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NAB Loan No. 59097-01 *mtc/rn*

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Cook County Recorder 53.50

NAB BANK COMMERCIAL MORTGAGE

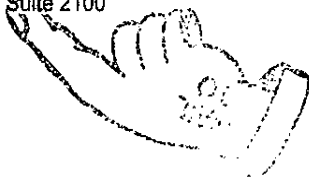
THIS COMMERCIAL MORTGAGE dated as of January 29, 2002 is made by JIM JOHNSTON, NOT PERSONALLY BUT AS TRUSTEE U/T/A DATED JULY 5, 1991 AND KNOWN AS THE RIDGE AVENUE IRREVOCABLE TRUST (the "**Mortgagor**"), whose address is c/o Jim Johnston, Trustee, 4747 North First Avenue, Tucson, Arizona 85718, in favor of NAB BANK whose address is 222 West Cermak Road, Chicago, Illinois 60616 (herein together its successors and assigns including each and every holder of the Secured Note hereinafter referred to, called the ("**Mortgagee**").

WHEREAS, Mortgagor has executed and delivered to Mortgagee a Secured Note bearing even date herewith in the original principal amount of Nine Hundred Thousand and No/100ths Dollars (\$900,000) (the "**Mortgage Note**");

WHEREAS, the indebtedness evidenced by the Mortgage Note, including the principal thereof and interest and premium, if any, thereon, and any extensions, substitutions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid hereunder or as provided in the Mortgage Note, are herein called the "**Liabilities**". In no event shall the total amount of Liabilities, including loan proceeds disbursed plus any additional charges provided for hereunder, exceed Ten Million Dollars (\$10,000,000.00).

Prepared by and after
recording return to:

Michael D. Burstein
Much Shelist Freed Denenberg Ament & Rubenstein
200 North LaSalle Street, Suite 2100
Chicago, IL 60601-1095



Property Common Address:

4251-59 West Diversey
Chicago, Illinois

Pin: 13-27-400-001-0000
13-27-400-002-0000
13-27-400-003-0000



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NOW, THEREFORE, to secure payment of the Liabilities and in consideration of One Dollar (\$1.00) in hand paid, receipt whereof is hereby acknowledged, Mortgagor does hereby grant, remise, release, convey and mortgage to Mortgagee, its successors and assigns, the real estate commonly known as 4251-59 West Diversey, Chicago, Illinois, which is legally described on Exhibit A hereto. Such real estate, together with the property described in the next succeeding paragraph, is herein called the "**Mortgaged Property**".

TOGETHER WITH all right, title and interest, including the right of use or occupancy, which Mortgagor may now have or hereafter acquire in and to:

- (a) any lands occupied by streets, alleys, or public places adjoining said Mortgaged Property or in such streets, alleys or public places;
- (b) all improvements, tenements, hereditaments, gas, oil, minerals, easements, fixtures and appurtenances, and all other rights and privileges thereunto belonging or appertaining to the Mortgaged Property;
- (c) all apparatus, machinery, equipment, and appliances (*whether single units or centrally controlled*) of Mortgagor now or hereafter used to supply heat, gas, air conditioning, water, light, power, ventilation or refrigeration or to treat or dispose of refuse or waste on the Mortgaged Property;
- (d) all screens, window shades, blinds, storm doors and windows, floor coverings, and awnings of Mortgagor at the Mortgaged Property;
- (e) all apparatus, machinery, equipment and appliances of Mortgagor used or useful for or in connection with the maintenance and operation of the Mortgaged Property or intended for the use or convenience of tenants, other occupants, or patrons thereof;
- (f) all Accounts, Goods, Equipment, Inventory, General Intangibles, Payment Intangibles, Documents, Instruments, Chattel Paper, Investment Property or other items of furniture, furnishings, equipment, and personal property used, useful or arising in connection with the operation of said real estate (*except to the extent such are owned by tenants of the Mortgaged Property other than Mortgagor*);
- (g) all replacements and substitutions for the foregoing whether or not any of the foregoing is or shall be on or attached to the Mortgaged Property; and
- (h) all proceeds of the foregoing.

It is mutually agreed, intended, and declared, that all of the aforesaid property owned by Mortgagor shall, so far as permitted by law, be deemed to form a part and parcel of said real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage. Items in (a) - (h) of this paragraph are sometimes collectively referred to herein as "**Collateral**". Any capitalized terms used herein, but not defined shall have the meanings given to such terms in the Uniform Commercial Code.

It is also agreed that if any of the Mortgaged Property or the Collateral is a fixture or of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, Mortgagor hereby grants to Mortgagee a Uniform Commercial Code security interest in such

Collateral. This Mortgage shall constitute a fixture filing or a Security Agreement, as the case may be, and Mortgagor agrees to execute, deliver and file or refile any financing statement, continuation statement, or other instruments Mortgagee may require from time to time to perfect or renew such security interest under the Uniform Commercial Code. Mortgagee's filing of one or more separate fixture filing financing statements shall in no way impair Mortgagee's security interest in said fixtures or Collateral.

This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Mortgaged Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are herein set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Mortgaged Property is located.

To the extent permitted by the provisions of the Code, Mortgagor herewith specifically authorizes Mortgagee to file or record unsigned Financing Statements, or Financing Statements signed only by the Mortgagee as secured party, from time to time to perfect Mortgagor's security interest in the Collateral.

As additional security for the repayment of the Liabilities, Mortgagor has executed and delivered to Mortgagee that certain Assignment of Leases and Rents dated of even date herewith (*the "Assignment"*) which, among other things, pledges and assigns to Mortgagee all the rents, issues and profits of the Mortgaged Property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (*including all deposits or money as advance rent, for security or as earnest money or as down payment for the purchase of all or any part of the Mortgaged Property*) under any and all present and future leases, contracts or other agreements relative to the ownership, sale or occupancy of all or any portion of the Mortgaged Property. The terms and provisions of the Assignment are hereby incorporated by reference.

Nothing herein contained shall be construed as constituting the Mortgagee as a mortgagee-in-possession in the absence of the taking of actual possession of the Mortgaged Property by the Mortgagee. In the exercise of the powers herein granted the Mortgagee, no liability shall be asserted or enforced against the Mortgagee, all such liability being expressly waived and released by Mortgagor.

TO HAVE AND TO HOLD the Mortgaged Property, properties, rights and privileges hereby conveyed or assigned, unto Mortgagee, its successors and assigns, forever for the uses and purposes herein set forth. Mortgagor hereby releases and waives all right under and by virtue of the Homestead Exemption Laws of the State of Illinois, and Mortgagor hereby covenants that as of the date of this Mortgage, Mortgagor is well seized of the Mortgaged Property in fee simple, and with full legal and equitable title to the Mortgaged Property, with good right, full power and lawful authority to sell, assign, convey and mortgage the same, and that it is free and clear of encumbrances, except for encumbrances of record consented to by Mortgagee, and that Mortgagor will forever defend the same against all lawful claims.

The following provisions shall constitute an integral part of this Mortgage:

1. **Payment of Indebtedness and Performance of Covenants.** Mortgagor agrees to pay, when due or declared due, all of the Liabilities secured hereby and to duly and punctually observe all of the terms, provisions, conditions, covenants and agreements on

Mortgagor's part to be performed or observed as provided in this Mortgage or in the Mortgage Note and all other documents which evidence, secure or guarantee the Liabilities.

2. **Representations.** Mortgagor hereby covenants and represents that:

(a) Mortgagor is duly authorized to make and enter into this Mortgage and to carry out the transactions contemplated herein.

(b) This Mortgage has been duly executed and delivered pursuant to authority legally adequate therefor, Mortgagor has been and is authorized and empowered by all necessary persons having the power of direction over it to execute and deliver this Mortgage; this Mortgage is a legal, valid and binding obligation of Mortgagor, enforceable in accordance with its terms, subject, to bankruptcy and other law of general application affecting the enforcement of creditors' rights, and to the fact that the availability of the remedy of specific performance or of injunctive relief in equity is subject to the discretion of the court before which any proceeding therefor may be brought.

(c) Mortgagor is not now in default under any instruments or obligations relating to the Mortgaged Property and no party has asserted any claim of default against Mortgagor relating to the Mortgaged Property.

(d) The execution and performance of this Mortgage and the consummation of the transactions hereby contemplated will not result in any breach of, or constitute a default under, any articles of incorporation, by-laws, resolution, mortgage, lease, bank loan, or credit agreement, trust indenture, or other instrument to which Mortgagor is a party or by which it may be bound or affected; nor do any such instruments impose or contemplate any obligations which are or may be inconsistent with any other obligations imposed on Mortgagor under any other instrument(s) heretofore or hereafter delivered by Mortgagor.

(e) There are no actions, suits, or proceedings (including without limitation, any condemnation or bankruptcy proceedings) pending or threatened against or affecting Mortgagor or the Mortgaged Property, or which may adversely affect the validity or enforceability of this Mortgage, at law or in equity, or before or by any governmental authority; Mortgagor is not in default with respect to any writ, injunction, decree or demand of any court or any governmental authority affecting the Mortgaged Property.

(f) Mortgagor has made a physical investigation of the Mortgaged Property, and no Environmental Conditions (as defined in Section 3(c) hereof) are present on or affect the Mortgaged Property.

(g) All statements, financial or otherwise, submitted to Mortgagee in connection with this transaction are true and correct in all respects and fairly present the financial condition of the parties or entities covered by such statements as of the date hereof.

(h) Mortgagor shall establish and maintain with Mortgagee throughout the term of the loan secured hereby, the operating account for the operation of the Mortgaged Property. During each month of the term of the Loan secured by this

Mortgage, Mortgagor shall deposit into said operating account all rents and other income received from the Mortgaged Property.

- (i) Mortgagor represents and warrants that:
 - i. Mortgagor is the record owner of the Premises;
 - ii. Mortgagor's chief executive office is located in the State of Illinois;
 - iii. Mortgagor's state of formation is the State of Illinois; and
 - iv. Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage.

3. **Maintenance, Repair, and Compliance with Law.**

(a) Mortgagor agrees: (i) not to abandon the Mortgaged Property; (ii) to keep the Mortgaged Property in good, safe and insurable condition and repair and not to commit or suffer waste; (iii) to refrain from impairing or diminishing the value of the Mortgaged Property or this Mortgage; and (iv) to cause the Mortgaged Property to be managed, developed and constructed in a competent and professional manner.

(b) Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any (i) material alterations of the Mortgaged Property except as required by law or ordinance; (ii) change in the intended use or occupancy of the Mortgaged Property for which the improvements were constructed, including without limitation any change which would increase any fire or other hazard; (iii) change in the identity of the person or firm responsible for managing the Mortgaged Property; (iv) zoning reclassifications with respect to the Mortgaged Property; (v) unlawful use of, or nuisance to exist upon, the Mortgaged Property; (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Mortgaged Property; or (vii) execution by Mortgagor of any leases in breach of the terms and provisions of the Assignment.

(c) Mortgagor agrees not to cause or permit any toxic or hazardous substance or waste, or underground storage tanks, or any other pollutants which could be detrimental to the Mortgaged Property, human health, or the environment, or that would violate any local, state or federal laws or regulations (*collectively "Environmental Conditions"*) to be present on or affect the Mortgaged Property. If Mortgagee determines that Environmental Conditions either do or may exist at the Mortgaged Property, upon demand, Mortgagor shall take at its own expense any and all measures necessary to eliminate any Environmental Conditions. If at any time Environmental Conditions are present or affect the Mortgaged Property, Mortgagor agrees to indemnify, defend and save Mortgagee, its successors and assigns, harmless, from and against all damage suffered by reason of the Environmental Conditions. Mortgagor has executed and delivered in favor of Mortgagee a separate Environmental Indemnity Agreement dated of even date herewith (*the "Environmental Indemnity"*) in order to evidence and more specifically define the obligations under this Paragraph 3(c). The terms and provisions of the Environmental Indemnity are incorporated herein by reference.

4. **Taxes, Liens.**

(a) Mortgagor agrees to pay, not later than the due date and before any penalty or interest 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 or imposed on or against the Mortgaged Property and, at the request of the Mortgagee, to exhibit to Mortgagee, official receipts evidencing such payments.

(b) Except for the Permitted Second Mortgage, as hereinafter defined Mortgagor shall not create, suffer or permit any mortgage, lien, charge or encumbrance to attach to or be filed against the Mortgaged Property, whether such lien or encumbrance is inferior or superior to the lien of this Mortgage, including mechanic's liens, materialmen's liens, or other claims for lien made by parties claiming to have provided labor or materials with respect to the Mortgaged Property and excepting only the lien of real estate taxes and assessments not due or delinquent, and any liens and encumbrances of Mortgagee.

5. **Change in Tax Laws.** Mortgagor agrees that, if the United States, the State of Illinois or any of their subdivisions having jurisdiction, shall levy, assess, or charge any tax, assessment or imposition upon this Mortgage or the credit or indebtedness secured hereby or the interest of Mortgagee in the Mortgaged Property or upon Mortgagee by reason of or as holder of any of the foregoing, then, Mortgagor shall pay (or reimburse Mortgagee for) such taxes, assessments or impositions, and, unless all such taxes, assessments and impositions are paid or reimbursed by Mortgagor when and as they become due and payable, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee, notwithstanding anything contained herein or in any law heretofore or hereafter enacted.

6. **Restrictions on Transfer.** Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, contract for, consent to, suffer or permit any **"Prohibited Transfer"**. **"Prohibited Transfer"** shall mean any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any of the following:

(a) the Mortgaged Property or any unit or part thereof or interest therein, excepting only sales or other dispositions of Collateral no longer useful in connection with the operation of the Mortgaged Property (**"Obsolete Collateral"**) provided that prior to the sale or other disposition thereof, such Obsolete Collateral shall have been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility, or the replacement of such Obsolete Collateral is not necessary to substantially preserve the value of the Premises and/or Mortgagee's security interest therein;

(b) If the Mortgagor is a trustee, then if any beneficiary of the Mortgagor shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of such beneficiary's beneficial interest in the Mortgagor;

(c) If the Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment,

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transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's shares in such corporation;

(d) If the Mortgagor is a limited liability company, partnership or joint venture, or if any beneficiary of a trustee Mortgagor is a limited liability company, partnership or joint venture, then if any manager, general partner or joint venturer in such limited liability company, partnership or joint venture shall create, effect of consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the limited liability company interest, partnership interest or joint venture interest, as the case may be, of such limited liability company, partner or joint venturer; or

(e) If there shall be any change in control (by way of transfer of stock ownership, partnership interests or otherwise) in any manager or general partner which directly or indirectly controls or is a manager or general partner of a limited liability company, partnership or joint venture beneficiary as described in Subsection 6(d) above.

All of the above described transactions shall be a Prohibited Transfer if such occurs, is granted, accomplished, attempted or effectuated without the prior written consent of Mortgagee. Further all such transactions shall be a "**Prohibited Transfer**" regardless of whether such is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise. Mortgagor acknowledges that Mortgagee shall be under no obligation to consent to any of the Prohibited Transfers and that any such consent may be subject to changes in the applicable interest rates charged under any instrument evidencing the Liabilities, the payment of a fee to Mortgagee or such other modifications to the terms and conditions of this Mortgage or any other agreement which evidences or secures the repayment of the Liabilities as Mortgagee in its sole discretion may determine.

7. **Insurance.**

(a) Mortgagor agrees to maintain *(or cause a lessee to maintain if agreed to by Mortgagee)* in force at all times: (i) fire and extended coverage insurance *(including, without limitation, windstorm, earthquake, explosion, flood and such other risks usually insured against by owners of like properties)* on the Mortgaged Property an amount not less than one hundred percent (100%) of the full insurable value of the Mortgaged Property; (ii) comprehensive public liability insurance against death, bodily injury and property damage not less than \$1,000,000 single limit coverage; (iii) steam boiler, machinery and pressurized vessel insurance *(if required by Mortgagee)*; (iv) rental or business interruption insurance in amounts sufficient to pay, for a period of up to twelve (12) months, all amounts required to be paid by Mortgagor pursuant to this Mortgage *(if required by Mortgagee)*; and (v) the types and amounts of insurance that are customarily maintained by owners or operators of like properties.

(b) Mortgagor will also maintain flood insurance, if required by the Mortgagee, pursuant to a designation of the area in which the Mortgaged Property are located as flood prone or a flood risk area, as defined by the Flood Disaster Protection Act of 1973, as amended, in an amount to be determined by the Mortgagee from time to time, when appropriate, as well as comply with any additional requirements of the National Flood Insurance Program as set forth in said Act.

(c) All such insurance shall be written by companies and on forms with endorsements satisfactory to Mortgagee, all with suitable lender's loss-payable and standard non-contribution mortgagee clauses in favor of Mortgagee. Certified copies of the policies evidencing the same shall be kept constantly deposited with Mortgagee. All said policies shall provide for thirty (30) days prior written notice to Mortgagee of the expiration of any such policy, and a certified copy of an appropriate renewal policy shall be deposited with Mortgagee. Mortgagee is authorized to make claim for, adjust and settle all insured losses, to collect all insurance proceeds and apply them, at its option, to the reduction of the Liabilities hereby secured, whether due or not then due. Mortgagee may, at its option and subject to such terms and conditions determined by Mortgagee, in its sole discretion, allow Mortgagor to use such money, or any part thereof, in repairing the damage or restoring the improvements.

(d) Mortgagor shall notify Mortgagee, in writing, of any loss to the Mortgaged Property covered by insurance, and Mortgagor hereby directs each insurance company to make payment for such loss directly and solely to Mortgagee; and Mortgagor agrees that any payment which is delivered, for any reason, to Mortgagor shall be held in trust for Mortgagee and promptly delivered in the form received (*except for any necessary endorsements thereof*) to Mortgagee.

8. **Compliance with Laws.** Mortgagor agrees that it will comply with all restrictions affecting the Mortgaged Property and with all laws, ordinances, acts, rules, regulations and orders of any legislative, executive, administrative or judicial body, commission or officer (*whether federal, state or local*) exercising any power or regulation or supervision over Mortgagor, or any part of the Mortgaged Property, whether the same be directed to the repair thereof, manner or use thereof, structural alterations or buildings located thereon, or otherwise.

9. **Stamp Tax.** Mortgagor agrees that, if the United States government or any department, agency or bureau thereof or of the State of Illinois or any of its subdivisions shall at any time require documentary stamps to be affixed to the mortgage, Mortgagor will, upon request, pay for the stamps in the required amount and deliver them to Mortgagee and Mortgagor agrees to indemnify Mortgagee against liability on account of such documentary stamps, whether such liability arises before or after payment of the Liabilities and regardless whether this Mortgage shall have been released.

10. **Financial Statements.** Within ten (10) days after receipt of written request from Mortgagee, Mortgagor and its beneficiary will furnish to Mortgagee such financial statements, tax returns or other information reasonably related to the Mortgagor and its beneficiary or the Mortgaged Property or the operation thereof as Mortgagee may request in its discretion, including, without limitation, a detailed statement of income and expenditures related to the Mortgaged Property or the leasing thereof.

11. **Deposits for Taxes and Insurance Premiums.** Mortgagor agrees to make monthly deposits in an account, which account shall be pledged to Mortgagee at a bank satisfactory to Mortgagee, of an amount equal to the sum of 1/12th of the annual general real estate taxes levied on the Mortgaged Property and/or 1/12th of the annual premium required to maintain insurance in force on the Mortgaged Property in accordance with the provisions of this Mortgage, the amount of such taxes and premiums, if unknown, to be estimated on the basis of the previous year's taxes or premiums, if any, or by Mortgagee. Mortgagor shall provide Mortgagee with the original real estate tax bill or insurance invoice not later than ten (10) days before the payment is due and shall concurrently deposit in said account an amount equal to the difference between the amount available in the aforesaid escrow account for such payment

(giving effect to other taxes or expenses which are also paid from said account) as shown on Mortgagee's records and the amount required to be paid. Provided that no Default, as hereinafter defined, has occurred, funds in such account (including the supplemental deposits required by the preceding sentence) shall be used by Mortgagor to pay such taxes and premiums on their respective due dates. From and after the occurrence of a Default under this Mortgage, Mortgagee may use such funds for application on the Liabilities. Until Mortgagee requires that such deposits be made, Mortgagor shall furnish Mortgagee with copies of paid tax receipts and insurance premium receipts not later than five (5) days before the payment is due.

12. **Leases.** Mortgagor agrees faithfully to perform all of its obligations under the Assignment and under all present and future leases or other agreements relative to the occupancy of the Mortgaged Property. Mortgagor shall refrain from any actions or inaction which could result in termination of any such leases or agreements or in the diminution of the value thereof or of the rents or revenues due thereunder. Mortgagor further agrees that any lease of the Mortgaged Property made after the date of recording of this Mortgage shall contain a covenant to the effect that the lessee under such lease shall, at Mortgagee's option, agree to attorn to Mortgagee as successor lessor and, upon demand, to pay rent to Mortgagee.

13. **Indemnification.** In addition to the provisions of the Environmental Indemnify, Mortgagor further agrees to indemnify Mortgagee from all loss, damage and expense, including reasonable attorneys' fees and paralegals' fees and expenses and the costs of any settlement or judgment, incurred in connection with any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this Mortgage, and all such fees, expenses and costs shall be additional Liabilities secured hereby.

14. **Condemnation.** Mortgagor agrees that, if at any time it shall become aware of the institution of condemnation proceedings against the Mortgaged Property or any part thereof, it shall immediately inform Mortgagee of the pendency of such proceedings. Mortgagee may, at its option, participate in such proceedings, and Mortgagor agrees to provide Mortgagee with any evidence that Mortgagee may seek in connection with such proceedings. Mortgagor hereby assigns to Mortgagee, as additional security, all awards of damage resulting from condemnation proceedings or the taking of or injury to the Mortgaged Property for public use and Mortgagor agrees that the proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all its expenses in connection with such proceedings, including reasonable attorneys' fees and expenses, to the reduction of the Liabilities hereby secured, and Mortgagee is hereby authorized, on behalf of and in the name of Mortgagor, to execute and deliver valid acquittance for and to appeal from any such award.

15. **Mortgagee's Performance of Mortgagor's Obligations.** Mortgagor agrees that Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor, in any form and manner deemed expedient. All money paid for any of the purposes herein authorized and all other moneys advanced by Mortgagee to protect the Mortgaged Property and the lien hereof shall be additional Liabilities secured hereby and shall become immediately due and payable without notice and shall bear interest at four percent (4.0%) over the interest rate applicable under the terms of the Mortgage Note (the "**Interest Rate**") until paid to Mortgagee in full. In making any payment hereby authorized relating to taxes, assessments or prior or coordinate liens or encumbrances, Mortgagee shall be the sole judge of the legality, validity and priority thereof and of the amount necessary to be paid in satisfaction thereof.

16. **Inspection.** Mortgagee, or any person designated by Mortgagee in writing, shall have the right, from time to time hereafter, to call at the Mortgaged Property, (or at any other

place where information relating thereto is kept or located) during reasonable business hours and, without hindrance or delay, to make such inspection and verification of the Mortgaged Property (including all books, records and documents relating thereto), as Mortgagee may consider reasonable under the circumstances, and to discuss the same with any agents or employees of Mortgagor. Mortgagor shall be liable for all costs and fees related to such inspections, field audits and verifications.

17. **Default.** Any of the following occurrences or acts shall constitute an event of default under this Mortgage ("**Default**") if such occurs and is not cured within any applicable cure period:

(a) the occurrence of a default or an Event of Default under the Mortgage Note (whether in payment or otherwise) or in the payment or performance of the Liabilities which is not cured within any applicable cure or grace period;

(b) the occurrence of a default or an Event of Default under the Assignment, the Environmental Indemnity or any other agreement, security agreement, assignment, instrument or other agreement made by Mortgagor or the beneficiary of Mortgagor in favor of Mortgagee which is not cured within any applicable cure period;

(c) Mortgagor shall fail to observe or perform any of Mortgagor's covenants, agreements, or obligations under this Mortgage and Mortgagor shall fail to cure such within ten (10) days after being served with written notice from Mortgagee;

(d) the occurrence of a default or an Event of Default under the Guarantee or any other agreement made by one or more of the Guarantors in favor of Mortgagee which is not cured within any applicable cure period; and/or

(e) the occurrence of a Prohibited Transfer;

18. **Rights Upon Default.** If any such Default shall have occurred, then, to the extent permitted by applicable law, the following provisions shall apply:

(a) All sums secured hereby shall, at the option of Mortgagee, become immediately due and payable without presentment, demand or further notice.

(b) It shall be lawful for Mortgagee to take all actions authorized under applicable law or under any other agreement or instrument delivered by Mortgagor to Mortgagee including, without limitation, the Mortgage Note, the Assignment or one or more of the Guarantees.

(c) It shall be lawful for Mortgagee to: (i) immediately foreclose this Mortgage; or (ii) if allowed under applicable law at the time of such Default, immediately sell the Mortgaged Property either in whole or in separate parcels, as prescribed by applicable law, under power of sale, which power is hereby granted to Mortgagee to the full extent permitted by applicable law, and thereupon, to make and execute to any purchaser(s) thereof deeds of conveyance pursuant to applicable law.

(d) If a suit is brought to foreclose this Mortgage, the court in which any proceeding is pending for the purpose of foreclosure of this Mortgage may, at once or at any time thereafter, either before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment

of the Liabilities secured hereby, and without regard to the value of the Mortgaged Property or the occupancy thereof as a homestead, appoint Mortgagee as a mortgagee-in-possession or appoint a receiver (*the provisions for the appointment of a receiver or mortgagee-in-possession being an express condition upon which the loan hereby secured is made*) for the benefit of Mortgagee with power to collect the rents, issues and profits of the Mortgaged Property, due and to become due, during such foreclosure suit and to do all other things allowed under applicable law.

(e) Mortgagee shall, at its option, have the right, acting through its agents or attorneys, either with or without process of law, forcibly or otherwise, to enter upon and take possession of the Mortgaged Property, expel and remove any persons, goods, or chattels occupying or upon the same, to collect or receive all the rents, issues and profits thereof and to manage and control the same, and to lease the same or any part hereof, from time to time, and after deducting all reasonable attorneys' fees and expenses, and all reasonable expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income upon the Liabilities or other sums secured hereby or upon any deficiency decree entered in any foreclosure proceedings.

(f) Mortgagee or its duly authorized agent shall have the right to enter upon the Mortgaged Property to inspect, appraise and/or conduct any environmental assessments of the Mortgaged Property which Mortgagee, in its reasonable discretion, deems necessary. All expenses incurred by Mortgagee in connection with any inspections, appraisals or environmental assessments done pursuant hereto shall be additional Liabilities secured hereby and shall become immediately due and payable without notice and shall bear interest at the Interest Rate until paid to Mortgagee in full. Nothing contained in this paragraph 18(f) shall create an affirmative duty on the part of Mortgagee, or otherwise bind Mortgagee in any respect, to conduct any such inspection, appraisal or environmental assessment.

(g) If more than one property, lot or parcel is covered by this Mortgage, and if this Mortgage is foreclosed upon, or judgment is entered upon any of the Liabilities, or if Mortgagee exercises its power of sale, execution may be made upon or Mortgagee may exercise its power of sale against any one or more of the properties, lots or parcels and not upon the others, or upon all of such properties or parcels, either together or separately, and at different times or at the same time, and execution sales or sales by advertisement may likewise be conducted separately or concurrently, in each case at Mortgagee's election.

(h) In the event of a foreclosure of this Mortgage, the Liabilities then due the Mortgagee shall not be merged into any decree of foreclosure entered by the court, and Mortgagee may concurrently or subsequently seek to foreclose one or more mortgages which also secure said Liabilities.

19. **Foreclosure.** In any foreclosure of this Mortgage by action, or any sale of the Mortgaged Property by advertisement, there shall be allowed (*and included in the decree for sale in the event of a foreclosure by action*), to be paid out of the rents or the proceeds of such foreclosure proceeding or sale:

(a) all of the Liabilities and other sums secured hereby which then remain unpaid;

(b) all other items advanced or paid by Mortgagee pursuant to this Mortgage, the Assignment, the Environmental Indemnity or any other security document, with interest thereon at the Interest Rate from the date of advancement; and

(c) all court costs, attorneys' and paralegals' fees and expenses, appraiser's fees, advertising costs, notice expenses, expenditures for documentary and expert evidence, stenographers charges, publication costs, and costs (*which may be estimated as to items to be expended after entry of the decree*) of procuring all abstracts of title, title searches and examinations, title guarantees, title insurance policies, Torrens certificates and similar data with respect to title which Mortgagee may deem necessary. All such expense shall become additional Liabilities secured hereby and immediately due and payable, with interest thereon at the Interest Rate, when paid or incurred by Mortgagee in connection with any proceedings, including but not limited to probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant, or defendant, by reason of this Mortgage or any indebtedness hereby secured or in connection with the preparations for the commencement of any suit for the foreclosures, whether or not actually commenced, or sale by advertisement.

The proceeds of any sale (*whether through a foreclosure proceeding or Mortgagee's exercise of the power of sale*) shall be distributed and applied to the items described in (a), (b) and (c) of this paragraph, as Mortgagee may in its sole discretion determine, and any surplus of the proceeds of such sale shall be paid to Mortgagor.

20. **Rights Cumulative.** Each remedy or right of Mortgagee shall not be exclusive of but shall be in addition to every other remedy or right now or hereafter existing at law or in equity. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall constitute a waiver of default or constitute acquiescence therein, nor shall it affect any subsequent default of the same or different nature.

21. **Execution of Additional Documents.** Mortgagor agrees that, upon request of Mortgagee from time to time, it will execute, acknowledge and deliver all such additional instruments and further assurances of title and will do or cause to be done all such further acts and things as may reasonably be necessary to fully effectuate the intent of this Mortgage.

22. **WAIVER OF RIGHT OF REDEMPTION.** MORTGAGOR REPRESENTS THAT IT HAS BEEN AUTHORIZED TO, AND MORTGAGOR DOES HEREBY WAIVE (TO THE FULL EXTENT PERMITTED UNDER ILLINOIS LAW) ANY AND ALL STATUTORY OR EQUITABLE RIGHTS OF REDEMPTION, REINSTATEMENT OR ANY OTHER RIGHT UNDER ANY "MORATORIUM LAW" ON BEHALF OF MORTGAGOR AND EACH AND EVERY PERSON, EXCEPT DECREE OR JUDGMENT CREDITORS OF MORTGAGOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE MORTGAGED PROPERTY SUBSEQUENT TO THE DATE HEREOF.

The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "**Moratorium Law**" now or at any time hereafter in force, nor claim, take or insist upon the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to reclaim the property so sold,

or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) The Mortgagor hereby expressly waives any and all rights of redemption from sale, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of 735 ILCS 5/15-1101 et seq. of the Illinois Compiled Statutes or other applicable law or replacement statutes;

(b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(c) If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the Trust Estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

23. **Future Advances.** At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Liabilities the payment of any and all loan commissions, service charges, liquidated damages, attorneys' fees, paralegals' fees, expenses and advances due to or incurred by Mortgagee in connection with the Liabilities, all in accordance with the Mortgage, and any other security documents.

24. **Non-Marshalling Provision.** Mortgagor hereby agrees that Mortgagee shall have no obligation to marshal any collateral which secures the Liabilities, and it shall require any other of its creditors to waive any such marshalling obligation.

25. **Miscellaneous.**

(a) Mortgagor agrees that, without affecting the liability of any person for payment of the Liabilities or affecting the lien of this Mortgage upon the Mortgaged Property or any part thereof (*other than persons or property explicitly released as a result of the exercise by Mortgagee of its rights and privileges hereunder*), Mortgagee may at any time and from time to time, on request of the Mortgagor, without notice to any person liable for payment of any Liabilities secured hereby, extend the time, or agree to alter the terms of payment of such Liabilities.

(b) Mortgagor certifies and agrees that the proceeds of the Mortgage Note will be used for proper business purposes, and consistently with all applicable laws and statutes.

(c) Mortgagor agrees that this Mortgage is to be construed and governed by the laws of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law,

such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

(d) Upon full payment of all sums secured hereby or upon application on the Liabilities of the proceeds of any sale of the Mortgaged Property in accordance with the provisions of this Mortgage, at the time and in the manner provided, this conveyance shall be null and void and, upon demand therefore following such payment, a satisfaction of mortgage shall be provided by Mortgagee to Mortgagor. Provided, however, that this Mortgage shall continue to be effective or be reinstated, as the case may be, if at any time payment of any of the Liabilities is rescinded or must otherwise be returned by Mortgagee upon the insolvency, bankruptcy or reorganization of Mortgagor or otherwise, all as though such payment had not been made.

(e) This Mortgage shall be binding upon the Mortgagor and upon the successors, assigns and vendees of the Mortgagor and shall inure to the benefit of Mortgagee and Mortgagee's successors and assigns. All references herein to the Mortgagor and to the Mortgagee shall be deemed to include their successors and assigns. Mortgagor's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for Mortgagor. Further, the term "**Mortgage Note**" as used herein shall also be read to refer to any note or instrument executed in renewal, substitution, amendment or replacement thereto.

(f) Time is of the essence of this Mortgage, and any other document or instrument evidencing or securing the Liabilities.

(g) All notices, demands, consents, requests, approvals, undertakings or other instruments required or permitted to be given in connection with this Mortgage shall be in writing and shall be hand delivered or sent by United States registered or certified mail, return receipt requested, addressed to the address shown on page one hereof (*or such other address as specified by either party in writing*) and shall be deemed served on the date hand delivered or two (2) days after mailing the notice if served by registered or certified mail.

(h) No modification, waiver, estoppel, amendment, discharge or change of this Mortgage or any related instrument shall be valid unless the same is in writing and signed by Mortgagor and Mortgagee.

(i) Mortgagor agrees that:

- a. Mortgagee is authorized to file a financing statement describing the Collateral;
- b. Where Collateral is in possession of a third party, Mortgagor will join with the Mortgagee in notifying the third party of the Mortgagee's interest and obtaining an acknowledgment from the third party that is holding the Collateral for the benefit of Mortgagee;
- c. Mortgagor will cooperate with the Mortgagee in obtaining control with respect to Collateral consisting of deposit accounts,

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investment property, letter of credit rights and electronic chattel paper; and

- d. Until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its company name without giving the Mortgagee at least 30 days' in each instance.

(j) TO INDUCE MORTGAGEE TO ACCEPT THIS MORTGAGE MORTGAGOR IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS MORTGAGE SHALL BE LITIGATED ONLY IN COURTS HAVING SITUS WITHIN COUNTY OF COOK, STATE OF ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SAID COUNTY AND STATE AND HEREBY WAIVES ANY OBJECTION IT MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING BROUGHT AGAINST MORTGAGOR BY MORTGAGEE IN ACCORDANCE WITH THIS PARAGRAPH.

MORTGAGOR AND MORTGAGEE IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS MORTGAGE OR ANY SUCH AGREEMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

IN WITNESS WHEREOF, this instrument is executed by Mortgagor as of the date and year first above written.

MORTGAGOR.

RIDGE AVENUE IRREVOCABLE TRUST,
created by agreement dated July 5, 1991

By: Jim L. Johnston

Jim Johnston, Trustee*

*executed, not individually, but solely as Trustee and nothing herein contained shall create any liability on, or require performance of any covenant by the Trustee individually, such liability being limited to the assets of such trust

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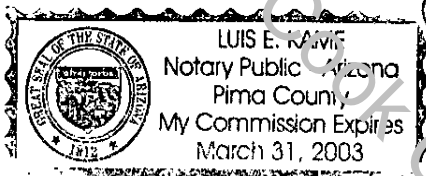
ARIZONA
STATE OF ILLINOIS)
) SS
COUNTY OF Pima)

I, Luis E. Kame, a Notary Public in and for said County, in the State aforesaid, do certify that Jim Johnston, not personally but solely as trustee of the Ridge Avenue Irrevocable Trust, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such trustee, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said Trust, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 29th day of January, 2002.

Luis E. Kame
NOTARY PUBLIC

(SEAL)



County Clerk's Office

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EXHIBIT A

20124126

LEGAL DESCRIPTION

LOTS 1, 2, 3, 4, 5 AND 6 IN BLOCK 1 IN OVERFIELD'S ADDITION TO CHICAGO, BEING A SUBDIVISION OF THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 4351-59 West Diversey
Chicago, Illinois

PIN: 13-27-400-001-0000
13-27-400-002-0000
13-27-400-003-0000

Property of Cook County Clerk's Office