

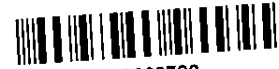
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Cook County Recorder 51.50



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**CONSTRUCTION  
MORTGAGE  
AND SECURITY  
AGREEMENT**

2039670MTCL/Salle

**COOK COUNTY  
RECORDER  
EUGENE "GENE" MOORE  
MARKHAM OFFICE**

THIS CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT is made as of this 11<sup>th</sup> day of June, 2002, between Coleman McDonagh and Geraldine McDonagh (<sup>husband and wife</sup> collectively "Mortgagor") with a mailing address of 1438 Wedgewood Avenue, Des Plaines, Illinois 60016 and Rose Mortgage Corporation ("Lender") with a mailing address of 6413 North Kinzua, Chicago, Illinois 60646.

## RECITALS

WHEREAS, Mortgagor is indebted to Lender in the principal sum of TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00), or so much thereof as may be now or hereafter disbursed to or for the benefit of Maker (as defined below), which indebtedness is evidenced by Mortgagor's Multiple Draw Mortgage Note dated of even date herewith and all modifications, substitutions, extensions, replacements and renewals thereof in favor of Lender ("Note") providing for repayment of principal and interest and providing for a final payment of all sums due thereunder on November 1, 2002 ("Maturity Date"). All obligors on the Note are collectively referred to herein as "Maker".

## THE GRANT

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all charges provided herein and all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements contained herein and in the Note, all future advances and all other indebtedness of Mortgagor to Lender whether now or hereafter existing (collectively, the "Secured Indebtedness" or "Indebtedness") and also in consideration of Ten and 00/100 (\$10.00), the receipt and sufficiency whereof is acknowledged,

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Mortgagor does hereby convey, grant, mortgage and warrant to Lender the real estate ("Real Estate") located in the County of Cook, State of Illinois and described on Exhibit A, subject only to the covenants, conditions, easements and restrictions approved by Lender ("Permitted Encumbrances"). The Real Estate has the common street address of 1438 Wedgewood Avenue, Des Plaines, Illinois 60016 ("Property Address");

**TOGETHER WITH** all buildings, structures, improvements, tenements, fixtures, easements, mineral, oil and gas rights, appurtenances thereunto belonging, title or reversion in any parcels, strips, streets and alleys adjoining the Real Estate, any land or vaults lying within any street, thoroughfare, or alley adjoining the Real Estate, and any privileges, licenses, and franchises pertaining thereunto, all of the foregoing now or hereafter acquired, all leasehold estates and all rents, issues, and profits thereof, for so long and during all such times as Mortgagor, its successors and assigns may be entitled thereto, all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to: (i) proceeds of insurance in effect with respect to the Real Estate or improvements thereon and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Real Estate or improvements thereon, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards") (which are each pledged primarily and on a parity with the Real Estate and not secondarily), and all apparatus, equipment or articles now or hereafter located thereon used to supply heat, gas, air conditioning, water, light, power, refrigeration (whether single units or centrally controlled), and ventilation, and any other apparatus, equipment or articles used or useful in the operation of the Real Estate or improvements thereon including all additions, substitutions and replacements thereof. All of the foregoing are declared to be a part of the Real Estate whether physically attached or not. All similar apparatus, equipment, articles and fixtures hereafter placed on the Real Estate by Mortgagor or its successors or assigns shall be considered as constituting part of the Real Estate. (All of the foregoing, together with the Real Estate (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property").

To have and to hold the Property unto the Lender, its successors and assigns forever, for the purposes and uses set forth herein, free from all rights and benefits under any Homestead Exemption laws of the state in which the Property is located, which rights and benefits Mortgagor does hereby expressly release and waive.

## COVENANTS AND AGREEMENTS

Mortgagor and Lender covenant and agree as follows:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Mortgagor shall promptly pay or cause to be paid when due all Secured Indebtedness.
2. **FUNDS FOR TAXES AND INSURANCE.** Subject to applicable law, if requested by Lender, Mortgagor shall thereafter pay or cause to be paid to Lender on the day monthly payments of principal and interest are payable under the Note, until the Note is paid in full, the following amounts (collectively "Funds"): (i) a sum equal to all general and special real estate and property taxes and assessments (including condominium and planned unit development assessments, if any) (collectively "Impositions") next due on the Property, all as estimated by Lender, divided by the whole number of months to elapse before the month prior to the date when such Impositions will become due and payable; provided that in the case of the first

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such deposit, there shall be deposited in addition to an amount which, when added to the aggregate amount of monthly sums next payable under this subparagraph (i), will result in a sufficient reserve to pay the Impositions next becoming due one month prior to the date when such Impositions are, in fact, due and payable, plus (ii) a sum equal to an installment of the premium or premiums that will become due and payable to renew the insurance required in Paragraph 6, each installment to be in such an amount that the payment of approximately equal installments will result in the accumulation of a sufficient sum of money to pay renewal premiums for such insurance at least one (1) month prior to the expiration or renewal date or dates of the policy or policies to be renewed, if any, all as are reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held by Lender or, at Lender's election, in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency ("depository account"). Lender shall apply the Funds to pay the Impositions, except that in the event of default, Lender may apply the Funds to the Secured Indebtedness as Lender sees fit. Lender shall not be required to pay any interest or earnings on the Funds unless otherwise required by law, in which case, all interest shall accrue in the depository account and Lender may charge for so holding and applying the Funds, analyzing the account or verifying and compiling assessments and bills. Upon Mortgagor's request, Lender shall provide to Mortgagor an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit was made. The Funds are pledged as additional security for the sums secured by this Mortgage. The Funds are for the benefit of Mortgagor and Lender only and no third party shall have any right to or interest in the Funds or the application thereof.

If the amount of Funds held by Lender, together with the future monthly installments of Funds payable to the due dates of Impositions, shall exceed the amount required to pay said Impositions and insurance premiums as they fall due, such excess shall be retained by Lender or in the depository account and credited to subsequent monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay the Impositions and insurance premiums as they fall due, Mortgagor shall immediately pay or cause to be paid to Lender any amount necessary to make up the deficiency in one or more payments as Lender may require.

Upon payment in full of all Secured Indebtedness, Lender shall promptly refund to Mortgagor, or to any person to whom Mortgagor directs, any Funds held by Lender. If, under Paragraph 18, the Property is sold or are otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the Secured Indebtedness.

3. **APPLICATION OF PAYMENTS.** Unless prohibited by applicable law, all payments received by Lender under this Mortgage or the Note, and all documents given to Lender to further evidence, secure or guarantee the Secured Indebtedness (collectively, and as amended, modified or extended, the "Loan Documents") shall be applied by Lender first to payments required from Mortgagor to Lender under Paragraph 2, then to any sums advanced by Lender pursuant to Paragraph 8 to protect the security of this Mortgage, then to interest payable on the Note, and then to Note principal (and if principal is due in installments, application shall be to such installments in the inverse order of their maturity).

Any applications to principal of proceeds from insurance policies, as provided in Paragraph 6, or of condemnation awards, as provided in Paragraph 10, shall not extend or postpone the due date of any monthly installments of principal or interest, or change the amount of such installments or of the other charges or payments provided in the Note or other Loan Documents.

4. **PRIOR ENCUMBRANCES; LIENS.** Mortgagor represents to Lender that there are no mortgages, liens or encumbrances against the Property other than the lien of the Lender under this Mortgage and the Permitted Encumbrances. Mortgagor shall keep the Property free from mechanics' and all other encumbrances and liens, except Permitted Encumbrances and statutory liens for real estate taxes and assessments not yet due and payable.

5. **TAXES AND ASSESSMENTS.** Mortgagor shall pay or cause to be paid when due all Impositions and water, sewer and other charges, fines and Impositions attributable to the Property. Mortgagor shall provide evidence satisfactory to Lender of compliance with these requirements promptly after the respective due dates for payment. Mortgagor shall pay, in full, but under protest in the manner provided by Statute, any tax or assessment Mortgagor desires to contest.

6. **INSURANCE. DEFINITIONS.** For purposes of this Section 6:

"Premises" means all land, improvements and fixtures.

"Real Estate" means only the land.

(a) Mortgagor, at its sole cost and expense, shall insure and keep insured the Premises against such perils and hazards, and in such amounts and with such limits, as Lender may from time to time require and, in any event, including:

(i) **HAZARD OR PROPERTY INSURANCE.** Mortgagor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's right to disapprove Mortgagor's choice, which right shall not be exercised unreasonably.

(ii) **FLOOD.** Insurance against loss or damage by flood or mud slide in compliance with the Flood Disaster Protection Act of 1973, as amended from time to time, if the Premises are now, or at any time while the Secured Indebtedness remains outstanding shall be, situated in any area which an appropriate governmental authority designates as a special flood hazard area, Zone A or Zone V, in amounts Lender requires. Lender may require Mortgagor to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services, or (b) a one-time charge for flood-zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification;

(iii) **EARTHQUAKE.** Insurance against loss or damage by earthquake, if the Premises are now, or at any time while the Secured Indebtedness remains outstanding shall be, situated in any area which is classified as a Major Damage Zone, Zones 3 and 4, by the International Conference of Building Officials in an amount equal to the probable maximum loss for the Premises, fixtures and equipment, plus the cost of debris removal;

(iv) **OTHER INSURANCE.** Such other insurance relating to the Premises and the use and operation thereof, as Lender may, from time to time, reasonably require.

(b) **POLICY REQUIREMENTS.** All insurance shall: (i) be carried in companies with a Best's rating of A/X or better, or otherwise acceptable to Lender; (ii) in form and content acceptable to Lender; (iii) provide thirty (30) days' advance written notice to Lender before any cancellation, adverse material modification or notice of non-renewal; (iv) to the extent limits are not otherwise specified herein, contain deductibles which are in amounts acceptable to Lender; and (v) provide that no claims shall be paid thereunder without ten (10) days advance notice to Lender.

All physical damage policies and renewals shall contain a standard mortgage clause naming the Lender as mortgagee, which clause shall expressly state that any breach of any condition or warranty by Mortgagor shall not prejudice the rights of Lender under such insurance; and a loss payable clause in favor of the Lender for personal property and contents. All liability policies and renewals shall name the Lender as an additional insured. No additional parties shall appear in the mortgage or loss payable clause without Lender's prior written consent. All deductibles shall be in amounts acceptable to Lender. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in full or partial satisfaction of the Secured Indebtedness, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee.

(c) **DELIVERY OF POLICIES.** Any notice pertaining to insurance and required pursuant to this Paragraph 6 shall be given in the manner provided in Paragraph 15 below at Lender's address stated below. The insurance shall be evidenced by the original policy or a true and certified copy of the original policy, or in the case of liability insurance, by certificates of renewals (or certificates evidencing the same), marked "paid", (or evidence satisfactory to Lender of the continuing coverage) to Lender at least thirty (30) days before the expiration of existing policies and, in any event, Mortgagor shall deliver originals of such policies or certificates to Lender at least fifteen (15) days before the expiration of existing policies. If Lender has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Lender shall have the right, but not the obligation, to purchase such insurance for Lender's interest only. Any amounts so disbursed by Lender pursuant to this Section shall be a part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note. Nothing contained in this Paragraph 6 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 6.

(d) **SEPARATE INSURANCE.** Mortgagor shall not carry any separate insurance on the Premises concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Lender's prior written consent, and any such policy shall have attached standard non-contributing mortgagee clause, with loss payable to Lender, and shall otherwise meet all other requirements set forth herein.

(e) **COMPLIANCE CERTIFICATE.** At Lender's option, but not more often than annually, Mortgagor shall provide Lender with a report from an independent insurance consultant of regional or national prominence, acceptable to Lender, certifying that Mortgagor's insurance is in compliance with this Paragraph 6.

(f) **NOTICE OF CASUALTY.** Mortgagor shall give immediate notice of any loss to Lender. In case of loss covered by any of such policies, Lender is authorized to adjust, collect and compromise in its discretion, all claims thereunder and in such case, Mortgagor covenants to sign upon demand, or Lender may sign or endorse on Mortgagor's behalf, all necessary proofs of loss, receipts, releases and other papers required by the insurance companies to be signed by Mortgagor. Mortgagor hereby

irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Lender may deduct from such insurance proceeds any expenses incurred by Lender in the collection and settlement thereof, including, but not limited to, attorneys' and adjusters' fees and charges.

(g) **APPLICATION OF PROCEEDS.** If all or any part of the Premises shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Paragraph 10, Mortgagor shall promptly and with all due diligence restore and repair the Premises whether or not the net insurance proceeds, award or other compensation (collectively, the "Proceeds") are sufficient to pay the cost of such restoration or repair. Lender may require that all plans and specifications for such restoration or repair be submitted to and approved by Lender in writing prior to commencement of the work. At Lender's election, to be exercised by written notice to Mortgagor following the date of the loss or taking (failure to so notify the Mortgagor shall constitute an election to apply the proceeds to reduce the Secured Indebtedness), the entire amount of the Proceeds, shall either:

- (i) be made available to Mortgagor on the terms and conditions set forth in this Paragraph 6 to finance the cost of restoration or repair with any excess to be applied to the Secured Indebtedness in the inverse order or maturity, or
- (ii) to be applied to the Secured Indebtedness in such order and manner as Lender may elect.

If the amount of the Proceeds to be made available to Mortgagor pursuant to this Paragraph 6 is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Mortgagor shall cause to be deposited with lender the amount of such deficiency within thirty (30) days of Lender's written request therefor (but in no event later than the commencement of the work) and Mortgagor's deposited funds shall be disbursed prior to the Proceeds. If Mortgagor is required to deposit funds under this Paragraph 6, the deposit of such funds shall be a condition precedent to Lender's obligation to disburse the Proceeds held by Lender hereunder. The amount of the Proceeds which is to be made available to Mortgagor, together with any deposits made by Mortgagor hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either at Lender's option, to Mortgagor or directly to contractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof. Lender may require:

- (i) evidence of the estimated cost of completion of such restoration or repair satisfactory to Lender and
- (ii) such architect's certificates, waivers of lien, contractors' sworn statements, title insurance endorsements, plats of survey and other evidence of cost, payment and performance acceptable to Lender.

If Lender requires mechanics' and materialmen's lien waivers in advance of making disbursements, such waivers shall be deposited with an escrow trustee acceptable to Lender pursuant to a construction loan escrow agreement satisfactory to Lender. No payment made prior to final completion of the repair or restoration shall exceed ninety percent (90%) of the value of the work performed from time to time. Lender may commingle any such funds held by it with its other general funds. Lender shall not be obligated to pay interest in respect of any such funds held by it nor shall Mortgagor be entitled to a credit against any of the

Secured funds held by it nor shall Mortgagor be entitled to a credit against any of the Secured Indebtedness except and to the extent the funds are applied thereto pursuant to this Paragraph 6. Without limitation of the foregoing, Lender shall have the right at all times to apply such funds to the cure of any Event of Default of Mortgagor under the Loan Documents.

7. **USE, PRESERVATION AND MAINTENANCE OF PROPERTY.** Mortgagor shall keep the Property in good condition and repair and shall not commit waste or permit impairment or deterioration of the Property. Mortgagor shall not allow, store, treat or dispose of Hazardous Material as defined in Paragraph 28, nor permit the same to exist or be stored, treated or disposed of, from or upon the Property. Mortgagor shall promptly restore or rebuild any buildings or improvements now or hereafter on the Property which may become damaged or destroyed. Mortgagor shall comply with all requirements of law or municipal ordinances with respect to the use, operation, and maintenance of the Property, including all environmental, health and safety laws and regulations, and shall make no material alterations in the Property except as required by law, without the prior written consent of Lender. Mortgagor shall not grant or permit any easements, licenses, covenants or declarations of use against the Property. If this Mortgage is on a unit in a condominium or a planned unit development, Mortgagor shall perform all of Mortgagor's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

8. **PROTECTION OF LENDER'S SECURITY.** If Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, the Note or the other Loan Documents, or if any action or proceeding is threatened or commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Mortgagor, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as it deems expedient or necessary to protect Lender's interest, including (i) making repairs; (ii) discharging Prior Encumbrances in full or part; (iii) paying, settling, or discharging tax liens, mechanics' or other liens, (iv) procuring insurance; and (v) renting, operating and managing the Property and paying operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Property shall be operational and usable for its intended purposes. Lender, in making payments of Impositions and assessments, may do so in accordance with any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of same or into the validity thereof.

Any amounts disbursed by Lender pursuant to this Paragraph 8 shall be a part of the Secured Indebtedness and shall bear interest at the default interest rate provided in the Note (the "Default Rate"). Nothing contained in this Paragraph 8 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be considered a waiver of any right accruing to Lender on account of this Paragraph 8.

9. **INSPECTION OF PROPERTY.** Mortgagor shall permit Lender and its representatives and agents to inspect the Property from time to time during normal business hours and as frequently as Lender requests.

10. **CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid directly to Lender. Mortgagor hereby grants a security interest to Lender in and to such proceeds. Lender is authorized to collect such proceeds and, at Lender's sole option and discretion (as provided in Paragraph 6(g)), to apply said proceeds either to restoration or repair of the Property or in payment of the Secured Indebtedness.

11. **MORTGAGOR NOT RELEASED; FORBEARANCE BY LENDER NOT A WAIVER; REMEDIES CUMULATIVE.** Any extension or other modification granted by Lender to any successor in interest of Mortgagor of the time for payment of all or any part of the Secured indebtedness shall not operate to release, in any manner, Mortgagor's liability. Any forbearance or inaction by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the later exercise of any such right or remedy. Any acts performed by Lender to protect the security of this Mortgage, as authorized by Paragraph 8 or otherwise, shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively. No consent or waiver by Lender to or of any breach or default by Mortgagor shall be deemed a consent or waiver to or of any other breach or default.

12. **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CO-SIGNERS.** The covenants and agreements contained herein shall bind, and the rights hereunder shall inure to, the respective heirs, executors, legal representatives, successors and permitted assigns of Lender and Mortgagor. If this Mortgage is executed by more than one Mortgagor, each Mortgagor shall be jointly and severally liable hereunder.

13. **EXCESS LOAN CHARGES.** If the Loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Maker which exceeded permitted limits ("Excess Loan Charges") will, at Lender's option, either be refunded to Maker or applied as a credit against the then outstanding principal balance or accrued and unpaid interest thereon. Neither Mortgagor nor any other guarantor or obligor on the Note shall have any action against Lender for any damages whatsoever arising from the payment of Excess Loan Charges.

14. **LEGISLATION AFFECTING LENDERS' RIGHTS.** If an enactment, modification or expiration of an applicable governmental law, ruling or regulation has the effect of rendering any provision of the Note, this Mortgage or any of the other Loan Documents unenforceable according to its terms, Lender, at its option upon giving written notice to Maker allowing Maker ninety (90) days to pay off the balance of this loan may require immediate payment in full of all sums secured by this Mortgage and may invoke any remedies permitted by Paragraph 19.

15. **ADDITIONAL CONDITIONS PRECEDENT TO DISBURSEMENT UNDER THE MULTIPLE DRAW MORTGAGE NOTE.**

Mortgagor represents to Lender that the proceeds of the Note will be used to fund construction of improvements to the Property pursuant to Plans and Specifications submitted to the Lender for approval ("Project"). In addition to the other conditions set forth herein, the obligation of Lender to make the initial and each subsequent disbursement under the Note shall be conditioned upon and subject to the satisfaction of all of the following conditions:

(a) Borrower shall have delivered to Lender certificates from the Architect, as applicable and acceptable to Lender, stating that the portion of the Project that has been completed was constructed in accordance with the Plans and Specifications prepared by the Architect, as applicable, and



complies with all applicable zoning, subdivision, land use, building, landmark, occupational health and safety, environmental and pollution control laws, statutes, codes, ordinances or regulations, and does not require any variances therefrom. In addition, Mortgagor shall have delivered to Lender copies of all licenses and building permits necessary for commencement and completion of the Work for which such disbursement is being requested, all of which shall be unconditional.

(b) Intentionally Omitted.

(c) Mortgagor shall request and Lender shall be required to make disbursements under the Note not more frequently than once each calendar month. Lender may at any time take such action as it deems appropriate to verify that the conditions precedent to each disbursement have been satisfied, including, without limitation, verification of any amounts due under the construction contract for the Project. Mortgagor agrees to cooperate with Lender in any such action. If in the course of any such verification, any amount shown on the contract entered into for the performance of any portion of the Work (including the Construction Contract), or any application for payment, sworn statement or waiver of lien is subject to a possible discrepancy, such discrepancy shall be eliminated by Mortgagor to Lender's satisfaction. Each request for disbursement shall be made by a letter from Mortgagor addressed to Lender, specifying in detail the amount and mode of each disbursement and accompanied by the following, all in form and substance satisfactory to Lender:

(i) An Owner's Sworn Statement and disbursement request;

(ii) A Contractor's Application for Payment and Sworn Contractor's Statement, together with (A) a statement of a duly authorized officer of the Contractor that all items of construction cost have been incorporated into the Project in accordance with the Plans and Specifications, and (B) waivers of lien from each contractor, subcontractor and materialman to whom payment is to be made, with respect to previous disbursements and the current disbursement;

(iii) Evidence (including invoices and contracts) showing the propriety of each non-construction cost item for which payment is requested and such supporting data as Lender may require to enable Lender to verify the correctness thereof;

(iv) Certificates of the Contractor, in Lender's reasonable discretion, stating that it has made diligent investigation and that based on such investigation all Work performed to the date of the request for disbursement has been completed in accordance with the Plans and Specifications and certifying (A) the percentage of completion of each component of the Work, (B) the Architect's approval of the request for disbursement, (C) that there has been no material deviation from the contract amount under the Construction Contract or the projected time of completion of any component of the Work, (D) the total cost to complete the Work with respect to the phase of Work under construction, and (E) and that after giving effect to all amounts previously certified for payment, plus the amount then requested, the remaining uncertified and undisbursed funds will be sufficient to pay all known costs required to complete the Work with respect to the phase of Work under construction, and to the extent that can then be determined, for the entire Work, in accordance with the Plans and Specifications;

(v) Copies of all licenses and permits (including building permits) necessary for construction and completion of the Work with respect thereto; and

(vi) Such other documents, assignments, certificates and opinions as are required by the title company, or as may be reasonably required by Lender.

(d) Notwithstanding anything contained in this Agreement to the contrary, Lender shall not be required to make any disbursement of the Loan pursuant to this Agreement until the title company is prepared to issue an endorsement to the title policy updating the same to the date of such disbursement and increasing the amount of coverage (including mechanic's lien coverage) thereunder by the amount so disbursed, and insuring the lien of the Mortgage to be superior to all defects in title other than the Permitted Exceptions.

16. **GOVERNING LAW; SEVERABILITY.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage, the Note or any of the other Loan Documents conflicts with applicable law, or is adjudicated to be invalid or unenforceable same shall not affect other provisions of this Mortgage, the Note or any of the other Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage, the Note or any of the other Loan Documents are declared to be severable and the validity or enforceability of the remainder of the Loan Document in question shall be construed without reference to the conflicting, invalid or unenforceable clause or provision.

17. **PROHIBITIONS ON TRANSFER OF THE PROPERTY OR OF AN INTEREST IN MORTGAGOR.** It shall be an immediate default if, without the prior written consent of Lender, which consent may be granted or withheld at Lender's sole discretion, Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale (including an installment sale), assignment, transfer, lien, pledge, hypothecation, mortgage, security interest, or other encumbrance or alienation, whether by operation of law, voluntarily or otherwise, (collectively "Transfer") of (1) the Property or any part thereof or interest therein; or (2) all or a portion of the beneficial interest of Mortgagor or the power of direction; (3) all or a portion of the stock of any corporate beneficiary of a trustee Mortgagor that results or could result in a material change in the identity of the person(s) or entity(ies) previously in control of such corporation; (4) all or a portion of an interest in a partnership, or a joint venture interest of a joint venturer in the joint venture, if Mortgagor's beneficiary consists of or includes a partnership or joint venture, that results or could result in a material change in the identity of the person(s) or entity(ies) in control of such partnership or joint venture (each of the foregoing is referred to as a "Prohibited Transfer"). In the event of such default, Lender, at its sole option, may declare the entire unpaid balance, including interest, immediately due and payable. This option shall not be exercised by Lender if prohibited by Federal law as of the date of this Mortgage.

18. **EVENT OF DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Mortgage:

(a) Mortgagor's failure to pay any amount due herein or secured hereby, or any installment of principal or interest when due and payable whether at maturity or by acceleration or otherwise

under the Note, this Mortgage, or any other Loan Document, which failure continues for more than five (5) days after written notice from Lender; provided, however, that such five (5) day cure period shall not apply to the other sub-paragraphs of this Paragraph 18;

(b) Mortgagor's failure to perform or observe any other covenant, agreement, representation, warranty or other provision contained in the Note, this Mortgage (other than an Event of Default described elsewhere in this Paragraph 18) or any other Loan Document and such failure continues for a period of twenty-one (21) days after the earlier of Mortgagor's becoming aware of such failure or the effective date of notice thereof given by Lender to Mortgagor; provided, however, that this grace period shall not apply to the other sub-paragraphs of this Paragraph 18;

(c) The occurrence of any breach of any representation or warranty contained in this Mortgage or any other Loan Document;

(d) A Prohibited Transfer occurs;

(e) A court having jurisdiction shall enter a decree or order for relief in respect of Mortgagor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law; or if Mortgagor, shall: (i) file a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under the Federal Bankruptcy Act or any similar state or federal law; (ii) consent to or suffer the appointment of or taking possession by a receiver, liquidator, or trustee (or similar official) of the Mortgagor or for any part of the Property or any substantial part of the Mortgagor's other property; (iii) make any assignment for the benefit of Mortgagor's creditors; (iv) fail generally to pay Mortgagor's debts as they become due;

(f) All or a substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon;

(g) If Mortgagor is other than a natural person or persons: (i) the dissolution or termination of existence of Mortgagor, voluntarily or involuntarily, whether by reason of death of a general partner of Mortgagor or otherwise; (ii) the amendment or modification in any respect of Mortgagor's articles or agreement of partnership or its corporate resolutions or its articles of incorporation or bylaws that would affect Mortgagor's performance of its obligations under the Note, this Mortgage or the other Loan Documents;

(h) This Mortgage shall not constitute a valid lien on and security interest in the Property (subject only to the Permitted Encumbrances), or if such lien and security interest shall not be perfected;

(i) The Property is abandoned;

(j) An indictment or other charge is filed against the Mortgagor, in any jurisdiction, under any federal or state law, for which forfeiture of the Property or of other collateral securing the Secured Indebtedness or of which other funds, property or other assets of Mortgagor or Lender is a potential penalty; or

(k) The death, incompetency, dissolution, liquidation, bankruptcy, insolvency of Mortgagor.

19. **ACCELERATION; REMEDIES.** AT ANY TIME AFTER AN EVENT OF DEFAULT, LENDER, AT LENDER'S OPTION, MAY DECLARE ALL SUMS SECURED BY THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS TO BE IMMEDIATELY DUE AND PAYABLE WITHOUT FURTHER DEMAND AND MAY FORECLOSE THIS MORTGAGE BY JUDICIAL PROCEEDING. LENDER SHALL BE ENTITLED TO COLLECT IN SUCH PROCEEDING ALL EXPENSES OF FORECLOSURE, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES AND COSTS INCLUDING ABSTRACTS AND TITLE REPORTS, ALL OF WHICH SHALL BECOME A PART OF THE SECURED INDEBTEDNESS AND IMMEDIATELY DUE AND PAYABLE, WITH INTEREST AT THE DEFAULT RATE. THE PROCEEDS OF ANY FORECLOSURE SALE OF THE PROPERTY SHALL BE APPLIED AS FOLLOWS: FIRST, TO ALL COSTS, EXPENSES AND FEES INCIDENT TO THE FORECLOSURE PROCEEDINGS; SECOND, AS SET FORTH IN PARAGRAPH 3 OF THIS MORTGAGE; AND THIRD, ANY BALANCE TO MORTGAGOR OR AS A COURT MAY DIRECT.

20. INTENTIONALLY OMITTED.

21. **APPOINTMENT OF RECEIVER.** Upon acceleration under Paragraphs 17, 19 or abandonment of the Property, and without further notice to Mortgagor, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents, if any, from the Property including those past due.

22. **RELEASE.** Upon payment of all Secured Indebtedness, Lender shall release this Mortgage upon payment by Mortgagor of all costs and fees to release same, if any. Mortgagor shall be responsible for recording the release, including all related costs of recordation.

23. **SECURITY AGREEMENT.** Without limiting any other provisions of this Mortgage, this Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (hereinafter called the "Code") with respect to all fixtures, apparatus, equipment or articles, and all replacements and substitutions, now or hereafter located on the Property as set forth in the description of the Property above, including but not limited to the air-conditioning, heating, gas, water, power, light, refrigeration, and ventilation systems which are presently located at the Property, and with respect to all Awards, and all Funds and other sums which may be deposited with Lender pursuant hereto (all for the purposes of this paragraph called "Collateral"), and Mortgagor hereby grants to Lender a security interest in such Collateral. All of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property. When the Secured Indebtedness shall become due, whether by acceleration or otherwise, Lender shall have all remedies of a secured party under the Code. This Mortgage is intended to be a financing statement with respect to any of the Collateral which constitute "fixtures" within the meaning of the Code. Mortgagor shall execute and deliver to Lender any other financing statements necessary to perfect the security interest in the Collateral created hereby. Any Code requirement for reasonable notice shall be met if such notice is delivered as provided herein at least five (5) days prior to the time of any sale, disposition, or other event or matter giving rise to the notice (which period of time and method of notice is agreed to be commercially reasonable).

24. **ZONING.** The Property is zoned to permit the current operation and use of the Property. Mortgagor will not initiate or acquiesce in a zoning reclassification without Lender's prior written consent.

25. **PRINCIPAL AMOUNT OF MORTGAGE.** At no time shall the principal amount of the indebtedness secured by this Mortgage (not including sums advanced for Impositions and insurance premiums or to protect the security of this Mortgage) exceed the stated principal amount of the Note.

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26. **INTERPRETATION.** This Mortgage shall be construed pursuant to the laws of the State of Illinois. The headings of sections and paragraphs in this Mortgage are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions. The use of singular and plural nouns, and masculine, feminine, and neuter pronouns, shall be fully interchangeable, where the context so requires. If any provision of this Mortgage, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included. Time is of the essence of the payment and performance of this Mortgage.

27. **COMPLIANCE WITH ILLINOIS MORTGAGE FORECLOSURE LAW.** If any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq. (1992 State Bar Edition) of the Illinois Compiled Statutes) (the "Act") the provisions of the Act shall take precedence over the Mortgage provisions, but shall not invalidate or render unenforceable any other Mortgage provision that can be construed in a manner consistent with the Act.

If any Mortgage provision shall grant to Lender any rights or remedies upon Mortgagor's default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of such provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 19 of this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.

28. **WAIVER OF JURY TRIAL.** TO THE EXTENT PERMITTED BY LAW, MORTGAGOR AND LENDER WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (I) UNDER THIS MORTGAGE, THE OTHER LOAN DOCUMENTS OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH OR THEREWITH; OR (II) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS. MORTGAGOR AND LENDER AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

29. **OCCUPANCY.** Mortgagor shall occupy, establish, and use the Property as Mortgagor's principal residence within sixty (60) days after substantial completion of the Project and shall continue to occupy the Property as Mortgagor's principal residence for at least one (1) year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Mortgagor's control.

*[The remainder of this page is left blank intentionally]*

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

*Coleman McDonagh*  
\_\_\_\_\_  
COLEMAN MCDONAGH

*Geraldine McDonagh*  
\_\_\_\_\_  
GERALDINE MCDONAGH

MORTGAGOR'S ADDRESS:

1438 WEDGEWOOD AVENUE  
DES PLAINES, ILLINOIS 60016

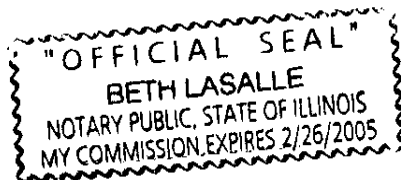
STATE OF ILLINOIS            )  
  ) SS.  
COUNTY OF COOK            )

I, \_\_\_\_\_ the undersigned \_\_\_\_\_, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that Coleman McDonagh and Geraldine McDonagh, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged to me that they, signed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11<sup>th</sup> day of June, 2002.

*Coleman McDonagh*  
\_\_\_\_\_  
Notary Public  
*Beth Lasalle*

My Commission Expires:



**EXHIBIT A**

**LEGAL DESCRIPTION**

Property Address: 1438 Wedgewood Avenue, Des Plaines, Illinois 60016

Permanent Tax Index No.: 09-19-405-027-0000

Property of Cook County Clerk's Office

LEGAL DESCRIPTION

LOT 1 IN NOVAK'S RESUBDIVISION, BEING A RESUBDIVISION OF LOT 4 IN BLOCK 2 IN HOMELAND ACRES, BEING A SUBDIVISION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 5, 1996 AS DOCUMENT 96516132, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office