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Cook County Recorder 99.50

MORTGAGE AND SECURITY AGREEMENT
WITH ASSIGNMENT OF RENTS



0020188178

This Mortgage dated April 1, 2001, made by Marc R. Shellist and Lynda A. Shellist, husband and wife, with an address of 1072 Creekview, Vernon Hills, Illinois 60061 (hereinafter referred to collectively as "Mortgagor"), to Harris Bank Arlington-Meadows, with its principal place of business at 3225 Kirchoff Road, Rolling Meadows, Illinois 60008 (hereinafter referred to as "Mortgagee"):

WITNESSETH THAT:

WHEREAS Scenic View, Inc. ("Borrower") is indebted to Mortgagee as evidenced by that certain Promissory Note bearing even date herewith in the principal sum of Three Hundred Sixty-Four Thousand Dollars (\$364,000) and payable to the order of Mortgagee whereby Borrower promises to pay the principal sum thereof together with interest thereon prior to the maturity date of ~~July 16, 2002~~ ^{SEPTEMBER 13, 2002} at the rate from time to time announced by Harris Trust and Savings Bank as its prime commercial rate (the "Prime Rate"), and after demand until paid at the rate per annum determined by adding three percent (3%) to the Prime Rate as from time to time in effect (such promissory note and any and all notes issued in renewal thereof or in substitution or replacement therefor being hereinafter referred to as the "Note"); and

WHEREAS, Marc R. Shellist has guaranteed the indebtedness evidenced by the Note and certain other indebtedness of the Borrower to the Mortgagee, in a sum not to exceed Three Hundred Sixty-Four Thousand Dollars (\$364,000) together with the amount of interest accrued on the principal amount of the Note and certain other expenses pursuant to that certain Guaranty of even date herewith (the "Guaranty");

NOW, THEREFORE, to secure (i) the payment of the principal of and interest on the Note as and when the same becomes due and payable, (ii) the payment of all other indebtedness, obligations and liabilities which are guaranteed pursuant to the Guaranty and (iii) the observance and performance of all covenants and agreements contained herein, in the Guaranty or in any other instrument or document at any time evidencing or securing any of the foregoing or setting forth terms and conditions applicable thereto (all of such indebtedness, obligations and liabilities described in clauses (i), (ii) and (iii) being hereinafter collectively referred to as the "indebtedness hereby secured"), Mortgagor does hereby grant, bargain, sell, convey, mortgage, warrant, assign, and pledge unto Mortgagee, its successors and assigns, and grant to Mortgagee,

This Instrument Prepared By And
After Recording Return To:
Steven N. Zaris
Chapman and Cutler
111 West Monroe Street
Chicago, Illinois 60603



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its successors and assigns a security interest in all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V and VI below, all of the same being collectively referred to herein as the "*Mortgaged Premises*":

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GRANTING CLAUSE I

That certain real estate lying and being in Vernon Hills, County of Lake and State of Illinois more particularly described in Schedule I attached hereto and made a part hereof.

GRANTING CLAUSE II

All buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials intended for construction, reconstruction, alteration and repairs of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, and all fixtures of every kind and nature whatsoever now or hereafter attached to or contained in or used or useful in connection with said real estate and the buildings and improvements now or hereafter located thereon; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage.

GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil, and water rights belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of the Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee.

GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation heretofore or hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvement now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or

any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively "*Condemnation Awards*").

GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter, by installation or writing of any kind, be subjected to the lien hereof by Mortgagor or by anyone in Mortgagor's behalf.

GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged and assigned, and in which a security interest is granted, or intended so to be, unto Mortgagee, its successors and assigns, forever; provided, however, that this instrument is upon the express condition that if all indebtedness hereby secured shall be fully paid and performed, then this instrument and the estate and rights hereby granted shall cease, determine and be void and this instrument shall be released by Mortgagee upon the written request and at the expense of Mortgagor, otherwise to remain in full force and effect.

It is expressly understood and agreed that the indebtedness hereby secured will in no event exceed two hundred percent (200%) of (i) the total face amount of the Note plus (ii) the total interest which may hereafter accrue under the Note on such face amount plus (iii) any fees, costs or expenses which may be payable hereunder.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. *Payment of the Indebtedness.* The indebtedness hereby secured will be promptly paid as and when the same becomes due.
2. *Further Assurances.* Mortgagor will execute and deliver such further instruments and do such further acts as may be necessary or proper to carry out more effectively the purpose of this instrument and, without limiting the foregoing, to make subject to the perfected lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be.
3. *Ownership of Mortgaged Premises.* Mortgagor covenants and warrants that it has good and marketable title to the Mortgaged Premises and Mortgagor has good

title, full power and authority to convey, transfer and mortgage the same to Mortgagee for the uses and purposes set forth in this Mortgage; and Mortgagor will warrant and defend the title to the Mortgaged Premises against all claims and demands whatsoever.

4. *Possession.* While Mortgagor is not in default hereunder, Mortgagor shall be suffered and permitted to remain in full possession, enjoyment and control of the Mortgaged Premises, subject always to the observance and performance of the terms of this instrument.

5. *Payment of Taxes.* Mortgagor shall pay before any penalty attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall, upon written request, exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced, no such charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, conducted in good faith and with due diligence and if Mortgagor shall have furnished such security, if any, as may be required in the proceedings or requested by Mortgagee.

6. *Insurance.* Mortgagor will, at its expense, keep all buildings, improvements, equipment and other property now or hereafter constituting part of the Mortgaged Premises insured against loss or damage by fire, lightning, windstorm, explosion and such other risks as are usually included under extended coverage policies, or which are usually insured against by owners of like property, in an amount sufficient to prevent Mortgagor or Mortgagee from becoming a co-insurer of any partial loss under applicable policies and in any event not less than the then full insurable value (actual replacement value without deduction for physical depreciation) thereof, as determined at the request of Mortgagee and at Mortgagor's expense by the insurer or insurers or by an expert approved by Mortgagee, all under insurance policies payable, in case of loss or damage, to Mortgagee, subject to the rights of the holder of any first mortgage lien on the Mortgaged Premises, such rights to be evidenced by the usual standard non-contributory form of mortgage clause to be attached to each policy. Mortgagor shall not carry separate insurance concurrent in kind or form and contributing in the event of loss, with any insurance required hereby. All insurance required hereby shall be maintained with good and responsible insurance companies and shall provide that any losses shall be payable notwithstanding any act or negligence of Mortgagor, and shall provide that no cancellation thereof shall be effective until at least 30 days after receipt by Mortgagor and Mortgagee of written notice thereof. Upon the execution of this Mortgage and thereafter not less than 15 days prior to the expiration date of any policy delivered pursuant to this instrument, Mortgagor will deliver to Mortgagee certificates of any policy required by this instrument, bearing notations evidencing the payment of all premiums. In the event

of foreclosure, Mortgagor authorizes and empowers Mortgagee to effect insurance upon the Mortgaged Premises in amounts aforesaid for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor to cancel any or all existing insurance policies.

UNLESS THE MORTGAGOR PROVIDES THE MORTGAGEE WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS MORTGAGE, THE MORTGAGEE MAY PURCHASE INSURANCE AT THE MORTGAGOR'S EXPENSE TO PROTECT THE MORTGAGEE'S INTERESTS IN THE MORTGAGED PREMISES. THIS INSURANCE MAY, BUT NEED NOT, PROTECT THE MORTGAGOR'S INTERESTS IN THE MORTGAGED PREMISES. THE COVERAGE PURCHASED BY THE MORTGAGEE MAY NOT PAY ANY CLAIMS THAT THE MORTGAGOR MAKES OR ANY CLAIM THAT IS MADE AGAINST THE MORTGAGOR IN CONNECTION WITH THE MORTGAGED PREMISES. THE MORTGAGOR MAY LATER CANCEL ANY SUCH INSURANCE PURCHASED BY THE MORTGAGEE, BUT ONLY AFTER PROVIDING THE MORTGAGEE WITH EVIDENCE THAT THE MORTGAGOR HAS OBTAINED INSURANCE AS REQUIRED BY THIS MORTGAGE. IF THE MORTGAGEE PURCHASES INSURANCE FOR THE MORTGAGED PREMISES, THE MORTGAGOR WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES THAT THE MORTGAGEE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO THE INDEBTEDNESS HEREBY SECURED. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE THE MORTGAGOR MAY BE ABLE TO OBTAIN ON ITS OWN.

7. *Damage to or Destruction of Mortgaged Premises.*

(a) *Notice.* In case of any material damage to or destruction of the Mortgaged Premises or any part thereof, Mortgagor shall promptly give written notice thereof to Mortgagee, generally describing the nature and extent of such damage or destruction.

(b) *Restoration.* In case of any damage to or destruction of the Mortgaged Premises or any part thereof, Mortgagor, whether or not the insurance proceeds, if any, received on account of such damage or destruction shall be sufficient for the purpose, at Mortgagor's expense, will promptly commence and complete (subject to unavoidable delays occasioned by strikes, lockouts, acts of God, inability to obtain labor or materials, governmental restrictions and similar causes beyond the reasonable control of Mortgagor) the restoration, replacement or rebuilding of the Mortgaged Premises as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

(c) *Adjustment of Loss.* Mortgagor hereby authorizes Mortgagee, at Mortgagee's option, to adjust and compromise any losses under any insurance afforded, but unless Mortgagee elects to adjust the losses as aforesaid, said adjustment and/or compromise shall be made by Mortgagor, subject to final approval of Mortgagee in the case of losses exceeding \$10,000.00

(d) *Application of Insurance Proceeds.* Net insurance proceeds received by Mortgagee under the provisions of this Mortgage or any instruments

supplemental hereto or thereto or under any policy or policies of insurance covering the Mortgaged Premises or any part thereof shall first be applied toward the payment of the amount owing on the indebtedness hereby secured in such order of application as Mortgagee may elect whether or not the same may then be due or be otherwise adequately secured; provided, however, that Mortgagee shall have the right, but not the duty, to release the proceeds thereof for use in restoring the Mortgaged Premises or any part thereof for or on behalf of Mortgagor in lieu of applying said proceeds to the indebtedness hereby secured and for such purpose may do all acts necessary to complete such restoration, including advancing additional funds, and any additional funds so advanced shall constitute part of the indebtedness hereby secured and shall be payable on demand with interest at the Default Rate.

8. *Eminent Domain.* Mortgagor acknowledges that Condemnation Awards have been assigned to Mortgagee, which awards Mortgagee is hereby irrevocably authorized to collect and receive, and to give appropriate receipts and acquittances therefor, and at Mortgagee's option, to apply the same toward the payment of the amount owing on account of the indebtedness hereby secured in such order of application as Mortgagee may elect and whether or not the same may then be due and payable or otherwise adequately secured, and Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any proceedings under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings.

9. *Construction, Repair, Waste, Etc.* Mortgagor agrees that no building or other improvement on the Mortgaged Premises and constituting a part thereof shall be altered, removed or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the consent of Mortgagee and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, Mortgagor covenants that the same will be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrance thereon or reservation of title thereto; to permit, commit or suffer no waste, impairment or deterioration of the Mortgaged Premises or any part thereof; to keep and maintain said Mortgaged Premises and every part thereof in good and first class repair and condition; from time to time to make all needful and proper replacements and additions so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good and first class condition, fit and proper for the respective purposes for which they were originally erected or installed; and to comply with all statutes, orders, requirements or decrees relating to the Mortgaged Premises by any federal, state or municipal authority.

10. *Liens and Encumbrances.* Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created or to remain

and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this instrument and the lien of the first mortgage on the Mortgaged Premises as of the date hereof.

11. *Right of Mortgagee to Perform Mortgagor's Covenants, Etc.* If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including without limitation reasonable attorney's fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Rate, shall constitute so much additional indebtedness hereby secured and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof. Mortgagee, in performing any act hereunder, shall be the sole judge of whether Mortgagor is required to perform same under the terms of this Mortgage.

12. *Inspection by Mortgagee.* Mortgagee and any participant in the indebtedness hereby secured shall have the right to inspect the Mortgaged Premises at all reasonable times, and access thereto shall be permitted for that purpose.

13. *Direct and Primary Security - No Subrogation.* The lien and security interest herein created and provided for stand as direct and primary security for the indebtedness hereby secured. No application of any sums received by Mortgagee in respect of the Mortgaged Premises or any disposition thereof to the reduction of the indebtedness hereby secured or any part thereof shall in any manner entitle Mortgagor to any right, title or interest in or to the indebtedness hereby secured or any collateral or security therefor, whether by subrogation or otherwise, unless and until all indebtedness hereby secured has been fully paid and satisfied.

14. *Events of Default.* Any one or more of the following shall constitute an event of default hereunder:

(a) Default in the payment when due of any indebtedness hereby secured; or

(b) Default for more than 15 days in the observance or compliance with any terms or provisions of this Mortgage or the Guaranty or of any separate

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assignment of leases and/or rents securing the Guaranty or of any other instrument or document securing the Guaranty or relating thereto; or

(c) Any representation or warranty made by Mortgagor herein or in any separate assignment of leases and/or rents securing the Guaranty or in any other instrument or document securing the Guaranty or relating thereto or in any statement or certificate furnished by it pursuant hereto or thereto proves to be untrue in any material respect as of the date of issuance or making thereof; or

(d) The Mortgaged Premises or any part thereof shall be sold, transferred, or conveyed, whether voluntarily or involuntarily, by operation of law or otherwise, except for sales of obsolete, worn out or unusable fixtures or personal property which are concurrently replaced with similar fixtures or personal property at least equal in quality and condition to those sold and owned by Mortgagor free of any lien, charge or encumbrance; or

(e) Any indebtedness secured by a lien or charge on the Mortgaged Premises or any part thereof is not paid when due or proceedings are commenced to foreclose or otherwise realize upon any such lien or charge or to have a receiver appointed for the property subject thereto or to place the holder of such indebtedness or its representative in possession thereof; or

(f) Mortgagor shall (i) have entered involuntarily against it an order for relief under the Under States Bankruptcy Code, as amended, (ii) not pay, or admit in writing its inability to pay, its debts generally as they become due, (iii) make an assignment for the benefit of creditors, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (v) institute any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it or (v), fail to contest in good faith any appointment or proceeding described in this Section 14 (f); or

(g) A custodian, receiver, trustee, examiner, liquidator or similar official shall be appointed for Mortgagor or any substantial part of any of their property, or a proceeding described in Section 14(f)(v) shall be instituted against Mortgagor, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) days; or

(h) Any judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes in an aggregate amount in excess of \$50,000 shall be entered or filed against the Mortgagor or against any of the

property or assets of any or all of them and remain undischarged, unvacated, unbonded or unstayed for a period of 30 days; or

(i) Mortgagor shall purport to disavow, revoke, repudiate or terminate its Guaranty.

15. *Remedies.* When any event of default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument and of the adequacy of the security for the Guaranty) and in addition to such other rights as may be available under applicable law, but subject at all times to any mandatory legal requirements:

(a) *Acceleration.* Mortgagee may, by written notice to Mortgagor, declare all unpaid indebtedness hereby secured, including any interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) *Foreclosure.* Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage.

(c) *Appointment of Receiver.* Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed of all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

16. *Waiver of Right to Redeem From Sale - Waiver of Appraisalment, Valuation, Etc.* Mortgagor shall not and will not apply for or avail itself of any appraisalment, 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. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor hereby waives any and all rights of redemption prior to or from sale under any order or decree of foreclosure pursuant to rights herein granted, on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

17. *Costs and Expenses of Foreclosure.* In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as the items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, all of which expenditures shall become so much additional indebtedness hereby secured which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

18. *Application of Proceeds.* The proceeds of any foreclosure sale of the Mortgaged Premises shall be distributed in the following order of priority. First, on account of all costs and expenses incident to the foreclosure or other proceedings; Second, to all other items which under the terms hereof constitute indebtedness hereby secured; and Third, to whomsoever the Mortgagee shall reasonably determine to be lawfully entitled to same.

19. *Deficiency Decree.* If at any foreclosure proceeding the Mortgaged Premises shall be sold for a sum less than the total amount of indebtedness for which judgment is therein given, the judgment creditor shall be entitled to the entry of a deficiency decree against Mortgagor and against the property of Mortgagor for the amount of such deficiency; and Mortgagor does hereby irrevocably consent to the appointment of a receiver for the Mortgaged Premises and the property of the Mortgagor and of the rents, issues and profits thereof after such sale and until such deficiency decree is satisfied in full.

20. *Mortgagee's Remedies Cumulative - No Waiver.* No remedy or right of Mortgagee shall be exclusive of but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or otherwise. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

21. *Mortgagee Party to Suits.* If Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee shall incur any costs or expenses in preparation for the commencement of any foreclosure proceedings or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Mortgagor agrees to pay to Mortgagee, immediately and without demand, all reasonable costs, charges, expenses and attorney's fees incurred by Mortgagee in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the Default Rate.

22. *Modifications Not to Affect Lien.* Mortgagee, without notice to anyone, and without regard to the consideration, if any, paid therefor, or the presence of other liens on the Mortgaged Premises, may in its discretion release any part of the Mortgaged Premises or any person liable for any of the indebtedness hereby secured, may extend the time of payment of any of the indebtedness hereby secured and may grant waivers or other indulgences with respect hereto and thereto, and may agree with Mortgagor to modifications to the terms and conditions contained herein or otherwise applicable to any of the indebtedness hereby secured (including modifications in the rates of interest applicable thereto), without in any way affecting or impairing the liability of any party liable upon any of the indebtedness hereby secured or the priority of the lien of this Mortgage upon all of the Mortgaged Premises not expressly released, and any party acquiring any direct or indirect interest in the Mortgaged Premises shall take same subject to all of the provisions hereof.

23. *Notices.* All communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or mailed by first class mail, postage prepaid, addressed to the parties hereto at their addresses as shown at the beginning of this Mortgage or to such other and different address as Mortgagor or Mortgagee may designate pursuant to a written notice sent in accordance with the provisions of this Section 23.

24. *Condition of Property.* Mortgagor warrants and represents that the Mortgaged Premises is free from contamination, that there has not been thereon a release,

discharge or emission, or threat of release, discharge or emission, of any hazardous substance, gas or liquid (including, without limitation, petroleum, its derivatives or by-products, or other hydrocarbons), or any other substance, gas or liquid, which is prohibited, controlled or regulated under applicable law, or which poses a threat or nuisance to safety, health or the environment, and that the Mortgaged Premises does not contain, or is not affected by: (i) asbestos, (ii) urea formaldehyde foam insulation, (iii) polychlorinated biphenyls (PCB's), (iv) underground storage tanks, (v) landfills, land disposals or dumps.

25. *Partial Invalidity.* All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

26. *Successors and Assigns.* Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not. If more than one party signs this instrument as Mortgagor, then the term "Mortgagor" as used herein shall mean all of such parties, jointly and severally.

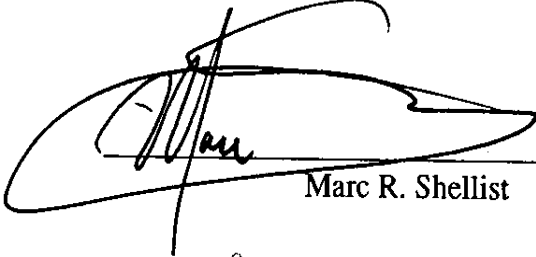
27. *Headings.* The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

28. *Changes, Etc.* This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.


29. *Default Rate.* As used herein, the term "Default Rate" shall mean the rate per annum determined by adding three percent (3%) to the Prime Rate from time to time in effect.

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IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed and sealed the day and year first above written.



Marc R. Shellist



Lynda A. Shellist

Property of Cook County Clerk's Office

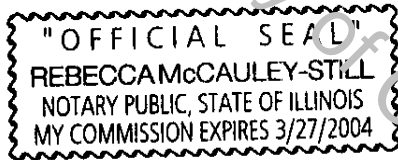
UNOFFICIAL COPY 20188178

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Marc R. Shellist and Lynda A. Shellist, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 21 day of ^{January 2002}~~October, 2001~~.

Rebecca McCauley-Still
Notary Public



Rebecca McCauley-Still
(TYPE OR PRINT NAME)

(SEAL)

My Commission Expires: 3/27/04

UNOFFICIAL COPY

SCHEDULE I

20188178

LEGAL DESCRIPTION

Property of Cook County Clerk's Office

Property Identification No.:

UNOFFICIAL COPY

10/23/01 TUE 16:50 FAX 312.553.0480

FATIC CNCD

003

20188178

FIRST AMERICAN TITLE INSURANCE COMPANY
30 North La Salle, Suite 300, Chicago IL 60602

ALTA Commitment
Schedule C

File No.: C9721196

LEGAL DESCRIPTION:

LOT 69 IN SUGAR CREEK, BEING A SUBDIVISION OF PART OF LOTS 21, 22 AND 23 IN SCHOOL TRUSTEES' SUBDIVISION IN SECTION 16, TOWNSHIP 43 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 23, 1988 AS DOCUMENT 2724161 AND CORRECTED BY CERTIFICATE OF CORRECTION RECORDED NOVEMBER 28, 1988 AS DOCUMENT 2743968, IN LAKE COUNTY, ILLINOIS.

of Cook County Clerk's Office