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Cook County Recorder 69.00

This instrument was prepared by
and after recording return to:

Anthony J. Nasharr
Foran, Nasharr & O'Toole Ltd.
55 West Wacker Drive, Suite 925
Chicago, Illinois 60601



0020196613

(The Above Space For Recorder's Use Only)

MORTGAGE

Loan

Number: _____
(1050 Remington)

THIS MORTGAGE ("Mortgage") is made on this 14th day of February, 2002, by **COLE TAYLOR BANK**, not personally, but as Trustee under Trust Agreement dated March 1, 1978 and known as Trust No. 38082 with its office at 111 West Washington Street, Chicago, Illinois 60602 ("Mortgagor"), in favor of **BEN FRANKLIN BANK OF ILLINOIS**, a federal banking association, with its office at 14 North Dryden Place, Arlington Heights, Illinois 60004 ("Lender")

GRANTING CLAUSE

To secure the Indebtedness and as security for the purposes stated elsewhere in this Mortgage, the Mortgagor hereby MORTGAGES AND WARRANTS to the Lender, its successors and assigns, the following described properties, rights, interests and privileges (collectively, the "Mortgaged Property"):

A. The parcel of real estate commonly known as 1050 Remington Road, located in Schaumburg, Cook County, Illinois, described in **Schedule A** attached to this Mortgage and made a part hereof ("Real Estate");

B. All building, structures and improvements now located, or subsequently constructed or placed upon the Real Estate, including, without limit, all building materials and building equipment located on the Real Estate;

C. All machinery, apparatus, equipment, goods, appliances, fittings, fixtures and articles of personal property of every kind and nature located or subsequently located on the Real Estate and all attachments, accessions and replacements (individually and collectively, "Equipment"), and all of the right, title and interest of the Mortgagor in and to any Equipment which may be subjected to any title retention or security agreement

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superior in lien to the lien of this Mortgage. It is agreed that all Equipment is part and parcel of the Mortgaged Property and appropriated to the use of the Real Estate and, whether affixed or not, unless the Lender shall otherwise elect, be deemed to be real estate and mortgaged under this Mortgage;

D. All easements, rights-of-way, licenses, privileges and appurtenances relating to the Real Estate;

E. All rents, issues, profits, revenues, proceeds, accounts and general intangibles arising from the Real Estate or relating to any business conducted by the Mortgagor on the Real Estate, or under present or future leases, reservation and/or purchase agreements, land contracts, licenses or otherwise, all of which are specifically assigned and transferred to the Lender;

F. All right, title and interest of the Mortgagor in and to the land lying in the bed of any street, road, avenue, alley or walkway, opened or proposed or vacated, adjoining the Real Estate; and

G. Any and all awards or payments, including, without limit, interest on any awards or payments, and the right to receive them, which may be made with respect to the Mortgaged Property as a result of: (1) the exercise of the right of eminent domain, (2) the alteration of the grade of any street, (3) any loss of or damage to any building or other improvement on the Real Estate, (4) any other injury to or decrease in the value of the Mortgaged Property, (5) any refund due on account of the payment of real estate taxes, assessments or other charges levied against or imposed upon the Mortgaged Property, or (6) any refund of utility deposits or right to any tenant deposit.

INDEBTEDNESS SECURED BY THIS MORTGAGE

This Mortgage is made to secure all of the following (individually and collectively the "Indebtedness"):

I. Payment of Three Hundred Thousand and 00/100 Dollars (\$300,000.00), together with interest, costs and all other sums on that amount, to be paid according to the Promissory Note of even date made by Mortgagor payable to Lender and all extensions, renewals, modifications, substitutions or replacements (collectively, the "Note") and any other note(s), guaranty(ies), loan and/or letter of credit agreement(s), indemnity agreement(s) or other evidence(s) of indebtedness to Lender made as of the date of this Mortgage by the Mortgagor; and any and all extensions, renewals, modifications, substitutions or replacements thereof. This reference to a particular dollar amount does not in any way limit the dollar amount secured by this Mortgage.

II. The payment of any and all amounts of any kind now owing or later to become due to the Lender from the Mortgagor during the term of this Mortgage, however created or arising, whether under the above mentioned note(s), guaranty(ies), loan and/or letter of credit agreement(s), indemnity agreement(s), evidence(s) of indebtedness or under any other instrument, or agreement now or hereafter existing between the Mortgagor and the Lender, or otherwise, and whether direct, indirect, primary, secondary, fixed, contingent, joint or several, due or to become due, together with interest, costs and all other sums on that amount and including, without limit, all present and future indebtedness or obligations of third parties to the Lender which is guaranteed by the Mortgagor, and the present or future indebtedness originally owing by the Mortgagor, to third parties and assigned by third parties to the Lender, and any and all renewals, extensions, modifications, substitutions or replacements of any of them.

III. The performance of the covenants and obligations due or to become due to the Lender, including, without limit, those due under this Mortgage, and the repayment of all sums expended by the Lender in connection with performance of those covenants and obligations.

COVENANTS AND AGREEMENTS

1. **COVENANTS AND WARRANTIES.** The Mortgagor covenants and warrants to the Lender as follows:

1.1. **Authority; No Conflict.** The Mortgagor has the power and authority to execute, deliver and perform its obligations under this Mortgage. The execution, delivery and performance of this Mortgage by the Mortgagor does not, and will not violate or conflict with any provision of its organizational or charter documents or any agreement, court order or consent decree to which the Mortgagor is a party or by which the Mortgagor may be bound.

1.2. **Title to Mortgaged Property.** The Mortgagor is the owner and is lawfully seized and possessed of the Mortgaged Property. The Mortgagor has good right, full power and authority to mortgage the Mortgaged Property to Lender in accordance with the terms of this Mortgage. The Mortgaged Property is and shall remain free and clear of any liens and encumbrances excepting only the permitted encumbrances identified on **Schedule B** attached hereto. The Mortgagor shall pay when due all obligations which, if unpaid, may become a lien on the Mortgaged Property.

1.3. **Payment of Indebtedness.** The Mortgagor will pay and perform the Indebtedness when due, whether by maturity, acceleration or otherwise.

1.4. **Maintenance of Mortgaged Property; Waste.** The Mortgagor shall preserve and maintain the Mortgaged Property in good repair, working order and condition, excepting ordinary wear and tear, shall replace any Equipment which requires replacement, and shall not commit or permit the commission of waste against the Mortgaged Property. Failure, refusal or neglect of the Mortgagor to pay any taxes or assessment or any utility rates levied, assessed or imposed upon the Mortgaged Property, and/or nonpayment of any premiums for insurance, shall constitute waste, and shall entitle the Lender to exercise the remedies provided in this Mortgage, as well as those afforded by law.

1.5. **Payment of Taxes; Discharge of Liens.**

1.5.1. The Mortgagor shall pay when due, and before any interest, collection fees or penalties accrue, all taxes, assessments, encumbrances, liens, mortgages, water or sewer charges and other charges and impositions (individually and collectively, "Imposition(s)") levied, assessed or existing with respect to the Mortgaged Property, or any part of it, and the Mortgagor will deliver to the Lender receipts showing payment of the Imposition(s). If the Mortgagor fails to pay any of the Imposition(s), the Lender, at its option, may pay such Imposition(s) and the monies paid shall be a lien upon the Mortgaged Property, added to the amount secured by this Mortgage, and payable immediately by the Mortgagor to the Lender, with interest at the higher of (i) the interest rate, if any, charged by the particular entity levying or assessing the Imposition(s), or (ii) the highest rate charged by the Lender on any of the Indebtedness (but in either case not to exceed the maximum interest rate permitted by law).

1.5.2. At the option of the Lender, the Mortgagor shall pay to the Lender, in advance on the first day of each month, a pro rata portion (as determined by the Lender) of all Imposition(s) levied, assessed or existing on the Mortgaged Property. In the event that sufficient funds have been deposited with the Lender to cover the amount of these Imposition(s) when they become due and payable, the Lender shall pay them. In the event that sufficient funds have not been deposited to cover the amount of these Imposition(s) at least thirty (30) days prior to the time when they become due and payable, the Mortgagor shall immediately pay the amount of the deficiency to the Lender. The Lender shall not be required to keep a separate account or to pay the Mortgagor any interest on the funds held by the Lender for the payment of the Imposition(s) pursuant to this Section 1.5 or for the payment of insurance premiums under Section 1.7 below, or on any other funds deposited with the Lender in connection with this Mortgage. The funds on deposit with the Lender are further security for the Indebtedness and if an Event of Default occurs under this Mortgage, any funds remaining on deposit with the Lender may be applied against the Indebtedness at any time after the Event of Default occurs, and without notice to the Mortgagor.

1.6. **Sale or Transfer of Mortgaged Property.** Without the prior written consent of the Lender, the Mortgagor will not (i) sell, assign, transfer or encumber all or any interest in the Mortgaged Property or (ii) enter into any agreement or grant an option for such purpose, or (iii) permit or suffer any change in the ownership of the Mortgagor. In the event ownership of the Mortgaged Property, or any part, becomes vested in any person(s) other than the Mortgagor, the Lender may deal with and may enter into any contract or agreement with the successor(s) in interest with reference to this Mortgage in the same manner as with the Mortgagor, without discharging or otherwise affecting the lien of this Mortgage or the Mortgagor's obligations under this Mortgage.

1.7. **Insurance.**

1.7.1. The Mortgagor shall keep the buildings and all other improvements on the Mortgaged Property insured for the benefit of the Lender against fire and other hazards and risks, including, without limit, vandalism and malicious mischief, as the Lender may require and shall further provide flood insurance (if the Mortgaged Property is situated in an area which is considered a flood risk area by the United States Department of Housing and Urban Development, and for which flood insurance is available under the National Flood Insurance Act of 1968, as amended), loss of rents insurance, public liability and product liability insurance and any other insurance as the Lender may reasonably require from time to time. All insurance shall be in amounts and in forms and with companies reasonably satisfactory to the Lender, and in the case of fire and extended coverage (or builder's risk) insurance shall not be for less than 100% of the full insurable value of the Mortgaged Property. The Mortgagor shall deliver to the Lender the policies evidencing the required insurance with premiums fully paid for one year in advance, and with standard mortgagee clauses (making all losses payable to the Lender). Renewals of the required insurance (together with evidence of premium prepayment for one (1) year in advance) shall be delivered to the Lender at least thirty (30) days before the expiration of any existing policies. All policies and renewals shall provide that they may not be canceled or amended without giving the Lender thirty (30) days prior written notice of cancellation or amendment.

1.7.2. Should the Mortgagor fail to insure or fail to pay the premiums on any required insurance or fail to deliver the policies or renewals as provided above, the Lender may have the insurance issued or renewed (and pay the premiums on it for the account of the Mortgagor) in amounts and with companies in Lender's reasonable discretion and in accordance with the standards set forth in Paragraph 1.7.1 above. Any sums paid by the Lender for insurance, as provided above, shall be a lien upon the Mortgaged Property, added to the amount secured by this Mortgage, and payable immediately by the Mortgagor to the Lender, with

interest on those sums at the highest rate charged by the Lender on any of the Indebtedness (but not to exceed the maximum interest rate permitted by law).

1.7.3. In the event of loss or damage, the proceeds of all required insurance shall be paid jointly to the Lender and Mortgagor. No loss or damage shall itself reduce the Indebtedness. The proceeds shall be applied first toward reimbursement of all costs and expenses reasonably incurred by the Lender in collecting the proceeds (including, without limit, court costs and reasonable attorneys' fees), and then toward the repair or rebuilding of the Mortgaged Property, if the Mortgagor elects to restore or repair the Mortgaged Property. In such event, the Mortgagor and the Lender shall enter into a written agreement mutually satisfactory to the parties providing for the terms under which the insurance proceeds shall be released. If the Mortgagor elects not to restore or repair the Mortgaged Property then all proceeds shall be applied toward payment of the Indebtedness whether or not then due or payable, with any remaining balance being remitted to Mortgagor after satisfaction of all Indebtedness. Application of proceeds by the Lender toward later maturing installments of the Indebtedness shall not excuse the Mortgagor from making the regularly scheduled installment payments nor shall such application extend or reduce the amount of any of these payments.

1.7.4. In the event of a foreclosure of this Mortgage, or the giving of a deed in lieu of foreclosure, the purchaser or grantee of the Mortgaged Property shall succeed to all of the rights of the Mortgagor under the insurance policies including, without limit, any right to unearned premiums and to receive the proceeds.

1.7.5. At the option of the Lender, the Mortgagor shall pay to the Lender, in advance on the first day of each month, a pro rata portion of the annual premiums due (as estimated by the Lender) on the required insurance. In the event that sufficient funds have been deposited with the Lender to cover the amount of the insurance premiums when the premiums become due and payable, the Lender shall pay the premiums. In the event that sufficient funds have not been deposited with the Lender to pay the insurance premiums at least thirty (30) days prior to the time when they become due and payable, the Mortgagor shall immediately pay the amount of the deficiency to the Lender.

1.8. **Compliance With Law and Other Matters.** The Mortgagor will comply with all federal, state and local laws, ordinances, rules, regulations and restrictions relating to the ownership, use, occupancy and operation of the Mortgaged Property and will not permit the use of the Mortgaged Property for unlawful purposes. Further, the Mortgagor will comply with, perform the Mortgagor's obligations under, and enforce the obligations of all other parties to all building and use restrictions, ground leases, leases,

reservation and/or purchase agreements, condominium documents and/or other instruments affecting or relating to the use and/or occupancy of the Mortgaged Property.

1.9. **No Removal of Improvements.** Without the prior written consent of the Lender, the Mortgagor will not, remove, demolish or materially alter any building, structure or other improvement forming part of the Mortgaged Property nor otherwise reduce the value of the Mortgaged Property, except for replacement, maintenance and relocation in the ordinary course of business.

1.10. **Recording.** The Mortgagor will cause this Mortgage, any supplemental mortgage and any financing and continuation statements required by the applicable Uniform Commercial Code to be recorded and filed at the Mortgagor's expense in such manner and in such place as may, in the Lender's opinion, be necessary or proper.

1.11. **Additional Assurances.** The Mortgagor will execute and deliver additional instruments and take additional actions as Lender may reasonably request to carry out the terms and conditions of this Mortgage.

1.12. **Books and Records; Inspection Rights.** The Mortgagor will at all times maintain accurate and complete books and records, and copies of all building and use restrictions, ground leases, leases, reservation and/or purchase agreements, condominium documents, contracts and/or other instruments with respect to the Mortgaged Property. During Mortgagor's normal business hours and upon reasonable advance notice to Mortgagor, the Lender may inspect and make copies of those books and records and any other data relating to the Mortgaged Property. The Lender may inspect the Mortgaged Property at such reasonable times as Lender shall determine. The Mortgagor will promptly provide to the Lender reports concerning the income, expenses and financial and other conditions of the Mortgaged Property as may be required from time to time by the Lender.

1.13. **Environmental Representation, Warranty and Indemnification.** Notwithstanding anything in this Mortgage to the contrary, the Mortgagor represents, covenants and warrants to the Lender as follows:

1.13.1. For the purpose of this Section the following terms shall have the meanings given them.

1.13.1.1. "Relevant Environmental Laws" shall mean all applicable federal, state and local laws, rules, regulations, orders, judicial determinations and decisions or determinations by any judicial, legislative or executive body of any governmental or quasi-governmental entity, whether in the past, the present or the future, with respect to: (i) the installation, existence or removal of, or exposure to, Asbestos on the Mortgaged Property; (ii) the existence on, discharge from, or removal from the Mortgaged Property of Hazardous

Materials; and/or (iii) the effects on the environment of the Mortgaged Property or of any activity now, previously, or hereafter conducted on the Mortgaged Property.

1.13.1.2. "Asbestos" shall have the meanings provided under the Relevant Environmental Laws, and shall include, without limited, asbestos fibers and friable asbestos, as such terms are defined under the Relevant Environmental Laws.

1.13.1.3. "Hazardous Materials" shall mean any of the following (as defined by the Relevant Environmental Laws): solid wastes; toxic or hazardous substances, wastes, or contaminants (including, without limit, polychlorinated biphenyls, paint containing lead, and urea formaldehyde foam insulation; and discharges of sewage or effluent.

1.13.2. At all times since Mortgagor has acquired any interest or rights in the Mortgaged Property, whether through lease, land contract, deed or otherwise and, to Mortgagor's knowledge, at all times prior to Mortgagor's acquisition of such interest or rights in the Mortgaged Property: there are no and have been no violations of the Relevant Environmental Laws (as hereinafter defined) at the Mortgaged Property; and no consent orders have been entered with respect to the Mortgaged Property; there are no and have been no Hazardous Materials (as hereinafter defined) or Asbestos (as hereinafter defined) in violation of Relevant Environmental Laws, either at, upon, under or within, or discharged or emitted at or from, the Mortgaged Property; no Hazardous Materials or Asbestos have flown, blown or otherwise become present at the Mortgaged Property from neighboring land; and no Hazardous Materials or Asbestos have been removed from the Mortgaged Property.

1.13.3. The Mortgagor is not aware of any claims of litigation, and has not received any communication, concerning the presence or possible presence of Hazardous Materials or Asbestos at the Mortgaged Property or concerning any violation or alleged violation of the Relevant Environmental Laws respecting the Mortgaged Property. The Mortgagor shall promptly notify the Lender of any such claims and shall furnish the Lender with a copy of any such communications received after the date of this Mortgage.

1.13.4. The Mortgagor shall use reasonable efforts to ensure that the Mortgaged Property complies in all respects with the Relevant Environmental Laws and shall notify Lender promptly and in reasonable detail in the event that the Mortgagor becomes aware of the presence of Hazardous Materials or Asbestos or a violation of the Relevant Environmental Laws at the Mortgaged Property.

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1.13.5. Should the Mortgagor use or permit the Mortgaged Property to be used or maintained so as to subject the Mortgagor, the Lender or the use of the Mortgaged Property to a claim of violation of the Relevant Environmental Laws (unless contested in good faith by appropriate proceedings satisfactory to the Lender), the Mortgagor shall immediately remedy and fully cure, at its own cost and expense, any conditions arising therefrom.

1.13.6. The Mortgagor shall pay immediately when due the cost of compliance with the Relevant Environmental Laws. Further, the Mortgagor shall keep the Mortgaged Property free of any lien imposed pursuant to the Relevant Environmental Laws.

1.13.7. In the event that the Mortgagor fails to comply with any of the requirements of this Section 1.13, after notice to the Mortgagor and the earlier of the expiration of any applicable cure period under this Mortgage or the expiration of the cure period permitted under the Relevant Environmental Laws, if any, the Lender may exercise its right to do one or more of the following: (i) elect that such failure constitutes a default under this Mortgage; and/or (ii) take any and all reasonable actions, at the Mortgagor's expense, that the Lender reasonably deems necessary or desirable to cure such failure of compliance. Any costs incurred the Lender pursuant to this Section 1.13, shall become immediately due and payable without notice and with interest thereon at a rate equal to the highest interest rate charged on the Indebtedness (but not to exceed the maximum interest rate permitted by law), and such amount, including interest, shall, if incurred prior to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, be added to amounts owing under the Indebtedness and shall be secured by this Mortgage.

1.13.8. The Lender shall not be liable for and the Mortgagor shall immediately pay to and indemnify, defend and hold the Lender harmless from and against, all loss, cost, liability, damage and expense (including, without limit, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that the Lender may suffer or incur (as holder of this Mortgage, as mortgagee in possession or as successor in interest to the Mortgagor as owner of the Mortgaged Property by virtue of foreclosure or acceptance of a deed in lieu of foreclosure) as a result of or in connection in any way with the Mortgagor's failure to comply with the terms and provisions of this Section 1.13.

1.13.9. The provisions of this Section 1.13 shall survive the repayment of the Indebtedness and the performance of all duties and obligations related thereto, the foreclosure of this Mortgage, the delivery of a deed in lieu of foreclosure and/or the discharge of this Mortgage.

1.14. **Reporting Requirements.** The Mortgagor shall certify and furnish to the Lender, in form and detail satisfactory to the Lender, complete annual financial reports of the Mortgagor, including balance sheets, statements of income, expense and cash flow, within one hundred twenty (120) days of the close of each fiscal year of the Mortgagor, and shall further furnish to the Lender copies of all tax returns filed by the Mortgagor within fifteen (15) days of the date of filing by the Mortgagor.

2. **APPLICATION OF CONDEMNATION AWARDS.**

2.1. **Condemnation Award.** Any eminent domain or condemnation proceeds shall be paid directly to the Lender and applied toward reimbursement of all the Lender's costs and expenses incurred in connection with collecting the award (including, without limit, court costs and reasonable attorneys' fees), and the balance applied upon the Indebtedness whether or not then due or payable in whatever manner the Lender deems advisable. Application by the Lender of any condemnation award or portion of it toward the last maturing installments of the Indebtedness shall not excuse the Mortgagor from making the regularly scheduled payments nor extend or reduce the amount of these payments.

2.2. **Appointment of Lender.** The Lender or any of its employees is each irrevocably appointed attorney-in-fact for the Mortgagor and is authorized to receive, receipt for, discharge and satisfy any condemnation award or judgment, whether joint or several, on behalf of the Mortgagor, the Mortgagor's legal representatives, successors and assigns; provided, however, that the Lender shall not be liable for failure to collect any condemnation award.

3. **ADDITIONAL SECURITY.**

3.1. **Security Interest in Personal Property.** This Mortgage shall, as to any Equipment, fixtures, accounts, general intangibles and other personal property included within the definition of Mortgaged Property, be deemed to grant a security interest in the Equipment, fixtures, accounts, general intangibles and other personal property pursuant to the Uniform Commercial Code. The Mortgagor agrees, upon request of the Lender, to promptly furnish a list of personal property owned by the Mortgagor and subject to this Mortgage and, upon request by the Lender, to immediately execute, deliver and/or file any mortgage and any amendments to this Mortgage, any separate security agreement and any financing statements to include specifically this list of personal property. The Lender or any of its employees is each irrevocably appointed attorney-in-fact and is authorized to execute, deliver and/or file any mortgage and any amendments to this Mortgage, any separate security agreement and any financing statements to include specifically the personal property described above.

3.2. **Licenses and Permits.** As additional security for the Indebtedness, the Mortgagor assigns to the Lender all of the Mortgagor's rights and interest in all licenses or permits affecting the Mortgaged Property. This assignment shall not impose upon the Lender any obligations with respect to any license or permit. The Mortgagor shall not cancel or amend any of the licenses or permits assigned (nor permit any of them to terminate if they are necessary or desirable for the operation of the Mortgaged Property) without first obtaining the written approval of the Lender.

3.3. **Deposits and Accounts.** As additional security for the payment of the Indebtedness and performance of this Mortgage, the Mortgagor grants a security interest to the Lender in all deposits or other accounts maintained with the Lender, if any.

3.4. **Assignment of Rents and Leases.**

3.4.1. As additional security for the payment of the Indebtedness and performance of this Mortgage, the Mortgagor assigns to the Lender all of the Mortgagor's right, title and interest in and to all written and oral leases and occupancy agreements, now or later existing, covering the Mortgaged Property or any part of it (collectively, the "Leases") (but without an assumption by the Lender of liabilities of the Mortgagor under any of these Leases or occupancy agreements by virtue of this assignment), and the Mortgagor assigns to the Lender the leases, rents, issues and profits of the Mortgaged Property.

3.4.2. At least annually, and more frequently if requested by the Lender, the Mortgagor shall provide the Lender with a certified rent roll and such other information regarding the Leases as the Lender may reasonably require.

3.4.3. If an Event of Default occurs under this Mortgage, the Lender may receive and collect the rents, issues and profits personally, or through a receiver, so long as the Event of Default exists and during the pendency of any foreclosure proceedings and during any redemption period. The Mortgagor consents to the appointment of a receiver.

3.4.4. The Lender shall at no time have any obligation whatever to attempt to collect rents or other amounts from any tenant of the Mortgaged Property. Further, the Lender shall have no obligation to enforce any other obligations owed by any tenant of the Mortgaged Property. No action taken by the Lender under this Mortgage shall make the Lender a "mortgagee in possession."

3.4.5. The Mortgagor shall not collect advance rent under any of the Leases in excess of one month (other than as a security deposit) and the

Lender shall not be bound by any prepayment made or received in violation of this prohibition.

3.4.6. At the option of the Lender, this Mortgage shall become subordinate, in whole or in part (but not with respect to priority as to insurance proceeds or any condemnation award) to any or all Leases upon the execution and recording by the Lender of an affidavit to that effect.

3.4.7. The Mortgagor shall timely perform the obligations under the Leases and not permit or suffer any event or condition which gives any tenant a right to cancel, terminate, or assert any defense or offset under any of the Leases.

3.4.8. Without the Lender's prior written consent which consent shall not be unreasonably withheld or delayed, the Mortgagor shall not materially modify or amend the Mortgagor's standard lease form or the terms of any of the Leases or enter into any lease for longer than five (5) years, covering more than ten percent (10%) of the Mortgaged Property's rentable space, or with any affiliate.

3.5. Assignment Of Sales Agreements.

3.5.1. As additional security for the payment of the Indebtedness and performance of this Mortgage, the Mortgagor assigns to the Lender all of the Mortgagor's right, title and interest in and to all written and oral purchase and sale agreements, now or later existing covering the Mortgaged Property or any part of it (collectively, the "Sales Agreements") (but without an assumption by the Lender of liabilities of the Mortgagor under any of these Sales Agreements by virtue of this assignment), and the Mortgagor assigns to the Lender all security and good faith deposits, all payments, and all other sums due at any time under any of the Sales Agreements.

3.5.2. When requested by the Lender, the Mortgagor shall provide the Lender with such information regarding the Sales Agreements as the Lender may reasonably require, including without limitation any accounting of all payments received at any time under any of the Sales Agreements.

3.5.3. If an Event of Default occurs under this Mortgage, the Lender may receive and collect all sums due under the Sales Agreements personally, or through a receiver, so long as the Event of Default exists and during the pendency of any foreclosure proceedings and during any redemption period. The Mortgagor consents to the appointment of a receiver.

3.5.4. The Lender shall at no time have any obligation whatever to attempt to collect any sums due from any under any of the Sales Agreements. Further, the Lender shall have no obligation to enforce any other obligations owed by any purchaser under any of the Sales Agreements. No action taken by the Lender under this Mortgage shall make the Lender a "mortgagee in possession."

4. **EVENTS OF DEFAULT AND REMEDIES.**

4.1. **Events of Default.** Any of the following events shall, for purposes of this Mortgage, constitute an "Event of Default":

4.1.1. Failure by the Mortgagor to pay any amount owing under the Note or otherwise on the Indebtedness when due whether by maturity, acceleration or otherwise.

4.1.2. Any failure by the Mortgagor or any guarantor of all or any part of the Indebtedness to comply with, or breach by the Mortgagor or any guarantor of, any of the terms, provisions, warranties or covenants of this Mortgage, and agreement or instrument which is part of the Indebtedness, any guaranty of any of the Indebtedness, or any other agreement or commitment between the Mortgagor or any guarantor and the Lender.

4.1.3. Institution of foreclosure proceedings or other exercise of rights and remedies under any mortgage or other lien against the Mortgaged Property or any portion thereof.

4.1.4. The insolvency of the Mortgagor or any guarantor or the admission in writing of the Mortgagor's or any guarantor's inability to pay debts as they mature.

4.1.5. Any material statement, representation or information made or furnished by or on behalf of the Mortgagor or any guarantor to the Lender in connection with or to induce the Lender to provide any of the Indebtedness shall prove to be false or materially misleading when made or furnished.

4.1.6. Institution of bankruptcy, reorganization, insolvency or other similar proceedings by or against the Mortgagor or any guarantor.

4.1.7. Any uninsured loss, theft, substantial damage or destruction to the Mortgaged Property which is not restored within 30 days, or the issuance or filing of any attachment, levy, garnishment or the commencement of

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any related proceeding or the commencement of any other judicial process upon or in respect to the Mortgaged Property which is not remedied in a timely manner (which in any event does not exceed 60 days).

4.1.8. Sale or other disposition by the Mortgagor or any guarantor of any substantial portion of assets or property, or death, dissolution, merger, consolidation, termination of existence, insolvency, business failure or assignment for the benefit of creditors of or by the Mortgagor or any guarantor.

4.1.9. [Intentionally omitted.]

4.1.10. [Intentionally omitted.]

4.1.11. The sale, assignment, mortgage, pledge or other disposition of the Mortgaged Property, in whole or in part, without the Lender's prior written consent.

4.2. **Remedies Upon Event of Default.** Upon the occurrence of any Event of Default, the Lender shall have the following rights, power and authority:

4.2.1. Declare all or part of the Indebtedness immediately due and payable.

4.2.2. Demand that the Mortgagor immediately surrender the possession of the Mortgaged Property to the Lender and the Mortgagor consents to the Lender taking possession of the Mortgaged Property and the books and records relating to the Mortgaged Property.

4.2.3. Lease the Mortgaged Property and may collect proceeds for the account of the Mortgagor.

4.2.4. Foreclose the interest of the Mortgagor in the Mortgaged Property by action pursuant to applicable law. Commencement of such an action shall be deemed a declaration of acceleration pursuant to clause 4.2.1 above.

4.2.5. The Lender is authorized and empowered to sell or cause to be sold the Mortgaged Property and to convey the same to the purchaser thereof, pursuant the authority and power hereby granted and the provisions of 735 ILCS 5/15-1001, et seq., as amended, pertaining to mortgage foreclosure. The Lender may direct the sale of the Mortgaged Property to be in one parcel or several parcels and in any order as the Lender may elect in its sole discretion. The Mortgagor further agrees that the Lender is authorized and empowered to retain out

of the sale proceeds such monies as are due under the terms of this Mortgage, including the costs and charges of such sale, including the attorney's fees and expenses, rendering the surplus moneys, if any, to the Mortgagor.

4.2.6. Collect and receive all payments, rents, profits and other amounts that are due or shall subsequently become due under the terms of any leases, land contract, or other agreements by which the Mortgagor is leasing or selling the Mortgaged Property or any interest in the Mortgaged Property. The Lender may also exercise any other rights or remedy of the Mortgagor under any lease, land contract or other agreement, and the costs and expenses thereof shall be for the account and expense of the Mortgagor. However, the Lender shall have no obligation to make any demand or inquiry as to the nature of sufficiency of any payment received or to present or file any claim or take any other action to collect or enforce the payment of any amounts to which the Lender may become entitled under this Mortgage. Similarly, the Lender shall not be liable for any of the Mortgagor's obligations under any such lease, land contract or other agreement.

4.2.7. Exercise all rights, remedies and privileges afforded a "secured party" under Article 9 of the Illinois Uniform Commercial Code. Require the Mortgagor to assemble the personal property subject to this Mortgage and make it available to the Lender at a place to be designated by the Lender which is reasonably convenient to both parties. Collect all accounts receivable, take possession of the personal property with or without demand and with or without process of law, and sell and dispose of it and distribute the proceeds according to law. For these purposes, the Mortgagor agrees that any requirement of reasonable notice, if any, shall be met if the Lender sends notice to the Mortgagor at least ten (10) days prior to the date of sale, disposition or other event giving rise to the required notice.

4.2.8. Enter upon the Mortgaged Property and take other actions as the Lender deems appropriate to perform the Mortgagor's obligations under this Mortgage to inspect, repair, protect or preserve the Mortgaged Property to investigate or test for the presence of any Hazardous Materials and/or to appraise the Mortgaged Property.

4.2.9. Pursue any other available remedy at law or equity to enforce the payment of the Indebtedness.

4.3. Remedies Generally.

4.3.1. All remedies provided for in Section 4.2 shall be available to the extent not prohibited by law. Each remedy shall be cumulative and additional to any other remedy of the Lender at law, in equity or by statute. No

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delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of, or acquiescence in, any such default or Event of Default.

4.3.2. The Lender may waive any Event of Default and may rescind any declaration of maturity of payments on the Indebtedness. In case of such waiver or rescission the Mortgagor and the Lender shall be restored to their respective former positions and rights under this Mortgage. Any waiver by the Lender of any default or Event of Default shall be in writing and shall be limited to the particular default waived and shall not be deemed to waive any other default.

4.3.3. The Lender may release the obligation of any person liable for any of the Indebtedness and may extend time for payment or otherwise modify any terms of any of the Indebtedness without notice to or consent of the Mortgagor or any other person and without impairing the lien or priority of lien of this Mortgage.

4.4. **Receivers/Mortgagee in Possession**. Upon an Event of Default and commencement of foreclosure proceedings to enforce the rights of the Lender under this Mortgage, the Lender shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property and of the rents, issues and profits of the Mortgaged Property, pending such proceedings, or in addition to such receiver appointment or as alternative thereto the Lender shall be entitled to its appointment as mortgagee in possession as permitted by law.

4.5. **Application of Proceeds**. Any proceeds received by the Lender from the exercise of remedies pursuant to Section 4.2 of this Mortgage shall be applied as follows:

4.5.1. First, to pay all reasonable costs and expenses incidental to the leasing, foreclosure, sale or other disposition of the Mortgaged Property. These costs and expenses shall include, without limit, reasonable compensation to the Lender, its agents and attorneys and any taxes and assessments or other liens and encumbrances prior to the lien of this Mortgage.

4.5.2. Second, to all reasonable sums expended or incurred by the Lender directly or indirectly in carrying out any term, covenant or agreement under this Mortgage or any related document, together with interest as provided in this Mortgage.

4.5.3. Third, to the payment of the Indebtedness. If the proceeds are insufficient to fully pay the Indebtedness, then application shall be made first to late charges and interest accrued and unpaid, then to any applicable

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prepayment premiums, then to unpaid fees and other charges, and then to the outstanding principal balance.

4.5.4. Fourth, any surplus remaining shall be paid to the Mortgagor or to whomsoever may be lawfully entitled.

4.6. **Marshalling.** In the event of foreclosure of this Mortgage or the enforcement by the Lender of any other rights and remedies under this Mortgage, the Mortgagor waives any right in respect to marshalling of assets which secure the Indebtedness or to require the Lender to pursue its remedies against any other assets or any other party which may be liable for any of the Indebtedness.

4.7. **Further Actions.** Promptly upon the request of the Lender, the Mortgagor shall execute, acknowledge and deliver any and all further conveyances, documents, mortgages and assurances, and do or cause to be done all further acts as the Lender may require to confirm and protect the lien of this Mortgage or otherwise to accomplish the purposes of this Mortgage.

4.8. **Attorneys Fees.** Any reference in this Mortgage to attorneys' fees shall refer to fees, charges, costs and expenses of in-house and outside attorneys and paralegals, whether or not a suit or proceeding is instituted, and whether incurred at the trial court level, on appeal, in a bankruptcy, administrative or probate proceeding, in consultation with counsel, or otherwise. All costs, expenses and fees of any nature for which the Mortgagor is obligated to reimburse or indemnify the Lender are part of the Indebtedness secured by this Mortgage and are payable upon demand, unless expressly provided otherwise, with interest until repaid at the highest rate charged on any of the Indebtedness (but not to exceed the maximum rate permitted by law).

5. **MISCELLANEOUS.**

5.1. **Governing Law.** This Mortgage shall be construed in accordance with the laws of the State of Illinois.

5.2. **Successors and Assigns.** This Mortgage shall be binding upon the successors and assigns of the Mortgagor including, without limit, any debtor in possession or trustee in bankruptcy for the Mortgagor, and the rights and privileges of the Lender under this Mortgage shall inure to the benefit of its successors and assigns. This shall not be deemed a consent by the Lender to a conveyance by the Mortgagor of all or any part of the Mortgaged Property or of any ownership interest in the Mortgagor.

5.3. **Notices.** Notice from one party to another relating to this Mortgage shall be deemed effective if made in writing (including telecommunications) and delivered to the recipient's address, telex number or telecopier number set forth in this Mortgage by

any of the following means: (a) hand delivery, (b) registered or certified mail, postage prepaid, (c) express mail or other overnight courier service, or (d) telecopy, telex or other wire transmission with request for assurance of receipt in a manner typical with respect to communications of that type. Notice made in accordance with these provisions shall be deemed delivered on receipt if delivered by hand or wire transmission, on the third business day after mailing if mailed by registered or certified mail, or on the next business day after mailing or deposit with the postal service or an overnight courier service if delivered by express mail or overnight courier. The Mortgagor's telecopier number is (847) 205-9723 and the Lender's telecopier number is (847) 398-1362.

5.4. **Entire Agreement; Amendments.** This Mortgage and any agreement to which it refers state all rights and obligations of the parties and supersede all other agreements (oral or written) with respect to the lien granted by this Mortgage. Any amendment of this Mortgage shall be in writing and shall require the signature of the Mortgagor and the Lender.

5.5. **Partial Invalidity.** The invalidity or unenforceability of any provision of this Mortgage shall not affect the validity or enforceability of the remaining provisions of this Mortgage.

5.6. **Inspections.** Any inspection, audit, appraisal or examination by the Lender or its agents of the Mortgaged Property or of information or documents pertaining to the Mortgaged Property is for the sole purpose of protecting the Lender's interests under this Mortgage and is not for the benefit or protection of the Mortgagor or any third party.

5.7. **Joint and Several Liability.** In the event that more than one person or entity executes this Mortgage, the obligations of each person or entity shall be joint and several.

5.8. **Automatic Reinstatement.** Notwithstanding any prior revocation, termination, surrender or discharge of this Mortgage, the effectiveness of this Mortgage shall automatically continue or be reinstated, as the case may be, in the event that:

5.8.1. Any payment received or credit given by the Lender in respect of the Indebtedness is returned, disgorged or rescinded as a preference, impermissible setoff, fraudulent conveyance, diversion of trust funds, or otherwise under any applicable state or federal law, including, without limit, laws pertaining to bankruptcy or insolvency, in which case this Mortgage shall be enforceable as if the returned, disgorged or rescinded payment or credit had not been received or given, whether or not the Lender relied upon this payment or credit or changed its position as a consequence of it.

5.8.2. Any liability is imposed, or sought to be imposed, against the Lender relating to the environmental condition of, or the presence of Hazardous Materials on, in or about the Real Estate, whether this condition is known or unknown, now exists or subsequently arises (excluding only conditions which arise after any acquisition by the Lender of any such property, by foreclosure, in lieu of foreclosure or otherwise, to the extent due to the wrongful acts or omissions of the Lender), in which case this Mortgage shall be enforceable to the extent of all liability, costs and expenses (including without limit reasonable attorneys fees) incurred by the Lender as the direct or indirect result of any environmental condition or Hazardous Materials.

5.8.3. In the event of continuation or reinstatement of this Mortgage, Mortgagor agrees upon demand by the Lender to execute and deliver to the Lender those documents which the Lender determines are appropriate to further evidence (in the public records or otherwise) this continuation or reinstatement, although the failure of the Mortgagor to do so shall not affect in any way the reinstatement or continuation. If Mortgagor does not execute and deliver to the Lender upon demand such documents, the Lender and each officer of the Mortgage is irrevocably appointed (which appointment is coupled with an interest) the true and lawful attorney of the Mortgagor (with full power of substitution) to execute and deliver such documents in the name and on behalf of the Mortgagor.

5.9. WAIVER OF JURY TRIAL. THE MORTGAGOR AND THE LENDER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS MORTGAGE OR THE INDEBTEDNESS.

5.10 RECEIVER APPOINTMENT. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such suit is filed may appoint a receiver of the Mortgaged Property. The receiver's appointment may be made either before or after entry of judgment of foreclosure, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for the receiver and without regard to the then value of the Mortgaged Property or whether the Mortgaged Property shall be then occupied as a homestead or not. Mortgagee may be appointed as the receiver. Such receiver shall have power to collect the rents, issues and profits of the Mortgaged Property during the pendency of the foreclosure suit and, in case of an entry of judgment of foreclosure, during the full statutory period of redemption, if any, whether there be redemption or not, as well as during any further times when Mortgagor, except

for the intervention of the receiver, would be entitled to collect the rents, issues and profits. Such receiver shall also have all other legal and equitable powers which may be necessary or are usual for the protection, possession, control, management and operation of the Mortgaged Property. The court in which the foreclosure suit is filed may from time to time authorize the receiver to apply the net income in the receiver's hands in payment in whole or in part of the Liabilities secured hereby, or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien or encumbrance which may be or become superior to the lien hereof or of the judgment, and the deficiency judgment against Mortgagor or any Guarantor in case of a forfeiture sale and deficiency.

5.11. WAIVER OF RIGHTS OF REDEMPTION AND REINSTATEMENT.

5.11.1. Mortgagor Hereby Waives Any And All Rights And Benefits Of The Homestead Exemption Laws In The Premises And Rights Of Redemption From Sale Under Any Order Or Judgment Of Foreclosure Of This Mortgage And Any Rights Of Reinstatement Pursuant To The Laws Of The State Of Illinois Regarding Foreclosure Of Mortgages, On Mortgagor's Own Behalf And On Behalf Of Each And Every Person, Except Judgement Creditors Of Mortgagor, Acquiring Any Interest In Or Title To The Premises As Of Or Subsequent To The Date Of This Mortgage.

5.11.2. In The Event The Premises Is Agricultural Property Or Mortgagor Is An Illinois Corporation, Limited Liability Company or Limited Partnership or A Foreign Corporation Licensed To Do Business In The State Of Illinois Or A Corporate Trustee Of An Express Land Trust, Mortgagor Hereby Waives Any And All Rights Of Redemption From Sale Under Any Order Or Judgment Of Foreclosure Of This Mortgage. Mortgagor Waives Any Rights Of Reinstatement Pursuant To The Laws Of The State Of Illinois Regarding Foreclosure Of Mortgages, On Mortgagor's Own Behalf And On Behalf Of Each And Every Person, Except Judgment Creditors Of Mortgagor, Acquiring Any Interest In Or Title To The Premises, As Of Or Subsequent To The Date Of This Mortgage.

5.11.3. In The Event The Premises Is Residential Property As Defined Under The Laws Of The State Of Illinois Regarding Foreclosure Of Mortgages, But Prior To The Filing Of A Complaint For Foreclosure, The Premises Ceases To Qualify As Residential Property, Mortgagor Hereby Waives Any And All Rights Of Redemption From Sale Under Any Order Or Judgment Of Foreclosure Of This Mortgage And Any Rights Of Reinstatement Pursuant To The Laws Of The State Of Illinois Regarding Foreclosure Of Mortgages, On Mortgagor's Own Behalf And On

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**Behalf Of Each And Every Person, Except Judgment Creditors Of
Mortgagor, Acquiring Any Interest In Or Title To The Premises As Of Or
Subsequent To The Date Of This Mortgage.**

Trustee's Exoneration Rider Attached Hereto And Made A Part Hereof

IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage as of the day
and year noted above.

BORROWER:

COLE TAYLOR BANK,
as Trustee aforesaid

By: _____

Its: _____

Vice President

ATTEST:

By: _____

Its: _____

TRUST OFFICER

Property of Cook County Clerk's Office

ATTACHED LAND TRUST MORTGAGE EXONERATION RIDER

This MORTGAGE is executed by The Land Trustee, not personally but as trustee as aforesaid in the exercise of the power and authority conferred upon vested in it as such Trustee (and said Land Trustee, hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said Note contained shall be construed as creating any liability on the said Trustee or on said Land Trustee personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either expressed or implied herein contained, or on account of any warranty or indemnification made hereunder, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as the trustee and its successors and said Land Trustee personally are concerned, the legal holder or holders of said Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided or by action to enforce the personal liability of the guarantor, if any.

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

20196613

I, Sherrri Smith, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MARIO V. GOTANCO, the Vice President of COLE TAYLOR BANK ("Trust"), and LINDA L. Holbrook, the TRUST OFFICER of said Trust, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and TRUST OFFICER respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trust, as Borrower for the uses and purposes therein set forth.

GIVEN UNDER my hand and notarial seal this 17th day of February, 2002.

[SEAL]



Sherrri Smith
NOTARY PUBLIC

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SCHEDULE A

20196613

THIS ADDENDUM IS ATTACHED TO AND MADE A PART OF THE CERTAIN MORTGAGE, EXECUTED BY COLE TAYLOR BANK, as Trustee, IN FAVOR OF BEN FRANKLIN BANK OF ILLINOIS.

LEGAL DESCRIPTION

LOT 2 IN THE PLAT OF RESUBDIVISION OF LOT 2 (EXCEPT THE NORTH 68.69 FEET THEREOF, AS MEASURED AT RIGHT ANGLES TO THE NORTH LINE THEREOF) IN THE RESUBDIVISION OF PART OF OUT-LOT 'D' IN SCHAUMBURG INDUSTRIAL PARK AS RECORDED JUNE 10, 1969 UNDER DOCUMENT NUMBER 20866510 AND FILED WITH THE REGISTRAR OF DEEDS UNDER TORRENS REGISTRATION NUMBER 2455597, BEING A SUBDIVISION OF THE SOUTH EAST ¼ OF SECTION 11 THE NORTHEAST ¼ OF SECTION 11 PART OF THE SOUTHWEST ¼ OF SECTION 12, PART OF THE NORTHWEST ¼ OF SECTION 13 AND PART OF THE NORTHEAST ¼ OF SECTION 14, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON FEBRUARY 27, 1978 AS DOCUMENT NUMBER 3001374 IN COOK COUNTY, ILLINOIS.

Permanent Tax Index No.: 07-11-400-050-0000

Address: 1050 Remington Road, Schaumburg, Illinois 60173-4518

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SCHEDULE B

20196613

THIS ADDENDUM IS ATTACHED TO AND MADE A PART OF THE CERTAIN MORTGAGE, EXECUTED BY COLE TAYLOR BANK, as Trustee, IN FAVOR OF BEN FRANKLIN BANK OF ILLINOIS.

PERMITTED ENCUMBRANCES

*As shown on Chicago Title
Insurance Company Policy # 797562*

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