

# UNOFFICIAL COPY



## MORTGAGE

THIS INDENTURE, made as of this 9th day of November, 2000 by SANDRINGHAM LLC, an Illinois limited liability company (hereinafter referred to as "Mortgagor"), and FIRST BANK AND TRUST COMPANY OF ILLINOIS (hereinafter referred to as "Mortgagee"):

## WITNESSETH

Mortgagor is justly indebted to Mortgagee in the principal sum of THREE MILLION NINE HUNDRED AND NO/100 DOLLARS (\$3,900,000) evidenced by: a) a Mortgage Note (the "Mortgage Note") of even date herewith in the original principal amount of \$2,800,000, and b) a Letter of Credit Note (the "L/C Note") of even date herewith in the original principal amount of \$1,100,000 (the Mortgage Note and the L/C Note are collectively referred to herein as the "Note"), made by Mortgagor and payable to the order of and delivered to Mortgagee, in and by which said Note Mortgagor promises to pay the said principal sum and interest in the manner and at the rates as provided therein. The unpaid principal amount and all accrued and unpaid interest due under the Note, if not sooner paid, shall be due on November 9, 2001 or Mortgagee's demand, except that if certain conditions described in the Note are not satisfied in accordance with the provisions thereof, the unpaid principal amount and all accrued and unpaid interest due under the Note shall be due on such earlier date or dates as are specified in the Note. All such payments on account of the indebtedness evidenced by the Note shall be first applied to interest on the unpaid principal balance and the remainder to principal, and all of said principal and interest shall be payable at such place as the holder or holders of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, 300 East Northwest Highway, Palatine, Illinois 60067.

NOW, THEREFORE, Mortgagor, to secure the payment of said principal sum of money and said interest in accordance with the terms, provisions and limitations of this Mortgage, and of the Note secured hereby, together with any extensions, renewals or refinancings thereof, and the performance of the covenants and agreements herein contained by Mortgagor to be performed (which amount secured by this Mortgage shall not exceed \$7,800,000), and also in consideration of the sum of TEN DOLLARS (\$10.00) in hand paid, the receipt whereof is hereby acknowledged, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto Mortgagee, its successors and assigns, the real estate and all of Mortgagor's estate, right, title and interest therein situated and located in Cook County, as legally described in Exhibit A attached hereto and made a part hereof, which, together with the property hereinafter described, is referred to herein as the "Premises";

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TOGETHER with all easements, rights of way, strips and gores of land, vaults, streets, alleys, water rights, mineral rights, and rights used in connection with the Premises or to provide a means of access to the Premises, and all tenements, hereditaments and appurtenances thereof and thereto pertaining or belonging, and all underground and overhead passageways and licenses in connection therewith;

TOGETHER with all leasehold estates, right, title and interest of the Mortgagor in any and all leases, subleases, management agreements, arrangements, concessions, or agreements, written or oral, relating to the use and occupancy of the Premises and improvements or any portion thereof located thereon, now or hereafter existing or entered into;

TOGETHER with all rents, issues and profits thereof for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily);

TOGETHER with all buildings and improvements, tenements, easements, fixtures and appurtenances thereto belonging, and all rents, issues and profits thereof and therefrom for so long and during all such times as Mortgagor may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and all shades, awnings, venetian blinds, screens, screen doors, storm doors and windows, stoves and ranges, refrigerators, curtain and drapery fixtures, partitions, and attached floor coverings, now or hereafter therein or thereon, and all fixtures, apparatus, equipment, and articles now or hereafter therein or thereon used to supply heat, gas, air conditioning, water, light, power, sprinkler protection, waste removal, refrigeration (whether single units or centrally controlled), and ventilation, including (without restricting the foregoing): all fixtures, apparatus, equipment, and articles, other than such as constitute trade fixtures used in the operation of any business conducted upon the Premises as distinguished from fixtures which relate to the use, occupancy and enjoyment of the Premises and other than such as are owned by any tenant of all or any portion of the Premises, it being understood that the enumeration of any specific articles of property shall in no way exclude or be held to exclude any items of property not specifically mentioned. 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 a 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; and

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

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

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Mortgagor represents and covenants that (i) Mortgagor is the holder of fee simple title to the Premises free and clear of all liens and encumbrances, except for such liens and encumbrances as shall have been expressly approved by Mortgagee, (ii) Mortgagor has legal power and authority to mortgage and convey the Premises as herein provided, and (iii) it will warrant and forever defend said Premises and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

## 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 or improvements now or hereafter on the Premises which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien, except that Mortgagor shall have the right either to: (i) place a bond with Mortgagee in an amount, form, content and issued by a surety acceptable to Mortgagee for the payment of any such lien, or (ii) obtain a title indemnity insuring Mortgagee's interest against said lien in an amount, form, content and issued by a title insurance company acceptable to Mortgagee, in either case within thirty (30) days after notice of the filing thereof; (c) immediately pay when due any indebtedness which may be secured by a lien or charge on the Premises superior or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of any such lien to Mortgagee; (d) complete any building or buildings, and all construction work with respect thereto, now or at any time in process of construction upon the Premises; (e) comply with all requirements of law, municipal ordinances and restrictions of record with respect to the Premises or the use thereof, including, without limitation, those relating to building, zoning, environmental protection, health, fire and safety; (f) make no structural or non-structural alterations to the Premises or any buildings or other improvements now or hereafter constructed thereon, without the prior written consent of Mortgagee; (g) suffer or permit no change in the general nature of the occupancy of the Premises, without the prior written consent of Mortgagee; (h) initiate or acquiesce in no zoning reclassification, without the prior written consent of Mortgagee; and (i) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note. As used in this Article and elsewhere in this Mortgage, the term "indebtedness" shall mean and include the principal sum evidenced by the Note, together with all interest thereon and all other amounts payable to Mortgagee thereunder, and all other sums at any time secured by this Mortgage.

2. Payment of Taxes and Assessments.

Mortgagor shall pay or cause to be paid, before any penalty or interest attaches all general taxes, special taxes, special assessments, water charges, sewer service charges, and electric, gas and other utility charges, and all other liens or charges levied or assessed against the Premises of any nature whatsoever when due, and shall furnish to Mortgagee duplicate receipts of payment therefor. If any special assessment is permitted by applicable law to be paid in installments, Mortgagor shall have the right to pay such assessment in installments, so long as all such installments are paid prior to the due date thereof.

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### 3. Tax Deposits.

In order to more fully protect the security of this Mortgage and to provide security to Mortgagee for the payment of the amounts required under Paragraph 2 above, upon Mortgagee's request after an Event of Default, Mortgagor agrees to pay or cause to be paid to Mortgagee, at such place as Mortgagee may from time to time in writing appoint and in the absence of such appointment, then at the office of the Mortgagee in Palatine, Illinois, each month at the due date for the monthly installments of principal and interest as provided for under the Note (in addition to paying the principal and interest provided for under the Note) in an amount as determined by Mortgagee on an accrual basis and in such manner as Mortgagee may prescribe. Said amounts shall be held by Mortgagee or its designee not in trust and not as agent of Mortgagor and maybe commingled with other funds held by Mortgagee or its designee, and said amounts shall not bear interest. Mortgagor shall deposit at least 60 days prior to the due date of any such payment, such additional amount as may be necessary to provide Mortgagee with sufficient funds in such deposit account to make such payment at least 60 days in advance of the due date thereof.

### 4. Mortgagee's Interest In and Use of Deposits.

In the event of a default under any of the provisions contained in this Mortgage or in the Note secured hereby, Mortgagee may at its option, without being required so to do, apply any monies at the time on deposit pursuant to Paragraph 3 hereof to any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder, shall not earn interest and shall be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited. In addition, Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party. Notwithstanding anything contained in this paragraph to the contrary, Mortgagee shall have no obligation to pay such taxes, assessments and other governmental liens or charges against the Property from the amounts collected by Mortgagee pursuant to this paragraph if (i) any default or event of default has occurred under any of the Loan Documents and such default or event of default remains uncured beyond any applicable cure period, or (ii) Mortgagor fails to provide Lender with a written request to pay such taxes, assessments and other governmental liens or charges against the Property at least ten (10) business days prior to the date on which the same become delinquent or past due and further provided that such written request from Mortgagor includes a duplicate copy of the applicable bill for such taxes, assessments and other governmental liens or charges against the Property which Mortgagor specified in such request to be paid from such amounts held by Mortgagee pursuant to this paragraph. Mortgagor agrees to indemnify, defend and hold Mortgagee harmless from any loss, cost, expense, claim, penalty or charge (including reasonable attorneys fees) that result from Mortgagor's failure to comply with the foregoing.

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## 5. Insurance.

Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured, pursuant to an all risk policy of insurance issued by an insurance company approved by Mortgagee, against loss or damage by fire and such other hazards as may be required by Mortgagee, including without limitation: (a) fire and extended coverage insurance, with vandalism and malicious mischief endorsements, for the full replacement value of the Premises; (b) if there are tenants under leases at the Premises, rent or business loss insurance for the same perils described in (a) above, payable at the rate per month specified from time to time by Mortgagee and for a period of one year; (c) boiler and sprinkler damage insurance in an amount satisfactory to Mortgagee, if and so long as the Premises shall contain a boiler and sprinkler system, respectively; (d) if the Premises are located in a flood hazard district, flood insurance whenever in the opinion of Mortgagee such protection is necessary and is available; and (e) such other insurance as Mortgagee may from time to time reasonably require. Mortgagor also shall at all times maintain comprehensive public liability, property damage and workers' compensation insurance covering the Premises and any employees thereon, with such limits for personal injury, death and property damage as Mortgagee may reasonably require. All policies of insurance to be furnished hereunder shall be in forms, amounts and deductibles, and from companies, satisfactory to Mortgagee, with mortgage clauses attached to all policies in favor of and in form reasonably satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days, prior written notice to Mortgagee. Mortgagor shall deliver copies of all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver copies of all 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 mortgage clause acceptable to Mortgagee. Mortgagor immediately shall notify Mortgagee whenever any such separate insurance is taken out and promptly shall deliver to Mortgagee the policy or policies of such insurance.

In the event of loss Mortgagor will give immediate notice by mail to Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and the insurance proceeds, or any part thereof, shall, at the option of Mortgagee, either be applied by Mortgagee to (i) the outstanding indebtedness due from Mortgagor to Mortgagee or (ii) the restoration or repair of the property damaged as provided in Paragraph 19 hereof. In the event of an entry of decree of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any and all insurance policies then in force shall pass to the purchaser at the foreclosure sale. Mortgagor shall furnish Mortgagee, without cost to Mortgagee, at the request of Mortgagee, from time to time, evidence of the replacement value of the Premises. In the event of an entry of decree of foreclosure, Mortgagor authorizes and empowers Mortgagee to effect insurance upon the Premises in the amounts aforesaid, for a period covering the time from entry of said decree to and including the date of sale, and if necessary therefor, to cancel any or all existing insurance policies.

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## 6. Condemnation.

If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damage made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this instrument, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts there for in the name of Mortgagor, and the same shall be paid forthwith to Mortgagee, who shall release any such award or monies so received or apply the same in whole or in part, after the payment of all of its expenses, including costs and attorneys fees, at the option of Mortgagee either to (i) the outstanding indebtedness due from Mortgagor to Mortgagee or (ii) the restoration or repair of the property damaged as provided in Paragraph 19 hereof, if the property can be restored or repaired to constitute a complete architectural unit. In the event the said property cannot be restored or repaired to constitute a complete architectural unit, then such award or monies received, after the payment of the expenses of Mortgagee as aforesaid, shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable. Furthermore, in the event such award or monies so received shall exceed the cost of restoration or repair of the property and the expenses of Mortgagee as aforesaid, then such excess monies shall be applied on account of the unpaid principal balance of the Note.

## 7. Stamp Tax.

If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note hereby secured, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any tax on the issuance of the Note secured hereby. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

## 8. Observance of Lease Assignment.

As additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, Mortgagor, as lessor, hereby assigns to Mortgagee all of its right, title and interest as lessor in and to any and all leases ("Leases") which now or hereafter affect the Premises.

Mortgagor will not, without Mortgagee's prior written consent: (i) execute any new lease or renew, cancel, modify or amend any existing lease for all or any portion of the Premises; (ii) execute an assignment or pledge of any rents and/or any leases affecting all or any portion of the Premises on less favorable terms than the previous lease or the existing lease, as the case may be; or (iii) accept any prepayment of any installment of any rents more than thirty (30) days before the due date of such installment, other than security and other deposits.

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Mortgagor at its sole cost and expense will (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all Leases affecting all or any portion of the Premises, on the part of the sublessor thereunder to be kept and performed; (ii) use its best efforts to enforce or secure the performance of all of the covenants, conditions and agreements of such Leases on the part of the sublessees to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such Leases or the obligations, duties or liabilities of the lessor or of the lessees thereunder; (iv) as additional security for the payment of the Note secured hereby and for the faithful performance of the terms and conditions contained herein, transfer and assign to Mortgagee any Lease or Leases affecting all or any portion of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee, upon demand, any and all instruments required to effectuate said assignment; (v) give written notice to Mortgagee within five (5) days of the occurrence of any material default under any Lease affecting all or any portion of the Premises; and (vi) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the lessee under any Lease affecting all or any portion of the Premises a certificate with respect to the status thereof.

Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor as lessor under any of the Leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the lessor, each and all of which covenants and payments Mortgagor agrees to perform and pay.

In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each Lease affecting all or any portion of the Premises shall, at the option of Mortgagee, attorn to any person succeeding to the interest of Mortgagor as a result of such enforcement and shall recognize such successor in interest as lessor under such Lease without change in the terms or other provisions thereof; provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one (1) month in advance or any amendment or modification to any lease made without the consent of Mortgagee or said successor in interest. Each lessee, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

Mortgagee shall have the option to declare this Mortgage (after the expiration of the cure period expressly provided for in Paragraph 13(b) below) in default because of a default of the lessor under any new Lease affecting all or any portion of the Premises which is not cured by the lessor within the applicable cure period, if any, whether or not such default is cured by Mortgagee pursuant to the right granted herein. It is covenanted and agreed that a default remaining uncured after the expiration of any applicable cure periods expressly provided for under the first grammatical paragraph of this Paragraph 8 or under any assignment of leases executed pursuant to this Paragraph 8 shall constitute a default hereunder on account of which the whole of the indebtedness secured hereby shall at once, at the option of Mortgagee, become immediately due and payable without notice to Mortgagor.

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## 9. Effect of Extensions of Time.

If the payment of said indebtedness or any part thereof be extended or varied or if any part of any security for the payment of the indebtedness be released, all persons now or at any time hereafter liable there for, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

## 10. Effect of Changes in Laws Regarding Taxation.

In the event of the enactment after this date of any law of the state in which the Premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens hereto required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or 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 or holders thereof, then, and in any event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable thirty (30) days from the giving of such notice.

## 11. Mortgagee's Performance of Defaulted Acts.

In case of default hereunder, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Landlord under any lease affecting all or any portion of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Paragraph 7 hereof or to protect the Premises or the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at an annual rate equal to the Default Rate (as defined in the Note). The interest accruing under this Paragraph 11 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

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## 12. Mortgagee's Reliance on Tax Bills and Claims for Lien.

Mortgagee, in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

## 13. Acceleration of Indebtedness in Event of Default.

The occurrence of any one or more of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Mortgagor fails to pay on the date when due any installment of principal or interest or other monetary sum payable pursuant to the Note or the Loan Documents;

(b) Edward Zale ("Guarantor"), or Mortgagor fails promptly to perform or cause to be performed any other obligation or to observe any other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor under the Construction Loan Agreement of even date herewith by and among Mortgagor, and Mortgagee (ii) the Note, (iii) this Mortgage, (iv) the Assignment of Rents and Lessor's Interest in Leases of even date herewith made by Mortgagor, (v) the Security Agreement of even date herewith made by Mortgagor to Mortgagee, (vi) the Continuing Guarantee of even date herewith made by Guarantor to Mortgagee, (vii) the Environmental Indemnity Agreement of even date herewith made by Guarantor and Mortgagor to Mortgagee, (viii) the Assignment of Architect's Contract of even date herewith made by Mortgagor to Mortgagee, (ix) the Architect's Consent of even date herewith made by Bloodgood, Sharp, Buster Architects & Planners of Illinois, Inc., an Iowa corporation, to Mortgagee, (x) the Assignment of Construction Contracts, Permits and Plans, and Security Agreement of even date herewith made by Mortgagor to Mortgagee, (xi) the Assignment of Sales Contract and Security Agreement of even date herewith made by Mortgagor to Mortgagee, (xii) the Letter of Credit Note of even date herewith made by Mortgagor in favor of Mortgagee, and such other documents executed in connection with the Note (those documents, along with the documents described in sections (i) through (xii) above, both inclusive, being hereinafter collectively referred to as the "Loan Documents"); provided, however, that unless and until the continued operation or safety of the Premises, or the priority, validity or enforceability of this Mortgage or the lien hereof or the lien of any other security granted to Mortgagee or the value of the Premises is immediately threatened or jeopardized, Mortgagor shall have a period not to exceed thirty (30) days after written notice of such failure of performance or observance to cure the same; provided, however, that if the nature of the default is such that the same cannot reasonably be cured within said thirty (30) day period, Mortgagor shall not be deemed to be in default and Mortgagor shall have an additional thirty (30) days to cure such failure if Mortgagor shall within such thirty (30) day period commence such cure and thereafter diligently prosecute the same to completion;

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(c) Any material inaccuracy or untruth arises in any material representation when made, or in any covenant or warranty at any time, made in this Mortgage or in any of the other Loan Documents;

(d) At any time, Mortgagor, or Guarantor files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or insolvent, or institutes (by petition, application, answer, consent or otherwise) any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal, state or other statute or law, or admits in writing his or its inability to pay his or its debts as they mature, or makes an assignment for the benefit of his or its creditors, or seeks or consents to the appointment of any receiver, trustee or similar officer for all or any substantial part of his or its property;

(e) The commencement of any involuntary petition in bankruptcy against Mortgagor, or Guarantor or the institution against Mortgagor, or Guarantor of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future Federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Mortgagor, or Guarantor which shall remain undismissed or undischarged for a period of sixty (60) days;

(f) A violation of the provisions of Paragraph 26 hereof occurs; or

(g) The death, legal incompetency or mental disability of Guarantor, unless the Guarantor is replaced with a guarantor acceptable to Lender within forty-five (45) days of such event, or the bankruptcy, dissolution or liquidation of Mortgagor

(h) Mortgagor is in default under the Leases, or has sublet or assigned all or any portion of its interest in the Premises, except with the consent of Mortgagee, which consent shall not be required for any existing Leases.

If an Event of Default occurs, Mortgagee may, at its option, declare the whole of the indebtedness hereby secured to be immediately due and payable without prior notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate. If, while any insurance proceeds or condemnation awards are being held by Mortgagee to reimburse Mortgagor for the cost of rebuilding or restoration of buildings or improvements on the Premises, as set forth in Paragraph 19 hereof, Mortgagee shall be or become entitled to, and shall accelerate the indebtedness secured hereby, then and in such event, Mortgagee shall be entitled to apply all such insurance proceeds and condemnation awards then held by it in reduction of the indebtedness hereby secured and any excess held by it over the amount of the indebtedness then due hereunder shall be returned to Mortgagor or any party entitled thereto without interest.

#### 14. Foreclosure; Expense of Litigation.

When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and

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expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, 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 the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Paragraph 14 mentioned and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or other proceeding affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any litigation or other proceeding or threatened litigation or other proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate, and shall be secured by this Mortgage.

## 15. Application of Proceeds of Foreclosure Sale.

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

## 16. Appointment of Receiver.

Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not, and Mortgagee or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of and from the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency during the full statutory period of redemption, whether there be redemption or not, as well as during any further period when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his or her hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and/or (b) the deficiency in case of a sale and deficiency.

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## 17. Rights Cumulative.

Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein 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 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 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.

## 18. Mortgagee's Right of Inspection.

Mortgagee and its agents upon reasonable prior notice (except in the event of an emergency) shall have the right to inspect the Premises at all reasonable times and access thereto shall be permitted for that purpose.

## 19. Disbursement of Insurance or Condemnation Proceeds.

In the event Mortgagee elects or is required to apply insurance or condemnation proceeds to restoration:

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises or of the improvements upon the Premises, whether by fire or other casualty or by condemnation or a taking under the power of eminent domain, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(b) Prior to the payment or application of insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the Premises or of the improvements upon the Premises as provided in Paragraphs 5 and 6 hereof, Mortgagee shall be entitled to evidence of the following:

(i) That Mortgagor is not then in default under any of the terms, covenants or conditions of the Note or of the Loan Documents;

(ii) That either such property has been fully restored, or that the expenditure of such money as may be received from such insurance proceeds or condemnation or eminent domain award will be sufficient to repair, restore or rebuild the Premises or the improvements upon the Premises, free and clear of all liens, except the lien of this Mortgage;

(iii) That in the event such insurance proceeds or condemnation or eminent domain award shall be insufficient to repair, restore or rebuild such property, Mortgagor shall deposit with Mortgagee funds equaling such deficiency, which, together with the insurance proceeds or condemnation or eminent domain award, shall be sufficient to repair, restore and rebuild such property; and



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(iv) That prior to the disbursement of any such proceeds or award held by Mortgagee in accordance with the terms of this Paragraph 19 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of Mortgagor's architect, certifying the extent of the repair, restoration and rebuilding completed to the date thereof, and that such repair, restoration and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation or eminent domain award to the repair, restoration or rebuilding of the Premises or of the improvements upon the Premises as provided in Paragraphs 5 and 6 hereof, there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer which claims that no liability exists as to Mortgagor or the then owner or other assured under the policy of insurance in question; and

(ii) Such performance and payment bonds, and such insurance, in such amounts, issued by such company or companies and in such forms and substance, as are required by Mortgagee.

(d) In the event Mortgagor shall fail to repair, restore or rebuild the Premises or the improvements upon the Premises within a reasonable time, then Mortgagee, at its option, and upon not less than thirty (30) days' written notice to Mortgagor, may commence to repair, restore or rebuild such property for or on behalf of Mortgagor, and for such purpose, may perform all necessary acts to accomplish such repair, restoration or rebuilding. In the event that insurance proceeds or a condemnation or eminent domain award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Premises or of the improvements upon the Premises, such excess shall be used by Mortgagor to up-grade the improvements upon the Premises or shall be applied on account of the unpaid principal balance of the Note.

(e) In the event that Mortgagor commences the repair, restoration or rebuilding of the Premises or of the improvements upon the Premises, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 19, or in the event that Mortgagor shall fail to repair, restore or rebuild the Premises or the improvements upon the Premises within a reasonable time, and if Mortgagee does not repair, restore or rebuild such property as provided in Paragraph 19(d) hereof, then Mortgagee may, at its option, accelerate the indebtedness evidenced by the Note and apply all or any part of the insurance proceeds or condemnation or eminent domain award against the indebtedness secured hereby.

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## 20. Release Upon Payment and Discharge of Mortgagor's Obligations.

Mortgagor intends to construct twenty-four (24) houses (the "Units") on the Premises. At the time of the closing of the sale of any Unit, Mortgagor shall pay the Net Sales Proceeds (as hereinafter defined) from any such sale to Mortgagee. Net Sales Proceeds shall mean the gross sales proceeds from the sale of any Unit, less closing costs and brokerage commissions, provided such closing costs and brokerage commissions shall not exceed 10% of the gross sales proceeds of such Unit and less the earnest money deposited with Mortgagee pursuant to Section 3.12 of the Construction Loan Agreement relating to such Units. Such applicable payments on the sale of the Units (the "Release Payments"), will be applied first to any past due interest (i.e., interest which was not paid when due) on the Note, any unpaid cost or expense of Mortgagee hereunder or under the Loan Documents, with the balance to the payment of principal on the Note. Mortgagee agrees that, provided (i) Mortgagee has received the required Release Payment with respect to a sold Unit, (ii) Mortgagee has received a release fee of \$250 with respect to such Unit, (iii) Mortgagor has complied with all of the conditions and restrictions herein set forth with respect to the sale of such Unit, and with all of its other covenants and agreements hereunder and under the Loan Documents, (iv) an Event of Default is not then continuing hereunder, and (v) Mortgagee is furnished with an endorsement, in form and substance satisfactory to Mortgagee issued by the Chicago Title Insurance Company insuring that such release will not affect the priority of the lien of the Mortgage as to the remainder of the Premises, Mortgagee will, at Mortgagor's sole cost and expense, at the time of each such closing for a particular Unit, release the lien of its Mortgage from the subject Unit.

Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of expenses incurred by Mortgagee in connection with the execution of such release.

## 21. Notices.

All notices permitted or required pursuant to this Mortgage shall be in writing and shall be deemed to have been properly given: (i) upon delivery, if served in person or sent by facsimile with receipt acknowledged; (ii) on the third (3rd) business day following the day such notice is deposited in any post office station or letter-box if mailed by certified mail, return receipt requested, postage prepaid; or (iii) on the first (1st) business day following the day such notice is delivered to the carrier if sent via Federal Express or Airborne overnight delivery and addressed to the party to whom such notice is intended as set forth below:

To Mortgagee:

First Bank and Trust Company of Illinois  
300 East Northwest Highway  
Palatine, Illinois 60067  
Attn: Loan Department  
Fax #: (847) 705-3903

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With a copy to: D'Ancona & Pflaum LLC  
111 East Wacker  
Suite 2800  
Chicago, Illinois 60601  
Attn: Marc S. Joseph  
Fax #: (312) 603-3000

To Mortgagor: SANDRINGHAM LLC  
c/o Zale Group Inc.  
100 Lexington Drive  
Suite 100  
Buffalo Grove, Illinois 60089  
Attn: Leon Joffe  
Fax #: (847) 537-8514

With a copy to: Stone, Pogrund & Korey  
221 N. LaSalle Street  
32<sup>nd</sup> Floor  
Chicago, Illinois 60601  
Attn: Martin S. Korey  
Fax #: (312) 782-1482

Either party may designate a different address for notice purposes by giving notice thereof in accordance with this Paragraph 21; provided, however, that such notice shall not be deemed given until actually received by the addressee.

22. Waiver of Defenses.

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 the same in an action at law upon the Note hereby secured.

23. Waiver of Rights.

To the extent permitted by law, Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of all such laws. To the extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the Premises marshaled 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.

24. Expenses Relating to Note and Mortgage.

Mortgagor will pay all expenses, charges, costs and fees relating to the loan evidenced by the Note and secured by this Mortgage or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's attorneys' fees in

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connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note or this Mortgage. All expenses, charges, costs and fees described in the preceding sentence shall be so much additional indebtedness secured hereby, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with such interest, by Mortgagor forthwith upon demand.

## 25. Business Purpose.

Mortgagor covenants that the proceeds of the loan evidenced by the Note and secured by this Mortgage will be used for the purposes specified in Section 4(1)(c) of Paragraph 205 of Chapter 815 of the Illinois Revised Statutes, as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of such Section.

## 26. Transfer of Premises; Further Encumbrance.

In determining whether or not to make the loan secured hereby, Mortgagee examined the creditworthiness of Mortgagor, found it acceptable and relied and continues to rely upon the same as the means of repayment of the Note. Mortgagee also evaluated the background and experience of Mortgagor in operating property such as the Premises, found it acceptable and relied and continues to rely upon the same as the means of maintaining the value of the Premises, which is Mortgagee's security for the Note. Mortgagor are well experienced in borrowing money and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby, or had the opportunity to be so represented, and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognize that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan. Mortgagor further recognize that any secondary or junior financing placed upon the Premises: (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior 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 the same; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Mortgagor and of the value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this Paragraph 26 be deemed a restraint on alienation, that it is a reasonable one, and that any sale, conveyance, assignment, further encumbrance or other transfer of Mortgagor's interest in the Premises (whether voluntary or by operation of law),



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including, without limitation, the entering into of an assignment or lease for the Premises or any portion thereof, the placement or granting of liens on all or any part of the Premises or the placement or granting of chattel mortgages, conditional sales contracts, financing statements or security agreements which would be or create a lien on the personal property utilized in the operation of the Premises, or the placement or granting of a mortgage commonly known as a "wrap around" mortgage or an improvement loan, without 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 Mortgagor's interest in the Premises and therefore an Event of Default hereunder: any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, all or any part of the interest in the Premises, the beneficial interest in Mortgagor or any controlling interest Mortgagor without Mortgagee's consent. Any waiver by Mortgagee of an Event of Default under this Paragraph 26 shall not constitute a consent to, or a waiver of, any right, remedy or power of Mortgagee upon a subsequent Event of Default under this Paragraph 26. Mortgagor acknowledges that any agreements, liens, transfers or encumbrances created or entered into in violation of the provisions of this Paragraph 26 shall be void and of no force or effect.

## 27. Financial Statements.

Mortgagor shall cause to be delivered annually to Mortgagee as soon as available, and in any event within 90 days after the close of the fiscal year of Mortgagor and Guarantor, annual financial statements of Mortgagor, Guarantor and the Premises as of the end of such fiscal year in conformity with generally accepted accounting principles consistently applied, all in reasonable detail and stating in comparative form the figures as of the end of and for such fiscal year and the figures as of the end of and for the prior fiscal years, certified by Mortgagor and Guarantor, as the case may be.

## 28. Statement of Indebtedness.

Mortgagor, within ten (10) days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage and the date to which interest has been paid, and stating either that no offsets or defenses exist against the Mortgage debt or, if such offsets or defenses are alleged to exist, the nature thereof.

## 29. Further Instruments.

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

## 30. Miscellaneous.

### (a) Successors and Assigns.

This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and its successors, grantees and assigns, any subsequent owner or owners of

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the Premises who acquire the Premises subject to this Mortgage, and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby.

(b) Invalidity of Provisions.

In the event one or more of the provisions contained in this Mortgage or in the Note secured hereby or in any security documents given to secure the payment of the Note secured hereby shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision were not contained herein or therein. This Mortgage and the Note it secures shall be governed by and construed in accordance with the laws of the State of Illinois.

(c) Municipal and Zoning Requirements.

Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any municipal or governmental 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 30(c) shall be void.

(d) Rights of Lessor.

Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a Decree of Foreclosure and Sale subject to the rights of the lessor, or any lessee of the Premises. The failure to join the lessor or any lessee as party or parties defendant in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose his, her, its or their rights shall not be asserted by 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.

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(e) Option of Mortgagee to Subordinate.

At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to the Lease upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of and for the county wherein the Premises are situated, of a unilateral declaration to that effect.

(f) Use of Proceeds.

Mortgagor warrants that the proceeds evidenced by the Note secured hereby will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(g) Value for Purposes of Insurance.

Upon request by Mortgagee, Mortgagor agrees to furnish evidence of replacement value, without cost to Mortgagee, of the type which is regularly and ordinarily provided to insurance companies, with respect to the buildings and other improvements on the Premises.

(h) Mortgagee in Possession.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

(i) Relationship of Mortgagee and Mortgagor.

Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any beneficiary, lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses.

(j) Time of the Essence.

Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the performance and observance by Mortgagor of all of the terms, conditions, obligations and agreements contained in this Mortgage.

31. Indemnity.

Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including attorneys' fees and court costs) of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time which relate to or arise from: the making of the loan evidenced by the Note and secured by this Mortgage; any suit or other proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or

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does become a party, either as a plaintiff or as a defendant, by reason of this Mortgage, or for the purpose of protecting the lien of this Mortgage; and/or the ownership, use, operation and/or maintenance of the Premises except as a result of Mortgagee's negligence after taking over possession and operation of the Premises. All costs provided for herein and paid for by Mortgagee shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and together with interest thereon at the Default Rate.

## 32. Hazardous Substances.

As used below, "Hazardous Substances" shall mean all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), petroleum products, or any other similar substances, or materials which are regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination or clean-up, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, or equivalent state law (all such laws, rules and regulations being referred to collectively as "Environmental Laws"). Mortgagor warrants, represents and covenants as follows:

(a) Neither the Premises nor any other personal or real property owned by Mortgagor is subject to any private or governmental lien or judicial or administrative notice or action relating to Hazardous Substances or environmental problems, impairments or liabilities with respect to the Premises or such other property, or the direct or indirect violation of any Environmental Laws.

(b) No Hazardous Substances are located on or have been stored, processed or disposed of in violation of Environmental Laws on or released or discharged in violation of Environmental Laws from (including ground water contamination) the Premises and no above or underground storage tanks, exist on the Premises. Mortgagor shall not allow any Hazardous Substances to be stored, located, discharged, possessed, managed, processed or otherwise handled in violation of Environmental Laws on the Premises and shall comply with all Environmental Laws affecting the Premises.

(c) Mortgagor shall keep the Premises free of any lien imposed pursuant to any Environmental Law.

Mortgagor hereby agrees to indemnify, defend and hold Mortgagee harmless from and against, and shall reimburse Mortgagee for, any and all loss, claim, liability, damages, injuries to person, property or natural resources, cost, expense, action or cause of action, arising from, out of or as a consequence, direct or otherwise, of the release or presence of any Hazardous Substance at the Premises whether originating at the Premises or any migration of any Hazardous Substances from the Premises to any property adjacent thereto, whether foreseeable or unforeseeable, and whether or not known to Mortgagor, regardless of when such release occurred, except these arising from, out of or as a consequence of any release of Hazardous Substances on or to the Premises caused solely by Mortgagee or Mortgagee's employees, representatives, agents, contractors, consultants, successors or assigns. The foregoing indemnity includes, but shall not

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be limited to, all costs of removal, remediation of any kind, detoxification, clean up and disposal of such Hazardous Substances, all costs of determining whether the Premises is in compliance and causing the Premises to be in compliance with all applicable Environmental Laws, all costs and fees associated with claims for damages to persons, property, or natural resources, and Mortgagor's attorneys' fees and consultants' fees and court costs in respect thereto whether or not litigation or administrative proceedings shall occur. It is expressly understood and agreed that to the extent Mortgagor is strictly liable under any applicable statute or regulation pertaining to the protection of the environment, this indemnity shall likewise be without regard to fault on the part of Mortgagor or Mortgagee with respect to the violation of law which results in liability to Mortgagee. The provisions of the foregoing shall survive foreclosure of this Mortgage and satisfaction of the Note, and shall be in addition to any other rights and remedies of Mortgagee.

33. Waiver of Right of Redemption.

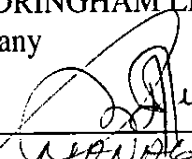
Mortgagor hereby releases and waives any and all rights to retain possession of the Premises after the occurrence of an Event of Default and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Mortgagor, all persons and entities interested in Mortgagor and each and every person (except judgment creditors of Mortgagor) acquiring any interest in, or title to, the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of Paragraph 15-1603 of Chapter 110 of the Illinois Revised Statutes, as amended.

34. Prepayment.

Mortgagor shall have the privilege of making prepayment on the principal of the Note in whole or in part in accordance with the terms and conditions set forth in the Note.

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

SANDRINGHAM LLC, an Illinois limited liability company

By:   
Its: MANAGER  
Name: LEON JOFFE

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STATE OF ILLINOIS )  
                                  *(McHenry)* )        SS.  
COUNTY OF COOK

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that LEON JOFFE, the MGR of SANDRINGHAM LLC, an Illinois limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such MANAGER, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

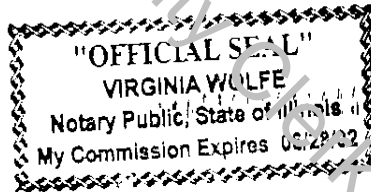
GIVEN under my hand and notarial seal, this 9 day of November, 2000.

*Virginia Wolfe*  
\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

My Commission expires:

6/28/02



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## EXHIBIT A

### LEGAL DESCRIPTION

P.I.N.: 02-34-101-002-0000

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## Exhibit A

THAT PART OF THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF QUENTIN ROAD, 710 FEET NORTH OF THE SOUTH LINE EXTENDED WEST OF OLD PLUM GROVE ROAD; THENCE EAST PARALLEL WITH AND 710 FEET NORTH OF SAID SOUTH LINE OF OLD PLUM GROVE ROAD, A DISTANCE OF 586 FEET; THENCE NORTH PARALLEL WITH THE SAID CENTERLINE OF QUENTIN ROAD, A DISTANCE OF 669 FEET; THENCE WEST PARALLEL WITH AND 1379 FEET NORTH OF SAID SOUTH LINE OF OLD PLUM GROVE ROAD, A DISTANCE OF 586 FEET TO A POINT ON THE SAID CENTERLINE OF QUENTIN ROAD; THENCE SOUTH ALONG SAID CENTERLINE, A DISTANCE OF 669 FEET TO THE POINT OF BEGINNING SAID POINT OF BEGINNING BEING 3499 FEET SOUTH OF THE CENTERLINE OF SECTION 27, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE WEST 50 FEET THEREOF), IN COOK COUNTY, ILLINOIS.

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This instrument prepared by,  
and when recorded, return to:

Marc S. Joseph, Esq.  
D'Ancona & Pflaum LLC  
111 East Wacker Drive  
Suite 2800  
Chicago, Illinois 60601-4205

Property of Cook County Clerk's Office

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