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2002-10-30 09:42:53  
Cook County Recorder 52.00



This instrument prepared by, and please return after recording to:

GRIFFITH & JACOBSON, L.L.C.  
55 WEST MONROE STREET  
SUITE 3550  
CHICAGO, ILLINOIS 60603

Attention: Louis Michael Bell, Esq.

**MORTGAGE**

NORTH STAR TRUST COMPANY, an Illinois corporation, not in its individual corporate capacity, but solely as Trustee under Trust Agreement dated September 4, 2002 and known as Trust Number 02-5419 ("Land Trust"), and

MICHAEL L. NIELSEN, an individual ("Borrower"), jointly and severally as mortgagor ("Mortgagor"), make this MORTGAGE (this "Mortgage") this 16<sup>th</sup> day of September, 2002 to

JAYENNE, LTD., an Illinois corporation (with its successors and assigns as to this Mortgage, "Lender"), as mortgagee.

**Recitals**

WHEREAS Land Trust is the record owner of the real property described in Exhibit A to this Mortgage (the "Premises"), and Borrower is the sole beneficiary of Land Trust; and

WHEREAS Lender has loaned \$220,000 to Borrower (the "Loan") for purposes of Borrower's acquisition and rehabilitation of the Premises; and

WHEREAS the Loan is evidenced by Borrower's Promissory Note dated the date of this Mortgage payable to the order of Lender in the principal amount of \$220,000 (the "Note"); and

WHEREAS Borrower and Land Trust have executed and delivered to Lender an Assignment of Leases and Rents dated the date of this Mortgage (the "Assignment") to Lender with respect to the Premises as security for the payment and performance of Borrower's obligations to Lender under the Note and this Mortgage; and

WHEREAS it is a condition to Lender's making of the Loan and to Lender's acceptance of the Note and the Assignment that Mortgagor secure the payment and performance of Borrower's obligations to Lender under and pursuant to the Note, the Assignment and this Mortgage, whether now existing or hereafter arising, direct or indirect, contingent or absolute, due or to become due (the "Obligations"), by mortgaging its interests in the Premises and related owned personal property to Lender;

NORTH STAR TRUST COMPANY TRUST NO. 02-5419 AND MICHAEL L. NIELSEN  
TO JAYENNE, LTD.

W:\LOANDEAL\JAYENNE\NIELSEN\NIELSEN MORTG. WPD

BOX 333-57

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IN CONSIDERATION OF the premises and intending to be legally bound hereby, Mortgagor covenants to Lender as follows:

## Granting Clauses

NOW, THEREFORE, IN ORDER TO SECURE

(A) the payment of all sums that may at any time be due to Lender under the Note, the Assignment and this Mortgage, and any and all renewals, extensions or other amendments or modifications or replacements of or substitutions for such agreements, instruments and documents (the terms "Note", "Assignment" and "Mortgage" will include all such renewals, extensions, amendments, modifications, replacements and substitutions of each respective document, all such obligations of Mortgagor and Borrower to Lender are called "Indebtedness"); and

(B) the performance and observance of all the covenants, agreements and provisions (all such other obligations of Mortgagor and Borrower to Lender are "Related Obligations") contained in the Note, the Assignment and this Mortgage (each a "Related Document" and collectively "Related Documents"); and in order to charge the properties, interests and rights described below in this Mortgage with such payment, performance and observance;

AND FOR OTHER VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged;

MORTGAGOR MORTGAGES to Lender, its successors and assigns (the term "Lender" will include all such successors and assigns) forever all of its estate, title, rights and interest in and to the following described property (the "Premises"):

THE LAND located in the State of Illinois and legally described in EXHIBIT A to this Mortgage (the "Land");

TOGETHER WITH all improvements and fixtures of every kind now or later situated on or used or intended to be used on or in connection with the Land or the improvements, or in their construction, including all extensions, additions, improvements, betterments, renewals, substitutions, and replacements to any of the improvements and fixtures and the benefit of any deposits or payments now or hereafter made with third parties, whether owned by Mortgagor or any other (the "Improvements");

IT BEING AGREED that (1) "fixtures" include, without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings and wiring attached to the Land or the Improvements so that they cannot be removed without causing material damage to the Land or the Improvements and (2) all fixtures owned by Mortgagor and placed on the Land or the Improvements are and will be, as far as permitted by law, deemed fixtures and form a part of the real property included in the Premises subject to this Mortgage;

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AND TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or later belonging, relating or appertaining to the Land, and the reversions, remainders, issues and profits of the foregoing ("**Other Property Rights**");

AND TOGETHER WITH all proceeds of the Land, Improvements and Other Property Rights, including, without limitation, judgments, awards, damages and settlements arising after the date of this Mortgage as a result of condemnation or taking of all or any portion of the Premises by eminent domain, proceeds of policies of insurance with respect to the Premises or proceeds of any sale, option or contract to sell all or any portion of the Premises; and

MORTGAGOR HEREBY APPOINTS Lender its attorney-in-fact and authorizes Lender, at its option, on behalf of Mortgagor or its successors or assigns, to adjust, compromise, claim, collect and receive such proceeds, to give proper acquittances for such proceeds, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Lender, of the Indebtedness, even if such Indebtedness is not then due or is otherwise adequately secured;

TO HAVE AND TO HOLD the Premises, unto Lender forever, for the purposes and upon the uses set forth in this Mortgage, together with all right to possession of the Premises after the occurrence of any Default (as defined below);

MORTGAGOR HEREBY RELEASING AND WAIVING all rights under the homestead or similar exemption laws of the State of Illinois, to the extent permitted by the laws and public policy of the State of Illinois;

MORTGAGOR COVENANTS that it is lawfully seized of the Land, that the Land is unencumbered except for the Permitted Encumbrances (as defined below), and that it has good right, full power and lawful authority to convey and mortgage the Land, the Improvements and the Other Property Rights, and that it will warrant and forever defend the Land and its quiet and peaceful possession against the lawful claims of all persons;

PROVIDED, NEVERTHELESS, that if Mortgagor pays in full when due the Indebtedness and timely performs and observes all of the Other Obligations to be performed and observed by Mortgagor, AND PROVIDED that no default or event or circumstance that with notice or lapse of time or both would become a default occurs and remains continuing under any of the Related Documents, then the lien of this Mortgage and the interest of Lender in the Premises will terminate and Lender will provide Mortgagor with a release of the lien of this Mortgage in recordable form, but otherwise this Mortgage and the Lender's lien will remain in full force.

## Additional Covenants, Terms and Conditions

1. **Property Taxes.** Mortgagor shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and any other charges that may be asserted against the Mortgaged Property or any part thereof or interest therein, and to furnish to Lender duplicate receipts therefor within thirty (30) days after payment thereof. Mortgagor shall deposit with Lender, with each monthly payment due under the Note an amount equal to one twelfth ( $1/12$ ) of the estimated improved real estate taxes and, from time to time, such sums as Lender may from time to time require as a reasonable reserve against Mortgagor's failure to timely make such deposits; such deposits shall

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be held in a non-interest bearing escrow account. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that:

a. such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the Mortgaged Property or any part thereof or interest therein to satisfy the same;

b. Mortgagor has notified Lender in writing of the intention of Mortgagor to contest the same before any tax or assessment has been increased by any interest, penalties or costs; and

c. Mortgagor has deposited with Lender, at such place as Lender may from time to time in writing designate, a sum of money or other security acceptable to Lender that, when added to the monies or other security, if any, deposited with Lender, is sufficient, in Lender's judgment, to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Lender's judgment, to pay in full such contested tax and assessment, increasing such amount to cover additional penalties and interest whenever, in Lender's judgment, such increase is advisable.

2. **Insurance.** Mortgagor shall maintain the following insurance:

a. **Hazard Insurance.**

i. Mortgagor shall keep the improvements now existing or hereafter erected on the Mortgaged Property insured under a replacement cost form of insurance policy (without depreciation and without co-insurance) against loss or damage resulting from fire, windstorm and other hazards as may be required by Lender, and shall pay promptly, when due, any premiums on such insurance. All such insurance shall be in form and of content and shall be carried in companies approved in writing by Lender, which approval shall not be unreasonably withheld or delayed, and all such policies and renewals thereof (or certificates evidencing the same), marked "paid," shall be delivered to Lender at least thirty (30) days before the expiration of then existing policies and shall have attached thereto standard noncontributing Lender clauses entitling Lender to collect any and all proceeds payable under such insurance, as well as standard waiver of subrogation endorsements. Mortgagor shall not carry any separate insurance on such improvements concurrent in kind or form with any insurance required hereunder or contributing in the event of loss, unless each such policy includes a standard non-contributing Lender clause entitling Lender to collect any and all proceeds thereunder, as well as a standard waiver of subrogation endorsement.

ii. In case of loss, Lender (or after entry of decree of foreclosure, purchaser at the sale, or the decree creditor, as the case may be) is hereby authorized to either: (1) settle and adjust any claim under any insurance policies without the consent of Mortgagor or (2) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss, provided, however, that Lender shall not have the right to exercise the powers granted in this sentence unless there is then existing a Default hereunder or there has been entered a decree of foreclosure. In either case, Lender is authorized to collect and receipt for any such insurance money. In case of any such loss, if, in Lender's sole judgment and determination, either the Mortgaged Property cannot be restored or the funds collected from any such insurance settlements, together with any additional funds deposited by Mortgagor with Lender for such purpose, are insufficient to pay for the full restoration and repair of such damage, Lender shall have the right to collect any insurance proceeds and apply the same toward payment of the indebtedness secured hereby, or hold such proceeds in a cash collat-

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eral account to secure the Obligations, after deducting all expenses and fees of collection. If said funds are sufficient to pay for the full restoration and repair of such damage, Lender shall apply said funds toward such restoration and repair. If the net insurance proceeds are insufficient to pay the then outstanding Obligations, together with all accrued interest, fees and charges, Lender may, at its sole election, declare the entire unpaid balance to be immediately due and payable, and Lender may then treat the same as in the case of any other default hereunder. If any insurance company raises a defense to any claim for payment due to damage or destruction of the Mortgaged Property or any part thereof by reason of fire or other casualty submitted by Lender or any party on behalf of Lender, then Lender may, at its option, whether or not Lender has received funds from any insurance settlements, declare the unpaid balance to be immediately due and payable, and Lender may then treat the same as in the case of any other default hereunder.

iii. In case of loss after foreclosure proceedings have been instituted, all insurance proceeds shall, at Lender's option, be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if such owner shall then be entitled to the same, or as the court may direct. In case of the foreclosure of this Mortgage or the exercise of the equity of redemption, the court in its decree may provide that the Lender's clause attached to each of said insurance policies may be canceled and replaced with a loss payable clause making the loss thereunder payable as the court shall find proper, and Lender is hereby authorized, without the consent of Mortgagor, to execute and deliver such documents with respect to its interest under such policies as the court may direct. In the event of foreclosure sale, Lender is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Lender may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

iv. Nothing contained in this Mortgage shall create any responsibility or obligation of Lender to collect any amount owing on any insurance policy to rebuild, repair or replace any damaged or destroyed portion of the Mortgaged Property or to perform any act hereunder.

v. If Lender is obligated or elects to apply such proceeds toward repairing, restoring, and rebuilding any portion of the Mortgaged Property such proceeds shall be made available, from time to time, upon Lender's being furnished with satisfactory evidence of the estimated cost of such repairs, restoration and rebuilding and with such architect's and other certificates, waivers of lien, certificates, contractors' sworn statements and other evidence of the estimated cost thereof and of payments as Lender may reasonably require and approve, and, with all plans and specifications for such repairs, restoration and rebuilding as Lender may reasonably require and approve. No payment made prior to the completion of ninety percent (90%) of the work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of Lender shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens.

vi. Mortgagor shall deposit with Lender, with each monthly payment due under the Note an amount equal to one twelfth ( $1/12$ ) of the estimated cost of hazard insurance and, from time to time, such sums as Lender may from time to time require as a reasonable reserve against Mortgagor's failure to timely make such deposits; such deposits shall be held in a non-interest bearing escrow account.

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b. **Other Insurance.** Upon Lender's written request, Mortgagor shall carry and maintain such other insurance coverage(s) as Lender may, in its sole discretion, deem necessary or appropriate in such amounts, with such companies and in such form as Lender deems satisfactory, all at Mortgagor's sole expense.

3. **Condemnation and Eminent Domain.** Any and all awards heretofore or hereafter made or to be made to the present or any subsequent owner of the Mortgaged Property by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property, any improvement located thereon or any easement thereon or appurtenance thereof (including any award from the United States government at any time after the allowance of a claim therefore, the ascertainment for the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by Mortgagor to Lender, which awards Lender is hereby authorized to negotiate, collect and receive from the condemnation authorities, and Lender is hereby authorized to give appropriate receipts and acquittances therefor. Mortgagor shall give Lender immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises, or any easement thereon or appurtenance thereof (including severance of, consequential damage to or change in grade of streets), and shall deliver to Lender copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute and deliver to Lender, at any time upon request, free and clear of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. Any such award shall either be applied toward the indebtedness secured by this Mortgage or, if such award, together with any funds deposited by Mortgagor into an escrow for such purpose, are sufficient to pay for the full cost of restoration, applied toward restoring the improvements, in which event the same shall be paid out the same manner as is provided with respect to insurance proceeds in Paragraph 2.a hereof.

4. **Compliance with Laws.** Mortgagor shall comply with all statutes, ordinances, regulations, rules, orders, decrees and other requirements relating to the Mortgaged Property or any part thereof by any federal, state or local authority; and shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions, and nonconforming uses), privileges, franchises and concessions that are applicable to the Mortgaged Property or that have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Property.

## 5. **Liens and Transfers.**

a. Except for those matters identified in Chicago Title Insurance Company Title Commitment No. ST5039103, as revised and executed by \_\_\_\_\_ on \_\_\_\_\_, 2002 (the "Permitted Encumbrances"), without Lender's prior written consent, Mortgagor shall not create, suffer or permit to be created or filed against the Mortgaged Property or any part thereof hereafter any mortgage lien (other than the lien in favor of the Mortgage as contemplated herein) or other lien, whether superior or inferior to the lien of this Mortgage, provided that Mortgagor may, within ten (10) days after the filing thereof, contest any lien claim arising from any work performed, material furnished or obligation incurred by Mortgagor upon furnishing Lender security and indemnification satisfactory to Lender in its sole discretion, which security may be in the form of special endorsement to Lender's title insurance policy, for the final payment and discharge thereof. If Mortgagor hereafter creates, suffers or permits any superior

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or inferior lien (other than those expressly authorized hereunder) to be attached to the Mortgaged Property or any part thereof without such consent, such act shall constitute a Default hereunder entitling Lender to exercise all remedies provided hereunder and under the Related Documents, including, without notice to Mortgagor and at the election of the Lender, acceleration of the Obligations.

b. If Mortgagor, without Lender's prior written consent, sells, transfers, conveys assigns, pledges, hypothecates or otherwise disposes of the title to all or any portion of the Mortgaged Property, whether by operation of law, voluntarily or otherwise, or any interest thereto, including without limitation any assignment (either collateral or outright) of all or any part of the beneficial interest of any trust holding legal title to the Premises, or enters into any agreement to do any of the foregoing, such act shall constitute a Default hereunder entitling Lender to exercise all remedies provided hereunder, under the Note and under any other Related Documents, including, without notice to Mortgagor and at the election of the Lender, acceleration of the Obligations.

6. **Events Constituting Default.** Each of the following events shall constitute "a Default" under this Mortgage:

a. Failure of Mortgagor to pay when due any payment on the Indebtedness secured hereby and continuance of such failure after any required notice or lapse of time or both or if neither is specified, for a period of five (5) business days after such failure; or

b. Failure of Mortgagor to make any deposit with Lender for the payment of taxes, hazard insurance premiums or otherwise when due and continuance of such failure for a period of five (5) business days

c. Failure of Mortgagor to perform or observe any other covenant, warranty or other provision contained in this Mortgage for a period of more than fifteen (15) days after the date on which notice of the nature of such failure is given by Lender to Mortgagor or, with respect to defaults which cannot be cured within fifteen (15) days, the failure by Mortgagor promptly to commence and diligently pursue the cure of such default upon Mortgagor's receipt of notice thereof, and to complete said cure within thirty (30) days of said notice; or

d. The occurrence of any Default or default under the terms of any of the Related Documents, after giving effect to any applicable notice, lapse of time or both; or

e. Any representation or warranty contained in any of the Related Documents or any other document or writing submitted to Lender by or on behalf of Mortgagor proves to be untrue in any material respect; or

f. Admission by Borrower or Mortgagor in writing, including without limitation an answer or other pleading filed in any court, of Borrower's or Mortgagor's insolvency or its inability to pay its debts generally as they fall due; or

g. Institution by Borrower or Mortgagor of bankruptcy, insolvency, reorganization or arrangement proceedings of any kind under the Federal bankruptcy Code, whether as now existing or as hereafter amended, or any similar debtors' or creditors' rights law, whether federal or state, now or hereafter existing, or the making by Borrower or Mortgagor of a general assignment for the benefit of creditors; or



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h. Institution of any proceedings described in Paragraph 6.f against Borrower or Mortgagor that are consented to by Borrower or Mortgagor, as the case may be, or are not dismissed, vacated, or stayed within sixty (60) days after the filing thereof; or

i. Appointment by any court of a receiver, trustee or liquidator of or for, or assumption by any court of jurisdiction of, all or any part of the Mortgaged Property or all or a major portion of the property of Borrower or Mortgagor, if such appointment or assumption is consented to by Borrower or Mortgagor, as the case may be, or if, within sixty (60) days after such appointment or assumption, such receiver, trustee or liquidator is not discharged or such jurisdiction is not relinquished, vacated or stayed; or

j. Declaration by any court or governmental agency of the bankruptcy or insolvency of Borrower or Mortgagor.

7. **Acceleration of Maturity.** At any time a Default has occurred and remains continuing, at the option of Lender, all amounts then outstanding under Note or any other of the Related Documents, together with all unpaid interest accrued thereon and all other sums due from Mortgagor thereunder or under this Mortgage, shall without notice become immediately due and payable with interest thereon.

8. **Foreclosure of Mortgage.** At any time a Default has occurred and remains continuing, Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Premises are located. Any failure by Lender to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

9. **Lender's Continuing Options.** The failure of Lender to exercise either or both of its foregoing options, that is, to accelerate the maturity any or all of the Indebtedness or to foreclose the lien hereof, while any Event Default remains continuing as aforesaid, or to exercise any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments of any Indebtedness, shall neither constitute a waiver of any such Event Default or of Lender's options hereunder nor establish, extend or affect any grace period for payments due under Note and the other Related Documents, but such options shall remain continuously in force. Acceleration of maturity, once asserted hereunder by Lender, may, at Lender's option, be rescinded by written acknowledgment to that effect by Lender and shall not affect Lender's right to accelerate maturity upon or after any future Default.

10. **Litigation Expenses.** In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Lender under this Mortgage or any of the other Related Documents, or in any other proceeding whatsoever in connection with any of the Related Documents or any of the Mortgaged Property in which Lender is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Lender, including without limitation, reasonable attorneys' fees, appraisers' fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and any similar data and assurances with respect to title to the Premises as Lender may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the Premises or the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon,

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including without limitation the reasonable fees of any attorney employed by Lender in any litigation affecting this Mortgage, any of the Related Documents or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceedings or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor with interest thereon at the interest rate set forth in the Related Documents.

11. **Performance by Lender.** At any time a Default remains continuing, or if action or proceeding is instituted that materially affects, or threatens to materially affect, Lender's interest in any portion of the Mortgaged Property, Lender may perform any act on Mortgagor's behalf in any form and manner deemed expedient by Lender, and Lender may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Mortgaged Property; pay any real estate taxes or insurance premiums with respect to the Mortgaged Property or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including without limitation attorneys' fees and court costs, and any other monies advanced by Lender to protect the Mortgaged property and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Lender without notice and with interest thereon at the Default Rate set forth in the Note. Inaction of Lenders shall never be construed to be waiver of any right accruing to Lender by reason of any default by Mortgagor. Lender shall not incur any personal liability because of anything it may do or omit to do hereunder, nor shall any acts of Lender act as a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage or to proceed to foreclose this Mortgage.

12. **Right of Possession.** In any case in which, under the provisions of this Mortgage or the other Related Documents, Lender has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agents or attorneys, or enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers and accounts of Mortgagor or the then owner of the Mortgaged Property relating thereto, and may exclude Mortgagor, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Lender and under the power herein granted:

a. hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, whether legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of rents, issues, deposits, profits and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer and actions in distress for rent, all without notice to Mortgagor;

b. cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Mortgagor to cancel the same;

c. elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage or subordinated to the lien hereof;

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d. extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Property are subject to the lien hereof and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and

e. make all necessary or proper repairs; decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Mortgaged Property as may seem judicious to Lender, to insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

13. **Priority of Payments.** Any rents, issues, deposits, profits and avails of the mortgaged Property received by Lender after taking possession of all or any part of the Mortgaged Property, or pursuant to any assignment thereof to Lender under the provisions of this Mortgage or any of the other Related Documents, shall be applied in payment of or on account of the following in such order as Lender in its sole discretion or, in case of a receivership, as the court, may determine:

a. operating expenses of the Mortgaged Property (including without limitation reasonable compensation to Lender, any receiver of the Mortgaged Property, any agent or agents to whom management of the Mortgaged Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

b. taxes, special assessments, water and sewer charges now due or that may hereafter become due on the Mortgaged Property, or that may become a lien thereon prior to the lien of this Mortgage;

c. any and all repairs, decorating, renewals, replacements alterations, additions betterments and improvements of the Mortgaged Property (including without limitation the costs, from time to time, of placing the Mortgaged Property in such condition as will, in the judgment of Lender or any receiver thereof, make it readily rentable or salable.);

d. any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and

e. any remaining funds to Mortgagor to its successors or assigns, as their interests and rights may appear.

14. **Appointment of Receiver.** Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may, upon application, either appoint Lender as "lender-in- possession" or appoint a receiver of the Mortgaged Property (either appointee being hereinafter referred to in this paragraph as the "receiver"). Such appointment may be made either before or after foreclosure sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; and without bond being required of the applicant. Such receiver shall have the power to take

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possession, control and care of the Mortgaged Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the indebtedness secured by this Mortgage, and in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Lender or its devisees, legatees, heirs, executors, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may be authorized by the court to extend or modify any then existing leases and to make new leases of the Mortgaged Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options of lessees to extend or renew terms to expire, beyond the maturity date of the Loan Agreement, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

15. **Foreclosure Sale.** In any foreclosure sale of the Mortgaged Property, the Mortgaged Property may be sold in one or more parcels. Lender may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

16. **Waiver of Statutory Rights.** Mortgagor shall not apply for or avail itself of any appraisal, valuation, redemption, stay, extension or exemption laws, or any so-called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, hereby also waives any and all rights to have the Mortgaged Property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold in its entirety. MORTGAGOR HEREBY FURTHER WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR DECREE OF FORECLOSURE OF THE LIEN HEREOF PURSUANT OUT THE RIGHTS HEREIN GRANTED, FOR ITSELF AND ON BEHALF OF ANY TRUST ESTATE OF WHICH THE PREMISES ARE A PART, ALL PERSONS BENEFICIALLY INTERESTED THEREIN AND EACH AND EVERY PERSON ACQUIRING ANY INTEREST IN THE MORTGAGED PROPERTY OR TITLE TO THE PREMISES AFTER THE DATE OF THIS MORTGAGE, AND ON BEHALF OF ALL OTHER PERSONS TO THE EXTENT PERMITTED BY THE PROVISIONS OF THE ILLINOIS MORTGAGE FORECLOSURE LAW, 735 ILCS 5/1101 ET SEQ., INCLUDING ANY SUBSEQUENT AMENDMENTS, REPLACEMENTS OR SIMILAR APPLICABLE LAWS.

17. **Indemnification.** Mortgagor will indemnify and hold Lender harmless from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation reasonable attorneys' and expert witness fees and court costs) incurred by or asserted against Lender by reason of the ownership of the Premises or any interest therein or receipt of any rents, issues, proceeds or profits therefrom; any accident, injury to or death of persons, or loss of or damage to property occurring in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; any use, non-use or condition in, on or about the Premises or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; or performance of

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any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof. Any amounts owed to Lender by reason of this Paragraph shall constitute additional Indebtedness that is secured by this Mortgage and shall become immediately due and payable upon demand therefor, and shall bear interest from the date such loss or damage is sustained by Lender until paid. The obligations of Mortgagor under this Paragraph shall survive any termination or satisfaction of this Mortgage.

18. **Notices, Etc.** All notices and other communications required or permitted hereunder shall, unless otherwise stated herein, be given by registered or certified mail, return receipt requested, postage prepaid, or by recognized commercial courier, or by telecopy, to the addressees at their respective addresses set forth below,

**If to Lender:**

Jayenne, Ltd.  
55 West Monroe Street, Suite 3550  
Chicago, Illinois 60603  
Attention: James D. Jacobson, Vice President  
Phone: 312.236.8110  
Fax: 312.236.6724

**If to Mortgagor:**

North Star Trust Company  
500 West Madison Street, Suite 3800  
Chicago, Illinois 60661

Phone: 312.559.5761  
Fax: 312.559.5762

*with a copy to:*

Mr. Michael L. Nielsen  
2308 South 15<sup>th</sup> Avenue  
Broadview, Illinois 60153

All notices and other communications shall be effective on the business day following the mailing or sending of such notice. Each of the parties named above may, by notice given to the other party in accordance with the foregoing, change its address for the purposes hereof.

19. **Time of Essence.** It is specifically agreed that time is of the essence of this Mortgage.

20. **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon Mortgagor, its successors, assigns, legal representatives and all other persons or entities claiming under or through Mortgagor, and the word "**Mortgagor**", when used herein, shall include all such persons and entities and any other liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed the Reimbursement Agreement or this Mortgage. The word "**Lender**" when used herein, shall include Lender's successors, assigns and legal representatives, including all other holders, from time to time, of the Reimbursement Agreement.

21. **No Joint Venture.** Mortgagor and Lender acknowledge and agree that under no circumstances shall Lender be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor, including without limitation by virtue of becoming a Lender in possession or exercising any of its rights pursuant to this Mortgage or pursuant to any of the other Related Documents, or otherwise.


*[remainder of page intentionally left blank]*

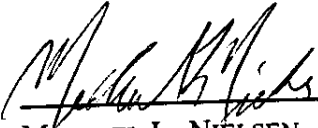
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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date and year first above written.

NORTH STAR TRUST COMPANY, not in its individual corporate capacity, but solely as Trustee under Trust Agreement dated September 4, 2002 and known as Trust Number 02-5419

The undersigned, who is sole beneficiary of such Trust Number 02-5419, joins in all of the covenants of the foregoing Mortgage

By  \_\_\_\_\_  
Its Vice President \_\_\_\_\_  
(additional exculpatory language below)

 \_\_\_\_\_  
MICHAEL L. NIELSEN

## EXHIBIT A TO MORTGAGE

LOTS 1 TO 4 IN RICE'S SUBDIVISION OF BELLEWOOD, BEING A SUBDIVISION OF PART OF THE SOUTHWEST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.I.N.: 15-09-316-047-0000, 15-09-316-048-0000

Commonly known as: 700-708 Bellwood Avenue, Bellwood, Illinois 60104-1831

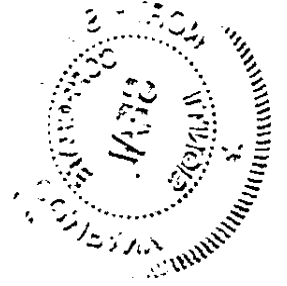
NORTH STAR TRUST COMPANY TRUST NO. 02-5419 AND MICHAEL L. NIELSEN  
TO JAYENNE, LTD.

W:\LOANDEAL\JAYENNE\NIELSEN\NIELSEN MORTG. WPD

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STATE OF ILLINOIS

SS:

COUNTY OF COOK

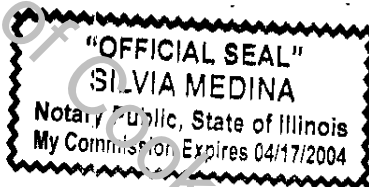
I, Silvia Medina, a Notary Public in and for said County and State aforesaid, HEREBY CERTIFY that JACKLIN ISHA, being a Vice President of NORTH STAR TRUST COMPANY, an Illinois corporation acting as Trustee under Trust Agreement dated September 4, 2002 and known as Trust Number 02-5419, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument, and caused the seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act of said corporation as Trustee of said Trust, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 17th day of September 2002.

[SEAL]

Silvia Medina

NOTARY PUBLIC



STATE OF ILLINOIS

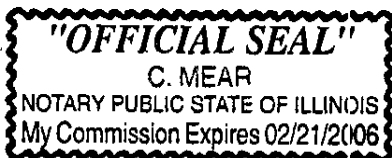
SS:

COUNTY OF COOK

I, C. Mear, a Notary Public in and for said County and State aforesaid, HEREBY CERTIFY that MICHAEL L. NIELSEN, an individual, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 16th day of September 2002.

[SEAL]



C. Mear

Notary Public

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## ATTACHED LAND TRUST MORTGAGE EXONERATION RIDER

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

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