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Cook County Recorder 65.00



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(SPACE ABOVE THIS LINE FOR USE BY RECORDER OF DEEDS)

7869-15 CT

MORTGAGE

THIS MORTGAGE ("Mortgage") made this 26th day of September, 2000, by and between OAK FOREST CENTRAL LLC, an Illinois Limited Liability Company, whose address is Attn: Mr. Michael H. Rose at 533 Ashland Avenue, Chicago Heights, Illinois, 60411 (hereinafter "Mortgagor"), unto AUTO-OWNERS LIFE INSURANCE COMPANY, a Michigan Corporation, whose address is 5101 Anacapi Boulevard, Lansing, Michigan 48917 (hereinafter "Mortgagee").

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1A

WITNESSETH:

THAT TO SECURE the payment of certain commercial loan indebtedness in the original principal sum of **ONE MILLION FIVE HUNDRED THOUSAND AND NO/100 (\$1,500,000.00) DOLLARS**, together with interest thereon and other charges provided under the below-referenced Loan Documents, payable in legal tender of the United States of America, as evidenced by Mortgagor's Mortgage Note to Mortgagee, bearing even date herewith (the "Note"), as well as any renewals, modifications or extensions thereof, together with the obligations of Mortgagor and/or other Loan obligor(s) under this Mortgage, a certain Assignment of Leases, a Personal Guaranty of Michael H. Rose ("Guarantor") and a Security Agreement all securing the Note and any other instruments evidencing, securing or executed in conjunction with the debt secured hereby (hereinafter collectively or alternatively called "**Loan Documents**"), Mortgagor hereby mortgages, pledges, grants and warrants and conveys to Mortgagee all of the real estate commonly known as "**Rose Plaza Shopping Center**" shopping/retail center at **5447-5459 W. 159th Street, Oak Forest, Illinois** and legally described in **Exhibit "A"** attached hereto. The foregoing notwithstanding in no event, however, shall the aggregate indebtedness secured hereby at any one time exceed five (5) times the aforestated original principal sum of the Note.

.....
This Instrument Prepared By
and After Recording Return To:

J. Steven Butkus, Esq.
GUERARD, KALINA & BUTKUS
100 W. Roosevelt Road, Suite A-1
Wheaton, Illinois 60187

P.I.N. 28-21-117-018-0000

Property Address:
9,215 +/- S.F. Retail Center at
5447-5459 W. 159th Street
Oak Forest, Illinois

BOX 333-CT

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TOGETHER with all buildings, structures and improvements now or hereafter constructed, erected, installed or placed in or upon said real estate, and all replacements thereof and additions thereto, and all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion or reversions, remainder or remainders thereof, and also all the estate, right, title, interest, property, claim and demand whatsoever of the Mortgagor, of, in and to the same and of, in and to every part and parcel thereof;

TOGETHER with all the leases, rents, issues and profits thereof and any present or future lease or rights to income (whether pursuant to lease or otherwise) growing out of the use and/or occupancy of the above-described real estate, which are hereby specifically assigned, transferred and set over to the Mortgagee;

TOGETHER with all right, title and interest of the Mortgagor, if any, in and to the land lying in the bed of any street, road, avenue or alley, opened, proposed, vacated or to be vacated in front of, behind, adjoining or abutting the above-described real estate, to the centerline thereof;

TOGETHER with all easements, rights and licenses relating to the said real estate;

TOGETHER with all machinery, apparatus, equipment, appliances, floor covering, furniture, furnishings, supplies, materials, fittings, fixtures and personal property of every kind and nature whatsoever, now or hereafter located in or upon, affixed to or intended for use in or upon said real estate (whether stored thereon or elsewhere), or any part thereof, now owned or hereafter acquired by Mortgagor, and used or usable in connection with any present or future operation or maintenance of said real estate, regardless of their classification as fixtures or personal property, and all replacements thereof (the "Equipment"), including, but without limiting the generality of the foregoing, all heating, lighting, ventilating and power equipment, pipes, ducts, pumps, tanks, compressors, engines, motors, conduits, plumbing and cleaning equipment, fire-extinguishing systems, refrigerating and ventilating apparatus, air-cooling and air conditioning apparatus, gas, water and electrical equipment, elevators, escalators, attached cabinets, shelving, partitions, carpeting, communications equipment and all of the right, title and interest of Mortgagor in and to any equipment which may be subject to any title retention or security agreement superior in lien to the lien of this Mortgage. All Equipment hereinabove described (excluding only movable trade fixtures, non-fixed equipment and personal property belonging to third party tenants in possession) shall be deemed part and parcel of said real estate, appropriated to the use of said real estate and, whether affixed or annexed thereto or not, shall for the purpose of this Mortgage be deemed conclusively to be real estate and mortgaged hereby;

TOGETHER with any and all awards or payments, including interest thereon, and the right to receive the same which may be made with respect to any of said real estate as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade of any street, or (c) any other injury to, or decrease in the value of, said real estate, to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Mortgagee and the costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment. Mortgagor shall execute and deliver, from time to time, such further instruments as may be requested by Mortgagee to confirm such assignment to Mortgagee of any such award or payment.

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Any reference herein to the **"Premises"** or **"Mortgaged Premises"** shall be deemed to apply to the above-described real estate and any and all other property and items, including the Equipment, covered hereby and described in the foregoing granting clauses, unless the context shall require otherwise.

And the Mortgagor for itself and its heirs, executors, administrators, representatives, successors and assigns, hereby covenants and agrees with the Mortgagee, its successors and assigns, as follows:

1. **TITLE.** At the time of the execution and delivery of this Mortgage, Mortgagor is well seized of the Mortgaged Premises in fee simple, free from all liens, encumbrances and charges whatsoever, except for the encumbrances shown on **Exhibit "B"** attached hereto, has good right and full power to grant, bargain, sell, convey, mortgage and warrant the same as herein set forth, and shall forever warrant and defend the same against all claims whatsoever, and the lien created by this Mortgage is a first and prior lien on said real estate, subject only to those encumbrances and charges recited in Exhibit "B".

2. **LIENS.** Mortgagor shall permit no lien, encumbrance or charge of any kind to accrue and remain on the Premises or any part thereof, or the improvements thereon, without the prior written consent of Mortgagee.

3. **PAYMENT OF DEBT.** Mortgagor will pay the debt evidenced by the Note, in accordance with its terms, which Note terms are incorporated herein and made a part hereof by this reference, as well as any renewals, modifications or extensions thereof, and will pay any other loans or advances hereafter made by Mortgagee to Mortgagor and any other debt secured hereby in accordance with their respective terms.

4. **INSURANCE.** Mortgagor shall insure all buildings and improvements existing, erected and to be erected on said mortgaged real estate, and the Equipment, for the benefit of Mortgagee against loss or damage by the perils covered by standard fire insurance policies with vandalism, malicious mischief and extended coverage endorsements, and shall obtain such other insurance as may from time to time be reasonably required by Mortgagee, including, but not limited to, loss of rental insurance in an amount sufficient to cover total annual rentals from the Premises in the event of a casualty loss (for a minimum of at least twelve [12] month's rent). All insurance herein provided for shall be in amounts, forms and with companies approved by Mortgagee, and, regardless of the types or amounts of insurance required and approved by Mortgagee, all such policies shall provide that they may be canceled only on thirty (30) days' written notice to Mortgagee. Mortgagor shall assign and deliver to Mortgagee all such policies of insurance (or furnish Mortgagee with a current Certificate of Insurance which must be satisfactory to Mortgagee in form and content in all material respects) as collateral and further security for the payment of the debts secured by this Mortgage, with loss payable to Mortgagee pursuant to mortgagee clauses, without contribution, satisfactory to Mortgagee. Renewal policies shall be delivered to Mortgagee, with premiums fully paid, at least thirty (30) days before the expiration of any existing policy, to be held by Mortgagee. In the event of the foreclosure of this Mortgage, any and all insurance policies in force or written during the

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pendency of said proceedings or during the period of redemption (if any) from said foreclosure proceedings shall, if no redemption be made therefrom, become the property of the purchaser at any sale pursuant to such foreclosure proceedings. After the right of redemption (if any) has expired, Mortgagor and its successors in title and interest shall have no right, title or interest in and to said insurance policies or insurance or the cash surrender value thereof.

In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Mortgagor hereby authorizes and empowers Mortgagee as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this paragraph 4 shall require Mortgagee to incur any expense or take any action hereunder. In the event of a disbursement of insurance proceeds less than \$10,000.00 said funds shall be paid to Mortgagee and provided loan is not in default, Mortgagee shall disburse said funds in accordance with the reasonable instructions of Mortgagor relative to repair of the Mortgaged Premises. In the event of a disbursement of insurance proceeds in the amount of \$10,000.00 or more said funds shall be paid to Mortgagee and Mortgagor further authorizes Mortgagee: (a) to hold without interest the balance of such proceeds to be used to reimburse the cost of reconstruction or repair of the Mortgaged Premises or (b) in the event an Act of Default then exists or if in Mortgagee's reasonable judgment the value of the Mortgaged Premises and/or the debt to value of collateral ratio of the Loan secured hereby is or if upon reconstruction or repair will be materially adversely affected by such loss, or if such damage or destruction, in Mortgagee's reasonable judgment cannot reasonably be fully repaired or reconstructed within six (6) months of the occurrence of such damage or destruction or if such damage or destruction occurs during the last nine (9) months of the term of the Note, then to apply the balance of such proceeds to the payment of the sums secured by this Mortgage, whether or not then due.

If the insurance proceeds are held by Mortgagee to reimburse Mortgagor for the costs of restoration and repair of the Mortgaged Premises, the Mortgaged Premises shall be restored to the equivalent of its original condition or such other condition as Mortgagee may approve in writing. Mortgagee may, at Mortgagee's option, condition disbursement of said proceeds on Mortgagee's receipt, review and approval of such plans and specifications by an architect satisfactory to Mortgagee, contractor's cost estimates and a budget for such restoration and repair work (which is at all times "in-balance" with the available insurance proceeds and Mortgagor's own funds escrowed with Mortgagee for such purpose), Architect's certificate, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Mortgagee may require. Mortgagee may also require all disbursements to be made through a title company construction escrow and otherwise in accordance with Mortgagee's customary construction lending disbursement requirements, procedures and practices. If the insurance proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in the Note or change the amounts of such installments. If the Mortgaged Premises is sold pursuant to the provisions of this Mortgage and/or applicable mortgage foreclosure law or if Mortgagee acquires title to the Mortgaged Premises, Mortgagee shall have all of the rights, title and

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interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Mortgaged Premises prior to such sale or acquisition.

Any surplus proceeds remaining after completion of such restoration shall be applied toward payment of the unpaid balance of said Note, whether then matured or to mature in the future, to be applied on the last maturing installments thereof.

5. **TAXES AND ENCUMBRANCES.** Mortgagor shall pay all taxes, assessments, water rates and other charges, impositions, encumbrances and liens (including prior liens), now existing or hereafter assessed or levied against the Premises, or any part thereof, at such time as the aforesaid become due and payable and prior to the date when the same become delinquent. Mortgagor shall deliver to Mortgagee receipts or other reasonably satisfactory evidence of the timely payment of all such items within not more than ten (10) days after the respective payment due date(s) for such items or in any event upon Mortgagee's request. Mortgagor, in its own name and at its own expense, may contest any such tax, assessment, charge, imposition, encumbrance or lien.

6. **MAINTENANCE AND REPAIRS.** Mortgagor shall (a) maintain the Premises in good condition and repair, including all on-site paved parking areas, roadways, sidewalks and landscaped areas, if any, not commit or suffer any waste of the Premises, and comply with, or cause to be complied with, all statutes, ordinances and requirements of any governmental authority relating to the Premises; (b) promptly repair, restore, replace or rebuild any part of the Premises now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty whatsoever or which may be affected by any proceeding of the character referred to in Paragraph 13; (c) not initiate, join in or consent to any change in any restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Premises, or any part thereof, without the prior written consent of Mortgagee; (d) not construct any buildings or additions on the Premises without the prior written consent of Mortgagee; and (e) within a reasonable time, complete and pay for any additional structure approved by Mortgagee at any time in the process of construction on the Premises.

7. **PAYMENTS BY MORTGAGEE.** Upon any failure of Mortgagor to observe or perform any covenant or condition of this Mortgage, or if any other contingency shall arise or be threatened relating to the Premises, or any part thereof, Mortgagee may, at its option and in a reasonable manner under the circumstances, make any advances or incur any expenses or otherwise act as may, in the judgment of Mortgagee, seem advisable to protect the security of Mortgagee hereunder or carry out the covenants of Mortgagor herein. All advances, costs, expenses and reasonable attorney's fees which Mortgagee may make, pay or incur under any provision of this instrument for the protection of the security of Mortgagee or any of the rights of Mortgagee in connection with the Premises, or in foreclosure proceedings commenced and subsequently abandoned, or in any dispute or litigation in which Mortgagee or the holder of the Note may become involved by reason of or arising out of this Mortgage, or to carry out any covenant of Mortgagor herein which Mortgagor has failed to carry out, shall be paid by Mortgagor to Mortgagee upon demand and bear interest from the date of advance or payment, until repaid, at the annual rate of interest set forth in the Note in the event of default, all of which obligations shall be additional charges

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upon the Premises and be equally secured hereby, prior to any right or title to, interest in, or claim upon the Premises subordinate to the lien of this Mortgage.

8. **REPRESENTATIONS.** Any representation contained in this Mortgage or any other Loan Document shall be deemed a warranty, and breach of any such warranty shall be a default hereunder entitling Mortgagee to accelerate the maturity of the indebtedness secured hereby and deem the same fully and instantly due and payable, in accordance with the provisions of Paragraph 10 of this Mortgage.

9. **REMOVAL OF IMPROVEMENTS AND EQUIPMENT.** No building, improvement, Equipment or other property now or hereafter covered by the lien of this Mortgage shall be transferred, conveyed, removed, demolished or materially altered without the prior written consent of Mortgagee, except that Mortgagor may, without such consent, remove and dispose of worn or obsolete Equipment covered by the lien of this Mortgage in the ordinary course of its business, provided such Equipment is promptly replaced with comparable Equipment of equal or greater value and utility.

10. **ACTS OF DEFAULT.** The entire debt secured hereby, together with interest thereon, and any other charges provided for hereunder or under the Note and other Loan Documents shall become due and payable in full and this Mortgage shall become subject to foreclosure and exercise of other rights, remedies and recourses of Mortgagee, at the option of Mortgagee, without further notice, except only as otherwise provided herein or as specifically provided at Paragraph 23 of this Mortgage (respecting certain default notice and cure provisions):

- (a) In the event of default by Mortgagor in the due and punctual performance of any of the terms, covenants, agreements or conditions contained in this Mortgage or in the event of a default by Mortgagor under any of the Loan Documents; or
- (b) Upon the election by Mortgagee to accelerate the maturity of the Note pursuant to the provisions of the Note or of any other instrument which may be held by Mortgagee as additional security for the Note; or
- (c) After default in the payment of any installment of principal and/or interest on the debt secured hereby; or
- (d) After default in the payment, when due, of any tax, water rate, assessment, imposition, encumbrance or other charge; or
- (e) After default in assigning and delivering or keeping in force the policies of insurance herein described or referred to or in reimbursing Mortgagee for premiums paid on such insurance, as herein provided; or
- (f) After default in furnishing a statement of the amount due on this Mortgage and whether any off-sets or defenses exist against the mortgage debt, as hereinafter provided; or

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- (g) Upon the waste, removal or demolition of, or material alteration to, any part of the Premises; or
- (h) Upon assignment by Mortgagor of the whole or any part of the rents, income or profits arising from the Premises without the prior written consent of Mortgagee; or
- (i) Failure of Mortgagor to remove any Federal tax lien on the Premises, or to bond off or otherwise adequately secure the Premises against said lien; or
- (j) If, by order of a court of competent jurisdiction, a receiver, liquidator or trustee of Mortgagor, or Mortgagor's beneficiary(ies) or any other obligor or guarantor of the debt secured hereby (collectively the **"Guarantors"** and, individually, a **"Guarantor"**), or of any of its/their property, shall be appointed and shall not have been discharged within sixty (60) days; or
- (k) If any Guarantor shall provide Mortgagee with notice that such Guarantor wishes to prospectively terminate his, her or its liability under any Guaranty executed by such Guarantor; or
- (l) If, by decree of such a court, Mortgagor or any Guarantor shall be adjudicated bankrupt or insolvent, or any of its property shall have been sequestered, and such decree shall have continued undischarged and unstayed for sixty (60) days after the entry thereof; or
- (m) If a petition in bankruptcy respecting Mortgagor or any Guarantor pursuant to any bankruptcy or other similar statute applicable to Mortgagor or Guarantor, as now or hereafter in effect, shall be filed, and shall not be dismissed within sixty (60) days after such filing; or
- (n) If Mortgagor or any Guarantor shall file a petition in voluntary bankruptcy or for an arrangement or reorganization under any provision of any bankruptcy or other similar statute or shall consent to the filing of any such petition; or
- (o) If Mortgagor or any Guarantor shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due; or
- (p) If Mortgagor or any Guarantor shall consent to the appointment of a receiver, liquidator or trustee of Mortgagor or of all or any part of its property, or if title to, or possession of, the Premises shall pass to any receiver, trustee or assignee for the benefit of creditors of Mortgagor; or
- (q) If Mortgagor or any Guarantor shall institute any proceedings for the dissolution or liquidation of Mortgagor; or
- (r) If any proceedings be instituted for the foreclosure or collection of any mortgage, judgment or lien affecting the Premises (provided, however, only respecting mechanic lien claims, Mortgagor shall be permitted to contest the same in good faith provided Mortgagor has

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satisfactorily bonded or insured Mortgagee over the same within not more than thirty (30) days after the date such lien is first asserted); or

- (s) If Mortgagor shall sell, transfer or hypothecate any part of the Premises in violation of the terms of this Mortgage and/or any other Loan Document; or
- (t) If Mortgagor shall materially violate any of the provisions of any lease or leases now or hereafter covering or affecting the Premises, or any portion thereof; or
- (u) If Mortgagor shall, without the prior written consent of Mortgagee, permit the Premises, or any part thereof, to be operated as a cooperative or condominium in which the tenants or occupants participate in the ownership, control or management thereof as tenants, stockholders or otherwise; or
- (v) Upon the release or threat of release of any Hazardous Materials (as defined in Paragraph 35) on or from the Premises, or if any proceedings be instituted arising from the release or threat of release of any Hazardous Materials on or from the Premises, or if any citation or administrative order is issued for, or if any fine or penalty is imposed for, or if any proceedings are instituted arising from, the violation of federal, state or local environmental laws, ordinances, rules, regulations or policies and any of the foregoing continues and persists beyond and/or otherwise is not fully and completely remediated and cured in accordance with applicable laws, rules, regulations or ordinances within thirty (30) days after such occurrence is first known or reasonably should have been known to exist; or
- (w) Upon either the (i) filing of formal charges under, or (ii) violation by Mortgagor of, any federal, state or local statute, law or ordinance for which forfeiture of the Premises or any property mortgaged hereby is a potential penalty.

11. TITLE TO EQUIPMENT. Mortgagor warrants that (except for movable trade fixtures, non-fixed equipment and personal property belonging to third party tenants in possession) it owns all Equipment described in this Mortgage free and clear of any and all liens and security interests, except for the lien granted by this Mortgage and other liens and security interests subordinate to the lien of this Mortgage heretofore approved in writing by Mortgagee. Mortgagor further warrants that, as to Equipment hereafter acquired by it, it will own all such Equipment at the time it is brought on the Premises and thereafter free and clear of any and all liens and security interests, except for the lien created by this Mortgage and other liens and security interests subordinate to the lien of this Mortgage approved by Mortgagee in writing.

12. FUTURE LIENS. Mortgagor covenants not to execute any mortgage, chattel mortgage, security agreement, deed of trust or other document or agreement granting a lien against the right, title and interest of Mortgagor in the Premises covered or to be covered by this Mortgage without the prior written approval of Mortgagee, and then only with the prior written consent of Mortgagee and when the document granting any such lien expressly provides therein that the same shall be subject to the lien of Mortgagee under and pursuant to this Mortgage for the full amount

secured hereby, together with interest thereon, and shall also be subject and subordinate to any then existing or future leases affecting the Premises.

13. **EMINENT DOMAIN.** Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, Mortgagor shall continue to make the required payments on the entire debt secured hereby until any such award or payment shall have been actually received by Mortgagee, and any reduction in the principal sum resulting from the application by Mortgagee of such award or payment, as hereinafter set forth, shall be deemed to take effect only on the date of such receipt. In the event of a partial taking of any single parcel, any such award or payment may, at the option of the Mortgagee, be retained and applied by Mortgagee, without penalty or surcharge, toward payment of the unpaid balance of the Note, to be applied upon the last maturing installments thereof in the inverse order of their maturity, or be paid over wholly or in part to or for the benefit of Mortgagor, subject to its compliance with such requirements as Mortgagee, in its sole discretion (reasonably exercised), may establish for the application of such award or payment, or part thereof, for the purpose of altering, restoring or rebuilding any part of the Premises which shall have been altered, damaged or destroyed as a result of any such taking, alteration of grade, or other injury to the Premises, or for any other purpose or object satisfactory to Mortgagee. Mortgagee shall not be obligated to see to the application of any amount paid over to Mortgagor, and if, prior to the receipt by Mortgagee of such award or payment, the Premises shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive said award or payment, to the extent of any deficiency judgment on this Mortgage which shall have been sought and recovered or denied and the reasonable attorney's fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment. Any award or payment for a total taking of any single parcel shall be paid over solely to the Mortgagee and applied by it on the unpaid principal balance of the Note, without penalty or surcharge, and shall be applied on the last maturing installments thereof in the inverse order of their maturity.

14. **LEASES.** Mortgagor shall observe and perform all covenants, conditions and agreements contained in any lease or leases now or hereafter affecting the Premises, or any portion thereof, on the part of Mortgagor to be observed and performed. Mortgagor will neither do, nor neglect to do, nor permit to be done, anything which may cause the modification or termination of any such lease or leases, or of the obligations of any tenant or any person claiming through any tenant thereunder, or which may diminish or impair the value of any such lease or leases, or the rents provided for therein, or the interest of the landlord or of Mortgagee thereunder; and will promptly, reasonably, enforce landlord's remedies thereunder following default by any tenant. Mortgagor, upon request, from time to time, shall furnish to Mortgagee a statement in such reasonable detail as Mortgagee may require, certified by Mortgagor, of all leases relating to the premises and conformed true copies of any and all such leases. Mortgagor shall comply, and shall exercise its best efforts to obtain the compliance by all tenants, subtenants or other occupants of the Premises, with all applicable federal, state and local environmental laws, ordinances, rules and regulations and shall obtain and comply with, and shall exercise its best efforts to ensure that all tenants, subtenants and other such occupants obtain and comply with, any and all approvals, registrations or permits required thereunder. The foregoing covenants shall bind and apply to any beneficiary of any land trust-Mortgagor as well.

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15. **REMEDIES.** Mortgagee shall have the right from time to time, at Mortgagee's sole discretion, to sue for any amounts due hereunder or under the Note or other Loan Documents, whether interest, installments of principal, taxes, or any other debt required to be paid under the terms thereof, as the same become due, without regard to whether or not the debt secured by the Mortgage shall be due and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or other actions, for a default or defaults by Mortgagor existing at the time such earlier action was commenced. The rights of Mortgagee arising under the clauses and covenants contained in this Mortgage and each and every other Loan Document shall be separate, distinct and cumulative, and none of them shall be in exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision hereof to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.

16. **NON-WAIVER.** Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor. Neither the Mortgagor, nor any other person now or hereafter obligated for the payment of the whole or any part of the debt now or hereafter secured hereby, shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor, or of any other person so obligated, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured hereby, or by reason of any agreement or stipulation between any subsequent owner or owners of the Premises and the Mortgagee extending the time of payment or modifying the terms of the Note, this Mortgage or the other Loan Documents without first having obtained the consent of Mortgagor or such other person, and in any event, Mortgagor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Premises, Mortgagee may release the obligation of anyone at any time liable for any of the debt secured hereby or any part of the security held for the debt, and may extend the time of payment or otherwise modify the terms of the Note or Mortgage without, as to the security of the remainder thereof, in anywise impairing or affecting the lien of this Mortgage or the priority of such lien as security for the payment of the debt as it may be so extended or modified, over any subordinate lien; and the holder of any subordinate lien shall have no right to terminate any lease affecting the Premises, whether or not such lease is subordinate to this Mortgage. The Mortgagee may resort for the payment of the debt secured hereby to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

17. **MORTGAGEE-IN-POSSESSION/RECEIVER.** Upon occurrence of an default under this Mortgage or the other Loan Documents, as aforesaid, Mortgagee may in person, by agent or by a court-appointed receiver, enter upon and take and maintain full control of the Mortgaged Premises in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents, revenues, proceeds and deposits of the Mortgaged Premises, the making of repairs to the Mortgaged Premises and the execution or termination of contracts providing for the

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management or maintenance of the Mortgaged Premises, all on such terms as Mortgagee deems best to protect the security of this Mortgage. In the event Mortgagee elects to seek the appointment of a receiver for the Mortgaged Premises upon breach of any covenant or agreement or default of Mortgagor or any other obligor or Guarantor in this Mortgage or any other Loan Document, Mortgagor for itself and on behalf of any other obligor or Guarantor hereby expressly consents to the appointment of such receiver. Mortgagee or the receiver shall be entitled to receive a reasonable fee for so managing the Mortgaged Premises.

All rents, revenues, proceeds and deposits collected subsequent to delivery of written notice by Mortgagee to Mortgagor of a default under this Mortgage or the other Loan Documents, aforesaid, shall be applied first to the costs, if any, of taking control of and managing the Mortgaged Premises and collecting the rents, revenues, proceeds and deposits, including, but not limited to, attorney's fees, premiums on receiver's bonds, costs of repairs to the Mortgaged Premises, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Premises, and the costs of discharging any obligations or liability of Mortgagor or any other obligor or Guarantor as lessor, landlord, operator or licensor of the Mortgaged Premises and then to the sums secured by this Mortgage. Mortgagee or the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Premises and shall be liable to account only for those rents, revenues, proceeds or deposits actually received by Mortgagee. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Mortgaged Premises by reason of anything done or left undone by Mortgagee under this paragraph.

If the rents, revenues, proceeds or deposits of the Mortgaged Premises are not sufficient to meet the costs, if any, of taking control of and managing the Mortgaged Premises and collecting the rents, revenues, proceeds or deposits any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Unless Mortgagee and Mortgagor agree in writing to other terms of payment, such amounts shall be payable upon notice from Mortgagee to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the Default Rate stated in the Note.

Any entering upon and taking and maintaining of control of the Mortgaged Premises by Mortgagee or the receiver and any application of rents, revenues or proceeds as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Mortgagee under applicable law or provided herein.

18. ASSIGNMENT OF RENTS. Mortgagor, as additional security for the payment of the debt evidenced by the Note, together with interest thereon, insurance premiums, taxes and assessments, at the time and in the manner provided herein, and for the performance of the covenants and agreements contained herein and in the other Loan Documents, does hereby sell, assign, transfer and set over unto Mortgagee (i) all of the rents, profits, income, revenues, deposits and other moneys, whether due or to become due, under all oral or written leases, licenses or other agreements for the use or occupancy of the Premises, or any part thereof, in existence or coming into existence during the period this Mortgage is in effect, and (ii) all of the rights and benefits conferred by the Illinois Mortgage Foreclosure Act and any other applicable laws pertaining thereto. **This assignment of rents is an absolute and present assignment** and shall run with the land and be good and valid as

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against Mortgagor herein, or those claiming by, through or under Mortgagor, from the date of the recording of this Mortgage, provided, however, that Mortgagor may collect and retain such rents, profits and income so long as Mortgagor is not in default hereunder. This assignment shall continue to be operative during the foreclosure or any other proceeding taken to enforce this Mortgage. In the event of a sale on foreclosure which shall result in deficiency, this assignment shall stand as security during the redemption period for the payment of such deficiency.

In the event of default by Mortgagor under the Loan Documents, Mortgagor shall, upon demand therefor made by Mortgagee, deliver and surrender possession of the Premises to Mortgagee, who shall thereafter collect the rents, profits and income therefrom, rent or lease said Premises or any portion thereof upon such terms and for such time as it may deem best, terminate any tenancy and maintain proceedings to recover rents or possession of the Premises from any tenant or trespasser, and apply the proceeds of such rent, profits and income actually collected, less all reasonable costs incurred in making such collection or in renting, leasing, operating or maintaining the Premises all as further provided pursuant to Paragraph 17 ("Mortgagee-in-Possession/Receiver") hereof or other applicable provisions of this Mortgage and the other Loan Documents.

In the event that Mortgagor fails, refuses or neglects to deliver or surrender such possession, Mortgagee shall be entitled to the appointment of a receiver of the Premises and of the earnings, issues, rents, profits and income with such power as the Court making such appointment may confer, all as further provided pursuant to Paragraph 17 ("Mortgagee-in-Possession/Receiver") hereof or other applicable provisions of this Mortgage and the other Loan Documents. The collection by Mortgagee of rents or other income from the Premises shall in no way waive the right of Mortgagee to foreclose the Mortgage in the event of default, and Mortgagee shall be entitled to all of the rights and remedies accorded to a mortgagee by the statutes and other applicable laws of the State of Illinois in effect from time to time.

19. CROSS-DEFAULT. The Note secured by this Mortgage is or may also be secured by an Assignment of Leases, a Security Agreement or other security instruments and Loan Documents (hereinafter defined). Any default under any instrument or agreement delivered to evidence or secure the indebtedness secured hereby, or executed in conjunction therewith, shall be deemed an act of default by Mortgagor hereunder, entitling Mortgagee to all remedies granted it upon default hereunder. Any act of default by Mortgagor under this Mortgage shall be deemed an act of default by Mortgagor under any other instrument or agreement evidencing or given to secure the debt secured hereby, or executed in conjunction therewith, entitling Mortgagee to all remedies granted it upon default thereunder.

20. TAX AND INSURANCE ESCROW. Mortgagor shall pay to Mortgagee, at the time of and in addition to the monthly installments of principal and/or interest due under the Note, a sum equal to one-twelfth (1/12) of (a) the amount estimated by Mortgagee to be sufficient to enable Mortgagee to pay at least thirty (30) days before they become due and payable, all taxes, assessments and other similar charges levied against the Premises, and (b) the amount of the annual premiums on any policies of insurance required to be carried by Mortgagor hereunder. Such monies may be commingled with the general funds of Mortgagee, and no interest shall be payable thereon nor shall such monies be deemed to be held in trust for the benefit of Mortgagor. Upon notice at any time, the

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Mortgagor will, within ten (10) days, deposit such additional sum as may be required for the payment of such taxes, assessments, charges or premiums. In the event of foreclosure of this Mortgage, any of such monies then remaining on deposit with the Mortgagee or its agents shall be applied against the indebtedness hereby secured, prior to the commencement of foreclosure proceedings. The obligation of Mortgagor to pay taxes, assessments, charges or insurance premiums as in this Mortgage specified is not affected or modified by the arrangements set out in this Paragraph. Any default by the Mortgagor in the performance of the provisions of this Paragraph shall constitute a default under this Mortgage.

The foregoing notwithstanding, Mortgagee hereby agrees to initially suspend the requirement of such real estate tax and insurance escrows, it being understood and agreed, however, that such initial suspension is subject to Mortgagee's right to elect to reinstate such real estate tax and insurance escrow requirements upon the occurrence of either: (i) any Event of Default even if cured or (ii) failure by Mortgagor to furnish Mortgagee with satisfactory evidence of timely payment of real estate taxes and insurance premiums within fifteen (15) days after each due date for such respective payments.

21. TAXATION OF MORTGAGES. In the event of the passage after the date of this Mortgage of any law of the State of Illinois, deducting from the land for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust or debts secured thereby for state or local purposes, or the manner of the operation of any such taxes so as to affect the interest of Mortgagee, then and in such event, Mortgagor shall bear and pay the full amount of such new or additional taxes, provided that if for any reason payment by Mortgagor of any such new or additional taxes would be unlawful or would constitute usury or render the loan or indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of the Note, or this Mortgage, or otherwise, Mortgagee may, at its option, declare the whole sum secured by this Mortgage with interest thereon, to be immediately due and payable, or pay that amount or portion of such taxes as renders the loan secured hereby unlawful or usurious, in which latter event Mortgagor shall concurrently therewith pay the remaining lawful and nonusurious portion or balance of said taxes. The foregoing notwithstanding, the provisions of this Paragraph 21 do not apply to state or federal corporate or business income taxes which may apply to the interest or other income earned by Mortgagee under the Note.

22. INTENTIONALLY OMITTED.

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23. **NOTICE OF MONETARY OR NONMONETARY DEFAULT/CURE PROVISION.** Unless and except as otherwise expressly provided herein or in the Note or other Loan Documents, in the case of any monetary default or failure by Mortgagor, Mortgagee shall not take any action or exercise any remedy available to Mortgagee under this Mortgage instrument, unless Mortgagor shall have failed to fully remedy such monetary default (including payment of any applicable late charges, default interests and reasonably attorneys fees and other charges of Mortgagee) within five (5) days after the giving by Mortgagee of written notice to Mortgagor of such monetary default, PROVIDED, HOWEVER, Mortgagee shall not be required to give such notice as to any monetary default(s) more than twice during any calendar year during the term of the Note and Loan secured hereby. Anything herein or elsewhere to the contrary notwithstanding, in case of default by Mortgagor as to any nonmonetary item, notwithstanding the existence and continuance of such default, Mortgagee shall not take any action or exercise any remedy to which it may be entitled against Mortgagor, unless Mortgagor shall have failed to remedy the default within fifteen (15) days after notice of such nonmonetary default or shall have, in the judgment of Mortgagee, commenced appropriate action to remedy within such fifteen (15) days any nonmonetary default which by its nature is not curable within such fifteen (15) days but is by its nature curable and shall be proceeding diligently therewith, provided, however, in any event such full cure of such nonmonetary default is completed within not more than thirty (30) additional days. The foregoing nonmonetary default cure provisions shall not apply to nor be available to Mortgagor in the event of any breach of default under the restrictions against transfer or encumbrance covenants set forth herein or in the other Loan Documents or the occurrence of a bankruptcy, insolvency, dissolution and/or assignment for benefit of creditors of Mortgagor or any Guarantor.

24. **INSPECTION.** Mortgagee and any persons authorized by Mortgagee shall have the right to enter and inspect the Premises at all reasonable times during normal business hours and upon notice to Mortgagor.

25. **CERTIFICATION OF DEBT.** Mortgagor, upon request made either personally or by mail, shall certify, by a writing duly acknowledged, to Mortgagee or to any proposed assignee of this Mortgage, the amount of principal and interest then secured by this Mortgage and whether any off-sets or defenses exist against the mortgage debt. Such certification shall be delivered to Mortgagee within ten (10) days of a request therefor.

26. **TRANSFER.** In the event of the sale or transfer by operation of law, or otherwise, of all or any part of the Premises, Mortgagee is hereby authorized and empowered to deal with any vendee or transferee with reference to said Premises or the debt secured hereby, or with reference to any of the terms or conditions thereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from its liability or undertakings hereunder, subject to the other provisions of this Mortgage.

27. **FINANCIAL STATEMENTS.** Mortgagor shall furnish to Mortgagee, (i) within ninety (90) days after the end of each calendar year of Mortgagor, a financial statement satisfactory to Mortgagee reflecting the complete results of the operation of the Premises only, including a statement of annual income and expenses (together with a schedule of rents received by Mortgagor from the Premises for such year and a schedule of gross sales for each tenant at the Premises who or which has

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a percentage lease), for the calendar year then ended and stating in comparative form comparable figures as of the end of and for the previous calendar year, certified as true and correct by Mortgagor, (ii) within ninety (90) days after the end of each calendar year, a complete rent roll for the Premises setting forth the rental status thereof, including, but not limited to, the name of each tenant, the area in square feet leased to and occupied by each tenant and the rental being paid, (iii) within five (5) days after the filing thereof, copies of Mortgagor's and any Guarantor's federal, state and local income tax returns; and (iv) such interim certified rent roll and operating statement and periodic-annual personal financial statement(s) (as to the Guarantor[s]) as may be required by Mortgagee. Such personal financial statement(s) of the Guarantor(s) shall include a statement of income and cash flow. All such statements shall be in form and substance satisfactory to Mortgagee and shall be prepared in accordance with generally accepted accounting principles, consistently applied. Mortgagee will be permitted, upon five (5) days' prior written notice, to examine and make copies of all books, record and/or income tax returns of Mortgagor pertaining to the earnings and expenses of the Premises, and all supporting vouchers and data, at a place within the State of Illinois for a period of three (3) years after submission of such statements and/or reports by Mortgagor to Mortgagee.

28. **EXCESS INTEREST.** Notwithstanding any provision hereof, it is not intended by this Mortgage to impose upon Mortgagor any obligation to pay interest in excess of the maximum rate of interest permitted by law, and any interest which so exceeds such maximum rate of interest shall automatically be applied in reduction of principal due on the Note to the extent of such excess.

29. **NOTICE.** Every provision for notice and demand or request shall be deemed fulfilled by telegraphic or written notice and demand or request (a) personally served on one or more of the persons who shall at the time hold the record title to the Premises, or on their heirs, representatives, successors or assigns, (b) mailed by U.S. Certified Mail, Return Receipt Requested, by depositing it in any U.S. post office or mail box, enclosed in a post-paid envelope addressed to such person or persons, or their heirs, representatives, successors or assigns, at his or their address or addresses last known to Mortgagee, or (c) delivered to such person or persons, or their heirs, representatives, successors or assigns, at such address or addresses by Federal Express or comparable expedited delivery service. Notices given pursuant to subsections (a) and (c) shall be effective upon delivery, and notices given pursuant to subsection (b) shall be effective three (3) business days after mailing.

30. **PROHIBITION ON SALE OR ENCUMBRANCE.** In the event that Mortgagor, without the prior written consent of Mortgagee, shall transfer, sell, assign, convey or further encumber all or any portion of its title and interest in and to the Premises, or any part thereof, in actuality or practically or by operation of law (including the underlying beneficial interest or any underlying ownership interest in Mortgagor itself which result(s) in Michael H. Rose, Guarantor, having less than Fifty One (51%) Percent ownership in the Mortgagor), or contract to do any of the foregoing (including, without limitation, options to purchase, installment sales contracts, land contracts or sale leasebacks), or shall ground lease all or any portion of the Premises or change the legal possession thereof, or shall be divested of its title, or any interest therein, in any manner or way, whether voluntary or involuntary, then, upon occurrence of any such event, and irrespective of the maturity date expressed in the Note, the entire principal balance of the Note remaining at the time unpaid, together with accrued interest thereon and any applicable prepayment premiums shall, at the

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election of Mortgagee and without notice of such election or demand or presentment, become immediately due and payable. Any change in the legal or equitable title to the Premises or in the beneficial ownership of the Premises, whether or not of record, and whether or not for consideration or any disposition of any part of the aforementioned respective interests (including the death of any Guarantor), shall be deemed a transfer of interest in the Premises. In connection herewith, the financial stability of Mortgagor and all Guarantors is a substantial and material consideration to Mortgagee in its agreement to make the loan secured hereby to Mortgagor. Mortgagor acknowledges that the transfer of an interest in the Premises may significantly or materially alter or reduce Mortgagee's security for the indebtedness secured hereby.

The foregoing notwithstanding, the death of any personal Guarantor shall result in an Event of Default, but Mortgagee will temporarily forbear from and suspend taking action solely on the basis thereof (to the exclusion of any other Events of Default) and Mortgagor shall be permitted to propose to Mortgagee reasonably satisfactory substitute personal guarantor(s) who have equal or greater financial net worth and liquidity as the deceased Guarantor and reasonably equivalent management ability and expertise as such deceased Guarantor relative to Mortgagor's business operations, whereupon Mortgagee may elect in its sole discretion (reasonably exercised) to accept the substitute personal guaranty(s) of such substitute guarantor(s) to cure such "death of Guarantor" Event of Default.

The foregoing notwithstanding, if and to the extent the Note contains an express limited loan assumption right and provisions such terms and provisions shall govern and control to the extent the same are inconsistent with the foregoing prohibitions.

31. APPLICABLE LAW. Any proceedings for the foreclosure of this Mortgage or the enforcement of any rights conferred on Mortgagee under the terms hereof shall be governed by the laws of the State of Illinois.

32. DEFINITIONS. Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean "Mortgagor and/or any individual mortgagor and/or any subsequent owner or owners of the Premises", together with any beneficiary(ies) of a land trust-Mortgagor, the word "Mortgagee" shall mean "Mortgagee or any subsequent holder or holders of this Mortgage", and the word "person" shall mean "an individual, corporation, partnership or unincorporated association." Whenever and wherever the singular number is used herein, it shall include the plural and vice-versa, as the context may require, and the pronouns "he" or "it" referring to the Mortgagor shall also include "he", "she", "they" or "it" as the context may require.

33. MARGINAL HEADINGS. The marginal headings are inserted merely for convenience and shall not modify the terms of this instrument in any respect.

34. SEVERABILITY OF PROVISIONS. The invalidity of any of the covenants, phrases or clauses in this Mortgage shall not affect the remaining portions hereof, and this Mortgage shall be construed as if such invalid covenant, phrase or clause had not been contained herein.

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35. HAZARDOUS MATERIALS. Mortgagor represents, warrants, covenants and agrees that:

- (a) 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;
- (b) Mortgagor has no knowledge of any use by any prior owner of the Premises or any prior or existing tenant, subtenant or occupant of 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;
- (c) Mortgagor has never received any written notice of any violations of 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 at the Premises, and has no knowledge of any action commenced or threatened by any party for noncompliance therewith;
- (d) Mortgagor shall only use, and shall cause or permit the tenants, invitees, subtenants or occupants of the Premises to use, Hazardous Materials in the ordinary course of business at the Premises only and any such use shall not in any manner violate federal, state or local laws, ordinances, rules, regulations or policies governing such use. Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or occupant of the Premises, a release of Hazardous Materials onto the Premises or onto any other property;
- (e) Mortgagor shall 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, under, from or affecting the Premises in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations and policies, to the reasonable satisfaction of Mortgagee, and in accordance with the orders and directives of all federal, state, and local governmental authorities;
- (f) Mortgagor shall 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, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of, or in any way related to, (1) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Premises or the soil, water, vegetation, buildings,

personal property, persons or animals thereon; (2) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Premises; (3) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials with respect to the Premises; and/or (4) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or reasonable written requirements of Mortgagee provided to Mortgagor, which are based upon or in any way related to such Hazardous Materials used in the Premises;

- (g) In the event the Mortgage is foreclosed or Mortgagor tenders a deed in lieu of foreclosure, Mortgagor shall deliver the Mortgaged Property to Mortgagee free of any and all Hazardous Materials so that the condition of the Premises shall conform with all applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises; and
- (h) The environmental investigation conducted by Mortgagee was conducted solely for the benefit of Mortgagee to protect its interest as mortgagee. The investigation was not intended to be and shall not be relied upon by Mortgagor for any purposes, including, but not limited to, satisfaction of Mortgagor's obligation, if any, to conduct an independent environmental investigation. The conducting of the environmental investigation by Mortgagee does not and shall not be construed to create any obligation or liability on the part of Mortgagee to Mortgagor.

For purposes of this Mortgage, "Hazardous Materials" includes, without limitation, any materials or substances so defined or identified as "hazardous materials" and/or "hazardous substances" under applicable laws, rules and/or regulations:

- (i) defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), and amendments thereto and regulations promulgated thereunder;
- (ii) defined in the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), and amendments thereto and regulations promulgated thereunder;
- (iii) defined in the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and amendments thereto and regulations promulgated thereunder;
- (iv) defined in the Illinois Responsible Property Transfer Act of 1988 (Public Act 86-679) and amendments thereto, regulations promulgated thereunder, and replacements thereof;
- (v) containing gasoline, oil, diesel fuel or other petroleum products;
- (vi) containing polychlorinated biphenyls (PCBs);
- (vii) containing asbestos;

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- (viii) which are radioactive;
- (ix) which are biological; or
- (x) the presence of which require investigation or remediation under any federal, state or local statute, regulation, ordinance or policy, or under any rules, regulations or policies promulgated thereunder, or which is or becomes defined as a "hazardous waste" or "hazardous substance" under any federal, state or local statute, regulation or ordinance, and any toxic, explosive, corrosive or otherwise hazardous substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, or which cause a nuisance upon or waste to the Premises.

For purposes of this Paragraph, "rules, regulations or policies" shall mean written rules, regulations or policies promulgated by a government agency or entity of legal and binding effect.

The provisions of this Paragraph shall be in addition to any of the obligations and liabilities Mortgagor may have to Mortgagee at common law, and shall survive (i) the repayment of all sums due under the Note and the other Loan Documents, (ii) the satisfaction of all of the other obligations of Mortgagor hereunder and under the other Loan Documents, (iii) the discharge of this Mortgage, and (iv) the foreclosure of this Mortgage or acceptance of a deed in lieu thereof.

36. WAIVERS. Notwithstanding the existence of any other security interests in the Mortgaged Premises held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Mortgaged Premises shall be subjected to the remedies provided herein. Mortgagee shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor and any party who now or hereafter acquires a security interest in the Mortgaged Premises and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein. Mortgagor for itself and on behalf of its owner(s)/member(s) also waives any right of set-off and/or recoupment Mortgagor may have against Mortgagee. **MORTGAGOR FOR ITSELF AND ON BEHALF OF ITS OWNER(S)/MEMBER(S) FURTHER WAIVE ANY RIGHT MORTGAGOR AND/OR OWNER(S)/MEMBER(S) MAY HAVE TO DEMAND A JURY TRIAL IN RELATION TO ANY ACTION BROUGHT BY MORTGAGEE TO EXERCISE ITS REMEDIES, UNDER THIS MORTGAGE, THE NOTE OR THE OTHER LOAN DOCUMENTS.** To the extent permitted by law, Mortgagor for itself and on behalf of its Owner(s)/Member(s) waives any right of reinstatement and further waive the benefits of all present and future valuation, appraisal, stay, redemption and moratorium laws under any state or federal law. **FURTHER MORTGAGOR ON ITS OWN BEHALF AND ON THE BEHALF OF ITS OWNER(S)/MEMBER(S), HEREBY EXPRESSLY WAIVE ALL RIGHTS OF REDEMPTION PURSUANT TO THIS MORTGAGE.**

37. BUSINESS LOAN. The Mortgagor represents and warrants that the loan evidenced by the Note secured hereby is a business loan within the purview of Section 205/4(1)(c) of Chapter

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815 of the Illinois Compiled Statutes and is likewise an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Section 1601 et seq.

38. **ACTIVITIES OF MORTGAGOR.** In order to induce Mortgagee to make the loan evidenced by the Note, Mortgagor represents and warrants to Mortgagee that (i) all of its business activities have been and will be conducted in compliance with, and in the conduct of its business it has not and will not violate, any applicable statutes, laws and ordinances, including, but not limited to, any federal, state or local statute, law or ordinance for which forfeiture of any property mortgaged hereby is a potential penalty, (ii) the proceeds of the loan evidenced by the Note will be used by Mortgagor strictly for legal uses and purposes, and (iii) there are not now any pending, nor has Mortgagor received notice of any threatened, proceedings under any federal, state or local statute, law or ordinance for which forfeiture of any property mortgaged hereby is a potential penalty. Mortgagor further covenants to and with Mortgagee that it will not violate any federal, state or local statute, law or ordinance for which forfeiture of any property mortgaged hereby is a potential penalty and will immediately provide Mortgagee with notice of the filing of formal charges under, or any pending or threatened legal action relating to, any such statute, law or ordinance.

39. **MISCELLANEOUS.** Mortgagor further covenants and agrees:

- (a) To notify Mortgagee promptly of any damage to the Premises, or any part thereof, in excess of Fifty Thousand (\$50,000.00) Dollars;
- (b) That it will grant no parking rights in the Premises other than those provided for in existing leases, except with Mortgagee's prior written consent, and that if any part of the automobile parking areas within the Premises is taken by condemnation or otherwise, or before said areas are otherwise reduced, Mortgagor will provide parking facilities in kind, size and location to comply with all leases, and in so doing will comply with all requirements pertaining thereto which Mortgagee may reasonably establish; and
- (c) That (except as otherwise expressly provided at Paragraph 30 hereinabove) should the Premises at any time be or become subject to the lien of any mortgage or deed of trust in connection with which payments on account of the indebtedness secured hereby are to be made directly or indirectly by or through the mortgagee or beneficiary thereunder, regardless of whether or not payment of the indebtedness secured hereby is assumed by such mortgagee or beneficiary, the whole of the principal sum and interest and other sums hereby secured, at the option of Mortgagee, shall immediately become due and payable.

40. **LIMITED LIABILITY COMPANY-MORTGAGOR'S AUTHORITY.** Mortgagor hereby warrants and represents that the execution, delivery and performance of this Mortgage and each and every other Loan Document has been authorized by all requisite actions, resolutions, approvals and/or consents of Mortgagor's member(s) and manager(s), if any, and is not contrary to or in violation of any term, condition, provision, restriction, or limitation set forth in Mortgagor's Articles of Organization, Operating Agreement or any other agreement by which Mortgagor is bound.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage the day and year first above written.

MORTGAGOR:

OAK FOREST CENTRAL LLC, an
Illinois Limited Liability Company

By: Michael H. Rose *Michael H. Rose*
Its: Manager

Attest: _____
Its: _____

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STATE OF ILLINOIS)

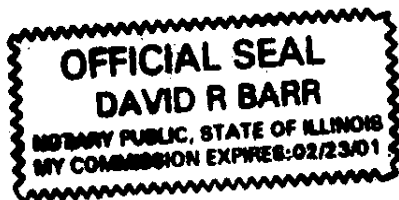
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COUNTY OF Cook)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that Michael H. Rose Manager of **OAK FOREST CENTRAL LLC**, an Illinois Limited Liability Company, and _____ of said LLC, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Manager and _____, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said LLC for the uses and purposes therein set forth. GIVEN under my hand and official seal, this 26th day of September, 2000.

David R Barr

Notary Public



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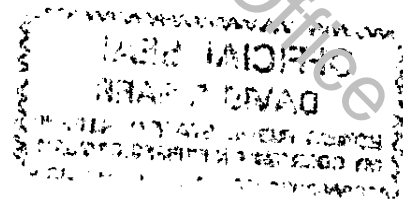


EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL ONE: THE WEST 43 FEET OF LOT 6 AND THE WEST 43 FEET OF LOT 7 IN THE RESUBDIVISION OF LOT "A" (EXCEPT THE NORTH 100 FEET OF THE WEST 150 FEET THEREOF), LOT "D" AND THE EAST 150 FEET (EXCEPT THE NORTH 100 FEET THEREOF) OF LOT "E" IN WARREN J. PETERS FRIENDLY OAKS SUBDIVISION, BEING A SUBDIVISION OF THE WEST ½ OF THE NORTH WEST ¼ OF SECTION 21, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPTING THEREFROM THAT PART HERETOFORE DEDICATED FOR PUBLIC HIGHWAY BY DOCUMENT NUMBER 11113019, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS, ON MARCH 6, 1962 AS DOCUMENT NUMBER 2022665, IN COOK COUNTY, ILLINOIS.

PARCEL TWO: LOTS "B" AND "C" IN WARREN J. PETER'S FRIENDLY OAKS SUBDIVISION, BEING A SUBDIVISION OF THE WEST ½ OF THE NORTH WEST ¼ OF SECTION 21, TOWNSHIP 36 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPTING THEREFROM THAT PART HERETOFORE DEDICATED FOR PUBLIC HIGHWAY BY DOCUMENT NUMBER 11113019, ACCORDING TO PLAT OF SAID SUBDIVISION REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON APRIL 12, 1957 AS DOCUMENT NUMBER LK1732808.

P.I.N.: 28-21-117-018-0000.

COMMONLY KNOWN AS:

9,215+/-S.F. RETAIL CENTER KNOWN AS
"ROSE PLAZA SHOPPING CENTER" AT
5447-5459 W. 159TH STREET
OAK FOREST, IL

UNOFFICIAL COPY

EXHIBIT "B"

00763389

SCHEDULE OF ENCUMBRANCES

- 1) GENERAL REAL ESTATE TAXES NOT YET DUE OR PAYABLE.
- 2) SUBORDINATE LEASES OF TENANTS IN POSSESSION PURSUANT TO WRITTEN LEASES.
- 3) THE FOLLOWING SCHEDULE B EXCEPTIONS AS SHOWN ON CHICAGO TITLE INSURANCE COMPANY'S COMMITMENT NO. 78-69-615 (OF) EFFECTIVELY DATED JULY 26, 2000:
*M; O; P; Q; R; S; V; W; X

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