

RESOLUTION NO. 2010-R- 05

A RESOLUTION AUTHORIZING
BUSINESS DISTRICT PLAN

WHEREAS, on July 12, 2010, the City Council for the City of Marshall by ordinance adopted a business development and redevelopment district known as the Marshall Square Plaza Business District; and

WHEREAS, said ordinance provided for authority to carry out a business district development or redevelopment plan; and

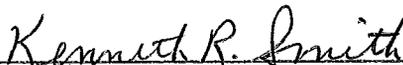
WHEREAS, this Council has negotiated with the company involved for the development and redevelopment of said district; and

WHEREAS, the plan of development and redevelopment should be approved.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF MARSHALL, CLARK COUNTY, ILLINOIS:

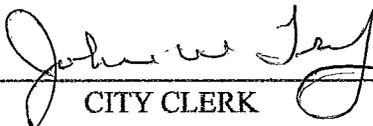
1. The Business District Development and Redevelopment Plan and Agreement, copy of which is attached hereto and made a part hereof as Exhibit A, is hereby approved.
2. That the Mayor and City Clerk are hereby authorized and directed to execute said plan and agreement and any related documents for the implementation of said plan and agreement.

PASSED this 12th day of July, 2010.



MAYOR

ATTEST:



CITY CLERK

(SEAL)

MARSHALL SQUARE PLAZA
BUSINESS DISTRICT DEVELOPMENT AND
REDEVELOPMENT PLAN AND AGREEMENT

This Plan and Agreement made by and between the City of Marshall, Clark County, Illinois hereinafter "City" and David E. Freedheim, of La Jolla, California, hereinafter "Freedheim";

WITNESSETH:

WHEREAS, the real estate located at 1302-1408 N. Michigan Ave., Marshall, Illinois 62441 and described as:

Lot 10 and South 50 feet of Lot 9 of Smitley-Bush Subdivision of a part of Uri Manly's Addition to the Town, (now City) of Marshall, as recorded in Plat Record 4 at page 64 in the Recorder's Office, Clark County, Illinois.

PIN: 08-08-13-06-103-017

has been designated a business development and redevelopment district known as the Marshall Square Plaza Business District by ordinance pursuant to Section 5/11-74.3-1 et seq. of the Illinois Municipal Code (65 ILCS 5/11-74.3-1 et seq.); and

WHEREAS, the adoption of this Plan and Agreement would promote economic and social welfare as well as commercial growth in the City of Marshall; and

WHEREAS, the adoption of this Plan and Agreement conforms with the comprehensive plan for the development of the City of Marshall; and

WHEREAS, the adoption of this Plan and Agreement would enhance the tax base of the Marshall Square Plaza Business District.

NOW THEREFORE the parties agree as follows:

1. City shall:
 - a. Loan to Freedheim from its Capital Projects Fund \$20,000.00, which loan is to be paid back, with monthly payments, over a period of nine months with 3% interest.
2. Freedheim shall:
 - a. Borrow the aforementioned \$20,000.00 from the City's Capital Projects Fund at the terms stated above.
 - b. Secure the loan with a Promissory Note and Mortgage on the real estate described as:

Lot 10 and South 50 feet of Lot 9 of Smitley-Bush Subdivision of a part of Uri Manly's Addition to the Town, (now City) of Marshall, as recorded in Plat Record 4 at page 64 in the Recorder's Office, Clark County, Illinois.

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- c. Said mortgage to be a third mortgage behind a first mortgage in favor of the Citizens National Bank of Paris, Illinois with a current outstanding balance of \$_____ and a second mortgage in favor of Citizens National Bank of Paris, Illinois with a current outstanding balance of \$_____. Freedheim agrees not to increase the amount owed Citizens National Bank under each mortgage through the use of a future advance clause.
- d. Use the loan proceeds for painting, facade work and parking lot improvements.
- e. The leasing of the sites at said locations shall continue through at least the complete payment of the above referenced loan.
- f. In the operation of said rentals Freedheim shall encourage his lessees to employ personnel, to the extent possible, from the City of Marshall or the surrounding area.
- g. Pay for all costs related to the preparation and completion of this loan including, but not limited to, attorneys fees and expenses, title costs and recording fees.

Dated at Marshall, Illinois this ____ day of _____, 2010.

CITY OF MARSHALL

By: Kenneth R. Smith
Kenneth R. Smith
Mayor

ATTEST:

John W. Trefz
John W. Trefz
City Clerk

David E. Freedheim

PROMISSORY NOTE

\$20,000.00

_____, 2010

FOR VALUE RECEIVED, the undersigned, David E. Freedheim, of 5494 Caminito Bayo, La Jolla, CA 92037, promises to pay to the order of the City of Marshall, an Illinois Municipal Corporation, of Marshall, Illinois, the principal sum of Twenty Thousand Dollars (\$20,000.00) bearing an interest rate of 3.00% per annum, payable in eight successive monthly installments of \$2,250.09, and a ninth and final monthly installment of the outstanding principal and accrued interest, with the first installment due one month from even date and continuing on the same day of each successive month thereafter until the entire sum is paid in full.

The undersigned shall pay to the holder hereof for each installment not received by the holder hereof within five (5) days after the installment is due a late charge of five (5) percent of the installment or \$10.00 whichever is greater.

If any installment under this note is not paid when due and remains unpaid after five (5) days after the due date, the entire principal amount outstanding hereunder and the accrued interest and late fees thereon shall at once become due and payable at the option of the holder hereof without notice or demand. Failure to exercise such option shall not constitute a waiver of the right to exercise such option if the undersigned is in default hereunder. In the event of any default in the payment of this note and if suit is brought hereon, the holder hereof shall be entitled to collect in such proceeding all reasonable costs and expenses of suit, including but not limited to reasonable attorney's fees and court costs.

The undersigned shall have the right to prepay the principal amount outstanding in whole or in part provided that the holder hereof may require any partial prepayments to be made on the date installments are due. Any partial prepayment of principal shall be applied against the principal amount outstanding and shall not extend or postpone the due date of any subsequent installment or change the amount of such installment unless the holder hereof shall otherwise agree in writing.

Presentment, notice of dishonor and protest are hereby waived by the undersigned. This note shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

The undersigned acknowledges jurisdiction and venue for enforcement of this Promissory Note shall solely be Clark County, Illinois. The terms and provisions of Exhibit A attached shall apply to this Promissory Note.

David E. Freedheim

ADDITIONAL TERMS OF THE NOTE

DEFINITIONS - "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW - This note and any agreement securing this note will be governed by the laws of the state of Illinois. The fact that any part of this note cannot be enforced will not affect the rest of this note. Any change to this note or any agreement securing this note must be in writing and signed by you and me.

PAYMENTS - Each payment I make on this loan will be applied first to any charges I owe other than principal and interest, then to interest that is due, and finally to principal that is due. No late charge will be assessed on any payment when the only delinquency is due to late fees assessed on earlier payments and the payment is otherwise a full payment. The actual amount of my final payment will depend on my payment record.

PREPAYMENT - I may prepay this loan in whole or in part at any time. If I prepay in part, I must still make each later payment in the original amount as it becomes due until this note is paid in full.

ACCRUAL METHOD - The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1. For interest calculation, the accrual method will determine the number of days in a year. If no accrual method is stated, then you may use any accrual method for calculating interest allowed by law.

POST-MATURITY INTEREST - Interest will accrue on the principal balance remaining unpaid after final maturity at the rate specified on page 1. For purposes of this section, final maturity occurs:

- (a) If this loan is payable on demand, on the date you make demand for payment;
- (b) If this loan is payable on demand with alternate payment date(s), on the date you make demand for payment or on the final alternate payment date, whichever is earlier;
- (c) On the date of the last scheduled payment of principal; or
- (d) On the date you accelerate the due date of this loan (demand immediate payment).

REAL ESTATE OR RESIDENCE SECURITY - If this loan is secured by real estate or a residence that is personal property, the existence of a default and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by this agreement.

DEFAULT - Subject to any limitations in the "Real Estate or Residence Security" paragraph above, I will be in default on this loan and any agreement securing this loan if any one or more of the following occurs:

- (a) I fail to make a payment in full when due;
- (b) I die, am declared incompetent, or become insolvent;
- (c) I fail to keep any promise I have made in connection with this loan;
- (d) I fail to pay, or keep any other promise on, any other loan or agreement I have with you;
- (e) I make any written statement or provide any financial information that is untrue or inaccurate at the time it is provided;
- (f) Any creditor of mine attempts to collect any debt I owe through court proceedings, set-off or self-help repossession;
- (g) The Property is damaged, destroyed or stolen;
- (h) I fail to provide any additional security that you may require;
- (i) Any legal entity (such as a partnership or corporation) that has agreed to pay this note merges, dissolves, reorganizes, ends its business or existence, or a partner or majority stockholder dies or is declared incompetent; or
- (j) Anything else happens that causes you to believe that you will have difficulty collecting the amount I owe you.

If any of us are in default on this note or any security agreement, you may exercise your remedies against any or all of us.

REMEDIES - Subject to any limitations in the "Real Estate or Residence Security" paragraph above, if I am in default on this loan or any agreement securing this loan, you may:

- (a) Make unpaid principal, earned interest and all other agreed charges I owe you under this loan immediately due;

(b) Use the right of set-off as explained below;

(c) Demand more security or new parties obligated to pay this loan (or both) in return for not using any other remedy;

(d) Make a claim for any and all insurance benefits or refunds that may be available on my default;

(e) Use any remedy you have under state or federal law; and

(f) Use any remedy given to you in any agreement securing this loan.

By choosing any one or more of these remedies you do not give up your right to use another remedy later. By deciding not to use any remedy should I be in default, you do not give up your right to consider the event a default if it happens again.

COSTS OF COLLECTION AND ATTORNEYS' FEES - I agree to pay you all reasonable costs you incur to collect this debt or realize on any security. This includes, unless prohibited by law, reasonable attorneys' fees. This provision also shall apply if I file a petition or any other claim for relief under any bankruptcy rule or law of the United States, or if such petition or other claim for relief is filed against me by another.

SET-OFF - I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

(a) Any deposit account balance I have with you;

(b) Any money owed to me on an item presented to you or in your possession for collection or exchange; and

(c) Any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance the due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right to set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right to set-off.

OTHER SECURITY - Any present or future agreement securing any other debt I owe you also will secure the payment of this loan. Property securing another debt will not secure this loan if such property is my principal dwelling and you fail to provide any required notice of right of rescission. Also, property securing another debt will not secure this loan to the extent such property is in household goods.

OBLIGATIONS INDEPENDENT - I understand that my obligation to pay this loan is independent of the obligation of any other person who has also agreed to pay it. You may, without notice, release me or any of us, give up any right you may have against any of us, extend new credit to any of us, or renew or change this note one or more times and for any term, and I will still be obligated to pay this loan. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

WAIVER - I waive (to the extent permitted by law) demand, presentment, protest, notice of dishonor and notice of protest.

PRIVACY - I agree that from time to time you may receive credit information about me from others, including other lenders and credit reporting agencies. I agree that you may furnish on a regular basis credit and experience information regarding my loan to others seeking such information. To the extent permitted by law, I agree that you will not be liable for any claim arising from the use of information provided to you by others or for providing such information to others.

FINANCIAL STATEMENTS - I will give you any financial statements or information that you feel is necessary. All financial statements and information I give you will be correct and complete.

PURCHASE MONEY LOAN - If this is a purchase loan, you may include the name of the seller on the check or draft for this loan.

EXHIBIT A

This Instrument Prepared By: }
Richard J. Bernardoni }
Meehling & Bernardoni }
115 South 6th St., P.O. Box 100 }
Marshall, IL 62441-0100 }
(217) 826-6330 }
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For Recorder's Use Only

MORTGAGE
CITY OF MARSHALL

THIS MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT ("Mortgage") is made as of _____, 2010, by David E. Freedheim ("Mortgagor") whose mailing address is 5494 Caminito Bayo, La Jolla, CA 92037 in favor of City of Marshall, an Illinois Municipal Corporation, of Marshall, Illinois ("Mortgagee"), whose mailing address is City Hall, 201 South Michigan Avenue, P.O. Box 298, Marshall, IL62441-0298. Mortgagor is justly indebted to the Mortgagee including, without limitation, the principal sum of Twenty Thousand Dollars (\$20,000.00) as evidenced by a certain PROMISSORY NOTE of even date herewith ("Note"), made payable to the order of and delivered to the Mortgagee, whereby the obligor promises to pay the Note, late charges, prepayment premiums (if any) and interest at the rate or rates, all as provided in the Note. The final payment of principal and interest, if not sooner paid, renewed, modified, extended or renegotiated shall be due nine months from even date. All such payments on account of the indebtedness secured hereby shall be applied first to interest on the unpaid principal balance of the Note, secondly to any other sums due thereunder, thirdly to all other advances and sums secured hereby, and the remainder to principal.

Mortgagor, (i) in order to secure the payment of said principal sum of money and said interest and late charges and prepayment premiums, if any, fees and expenses, in accordance with the terms, provisions and limitations of this Mortgage and of the Note; (ii) either directly or indirectly as evidenced by a guaranty of payment of performance executed by the Mortgagor or beneficiary of Mortgagor and the performance of the covenants and agreements herein contained by the Mortgagor to be performed; (iii) as security for repayment of any and all other liabilities and obligations of Mortgagor or its beneficiary now or hereafter due Mortgagee, whether direct or indirect, absolute or contingent, primary or secondary, joint or several; and (iv) in consideration of the sum of ONE DOLLAR (\$1.00) in hand paid, the receipt whereof is hereby acknowledged, Mortgagor does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto the Mortgagee and its successors and assigns, the following described real estate and all of its present and hereafter acquired estate right, title and interest therein, lying and being in the County of Clark and State of Illinois to wit:

Lot 10 and South 50 feet of Lot 9 of Smitley-Bush Subdivision of a part of Uri Manly's Addition to the Town, (now City) of Marshall, as recorded in Plat Record 4 at page 64 in the Recorder's Office, Clark County, Illinois.

PIN: 08-08-13-06-103-017

Commonly known as 1302-1408 N. Michigan Ave., Marshall, Illinois 62441, which, with the property hereinafter described, is collectively referred to herein as the "Premises."

TOGETHER with all improvements, tenements, reversions, remainders, easements, fixtures and appurtenances now or hereafter thereto belonging, and all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily); all tenant security deposits, utility deposits and insurance premium rebates to which Mortgagor may be entitled or which Mortgagor may be holding; and all fixtures, apparatus, equipment and articles (other than inventories held for sale) which relate to the use, occupancy, and enjoyment of the Premises. All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared (to the maximum extent permitted by law) to form part and parcel of the real estate and to be appropriated to the use of the real estate, and shall be, for the purposes of this Mortgage, deemed to be real estate and conveyed and mortgaged hereby.

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

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. MAINTENANCE, REPAIR AND RESTORATION OF IMPROVEMENTS, PAYMENT OF PRIOR LIENS, ETC. Mortgagor shall: (a) promptly repair, restore or rebuild any buildings and other improvements now or hereafter on the Premises which may become damaged or destroyed to substantially the same character as prior to such damage or destruction, without regard to the availability or adequacy of any casualty insurance proceeds or eminent domain awards; (b) keep the Premises constantly in good condition and repair, without waste; (c) keep the Premises free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), subject, however, to the rights of the Mortgagor set forth in the next Paragraph below; (d) immediately 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 (no such subsequent lien to be permitted hereunder) and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee; (e) complete within a reasonable time any building(s) or other improvement(s) now or at any time in process of erection upon the Premises; (f) comply with all federal, state and local requirements of law, regulations, ordinances, orders and judgments and all covenants, easements and restrictions of record with respect to the Premises and the use thereof; (g) make no alterations in the

Premises without Mortgagee's prior written consent; (h) suffer or permit no change in the general nature of the occupancy of the Premises without Mortgagee's prior written consent; (i) observe and comply with all conditions and requirements (if any) necessary to preserve and extend all rights, easements, licenses, permits (including without limitation zoning variations and any non-conforming uses and structures), privileges, franchises and concessions applicable to the Premises or contracted for in connection with any present or future use of the Premises; and (j) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof and of the Note. As used in this Paragraph and elsewhere in the Mortgage, the term "Indebtedness" means and includes the unpaid principal sum evidenced by the Note, together with all interest, additional interest, late charges and prepayment premiums thereon (if any), and all other sums at any time secured by this Mortgage.

Anything in (c) and (d) above to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any lien not expressly subordinated to the lien hereof, and defer payment and discharge thereof during the pendency of such contest, provided: (i) that such contest shall have the effect of preventing the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such lien; (ii) that, within ten (10) days after Mortgagor has been notified of the assertion of such lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such lien; and (iii) the Mortgagor shall have deposited with Mortgagee a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable. Such deposits are to be held without any allowance of interest. If Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the lien plus any interest, cost and expenses finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on such lien, or that part thereof then unpaid, together with all interest thereon. If the amount of money so deposited shall be insufficient for the payment in full of such lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such lien or that part thereof then unpaid (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount to be made.

2. **PAYMENT OF TAXES.** Mortgagor shall pay all general taxes before any penalty or interest attaches, and shall pay special taxes, special assessments, water charges, sewer service charges, and all other charges against the Premises of any nature whatsoever when due, and shall, upon written request, furnish to Mortgagee duplicate receipts thereof within thirty (30) days following the date of payment. Mortgagor shall pay in full "under protest" any tax or assessment which Mortgagor may desire to contest, in the manner provided by law.

3. TAX DEPOSITS. Unless waived from time to time by Mortgagee in writing, Mortgagor shall deposit with the Mortgagee, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs (unless otherwise agreed to by Mortgagee), a sum equal to the amount of all real estate taxes and assessments (general and special) next due upon or for the Premises (the amount of such taxes next due to be based upon the Mortgagee's reasonable estimate as to the amount of taxes and assessment to be levied and assessed) reduced by the amount, if any, then on deposit with the Mortgagee, divided by the number of months to elapse before two months prior to the date when such taxes and assessments first become due and payable. Such deposits are to be held without any allowance or payment of interest to Mortgagor and are to be used for the payment of taxes and assessments (general and special) 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 or special) when the same become due and payable, the Mortgagor shall, within ten (10) days after receipt of demand therefor from the Mortgagee, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of the Mortgagee.

Anything in this Paragraph 3 to the contrary notwithstanding, if the funds so deposited are insufficient to pay any such taxes or assessments (general or special) or any installment thereof, Mortgagor will, not later than the thirtieth (30th) day prior to the last day on which the same may be paid without penalty or interest, deposit with the Mortgagee the full amount of any such deficiency.

If any such taxes or assessments (general or special) shall be levied, charged, assessed or imposed upon or for the Premises, or any portion thereof, and if such taxes or assessments shall also be a levy, charge, assessment or imposition upon or for any other premises not encumbered by the lien of this Mortgage, then the computation of any amount to be deposited under this Paragraph 3 shall be based upon the entire amount of such taxes or assessments, and Mortgagor shall not have the right to apportion the amount of any such taxes or assessments for the purpose of such computation.

3a. INSURANCE DEPOSITS. For the purpose of providing funds with which to pay premiums when due on all policies of fire and other hazard insurance covering the Premises and the Collateral (defined below), commencing upon written demand from Mortgagee in writing, Mortgagor shall deposit with the Mortgagee, commencing on the date of disbursement of the proceeds of the loan secured hereby and on the first day of each month following the month in which said disbursement occurs (unless otherwise agreed to by Mortgagee), a sum equal to the Mortgagee's estimate of the premiums that will next become due and payable on such policies reduced by the amount, if any, then on deposit with the Mortgagee, divided by the number of months to elapse before two (2) months prior to the date when such premiums become due and payable. No interest shall be allowed or paid to Mortgagor on account of any deposit made hereunder, and said deposit need not be kept separate and apart from any other funds of the Mortgagee.

4. **MORTGAGEE'S INTEREST IN AND USE OF TAX AND INSURANCE DEPOSITS; SECURITY INTEREST.** In the event of a default hereunder, the Mortgagee may, at its option but without being required so to do, apply any monies at the time of deposit pursuant to Paragraphs 3 and 3a hereof on any of Mortgagor's obligations contained herein or in the Note, in such order and manner as the Mortgagee may elect. When the Indebtedness has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises as the same appear on the records of the Mortgagee. A security interest, within the meaning of the Uniform Commercial Code of the State in which the Premises are located, is hereby granted to the Mortgagee in and to all monies at any time on deposit pursuant to Paragraph 3 and 3a hereof and such monies and all of Mortgagor's right, title and interest are hereby assigned to Mortgagee, all as additional security for the indebtedness hereunder and shall, in the absence of default hereunder, be applied by the Mortgagee for the purposes for which made hereunder and shall be subject to the direction or control of the Mortgagee; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes or assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have furnished Mortgagee with the bills therefor and requested Mortgagee in writing to make application of such funds to the payment of the particular taxes or assessments or insurance premiums for payment of which they were deposited, accompanied by the bills for such taxes or assessments of insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith, but only for its gross negligence or willful misconduct.

5. **INSURANCE.** Mortgagor shall keep all buildings and improvements and the Collateral (defined in Paragraph 27 below) now or hereafter situated on said Premises insured against loss or damage by fire on a so-called "All Risks" basis and against such other hazards as may reasonably be required by Mortgagee, including without limitation of the generality of the foregoing: (a) rent loss or business interruption insurance whenever in the opinion of Mortgagee such protection is necessary, and (b) flood insurance whenever same is available and, in the opinion of Mortgagee, such protection is necessary. Mortgagor shall also provide insurance coverages with such limits for personal injury and death and property damage as Mortgagee may require. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with waiver of subrogation and replacement cost endorsements and a standard non-contributory mortgagee clause attached to all policies, including a provision requiring that the coverages evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. Mortgagor shall deliver all original policies, including additional and renewal policies, 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.

Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard non-contributory mortgagee clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the original policy or policies of such insurance. In the event of a foreclosure of the lien Mortgage, or of a transfer of title to the Premises either in lieu of foreclosure or by purchase at the foreclosure sale, all interest in all insurance policies in force shall pass to Mortgagee, transferee or purchaser, as the case may be.

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

6. ADJUSTMENT OF LOSSES WITHINSURER AND APPLICATION OF PROCEEDS OF INSURANCE. In case of the loss or damage by fire or other casualty, Mortgagee is authorized: (a) to settle and adjust any claim under insurance policies which insure such risks; or (b) to allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, Mortgagee is authorized to collect and receipt for any such insurance monies. So long as: (a) each lease applicable to the premises is in full force and effect and each tenant thereunder is not in default and such loss or damage shall not result in the termination or cancellation of any of those leases or give any tenant thereunder the right to terminate or cancel its lease; (b) no insurer denies liability as to any insured or claims any right of participation in any of the Mortgagee's security; and (c) this Mortgage is not in default, then such insurance proceeds, after deducting therefrom any expense incurred by Mortgagee in the collection thereof, shall be made available by the Mortgagee for the repair, rebuilding or restoration of the building(s) and other improvement(s) on the Premises. In any event, the building(s) and other improvement(s) shall be repaired, restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. If the insurance proceeds are made available for repair, rebuilding or restoration, such proceeds shall be disbursed upon the "Disbursing Party" (hereinafter defined) being furnished with satisfactory evidence of the cost of completion thereof and with architects' certificates, waivers or lien, contractors' and subcontractors' sworn statements, title continuations and other evidence of cost and payments so that the Disbursing Party can verify that the amounts disbursed from time to time are represented by completed and in-place work and that said work is free and clear of mechanics' lien claims. 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 undisbursed balance of such proceeds remaining in the hands of the Disbursing Party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. If the cost of rebuilding, repairing or restoring the buildings and other improvements may reasonably exceed the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), then the Mortgagee must approve plans and specifications of such work before such work shall be commenced. Any surplus which may remain out of said insurance proceeds, after payment of the cost or repair, rebuilding, restoration and the reasonable charges of the Disbursing Party, shall at the option of the Mortgagee, be applied on account of the indebtedness or paid to any party entitled thereto as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on any proceeds of insurance held by the Disbursing Party.

As used in this Paragraph 6, the term "Disbursing Party" refers to the Mortgagee and/or any title insurance company selected by the Mortgagee.

7. **STAMP TAX; EFFECT OF CHANGES IN LAWS REGARDING TAXATION.** If, by the laws of the United States of America or of any state or subdivision thereof having jurisdiction over the Mortgagor, any tax is due or becomes due in respect to the Note or this Mortgage, the Mortgagor covenants and agrees to pay such tax in the manner required by any such law. The Mortgagor further covenants to reimburse the Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note.

In the event of the enactment of any law of the state in which the Premises are located imposing upon the Mortgagee the payment of the whole or any part of taxes, assessments or charges on the lien of this Mortgage, 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 holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments or reimburse the Mortgagee therefor; provided, however, that if in the opinion of counsel for the Mortgagee: (a) it might be unlawful to require Mortgagor to make such payment; or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law; then and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

8. **RESERVED.**

9. **MORTGAGOR AND LIEN NOT RELEASED.** From time to time Mortgagee may, at the Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor, its beneficiary, or Mortgagor's successors or assigns or the consent of any junior lien holder, grantor or tenant, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant, agreement or condition: (a) release anyone primarily or secondarily liable on any of the Indebtedness; (b) accept a renewal note or notes of the Note; (c) release from the lien of this Mortgage any part of the Premises; (d) take or release other or additional security for the indebtedness; (e) consent to any plat, map or plan of the Premises or Declaration of Condominium as to the Premises (in whole or in part); (f) consent to the granting of any easement; (g) join in any extension or subordination agreement; (h) agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the time of payment or the amount of the installments payable thereunder; and (j) waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the indebtedness.

Any actions taken by Mortgagee pursuant to the terms of this Paragraph 9 shall not impair or affect: (a) the obligation of Mortgagor or Mortgagor's successors or assigns to pay any sums at any time secured by this Mortgage and to observe all of the covenants, agreements and conditions herein contained; (b) the guaranty of any individual or legal entity for payment of the indebtedness; and (c) the lien or priority of the lien hereof against the Premises.

Mortgagor shall pay to Mortgagee a reasonable service charge and such title insurance premiums and attorney's fees (including in-house staff) as may be incurred by Mortgagee for any action described in this Paragraph 9 taken at the request of Mortgagor or its beneficiary or beneficiaries.

10. **MORTGAGEE'S PERFORMANCE OF DEFAULTED ACTS.** In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner Mortgagee deems 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 assessment or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting said Premises or contest any tax or assessment or cure any default of any landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorney's fees, and any other monies advanced by Mortgagee in regard to protecting 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 rate of interest set forth in the Note applicable to a period when a default exists thereunder. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

11. **MORTGAGEE'S RELIANCE ON TAX BILLS, ETC.** Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any computer or billing service, bill, statement or estimate procured from the appropriate public office or title company 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 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.

12. **ACCELERATION OF INDEBTEDNESS IN CASE OF DEFAULT.** If: (a) default be made in the due and punctual payment of principal or interest on the Note, or any other payment due in accordance with the terms thereof; or (b) the Mortgagor or any beneficiary thereof or any guarantor of the Note shall file (i) a petition for liquidation, reorganization or adjustment of debt under Title 11 of the United States Code (11 U.S.C. Sec. 101, et seq.) or any similar law, state or federal, whether now or hereafter existing, or (ii) any answer admitting insolvency or inability to pay debts, or (iii) fail to obtain a vacation or stay of involuntary proceedings within ten (10) days, as hereinafter provided; or (c) any order for relief of the Mortgagor or any beneficiary thereof or any guarantor of the Note shall be entered in any case under Title 11 of the United States Code, or a trustee or a receiver shall be appointed for the Mortgagor or for any beneficiary thereof or any guarantor of the Note, or for all or the major part of the property of Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the property of the Mortgagor or of any beneficiary thereof or of any guarantor of the Note in any voluntary or involuntary proceedings for the reorganization, dissolution, liquidation, adjustment of debt or winding up of the Mortgage or of any beneficiary thereof or of any guarantor of the Note and such trustee or receiver shall not be discharged or such

jurisdiction not be relinquished or vacated or stayed on appeal or otherwise stayed within ten (10) days; or (d) the Mortgagor or any beneficiary thereof or any guarantor of the Note secured hereby 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 or any major part of its property; (e) default shall be made in the due observance or performance of any other covenant, agreement or condition hereinbefore or hereinafter contained and required to be kept or performed or observed by the Mortgagor or its beneficiary; (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 its 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, then and in any such event, the whole of the Indebtedness shall at once, at the option of the Mortgagee, become immediately due and payable without notice to Mortgagor. If while any insurance proceeds or condemnation awards are held by or for the Mortgagee to reimburse Mortgagor or any lessee for the cost of repair, rebuilding or restoration of building(s) or other improvement(s) on the Premises, as set forth herein, the Mortgagee shall be or become entitled to accelerate the maturity of the indebtedness, then and in such event, the Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by or for it in reduction of the Indebtedness, and any excess held by it over the amount of the Indebtedness shall be paid to Mortgagor or any party entitled thereto, without interest, as the same appear on the records of the Mortgagee.

13. FORECLOSURE; EXPENSE OF LITIGATION. When the Indebtedness or any part thereof shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien herein for such Indebtedness or part thereof. In any civil action to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the order or judgment for foreclosure and sale all expenditures and expenses which may be paid or incurred by or on behalf of mortgagee including, without limitation, expenditures for attorneys' fees, including those of in house counsel, appraisers' 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 said order or judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens Certificates and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such civil action or to evidence to bidders at any sale which may be had pursuant to such order or judgment the true condition 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 and expenses as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the Premises, including probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any action or proceeding or threatened action or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate set forth in the Note applicable to a period when a default exists thereunder, and shall be secured by this Mortgage.

At all times, the Mortgagor shall appear in and defend any suit, action or proceeding that might in any way in the sole judgment of Mortgagee affect the value of the Premises, the priority of

this Mortgage or the rights and powers of Mortgagee hereunder or under any document given at any time to secure the Indebtedness. Mortgagor shall, at all times, indemnify, hold harmless and reimburse Mortgagee on demand for any and all loss, damage, expense or cost, including cost of evidence of title and attorneys' fees, arising out of or incurred in connection with any such suit, action or proceeding, and the sum of such expenditures shall be secured by this Mortgage, and shall bear interest after demand at the rate specified in the Note applicable to a period when an uncured default exists thereunder, and such interest shall be secured hereby and shall be due and payable on demand.

14. APPLICATION OF PROCEEDS OF FORECLOSURE SALE. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order or priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Paragraph hereof; second, all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon and herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any excess to any party entitled thereto as their rights may appear.

15. APPOINTMENT OF RECEIVER OR MORTGAGEE IN POSSESSION. Upon, or at any time after, the commencement of an action to foreclose this Mortgage, the court in which such action was commenced may, upon request of the Mortgagee, appoint a receiver of the Premises either before or after foreclosure sale, without notice and 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 the Mortgagee or any holder of the Note may be appointed as such receiver as Mortgagee in possession. Such receiver or the Mortgagee in possession shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure action and, in case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not, as well as during any further times (if any) when Mortgagor, except for the intervention of such receiver or Mortgagee in possession, would be entitled to collect such rents, issues and profits, and all other powers which 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 or Mortgagee in possession to apply the net income in its hands in payment in whole or in part of: (a) the Indebtedness secured hereby or by any order or judgment foreclosing the lien of this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or the lien of such order of judgment, provided such application is made prior to foreclosure sale; (b) the deficiency in case of a sale and deficiency.

16. RIGHTS CUMULATIVE. Each right, power and remedy conferred upon the Mortgagee by this Mortgage and by all other documents evidencing or securing the indebtedness and conferred by law and in equity is cumulative and in addition to every other right, power and remedy, express or implied, given now or hereafter existing, at law and in equity; and each and every right, power and remedy herein or therein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee; and the exercise or the

beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of, or discontinuance by, the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

17. **MORTGAGEE'S RIGHT OF INSPECTION.** Mortgagee, its representatives, agents or participants shall have the right to inspect the Premises at all reasonable times, and access thereto shall be permitted for that purpose.

18. **EMINENT DOMAIN AND/OR CONDEMNATION.** Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation. So long as: (a) any applicable lease is in full force and effect and each tenant thereunder is not in default and such taking shall not result in the termination or cancellation of any of those leases or give any tenant thereunder the right to cancel its lease; (b) the Premises require repair, rebuilding or restoration; and (c) this Mortgage is not in default, then any award, after deducting therefrom any expenses incurred in the collection thereof, shall be made available by the Mortgagee for the repair, rebuilding or restoration of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee.

In all other cases, the Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness, whether due or not, or make those proceeds available for repair, restoration or rebuilding of the Premises in accordance with plans and specifications to be submitted to and approved by the Mortgagee. In any case where proceeds are made available for repair, rebuilding or restoration, the proceeds of the award shall be paid out in the same manner and under the same conditions provided in Paragraph 6 hereof for the payment of insurance proceeds toward the cost of repair, rebuilding or restoration. Any surplus which may remain out of said award after payment of such cost of repair, rebuilding, restoration and the reasonable charges of the Disbursing Party shall, at the option of Mortgagee, be applied on account of the Indebtedness or paid to any part entitled thereof as the same appear on the records of the Mortgagee. No interest shall be allowed to Mortgagor on account of any proceeds of any award held by the Mortgagee.

19. **RELEASE UPON PAYMENT AND DISCHARGE OF MORTGAGOR'S OBLIGATIONS.** Mortgagee shall release (in whole or partially) this Mortgage and the lien (in whole or partially) by proper instrument upon payment and discharge of all Indebtedness (or applicable agreed portion) secured hereby (including any prepayment charges and late charges provided for herein or in the Note) and upon payment of a reasonable fee to Mortgagee for the preparation and execution of such proper instrument as shall be determined by Mortgagee in its absolute discretion.

20. **GIVING OF NOTICE.** Any notice 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 the Mortgagor or to the Mortgagee, as the case may be, at the respective addresses set forth on the first

page hereof or at such other place as any party hereto may by notice in writing designate as the place of notice, shall constitute service of notice hereunder.

21. **WAIVER OF DEFENSE.** No action for the enforcement of the lien or of 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.

22. **WAIVER OF STATUTORY RIGHTS.** Mortgagor shall not and will not (nor shall any beneficiary of Mortgagor) apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement of foreclosure of the lien of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, including its beneficiary, waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. Mortgagor does hereby expressly waive any and all rights of redemption from sale under any order or judgment of foreclosure of the lien of this Mortgage on behalf of the Mortgagor, the trust estate and all persons beneficially interested therein and each and every person, except judgment creditors of the Mortgagor in its representative capacity and of the trust estate, acquiring any interest in or title to the Premises subsequent to the date of this Mortgage.

23. **RESERVED.**

23.1 Mortgagor covenants and agrees to furnish to the Mortgagee, within ninety (90) days following the end of every fiscal year applicable to the operation of the improvements on the Premises, a copy of a report of the operations of the Improvements on the premises for the year then ended, to be certified by the Mortgagor or its beneficiary (or a general partner if the beneficiary of Mortgagor is a partnership, or the chief financial officer if the beneficiary of Mortgagor is a corporation) satisfactory to the Mortgagee, including a balance sheet and supporting schedules and containing a detailed statement of income and expenses. Each such certificate to each such annual report shall certify that the certifying party examined such records as were deemed necessary for such certification and those statements are true, correct and complete.

23.2 If Mortgagor fails to furnish promptly any report required by Paragraph 23.1, the Mortgagee may elect (in addition to exercising any other right, remedy and power) to make an audit of all books and records of Mortgagor and its beneficiaries which in any way pertain to the Premises and to prepare the statement or statements which Mortgagor failed to procure and deliver. Such audit shall be made and such statement or statements shall be prepared by an independent Certified Public Accountant to be selected by the Mortgagee. Mortgagor shall pay all expenses of the audit and other services, which expenses shall be secured hereby as additional Indebtedness and shall be immediately due and payable with interest thereon at the rate set forth in the Note applicable to a period when default exists thereunder.

24. **FILING AND RECORDING CHARGES AND TAXES.** Mortgagor will pay all filing, registration, recording and search and information fees, and all expenses incident to the execution and acknowledgment of this Mortgage and all other documents securing the Note and all federal, state, county and municipal taxes, other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution, delivery, filing, recording or registration of the Note, this Mortgage and all other documents securing the Note and all assignments thereof.

25. **BUSINESS PURPOSE; USURY EXEMPTION.** Mortgagor hereby represent, or if applicable Mortgagor has been advised by its beneficiaries, that the proceeds of the loan secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4 and that the principal obligation secured hereby constitutes a "business loan" which comes within the purview and operation of said paragraph.

26. **MISCELLANEOUS. Binding Nature.** This Mortgage and all provisions hereof shall extend to and be binding upon the original Mortgagor named on Page 1 hereof and its successors, grantees, assigns, each subsequent owner or owners of the Premises and all persons claiming under or through mortgagor; and the word "Mortgagor" when used herein shall include all such persons and all persons primarily and secondarily liable for the payment of the Indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage, and shall also include any beneficiary of Mortgagor, direct or indirect.

26.1 **Release of Previous Holder.** The word "Mortgagee" when used herein shall include the successors and assigns of the original Mortgagee named on Page 1 hereof, and the holder or holders, from time to time, of the Note. However, whenever the Note is sold, each prior holder shall be automatically freed and relieved, on and after the date of such sale, of all liability with respect to the performance of each covenant and obligation of Mortgagee hereunder thereafter to be performed, provided that any monies in which the Mortgagor has an interest, which monies are then held by the seller of the Note, are turned over to the purchaser of the Note.

26.2 **Severability and Applicable Law.** In the event one or more of the provisions contained in this Mortgage or in the Note or in any other document given at any time to secure the payment of the Note shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, the Note or other document and this Mortgage, the Note or other document shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein or therein. The validity and interpretation of this Mortgage and the Note it secures are to be construed in accordance with and governed by the laws of the State in which the Premises are situated.

26.3 **Governmental Compliance.** Mortgagor shall not by act or omission permit any lands or improvements not subject to the lien of this Mortgage to include the Premises or any part thereof in fulfillment of any governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises to be used. Similarly, no lands or

improvements comprising the Premises shall be included with any lands or improvements nor subject to the lien of this Mortgage in fulfillment of any government requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this paragraph shall be void.

26.4 Estoppel Certificate. Mortgagor, within fifteen (15) days after mailing of a written request by the Mortgagee, agrees to furnish from time to time a signed statement setting forth the amount of the Indebtedness and whether or not any default, offset or defense then is alleged to exist against the Indebtedness and, in so doing, specifying the nature thereof.

26.5 Non-Joinder of Tenant. After an event of default, Mortgagee shall have the right and option to commence a civil action to foreclose the lien of this Mortgage and to obtain an order or judgment of foreclosure and sale subject to the rights of any tenant or tenants of the Premises. The failure to join any tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any such order or judgment to foreclose their right shall not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

26.6 Evasion of Prepayment Premium. If maturity of the Indebtedness is accelerated by the Mortgagee because of an event of default, as herein provided, and a tender of payment is made by or on behalf of the Mortgagor in an amount necessary to satisfy the Indebtedness at any time prior to judicial confirmation of foreclosure sale, such tender shall constitute an evasion of the prepayment premium provided for in the Note, if any, and shall be treated as a prepayment thereunder. Any such tender must therefore include the prepayment premium, if an required under the Note; or if at that time there is no prepayment privilege provided for in the Note, then such payment will include a prepayment premium of two percent (2%) of the then unpaid principal balance of the Note.

27. SECURITY AGREEMENT AND FINANCING STATEMENT. Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement within the meaning of the Uniform Commercial Code (the "Code") of the State in which the Premises are located with respect to all sums on deposit with the Mortgagee pursuant to Paragraphs 6 and 18 hereof ("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 in EXHIBIT "A" or may constitute 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, 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 (ii) that a security interest in and to the Collateral and Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the Indebtedness and to secure performance by the Mortgagor of the terms, covenants and provisions hereof.

In the event of a default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the real property and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the real property, five (5) days' notice of the sale of the Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee including in-house staff. The Mortgagors agree that without the written consent of the Mortgagee the Mortgagor will not remove or permit to be removed from the Premises any of the Collateral except that so long as the 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 of this Mortgage and covered hereby. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee at the cost of the Mortgagor: (i) such further financing statements and security documents and assurance as Mortgagee may require, to the end that the liens and security interests created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. The Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions thereof or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

The Mortgagor and Mortgagee agree, to the extent permitted by law, that this instrument, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of Sections 9-313 and 9-402 of the Code.

If the Collateral is sold in connection with a 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 agree to assume Mortgagor's obligations as to the security interest 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, Deposits and the deposits described in Paragraph 4 above.

28. LIEN FOR LOAN COMMISSIONS, SERVICE CHARGES AND THE LIKE. So long as the original Mortgagee named on Page 1 hereof is the owner of the Note, and regardless of whether any proceeds of the loan evidenced by the Note have been disbursed, this Mortgage also secures the payment of all loan commissions, service charges, fees to its attorneys (including in-house staff), liquidated damages, expenses and advances due to or incurred by the Mortgagee in connection with the loan transaction intended to be secured hereby, all in accordance with the application of, and loan commitment issued to and accepted by, one or more of Mortgagee or Mortgagor's beneficiaries in connection with said loan, if applicable.

29. **DUE ON SALE OR FURTHER INCUMBRANCE CLAUSE.** In determining whether or not to make the loan secured hereby, Mortgagee examined the credit-worthiness of Mortgagor and/or Mortgagor's beneficiary or guarantors (if applicable), found the same to be acceptable, and relied and continues to rely upon same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagor and/or the beneficiary or guarantor (if applicable) in owning and operating property such as the Premises, found the same to be 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 loan. It is recognized 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 its beneficiary (if applicable). Mortgagor and/or its beneficiary (if applicable) further recognize that any secondary or junior financing placed upon the Premises, or the beneficial interest of beneficiary in Mortgagor (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 encumbrancer 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 purpose of (i) protecting Mortgagee's security, both of repayment by the Indebtedness and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor and/or beneficiary (if applicable) and Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises and the beneficial interest (if applicable) free of subordinate financing liens, beneficiary (if applicable) and Mortgagor agree that if this Paragraph be deemed a restraint on an alienation, it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntary or by operation of law) without the Mortgagee's prior written consent shall be an event of default hereunder. For the purpose of, and without limiting the generality of, the preceding sentence, 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 an event of 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 or power of direction under the trust agreement with the Mortgagor, if applicable;
- (b) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of the Mortgagor (if a corporation), or the corporation which is the beneficiary or one of the beneficiaries under the trust agreement with the Mortgagor, or of any corporation directly or indirectly controlling such beneficiary corporation;
- (c) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any general partnership interest of the limited partnership or general partnership

(herein called the "Partnership") which is the Mortgagor or the beneficiary or one of the beneficiaries under the trust agreement with the Mortgagor;

(d) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any share of stock of any corporation directly or indirectly controlling any such Partnership.

Any consent by the Mortgagee, or any waiver of an event of default, under this Paragraph shall not constitute a consent to, or waiver of any right, remedy or power of the Mortgagee upon a subsequent event of default under this Paragraph.

30. HAZARDOUS MATERIALS. Mortgagor and its beneficiary (for purposes of this paragraph, collectively "Mortgagor") represents, warrants and covenants that Mortgagor has not used Hazardous Materials (as defined hereinafter) on, from, or affecting the Premises 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 Materials, and that, to the best of Mortgagor's knowledge, no prior owner of the Premises or any tenant, subtenant, prior tenant or prior subtenant has used Hazardous Materials on, from, or affecting the Premises 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 Materials. Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials. Without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, store, manufacture, refine, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws or regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant or subtenant, a release of Hazardous Materials onto the Premises or onto any other property. Mortgagor shall comply with and ensure compliance by all tenants and subtenants with all applicable federal, state or local laws, ordinances, rules and regulations, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. Mortgagor shall (a) conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials, on, from or affecting the Premises (i) in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies, (ii) to the satisfaction of Mortgagee, and (iii) in accordance with the orders and directives of all federal, state and local governmental authorities, and (b) defend, indemnify and hold harmless Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to, (i) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous

that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notary seal this _____ day of _____, 2010.

(SEAL)

My commission expires:

This instrument shall be returned to:

City Hall
ATTN: Steve Calhoun
201 South Michigan Avenue
P.O. Box 298
Marshall, IL 62441-0298