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Cook County Recorder 111.00



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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("**Mortgage**"), made as of January 12, 1999, by and between **451 W. Aldine LLC**, an Illinois limited liability company, whose address is 1512 North Fremont, Chicago, Illinois 60622 ("**Borrower**"), and **LaSalle Bank FSB**, whose address is 8303 West Higgins Road, Chicago, Illinois 60631 ("**Lender**").

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WITNESSETH THAT:

Borrower has executed and delivered to Lender that certain Secured Promissory Note made payable to the order of Lender in the maximum principal amount of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000) dated of even date herewith (the "**Note**") which matures on January 12, 2000 (the "**Maturity Date**"). A copy of the Note is attached hereto as **Exhibit A**, and by this reference incorporated herein and made a part hereof.

NOW, THEREFORE, Borrower, in order to secure to Lender the repayment of the indebtedness evidenced by the Note, including principal, interest, and all other amounts due thereunder, herein and under the Loan Documents as hereafter defined, and the performance of the covenants and agreements contained herein and in the Loan Documents as hereafter defined and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, does hereby grant, bargain, sell, transfer, assign, convey, confirm and mortgage unto Lender, its successors and assigns the property located at 451 West Aldine, Chicago, Illinois which property is legally described in **Exhibit B** attached hereto and made a part hereof; together with all buildings, structures and other improvements and chattels of every nature now on said land or that may hereafter be erected or placed thereon or used and incorporated into the construction thereof, all

THIS INSTRUMENT PREPARED BY AND UPON RECORDING RETURN TO:

Thomas R. Brashler
Stahl Brashler LLC
20 East Jackson Boulevard, Suite 1600
Chicago, Illinois 60604

STREET ADDRESS:

451 West Aldine, Chicago, Illinois

PERMANENT TAX INDEX NUMBER:
14-21-312-013-0000

BOX 333-CTI

present and future air, mineral, oil and gas rights and interests relating thereto, all shrubbery and trees now growing or that hereafter may be planted or grown thereon; all crops and/or produce of any kind now growing or that may be hereafter growing, grown or produced upon said land or any part thereof, and all and singular ways, present and future easements and other rights, and all present and future tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, including but not limited to all present and future sewer rights, development rights or credits, surface and underground water, water rights and powers; all present and future rights in any abutting public or private streets and alleys and in any submerged lands adjacent thereto (hereinafter referred to as the "**Premises**"); and

All present and future rents, issues, avails, profits, account receivables, concession and other operating costs and proceeds (hereinafter referred to as the "**Rents**") of or from the Premises, the "**Leases**" and/or from the "**Equipment**" (both of which terms are hereinafter defined), howsoever occurring, existing, created or arising; and

All present and future permits, licenses, franchises, consents and approvals and all general intangibles of, from or relating to the Premises (collectively, the "**Licenses**"), leases, agreements and tenancies (hereinafter collectively referred to as the "**Leases**") of or from the Premises and/or the Equipment or in any way, manner or respect required, existing, used or useable in connection with the Premises and/or the Equipment or the management, maintenance, operation or business thereof, including, without limitation, those Licenses issued by any governmental authority, and all deposits of money as advance rent or for security under any or all of the Leases and all guaranties of lessees' performances thereunder; and

All present and future judgments, awards or damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment, the Licenses, the Rents and/or the Leases, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereto; and

All present and future apparatus, machinery, elevators, equipment, fixtures, appliances, furniture, hardware, floor, wall or window coverings and articles of personal property of any and every kind and nature whatsoever used, attached to, installed or located in or on the Premises, or required for use in or on or in connection with the Premises or the management, maintenance, operation or business thereof and all replacements thereof and accessions thereto now or hereafter owned by Borrower or which Borrower now or hereafter acquires an interest in (hereinafter referred to as the "**Equipment**"), including, but not limited to, any such items of Equipment now or at any time or times hereafter situated on the Premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, security, incineration, laundry service and all other related or other such services (all of the immediately above mentioned items of Equipment being deemed to be a part of the Premises, whether physically attached thereto or not); and

All present and future insurance policies in force or effect insuring the Premises, the Rents, the Leases, the Licenses or the Equipment; and

All present and future plans, specifications, surveys, studies, forms, brochures, photographs, drawings, warranty claims, warranties, contract rights and title insurance policies of or relating to the Premises, the Equipment, the Leases, the Rents and/or the Licenses or any part or interest therein and all bonds, permits, utility contracts, maintenance agreements, management agreements and service contracts in any way required, existing, used or useable in connection with the Premises, the Leases, the Rents, the Licenses and/or the Equipment or the management, maintenance, operation or business on the Premises and all books and records, computerized data, tapes and other materials, financial records relating thereto; and

All sums and monies now or from time to time held by or for the benefit of Lender pursuant to this Mortgage; and

All proceeds of each and every of the foregoing.

Borrower hereby grants to Lender a continuing security interest in (i) that portion of the Mortgaged Property constituting property or interests in property, whether real or personal, tangible or intangible, now owned or existing and hereafter acquired and arising, which are subject to the priority and perfection of the security interest provisions of the Illinois Uniform Commercial Code (the "Code") or any similar and applicable law, statute, code or other governing body of law; and (ii) the Equipment and all proceeds thereof to secure payment of the Liabilities, as hereafter defined, and the faithful and prompt performance of the Obligations, as hereafter defined, secured by this Mortgage.

To have and to hold the above described property and interests in property ("Mortgaged Property") unto Lender, its successors and assigns, forever;

Provided always, that upon full payment of the Note secured hereby, or extensions or renewals thereof, in whole or in part, and payment in full of all other "Liabilities", as hereinafter defined, and secured hereby, and the faithful and prompt performance of the "Obligations", as hereinafter defined, then the lien of this Mortgage shall be released by Lender at the cost of Borrower but shall otherwise remain in full force and effect.

AND THIS MORTGAGE FURTHER WITNESSETH:

1. DEFINITIONS

1.1 Wherever used in this Mortgage, "Liabilities" means any and all of the following: (i) the payment of any and all monies, including, but not limited to, the payment, when due or declared due in accordance with the terms of the Note, of the principal sum of the Note, together with the interest and all other amounts due thereunder, now and/or hereafter owed or to become

owing by Borrower to Lender under and/or pursuant to the terms and provisions of the Note; (ii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Borrower to Lender under and/or pursuant to the terms and provisions of this Mortgage; (iii) the performance of all covenants, obligations and agreements (and the truth of all covenants and warranties) of Borrower under that certain Construction Loan Agreement dated of even date herewith ("**Loan Agreement**"); and (iv) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable to Lender, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, and arising under and/or pursuant to the terms of the Loan Documents as hereafter defined.

1.2 Wherever used in this Mortgage, "**Obligations**" means the prompt, full and faithful performance, discharge, compliance and observance of each and every term, condition, agreement, undertaking, covenant and provisions to be performed, discharged, observed or complied with by Borrower or any other party contained in the Loan Documents, as hereafter defined.

1.3 Wherever used in this Mortgage, "**Loan Documents**" means the Note, this Mortgage, the Loan Agreement, that certain Assignment of Rents and Leases of even date herewith executed by Borrower (the "**Assignment of Rents**"), that certain Security Agreement of even date herewith executed by Borrower (the "**Security Agreement**"), that certain Continuing Guaranty of Payment and Performance of even date herewith (the "**Guaranty**") executed by John M. Supera and The John M. Supera Declaration of Trust Dated 1-21-98 (collectively, the "**Guarantor**"), that certain Environmental Indemnity Agreement of even date herewith executed by Borrower and Guarantor (the "**Environmental Indemnity**"), and all extensions, renewals and modifications of all of the foregoing documents.

1.4 Wherever used in this Mortgage, the term "**and/or**" means one or the other or both, or any one or all, of the things, events or persons or parties in connection with which the term is used.

2. WARRANTIES AND REPRESENTATIONS

Based on its best knowledge after due inquiry, Borrower represents and warrants to Lender as follows:

2.1 Borrower has the standing, right, power and lawful authority to own the Mortgaged Property, to carry on the business of and operate the Mortgaged Property, to enter into, execute, perform under and deliver this Mortgage, the Note and the other Loan Documents executed by Borrower, to encumber the Mortgaged Property to Lender as provided herein or in the Loan Documents and to repay all of the Liabilities owing from Borrower to Lender and to perform all of the Obligations to be performed by Borrower and to consummate all of the transactions described in or contemplated by this Mortgage, the Note and the other Loan Documents executed by Borrower.

2.2 The execution, delivery and performance by Borrower of and under this Mortgage, the Note and the other Loan Documents executed by Borrower does not constitute a violation of any applicable law and does not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, trust agreement, note, judgment, order, award, decree or other restriction to which Borrower is a party or by which Borrower or any of the Mortgaged Property is bound or any law or regulatory provision now affecting Borrower or any of the Mortgaged Property.

2.3 All of the Licenses necessary for the operation of the Mortgaged Property are in full force and effect; and, to the best of Borrower's knowledge, all of the Leases are genuine, in all respects what they purport to be, free of set-offs, counterclaims or disputes and valid and enforceable in accordance with their terms. Borrower has made no previous assignment of the Leases, Rents or Licenses. All parties to the Leases, to the best of Borrower's knowledge, have the capacity to contract thereunder. Except for security deposits provided for under the Leases, no payment of any Rent has been made by any tenant or by any person in possession of any portion of the Mortgaged Property for more than one month's installment in advance.

2.4 There is no litigation, action, claim or proceeding pending or threatened which might, in any way, manner or respect, materially adversely affect Borrower, the Mortgaged Property, the operation or the business thereof, Lender's lien thereon, the collectibility of the Note, the ability of Borrower to repay the Note or the financial condition of the Mortgaged Property or the operation or business thereof. There are no bankruptcy or insolvency proceedings pending or contemplated by Borrower, or to the best knowledge of Borrower threatened against Borrower or pending or threatened against any other party directly or indirectly liable for the repayment of the Liabilities or performance of the Obligations.

2.5 Borrower and the Mortgaged Property possess and hold adequate Licenses to conduct and operate the business of the Mortgaged Property and none of the foregoing contains any term or condition that is materially burdensome to said business or materially differing from those possessed or held by other parties conducting or operating a similar business.

2.6 There does not exist any default or breach of or under any agreement, instrument or document for borrowed money by which Borrower or the Mortgaged Property is bound or obligated.

2.7 The location, existence, use and condition of the Premises and the Equipment are in compliance with all applicable laws, rules, ordinances and regulations, including, but not limited to, building and zoning laws, and all covenants and restrictions of record.

2.8 Borrower is (subject to the rights of tenants in possession) in peaceful possession of the Mortgaged Property and is lawfully seized, possessed and the owner of and has good and indefeasible, marketable fee-simple title to the Mortgaged Property, free and clear of all liabilities, claims, debts, exceptions, security interests, assessments, charges, impositions, levys, taxes, liens and all other types of encumbrances (hereinafter referred to as the "Encumbrances") except (a) the

Encumbrances of Lender, (b) those Encumbrances described on **Exhibit C** attached hereto and made a part hereof, and (c) existing Leases to a tenant or tenants in possession of all or portions of the Premises. (The items described in (a) through (c) hereof shall be referred to as the "Permitted Encumbrances".)

2.9 Electric, gas, sewer, water facilities and any other necessary utilities are available in sufficient capacity to service the Mortgaged Property, and any easements necessary to the furnishing of such utility services have been obtained and duly recorded.

2.10 The proceeds of the loan evidenced by the Note and secured hereby will be used solely for the purposes specified in Illinois Compiled Statutes, Chapter 815 ILCS 205/4, and the principal obligation evidenced by the Note constitutes a "business loan" within the definition and purview of said statute, and said loan is an exempted transaction under the Truth In Lending Act, 15 U.S.C. Section 1601, et seq.

2.11 All the various financial statements relating to the Borrower, the Mortgaged Property and the operation and business thereof delivered by or on behalf of Borrower to Lender prior to or contemporaneously with the execution of this Mortgage, and those from time to time hereafter delivered by or for Borrower to Lender pursuant to the Loan Documents or for any other reason, are true, correct, complete and accurate in all material respects, fairly present the financial conditions represented as of the dates and for the periods indicated, and have been prepared in accordance with generally accepted accounting principles, consistently applied.

2.12 The various other data and information relating to the Mortgaged Property and the operation and business thereof heretofore and from time to time hereafter delivered by or for Borrower to Lender are true, correct, complete and accurate in all material respects.

2.13 Borrower has disclosed in writing to Lender all conditions, events, and facts known to Borrower which could have any material adverse effect on the financial condition of Borrower or the Mortgaged Property and no representation or warranty contained herein or therein contains any material misstatement of fact or omits to state any material fact or any fact necessary to make the statements, representation or warranties therein or herein not misleading.

2.14 Borrower has duly filed all federal, state and other governmental tax and similar returns which Borrower is required by law to file. All taxes and other sums which are shown to be payable under such returns have been and shall be fully paid when due, and Borrower maintains adequate reserves in an amount to fully pay all such liabilities which hereafter may accrue.

2.15 No portion of the proceeds of the loan evidenced by the Note shall be used to purchase any "Margin Stock", or to pay or refinance any indebtedness incurred to purchase Margin Stock, as such term is defined under applicable rules and regulations of the Board of Governors of the Federal Reserve System.

2.16 All streets, roads, highways and waterways necessary for access to and full use, occupancy, operation and disposition of the Premises have been completed, have been dedicated to the appropriate governmental authority and are open and available to Borrower without further condition or cost.

2.17 Borrower has disclosed to Lender all of its partners, members and/or shareholders as the case may be and said partners, members and/or shareholders have furnished or will furnish all funds (other than funds supplied by institutional lenders which have or will hold valid mortgage liens against the Mortgaged Property) for the purchase of the Mortgaged Property and the construction of any improvements thereon and such funds were not and will not be from sources that are described in 18 U.S.C. Sections 1956 and 1957 as funds or property derived from "specified unlawful activity".

2.18 Borrower hereby expressly represents and warrants to Lender that there has not been committed by Borrower or any other person involved with the Mortgaged Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of all obligations under the Note, Mortgage or under any of the other Loan Documents, and Borrower hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. In furtherance thereof, Borrower agrees to indemnify, defend with counsel reasonably acceptable to Lender (at Borrower's sole cost) and hold Lender harmless from and against any claim or other cost (including, without limitation, reasonable attorneys' fees and costs incurred by Lender), damage, liability or injury by reason of the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Borrower, the Lender or all or any party of the Mortgaged Property under any federal or state law in which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Borrower's obligations under the Loan Documents is a potential result shall, at the election of Lender, constitute a Default hereunder without notice or opportunity to cure.

2.19 The Mortgaged Property does not contain any lead-based paint hazards as defined under and is not subject to the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. Section 4851 et seq., or any regulations promulgated thereunder.

2.20 The Mortgaged Property is not "real property" as such term is defined under the Illinois Responsible Property Transfer Act of 1988, 765 ILCS 90/1 et seq., as now or hereafter amended ("RPTA"). Neither the making of the loan evidenced by the Note by Lender nor the granting of a lien or security interest in the Mortgaged Property to Lender by Borrower is subject to RPTA.

2.21 Borrower has complied or shall comply in all respects with applicable state and local laws relating to the marketing, sale and conversion of condominium units, including but not limited

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to the delivery to tenants of notification of intent to convert the Mortgaged Property to condominium property as provided under the Chicago Condominium Ordinance and the Illinois Condominium Act.

2.22 All representations and warranties made in Article 2 hereof (a) shall remain true and correct as of the date of the disbursement of any proceeds of the Loan evidenced by the Note and at all times thereafter for so long as the Liabilities have not been paid in full and the Obligations fully performed and (b) shall be deemed to have been made again to Lender as being true and correct on each date Lender advances any proceeds of the loan evidenced by the Note to or for the benefit of Borrower and on each date Borrower delivers any of the information required under Paragraph 3.12 hereof to be given to Lender.

3. COVENANTS

In addition to all other covenants and agreements contained herein Borrower specifically covenants with Lender as follows:

3.1 Borrower will promptly pay, or cause to be paid, when due or declared due the Liabilities owing from Borrower to Lender and fully and faithfully will perform, discharge, observe and comply with each and every of the Obligations to be performed by Borrower.

3.2 Except for construction and development of the Project (as defined in the Loan Agreement) on the Premises, Borrower will not change the use or character of or abandon the Mortgaged Property and at all times hereafter shall keep the Mortgaged Property in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements and renewals (including the replacement of any items of the Equipment) to the Mortgaged Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Borrower shall not remove any fixture or demolish any building or improvement located in or on the Premises. Borrower shall pay for and complete, within such period of time as may be required by Lender in its sole discretion, any building or improvement at any time in the process of erection upon the Premises, shall refrain from impairing or diminishing the value of the Mortgaged Property and shall make no material alterations to the Mortgaged Property which in the opinion of Lender diminishes its value. Borrower shall comply with all requirements of law and all municipal ordinances governing the Mortgaged Property and the use thereof including but not limited to, building and zoning laws.

3.3 Borrower shall pay and discharge, as and when due and payable, before any penalty attaches, all charges, impositions, levies, assessments and taxes (whether general, special or otherwise), water charges, sewer service charges and all other municipal or governmental charges, impositions, levies, assessments and taxes of any kind or nature that may be at any time levied, assessed or imposed upon or against the Mortgaged Property, or any part thereof, and shall deliver to Lender duplicate receipts evidencing payment thereof at least fifteen (15) days before delinquency; provided, however, that if Borrower in good faith and by appropriate legal action shall contest the validity of any such item or the amount thereof, and shall have established by deposit of

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cash or other security with Lender for the payment thereof in such amount as Lender may reasonably require to pay in full any of the foregoing including interest and penalties thereon and shall increase said deposit to cover additional interest and penalties whenever Lender deems such increase advisable, then Borrower shall not be required to pay the item or to produce the required receipts: (a) while the deposit is maintained, and (b) so long as the contest operates to prevent collection, including enforcement of any lien securing payment thereof, is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Borrower.

3.4 Borrower shall keep the Mortgaged Property free and clear of all Encumbrances (including, but not limited to, mechanics' liens and other similar liens or claims for liens) of any and every kind and nature except Permitted Encumbrances, shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and, immediately upon request by Lender, shall deliver to Lender evidence satisfactory to Lender of the payment and discharge thereof; provided, however, that if Borrower in good faith and by appropriate legal action shall contest the validity of any such item or the amount thereof, and shall have established by deposit of cash or other security with Lender for the payment thereof in such amount as Lender may reasonably require to pay in full any of the foregoing together with interest thereon and shall increase said deposit whenever, in the judgment of Lender, such increase is advisable, then Borrower shall not be required to pay the item or to produce the required evidence of discharge: (a) while the deposit is maintained, and (b) so long as the contest operates to prevent collection, including enforcement of any lien securing payment thereof, is maintained and prosecuted with diligence, and shall not have been terminated or discontinued adversely to Borrower. If Lender makes payment of any such Encumbrance, Lender shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.

3.5 All present and future items of fixtures, equipment, furnishings or other tangible personal property (whether or not constituting a part of the Mortgaged Property) related or necessary to or used or useable in connection with any present or future building or improvement on the Premises, or the operation or business thereof, are and will be owned free and clear of all Encumbrances except Permitted Encumbrances and Borrower will not acquire any such property subject to any Encumbrance except Permitted Encumbrances.

3.6 If Lender is required by legislative enactment or judicial decision to pay any charge, imposition, assessment, levy or tax in or to any state, municipality or government on the Mortgaged Property (or on any interest therein), this Mortgage or the recording thereof, the other Loan Documents or the Liabilities, other than taxes measured by the net income or gross income of Lender, then to the extent permitted by law, Borrower shall pay, when payable, such charge, imposition, assessment, levy or tax. If under applicable law and for any reason whatsoever, Borrower is not permitted to pay, in full, all of such charges, impositions, assessments, levys and taxes, then all Liabilities shall become and be due and payable, at the election of Lender, within thirty (30) days following Lender's notice to Borrower.

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3.7 Borrower shall pay all operating expenses of the Premises, maintain all insurance required hereunder, cause the Premises to be operated in a competent and professional manner and refrain from any action which would increase the risk of hazards to the Premises. Borrower shall comply with all restrictions and covenants of record with respect to the Premises and the use thereof, and observe and comply with any conditions and requirements necessary to preserve, maintain and extend any and all Licenses (including, without limitation, special exceptions and nonconforming uses), privileges, franchises and concessions, electric, gas, sewer, water facilities and any other necessary utilities which are necessary to the operation of the business conducted on the Premises or for its use and occupancy.

3.8 Borrower shall not grant any License or easement burdening the Mortgaged Property (excepting utility easements) or agree to or accept the modification, amendment, or termination of any License or easement affecting the Mortgaged Property without the prior written consent of Lender. Borrower shall not initiate or acquiesce in any change in the zoning or conditions of the use of the Premises. If under applicable law, the use of all or any part of the Premises is or becomes a nonconforming use, Borrower shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Except for security deposits provided for under the Leases, Borrower shall not accept any payment of Rents for any portion of the Mortgaged Property for more than one month's installment in advance. Borrower shall not, without the written consent of Lender, change the identity of the person or firm responsible for managing and/or leasing the Premises.

3.9 If title to any part of the Mortgaged Property, or the interest of Lender therein, shall be endangered or shall be attached, directly or indirectly, Borrower will immediately take all necessary and proper steps for the defense thereof, including the employment of counsel (reasonably acceptable to Lender), the prosecution or defense of litigation, and the compromise or discharge of all claims.

3.10 Borrower shall permit Lender, and its agents, upon demand, to inspect the Mortgaged Property, conduct studies or tests thereof, above or below the surface of the Premises. Borrower shall pay all costs and expenses incurred by Lender in conducting such inspections.

3.11 If Borrower is a corporation, partnership, limited liability company or partnership, or trust, it shall take all action necessary under the laws of its state of organization to maintain its existence. If Borrower is a corporation, partnership, limited liability company or partnership, or trust organized under the laws of a state which is not the same as the state in which the Mortgaged Property is located, it shall, to the extent required by applicable law, qualify as a foreign corporation, limited liability company, partnership or trust in the state in which the Mortgaged Property is located, and maintain itself in good standing under the laws of the state in which the Mortgaged Property is located. Borrower shall timely file all federal, state and other governmental tax and similar returns which Borrower is required by law to file and shall fully pay when due all amounts in connection therewith.

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3.12 With respect to the Mortgaged Property and the operation and business thereof, Borrower will keep or cause to be kept proper books and records, prepared in accordance with generally accepted accounting principles, consistently applied. Upon demand Lender shall have the right to examine said books and records at any time or times hereafter until one (1) year after payment in full of the Note. Borrower shall deliver to Lender the following financial information to Lender, in form satisfactory to Lender and containing such information as Lender may require, within the time periods indicated: (i) annual statements of income and expenses reflecting the operations of the Mortgaged Property within ninety (90) days after the end of each calendar year; (ii) unit sales report within twenty (20) days following the end of each calendar quarter; and (iii) a statement of income and expenses for the period just ended within twenty (20) days following the end of each calendar quarter. Within twenty (20) days after filing, Borrower shall deliver copies of income tax returns for Borrower and if Borrower files for an extension, Borrower shall notify Lender. If requested by Lender, the annual financial statements shall be certified by an independent certified public accountant reasonably acceptable to Lender; all other statements and documents shall be certified as true, correct, complete and accurate by Borrower by its chief financial officer, general partner or managing member. All annual and quarterly financial statements delivered to Lender shall be prepared in accordance with generally accepted accounting principles consistently applied. In addition, Borrower shall deliver to Lender such other financial information relating to the Mortgaged Property, as may reasonably be requested by Lender. Upon the occurrence of a Default, Lender may require that any or all of the statements which would otherwise not be required until a later date be prepared and delivered immediately. If Borrower fails to deliver any of the foregoing, Lender may, at Borrower's expense, retain an accountant to prepare such information.

3.13 If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Mortgaged Property, or any part thereof, Borrower will immediately give written notice thereof to Lender. Borrower shall promptly, at Borrower's sole cost and expense and regardless of whether the insurance proceeds (if any) are made available to Borrower or will be sufficient to accomplish same, commence and continue diligently to completion to restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction, in accordance with plans, specifications and procedures acceptable to Lender.

3.14 Borrower shall promptly notify Lender if Borrower learns of the occurrence of (i) any event which constitutes a Default, (ii) any event which, but for the passage of time or the giving of notice would constitute a Default, (iii) any legal, judicial or regulatory proceedings affecting Borrower or any of its properties in which the amount involved is material and is not covered by insurance, or which, if adversely determined, would have a material adverse effect on Borrower, (iv) any other event of condition having a material adverse effect on Borrower, any general partner of Borrower, if Borrower is a general or limited partnership, or any party directly or indirectly responsible for the repayment of the Liabilities and performance of the Obligations including all guarantors thereof. Borrower's notice shall include a detailed statement of the steps being taken to cure or minimize the effect of any such occurrence or event.

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3.15 The proceeds of the loan hereby secured are intended to finance construction of improvements on the Premises pursuant to and in accordance with the terms and conditions of the Loan Agreement, and Borrower further covenants and agrees that:

(a) The improvements to be erected, altered or remodeled on the Premises shall be completed in accordance with the plans and specifications furnished to Lender pursuant to the Loan agreement, and which shall meet all local building code requirements or other applicable laws and regulations;

(b) There shall be no stoppage of construction for a period longer than thirty (30) days, except for matters beyond the reasonable control of Borrower;

(c) In any event, said construction shall be completed not later than July 1, 1998.

(d) Upon default in any of the covenants in (a), (b) or (c), Lender may but shall not be obligated to exercise either or both of the following remedies:

(i) Declare the entire principal indebtedness and interest thereon due and payable; or

(ii) Complete the construction, alteration or remodeling of said improvements and enter into the necessary contracts therefor. All moneys so expended shall be so much additional indebtedness secured by this Mortgage, and any moneys expended in excess of the Note shall be payable on demand, with interest at the rate in the Note.

(e) The construction of said improvements is and will be in compliance with all governmental regulations and restrictions and with all zoning and building laws and ordinances of the municipality in which the Premises are located and with all building restrictions of record, and Borrower will furnish satisfactory evidence of such compliance to Lender, and

(f) The proceeds of the loan secured hereby are to be disbursed by Lender to Borrower in accordance with the provisions contained in the Loan Agreement, the terms and provisions of which are, by this reference, incorporated herein. All advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note secured hereby, shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Mortgage. The occurrence of any Event of Default under the Loan Agreement shall constitute a default under this Mortgage entitling Lender to all of the rights and remedies conferred upon the Lender by the terms of this Mortgage (including those set forth in subparagraph (d) of this paragraph 3.15) or by law, as in the case of any other default. To the extent of any express and direct contradiction between any of the terms or provisions of this Mortgage and the Loan Agreement, the Loan Agreement shall be controlling.

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4. INSURANCE, TAXES, EMINENT DOMAIN AND CONDEMNATION

4.1 Borrower, at all times, shall keep and maintain the Mortgaged Property fully insured (without co-insurance): (i) with builder's risk insurance against loss or damage by, or resulting from, fire, windstorm, flood and other risks and hazards as covered under a standard extended coverage policy and such other hazards, casualties and contingencies as Lender, from time to time, may reasonably require in companies, form, amounts and for full replacement cost, and such periods as is satisfactory to Lender, but, in any event, on a replacement cost basis for not less than the full principal balance of the Note, without deduction for depreciation and with an "agreed amount, with inflation protection endorsement"; (ii) with rental or business interruption insurance in favor of Lender in an amount equal to not less than one year's gross rent from the Mortgaged Property which shall be determined annually on the renewal date based upon the sum of the actual rentals received during the prior year for occupied space and the scheduled rentals for unoccupied space as of such renewal date; (iii) with commercial general public liability insurance on an occurrence basis with combined single limit for bodily injury or property damage of \$2,000,000 with respect to any one accident or disaster and naming Lender as an additional insured thereunder; (iv) with sprinkler insurance and boiler insurance, if applicable; (v) with flood insurance if any part of the Premises is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any amendment or successor act thereto) in an amount at least equal to the outstanding principal amount of the Note or the maximum limit of coverage available with respect to the Premises and Equipment under said Act, whichever is less; (vi) with earthquake insurance, if available and if required by Lender; and (vii) with such other insurance as may be reasonably required by Lender from time to time. All such policies and renewals thereof (hereinafter referred to as the "policies") shall contain, in form and substance acceptable to Lender, a "replacement cost endorsement" (in the case of all casualty policies) and standard mortgagee, and Lender loss payable clauses naming Lender as the mortgagee and loss payee, as well as a standard waiver of subrogation endorsement and a non-contributory standard mortgagee clause and shall be delivered, as issued, to Lender, with premiums therefor paid in full by Borrower. All policies shall provide that (a) they may not be canceled or modified by the insurer as to Lender without first giving at least thirty (30) days' prior written notice to Lender of any intended cancellation or modification and (b) and that no claims thereunder shall be paid without ten (10) days advance written notice to Lender. Each insurance company which has issued a policy is hereby authorized and directed to make all payment of losses covered by any policy to Lender alone and not to Lender and Borrower jointly. In case of policies about to expire, Borrower will deliver to and deposit with Lender renewal policies not less than thirty (30) days prior to the respective dates of expiration. Borrower will deliver and deposit with Lender receipts for the payment of the premiums on all policies. In the event of foreclosure of this Mortgage, the assignment hereof by Lender or the transfer of title to the Mortgaged Property whether or not in extinguishment of Borrower's Liabilities or otherwise, all right, title and interest of Borrower in and to any policies then in force shall pass to the purchaser, grantee or assignee.

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4.2 Full power is hereby irrevocably conferred on Lender and the Borrower does hereby irrevocably constitute and appoint Lender the true and lawful attorney of Borrower with full power of substitution for Borrower: (i) to settle and compromise all claims under all policies; (ii) to demand, receive and receipt for all monies becoming due and/or payable under all policies; (iii) to execute, in the name of Borrower or in the name of Lender, any proofs of loss, notices or other instruments in connection with all claims under all policies; and (iv) to assign Lender's interest in all policies to any holder of Borrower's Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property. In the event of payment under any of the policies, the proceeds of the policies shall be paid by the insurer to and deposited with Lender, and Lender, in its sole and absolute discretion, may apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorneys' fees, either (a) toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof provided that all of the following are satisfied:

- (1) the restoration could be completed by the Completion Date under the Loan Agreement,
- (2) Borrower has deposited with Lender such additional funds with Lender which together with the net insurance proceeds shall be sufficient, in Lender's reasonable judgment to complete the restoration,
- (3) the restoration shall be done in compliance with applicable laws, rules and regulations,
- (4) Borrower carries builder's risk insurance satisfactory to Lender,
- (5) all reasonable costs and expenses incurred by Lender in connection with making the proceeds available for said restoration including without limitation reasonable attorneys' fees and costs, inspecting engineering or architect fees, appraisal fees and title insurance premiums and costs are paid by Borrower,
- (6) the Mortgaged Property as restored, in the judgment of Lender, will generate sufficient income to pay all expenses in connection with the operation of the Mortgaged Property,
- (7) Lender shall have received evidence satisfactory to Lender that during the period of restoration the sum of (A) income derived from the Mortgaged Property as determined by Lender plus (B) proceeds of rent loss insurance or business interruption insurance, if any, to be paid will equal or exceed the sum of (C) expenses to be paid in connection with the operations of the Mortgaged Property and (D) the debt service due Lender under the Note, and

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(8) there is delivered to Lender such architect's certificates, building permits, construction contracts, appraisals, waivers of lien, contractors and owners sworn statements, title insurance endorsements and plats of survey as may be required by Lender in its sole discretion;

or (b) as a payment on account of the Liabilities (without affecting the amount or time of subsequent installment payments required to be made by Borrower to Lender under the Note), whether or not then due or payable or to fulfill the performance of any of the Obligations; or (c) as a direct payment to Borrower. All insurance proceeds now or hereafter disbursed for the benefit of Borrower in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof unless released absolutely by Lender, are hereby assigned to Lender as additional security for the payment of the Liabilities and performance of the Obligations (except as expended for restoration of the Mortgaged Property) and for such purpose, Borrower hereby grants to Lender a security interest therein. The power of attorney granted Lender under this paragraph shall be coupled with an interest and shall be irrevocable and same cannot be modified or altered without the written consent of Lender.

4.3 At Lender's election following a Default by Borrower, Borrower shall deposit with Lender on the first (1st) day of each month hereafter until all Liabilities are fully paid, a sum equal to one-twelfth (1/12th) of one hundred ten percent (110%) of (i) the total annual impositions, levies, taxes and assessments arising with respect to the Mortgaged Property (collectively "Impositions") for the most recent ascertainable tax year and (ii) the total amount of annual premiums for all policies required to be obtained and maintained by Borrower pursuant to this Mortgage with respect to the Mortgaged Property and (iii) if required by Lender, Borrower shall also deposit with Lender upon execution of this Mortgage a sum sufficient as estimated by Lender to pay in full when due the next installment of any of said Impositions. Subject to the provisions of this paragraph and provided no Default or event but for the giving of notice and/or passage of time would be a Default exists, Lender shall pay, when and to whom due and payable under applicable contracts or law, all of the aforesaid Impositions and premiums. Notwithstanding the foregoing Lender does not hereby assume any of Borrower's obligations under said contracts or laws to make such payments and nothing contained herein, in the Note or the other Loan Documents shall require Lender to perform any such obligations of Borrower except for the making of the aforesaid payments in accordance with and subject to the above specified terms. If the deposits required by this paragraph are insufficient to pay the Impositions and/or premiums for which they are provided, on or before thirty (30) days prior to delinquency, Borrower shall deposit with Lender such additional monies as are necessary to pay, in full, such obligations. All of the aforesaid deposits hereby are pledged, as additional security for the payment of the Liabilities and performance of the Obligations (and for such purpose, Borrower hereby grants to Lender a security interest therein), to be applied by Lender for the purposes hereinabove set forth and shall not be subject to the control of Borrower; provided, however, that Lender shall not be liable for failure to pay, when due, any such Impositions or premiums unless Borrower, prior to the occurrence of a Default, shall have requested Lender, in writing, to pay the same and delivered to Lender appropriate evidence of bills therefor.

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4.4 All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Borrower in any way, manner of respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain or condemnation by such authority (including, but not limited to, any award for taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Mortgaged Property) hereby are, unless released absolutely by Lender, assigned to the Lender as additional security for the payment of the Liabilities (except as expended for restoration of the Mortgaged Property) and performance of the Obligations and for such purpose, Borrower hereby grants to Lender a security interest therein. Borrower, immediately upon request by Lender, shall make, execute and deliver and/or cause to be made, executed and delivered to and/or for the benefit of Lender any and all assignments and other instruments sufficient to assign, and cause the payment directly to Lender of, all such awards, free and clear of all Encumbrances except Permitted Encumbrances. Borrower does hereby irrevocably constitute and appoint Lender the true and lawful attorney of Borrower with full power of substitution of Borrower and Lender shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in Borrower's name, in Lender's name or in both names). In connection with any of the foregoing received by and deposited with Lender, Lender may, in its sole and absolute discretion, (i) apply the same, or any part thereof, to the Liabilities, whether or not then matured and without affecting the amount or time of subsequent installment payments required to be made by Borrower to Lender under the Note; (ii) to use the same, or any part thereof, to satisfy, perform or discharge any of the Obligations; (iii) to use the same, or any part thereof, to replace, repair or restore any or all of the Mortgaged Property to a condition satisfactory to Lender in accordance with the same conditions as set forth as items (1) through (8) of paragraph 4.2 hereof; or (iv) to release the same to Borrower. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Property by any public or quasi-public authority or corporation, Borrower shall continue to pay all of the Liabilities, as and when due and payable, until any such award or payment shall have been actually received by Lender, and any reduction in the Liabilities resulting from the application by Lender of such award or payment as herein set forth shall be deemed to take effect only on the date of such receipt and shall not affect the amount or time of subsequent installment payments required to be made by Borrower to Lender under the Note. If any portion of the Mortgaged Property is taken by eminent domain or condemnation, either temporarily or permanently, and the remaining portion of the Mortgaged Property is not, in the judgment of Lender, a complete economic unit having equivalent value to the Mortgaged Property as it existed prior to the taking, then, at the option of Lender, all Liabilities shall immediately become due and payable. If, prior to the receipt by Lender of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Lender shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered or denied, and to the extent of the reasonable attorneys' fees, costs, expenses and disbursements incurred by Lender in connection with the collection of such award or payment. The power of attorney granted Lender under this paragraph shall be coupled with an interest and shall be irrevocable and same cannot be modified or altered without the written consent of Lender.

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5. DUE ON SALE OR FURTHER ENCUMBRANCE

5.1 In determining whether or not to make the loan evidenced by the Note, Lender examined the creditworthiness of Borrower, found it acceptable and relied and continues to rely upon same as the means of repayment of the Liabilities. Lender also evaluated the background and experience of Borrower in owning, developing and operating property such as the Mortgaged Property, found it acceptable and relied and continues to rely thereon as the means of maintaining the value of the Mortgaged Property, which has been mortgaged to Lender to secure repayment of the Liabilities. Borrower is a business person or entity well-experienced in borrowing money and owning and operating property such as the Mortgaged Property, was ably represented by a licensed attorney at law in the negotiation and documentation of the Loan Documents and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan Documents, including this Article 5. Borrower recognizes that Lender is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Borrower. Borrower further recognizes that any secondary or junior financing placed upon the Mortgaged Property (a) may divert funds which would otherwise be used to pay the Liabilities; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Lender to take measures and incur expenses to protect its security; (c) would detract from the value of the Mortgaged Property should Lender come into possession thereof with the intention of a sale thereof; and (d) may impair Lender's right to accept a deed in lieu of foreclosure, as a foreclosure by Lender would be necessary to clear the title to the Mortgaged Property.

5.2 In accordance with the foregoing and for the purposes of (i) protecting Lender's security, both of repayment by Borrower and of value of the Mortgaged Property; (ii) giving Lender the full benefit of its bargain and contract with Borrower; (iii) allowing Lender to raise the interest rate and/or collect assumption fees; and (iv) keeping the Mortgaged Property free of subordinate financing liens, Borrower agrees that if this Article 5, or any provision hereof, is deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Mortgaged Property or any interest therein (whether voluntary or by operation of law) without the Lender's prior written consent shall be a Default hereunder. For the purpose of and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events (hereinafter referred to as a "**Prohibited Transfer**"), at Lender's option, shall be deemed to be a Default hereunder:

(a) Any sale, disposition (other than a sale or disposition of any Equipment no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof such Equipment has been replaced by other Equipment of at least equal value and utility which is subject to the lien of this Mortgage with the same priority as the Equipment so sold or disposed of), conveyance, assignment, mortgage or other transfer of, or the grant of a security interest in, all or any part of the Mortgaged Property, or the entering into any agreement to sell, convey, assign or transfer, or grant a security interest in all or any part of the Mortgaged Property, or any other act which has the effect of transferring

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legal or equitable title to all or any part of the Mortgaged Property or Borrower's interest therein.

(b) Any lease of substantially all of the Mortgaged Property to a single tenant, or to a group of affiliated tenants, or the lease of any portion of the Mortgaged Property which includes any option to purchase or otherwise acquire any portion of the Mortgaged Property.

(c) The granting of any option to acquire all or any part of the Mortgaged Property.

(d) If Borrower is a general partnership, any removal of any general partner, any addition of any general partner, the sale, assignment, transfer, conveyance, hypothecation, pledge, grant of a security interest in, by any general partner, of any of his right, title or interest in the Borrower, including his right to income, profits or distributions, and whether absolute, contingent, or for collateral purposes.

(e) If Borrower is a limited partnership, any removal of any general or limited partner, any addition of any general or limited partner, the sale, assignment, transfer, conveyance, hypothecation, pledge, grant of a security interest in, by any general or limited partner, of any of his right, title or interest in the Borrower, including his right to income, profits or distributions, and whether absolute, contingent, or for collateral purposes.

(f) If Borrower is corporation, any merger or consolidation involving Borrower, whether or not Borrower is the survivor to any such merger or consolidation, or the sale or issuance of any capital stock or membership interest, or of any security convertible into capital stock, of the Borrower, or the issuance by the Borrower of any right, option or warrant to purchase or otherwise acquire capital stock or membership interest, or the sale, conveyance, assignment, or other transfer of, or the grant of a security interest by any holder of capital stock of or membership interest in the Borrower in any such capital stock of or membership interest in the Borrower.

(g) If Borrower is a limited liability company, any change of manager or transfer of more than 50% of the voting membership interests in such company or in any entity which is a manager thereof.

(h) If Borrower is trust, the removal of any trustee or beneficiary, any addition of any trustee or beneficiary, the sale, assignment, transfer, conveyance, hypothecation, pledge, grant of a security interest in, by any beneficiary, of any of his right, title or interest in the Borrower, including his right to income, profits or distributions, and whether absolute, contingent, or for collateral purposes.

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(i) If Borrower is a corporation, partnership, limited liability company or partnership, or trust, and if any of its shareholders, members, partners or beneficiaries is not a natural person, then any act by any such entity which, if such entity were the Borrower or a partner, member, shareholder, beneficiary or trustee of the Borrower, would constitute an Event of Default hereunder.

Provided that any transfer of any interest of any individual stockholder, shareholder or member of Borrower as described above shall not be considered a Prohibited Transfer if said transfer is to said parties' heirs, legacies, devisees, executors, administrators or personal representatives as a result of the death or judicially declared incompetence of said party. Any consent by the Lender to any of the foregoing, or any waiver of a Default resulting from the commission of any of the foregoing, shall not constitute a consent to, or waiver of any right, remedy or power of the Lender upon a subsequent transaction under this Article 5. Borrower shall, from time to time, and upon the reasonable request of Lender, provide Lender with evidence satisfactory to Lender, that this Article 5 has not been violated. Such evidence shall include, but shall not be limited to, copies of partnership and trust documents, stock records, certificates of membership, title searches and abstracts of public records. Lender shall also have the right, from time to time, to obtain such title searches and abstracts of public records, and Borrower shall reimburse Lender, upon demand, for all costs thereof, which shall be a part of the Liabilities hereunder.

5.3 If Borrower requests Lender's consent to any further encumbering of the Mortgaged Property pursuant to Paragraph 5.2(a) ("**Proposed Financing**"), and Lender consents to the further encumbering, Borrower shall deliver to Lender evidence of the terms of the Proposed Financing. For a period of thirty (30) days after receipt of such information, Lender may commit to make Borrower a new loan (or additional advance hereunder) on the same terms and conditions as the Proposed Financing. Upon issuance of a commitment by Lender, Borrower shall, in good faith, proceed to consummate such transaction with Lender.

6. ASSIGNMENT OF LEASES AND RENTS

6.1 So long as there shall not have occurred a Default under this Mortgage, Borrower shall have the right to collect all of the Rents arising from the Leases, or renewals thereof, and shall hold the same, in trust, to be applied first to the payment of all impositions, levies, interest, assessments and other charges upon the Mortgaged Property, secondly to the cost of the maintenance of insurance policies upon the Mortgaged Property required hereby, thirdly to the maintenance and repairs required hereby and lastly to the payment of the Liabilities and fulfillment of the Obligations, before using any part of the Rents for any other purposes.

6.2 Lender's agents shall have the right to verify the validity, amount or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Lender, a nominee of Lender or in any or all of said names.

6.3 Upon the occurrence or existence of a Default, Lender, at its sole election and discretion, may do or require Borrower to do any one or more of the following:

(a) Borrower's right to use the Rents is terminated and upon written notice to Borrower any Rents then or thereafter coming into Borrower's possession are (to the extent the Liabilities remain due and owing to Lender and the Obligations remain unfulfilled) to be held in trust by Borrower for the benefit of Lender in a segregated manner and immediately delivered to Lender, and Borrower shall have no rights to use the Rents for any purpose whatsoever without the prior written consent of Lender.

(b) To the extent permitted by applicable law, Lender may, without notice and without bringing any action or proceeding or by a receiver appointed by a court, take possession of the Mortgaged Property and have, hold, manage, lease and operate the Mortgaged Property on such terms and for such period of time as Lender may deem proper. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to lease portions of the Mortgaged Property or from any other act or omission of Lender in managing the Mortgaged Property.

(c) Immediately upon demand by Lender, Borrower shall deliver to Lender the originals of the Leases, with appropriate endorsement and/or other specific evidence of assignment thereto to Lender which endorsement and/or assignment shall be in form and substance acceptable to Lender.

(d) Lender, then or at any time or times thereafter, at its sole election, without notice thereof to Borrower, may notify any or all of the obligors on the Leases that the Leases have been assigned to Lender and Lender (in its name, in the name of Borrower or in both names) may direct said obligors thereafter to make all payments due from them under the Leases directly to Lender.

(e) Borrower, immediately upon demand by Lender, irrevocably shall direct all obligors of the Leases then and thereafter to make all payments then and thereafter due from them under the Leases directly to Lender.

(f) Lender shall have the right at any time or times thereafter, at its sole election, without notice thereof to Borrower, to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of Borrower, Lender or in both names.

(g) Borrower irrevocably hereby designates, makes, constitutes and appoints Lender (and all persons designated by Lender) as Borrower's true and lawful attorney and agent in fact with power, without notice to Borrower and at such time or times thereafter as Lender, at its sole election, may determine, in the name of Borrower, Lender or in both names: (i) to demand payment of the Rents and performance of the Leases; (ii) to enforce

payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (iii) to exercise all of Borrower's rights, interests and remedies in and under the Leases and to collect the Rents; (iv) to settle, adjust, compromise, extend or renew the Leases and/or the Rents; (v) to settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (vi) to take control, in any manner, of the Rents; (vii) to prepare, file and sign Borrower's name on any proof of claim in bankruptcy, or of the Leases; (viii) to endorse the name of Borrower upon any payments or proceeds of the Rents and to deposit the same to the account of Lender; and (ix) to do all acts and things necessary, in Lender's sole discretion, to carry out any or all of the foregoing. The power of attorney granted Lender under this paragraph shall be coupled with an interest and shall be irrevocable and same cannot be modified or altered without the written consent of Lender.

(h) All of the foregoing payments and proceeds received by Lender shall be utilized by Lender, at its sole election in its sole discretion, for any one or more of the following purposes: (i) to be held by Lender as additional collateral for the payment of the Liabilities and fulfillment of the Obligations; (ii) to be applied to the Liabilities and/or Obligations, in such manner and fashion and to such portions thereof as Lender, at its sole election, shall determine, (iii) to be applied to such obligations of Borrower or the Mortgaged Property or the operations or business thereof as Lender, at its sole election, shall determine appropriate or warranted under the then existing circumstances; or (iv) to be remitted to Borrower.

6.4 The rights and remedies of Lender contained in this Article 6 are cumulative and are not in derogation of, secondary to or in lieu of but are in addition to any rights or remedies which the Lender shall have under the Assignment of Rents or any other Loan Document or any other instrument or document or under applicable law and the exercise of any rights or remedies herein contained shall not be deemed a waiver of any other rights or remedies of Lender each and all of which may be exercised whenever Lender deems it in its interest to do so.

7. SECURITY AGREEMENT AND FINANCING STATEMENT.

7.1 This Mortgage shall constitute a security agreement within the meaning of the Code with respect to all sums on deposit with the Lender pursuant to terms hereof or otherwise ("**Deposits**") and with respect to any property included in the definition herein of the words "Mortgaged Property" which is neither real property nor a "fixture" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (collectively, the "**Other Collateral**"), and Borrower hereby grants to Lender a security interest therein.

7.2 Upon a Default, the Lender, pursuant to the appropriate provisions of the Code, shall have the option to proceed with respect to both the real property and Other 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. Lender shall have the remedies of a secured party under the

Code, including without limitation, the right to take immediate and exclusive possession of the Other Collateral, or any part thereof, and for that purpose may, so far as Borrower can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place where the Other Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Other Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Lender shall be entitled to hold, maintain, preserve and prepare the Other Collateral for sale, until disposed of. Lender may render the Other Collateral unusable without removal and may dispose of the Other Collateral on the Premises. Lender may require Borrower to assemble the Other Collateral and make it available to Lender for its possession at a place to be designated by Lender which is reasonably convenient to both parties. Lender may buy at any public sale, and may buy at private sale if the Other Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Lender so elects, the Premises and the Other Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by Lender, shall be applied against the Liabilities and Obligations in such order or manner as Lender shall select. Borrower agrees that if the Lender shall elect to proceed with a sale with respect to the Other Collateral separately from the Premises, any requirement of the Code for reasonable notice shall be met if such notice is made in accordance with the terms of this Mortgage at least ten (10) days prior to the time of sale. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Lender shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Lender. Lender shall not be obligated to make any sale of the Other Collateral regardless of notice having been given. The Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefore and such sale may, without further notice, be made at the time and place to which it is adjourned. The Borrower agrees that upon replacement of any part of the Other Collateral, such replacement or substituted Other Collateral shall be subject to the security interest created hereby and the security interest of the Lender shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Other Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Borrower shall, from time to time, on request of the Lender, deliver to the Lender at the cost of the Borrower: (i) such further financing statements and security documents and assurances as Lender may require, to the end that the liens and security interests created hereby shall continue perfected in accordance with the requirements of any present or future law and (ii) an inventory of the Other Collateral in reasonable detail. The Borrower covenants and represents that all of the Other Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Lender otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others and that no financing statement other than one in favor of Lender shall be executed and/or filed in connection therewith.

7.3 This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Other Collateral and the goods described herein, which

goods are or may become fixtures relating to the Premises. The addresses of Borrower and Lender are hereinabove set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located. Borrower is the record owner of the Premises.

8. ENVIRONMENTAL MATTERS

8.1 The Borrower represents and warrants to Lender that (A) the Borrower has not used any "Hazardous Materials" (as defined below) on, from or affecting the Mortgaged Property in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Material and, to the best of Borrower's knowledge, no prior owner of the Mortgaged Property or any existing or prior tenant, or occupant has used Hazardous Materials on, from or affecting the Mortgaged Property in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production, registration, reporting or disposal of Hazardous Materials; (B) Borrower has never received any notice of any violations (and is not aware of any existing violations) of federal, state, or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment transportation, manufacture, refinement, handling, production, registration, reporting or disposal of Hazardous Materials at the Mortgaged Property and, to the best of Borrower's knowledge, there have been no actions commenced or threatened by any party for noncompliance which affects the Mortgaged Property; (C) Borrower shall keep or cause the Mortgaged Property to be kept free of all underground and/or above ground storage tanks except to the extent that such underground and/or above ground storage tanks do not leak on and/or into the Mortgaged Property and are used in compliance with all applicable federal, state and local laws and regulations; (D) Borrower shall keep or cause the Mortgaged Property to be kept free of all Hazardous Materials except to the extent that such Hazardous Materials are stored and/or used in compliance with all applicable federal, state and local laws and regulations; and, without limiting the foregoing, Borrower shall not cause or permit the Mortgaged Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Borrower cause or permit, as a result of any intentional or unintentional act or omission on the part of Borrower or any tenant, subtenant or occupant, a release, spill, leak or emission of Hazardous Materials onto the Mortgaged Property or onto any other contiguous property; (E) the Borrower shall conduct and complete all investigations, including a comprehensive environmental audit, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Mortgaged Property as required by Lender or by all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the satisfaction of Lender, and in accordance with the orders and directives of all federal, state and local governmental authorities. If the Borrower fails to conduct an environmental audit required by the orders and directives of any of the aforesaid

governmental authorities or required by Lender, then Lender may at its option and at the expense of Borrower, conduct such environmental audit.

8.2 Subject to the limitations set forth below, Borrower shall defend with counsel reasonably acceptable to Lender (at Borrower's sole cost), indemnify and hold harmless Lender, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, reasonable attorney's and consultant's fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to (a) the presence, disposal, remediation of, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Mortgaged Property or the soil, water, vegetation, buildings, personal property, persons or animals located thereon; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Mortgaged Property; (c) any lawsuit or administrative proceeding brought or threatened, settlement reached or government order relating to such Hazardous Materials with respect to the Mortgaged Property; and/or (d) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of Lender, which are based upon or in any way related to such Hazardous Materials used in the Mortgaged Property; and (e) the presence on or under the Premises of underground or above ground storage tanks. Borrower, and its successors and assigns, hereby waive, release and agree not to make any claim or bring any cost recovery action against Lender under Environmental Law now existing or hereafter enacted. It is expressly understood and agreed that to the extent that Lender is strictly liable under any Environmental Laws, the Borrower's obligations to Lender under this paragraph shall likewise be without regard to fault on the part of the Borrower with respect to the violation or condition which results in liability to Lender. If Lender takes title to the Mortgaged Property through foreclosure or deed in lieu of foreclosure, the indemnity contained in this paragraph shall not apply to any loss or costs incurred by Lender as a direct result of affirmative actions of Lender as owner and operator of the Mortgaged Property after Lender has acquired title and which actions are the sole and direct cause of damage resulting from the introduction and initial release of a Hazardous Material at the Mortgaged Property by Lender; provided, however, Borrower's agreement to indemnify and hold harmless Lender as described herein shall otherwise remain in full force and effect, including, without limitation, with respect to Hazardous Materials which are discovered or released at the Mortgaged Property after Lender acquired title to the Mortgaged Property, but which were not actually introduced at the Mortgaged Property by Lender, with respect to the continuing migration or release of Hazardous Material previously introduced at or near the Mortgaged Property and with respect to all substances which may be Hazardous Materials and which are situated at the Mortgaged Property prior to Lender taking title but are removed by Lender subsequent to such date.

8.3 Borrower agrees that in the event this Mortgage is foreclosed or the Borrower tenders a deed in lieu of foreclosure, Borrower shall, at Borrower's sole cost and expense and in accordance with all applicable Environmental Laws, deliver the Mortgaged Property to Lender free of any and all Hazardous Materials (a) which are then required to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules or regulations

affecting the Premises or (b) which may be legally allowed to remain on the Mortgaged Property but which Hazardous Materials Lender deems it prudent to remove or remediate.

8.4 For purposes of this Mortgage, "**Hazardous Materials**" includes, without limitation, petroleum, petroleum by-products, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials, oil and petroleum products, natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, gasoline, and all other hazardous materials, hazardous wastes, hazardous or toxic substances, toxic pollutants, hazardous air pollutants or related materials as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, et seq., the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sections 6901, et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. Sections 2601, et seq.; the Federal Insecticide Fungicide and Rodenticide Act, as amended, 7 U.S.C. Sections 136, et seq.; the Resource Conservation and Recovery Act, as amended, 16 U.S.C. Sections 3401, et seq.; the Clean Water Act, 33 U.S.C. 1251 et seq.; and the Clean Air Act, 42 U.S.C. 7401 et seq.; and all applicable state and local environmental laws, and the rules, regulations and ordinances adopted and publications promulgated pursuant to said laws and ordinances, as any of the foregoing laws, ordinances, rules and regulations may be amended from time to time, and any other federal, state or local laws or ordinances, now or hereafter existing, relating to regulation or control of toxic or hazardous substances, wastes or materials (all the foregoing being referred to herein as the "**Environmental Laws**").

8.5 The provisions of this Article 8 shall be in addition to any and all other obligations and liabilities Borrower may have to Lender under the Environmental Indemnity or under any of the other Loan Documents, and in common law, and shall survive (a) the repayment of all Liabilities, (b) the satisfaction of all of the Obligations, (c) the discharge or release of this Mortgage, and (d) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure. The rights and remedies of Lender contained in this Article 8 are cumulative and are not in derogation of, secondary to or in lieu of but are in addition to any rights or remedies which the Lender shall have under the Environmental Indemnity or any other Loan Document or under applicable law and the exercise of any rights or remedies herein contained shall not be deemed a waiver of any other rights or remedies of Lender each and all of which may be exercised whenever Lender deems it in its interest to do so.

9. DEFAULT

9.1 The occurrence of any one or more of the following events shall constitute a "**Default**" under this Mortgage:

- (a) Failure to timely pay any of the Liabilities within five (5) days after the date when due or declared due pursuant to the Note or any of the other Loan Documents.
- (b) Failure of Borrower to fully and faithfully satisfy, perform, discharge, observe and comply with the Obligations to be performed by Borrower and such failure shall remain

unremedied for thirty (30) days after written notice thereof shall have been made by Lender to Borrower.

(c) If any representation or warranty made herein, in the Note, any of the other Loan Documents, or in any certificate, document, financial or other statement furnished at any time to Lender under or in connection with the Loan Documents shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date made or deemed made.

(d) Failure to insure in accordance with Article 4, or occurrence of a Prohibited Transfer as defined under Article 5.

(e) A petition in bankruptcy is filed by or against Borrower seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency (and in the case of an involuntary petition, such petition is not discharged within thirty (30) days of its filing); or Borrower seeks or consents to or acquiesces in the appointment of any custodian, receiver, trustee, master or liquidator of itself or of all of the rent, revenues, issues, earnings, profits or incomes of Borrower to, or of the Mortgaged Property is appointed, or if Borrower makes an assignment for the benefit of creditors, or if Borrower is adjudged insolvent by any state or federal court of competent jurisdiction, or an attachment or execution is levied against any of the Mortgaged Property and is not discharged within thirty (30) days from the commencement thereof. If Borrower is a partnership, then for purposes of this subparagraph, the term "Borrower" shall also include each general partner of Borrower.

(f) The occurrence or existence of a Default as defined in the Note, or in any of the other Loan Documents.

(g) The occurrence or existence of any default, event of default or breach of or under any agreement, instrument or document, subject to any applicable grace or cure period contained therein, for borrowed money by which the Mortgaged Property or the Borrower is bound or obligated.

(h) A substantial part of Borrower's assets are attached, seized, subject to a writ or distress warrant or are levied upon, unless such writ, warrant or levy is vacated within thirty (30) days. If Borrower is a partnership then for the purposes of this subparagraph, the term Borrower shall also include each general partner of Borrower.

(i) A materially adverse change in the financial condition of Borrower.

10. REMEDIES

10.1 Upon the occurrence or existence of a Default, Lender, after notice and demand insofar as required hereby, or by applicable law, in its sole discretion and at its sole election, without notice of such election, and without further demand, may do any one or more of the following:

(a) Exercise any right or remedy set forth in any other Article of this Mortgage, or in the Note, or in any of the Loan Documents.

(b) If the Default is the failure to perform any of the Obligations, perform any such Obligation on Borrower's behalf, and any amounts paid by Lender in taking such action, together with interest thereon at the Default Rate, from the date of Lender's payment thereof until repaid by Borrower to Lender, shall be due and payable by Borrower to Lender upon demand, and until paid, shall constitute a part of the Liabilities secured by this Mortgage and bear interest at the Default Rate. Notwithstanding the foregoing, such advances by Lender shall not be deemed to relieve Borrower from a Default hereunder or impair any right or remedy of Lender consequent thereon. The exercise of the right to take such action shall be optional with Lender and not obligatory upon Lender and Lender shall not in any case be liable to Borrower for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Lender shall have no obligations to inquire into the validity of the bill, or to contest the bill or amount thereof, and may rely upon any bills delivered to it by Borrower or any payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

(c) Declare all of the Liabilities immediately due and payable and collect the same at once by foreclosure or otherwise, without notice of broken covenants or condition (and in case of a Default and the exercise of such option, the Liabilities shall bear interest, from the date of such default, at the Default Rate until paid in full).

(d) File a suit for the foreclosure of this Mortgage and/or to collect the Liabilities in accordance with the Illinois Mortgage Foreclosure Act, (735 ILCS 5/15 1101) (the "Act").

(e) Either before or after sale, without notice and without requiring bond (notice and bond being hereby waived), without regard to the solvency or insolvency of Borrower at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, make or require Borrower to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption if any, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the

receiver to apply the net income in his hands in payment, in whole or in part, of the Liabilities and Obligations.

(f) Either with or without process of law, forcibly or otherwise, but solely to the extent permitted by applicable law, enter upon and take immediate possession of the Mortgaged Property, expel and remove any persons, goods or chattels occupying or upon the same, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property as fully as Borrower might do if in possession thereof, including without limitation, the making of all repairs and replacements deemed necessary by Lender and the leasing of the same, or any part thereof, from time to time, and, after deducting all reasonable attorneys' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to the Liabilities and Obligations or upon any deficiency decree entered in any foreclosure proceeding or after a sale hereunder. At the option of Lender, to the extent permitted by law, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to the Borrower at the address of Borrower last appearing on the records of Lender. Borrower agrees to surrender possession of the Mortgaged Property to Lender immediately upon the occurrence of a Default. If Borrower shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such Default, such possession shall be as a tenant of Lender, and Borrower agrees to pay to Lender, or to any duly appointed receiver, after such Default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by the Borrower, to be applied as provided above in the first sentence of this subparagraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Borrower may be dispossessed by the usual summary proceedings. In the event Borrower shall so remain in possession of all, or any part of, the Mortgaged Property, said reasonable monthly rental shall be in amount established by Lender in its sole discretion. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and irrespective of any application for, or appointment of, a receiver.

(g) Exercise, in Lender's sole discretion, all rights of Borrower under all Licenses and to retain, use and enjoy same or sell, assign or transfer same (with appropriate governmental consent where necessary) in connection with the enforcement of Lender's rights and remedies under this Mortgage.

(h) Exercise of any other remedies or rights permitted or provided under or by the laws or decisions of the State of Illinois (including all remedies and rights of a secured party under the Code), accruing to a secured party upon a default by a borrower and/or debtor or otherwise available hereunder, under the Note, under any of the other Loan Documents, or provided by applicable statute or case law, and whether exercisable at law or in equity. Nothing contained in this Mortgage shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Premises.

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10.2 In any suit to foreclose the lien hereof, there shall be allowed and included as additional Liabilities due from Borrower to Lender in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Lender for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, 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 assurance with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Lender in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged Property, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Liabilities and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

10.3 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraph 10.2 above, secondly, to the balance of the Liabilities and Obligations, and thirdly, the surplus, if any, to Borrower.

10.4 All rights and powers of Lender under Article 10 hereof shall, from and after the entry of judgment of foreclosure, continue in the Lender as decree creditor until confirmation of sale. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any policy, if not applied in rebuilding or restoring the Mortgaged Property, shall be used to pay 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 as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the 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 creditors. In the event of foreclosure sale, Lender may, without the consent of Borrower, assign any policies to the purchaser at the sale, or take such other steps as Lender may deem advisable to protect the interest of such purchaser.

10.5 To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in force to redeem the property or any part thereof, or relating to

the marshalling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights to redemption and reinstatement under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Borrower acknowledges that the Premises do not constitute agricultural real estate as defined in Section 15-201 of the Act or residential real estate of the Borrower as defined in Section 15-1219 of the Act.

10.6 In case of Default, either before or after acceleration of the Liabilities or the foreclosure of the lien hereof, Lender may, but shall not be required to, make any payment or perform any act herein required of Borrower (whether or not Borrower is personally liable therefor) in any manner deemed expedient to Lender. Lender may, but shall not be required to, complete construction, furnishing and equipping of any improvements to the Premises and rent, operate and manage the Mortgaged Property and pay operating costs, including management fees, of every kind in connection therewith, so that the Mortgaged Property shall be usable for its intended purposes. All such monies paid and expenses incurred, including attorneys' fees, shall be so much additional Liabilities, whether or not the Liabilities, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due with interest thereon at the Default Rate. Inaction of Lender shall never be considered as a waiver of any right accruing to it on account of any Default nor shall the provisions of this paragraph or any exercise by Lender of its rights hereunder prevent any default from constituting a Default. Lender, in making any payment hereby authorized (a) relating to taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Mortgaged Property or the rental, operation or management of the Mortgaged Property or the payment of operating costs thereof, may do so in such amounts and to such persons as Lender may deem appropriate. Nothing contained herein shall be construed to require Lender to advance monies for any purpose.

10.7 The rights and remedies of Lender hereunder are cumulative and are not in derogation of, secondary to or in lieu of but are in addition to any rights or remedies which the Lender shall

have under the Note or any other Loan Document or any other instrument or document or under applicable law and the exercise by Lender of any rights and remedies herein contained shall not be deemed a waiver of any other rights or remedies of Lender, whether arising under the Mortgage, the Loan Documents or otherwise, each and all of which may be exercised whenever Lender deems it in its interest to do so. The rights and remedies of the Lender may be exercised from time to time and as often as such exercise is deemed expedient and the failure of the Lender to enforce any of the terms, provisions and conditions of this Mortgage for any period of time, at any time or times, shall not be construed or deemed to be a waiver of any rights under the terms hereof.

10.8 In case Lender shall have proceeded to invoke any right, remedy or recourse permitted hereunder, under the Note or under any of the Loan Documents, and shall thereafter elect to discontinue or abandon the same for any reason, Lender shall have the unqualified right so to do and, in such event, Lender and Borrower shall be restored to their former positions and otherwise, and the rights, remedies, recourses and power of Lender shall continue as if same had never been invoked.

10.9 If, following the occurrence of a Default and an acceleration of the Note but prior to the sale of the Mortgaged Property, Borrower shall tender to Lender payment of an amount sufficient to satisfy all of the Liabilities and Obligations, such payment shall be deemed to be a voluntary prepayment under the Note and, accordingly, Borrower shall also pay to Lender the premium (if any) then required under the Note in order to exercise the prepayment privilege contained therein.

10.10 Upon and after the occurrence of a Default, Lender shall not be obligated to accept any cure or attempted cure by Borrower, except to the extent required by applicable law.

11. MISCELLANEOUS

11.1 Any failure of Lender to insist upon the strict performance by Borrower of any of the terms and provisions of this Mortgage, the Note or the other Loan Documents shall not be deemed to be a waiver of any of the terms and provisions thereof, and Lender, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Borrower of any and all of the terms and provisions thereof to be performed by Borrower.

11.2 Lender, without notice, may release, regardless of consideration, any part of the security held for the Liabilities and Obligations, (including, without limitation, any guarantor) without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Lender may resort for the payment of the Liabilities and performance of the Obligations to any other security therefor held by the Lender in such order and manner as Lender may elect.

11.3 Every provision for notice, demand or request required in this Mortgage or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (or mailed to, as hereinafter provided) the party entitled thereto or on its successors or assigns. If

mailed, such notice, demand or request shall be made by certified or registered mail, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth below or to such other address as either party shall direct by like written notice and shall be deemed to have been made on the third (3rd) day after posting as aforesaid. If sent by commercial courier which guarantees next day delivery, such notice, demand or request shall be deemed to have been made on the first (1st) business day after delivery to the courier, with fee paid and next day delivery designated. For purposes herein, notices shall be sent to Borrower and Lender as follows:

If to Lender:

LaSalle Bank FSB
8303 West Higgins Road
Chicago, Illinois 60631-2941
Attention: Mr. James Pape

with a copy to:

Stahl Brashler LLC
20 East Jackson Blvd.
Suite 1600
Chicago, Illinois 60604
Attention: Thomas R. Brashler

If to Borrower:

451 W. Aldine LLC
1512 North Fremont
Chicago, Illinois 60622
Attn: Mr. John Supera

with a copy to:

Daniel Kohn
Holleb & Coff
55 W. Monroe Suite 4100
Chicago, Illinois 60603

or at such place or to such other person as any party may by notice in writing designate in the manner described above as a place for the service of notice. Failure to deliver courtesy copies shall not affect the validity of service between the parties.

11.4 All the covenants contained in this Mortgage will run with the land and be binding on any successor owner of the land.

11.5 Borrower, within ten (10) days after written request by Lender therefor, will certify, in writing, to Lender, or to any proposed assignee of this Mortgage, the amount of principal and interest then owing and unpaid under the Note and whether Borrower has or asserts any offsets or defenses thereto.

11.6 Borrower, promptly upon written request by Lender, at Borrower's sole expense, will or will cause to be made, executed and delivered to Lender, in form and substance acceptable to Lender, all documents and instruments that Lender is reasonably advised are and/or reasonably deems necessary or appropriate to evidence, document or conclude the transactions described in and/or contemplated by this Mortgage, the Note or the other Loan Documents or required to perfect or continue perfected, as valid encumbrances, the encumbrances granted herein or in the other Loan Documents by Borrower to Lender, upon the Mortgaged Property.

11.7 This Mortgage and all provisions hereof shall be binding upon Borrower, its successors, assigns, executors, administrators and legal representatives and all other persons or entities claiming under or through it and the word "Borrower" when used herein shall include all such persons and entities and any others liable for the payment of the Liabilities or performance of the Obligations or any part thereof. The word "Lender" as used herein shall include Lender's successors, assigns, and legal representatives, including all other holders, from time to time, of the Note.

11.8 This Mortgage shall be governed by the laws (without giving effect to the conflicts of laws principles thereof) of the State of Illinois in which State the Note and this Mortgage were executed and delivered, the Mortgaged Property is located and the principal and interest due under the Note are to be paid. Wherever possible each provision of this Mortgage shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provisions of this Mortgage shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage. Time is of the essence of this Mortgage. Whenever pursuant to this Mortgage Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide the arrangement or terms are satisfactory or not satisfactory shall be in the sole discretion of Lender and shall be final and conclusive. Neither this Mortgage nor any provision hereof may be amended, modified, waived or discharged orally. Borrower specifically acknowledges that Borrower has had an opportunity to review this Mortgage with Borrower's legal counsel and after said review understands the legal meaning and legal consequences of the provisions contained herein. Lender shall not have any obligation to refinance the indebtedness under the Note after the Maturity Date or to extend further credit thereafter to Borrower.

11.9 As used herein, the term "**Default Rate**" shall mean the Default Rate set forth in the Note.

11.10 Nothing herein shall be deemed or construed, nor shall the exercise by Lender of any rights, privileges or remedies conferred under this Mortgage, the Note or the other Loan Documents, render Lender and Borrower liable as joint venturers or partners in any way with respect to the Mortgaged Property.

11.11 The captions, titles and headings used in this Mortgage are inserted for convenience only, and shall not be construed in any way to limit or define the content, scope or intent of the provisions thereof.

11.12 No offset, claim, set-off right (including any such right which may be reduced to judgment) shall relieve Borrower of its obligations hereunder to pay the Liabilities and to perform the Obligations. Borrower consents and agrees that any claim or right which it may have against Lender it shall collect or assert only in an action separate from this Mortgage, and not as an offset, set-off, counterclaim or reduction of any amounts due hereunder, under the Note or under any of the other Loan Documents.

11.13 Lender shall have the right to set off against any amount due and owing hereunder, or under the Note or any of the other Loan Documents, any amount in Lender's possession which is owned by, or due to, Borrower (either in its individual capacity or as a joint tenant); provided, however, that Lender shall not be required to set off any such amount, and in no event shall the ability of Lender to set off any such amount be deemed to constitute payment of any amount unless and until such set off shall have actually been made.

11.14 All Deposits of any nature and kind delivered and held by Lender pursuant to the terms of this Mortgage may be commingled with other funds of Lender and Borrower shall not be entitled to any earnings or interest on said Deposits.

11.15 Lender shall be subrogated for its further security to the lien, whether or not released of record, of any and all encumbrances which were paid or discharged from the proceeds of the loan evidenced by the Note, from any of the Future Advances, as hereafter defined, and from any funds which, pursuant to the terms hereof, should have been paid to Lender; provided, however, that such subrogation shall not amend any of the terms and provisions hereof, or in any manner change the obligations of Borrower to Lender hereunder.

11.16 If the Mortgaged Property is not managed by the Borrower, then it shall be managed by a property manager or property management company and leased by a leasing company. The identity of said property management company and/or leasing company and the terms of any management or leasing contract or subcontract must be approved by Lender and Borrower shall not execute any such contract prior to obtaining the written consent of Lender thereto. The Mortgaged Property shall at all times be managed in a manner reasonably satisfactory to Lender. Any

management contract or subcontract entered into for the Mortgaged Property shall (i) contain provisions that the contract may be terminated upon two (2) days' prior written notice by Lender, at its option, if Lender or its successors and assigns acquires the Mortgaged Property by foreclosure of this Mortgage, by deed in lieu thereof or otherwise or upon the occurrence or existence of a Default hereunder and (ii) provide that the lien if any of said manager in and to the Mortgaged Property for any amount due under said management contract shall be subject and subordinate to the lien granted to Lender under this Mortgage.

11.17 If the loan evidenced by the Note is a construction loan, then the following provisions shall apply in addition to those set forth above:

(a) It is understood and agreed that funds are to be advanced under the Note pursuant to the terms of the Loan Agreement, which Loan Agreement is incorporated herein and by this reference made a part hereof. Borrower covenants and agrees that it will perform and satisfy all the terms, covenants and conditions of the Loan Agreement. The Loan Agreement shall, for purposes hereunder, be one of the Loan Documents.

(b) The Borrower covenants and agrees that, in accordance with the provisions of the Loan Agreement, all of the funds advanced and to be advanced thereunder have been and will be used exclusively to pay the costs of the construction and improvements on the Premises, and this Mortgage constitutes a "Construction Mortgage" within the meaning of the Code. All advances and indebtedness arising or accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Mortgage.

(c) All advances required by the Loan Agreement are obligatory advances up to the credit limits established therein and shall, to the extent permitted by law, have priority over mechanics' liens, if any, arising after this Mortgage is recorded; provided, however, that the obligation of Lender to disburse funds under the Loan Agreement shall be, in all respects, governed by the Loan Agreement.

11.18 This Mortgage secures not only the proceeds of the loan evidenced by the Note, but all advances hereafter made by Lender to or for the benefit of Borrower (the "Future Advances"), including, without limitation, any amounts advanced by Lender in satisfying, on Borrower's behalf, any of the Obligations, and any advances made by Lender to protect its security (the "Protective Advances"), and any other advances by Lender; provided, however, that in no event shall the total amount secured by this Mortgage exceed two hundred (200%) percent of the face amount of the Note.

11.19 If the payment of the Liabilities or performance of the Obligations, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor 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 and effect; the right of recourse against all such persons being expressly reserved by Lender, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Mortgaged Property or any part thereof or any interest therein, shall take the said lien subject to the rights of Lender to amend, modify, extend or release the Note, this Mortgage or any other Loan Document, in each case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

11.20 It is the desire and intention of the parties hereto that this Mortgage and the lien hereof shall not merge in fee simple title to the Mortgaged Property, unless a contrary intent is ever manifested by Lender as evidenced by an express statement to that effect in an appropriate document duly recorded. Therefore, it is hereby understood and agreed that should Lender acquire any additional or other interest in or to the Mortgaged Property or the ownership thereof, then this Mortgage and the 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.

11.21 BORROWER BY ITS EXECUTION HEREOF WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM, WHETHER IN CONTRACT OR TORT, AT LAW OR EQUITY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE. THIS WAIVER OF RIGHT TO JURY TRIAL IS KNOWINGLY AND VOLUNTARILY GIVEN AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE.

11.22 BORROWER HEREBY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS AND OF ANY ILLINOIS STATE COURT SITTING IN CHICAGO, ILLINOIS OR IN ANY COUNTY IN ILLINOIS WHEREIN THE MORTGAGED PROPERTY IS LOCATED AND FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS MORTGAGE (INCLUDING WITHOUT LIMITATION ANY OF THE OTHER LOAN DOCUMENTS) OR THE TRANSACTIONS CONTEMPLATED HEREBY. BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH BORROWER MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SAID COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

12. UNIT SALES; PARTIAL RELEASE OF MORTGAGE

Upon the written request of Borrower at any time and from time to time, Lender shall execute and deliver a partial release of a portion of the Mortgaged Property subject to this Mortgage constituting a residential condominium unit or parking space unit (a "Unit") so long as Borrower

shall not then be in default with respect to any of the covenants, conditions, warranties, representations or agreements contained in the Note, this Mortgage, the Loan Agreement or any other Loan Documents, and upon satisfaction of the following conditions:

- (a) A bonafide contract in form approved by Lender has been entered into between Borrower and a prospective purchaser of a Unit providing for a sales price satisfactory to Lender but in no event less than as set forth in or as required by the Loan Agreement, the contract complies with all other requirements set forth in the Loan Agreement, and all conditions of the Loan Agreement capable of being satisfied prior to the closing of the sale of such Unit have been waived or satisfied, including but not limited to the issuance of a certificate of occupancy with respect to such Unit;
- (b) All earnest money deposits required under the contract referred to above have been deposited into escrow with an escrow agent approved by Lender;
- (c) Lender has approved in writing all development and construction completed on the Premises as of the date of such partial release;
- (d) A sum equal to 93% of the gross sales price of such Unit, as approved by Lender, is paid to Lender and applied in accordance with the terms of the Loan Agreement; and
- (e) Borrower pays Lender's administrative fees, if any, relating to such partial release.

13. YEAR 2000 COMPLIANCE

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


[Signature on succeeding page]

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be executed as of the day and year first above written.

BORROWER:

451 W. Aldine LLC, an Illinois
limited liability company

By: _____


John M. Supera, as Trustee under the
John M. Supera Declaration of Trust
Dated 1-12-98, as Manager

Property of Cook County Clerk's Office

STATE OF ILLINOIS)
)
) SS.
COUNTY OF COOK)

I, Reginald Cunningham a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that John M. Supera, the Manager of 451 W. Aldine LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and the free and voluntary act of said company for the uses and purposes therein set forth.

Witness my hand and seal this 12 day of January, 1999.

Reginald Cunningham
Notary Public

My Commission Expires:

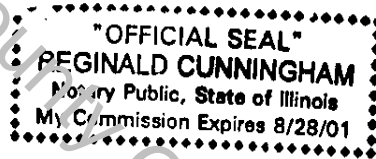


EXHIBIT A

SECURED PROMISSORY NOTE

\$1,200,000

January 12, 1999
Chicago, Illinois

FOR VALUE RECEIVED, the undersigned, **451 W. Aldine LLC, an Illinois limited liability company** ("Borrower"), hereby promises to pay to the order of **LaSalle Bank FSB**, its principal office and place of business located at 8303 West Higgins Road, 6th Floor, Chicago, Illinois 60631-2941, or any successor holder of this Note ("Lender"), at Lender's principal place of business, or such other place or places as Lender from time to time may designate in writing, the principal sum of ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00), or so much thereof as may be disbursed to Borrower by Lender pursuant to the Construction Loan Agreement between Borrower and Lender of even date herewith ("Loan Agreement"), together with interest thereon as provided herein, in lawful money of the United States of America.

1. Interest Rate. The unpaid principal amount hereof shall bear interest at the rate equal to the floating Prime Commercial Interest Rate of LaSalle National Bank, Chicago, Illinois, as announced and as changing from time to time (the "Interest Rate"), from the date of disbursement hereunder on the unpaid principal balance hereof from time to time outstanding. All interest due hereunder shall be computed for the actual number of days elapsed on the basis of a year consisting of three hundred sixty (360) days. The use of term "Prime Commercial Interest Rate" herein is not intended to mean, and does not imply, that said rate of interest is a preferred rate of interest or one offered by Lender or LaSalle National Bank, to only its most creditworthy customers. Monthly interest installments will change to reflect changes in the Interest Rate and changes in the principal balance from time to time as provided herein.

2. Repayment. Interest shall be payable at the Interest Rate monthly "in arrears" commencing February 1, 1999 and on the first (1st) day of each month thereafter, with a final payment of all outstanding principal and accrued but unpaid interest due on January 12, 2000 ("Maturity Date"). The proceeds from the sale of collateral secured by the Mortgage described below shall be paid to Lender and applied to repayment of the indebtedness evidenced by this Note, as a condition of Lender's partial release of its mortgage lien thereon.

3. Disbursements. All disbursements of principal under this Note shall be made in accordance with the Loan Agreement. The sum of \$57,600 of the principal amount of this Note shall be retained by Lender in a non-interest accruing reserve and disbursed for the payment of interest on the indebtedness evidenced by this Note, all in accordance with and subject to the provisions of the Loan Agreement. All advances and repayments hereunder shall be evidenced by entries on the

books and records of Lender which shall be presumptive evidence of the principal amount and interest owing and unpaid on this Note. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the obligations of Borrower hereunder or under any note to repay the principal amount of the liabilities together with all interest accruing thereon. It is expressly understood that this Note does not represent a revolving line of credit, and that any principal which is repaid by Borrower may not be re-borrowed.

4. Security for Note. The payment of this Note is secured by all security interests, liens, pledges, assignments and encumbrances concurrently herewith or from time to time hereafter granted by or for Borrower to Lender in connection with this Note, including, but not limited to, the liens evidenced by that certain Mortgage and Security Agreement of even date herewith ("Mortgage") encumbering the real property commonly known as 451 West Aldine, Chicago, Illinois ("Premises"), that certain Construction Loan Agreement of even date herewith ("Agreement"), that certain Assignment of Leases and Rents executed by Borrower (the "Assignment"), that certain Continuing Guaranty of Payment and Performance ("Guaranty") executed by John Supera ("Guarantor"), that certain Environmental Indemnity Agreement executed by Borrower and Guarantor, and such other instruments, documents and agreements evidencing and/or securing the payment of this Note as Borrower or any other person executes and delivers to Lender now and from time to time hereafter (the Note, Agreement, Mortgage and all other documents described in the preceding sentence shall be collectively referred to as the "Loan Documents"). The Premises and all other property, rights and assets pledged or given to secure this Note are herein referred to as the "Mortgaged Property". The terms and provisions of the Loan Documents are incorporated herein by this reference thereto as if fully set forth herein including but not limited to the right to accelerate the full amount due hereunder in the event of an unpermitted sale or transfer as defined in the Mortgage or any further encumbrance of the Mortgaged Property.

5. Prepayment. This Note may be prepaid in whole or in part without penalty prior to the Maturity Date provided such prepayment is made on the first day of any calendar month during the term of this Note or upon a permitted conveyance of all or a portion of the Mortgaged Property in accordance with the Mortgage. All partial prepayments shall be applied first to interest, charges and other fees due hereunder or under the Loan Documents and then to the principal balance.

6. Acceleration on Default; Waivers. If any payment due under this Note or any other monies owing from Borrower to Lender hereunder or under the Loan Documents is not paid within five (5) days after the date when due, or if Borrower otherwise defaults under the terms of this Note or if a default or event of default occurs under any of the Loan Documents (after the expiration of any applicable grace or cure periods specifically provided for therein) (collectively referred to herein as a "Default"), then all indebtedness evidenced by this Note, together with all other monies owing hereunder by Borrower to Lender, will be due and payable in full. The acceptance by Lender of any payment, partial or otherwise, made hereunder after the time when it becomes due as herein set forth will not establish a custom or constitute a waiver by Lender of any right to enforce prompt payment thereof or a waiver of any other Default or the same Default on another occasion. TO THE EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES THE

APPLICATION OF ANY AND ALL OF THEIR RIGHTS AND POWERS UNDER ALL STATUTES OF LIMITATION AND SIMILAR STATUTES AND LAWS AS TO THIS NOTE AND ALL PORTIONS HEREOF. DEMAND, PRESENTMENT FOR PAYMENT, PROTEST AND (EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN) NOTICE OF NON-PAYMENT AND PROTEST HEREBY ARE WAIVED BY BORROWER AND EVERY ENDORSER AND/OR GUARANTOR HEREOF.

7. Default Rate of Interest. If any payment or other monies owing to Lender are not paid when due, or upon the acceleration of the indebtedness evidenced hereby, then, from the due date of such amounts until all accrued, unpaid interest, all prepayment premiums, and any other amounts due hereunder or under any of the Loan Documents are paid or otherwise satisfied in full, all such amounts and indebtedness shall bear interest at the Default Rate. As used herein, the "Default Rate" means a per annum rate of interest equal to the Interest Rate as changing from time to time plus five (5%) percent.

8. Late Charge. In the event Lender receives any payment due under this Note more than fifteen (15) days after the due date therefor, Lender, at its sole election and in its sole discretion, may collect from Borrower a "late charge" of five cents (\$0.05) for each one dollar (\$1.00) of such delinquent payment to reimburse Lender for the extra administrative cost and expense involved in handling the late payment. Lender's acceptance of any late charge payment shall not constitute a waiver of any of its rights or remedies or of any Default which may then or thereafter occur or exist hereunder.

9. Fees and Expenses. If Lender employs counsel for advice with respect to the Loan Documents to respond to any request of Borrower, including but not limited to, a request for a consent, waiver, amendment or interpretation of the Loan Documents or to intervene, file a petition, answer, motion or other pleading in any suit or proceeding (bankruptcy or otherwise) relating to the Loan Documents or the Mortgaged Property, or to attempt to collect this Note or said other monies from, or to enforce the Loan Documents against, Borrower or any other party, then, in any such event, to the extent permitted by law all of the reasonable attorneys' and paralegals' fees and expenses arising from such services, and all expenses, costs and charges relating thereto, shall be an additional liability owing hereunder by Borrower to Lender, payable within five (5) days of demand and bearing interest at the Default Rate, from the date of demand until paid in full to Lender and shall be secured by the lien evidenced by the Mortgage.

10. Interest Limitation. All agreements between Borrower and Lender expressly are limited so that in no contingency or event whatsoever, whether by reason of disbursement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid by Borrower to Lender for the use, detention or forbearance of the amounts to be disbursed hereunder exceed the highest lawful rate of interest permissible under the law which a court of competent jurisdiction, by a final non-appealable order, determines is applicable hereto ("Highest Lawful Rate"). If fulfillment of any provision herein contained at the time performance of such provision becomes due involves exceeding the Highest Lawful Rate, then ipso facto, the obligation to fulfill the same shall be

reduced to such Highest Lawful Rate. If by any circumstance Lender shall ever receive as interest an amount which would exceed the Highest Lawful Rate, the amount which may be deemed excessive interest shall be applied to the principal and not to interest, or, if such excessive interest exceeds the unpaid principal under this Note, such excess shall be refunded to Borrower. All interest paid or agreed to be paid to Lender under this Note or any instrument executed in connection with this Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal (including the period of any renewal or extension of this Note) so that the interest on this Note for such full period shall not exceed interest computed at the Highest Lawful Rate. It is Lender's intention that the performance of any provision herein never result in any payments due or paid which involve exceeding the Highest Lawful Rate. The terms and provisions of this Paragraph shall control all other terms and provisions contained herein, in the Mortgage and in the other Loan Documents. If any provision of this Note or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Note and the application of such provision to other parties or circumstances shall not be affected thereby, the provisions of this Note being severable in any such instance. Borrower acknowledges that the loan evidenced by this Note is a business loan as defined in the Illinois Interest Act.

11. Waivers; Continued Liability. It is agreed that the granting to Borrower or any other party of an extension or extensions of time for the payment of any sum or sums due under this Note, the Mortgage or the other Loan Documents or for the performance of any term, provision, covenant or agreement of this Note, the Mortgage or the other Loan Documents, or the taking or releasing of security or collateral for the payment of this Note or the exercising or failure to exercise of any right or power under this Note, the Mortgage or the other Loan Documents, shall not in any way release or affect the liability of Borrower evidenced by this Note.

12. Amendments and Modifications. This Note may not be amended or modified, nor shall any revision hereof be effective, except by an instrument in writing expressing such intention executed by Lender and directed to Borrower.

13. Choice of Law. This Note shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects, including, but not limited to, the legality of the interest charged hereunder, by the statutes, laws and decisions of the State of Illinois.

14. Borrower Waivers of Service and Jury Trial. Borrower, in order to induce Lender to accept this Note and for other good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, HEREBY WAIVES TO THE EXTENT PERMITTED BY LAW, PERSONAL SERVICE OF ANY AND ALL PROCESS UPON BORROWER AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS BE MADE BY CERTIFIED OR REGISTERED MAIL DIRECTED TO BORROWER AT 1512 NORTH FREEMONT, CHICAGO, ILLINOIS 60622 (OR SUCH OTHER ADDRESS AS BORROWER SHALL SPECIFY BY WRITTEN NOTICE TO LENDER) AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED

UPON ACTUAL RECEIPT THEREOF. BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE CIRCUIT COURT OR FEDERAL COURT LOCATED WITHIN THE STATE OF ILLINOIS. BORROWER WAIVES TRIAL BY JURY AND WAIVES ANY OBJECTION WHICH THE BORROWER MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING INSTITUTED HEREUNDER.

15. Binding Effect. Wherever the term "Borrower" is used in this Note, the term shall include (unless otherwise expressly indicated) Borrower and its successors and assigns, as the case may be. This Note shall be binding upon Borrower and shall inure to the benefit of Lender and its successors and assigns.

16. Severability. Any provision of this Note which is unenforceable or contrary to applicable law, the inclusion of which would affect the validity, legality or enforcement of this Note, shall be of no effect, and in such case all the remaining terms and provisions of this Note shall be fully effective, the same as though no such invalid provision had ever been included in this Note.

IN WITNESS WHEREOF, the Borrower has executed and delivered this Note as of the day and year first above written.

BORROWER:

451 W. Aldine LLC, an Illinois
limited liability company

EXHIBIT

By: _____
John M. Supera, as Trustee under the
John M. Supera, Declaration of Trust
Dated 1-12-98, as Manager

UNOFFICIAL COPY

99054617

EXHIBIT B

LEGAL DESCRIPTION

THE EAST 70 FEET OF THE WEST 150 FEET OF THAT CERTAIN TRACT OF LAND DESCRIBED AS LOTS TWENTY-TWO (22) "B", TWENTY-THREE (23) TWENTY-FOUR (24) TWENTY-FIVE (25) TWENTY-SIX (26) TWENTY-SEVEN (27) TWENTY-EIGHT (28) AND TWENTY-NINE (29) IN BLOCK TWO (2) IN LAKE SHORE SUBDIVISION OF LOTS 24, 25 AND 26 IN PINE GROVE, A SUBDIVISION OF FRACTIONAL SECTION 21, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

Common Address: 451 West Aldine, Chicago, Illinois 60657

PPN: 14-21-312-013-0000

EXHIBIT C

PERMITTED ENCUMBRANCES

1. General real estate taxes for the year 1998 and subsequent years.

END

Property of Cook County Clerk's Office