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Cook County Recorder

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WHEREAS, THE MAXIMUM PRINCIPAL AMOUNT OF THE OBLIGATIONS SECURED BY THIS SECURITY INSTRUMENT AT EXECUTION OR WHICH MAY BE SECURED AT ANY TIME IN THE FUTURE UNDER ANY CONTINGENCY IS \$4,659,090.90, provided, that the foregoing limitation shall apply only to the lien upon the Property created by this Security Instrument, and it shall not in any manner limit, affect or impair any grant of a security interest or other right in favor of the Lender under the provisions of the Loan Agreement or under any other security agreement at any time executed by Borrower, and further provided, that the limitation shall not limit the security of this Security Instrument with respect to interest on such Obligations at the rates set forth in the Loan Agreement, sums to pay real estate taxes and insurance premiums, and attorneys' fees and costs with respect to the Property (as such terms are defined herein).

CNL FUNDING 2001-A, LP, as Mortgagor
(Borrower)

to

WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION,
AS COLLATERAL AGENT,
f/k/a NORWEST BANK MINNESOTA NATIONAL ASSOCIATION,
AS COLLATERAL AGENT FOR THE HOLDER OF THE NOTE
PURSUANT TO THAT CERTAIN COLLATERAL AGENCY AGREEMENT
DATED AS OF JUNE 16, 2000 AND
FIRST AMENDED AND RESTATED COLLATERAL AGENCY AGREEMENT
BETWEEN WELLS FARGO AND CNL DATED MARCH 26, 2001
BETWEEN
CNL FRANCHISE NETWORK, LP AND COLLATERAL AGENT, as Mortgagee
(Lender)

COMMERCIAL MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT
AND FIXTURE FILING

Dated: As of May 14, 2001

Location: As referenced on annexed
Exhibit "A"

UPON RECORDATION RETURN TO:
Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
215 N. Eola Drive
Orlando, Florida 32801
Attention: Dale A. Burket, Esq.

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WHEN RECORDED MAIL TO:

Dale A. Burket, Esquire
 Lowndes, Drosdick, Doster, Kantor & Reed, P.A.
 215 N. Eola Drive
 Orlando, Florida, 32801
 (407) 843-4600

SPACE ABOVE THIS LINE FOR RECORDER'S USE

COMMERCIAL MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

This Commercial Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (this "Security Instrument") is made as of May 14, 2001, by CNL FUNDING 2001-A, LP, a Delaware limited partnership, having its principal place of business at CNL Center at City Commons, 450 S. Orange Avenue, Orlando, Florida 32801-2878, as mortgagor/grantor ("Borrower") to WELLS FARGO BANK MINNESOTA, NATIONAL ASSOCIATION, a national banking association, as Collateral Agent (pursuant to that certain Collateral Agency Agreement dated as of June 16, 2000, and First Amended and Restated Collateral Agency Agreement between Wells Fargo and CFN dated March 26, 2001, between CNL Franchise Network, LP and Collateral Agent as the same may be hereafter amended, restated and/or consolidated, and their successors and assigns, from time to time), having an address at Corporate Trust Services, 1015 10th Avenue S.E., Minneapolis, Minnesota 55414, as mortgagee ("Lender" and "Collateral Agent"), for the benefit of the holder (the "Holder") of the Note (as hereinafter defined) pursuant to that certain Loan Agreement of even date herewith between Borrower and CNL Franchise Network, LP, a Delaware limited partnership (the "Loan Agreement").

RECITALS:

Borrower pursuant to the terms of the Loan Agreement and by that certain Promissory Note of even date herewith executed in favor of CNL Franchise Network, LP (together with all extensions, renewals or modifications thereof hereinafter referred to as the "Note") is indebted to the Holder in the principal sum of NINE HUNDRED THIRTY-ONE THOUSAND EIGHT HUNDRED EIGHTEEN AND 18/100 DOLLARS (\$931,818.18) (the "Loan") in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note and the Loan Agreement, principal and interest to be payable in accordance with the terms and conditions provided in the Note and the Loan Agreement with the balance due and payable, if not sooner paid, on May 17, 2021.

Borrower desires to secure the payment of the Debt (as defined in Article 2) and the performance of all of its obligations under the Note, the Loan Agreement, all Related Notes (as defined in the Loan Agreement) and the Other Obligations (as defined in Article 2).

ARTICLE 1 - GRANTS OF SECURITY

SECTION 1.1 PROPERTY CONVEYED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer, hypothecate, encumber and convey to Lender, and grant a security interest to Lender, in the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property"):

(a) If the Borrower has a fee simple interest in the Property then Section (a)(i) and related provisions herein shall be applicable and if the Borrower has a leasehold interest under a Ground Lease then Section (a)(ii) and related provisions herein shall be applicable:

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(i) Fee Parcel. The Borrower's fee simple interest, if any, in the real property described in Exhibit "A" attached hereto and made a part hereof (the "Fee Parcel" and, hereinafter sometimes referred to as the "Land"); or

(ii) Leasehold Parcels. The lease described in Exhibit "A" annexed hereto ("Ground Lease") and the leasehold estate created thereby in the real property described therein and in Exhibit "A" attached hereto, which is made a part hereof (the "Leasehold Parcel" and, hereinafter sometimes collectively referred to as the "Land"), including all assignments, modifications, extensions and renewals of the Ground Lease and all credits, deposits, options, privileges and rights of Borrower as tenant under the Ground Lease, including, but not limited to, the right, if any, to renew or extend the Ground Lease for succeeding term or terms, and also including all the right, title, claim or demand whatsoever of Borrower either in law or in equity, in possession or expectancy, of, in and to Borrower's right, as tenant under the Ground Lease, to elect under Section 365(h)(1) of the Bankruptcy code, Title 11 U.S.C.A. §101 *et seq.* (the "Bankruptcy Code") to terminate or treat the Ground Lease as terminated, or to retain the tenant's rights under the Ground Lease, in the event of (i) the bankruptcy, reorganization or insolvency of the landlord under such Ground Lease (the "Owner"), and (ii) the rejection of such Ground Lease by the Owner, as debtor in possession, or by a trustee for the Owner, pursuant to Section 365 of the Bankruptcy Code.

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging relating or pertaining to the Land and/or the Improvements, including, but not limited to, with respect to each Leasehold Parcel, if applicable, those arising under and by virtue of the related Ground Lease, and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereof;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "Uniform Commercial Code"), and all proceeds and products of the above; it is acknowledged and agreed that Borrower does not own (prior to a Default as defined below) personal property of the Tenant (as defined below);

(f) Leases and Rents. The lease agreement between Borrower and VICORP Restaurants, Inc. ("Tenant") dated on or about the date hereof, and attached and incorporated by reference to the Loan Agreement (the "Lease"), all other leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into by or with Borrower and all extensions, amendments and

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and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and a "security agreement". This Security Instrument is both a real property mortgage

SECTION 1.2 ASSIGNMENT OF LEASE AND RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to the current and future Lease(s) and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 10.1(h), Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower shall hold a portion of the Rents sufficient to discharge all current sums due on the Debt for use in the payment of such sums.

(n) **Other Rights.** Any and all other rights of Borrower in and to the items set forth in subsections (a) through (m) above.

(m) **Intangibles.** All trade names, trademarks, service marks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property; and

(l) **Agreements.** All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including without limitation, the right, upon the occurrence and during the continuance of an Event of Default (defined below), to receive and collect any sums payable to Borrower thereunder;

(k) **Rights.** The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(j) **Conversion.** All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(i) **Tax Certiorari.** All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(h) **Condemnation Awards.** All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(g) **Insurance Proceeds.** All proceeds of and any unearned premiums on any insurance policies covering the Property (individually, a "Policy" and collectively, the "Policies"), including without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property.

any of the Leases under the Bankruptcy Code; Debt, and all of Borrower's claims and rights to the payment of damages arising from any rejection by a lessee of from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the filing by or against Borrower for relief under the Bankruptcy Code (the "Rents"), and all proceeds mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other thereunder, cash or securities deposited thereunder to secure the performance by the Tenant or other lessees of their therein and thereunder, including without limitation, any guaranties of the Tenant or other lessees' obligations Bankruptcy Code (collectively, the "Leases") and all right, title and interest of Borrower, its successors and assigns modifications thereto, whether before or after the filing by or against Borrower of any petition for relief under the

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and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (defined in Section 2.3), a security interest in the Personal Property to the full extent that the Personal Property may be subject to the Uniform Commercial Code.

SECTION 1.4 FIXTURE FILING. Certain of the Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, described or referred to in this Security Instrument, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Property that is or may become fixtures. The debtor is the Borrower and the secured party is the Lender and their addresses are those set forth in the preamble of this Security Instrument.

SECTION 1.5 PLEDGE OF MONIES HELD. Borrower hereby pledges to Lender any and all monies now or hereafter held by Lender, including without limitation, any sums deposited into escrow for the payment of taxes and insurance premiums pursuant to the Loan Agreement, net proceeds of any insurance award, and condemnation awards or payments described in Section 3.5, and all Rents held pursuant to the Loan Agreement, as additional security for the Obligations until expended or applied as provided in this Security Instrument, the Loan Agreement or the Other Security Documents.

SECTION 1.6 CONDITIONS TO GRANT. TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever; provided, however, with respect to the Ground Lease and related Leasehold Parcel, if applicable, such period shall be for and during the rest, residue and remainder of the term of years yet to come and unexpired in the Ground Lease and any renewals therein provided for; subject nevertheless to the rents, covenants, conditions and provisions of such Ground Lease; PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Lender the Debt at the time and in the manner provided in the Note, the Loan Agreement and this Security Instrument, shall well and truly perform the Other Obligations as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein and in the Note and the Loan Agreement, these presents and the estate hereby granted shall cease, terminate and be void.

ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

SECTION 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the payment of the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"):

(a) the indebtedness evidenced by the Note and the Loan Agreement in lawful money of the United States of America;

(b) interest, default interest, prepayment charges, if any, late charges and other sums, as provided in the Note, this Security Instrument, the Loan Agreement or the Other Security Documents (defined below);

(c) all other moneys agreed or provided to be paid by Borrower in the Note, this Security Instrument, the Loan Agreement or the Other Security Documents;

(d) all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and

(e) all sums advanced and costs and expenses incurred by Lender in connection with the Debt or any part thereof, any renewal, refinancing, extension, or change of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender.

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SECTION 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the performance of the following (the "Other Obligations"):

- (a) all other obligations of Borrower contained herein;
- (b) each obligation of Borrower contained in the Note, the Loan Agreement, the Other Security Documents, any Related Note, any Related Loan Agreement, any Related Mortgage and any other Related Loan Documents (as such terms are defined in the Master Loan Agreement (as defined in the Loan Agreement)); and
- (c) each obligation of Borrower contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, this Security Instrument, the Loan Agreement or the Other Security Documents.

SECTION 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "Obligations."

ARTICLE 3 - BORROWER COVENANTS

Borrower covenants and agrees that:

SECTION 3.1 PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note, the Loan Agreement and in this Security Instrument.

SECTION 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note, (b) the Loan Agreement, and (c) all and any of the documents other than the Note, this Security Instrument or the Loan Agreement now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note (the "Other Security Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

SECTION 3.3 INSURANCE. Borrower shall comply, or shall cause the Tenant to comply with all of the terms and provisions and shall maintain, or cause to be maintained, with respect to the Property the Policies required pursuant to the Loan Agreement, (each a "Policy", collectively, the "Policies").

SECTION 3.4 PAYMENT OF TAXES, ETC. Subject to the provisions of the Loan Agreement, Borrower shall (a) promptly pay, or cause the Tenant to pay (i) all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), (ii) all maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and (iii) all charges for utility services provided to the Property as same become due and payable, and (b) promptly pay, or cause the Tenant to pay, all ground rents and other payment obligations payable under any Ground Lease ("Ground Rent") if applicable. Borrower will, or cause Tenant to, deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Ground Rent, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property, other than Permitted Encumbrances as defined in the Loan Agreement.

SECTION 3.5 CONDEMNATION. Borrower shall promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and shall deliver to Lender copies of any and all papers served in connection with such proceedings. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, the Loan Agreement and in this Security Instrument and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Borrower shall cause the award or

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payment made in any condemnation or eminent domain proceeding, which is payable to Borrower, to be paid directly to Lender. Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award interest at the rate or rates provided herein, in the Note or in the Loan Agreement. Lender may apply any award or payment in accordance with the terms of the Loan Agreement. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender shall have the right, whether or not a deficiency judgment on the Note (to the extent permitted in the Note or herein) shall have been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt, subject to the rights and obligation of the Tenant under the Lease in respect of the restoration of the Property.

SECTION 3.6 RESTORATION AFTER CASUALTY/CONDEMNATION. If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, or if the Property or any portion thereof is taken by the power of eminent domain, Borrower shall give prompt notice of such damage or taking to Lender and shall promptly commence and diligently prosecute or shall cause the Tenant under the Lease to promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty or taking, with such alterations as may be approved by Lender (the "Restoration") and in accordance with the provisions and requirements of the Lease. Lender shall have the right to apply any insurance proceeds or any condemnation award related to such damage or taking in accordance with, and subject to, the provisions of the Loan Agreement.

SECTION 3.7 LEASE AND RENTS. The Lease shall be subject to the prior approval of Lender and its counsel, at Borrower's expense, and shall be further subject to Borrower's continued compliance with all of the terms and conditions of the Loan Agreement. Except to the extent otherwise expressly set forth under the Loan Agreement, Borrower agrees faithfully to perform all its obligations under the Lease or any other future lease related to the Property at any time assigned to Lender as additional security, and to refrain from any action or inaction which would result in termination of the Lease or in the diminution of the value thereof or of the Rents due thereunder. The Tenant and all future lessees under the Lease made after the date of recording of this Security Instrument shall, at Lender's option, and without any further documentation, attorn to Lender as lessor if for any reason Lender becomes lessor thereunder, and Lender shall not be responsible under such Lease for matters arising prior to Lender becoming lessor thereunder; provided, however, Lender shall not become lessor or obligated as lessor under the Lease unless or until it shall elect in writing to do so. Borrower hereby agrees to authorize and direct the Tenant named in the Lease or any other or future lessees or occupants of the Property and all lease guarantors to pay over to Lender or to such other party as Lender directs all Rents and all sums due under any lease guaranties from and after the date hereof, and to continue so to do until otherwise notified by Lender.

SECTION 3.8 MAINTENANCE AND USE OF PROPERTY. Borrower shall cause, or shall cause the Tenant under the Lease to cause, the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property and except as may be permitted under the Lease) without the consent of Lender. Borrower shall, or shall cause the Tenant under the Lease to, promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.5 hereof and shall, or shall cause the Tenant under the Lease to, complete and pay for any structure at any time in the process of construction or repair on the Land in accordance with the provisions of the Lease. Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof without Lender's prior written consent. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, (a) Borrower will not cause or permit the nonconforming use to be discontinued or the nonconforming Improvement to be abandoned without the express written consent of Lender and (b) Borrower shall provide, or cause the Tenant under the Lease to provide, an "Ordinance or Law Coverage" or "Enforcement" endorsement to the Policies in accordance with the requirements set forth in the Loan Agreement.

SECTION 3.9 WASTE. Borrower shall not commit or suffer, or allow any Tenant under the Lease to commit or suffer, any waste of the Property or make, or allow any Tenant under the Lease to make, any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the

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operation of the Property, or take any action, or allow any Tenant under the Lease to take any action, that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

SECTION 3.10 COMPLIANCE WITH LAWS. Borrower shall, or shall cause the Tenant under the Lease to, promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting the Property, or the use thereof ("Applicable Laws").

SECTION 3.11 PAYMENT FOR LABOR AND MATERIALS. Borrower shall, or shall cause the Tenant under the Lease to, promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Encumbrances (as defined in the Loan Agreement).

SECTION 3.12 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property (including without limitation, each Lease) or given by Borrower to Lender for the purpose of further securing an Obligation and any amendments, modifications or changes thereto.

ARTICLE 4 - REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

SECTION 4.1 WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses (a) an unencumbered fee simple absolute estate in the Fee Parcel, if applicable, and the Improvements thereon, or (b)(i) an unencumbered leasehold estate in each Leasehold Parcel created by and pursuant to the provisions of the Ground Lease, if applicable, and (ii) good title to the Improvements thereon, and that it, in each case, owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument and other Permitted Encumbrances. Borrower further represents and warrants that if the Property is subject to a Ground Lease (a) the Ground Lease is in full force and effect and has not been modified or amended in any manner whatsoever, (b) to the best of its knowledge there are no defaults under such Ground Lease and no event has occurred which, but for the passage of time, or notice, or both would constitute a default under the Ground Lease, (c) to the best of its knowledge all rents, additional rents and other sums due and payable under the Ground Lease have been paid in full, and (d) none of Borrower nor to the best of its knowledge the Tenant nor the landlord under the Ground Lease has commenced any action or given or received any notice for the purpose of terminating the Ground Lease. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Lender against the claims of all persons whomsoever.

SECTION 4.2 BUSINESS PURPOSES. The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

SECTION 4.3 ILLEGAL ACTIVITY. No portion of the Property has been or will be purchased, improved, equipped or furnished with proceeds of any illegal activity and to the best of Borrower's knowledge, there are no illegal activities or activities relating to controlled substance at the Property.

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ARTICLE 5 - OBLIGATIONS AND RELIANCES

SECTION 5.1 RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Note, the Loan Agreement, this Security Instrument and the Other Security Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

SECTION 5.2 NO RELIANCE ON LENDER. The general partner(s), member(s) and/or principal(s) of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

SECTION 5.3 NO LENDER OBLIGATIONS. Notwithstanding the provisions of Subsections 1.1(f) and (l) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Lease; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Note, the Loan Agreement or the Other Security Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

SECTION 5.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, this Security Instrument, the Loan Agreement and the Other Security Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth herein, in the Loan Agreement, the Lease and in the Other Security Documents without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that such reliance existed on the part of Lender prior to the date hereof; that the warranties and representations are a material inducement to Lender in accepting the Note, this Security Instrument, the Loan Agreement and the Other Security Documents; and that Lender would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth herein, in the Loan Agreement and in the Other Security Documents.

ARTICLE 6 - FURTHER ASSURANCES

SECTION 6.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Loan Agreement, the Other Security Documents, any note, bond or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

SECTION 6.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the Property and rights

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hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Applicable Laws. Borrower, on demand, will execute and deliver and hereby authorizes Lender, following 10 days' notice to Borrower, to execute in the name of Borrower (as Borrower's attorney-in-fact or otherwise), or without the signature of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Lender in the Property. Borrower grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender pursuant to this Section 6.2.

SECTION 6.3 CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender shall have the option, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes, Ground Rents or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Lender shall have the option, exercisable by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instrument, the Loan Agreement or any of the Other Security Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

ARTICLE 7 - DUE ON SALE; ENCUMBRANCE

SECTION 7.1 NO SALE; ENCUMBRANCE. Except as may be permitted by the terms of the Loan Agreement, Borrower agrees that Borrower shall not, without the prior written consent of Lender, (a) sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Property or any part thereof or permit the Property or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than pursuant to the lease of space in the Improvements to Tenant or future tenants in accordance with the provisions of Section 3.7, or (b) permit the voluntary or involuntary sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, grant of any options with respect to, or any transfer or disposition (directly or indirectly, by operation of law or otherwise) of a legal or beneficial ownership interest in Borrower, any partners of Borrower, or any direct or indirect legal or beneficial owner of Borrower or any of its partners.

ARTICLE 8 - PREPAYMENT; RELEASE OF PROPERTY

SECTION 8.1 PREPAYMENT. The Debt may not be prepaid in whole or in part except in strict accordance with the express terms and conditions of the Note and the Loan Agreement.

SECTION 8.2 RELEASE OF PROPERTY. Borrower shall not be entitled to a release of any Fee Parcel or Leasehold Parcel from the lien of this Security Instrument except in accordance with terms and conditions of the Loan Agreement.

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ARTICLE 9 - DEFAULT

SECTION 9.1 EVENTS OF DEFAULT. The occurrence of a Default under (and as defined in) the Loan Agreement shall constitute an "Event of Default" under this Security Agreement.

ARTICLE 10 - RIGHTS AND REMEDIES

SECTION 10.1 REMEDIES. Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law or in equity in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) subject to the provisions of the Note and Loan Agreement, institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement or the Other Security Documents;
- (f) subject to the provisions of the Note and Loan Agreement, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument, the Loan Agreement or the Other Security Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower or of any person, firm or other entity liable for the payment of the Debt;
- (h) subject to any applicable law, the license granted to Borrower under Section 1.2 shall automatically be revoked and Lender, subject to the rights of Tenant under the Lease, may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto located at the office of or otherwise in the possession of the Borrower and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including without limitation, the right to make, cancel, enforce or modify the Lease, obtain and evict the Tenant, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay, or cause Tenant to pay, monthly in advance to Lender, or any receiver appointed to collect the

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Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of the Personal Property, if any, or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of such Personal Property, and (ii) request Borrower at its expense to assemble the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument, the Loan Agreement or any Other Security Document and subject to the rights of Tenant under the Lease, to the payment of the following items in any order in its sole discretion: (i) Taxes, Ground Rents and Other Charges; (ii) insurance premiums for the Policies; (iii) interest on the unpaid principal balance of the Note; (iv) amortization of the unpaid principal balance of the Note; (v) all other sums payable pursuant to the Note, this Security Instrument, the Loan Agreement and the Other Security Documents, including without limitation advances made by Lender pursuant to the terms of this Security Instrument, the Loan Agreement and the Other Security Documents;

(k) subject to the rights of Tenant under the Lease, surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned insurance premiums for the Policies and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such insurance premiums;

(l) subject to the rights of Tenant under the Lease, apply the undisbursed balance of any sums deposited with Lender by Borrower to cover deficiencies in connection with a Restoration as set forth in the Loan Agreement, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion; or

(m) pursue such other remedies as Lender may have under applicable law or in equity.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 10.1 to the contrary, if a Default as described in the Loan Agreement relating to a voluntary or involuntary bankruptcy shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

SECTION 10.2. APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument, the Loan Agreement or the Other Security Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

SECTION 10.3. RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default or if Borrower fails to make any payment or to do any act as herein provided, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security

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hereof. Lender is authorized, subject to the rights of Tenant under the Lease, to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 10.3, shall constitute a portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the interest rate set forth in the Note during the continuance of a Default thereunder, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and shall be immediately due and payable upon demand by Lender therefor.

SECTION 10.4. ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and, after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

SECTION 10.5. RECOVERY OF SUMS REQUIRED TO BE PAID. Lender shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

SECTION 10.6. EXAMINATION OF BOOKS AND RECORDS. Lender, its agents, accountants and attorneys shall have the right, upon prior written notice to Borrower if no Event of Default exists, to examine and audit, during reasonable business hours, the records, books, management and other papers of Borrower and its affiliates which pertain to their financial condition or the income, expenses and operation of the Property, at any office regularly maintained by Borrower or its affiliate, where the books and records are located. Lender and its agents shall have the right to make copies and extracts from the foregoing records and other papers. Lender shall have the right to review Tenant's records related to the restaurant operation located at the Property, and other related financial information of Tenant, which are received by Borrower pursuant to the Lease.

SECTION 10.7. OTHER RIGHTS, ETC.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note, the Loan Agreement or the Other Security Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Loan Agreement, this Security Instrument or the Other Security Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to

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the rights and remedies herein stated, but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

SECTION 10.8 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

SECTION 10.9 RIGHT OF ENTRY. Subject to Tenant's rights under the Lease, Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

SECTION 10.10 NO LIABILITY OF LENDER. This Security Instrument shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default. This Security Instrument shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the Tenant or any other parties, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

SECTION 10.11 NO MORTGAGEE IN POSSESSION. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

SECTION 10.12 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, the performance and discharge of Borrower's obligations hereunder, under the Note, the Loan Agreement and the Other Security Documents and the performance and discharge of the Other Obligations.

SECTION 10.13 BANKRUPTCY.

(a) Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the Tenant under such Lease under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in

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the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

SECTION 10.14 CROSS-COLLATERALIZATION. Borrower acknowledges that the Debt secured by this Security Instrument is also secured by additional mortgages/deeds of trust (the "Other Mortgages") given to Lender encumbering properties located in other states, all as described in the Master Loan Agreement and evidenced by Related Notes (as such term is defined in the Loan Agreement). Upon the occurrence of an Event of Default, Lender shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Security Instrument or the Other Mortgages, whether by court action, power of sale or otherwise, under any applicable provision of law, for all of the Debt and the debt evidenced by the Related Notes or any portion thereof, and the lien and the security interest created by this Security Instrument shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Debt then due and payable, but still outstanding. Borrower acknowledges and agrees that the Fee Parcels and/or Leasehold Parcels related to the Related Notes and the Note may be located in more than one county and/or state, and, therefore, Lender shall be permitted to enforce payment of the Debt and such debt under the Related Notes and exercise any and all rights and remedies under this Security Instrument and the Other Mortgages, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Lender, in its sole discretion, in any one or more of the counties or states in which the Property is located. Neither the acceptance of this Security Instrument and the enforcement thereof, nor the acceptance of the Other Mortgages and the enforcement thereof in any other county or state, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of this Security Instrument through one or more additional proceedings in that county or in any other county. Any and all sums received by Lender under the Note, the Loan Agreement, this Security Instrument or the Other Security Documents shall be applied to the Debt and the debt under the Related Notes in such order and priority as Lender shall determine, in its sole discretion, without regard to the appraised value of any individual Fee Parcel or Leasehold Parcel related to the Note or any Related Notes.

ARTICLE 11 - ENVIRONMENTAL MATTERS

SECTION 11.1 ENVIRONMENTAL COVENANTS. Borrower shall comply or cause the Tenant to comply with the covenants regarding environmental matters set forth in the Lease and shall comply with the terms of the Environmental Indemnity Agreement.

SECTION 11.2 LENDER'S RIGHTS. Lender and any other person or entity designated by Lender, including, but not limited to, any representative of a governmental entity, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have, subject to the rights of the Tenant under the Lease, the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use including, but not limited to, conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender.

ARTICLE 12 - WAIVERS

SECTION 12.1 WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, the Loan Agreement or any of the Other Security Documents, or the Obligations.

SECTION 12.2 MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of

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each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Laws.

SECTION 12.3. WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except (a) with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and (b) with respect to matters for which Lender is required by Applicable Laws to give notice.

SECTION 12.4. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

SECTION 12.5. SOLE DISCRETION OF LENDER. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole discretion of Lender, except as may be otherwise expressly and specifically provided herein.

SECTION 12.6. WAIVER OF TRIAL BY JURY. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE AND THE LOAN AGREEMENT, THE APPLICATION FOR THE LOAN, THE NOTE, THE LOAN AGREEMENT, THIS SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

ARTICLE 13 - EXCULPATION

SECTION 13.1. EXCULPATION. The exculpation provisions of the Note and Loan Agreement are hereby incorporated by reference to the fullest extent as if the text of such sections were set forth in their entirety herein.

ARTICLE 14 - NOTICES

SECTION 14.1. NOTICES. All notices or other written communications hereunder shall be delivered in accordance with the notice provisions contained in the Loan Agreement at the addresses set forth in the preamble of this Security Instrument.

ARTICLE 15 - APPLICABLE LAW

SECTION 15.1. CHOICE OF LAW. This Security Instrument shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located.

SECTION 15.2. PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Laws.

ARTICLE 16 - COSTS

SECTION 16.1. LEGAL FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Lender in connection with the preparation of the Note, the Loan Agreement, this Security Instrument

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and the Other Security Documents, and (b) Borrower shall pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees to the fullest extent permitted by law, incurred or paid by Lender in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property, whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the rate equal to the default rate set forth in the Note from the date paid or incurred by Lender until such expenses are paid by Borrower.

ARTICLE 17 - DEFINITIONS

SECTION 17.1 GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent mortgagee" the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Lease and the Rents and enforcing its rights hereunder.

SECTION 17.2 HEADINGS, ETC. The headings and captions of various Articles and Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

ARTICLE 18 - MISCELLANEOUS PROVISIONS

SECTION 18.1 NO ORAL CHANGE. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

SECTION 18.2 LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

SECTION 18.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of the Note, the Loan Agreement, this Security Instrument or any of the Other Security Documents is held to be invalid, illegal or unenforceable in any respect, the Note, the Loan Agreement, this Security Instrument or such Other Security Document shall be construed without such provision.

SECTION 18.4 DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

SECTION 18.5 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

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ARTICLE 19 - GROUND LEASE PROVISIONS

SECTION 19.1 THE GROUND LEASE. If the Property is subject to a Ground Lease, Borrower shall cause the Tenant to (i) pay all rents, additional rents and other sums required to be paid by Borrower, as tenant under and pursuant to the provisions of the Ground Lease, (ii) diligently perform and observe all of the terms, covenants and conditions of the Ground Lease on the part of Borrower, as tenant thereunder, and (iii) promptly notify Lender of the giving of any notice by the landlord under the Ground Lease to Borrower of any default by Borrower, as tenant thereunder, and deliver to Lender a true copy of each such notice. Borrower shall not, without the prior consent of Lender, surrender the leasehold estate created by the Ground Lease or terminate or cancel the Ground Lease or materially modify, change, supplement, alter or amend the Ground Lease, in any respect, either orally or in writing, and if Borrower shall default in the performance or observance of any term, covenant or condition of the Ground Lease on the part of Borrower, as tenant thereunder, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act or take any action as may be appropriate to cause all of the terms, covenants and conditions of such Ground Lease on the part of Borrower to be performed or observed on behalf of Borrower, to the end that the rights of Borrower in, to and under such Ground Lease shall be kept unimpaired and free from default. If any Owner shall deliver to Lender a copy of any notice of default under any Ground Lease, such notice shall constitute full protection to Lender for any action taken or omitted to be taken by Lender, in good faith, in reliance thereon. Borrower shall exercise each individual option, if any, to extend or renew the term of each Ground Lease upon demand by Lender made at any time within one (1) year prior to the last day upon which any such option may be exercised, and Borrower hereby expressly authorizes and appoints Lender its attorney-in-fact to exercise any such option in the name of and upon behalf of Borrower, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest.

SECTION 19.2 SUBLEASES. Notwithstanding anything contained in the Ground Lease or the Lease to the contrary, Borrower shall not further sublet any portion of the Land without prior written consent of Lender.

SECTION 19.3 NO MERGER OF FEE AND LEASEHOLD ESTATES; RELEASES. So long as any portion of the Debt shall remain unpaid, unless Lender shall otherwise consent, the fee title to the Leasehold Parcel and the leasehold estate therein created pursuant to the provisions of the related Ground Lease if applicable, shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates in Borrower, Owner, or in any other person by purchase, operation of law or otherwise. Lender reserves the right, at any time, subject to the rights of the Tenant under the Lease, to release portions of the Property, including, but not limited to, the leasehold estate created by the Ground Lease, with or without consideration, at Lender's election, without waiving or affecting any of its rights hereunder or under the Note, the Loan Agreement or the Other Security Documents and any such release shall not affect Lender's rights in connection with the portion of the Property not so released.

SECTION 19.4 BORROWER'S ACQUISITION OF FEE ESTATE. In the event that Borrower, so long as any portion of the Debt remains unpaid, shall be the owner and holder of the fee title to the Leasehold Parcel, the lien of this Security Instrument shall be spread to cover Borrower's fee title to such Leasehold Parcel and said fee title shall be deemed to be included in the Property. Borrower agrees, at its sole cost and expense, including without limitation, Lender's reasonable attorney's fees, to (i) execute any and all documents or instruments necessary to subject its fee title to such Leasehold Parcel to the lien of this Security Instrument; and (ii) provide a title insurance policy which shall insure that the lien of this Security Instrument is a first lien on Borrower's fee title to such Leasehold Parcel.

SECTION 19.5 BANKRUPTCY EVENTS CONCERNING THE MORTGAGED LEASE(S). If the Property is subject to a Ground Lease:

(a) Borrower shall not surrender its leasehold estate and its interest created under the Ground Lease, nor terminate or cancel the Ground Lease. Any attempted surrender, termination or cancellation by Borrower shall be null and void and of no force or effect. If there shall be filed by or against Borrower a petition under the Bankruptcy Code, Borrower, as tenant under the Ground Lease, or any trustee appointed by the Bankruptcy Court in such proceedings, shall immediately (but in no event more than one (1) day after the filing of such petition) notify Lender in writing of Borrower's or the trustee's intent, as the case may be, to assume or reject such Ground Lease pursuant to Section 365(a) of the Bankruptcy Code. If the intent of Borrower or such trustee is to reject such Ground Lease or

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to take no action under such Section 365(a), and Borrower or the trustee has received notification from Lender that, if such is the case, Lender desires an assignment of such Ground Lease, then:

- (i) Borrower (or Lender upon Borrower's failure to do so promptly) shall file, prior to the expiration of the period provided in Section 365(d)(4) of the Bankruptcy Code, a motion with the Bankruptcy Court to assume and assign such Ground Lease to Lender; and
- (ii) Borrower shall bear the burden of establishing with the Bankruptcy Court that Borrower can perform as required by Sections 365(b) and (f) of the Bankruptcy Code.

If Borrower notifies Lender of its intent to assume any Ground Lease, Borrower shall not seek to reject such Ground Lease, but shall forthwith (and in all events before the expiration of all applicable time periods for such assumption and assignment) obtain consent from the Bankruptcy Court to assume and assign such Ground Lease for the purposes of this paragraph. Borrower agrees that Lender may at any time apply to the Bankruptcy Court for an extension of any time period for the assumption of such Ground Lease by Borrower and that the protection of Lender's security interest in such Ground Lease shall be deemed sufficient cause for such extension and Borrower shall not oppose any application by Lender for such extension. Borrower agrees that, if for any reason the Ground Lease is rejected pursuant to the provisions of Section 365 of the Bankruptcy Code, Borrower will not take the position that such rejection is a termination of such Ground Lease.

(b) If any Owner rejects the Ground Lease pursuant to the Bankruptcy Code, Borrower agrees that it will not elect to treat such Ground Lease as terminated, but will elect to remain in possession of the leasehold interest as provided in 11 U.S.C. § 365(h)(1)(A)(ii), make Ground Rent payments subject to allowable setoffs under 11 U.S.C. § 365(h) and retain its rights under such Ground Lease.

(c) If the Ground Lease is canceled or terminated, and Lender or its nominee shall acquire an interest in any new Ground Lease of the Leasehold Parcel demised thereby, Borrower shall have no right, title or interest in or to the new Ground Lease or to the leasehold estate created by such new Ground Lease.

(d) If any action, proceeding, motion or notice shall be commenced or filed in respect of Owner or the leasehold estate under the Ground Lease in connection with any case (including a case commenced or filed under the Bankruptcy Code), Lender shall have the option, to the exclusion of Borrower, exercisable upon notice from Lender to Borrower, to conduct and control any such litigation with counsel of Lender's choice. Lender may proceed in its own name or in the name of Borrower in connection with any such litigation, and Borrower agrees to execute any and all powers, authorizations, consents or other documents required by Lender in connection therewith. Borrower shall, upon demand, pay to Lender all costs and expenses (including attorneys' fees) paid or incurred by Lender in connection with the prosecution or conduct of any such proceedings. Any such costs or expenses not paid by Borrower as aforesaid shall be secured by the lien of this Security Instrument and shall be added to the principal amount of the indebtedness secured hereby. Borrower shall not commence any action, suit, proceeding or case, or file any application or make any motion, in respect of the Ground Lease in any such case without the prior written consent of Lender.

(e) Borrower shall, promptly after obtaining knowledge thereof, notify Lender of any filing by or against any Owner under the Ground Lease of a petition under the Bankruptcy Code. Borrower shall thereafter forthwith give written notice of such filing to Lender, setting forth any information available to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought therein. Borrower shall promptly deliver to Lender, following receipt, any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and proceeding related thereto.

ARTICLE 20 - RECOURSE

SECTION 20.1 The recourse provisions of the Note are incorporated by this reference to the same extent as if such provisions were fully set forth herein.

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ARTICLE 21 - SPECIAL ILLINOIS PROVISIONS

SECTION 21.1 Notwithstanding anything contained in this Security Instrument to the contrary, the following additional provisions shall be incorporated into and deemed to modify and amend the applicable provisions, as necessary, of this Security Instrument to the same extent as if such provisions were initially set forth above.

(a) Upon an Event of Default by Borrower under the Security Instrument, Lender shall be entitled to certain other rights as set forth in the Loan Agreement, including without limitation, the right to appointment of a receiver for the Property and the right to be placed as mortgagee-in-possession of the Property.

(b) The Note, the Security Instrument, and the other Loan Documents may not be changed, amended or modified, except in writing expressly intended for such purpose and executed by both the Lender and the Borrower.

(c) Borrower hereby waives all rights of redemption and/or reinstatement on behalf of Borrower and on behalf of all other persons acquiring any interest or title in the Property subsequent to the date of this Security Instrument, except decree or judgment creditors of Borrower.

(d) At no time shall the principal amount of the indebtedness secured by this Security Instrument, exceed twice the original amount of the Note.

[Signatures on Next Page]

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IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Borrower the day and year first above written.

"BORROWER"

Signed, Sealed and Delivered
in the presence of:

U. C. Hartman
Name: U. C. HARTMAN

Jenara S. Lacey
Name: Jenara S. Lacey

CNL FUNDING 2001-A, LP, a Delaware limited
partnership

BY: CNL FUNDING 2001-A, INC., a Delaware
corporation, as General Partner

By: *Lisa S. Foster*
Lisa S. Foster, as Vice President

(CORPORATE SEAL)

STATE OF DELAWARE
COUNTY OF NEW CASTLE

The foregoing instrument was acknowledged before me on this 2 day of May, 2001, by Lisa S. Foster, as Vice President of CNL FUNDING 2001-A, INC., a Delaware corporation, as General Partner of CNL FUNDING 2001-A, LP, a Delaware limited partnership, on behalf of the corporation and limited partnership.

(NOTARY SEAL)

Pamela A. Jasinski
Notary Public, State of Delaware

Printed Name: _____
Notary Commission: PAMELA A. JASINSKI
My Commission Expires: NOTARY PUBLIC

STATE OF DELAWARE
My Commission Expires 11/23/01

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2025.03.27

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Exhibit "A"

Legal Description

Bakers Square #20205/Cook County, Rolling Meadows, IL

THAT PART OF LOT 4 IN 58-62 VENTURE SUBDIVISION OF PART OF SECTIONS 8 AND 9, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 4 IN SAID 58-62 VENTURE SUBDIVISION; THENCE SOUTH 12 DEGREES 10 MINUTES 10 SECONDS WEST, 271.97 FEET TO A POINT BEING 297.66 FEET EASTERLY OF THE SOUTHWESTERLY CORNER OF LOT 6 IN SAID 58-62 VENTURE SUBDIVISION; THENCE CONTINUING SOUTH 12 DEGREES 10 MINUTES 10 SECONDS WEST A DISTANCE OF 20.03 FEET; THENCE SOUTH 64 DEGREES 18 MINUTES 39 SECONDS EAST, 123.39 FEET; THENCE NORTH 21 DEGREES 25 MINUTES 20 SECONDS EAST FOR A DISTANCE OF 297.37 FEET TO A POINT IN THE NORTHEASTERLY LINE OF LOT 4 IN SAID 58-62 VENTURE SUBDIVISION, SAID LINE BEING AN ARC OF A CIRCLE CONVEX NORTHEASTERLY HAVING A RADIUS OF 2,814.79 FEET; THENCE NORTHWESTERLY ALONG SAID ARC FOR A DISTANCE OF 170.03 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS

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