

# UNOFFICIAL COPY

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Prepared by  
and after recording, return to:

4574/0146 27 001 Page 1 of 29  
1999-04-23 12:18:47  
Cook County Recorder 77.00

Robert N. Sodikoff  
Aronberg Goldgehn Davis & Garmisa  
One IBM Plaza, Suite 3000  
Chicago, Illinois 60611



Space above this Line for Recorder's Use Only

## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE made as of the 15th day of April, 1999 by and between MARK D. PETERSON AND KATHLEEN A. PETERSON, 400 S. Milwaukee Avenue, Wheeling, Illinois 60090 ("Mortgagor") and OOMMEN JOSEPH, 900 Jay Drive, Downers Grove, Illinois 60516 ("Mortgagee").

### WITNESSETH: THAT

WHEREAS, Mortgagor has concurrently herewith executed and delivered to Mortgagee a Mortgage Note bearing even date herewith (the "Note") in the principal sum of One Million Three Hundred Sixty Thousand and 00/100 Dollars (\$1,360,000.00) made payable to Mortgagee in and by which Note Mortgagor promises to pay the said principal sum, or so much thereof as may be outstanding from time to time, and interest thereon at the rate and in installments as provided in the Note, with a final payment of the balance due on the 1st day of January, 2004, if not sooner paid, all of said principal and interest being payable at such place as the holder or holders of the Note ("Holders") may, from time to time, in writing appoint, and in absence of such appointment, then at the office of Mortgagee, 900 Jay Drive, Downers Grove, Illinois 60516.

NOW, THEREFORE, in order to secure the payment of the principal indebtedness under the Note and interest and premiums on the principal indebtedness under the Note (and all amendments or supplements thereto, and all replacements, renewals and extensions thereof, in whole or in part) according to its tenor, and to secure the payment of all other sums which may be at any time due under the Note or this Mortgage (collectively sometimes referred to herein as "indebtedness secured hereby"); and to secure the performance and observance of all the provisions contained in this Mortgage, the Note, and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor DOES HEREBY MORTGAGE, GRANT, BARGAIN, REMISE, SELL AND CONVEY, unto Mortgagee, its successors and assigns forever, the following described property, rights and interests (all of which together with the Real Estate are referred to herein as the "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as hereinafter defined) and not secondarily:

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THE real estate located in the State of Illinois, County of Cook and legally described in Exhibit "A" attached hereto (the "Real Estate").

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used or intended to be used in connection with the Real Estate or the improvements, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf (the "Improvements"),

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, water's, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

TOGETHER WITH all income from the Premises to be applied against the indebtedness secured hereby, provided, however, that Mortgagor may, so long as no Default has occurred hereunder, collect income as it becomes due, but not more than one(1) month in advance thereof;

TOGETHER WITH all interest of Mortgagor in all leases now or hereafter on the Premises whether written or oral (the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishing, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any matter; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Real

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Estate or the Improvements shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the indebtedness secured hereby; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party and Mortgagor as debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 34 hereof; and

TOGETHER WITH all proceeds of the foregoing, including without limitation all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Mortgagor hereby appoints Mortgagee its attorney-in-fact and authorizes Mortgagee, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the indebtedness secured hereby, notwithstanding the fact that the same may not then be due or that the indebtedness secured hereby is otherwise adequately secured. Provided, however, that if there is not then existing a Default hereunder, Mortgagee shall take action as attorney-in-fact, with respect to eminent domain proceedings or with respect to proceeds of any policies of insurance, only with the consent of Mortgagor, which consent shall not be unreasonably withheld.

TO HAVE AND TO HOLD the Premises, unto the Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Default as hereinafter defined; the Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

Mortgagor represents and covenants that it is lawfully seized of the Premises, that the same are unencumbered, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

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

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IT IS FURTHER UNDERSTOOD AND AGREED THAT:

Maintenance, Repair and Restoration of Improvements, Payment of Prior Liens, Etc.

1. Mortgagor shall (a) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof, except that Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claim upon furnishing (i) to the title company which has issued the loan policy of title insurance to Mortgagee insuring the lien of this Mortgage such security or indemnity as it may require to issue an endorsement thereto insuring against loss or damage on account of any such lien; or (ii) to Mortgagee such other security with respect to such claims as may be reasonably acceptable to Mortgagee; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request, exhibit reasonably satisfactory evidence to Mortgagee of the discharge of such lien; (d) complete within a reasonable time any building or buildings or any other improvements now or at any time in the process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances or restrictions of record with respect to the Premises and the use and development thereof, including but not limited to those relating to zoning, building, environmental protection, health, fire and safety; (f) make no alterations to the Premises which would adversely affect same except as required by law or municipal ordinance without the prior written consent of Mortgagee; (g) suffer or permit no change in the general nature of the occupancy of the Premises, without Mortgagee's prior written consent; (h) initiate or acquiesce in no zoning variation or reclassification, without Mortgagee's written consent; (i) pay each item of indebtedness secured by this mortgage when due according to the terms hereof or of the Note; and (j) duly perform and observe all of the covenants, terms, provisions and agreements herein and in the Note on the part of Mortgagor to be performed and observed.

Payment of Taxes and Assessments

2. Mortgagor shall pay before any penalty or interest attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges or liens of any nature against the Premises when due, and shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof. To prevent default hereunder, Mortgagor shall pay in full under protest, in the manner provided by statute, any tax or assessment which Mortgagor may decide to contest.

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## Tax and Insurance Deposits

3. Mortgagor covenants and agrees, if required by Mortgagee, to deposit at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee in Downers Grove, Illinois, a sum equal to (a) one-twelfth (1/12th) of the last total annual taxes and assessments for the last ascertainable year (general and special) on the Premises, unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed, and (b) one-twelfth (1/12th) of the annual premiums payable for insurance required to be maintained in accordance with Section 4 hereof. Mortgagor, concurrently with the first monthly deposit of taxes and insurance premiums required hereunder, will also deposit with Mortgagee an amount, (i) which, together with the aggregate of the monthly deposits to be made pursuant to (a) above, shall be sufficient to pay in full the total annual taxes and assessments so ascertainable or so estimated by Mortgagee, as the case may be, to become due and payable with respect to the Premises for the current calendar year, as of two months prior to the due date of such taxes and assessments, and (ii) which, together with the aggregate deposits to be made pursuant to (b) above, shall be sufficient to pay in full the total annual insurance premium estimated by Mortgagee to next become due and payable with respect to the Premises, as of one month prior to the date on which the next annual insurance premium becomes due. Such deposits are to be held without any allowances of interest and are to be used for the payment of taxes and assessments (general and special) and insurance premiums, respectively on the Premises next due and payable when they become due. If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) and premiums for any year when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of demand therefor, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) and premiums in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee.

## Insurance

4. Mortgagor shall keep all buildings and improvements, fixtures and articles of personal property now or hereafter, situated on the Premises insured against loss or damage by fire, tornado, windstorm and extended coverage perils and such other hazards as may reasonably be required by Mortgagee, including, without limitation: (a) all-risk fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises, with agreed upon amount; (b) if there are tenants under leases at the Premises, rent and rental value loss insurance for the same perils described in (a) above payable at the rate per month and for the period specified from time to time by Mortgagee in its reasonable discretion; (c) broad form boiler and sprinkler damage insurance in an amount reasonably satisfactory to Mortgagee, if and so long as the Premises shall contain a boiler and sprinkler system, respectively;



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(d) if the Premises are located in a flood hazard district, flood insurance in the maximum amount obtainable up to the amount of the indebtedness hereby secured; and (e) such other insurance as Mortgagee may from time to time reasonably require. Mortgagor also shall at all times maintain comprehensive public liability, property damage and worker's compensation insurance covering the Premises and any employees thereof, with such limits for personal injury, death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, companies, amounts and deductibles reasonably satisfactory to Mortgagee, with Mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to Mortgagee (except for cancellation for non-payment of premiums which shall require ten (10) days prior written notice to Mortgagee) and shall contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, together with evidence of payment of premiums thereon, to Mortgagee, and in the case of insurance about to expire, shall deliver renewal policies not less than thirty (30) days prior to their respective dates of expiration.

## Mortgagee's Interest in and Use of Deposits

5. In the Event of a Default in any of the provisions contained in this mortgage or in the Note or the Loan Documents, and the failure to cure within the applicable cure period, if any, Mortgagee may at its option, without being required to do so, apply any moneys at the time on deposit pursuant to any provision of this mortgage, as any one or more of the same may be applicable, on any of Mortgagor's obligations herein or in the Note or Loan Documents contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes, assessments or insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instructions of any party.

## Adjustment of Losses with Insurer and Application of Proceeds of Insurance

6. In case of loss and if Mortgagee determines in its sole discretion that its collateral is in jeopardy, Mortgagee (or after entry of decree of foreclosure, purchaser at the sale, or the decree

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creditor, as the case may be) is hereby authorized to settle and adjust any claim under those insurance policies maintained by Mortgagor pursuant to Section 4 hereof without the consent of Mortgagor. Provided, however, that if there is no Default hereunder, then Mortgagee shall settle and adjust claims under such insurance policies with the consent of Mortgagor (which consent shall not be unreasonably withheld) or allow Mortgagor to settle or adjust such claims. In either such case, Mortgagee is authorized to collect and receipt for any such insurance money, whereupon such insurance proceeds may, after the payment of all Mortgagee expenses, including costs and reasonable attorneys' fees, at the option of Mortgagee, either be applied in payment or reduction of the indebtedness secured hereby, whether due or not, or be held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of buildings or improvements on said Premises. The buildings and improvements shall be so restored or rebuilt as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the net proceeds of insurance are insufficient to so restore or rebuild the buildings and improvements, the additional costs to replace, repair, rebuild or restore shall be paid by Mortgagor. In the event Mortgagee elects to reimburse Mortgagor out of insurance proceeds, such proceeds shall be made available, from time to time, upon Mortgagee's being furnished with reasonably satisfactory evidence of the estimated cost of completion thereof and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may reasonably require and approve. If the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, Mortgagee shall also be furnished with all plans and specifications for such rebuilding or restoration as the Mortgagee may reasonably require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undischursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. Any insurance proceeds held by Mortgagee prior to disbursement shall earn interest at the passbook rate then offered by Mortgagee.

In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, shall be applied in payment or reduction of the indebtedness secured hereby or in payment or reduction of the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner or the equity of redemption if it shall then be entitled to the same or as the court may direct. In the case of the foreclosure of this mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then, and in every such case, each successive redepton may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redepton. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all

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insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

## Stamp Tax

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

## Indemnity

8. Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: the making of the loan evidenced by the Note and secured by this mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this mortgage or for the purpose of protecting the lien of this mortgage; the offer for sale or sale of all or any portion of the Premises; and/or the ownership, leasing, use, operation or maintenance of the Premises. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the rate provided in the Note.

## Effect of Extensions and Amendments

9. If the payment of the debt secured hereby or any part thereof be extended or varied or if any part of the security granted to secure such indebtedness be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, or having an interest in Mortgagor or in the beneficiary of Mortgagor, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Mortgagee to amend, modify, extend or release the Note, this Mortgage or any other document or instrument evidencing, securing or guarantying the indebtedness secured



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hereby, 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.

## Effect of Changes in Laws Regarding Taxation

10. In the event of the enactment after this date of any laws of the state in which the Premises are located deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this mortgage or the debt secured hereby or the holders thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it would be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice. If Mortgagee declares all of the indebtedness secured hereby to be due and payable in accordance with this provision, then notwithstanding any contrary provision herein or in the Note, no premium shall be due and payable with respect to such prepayment.

## Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee

11. Upon the occurrence of an Event of Default, Mortgagee may, but need not, make any payment or perform any act required herein or in the Note or any of the Loan Documents required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. Upon the occurrence of an Event of Default, Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of any buildings or other improvements now or at any time hereafter on the Premises, and rent, operate and manage the Premises and such buildings and improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and such buildings and improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Section 7 above or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Post Maturity Rate. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this

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Mortgage or its priority, (b) protecting and enforcing any of Mortgagee's rights hereunder, (c) recovering any indebtedness secured hereby, (d) any litigation or proceedings affecting the Note, this mortgage, the Premises or any guarantor or co-maker of the Note or this mortgage, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Post Maturity Rate. The interest accruing under this Section shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the loan evidenced by the Note, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then as additional security hereunder, Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment. Notwithstanding anything contained in this mortgage to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to Ten Million and No/100 Dollars (\$10,000,000.00).

## Mortgagee's Reliance on Tax Bills and Claims for Liens

12. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; provided that if no Event of Default exists hereunder, Mortgagee shall give Mortgagor ten (10) days' prior notice thereof.

## Acceleration of Indebtedness in Event of Default

13. It is agreed that upon the occurrence of any one or more of the following events (herein called "Defaults" or "Events of Default"): (a) default be made in the due and punctual payment of the Note, or any installment due in accordance with the terms thereof, either of principal or interest which has not been cured within the applicable grace period, if any; or (b) Mortgagor or any Member or beneficiary thereof or any Guarantor shall file a petition in voluntary bankruptcy or under Chapter 7 or Chapter 11 or Chapter 13 of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or an answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within thirty (30) days, as hereinafter provided; or (c) any order for relief of the

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Mortgagor or any Member or beneficiary thereof or any Guarantor shall be entered under Title 11 of the United States Code, or a trustee or a receiver shall be appointed for Mortgagor or any Member or beneficiary thereof or any Guarantor or for all of the property or the major part thereof of Mortgagor or any Member or beneficiary thereof or any Guarantor in any involuntary proceeding, or any court shall have taken jurisdiction of the property of Mortgagor or any Member or beneficiary thereof or any Guarantor or the major part thereof in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of Mortgagor or any Member or beneficiary thereof or any Guarantor, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within thirty (30) days; or (d) Mortgagor or any Member or beneficiary thereof or any Guarantor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all of its property or the major part thereof; or (e) default shall be made in the due observance or performance of any other of the covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor or any Member or beneficiary thereof or any Guarantor and the same shall continue for twenty-one (21) days after notice from Mortgagee; or (f) default shall be made in the due observance or performance of any covenant, agreement or condition required to be kept or observed by Mortgagor or any of its Members or beneficiary or beneficiaries in the Note or any Guarantor thereof or in any other instrument given at any time to secure the payment of the Note and the expiration of the applicable cure period, if any; or (g) the existence of any inaccuracy or untruth in any material representation, covenant or warranty contained in this mortgage or in any other statement or certification as to facts delivered to Mortgagee by Mortgagor, Mortgagor's beneficiary, or any guarantor; or (h) the occurrence of a prohibited transfer as described in Section 27;

then and in every such case the whole of said principal sum hereby secured shall, at once at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, without notice to Mortgagor; provided, however, that if a default under subsections (e) and (f) of this Section 13 be such that it cannot be corrected within 21 days, Mortgagor shall not be in default if corrective action is initiated by Mortgagor within such period and diligently pursued until completion, with such default to be, in all events, cured within sixty (60) days or Mortgagor shall be in default hereunder.

## Foreclosure; Expense of Litigation

14. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee, including

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but not limited to reasonable attorneys' fee, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title and value as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Post Maturity Rate (as defined in Section 29 hereof) and shall be secured by this mortgage.

It is agreed that upon the occurrence of an Event of Default, Mortgagee shall have the right to proceed with foreclosure proceeding in the satisfaction of said default as if under a full foreclosure, and without declaring the entire secured indebtedness due, and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the unmatured part of the secured indebtedness; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured part of the secured indebtedness but as to such unmatured part this mortgage shall remain in full force and effect as if no foreclosure sale had been made under the provisions of this section. And it is further agreed that several foreclosure sales may be made hereunder without exhausting the right of foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a foreclosure sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the premises for any other of the secured indebtedness whether matured at the time or subsequently maturing.

## Application of Proceeds of Foreclosure Sale

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

## Appointment of Receiver

16. Upon, or at any time after the filing of a complaint to foreclose (or partially foreclose) this mortgage, the court in which such complaint is filed may appoint a receiver of the



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Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any Holders may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (i) the indebtedness secured hereby, or by any decree foreclosing this mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; (ii) if this is a leasehold mortgage, all rents due or which may become due under the underlying lease; and (iii) the deficiency in case of a sale and deficiency.

## Assignment of Rents and Leases

17. To further secure the indebtedness secured hereby, Mortgagor hereby sells, assigns and transfers unto Mortgagee all the rents, issues and profits now due and which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Premises or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such leases and agreements, and all the avails thereunder, to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its true and lawful attorney in its name and stead (with or without taking possession of the Premises as provided in Section 19 hereof) to rent, lease or let all or any portion of the Premises to any party or parties at such rental and upon such terms as Mortgagee shall, in its discretion, determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and every of the leases and agreements, written or verbal, or other tenancy existing, or which may hereafter exist on the Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of



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recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Section 19 hereof.

Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents to accrue for any portion of the said Premises has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor. Mortgagor waives for the benefit of Bank only and its successors or assigns any rights of set off against any person in possession of any portion of the Premises. If any lease provides for the abatement of rent during repair of the Premises demised thereunder by reason of fire or other casualty, Mortgagor shall furnish to Mortgagee rental insurance, the policies to be in amount and form and written by such insurance companies as shall be reasonably satisfactory to Mortgagee. Mortgagor agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises.

Nothing herein contained shall be construed as constituting Mortgagee a Mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to Section 19 hereof. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

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

Although it is the intention of the parties that the assignment contained in this Section 17 shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it by this section until an Event of Default shall exist under this mortgage or the Note.

## Observance of Lease Assignment

18. In the event Mortgagor, as additional security for the payment of the indebtedness described in and secured hereby, has sold, transferred and assigned, or may hereafter sell, transfer and assign, to Mortgagee, its successors and assigns, any interest of Mortgagor as lessor in any lease or leases, Mortgagor expressly covenants and agrees that if the lessee or any of the lessees under said lease or leases so assigned or Mortgagor, as lessor therein, shall fail to perform and fulfill any material term, covenant, condition or provision in said lease or leases, or any of them, on its or their part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Mortgagor shall suffer or permit to occur any material breach or default under the provisions of any assignment of any lease or leases of the Premises given as additional

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security for the payment of the indebtedness secured hereby, then and in any such event, such breach or default shall constitute a default hereunder unless cured within sixty (60) days after notice from Mortgagee, and at the option of Mortgagee, and without notice to Mortgagor, all unpaid indebtedness secured by this mortgage shall, notwithstanding anything in the Note or in this mortgage to the contrary, become due and payable as in the case of other defaults.

## Mortgagee's Right of Possession in Case of Default

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

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Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Except for the gross negligence or wilful misconduct of the Mortgagee, Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which Mortgagee may or might incur under said leases, or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest at the rate provided in the Note, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

## Application of Income Received by Mortgagee

20. Following an Event of Default, Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

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

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and, if this is a leased mortgage, of all rents due or which may become hereafter due under the underlying lease,

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

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

## Mortgagee's Right of Inspection

21. Mortgagee and/or its representatives shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

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## Condemnation

22. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, or to require Mortgagor to restore or rebuild, in which event the proceeds shall be held by Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoring of buildings or improvements on said Premises, in accordance with plans and specifications to be submitted to and approved by Mortgagee. In the event Mortgagor is required or authorized by Mortgagee's election as aforesaid to rebuild or restore, the proceeds of the award shall be paid out in the same manner as is provided in Section 6 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagor shall pay such cost in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, at the option of Mortgagee, be applied on account of the indebtedness secured hereby or be paid to any other party entitled thereto.

## Prepayment Privilege; Release upon Payment and Discharge of Mortgagor's Obligations

23. At such time as the Mortgagor is not in default under the terms of the Note, or under the terms of this mortgage, the Mortgagor shall have the privilege of making prepayment on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise. If Mortgagor shall fully pay all principal and interest on the Note, and all other indebtedness secured hereby and comply with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, then this mortgage shall be null and void. Mortgagee shall release this mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Mortgagee for the execution of such release.

## Giving of Notices

24. Any notice or demand which either party hereto may desire or be required to give to the other party shall be in writing and the mailing thereof by certified mail addressed to Mortgagor at c/o Castlerock Realty & Management, 400 S. Milwaukee, Wheeling, Illinois 60090, Attention Mark Peterson, or to Mortgagee at 900 Jay Drive, Downers Grove, Illinois 60516, or at such other place as either party hereto may by notice in writing designate as a place for service of notice shall constitute service of notice hereunder.

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## Waiver of Defense

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

## Waiver of Right of Redemption and other Rights

26. To the full extent permitted by law, Mortgagor 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 Premises, 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 after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption under the Illinois mortgage foreclosure laws (the "Act"), on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor 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, Mortgagor 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 Mortgagee, 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, Mortgagor hereby agrees that no action for 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. If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section 26 (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having power of direction over Mortgagor and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other parties named above. Mortgagor acknowledges that the Premises do not constitute agricultural real estate or residential real estate.

## Transfer of Title

27. In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor or Mortgagor's Members, if applicable, or Guarantor, if any, found the same to be acceptable and relied and continues to rely upon same as the means of



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repayment of the Note. Mortgagee also evaluated the background and experience of Mortgagor or Mortgagor's Members and the Guarantor, if any, in owning and operating property such as the Premises, found the same acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the Note. Mortgagor and Mortgagor's Members and the Guarantor, if any, are well experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor and Mortgagor's Members recognize that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor and/or the Members of Mortgagor, if applicable. Mortgagor and Mortgagor's Members further recognize that any secondary or junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor and Mortgagor's Members; (iii) allowing Mortgagee to raise the interest rate and collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor, Mortgagor's Members, and any Guarantor agree that if this paragraph be deemed a restraint on alienation, that it is a reasonable one, and that, any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises, the ownership interest in Mortgagor or any interest in the Premises (whether voluntary or by operation of law), including without limitation, the entering into of an installment agreement for the sale of the Premises, the placement or granting of liens on all or any part of the Premises or the placement or granting of chattel mortgages, conditional sales contracts, financing or security agreements which would be or create a lien on the personal property utilized in the operation of the Premises, or the placement or granting of a mortgage, including a junior or secondary mortgage or a mortgage commonly known as a "wrap around" mortgage or an improvement loan, without Mortgagee'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 shall be deemed to be an unpermitted transfer of title to the Premises and, therefore, a default hereunder:

(a) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the title to the Premises or the beneficial interest in, or power of direction under any trust agreement with Mortgagor, if

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applicable, except for leases of portions of the Premises in the ordinary course on a lease form reasonably acceptable to Bank;

(b) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any ownership or Membership interest or Membership Rights in Mortgagor, if applicable, or of any corporation directly or indirectly controlling or owning such ownership or Membership interest or Membership Rights in Mortgagor;

(c) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any share of any corporation which is a Member of Mortgagor or of any general or limited partnership interest of a general partnership or limited partnership which is a Member of Mortgagor.

Any consent by Mortgagee, or any waiver by Mortgagee of a default under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent default under this Section 27. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Section 27 shall be void and of no force or effect.

## Furnishing of Financial Statements to Mortgagee

28. Mortgagor shall, as requested by Mortgagee, furnish to the Mortgagee at the place where interest thereon is then payable, financial and operating statements of the Premises for such fiscal year, in the format requested by the Mortgagee, including a current rent roll, prepared by the property manager or Mortgagor and certified by Mortgagor.

## Definitions

29. "Post Maturity Rate" as used herein shall mean interest at the rate of five percent per annum above the rate provided for under the Note as at the maturity date. The word "Mortgagor" when used herein shall include the original Mortgagor named in the preambles hereof, its successors and assigns, and all owners from time to time of the Premises. The word "Guarantor" when used herein shall mean any and all of the guarantors of the Note. The words "Holders" and "Mortgagee" when used herein shall include all successors and assigns of the original holder of the Note and Mortgagee identified in the preambles hereof.

## Binding on Successors and Assigns

30. This mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of the Holders from time to time of the Note and of the successors and assigns of the Mortgagee.

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## Captions

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

## Mortgagee's Lien for Service Charge and Expenses; Future Advances

32. At all times, regardless of whether any loan proceeds have been disbursed, this mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by mortgagee in connection with the loan to be secured hereby, all in accordance with the Note, this mortgage and the Loan Documents.

## Business Purpose

33. Mortgagor represents and agrees that the obligation secured hereby is an exempted transaction under the Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.*, and constitutes a business loan within the meaning of Section 4 of the Illinois Interest Act 815 ILCS 205/4 (1992), and that the proceeds of the obligation secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation "U" promulgated by the Federal Reserve System.

## Security Agreement and Financing Statement

34. Mortgagor and Mortgagee agree: (a) that this mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code with respect to all sums on deposit with Mortgagee pursuant hereto ("Deposits") and with respect to any property included in the definition herein of the word "Premises," which property may not be deemed to form a part of the real estate described herein or may not constitute a "fixture" (within the meaning of the Code), and all replacements of such property, substitutions for such property, additions to such property, books and records relating to the Premises and operation thereof and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to as the "Collateral"); and (b) that a security interest in and to the Collateral and the Deposits is hereby granted to the Mortgagee; and (c) that the Deposits and all of Mortgagor's right, title and interest therein are hereby collaterally assigned to Mortgagee, all to secure payment of the indebtedness hereby secured and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

In the Event of a Default hereunder, Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and the 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. Mortgagee and Mortgagor agree that if

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Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, five (5) business days notice of the sale of the Collateral shall be reasonable notice. The expenses of retaking, holding, preparing for sale, selling and the like incurred by Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee.

Mortgagor agrees that, without the written consent of Mortgagee, Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby.

Mortgagor shall, from time to time, upon written request of Mortgagee and at Mortgagor's sole cost, deliver to Mortgagee: (i) such further financing statements and security documents and assurances as Mortgagee may reasonably require, to the end that the liens and security interests created hereby shall be and remain protected and perfected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. Mortgagor represents and covenants that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereof, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others. If the Collateral is sold in connection with the sale of the Premises, Mortgagor shall notify the Mortgagee prior to such sale and shall require as a condition of such sale that the purchaser specifically agrees to assume Mortgagor's obligations as to the security interests herein granted and to execute whatever agreements and filings are deemed necessary by the Mortgagee to maintain Mortgagee's first perfected security interest in the Collateral and the Deposits.

## Partial Invalidity; Maximum Allowable Rate of Interest

35. Mortgagor and Mortgagee intend and believe that each provision in this mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this mortgage and the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of

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Mortgagor and Mortgagee under the remainder of this mortgage and the Note shall continue in full force and effect. All agreements herein and in the Note are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to the Holders for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if from any circumstance the Holders shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

## Compliance with Environmental Laws

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

37. RESERVED

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## Expenses Relating to Note and Mortgage

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

(a) May be involved in Court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(b) May make preparation; following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(c) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

(d) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced; or

(e) May enter into negotiations with Mortgagor, Mortgagor's Members, if applicable, and/or any Guarantor of the Note, or any of their respective agents, employees or attorneys, in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the indebtedness represented by the Note or the transfer of the Premises in lieu of foreclosure.

All expenses, charges, costs and fees described in this Paragraph 38 shall be so much additional indebtedness secured hereby, shall bear interest from ten (10) days after the date demanded, until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

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## Statement of Indebtedness

39. Mortgagor, within seven (7) days after receipt of request by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against the Mortgage debt or, if such offsets or defenses are alleged to exist, the nature thereof.

## Further Instruments

40. Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

## Indemnity

41. Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: the making of the Loan evidenced by the Note and secured by this Mortgage; any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; the offer for sale or sale of all or any portion of the Premises; and/or the ownership, leasing, use, operation or maintenance of the Premises. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest at the Default Rate.

## Subordination of Commercial Broker's and Property Manager's Lien

42. Any property management or brokerage agreement for the Premises entered into hereafter by Mortgagor and/or Mortgagor's Members with a property manager or broker, shall contain a "no lien" provision whereby the property manager and/or broker, as the case may be, waives and releases any and all mechanics' lien rights that he or it or anyone claiming by, through or under either or both may have pursuant to applicable law. Such property management or brokerage agreement or a short form thereof shall, at Mortgagee's request, be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, Mortgagor and/or Mortgagor's beneficiary shall cause the property manager or broker, as the case may be, to enter into a Subordination Agreement with Mortgagee, in recordable form, whereby such property

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manager or broker, as the case may be, subordinates present and future lien rights and those of any party claiming by, through or under either or both, to the lien of this Mortgage.

## Waiver of Trial by Jury

43. TO INDUCE MORTGAGEE TO ACCEPT THE NOTE, MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDINGS IN WHICH MORTGAGOR AND MORTGAGEE ARE ADVERSE PARTIES, IN CONNECTION WITH THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS.

## Governing Law

44. This Mortgage was accepted by Mortgagee in the state of Illinois and the proceeds of the Note secured hereby were disbursed from the state of Illinois. Accordingly, in all respects, including, without limiting the generality of the foregoing, matters of construction, validity, enforceability and performance, this Mortgage, the Note and the other Loan Documents, and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the state of Illinois applicable to contracts made and performed in such state. Mortgagor hereby unconditionally and irrevocably waives, to the fullest extent permitted by law, any claim to assert that the law of any jurisdiction other than Illinois governs this Mortgage, the Note and other Loan Documents.

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

  
\_\_\_\_\_  
Mark D. Peterson

  
\_\_\_\_\_  
Kathleen A. Peterson

by MARK PETERSON  
ATTORNEY IN  
FACT.

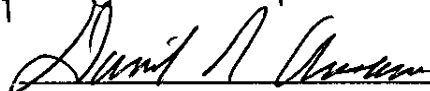
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STATE OF ILLINOIS )  
                                  ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Mark D. Peterson and Kathleen A. Peterson, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15th day of April, 1999.

\* By power of Attorney signed by Mark D. Peterson

  
\_\_\_\_\_  
Notary Public



166613

Property of Cook County Clerk's Office

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## EXHIBIT A

### LEGAL DESCRIPTION

UNIT NUMBERS 4006-1A, 4006-1B, 4006-2A, 4006-2B, 4018-1B, 4018-2A, 4018-3B, 4013-1A, 4013-1B, 4013-2B, 4013-3B, 4013-3A, 4012-1A, 4012-1B, 4012-2A, 4012-2B, 4012-3A, 4012-3B, 4235-1A, 4235-1B, 4235-2A, 4235-2B, 4235-3A, 4235-3B, 4241-1A, 4241-1B, 4241-2A, 4241-2B, 4241-3A, 4241-3B, 4247-1A, 4247-1B, 4247-2A, 4247-2B, 4247-3A, 4247-3B, 4253-1A, 4253-1B, 4253-2A, 4253-2B, 4253-3A AND 4253-3B IN ARLINGTON GROVE CONDOMINIUMS, AS DELINEATED ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE

PART OF THE NORTH ½ OF SECTION 1, TOWNSHIP 42 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH SURVEY IS ATTACHED AS EXHIBIT "A" TO THE DECLARATION OF CONDOMINIUM RECORDED AS DOCUMENT 25364419 AND AS AMENDED FROM TIME TO TIME TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, IN COOK COUNTY, ILLINOIS.

#### 4006 Bonhill, Arlington Heights, IL

02-01-200-083-1067  
02-01-200-083-1068  
02-01-200-083-1069  
02-01-200-083-1070

#### 4013 Bonhill, Arlington Heights, IL

02-01-200-083-1013  
02-01-200-083-1014  
02-01-200-083-1016  
02-01-200-083-1017  
02-01-200-083-1018

#### 4235 Jennifer, Arlington Heights, IL

02-01-200-083-1343  
02-01-200-083-1344  
02-01-200-083-1345  
02-01-200-083-1346  
02-01-200-083-1347  
02-01-200-083-1348

#### 4012 Bonhill, Arlington Heights, IL

02-01-200-083-1073  
02-01-200-083-1074  
02-01-200-083-1075  
02-01-200-083-1076  
02-01-200-083-1077  
02-01-200-083-1078

#### 4018 Bonhill, Arlington Heights, IL

02-01-200-083-1080  
02-01-200-083-1081  
02-01-200-083-1084

#### 4241 Jennifer, Arlington Heights, IL

02-01-200-083-1349  
02-01-200-083-1350  
02-01-200-083-1351  
02-01-200-083-1352  
02-01-200-083-1353  
02-01-200-083-1354

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4247 Jennifer, Arlington Heights, IL

4253 Jennifer, Arlington Heights, IL

02-01-200-083-1355

02-01-200-083-1361

02-01-200-083-1356

02-01-200-083-1362

02-01-200-083-1357

02-01-200-083-1363

02-01-200-083-1358

02-01-200-083-1364

02-01-200-083-1359

02-01-200-083-1365

02-01-200-083-1360

02-01-200-083-1366

Property of Cook County Clerk's Office

**99291169**