release of the appropriate portion of the Mortgaged Property.

26. Giving of Notice. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given if hand delivered or, if sent by reputable, overnight courier (effective the business day following delivery to such courier) or if mailed, three (3) days after deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested, in each case, addressed as follows:

If to Mortgagor:

Jackson Development Corporation
c/o Special Assets, Inc.
166 West Washington Street, Suite 600
Chicago, Illinois 60602
Attention: Ari Shulman

With a copy to:

Fuchs & Roselli, Ltd.
440 West Randolph Street, Suite 500
Chicago, Illinois 60606
Attention: Michael T. O'Connor

If to Mortgagee:

Rudolph Tessler
c/o The Royal Imperial Group
900 West Jackson Boulevard, Suite 8E
Chicago, Illinois 60602

With a copy to:

Alzheimer & Gray
Suite 4000
10 South Wacker Drive
Chicago, Illinois 60606
Attention: Barry B. Nekritz, Esq.
Lesli L. Mann, Esq.

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

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

28. Waiver of Statutory Rights. To the extent permitted by law, Mortgagor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (as the same may be amended, the "Act") or residential real estate as defined in Section 15-1219 of the Act. Pursuant to Section 151601(b) of the Act, Mortgagor hereby waives any and all right of redemption.

29. Binding on Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of Mortgagee from time to time and of the permitted successors and assigns of Mortgagee.

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

31. Further Encumbrances. Mortgagor recognizes that any additional junior financing placed upon the Mortgaged Property (a) may divert funds which would otherwise be used to pay the Indebtedness secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; and (c) would detract from the value of the Mortgaged Property should Mortgagee come into possession thereof with the intention of selling same.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Mortgagor and of value of the Mortgaged Property; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Mortgaged Property free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any further encumbrance of title to the Mortgaged Property or any interest therein (whether voluntary or by operation of law) which is not permitted by this Mortgage without the Mortgagee's prior written consent shall be an Event of Default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, it shall be deemed to be an unpermitted transfer of title to the Mortgaged Property and therefore an Event of Default hereunder, giving Mortgagee the right at its election under Section 12 hereof, to declare immediately due and payable the entire Indebtedness secured hereby, if without Mortgagee's prior

written consent, any lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall occur, (a "Prohibited Transfer"):

- (d) the Mortgaged Property or any part thereof; and
- (e) any interest in Mortgagor.

Any consent by Mortgagee, or any waiver of an Event of Default, under this Section shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent Event of Default under this Section.

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

33. Amount Secured. It is understood and agreed that with respect to subsequent purchasers and mortgagees without actual notice, the Indebtedness secured and to be secured hereby shall not exceed the Economic Value of the Mortgaged Property from time to time.

34. Security Agreement and Financing Statements. Mortgagor and Mortgagee agree: (a) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State in which the Mortgaged Property is located with respect to all sums on deposit with the Mortgagee pursuant to Sections 3 and 4 hereof ("Deposits") and with respect to any property included in the definition herein of the word "Mortgaged Property," which consists of personal property covered by the Code, and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (b) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (c) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the Indebtedness secured hereby and to secure performance by the Mortgagor of the terms, covenants and provisions hereof and of the Contingent Interest Note.

If an Event of Default occurs under this Mortgage, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, Mortgagee shall have all remedies available to a secured party under the Code and thirty (30) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, attorneys' fees and legal expenses incurred by Mortgagee. Mortgagor agrees that,

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without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Mortgaged Property any of the Collateral, except that so long as no Event of Default has occurred and is continuing hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Mortgaged Property, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests in others.

Mortgagor agrees that (i) all of Mortgagor's personal property, fixtures, furnishings, furniture, attachments and equipment located on or used in connection with the Mortgaged Property shall always be located at the Mortgaged Property and shall also be kept free and clear of all chattel mortgages, conditional vendor's liens and all other liens, encumbrances and security interests of any kind whatsoever other than the liens created by this Mortgage and the other Loan Documents, (ii) Mortgagor will be the absolute owner of said personal property, fixtures, attachments and equipment, and (iii) Mortgagor shall, from time to time, furnish Mortgagee with evidence of such ownership satisfactory to Mortgagee, including searches of applicable public records.

Mortgagor and Mortgagee agree, to the extent permitted by law, that: (1) all of the goods described within the definition of the word "Mortgaged Property" herein are or are to become fixtures on the land described in Exhibit A; (2) this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Section 9-313 and 9-402 of the Code; and (3) Mortgagor is the record owner of the land described in Exhibit A. The addresses of Mortgagor and Mortgagee are set forth in Section 26 hereof.

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

with the preparation, execution, recording, filing and re-filing of any such document. Mortgagor shall from time to time, on request of Mortgagee, deliver to Mortgagee an inventory of the Collateral in reasonable detail.

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

36. Applicable Law. This Mortgage and the Contingent Interest Note shall be construed, interpreted and governed by the laws of the State of Illinois.

37. Business Loan. The proceeds of the Contingent Interest Note will be used for the purposes specified in 815 ILCS 205/4 (formerly Ill. Rev. Stat., ch. 17, para. 6404), and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

38. Non-Waiver. The acceptance by Mortgagee of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare an Event of Default as herein provided. The acceptance by Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on

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account only and upon condition that it shall not constitute a waiver of the obligation of Mortgagor to pay the entire sum then due, and Mortgagor's failure to pay said entire sum then due shall be and continue to be an Event of Default notwithstanding such acceptance of such amount on account, as aforesaid, and Mortgagee shall be at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Mortgagee thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon Mortgagee, upon the occurrence of an Event of Default, and the right to declare the Indebtedness due and payable and to foreclose the lien hereof, shall in no way be impaired, whether any of such amounts are received prior or subsequent to the exercise of such right. Consent by Mortgagee to any transaction or action of Mortgagor which is subject to consent or approval of Mortgagee hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive transactions or actions. Mortgagor agrees that it has not and will not rely on any custom or practice of Mortgagee, or on any course of dealing by Mortgagee, in connection with the Indebtedness secured hereby unless such matters are set forth herein or in any of the other Loan Documents.

39. Senior Mortgage. This Mortgage shall be subject and subordinate to the lien of the financing which is secured by a first mortgage on the Mortgaged Property ("First Mortgage"), as well as such other additional security documents as such first mortgage lender requires (collectively, the "Senior Instruments").

(a) Mortgagor shall not permit the occurrence of an Event of Default (as defined in the Senior Instruments) under the Senior Instruments. If an Event of Default shall occur under this Mortgage or in the Contingent Interest Note, the owner or holder of the Contingent Interest Note may, but shall not be obligated to, pay any principal or interest due under the Senior Instruments. To the extent the owner and holder of the Contingent Interest Note pays any installment of principal or interest or any other sums due under the Senior Instruments, the said owner and holder shall become entitled to a lien on the Mortgaged Property covered by this Mortgage and by the Senior Instruments, equal in rank and priority to the Senior Instruments, and in addition to the extent necessary to make effective such rank and priority (i) the owner and holder of the Contingent Interest Note shall become subrogated to receive and enjoy all of the rights, liens, powers and privileges granted to the lender under the Senior Instruments and (ii) the Senior Instruments shall remain in existence for the benefit of and to further secure the debt and other sums secured or hereafter to become secured hereunder.

(b) Mortgagor shall give Mortgagee a copy of all notices of default (or potential default) given to Mortgagor with respect to any of the Senior Instruments within five (5) days after receiving such notice.

(c) Mortgagor shall not, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed, enter into any modification, extension, amendment, agreement or arrangement in connection with any of the Senior Instruments.

(d) If an Event of Default shall occur under the Senior Instruments, Mortgagor agrees that said default shall constitute an Event of Default hereunder. Upon the occurrence of such Event of Default under the Senior Instruments, in addition to any other rights or remedies available to Mortgagee, Mortgagee may, but need not, make any payment or perform any act required to cure or attempt to cure any said default under any of the Senior Instruments in any manner and form deemed reasonably expedient by Mortgagee. Mortgagee shall not be responsible for determining the validity or accuracy of any claim of default made by the lender under the Senior Instruments and the payment of any sum by Mortgagee in curing or attempting to cure any alleged default or omission shall be presumed conclusively to have been reasonable, justified and authorized. After an Event of Default under the Senior Instruments, Mortgagor hereby grants to Mortgagee an irrevocable power of attorney, which power of attorney is coupled with an interest, for the term of this Mortgage to cure any default or forfeiture which may occur under the Senior Instruments. Mortgagor further agrees to execute a formal and recordable power of attorney granting such right at any time during the existence of this Mortgage if requested by Mortgagee. All monies paid by Mortgagee in curing any default under the Senior Instruments, including attorneys' fees and costs in connection therewith, shall bear interest from the date or dates of such payment at the Default Rate (as defined in the Contingent Interest Note), shall be paid by Mortgagor to Mortgagee on demand, and shall be deemed a part of the Indebtedness and recoverable as such in all respects. Any inaction on the part of Mortgagee shall not be construed as a waiver of any right accruing to Mortgagee on account of any Event of Default hereunder.

(e) Upon the occurrence of an Event of Default hereunder, Mortgagee may prepay the entire balance due under the Senior Instruments, and any prepayment fees or penalty incurred by Mortgagee in connection with such prepayment shall bear interest from the date of such payment at the Default Rate (as defined in the Contingent Interest Note), shall be paid by Mortgagor to Mortgagee upon demand, and shall be deemed a part of the Indebtedness and recoverable in all respects.

(f) Notwithstanding anything to the contrary contained in this Mortgage, so long as the Senior Instruments are in place, upon the occurrence of an Event of Default hereunder, Mortgagee shall not be entitled to exercise its rights and remedies pursuant to Sections 13, 14 and 15 hereof without the prior written consent of the holder of the Senior Instruments. In the event of a Refinancing (as defined in the Contingent Interest Note) of the loan evidenced by the Senior Instruments, such covenant of Mortgagee shall continue in full force and effect with respect to the Refinancing if so required by the replacement lender.

40. **No Merger.** It being the desire and the intention of Mortgagor and Mortgagee that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title. It being the further desire and intention of Mortgagor and

Mortgagee that this Mortgage and the lien hereof and the Senior Instruments and the liens thereof do not merge into a single mortgage against the Mortgaged Property, it is hereby understood and agreed that unless a contrary intent is manifested by Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge with said Senior Instruments and the liens thereof into a single mortgage against the Mortgaged Property, toward the end that this Mortgage may be foreclosed as if held by a stranger to said Senior Instruments.

41. Illinois Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon an Event of Default which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

42. Consent to Jurisdiction, Waiver of Jury Trial, Waiver of Damages.

(A) MORTGAGOR AND MORTGAGEE AGREE THAT ALL DISPUTES BETWEEN OR AMONG ANY OF THEM ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN OR AMONG ANY OF THEM IN CONNECTION WITH THIS MORTGAGE AND THE CONTINGENT INTEREST NOTE, AND WHETHER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, SHALL BE RESOLVED ONLY BY STATE OR FEDERAL COURTS LOCATED IN CHICAGO, ILLINOIS BUT SUCH PARTIES ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF CHICAGO, ILLINOIS. MORTGAGOR AND MORTGAGEE EACH WAIVE IN ALL DISPUTES ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT CONSIDERING THE DISPUTE INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS.

(B) EACH OF MORTGAGOR AND MORTGAGEE WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN

CONTRACT, TORT, OR OTHERWISE ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN OR AMONG ANY OF THEM IN CONNECTION WITH THIS MORTGAGE AND THE CONTINGENT INTEREST NOTE. INSTEAD, ANY DISPUTES RESOLVED IN COURT WILL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

(C) MORTGAGEE SHALL NOT HAVE ANY LIABILITY WITH RESPECT TO, AND MORTGAGOR HEREBY WAIVES AND RELEASES ANY CLAIM FOR, ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (PRESERVING ALL CLAIMS FOR ACTUAL DAMAGES) SUFFERED BY MORTGAGOR IN CONNECTION WITH, ARISING OUT OF, OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED OR THE RELATIONSHIPS ESTABLISHED BY THIS MORTGAGE OR THE CONTINGENT INTEREST NOTE, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, UNLESS IT IS DETERMINED BY A JUDGMENT OF A COURT THAT IS BINDING ON MORTGAGEE (WHICH JUDGMENT SHALL BE FINAL AND NOT SUBJECT TO REVIEW ON APPEAL), THAT SUCH DAMAGES WERE THE RESULT OF ACTS OR OMISSIONS ON THE PART OF MORTGAGEE CONSTITUTING GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR INTENTIONAL VIOLATIONS OF LAW.

43. Limitation of Liability. This Mortgage is executed by LaSalle National Bank, not personally, but solely as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument). All covenants, agreements and conditions to be performed by LaSalle National Bank hereunder are undertaken by it solely as Trustee as aforesaid and not individually, and no personal liability shall be asserted or enforceable against LaSalle National Bank, personally, by reason of any of the covenants, agreements, representations or warranties contained herein; but nothing herein contained shall be deemed a release or impairment of the indebtedness evidenced hereby or incurred pursuant hereto, nor prejudice the rights of Lender from exercising any of its rights or remedies hereunder or under any or all of the Contingent Interest Note, this Mortgage and the other Loan Documents, or from securing a deficiency or personal judgment against any subsequent owner of the Mortgaged Property who assumes the indebtedness evidenced hereby or incurred pursuant hereto; and nothing herein contained shall release, waive, modify or discharge the liability and responsibility of Mortgagor or of any guarantors of or any other persons or entities in respect hereof.

LaSalle Bank National Association formerly
known as

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

~~JACKSON DEVELOPMENT CORPORATION,~~
an Illinois corporation, beneficiary of LaSalle National Bank, not personally, but solely as Trustee under Trust Agreement dated April 18, 1982 and known as Trust No. 104836

By: *A. Shulman*

Name: *Ari Shulman*

Its: *Pres.*

~~*LaSalle Bank National Association formerly known as~~

~~*LASALLE NATIONAL BANK, not personally, but solely as Trustee under Trust Agreement dated April 18, 1982 and known as Trust No. 104836~~

By: *Deborah Berg*

Name: *Deborah Berg*

~~ASSISTANT VICE PRESIDENT~~

Its: _____

Mortgagee hereby joins in this Mortgage solely for the purpose of ratifying certain agreements made by it hereinabove.

RUDOLPH TESSLER, a resident of the State of Illinois

Rudolph Tessler
Rudolph Tessler

STATE OF ILLINOIS)
)
COUNTY OF COOK)

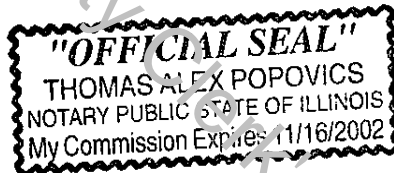
I THOMAS ALEX POPOVICS Notary public in and for said County in the State
aforesaid DO HEREBY CERTIFY THAT

Deborah Berg Senior/Assistant Vice President of LASALLE BANK
NATIONAL ASSOCIATION personally known to me to be the same person whose
name is subscribed to the foregoing instrument as such Senior/ Assistant Vice President
respectively, appeared before me this day in person and acknowledged that he signed and
delivered said instrument as his own free and voluntary act, and as the free and voluntary
act of said bank, for the uses and purposes therein set forth; and said Officer did also
then and there acknowledged that he, as custodian of the Corporate
so then and there acknowledged that he, as custodian of the Corporate Seal of said Bank,
did affix said

Corporate Seal of said Bank to said instrument as his own free and voluntary act, as the
free and voluntary act of said bank for the uses and purposes therein set forth.

Given under my name and notarial seal this 19th day of August, 1999

Thomas Alex Popovics
NOTARY PUBLIC



My Commission Expires: 11-16-02

Notary's Office

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STATE OF ILLINOIS, COUNTY OF COOK SS.

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, CERTIFY THAT

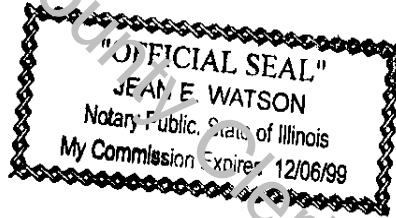
Rudolph Tessler

personally known to me to be the same person(s) whose name(s) are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal, this 19th day of August 1999

Jean Edwason

(Notary Public)



Property of Cook County Clerk's Office

EXHIBIT A

Legal Description

THE SOUTH 2.97 FEET OF LOT 7 AND ALL OF LOT 8 IN DUNCAN'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office