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Cook County Recorder 63.00

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Property of Cook County Clerk's Office

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**MORTGAGE**

THIS MORTGAGE is made as of the 13<sup>th</sup> day of November, 2000, by **COLE TAYLOR BANK**, not personally but solely as Trustee under a Trust Agreement dated October 12, 2000, and known as Trust No. 00-8695 ("Mortgagor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association ("Mortgagee");

**RECITALS:**

- A. Mortgagor owns fee simple title to the Premises (as defined below).
- B. Mortgagor, Dorothy Chaimovitz, as Trustee under a Trust Agreement dated June 22, 1992, and known as the Dorothy Chaimovitz Trust and the sole beneficiary of Mortgagor ("Beneficiary"), and 200 North Jefferson, L.L.C., an Illinois limited liability company ("Borrower") have entered into certain Articles of Agreement for Deed ("Articles of Agreement") of even date herewith whereby Borrower agreed to purchase the Premises from Mortgagor and Beneficiary.
- C. Under the Articles of Agreement, Mortgagor is obligated to execute and deliver this Mortgage for the benefit of Mortgagee. Mortgagee has agreed to extend a loan of \$2,433,000 (the "Loan") to Borrower in order that Borrower may use the proceeds of the Loan to

This instrument was prepared by and, after recording, return to:

Schwartz, Cooper, Greenberger & Krauss  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
Attn: Mark B. Butterman, Esq.

Permanent Real Estate Tax Index Nos.:

17-09-314-012, 17-09-314-013,  
17-09-314-014, 17-09-314-015,  
17-09-314-016, & 17-09-314-017

Common address:

200 North Jefferson  
Chicago, Illinois

**BOX 333-CT1**

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pay to Mortgagor a portion of the \$3,245,000 purchase price (the "Purchase Price") for the Premises agreed upon between Mortgagor and Borrower in the Articles of Agreement. Accordingly, Mortgagor acknowledges that it will benefit from Mortgagee's extension of the Loan to Borrower and such benefit constitutes good and valuable consideration to Mortgagor.

D. The Loan shall be evidenced by a certain Mortgage Note of even date herewith (the "Note") made by Borrower to Mortgagee.

E. A condition precedent to Mortgagee's extension of the Loan to Borrower is the execution and delivery by Mortgagor of this Mortgage.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns, the real estate legally described on Exhibit A attached hereto (the "Real Estate"), including all rights, interests and privileges appertaining to land beneath the surface and all air rights to space above the surface, together with the other property described in the following paragraph (the Real Estate and such other property being hereinafter referred to as the "Premises") to secure: (i) the payment of the Loan and all interest, late charges and other indebtedness evidenced by or owing under the Note or any of the other Loan Documents (as defined in the Note) and by any extensions, modifications, renewals or refinancings thereof; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Mortgagor, Beneficiary, Borrower or any other obligor to or benefiting Mortgagee which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iii) the reimbursement of Mortgagee for any and all sums expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage or any of the other Loan Documents, with interest thereon as provided herein or therein.

In addition to the Real Estate, the Premises hereby mortgaged includes all buildings, structures and improvements now or hereafter constructed or erected upon or located on or under the Real Estate, all tenements, easements, rights-of-way and rights used as a means of access thereto, all fixtures and appurtenances thereto now or hereafter belonging or pertaining to the Real Estate, and all rents, issues, royalties, income (but excluding income received by Mortgagor under the Articles of Agreement), revenue, proceeds, profits, security deposits and all accounts relating to the Premises and all other benefits thereof, and any after-acquired title, franchise, or license and the reversions or remainders 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), and all machinery, apparatus, equipment, appliances, floor covering, furniture, furnishings, supplies, materials, fittings, fixtures and other personal property of every kind and nature whatsoever, and all proceeds thereof, now or hereafter located thereon or therein

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and which is owned by Mortgagor or Beneficiary. All of the land, estate and property hereinabove described, real, personal and mixed, whether or not affixed or annexed, 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 conveyed and mortgaged hereby; provided, however, as to any of the property aforesaid which does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed to also be a Security Agreement under the Uniform Commercial Code of the State of Illinois (the "Code") for purposes of granting a security interest in such property, which Mortgagor hereby grants to Mortgagee, as secured party (as defined in the Code).

TO HAVE AND TO HOLD the Premises unto Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth, together with all right to retain possession of the Premises after any Event of Default (as hereinafter defined).

## IT IS FURTHER UNDERSTOOD AND AGREED THAT:

### 1. Title.

Mortgagor represents and covenants that (a) Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances described on Exhibit B attached hereto (the "Permitted Exceptions"); and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

### 2. 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 damages made in consideration thereof, to the extent of the full amount of the remaining unpaid indebtedness secured by this Mortgage, the Collateral Assignment and Subordination of Articles of Deed and Additional Covenants (the "Assignment") of even date herewith made by Borrower to Mortgagee, and the other Loan Documents is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Borrower and the same shall be paid forthwith to Mortgagee. Such award or monies shall be applied on account of the unpaid principal balance of the Note, irrespective of whether such principal balance is then due and payable and, at any time from and after the taking Mortgagee may declare the whole of the balance of the indebtedness secured by this Mortgage, the Assignment and the other Loan Documents to be due and payable.

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### 3. Effect of Extensions of Time.

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

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

If an Event of Default has occurred, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the Premises or the lien hereof, shall be so much additional indebtedness secured by this Mortgage, the Assignment and the other Loan Documents, and shall become immediately due and payable by Borrower to Mortgagee, upon demand, and with interest thereon at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Mortgagee's rights under this Mortgage, the Assignment, or the other Loan Documents, (c) recovering any indebtedness secured by this Mortgage, the Assignment or the other Loan Documents, (d) any litigation or proceedings affecting the Note, this Mortgage, the Assignment, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, the Assignment, any of the other Loan Documents or the Premises, shall be so much additional indebtedness secured by this Mortgage, the Assignment and the other Loan Documents, and shall become immediately due and payable by Borrower to Mortgagee, upon demand, and with interest thereon at the Default Rate. The interest accruing under this Paragraph 4 shall be immediately due and payable by Borrower to Mortgagee, and shall be additional indebtedness evidenced by the Note and secured by this Mortgage, the Assignment and the other Loan Documents. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default.

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## 5. Event of Default; Acceleration.

Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

(a) Borrower fails to pay on the date when due (i) any installment of principal or interest payable pursuant to the Note, or (ii) any other amount payable pursuant to the Note, this Mortgage or any of the other Loan Documents;

(b) Borrower fails to promptly perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower under the Note, the Assignment, or any of the other Loan Documents, or Mortgagor or Beneficiary fails to promptly perform or cause to be performed any other obligation or observe and other condition, covenant, term, agreement or provision required to be performed or observed by Mortgagor or Beneficiary under this Mortgage or any of the other Loan Documents; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the lien created by the Mortgage or any of the other Loan Documents and the value of the Premises are not impaired, threatened or jeopardized, then Mortgagor shall have a period (the "Cure Period") of thirty days after written notice from Mortgagee of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if Mortgagor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty additional days, but in no event shall the Cure Period be longer than sixty days in the aggregate;

(c) The existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to Mortgagee by Mortgagor, Beneficiary, Borrower or any guarantor of the Note;

(d) Mortgagor, Beneficiary, Borrower or any guarantor of the Note files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Mortgagor, Beneficiary, Borrower or of all or any substantial part of the property of Mortgagor, Beneficiary, Borrower or any guarantor of the Note or any of the Premises;

(e) The commencement of any involuntary petition in bankruptcy against Mortgagor, Beneficiary, Borrower or any guarantor of the Note or the institution against Mortgagor, Beneficiary, Borrower or any guarantor of the Note of any reorganization,

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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, Beneficiary, Borrower or any guarantor of the Note which shall remain undismissed or undischarged for a period of sixty days; or

(f) Any sale, transfer, lease, assignment, conveyance, financing, lien or encumbrance made in violation of Paragraph 17 of this Mortgage.

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 notice to Mortgagor, with interest thereon from the date of such Event of Default at the Default Rate.

## 6. Foreclosure; Expense of Litigation.

(a) When all or any part of the indebtedness hereby secured shall become due, whether by acceleration or other wise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents. It is further agreed that if default be made in the payment of any part of the secured indebtedness, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness. It is further agreed that such sale pursuant to a partial foreclosure shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part, the lien hereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Paragraph. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale in connection therewith, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree to discontinue such partial foreclosure and to accelerate the entire secured indebtedness by reason of any uncured Event of Default upon which such partial foreclosure was predicated or by reason of any other Event of Default and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose or partially foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses

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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 the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

## **7. Application of Proceeds of Foreclosure Sale.**

The proceeds of any foreclosure (or partial foreclosure) sale of the Premises shall be distributed and applied in the following order of priority: first, to all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Paragraph 6 above; second, to all other items which may under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as provided herein or in the other Loan Documents; third, to all principal and interest remaining unpaid on the Note; and fourth, any surplus to Mortgagor, its successors or assigns, as their rights may appear or to any other party legally entitled thereto.

## **8. Appointment of Receiver.**

Upon or at any time after the filing of a complaint to foreclose (or partially foreclose) this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor, Beneficiary or Borrower at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining

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prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment 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 (b) any deficiency upon a sale and deficiency.

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

At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Premises. Mortgagee, in its discretion, may, with or without process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- (b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing lease; and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee deems are necessary;
- (e) insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof; and



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- (f) receive all of such avails, rents, issues and profits.

## 10. Application of Income Received by Mortgagee.

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

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

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any indebtedness secured hereby, including any deficiency which may result from any foreclosure sale.

## 11. 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 under any of the Loan Documents or 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 Event of Default or acquiescence therein.

## 12. Mortgagee's Right of Inspection.

Mortgagee and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times, and access thereto shall be permitted for that purpose.

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## 13. Release Upon Payment and Discharge of Borrower's Obligations.

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

## 14. Notices.

Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee: LaSalle Bank National Association  
8303 West Higgins Road  
Chicago, Illinois 60631  
Attn: Tom Kearney

With copy to: Schwartz Cooper Greenberger & Krauss, Chtd.  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
Attn: Mark B. Buttermann, Esq.

To Mortgagor: Cole Taylor Bank  
111 West Washington, Suite 650  
Chicago, Illinois 60602  
Attn: Trust Department

With copy to: Birndorf & Birndorf  
200 West Madison Street  
Suite 2040  
Chicago, Illinois 60606  
Attn: Mr. Beryl Birndorf

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Fuchs & Roselli, Ltd.  
440 W. Randolph Street, Suite 500  
Chicago, Illinois 60606  
Attn: Susan Ghelerter, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

**15. 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.

**16. Waiver of Rights.**

Mortgagor hereby covenants and agrees that Mortgagor shall 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 such laws. To the fullest extent permitted by law, Mortgagor, for itself and all who may claim through or under it, waives any claims based on allegations that Mortgagee has failed to act in a commercially reasonable manner (except as otherwise expressly provided in this Mortgage or the other Loan Documents) and any and all rights to have the property and estates comprising the Premises marshaled upon any foreclosure of the lien hereof and further agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety.

**17. Transfer of Premises; Further Encumbrance.**

(a) Except pursuant to the terms and conditions of the Articles of Agreement (as defined in the recitals to this Mortgage), neither all nor any portion of (i) the Premises or (ii) any interest of Mortgagor in the Premises shall be sold, conveyed, assigned, encumbered or otherwise transferred (nor shall any agreement be entered into to sell, convey, assign, encumber or otherwise transfer same) without, in each instance, the prior written consent of Mortgagee, which consent may be given or withheld in Mortgagee's sole and absolute discretion, and may be conditioned in any manner that Mortgagee desires, including, without limitation, increases in the rate of interest charged on the Loan and payment of assumption fees. Any violation or attempted violation of the provisions of this Paragraph 17 shall be an Event of Default for purposes of all of the Loan Documents.

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(b) Any consent by Mortgagee, or any waiver by Mortgagee of an Event of Default under this Paragraph 17 shall not constitute a consent to or waiver of any right, remedy or power of Mortgagee upon a continuing or subsequent Event of Default under this Paragraph 17. Mortgagor acknowledges that any agreements, liens, charges or encumbrances created in violation of the provisions of this Paragraph 17 shall be void and of no force or effect. Mortgagor agrees that if any provision of this Paragraph 17 is deemed a restraint on alienation, that such restraint is a reasonable one.

## **18. Further Instruments.**

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

## **19. Additional Indebtedness Secured.**

All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note, the Assignment or any other document or instrument evidencing, securing or otherwise affecting the indebtedness secured hereby, including, without limitation, any and all amounts expended by Mortgagee to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage.

## **20. Indemnity.**

Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in the Mortgage, and Mortgagor hereby expressly waives and releases any such liability.

## **21. Waiver of Rights of Redemption and Reinstatement.**

Mortgagor hereby releases and waives, to the fullest extent permitted by law, any and all rights of reinstatement and redemption provided in the Illinois Mortgage Foreclosure Law.

## **22. Fixture Filing.**

Mortgagor and Mortgagee agree that this Mortgage shall constitute a financing statement and fixture filing under the Code with respect to all "fixtures" (as defined in the Code) attached to or otherwise forming a part of the Premises and that a security interest in and to such fixtures is hereby granted to Mortgagee. For purposes of the foregoing, Mortgagee is the secured party and Mortgagor is the debtor and the collateral covered by this financing statement shall be all

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items of property contained within the definition of the "Premises" which is or becomes a fixture on the Real Estate or any other real estate contained within the definition of the Premises.

## 23. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (herein called the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 8 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or Section 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage and/or by the judgment of foreclosure.

## 24. Miscellaneous.

### (a) Successors and Assigns.

This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its estates, heirs, legatees, assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

### (b) Invalidity of Provisions; Governing Law.

In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Mortgagee shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

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(c) **Intentionally Deleted.**

(d) **Rights of Tenants.**

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 any tenant or tenants of the Premises having an interest in the Premises prior to that of Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any Decree of Foreclosure and Sale to foreclose 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.

(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 any and all leases of all or any part of the Premises upon the execution by Mortgagee of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(f) **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.

(g) **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 lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise.

(h) **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 other Loan Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

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(i) **No Merger.**

It being the desire and intention of the parties hereto that the Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should Mortgagee acquire any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) **Maximum Indebtedness.**

Notwithstanding anything contained herein to the contrary, in no event shall the indebtedness secured by this Mortgage exceed an amount equal to \$4,800,000.

(k) **JURISDICTION AND VENUE.**

MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY MORTGAGOR AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF MORTGAGEE INITIATES SUCH ACTION, ANY COURT IN WHICH MORTGAGEE SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. MORTGAGOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY MORTGAGEE IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, ADDRESSED TO MORTGAGOR AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. MORTGAGOR WAIVES ANY CLAIM THAT CHICAGO, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD MORTGAGOR, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, MORTGAGOR SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED BY MORTGAGEE AGAINST MORTGAGOR AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR MORTGAGOR SET FORTH IN THIS PARAGRAPH SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY MORTGAGEE, OF ANY JUDGMENT

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OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY MORTGAGEE, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND MORTGAGOR HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

(l) WAIVER OF RIGHT TO JURY TRIAL.

MORTGAGOR AND MORTGAGEE ACKNOWLEDGE AND AGREE THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS MORTGAGE, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS OR WITH RESPECT TO THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN WOULD BE BASED UPON DIFFICULT AND COMPLEX ISSUES. ACCORDINGLY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR AND MORTGAGEE, BY ITS ACCEPTANCE OF THIS MORTGAGE, HEREBY KNOWINGLY AND VOLUNTARILY MUTUALLY (A) WAIVE THE RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION, CLAIM, COUNTERCLAIM, CROSS-CLAIM, THIRD-PARTY CLAIM, DISPUTE, DEMAND, SUIT OR PROCEEDING ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS MORTGAGE, THE NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN, OR ANY RENEWAL, EXTENSION OR MODIFICATION THEREOF, OR ANY CONDUCT OF ANY PARTY RELATING THERETO, AND (B) AGREE THAT ANY SUCH ACTION, CLAIM, SUIT OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.

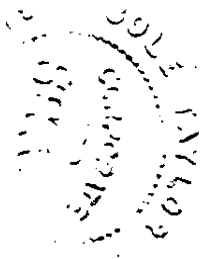
(m) Trustee Exculpation

This Mortgage is executed by Cole Taylor Bank, not personally but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing in this Mortgage shall be construed as creating any liability on such Trustee personally to perform any express or implied covenant, condition or obligation under this Mortgage, all such liability, if any, being expressly waived by every person or entity now or hereafter claiming any right, title, or interest under this Mortgage; provided, however, that the foregoing exculpation of the Trustee shall not impair or otherwise affect any of Mortgagee's rights or remedies against the assets held by Mortgagor or other collateral now or hereafter pledged to Mortgagee as security for the obligations of Mortgagor, or against any guarantor of the Loan or any other person or entity liable for the obligations of Mortgagor.



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



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COLE TAYLOR BANK, not personally but solely as Trustee as aforesaid

By: [Signature]  
Title: A.M.P.

Attest: [Signature]  
Sr. Trust Officer

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STATE OF ILLINOIS        )  
                                  ) SS.  
COUNTY OF COOK        )

I, the undersigned \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Mario V. Gotanco, the A.V.P. \_\_\_\_\_ of **COLE TAYLOR BANK**, as Trustee, and Linda L. Horcher \_\_\_\_\_, the Sr.T.O. thereof, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such A.V.P. and Sr.T.O., respectively, appeared before me this day in person and 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 Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 13th day of November, 2000.



*Sherrri Smith*  
NOTARY PUBLIC

(SEAL)

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## EXHIBIT A

### Legal Description of Real Estate

#### PARCEL 1:

LOTS 1 AND 2 IN MANNING'S SUBDIVISION IN LOTS 5 AND 8 IN BLOCK 25 ALL IN THE ORIGINAL TOWN OF CHICAGO IN THE SOUTH ½ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

THE 20 FOOT VACATED ALLEY SOUTH AND ADJOINING SAID LOTS 1 AND 2 ALL IN COOK COUNTY, ILLINOIS.

#### PARCEL 3:

LOTS 3, 4, 5, 6, 7, 8 AND 9 (EXCEPT THE NORTH 10 FEET OF EACH SAID LOTS CONVEYED FOR A PUBLIC ALLEY) IN MANNING'S SUBDIVISION OF LOTS 5 AND 8 IN BLOCK 25 IN THE ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 4:

ALL OF LOTS 1 AND 4 LYING WEST OF THE LINE (HEREINAFTER CALLED THE DIVISION LINE) BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 1 WHICH IS 49.65 FEET EAST OF THE NORTHWEST CORNER THEREOF, THENCE RUNNING SOUTH ALONG THE EAST FACE OF A BRICK WALL TO A POINT ON THE SOUTH LINE OF SAID LOT 4 WHICH IS 50.18 FEET EAST OF THE SOUTHWEST CORNER THEREOF IN BLOCK 25 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 30 NORTH RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 5:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 4 AS CREATED BY DEED DATED JANUARY 15, 1942 AND RECORDED APRIL 7, 1942 AS DOCUMENT 12870107 FROM DES PLAINES SAFETY DEPOSIT COMPANY TO 230 NORTH JEFFERSON STREET CORPORATION AND IN DEED TO IDA LASER AND MARIE SALMON RECORDED JUNE 3, 1943 AS DOCUMENT 13085640 FOR THE PURPOSE OF INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED LAND:

SOUTH 17 ½ FEET OF THAT PART OF LOT 4 LYING EAST OF THE LINE (HEREINAFTER CALLED THE DIVISION LINE) BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 1 WHICH IS 49.65 FEET EAST OF THE NORTHWEST CORNER THEREOF, THENCE RUNNING SOUTH ALONG THE EAST FACE OF A BRICK WALL TO A POINT ON THE

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SOUTH LINE OF SAID LOT 4 WHICH IS 50.18 FEET EAST OF THE SOUTHWEST CORNER THEREOF IN BLOCK 25 IN ORIGINAL TOWN OF CHICAGO IN SECTION 9, TOWNSHIP 30 NORTH RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Tax Index Nos.:

17-09-314-012, 17-09-314-013  
17-09-314-014, 17-09-314-015  
17-09-314-016, & 17-09-314-017

Common address:

200 North Jefferson Street  
Chicago, Illinois

Property of Cook County Clerk's Office

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## EXHIBIT B

### Permitted Exceptions

Non-delinquent general real estate taxes for the calendar year 2000 and subsequent years and to exceptions I, L, J, M, N, and Q contained in Part I of Schedule B of Chicago Title Insurance Company commitment no. 7886503 dated September 19, 2000.

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