

UNOFFICIAL COPY

0021349831

3643/0084 33 001 Page 1 of 31

2002-12-06 14:00:43

Cook County Recorder

162.50

Return TO:

LexisNexis Document Solutions
35 S. LaSalle St., Suite 2260
Chicago, IL 60603
Phone: (312) 201-1273

MORTGAGE AND SECURITY AGREEMENT



THIS INSTRUMENT PREPARED BY

Edward F. Dobbins, Esq.
Jenner & Block, LLC
330 North Wabash
Chicago, Illinois 60611
(312) 923-2670

This Mortgage and Security Agreement ("Mortgage"), made as of October 12, 2002, is made and executed by JAMES B. FLANAGAN ("Guarantor") and MARY P. FLANAGAN, his wife, each residing at 9245 S. Millard, Evergreen Park, Illinois, (collectively James B. Flanagan and Mary P. Flanagan are herein referred to as "Mortgagor"), in favor of LASALLE BANK NATIONAL ASSOCIATION, a national banking association having an office at 135 South LaSalle Street, Chicago, Illinois 60603 ("Lender").

31

RECITALS

I. Lender has made (i) revolving loans to Bullen Midwest, Inc., an Illinois corporation ("Borrower") in an aggregate principal amount not to exceed \$2,500,000 (the "Revolving Loan") evidenced by that Revolving Note, dated March 29, 2002, (the "Revolving Note"); (ii) a Term Loan A in the original principal amount of \$340,545 ("Term Loan A"), evidenced by that Term Loan Note A, dated March 29, 2002, (the "Term Loan A Note") and (iii) Term Loan B in the original principal amount of \$1,418,184 ("Term Loan B"), evidenced by that Term Loan B Note, dated March 29, 2002 (the "Term Loan B Note") (collectively, the Revolving Loan, Term Loan A and Term Loan B are herein referred to as the "Loans") (collectively, the Revolving Note, Term Loan A Note and Term Loan B Note, together with all allonges, amendments, supplements, modifications and replacements thereof, being referred to in this Mortgage as the "Notes"). The terms of the Loans are governed by a certain Amended and Restated Loan and Security Agreement, dated as of March 29, 2002, by and between Borrower and Lender (said Loan & Security Agreement, together with all amendments, supplements, modifications and replacements thereof, being referred to in this Mortgage as the "Loan Agreement"). The terms and provisions of the Notes and the Loan Agreement are hereby incorporated by reference in this Mortgage. Capitalized terms not otherwise defined in this Mortgage shall have the meaning ascribed to them in the Loan Agreement. As an inducement to Lender to make and continue the Loans, James B. Flanagan has executed and delivered to Lender a certain Guaranty, dated as of July 16, 1999 as heretofore hereafter amended and reaffirmed (the "Guaranty"), pursuant to which James B. Flanagan has agreed to guaranty all of the indebtedness and obligations of Borrower owed to Lender, including, without limitation, under the Loan Agreement and Notes.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Debtor: FLANAGAN, JAMES B.
Juris: Recorder of Deeds, Cook County, IL
(FX TO N) - ("G")

1765784 - 2



II. This Mortgage is given to secure Guarantor's obligations under the Guaranty, and Borrower's obligations under the Loan Agreement and Notes and secures not only present indebtedness but also future advances, whether such future advances are obligatory or are to be made at the option of Lender, or otherwise as are to be made within twenty (20) years of the date hereof. The amount of indebtedness secured hereby may increase or decrease from time to time; however the principal amount of such indebtedness shall not at one time exceed the amount of \$5,000,000 plus interest thereon, and other costs, amounts and disbursements as provided herein and in the other Loan Instruments (hereinafter defined).

GRANTING CLAUSES

To secure the obligations of Guarantor under the Guaranty and the payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Mortgage, the Guaranty, the Loan Agreement, the Notes, any and all other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit and any other documents and instruments now or hereafter executed by Mortgagor, Borrower or any party related thereto or affiliated therewith to evidence, secure or guarantee the payment of all or any portion of the indebtedness under the Note or the Guaranty and any and all renewals, extensions, amendments and replacements of this Mortgage, the Guaranty, the Loan Agreement, the Note and any such other documents and instruments (the Guaranty, the Loan Agreement, the Note, this Mortgage, such other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit, and any other documents and instruments now or hereafter executed and delivered in connection with the Loan, and any and all amendments, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the "Loan Instruments" and individually as a "Loan Instrument") and to secure payment of any and all other indebtedness and obligations of Guarantor, Mortgagor or Borrower or any party related thereto or affiliated therewith to Lender, whether now existing or hereafter created, absolute or contingent, direct or indirect, liquidated or unliquidated, or otherwise (all indebtedness and liabilities secured hereby being hereinafter sometimes referred to as "Mortgagor's Liabilities"), provided "Mortgagor's Liabilities," secured by this Mortgage, shall be limited to and shall not exceed an amount equal to the lesser of (i) \$200,000, or (ii) the aggregate amount of any overadvances (excluding those amounts owed under Term Loan B) or out of formula amounts existing from time to time under the terms of the Loan Agreement and any overdrafts in Borrower's accounts with Mortgagee existing at any time. Mortgagor does hereby convey, mortgage, warrant, assign, transfer, pledge and deliver to Lender the following described property subject to the terms and conditions herein:

(A) The land located at 9245 S. Millard, Evergreen Park, Illinois, in Cook County, Illinois, legally described in attached Exhibit A ("Land");

(B) All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land; and, to the extent not owned by tenants of the Mortgaged Property, all machinery, appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Land, buildings, structures, improvements or fixtures now or hereafter located or to be located on the Land, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, improvements, substitutions and replacements to any of the foregoing ("Improvements");

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(C) All building materials and goods which are procured or to be procured for use on or in connection with the Improvements or the construction of additional Improvements, whether or not such materials and goods have been delivered to the Land ("Materials");

(D) All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses of the Land or the Improvements, contracts for services to be rendered to Mortgagor or otherwise in connection with the Improvements and all other property, contracts, reports, proposals and other materials now or hereafter existing in any way relating to the Land or the Improvements or the construction of additional Improvements;

(E) All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired ("Appurtenances");

(F) (i) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(ii) All compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage or taking, pursuant to the power of eminent domain, of the Land, Improvements, Appurtenances or Materials or any part thereof, (b) damage to all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances, Materials or of other property, or (c) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances, Materials or any part thereof; and, except as otherwise provided herein, Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and, except as otherwise provided herein, to apply the same toward the payment of the indebtedness and other sums secured hereby;

(iii) All contract rights, general intangibles, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Land, Improvements, Appurtenances or Materials; and

(iv) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or Materials;

(G) All rents issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the "Rents"); it being intended that this Granting Clause shall constitute an absolute and present assignment of the Rents, subject, however, to the conditional permission given to Mortgagor to collect and use the Rents as provided in this Mortgage;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(H) Any and all leases, licenses and other occupancy agreements now or hereafter affecting the Land, Improvements, Appurtenances or Materials, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor which contain evidence of payments made under the leases and all security given therefor (collectively, the "Leases"), subject, however, to the conditional permission given in this Mortgage to Mortgagor to collect the Rents arising under the Leases as provided in this Mortgage;

(I) Any and all escrow accounts held by Lender or Lender's agent pursuant to any provision of this Mortgage;

(J) Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding Granting Clauses; and

(K) The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses;

All of the mortgaged property described in the Granting Clauses, together with all real and personal, tangible and intangible property pledged in, or to which a security interest attaches pursuant to, any of the Loan Instruments is sometimes referred to collectively as the "Mortgaged Property." The Rents and Leases are pledged on a parity with the Land and Improvements and not secondarily.

ARTICLE ONE

COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Lender as follows:

1.1 Performance under Guaranty, Mortgage and Other Loan Instruments.

Mortgagor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner all provisions hereof and of the Guaranty, every other Loan Instrument and every instrument evidencing or securing Mortgagor's Liabilities and will promptly pay or cause to be paid to Lender when due the principal with interest thereon and all other sums required to be paid by Mortgagor pursuant to the Guaranty, this Mortgage, every other Loan Instrument and every other instrument evidencing or securing Mortgagor's Liabilities.

1.2 General Covenants and Representations.

Mortgagor covenants, represents and warrants that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is seized of an indefeasible estate in fee simple in that portion of the Mortgaged Property which is real property, and has good and absolute title to it and the balance of the Mortgaged Property free and clear of all liens, security interests, charges and encumbrances whatsoever except those expressly permitted in writing by Lender, if any, including, without limitation, that certain Mortgage, dated May 4, 2001 and recorded as Document No. 0010432895

UNOFFICIAL COPY

Property of Cook County Clerk's Office

on May 22, 2001 made by Mortgagor in favor of America's Wholesale Lender, (herein referred to as the "First Mortgage") (such liens, security interests, charges and encumbrances expressly permitted in writing being hereinafter referred to as the "Permitted Encumbrances"); (b) Mortgagor has good right, full power and lawful authority to mortgage and pledge the Mortgaged Property as provided herein; (c) upon the occurrence of an Event of Default, Lender may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof; and (d) Mortgagor will maintain and preserve the lien of this Mortgage as a second and junior to the First Mortgage lien on the Mortgaged Property subject only to the Permitted Encumbrances until Mortgagor's Liabilities have been paid in full.

1.3 Compliance with Laws and Other Restrictions. Mortgagor covenants, represents and warrants that the Land and the Improvements and the use thereof presently comply in all material respects with, and will during the full term of this Mortgage continue to comply in all material respects with, all applicable restrictive covenants, zoning and subdivision ordinances and building codes, licenses, health and environmental laws and regulations and all other applicable laws, ordinances, rules and regulations. If any federal, state or other governmental body or any court issues any notice or order to the effect that the Mortgaged Property or any part thereof is not in compliance with any such covenant, ordinance, code, law or regulation, Mortgagor will promptly provide Lender with a copy of such notice or order and will immediately commence and diligently perform all such actions as are necessary to comply therewith or otherwise correct such non-compliance. Mortgagor shall not, without the prior written consent of Lender, petition for or otherwise seek any change in the zoning ordinances or other public or private restrictions applicable to the Mortgaged Property on the date hereof.

1.4 Taxes and Other Charges.

1.4.1 Taxes and Assessments. Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or Mortgagor's Liabilities or upon or against the interest of Lender in the Mortgaged Property, as well as all taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality or other taxing authority upon or in respect of the Mortgaged Property or any part thereof; provided, however, that unless compliance with applicable laws requires that taxes, assessments or other charges must be paid as a condition to protesting or contesting the amount thereof, Mortgagor may in good faith, by appropriate proceedings commenced within ninety (90) days of the due date of such amounts and thereafter diligently pursued, contest the validity, applicability or amount of any asserted tax, assessment or other charge and pending such contest Mortgagor shall not be deemed in default hereunder if on or before the due date of the asserted tax or assessment, Mortgagor shall first either (i) deposit with Lender a bond or other security satisfactory to Lender in the amount of 150% of the amount of such tax or assessment or (ii) obtain an endorsement, in form and substance satisfactory to Lender, to the loan policy of title insurance issued to Lender insuring the lien of this Mortgage, insuring over such tax or assessment. Mortgagor shall pay the disputed or contested tax, assessment or other charge and all interest and penalties due in respect thereof

UNOFFICIAL COPY

Property of Cook County Clerk's Office

on or before the date any adjudication of the validity or amount thereof becomes final and in any event no less than thirty (30) days prior to any forfeiture or sale of the Mortgaged Property by reason of such non-payment. Upon Lender's request, Mortgagor will promptly file, if it has not theretofore filed, such petition, application or other instrument as is necessary to cause the Land and Improvements to be taxed as a separate parcel or parcels which include no property not a part of the Mortgaged Property.

1.4.2 Taxes Affecting Lender's Interest. If any state, federal, municipal or other governmental law, order, rule or regulation, which becomes effective subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes, so as to impose on Lender a tax by reason of its ownership of any or all of the Loan Instruments or measured by the principal amount of the Note, requires or has the practical effect of requiring Lender to pay any portion of the real estate taxes levied in respect of the Mortgaged Property to pay any tax levied in whole or in part in substitution for real estate taxes or otherwise affects materially and adversely the rights of Lender in respect of the Note, this Mortgage or the other Loan Instruments, Mortgagor's Liabilities and all interest accrued thereon shall, upon thirty (30) days' notice, become due and payable forthwith at the option of Lender, whether or not there shall have occurred an Event of Default, provided, however, that, if Mortgagor may, without violating or causing a violation of such law, order, rule or regulation, pay such taxes or other sums as are necessary to eliminate such adverse effect upon the rights of Lender and does pay such taxes or other sums when due, Lender may not elect to declare due Mortgagor's Liabilities by reason of the provisions of this Section 1.4.2.

1.4.3 Tax Escrow. If directed by Lender in writing, Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Section 1.4, but not in lieu of such obligations, deposit with Lender on the first day of each calendar month throughout the term of the Loan, deposits, in amounts set by Lender from time to time by written notice to Mortgagor, in order to accumulate funds sufficient to permit Lender to pay all annual ad valorem taxes, assessments and charges of the nature described in Section 1.4.1 at least thirty (30) days prior to the date or dates on which they shall become delinquent. Mortgagor hereby pledges to Lender, and grants to Lender a security interest in, any and all such deposits as security for the Loan. The taxes, assessments and charges for purposes of this Section 1.4.3 shall, if Lender so elects, include, without limitation, water and sewer rents. Mortgagor shall procure and deliver to Lender when issued all statements or bills for such obligations. Upon demand by Lender, Mortgagor shall deliver to Lender such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges thirty (30) days prior to the date they become delinquent. Lender shall pay such taxes, assessments and other charges as they become due to the extent of the funds on deposit with Lender from time to time and provided Mortgagor has delivered to Lender the statements or bills therefor. In making any such payments, Lender shall be entitled to rely on any bill issued in respect of any such taxes, assessments or charges without inquiry into the validity, propriety or amount thereof and whether delivered to Lender by Mortgagor or otherwise obtained by Lender. Any deposits received pursuant to this Section 1.4.3 shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender and Lender shall have no obligation to pay interest on amounts deposited with Lender pursuant to

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

this Section 1.4.3. If any Event of Default occurs, any part or all of the amounts then on deposit or thereafter deposited with Lender under this Section 1.4.3 may at Lender's option be applied to payment of Mortgagor's Liabilities in such order as Lender may determine.

1.4.4 No Credit Against the Indebtedness Secured Hereby. Mortgagor shall not claim, demand or be entitled to receive any credit against the amounts payable under the terms of the Guaranty or on any of Mortgagor's Liabilities for any of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof or that are applicable to Mortgagor's Liabilities or to Lender's interest in the Mortgaged Property.

1.5 Mechanic's and Other Liens. Mortgagor shall not permit or suffer any mechanic's, laborer's, materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due) to be created upon or against the Mortgaged Property, provided, however, that Mortgagor may in good faith, by appropriate proceeding, contest the validity, applicability or amount of any asserted lien and, pending such contest, Mortgagor shall not be deemed to be in default hereunder if Mortgagor shall first obtain an endorsement, in form and substance satisfactory to Lender, to the loan policy of title insurance issued to Lender insuring over such lien, or, if no such loan policy shall have been issued, then Mortgagor shall deposit with Lender a bond or other security satisfactory to Lender in the amount of 150% of the amount of such lien. Mortgagor shall pay the disputed amount and all interest and penalties due in respect thereof on or before the date any adjudication of the validity or amount thereof becomes final and, in any event, no less than thirty (30) days prior to any foreclosure sale of the Mortgaged Property or the exercise of any other remedy by such claimant against the Mortgaged Property.

1.6 Insurance and Condemnation.

1.6.1 Hazard Insurance. Mortgagor shall, at its sole cost and expense, obtain for, deliver to, assign to and maintain for the benefit of Lender, until Mortgagor's Liabilities are paid in full, policies of hazard insurance, in an amount which shall be not less than 100% of the full insurable replacement cost of the Mortgaged Property (except the Land), insuring on a replacement cost basis the Mortgaged Property with "causes of loss-special form" coverage and insuring against such other hazards, casualties and contingencies as Lender may require, including without limitation, if requested by Lender, earthquake, and, if all or any part of the Mortgaged Property shall at any time be located within an area identified by the government of the United States or any agency thereof as having special flood hazards and for which flood insurance is available, flood. If any such policy shall contain a co-insurance clause it shall also contain an agreed amount or stipulated value endorsement. All policies of hazard insurance shall contain a "lender's loss payable" endorsement and shall provide that no losses shall be payable to any other parties without Lender's prior written consent. The form of such policies, the amounts and the companies issuing them shall be acceptable to Lender. Originals or certified copies of all policies shall be delivered to and retained by Lender. Mortgagor shall pay on or before the due dates thereof premiums on all insurance policies and on any renewals thereof. In the event of loss, Mortgagor will give immediate written notice to Lender and Lender may make proof of loss if not made promptly by Mortgagor (for which purpose Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact). In the event of the foreclosure of this Mortgage or any other

UNOFFICIAL COPY

Property of Cook County Clerk's Office

transfer of title to the Mortgaged Property in full or partial satisfaction of Mortgagor's Liabilities, 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. All such policies shall provide that they shall not be modified, cancelled or terminated without at least thirty (30) days' prior written notice to Lender from the insurer.

1.6.2 Other Insurance. Mortgagor shall, at its sole cost and expense, obtain for, deliver to, assign to and maintain for the benefit of, Lender, until Mortgagor's Liabilities are paid for in full, (i) commercial general liability insurance in such amounts as Lender may specify, together with workers compensation and employer's liability insurance, naming Lender as additional insured, (ii) boiler and machinery insurance, if requested by Lender, and (iii) such other policies of insurance relating to the Mortgaged Property and the use and operation thereof as Lender may require, including dramshop, all in form and amounts, and issued by such companies as are acceptable to Lender.

1.6.3 Adjustment of Loss. Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss of more than \$100,000 under any insurance policies covering or relating to the Mortgaged Property and to collect and receive the proceeds from any such policy or policies (and deposit such proceeds as provided in Section 1.6.5). Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment (i) of 100% of all such losses of more than said amount directly to Lender alone and (ii) of 100% of all such losses of said amount or less directly to Mortgagor alone, and in no case to Mortgagor and Lender jointly. After deducting from such insurance proceeds any expenses incurred by Lender in the collection and settlement thereof, including without limitation attorneys' and adjusters' fees and charges, Lender shall apply the net proceeds as provided in Section 1.6.5. Lender shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

1.6.4 Condemnation Awards. Lender shall be entitled to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Mortgaged Property or any part thereof, (ii) damage to the Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of other property, or (iii) the alteration of the grade of any street or highway on or about the Mortgaged Property. Lender is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Lender after deducting from such compensation, awards, damages, claims, rights of action and proceeds all its expenses, including attorneys' fees, may apply such net proceeds (except as otherwise provided in Section 1.6.5 of this Mortgage) to payment of Mortgagor's Liabilities in such order and manner as Lender may elect. Mortgagor agrees to execute such further assignments of any compensation awards, damages, claims, rights of action and proceeds as Lender may require.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0021349831

1.6.5 Repair; Proceeds of Casualty Insurance and Eminent Domain. If all or any part of the Mortgaged Property 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 Section 1.6.4, Mortgagor shall promptly and with all due diligence restore and repair the Mortgaged Property whether or not the proceeds, award or other compensation are sufficient to pay the cost of such restoration or repair. At Lender's election, to be exercised by written notice to Mortgagor within thirty (30) days following Lender's unrestricted receipt in cash or the equivalent thereof of said proceeds, award or other compensation, the entire amount of said proceeds, award or compensation shall either (i) be applied to Mortgagor's Liabilities in such order and manner as Lender may elect or (ii) be made available to Mortgagor on such terms and conditions as Lender may impose, including without limitation the terms and conditions set forth in this Section 1.6.5, for the purpose of financing the cost of restoration or repair with any excess to be applied to Mortgagor's Liabilities. Notwithstanding any other provision of this Section 1.6.5, if an Event of Default shall be existing at the time of such casualty, taking or other event or if an Event of Default occurs thereafter, Lender shall have the right to immediately apply all insurance proceeds, awards or compensation to the payment of Mortgagor's Liabilities in such order and manner as Lender may determine. Lender shall have the right at all times to apply such net proceeds to the cure of any Event of Default or the performance of any obligations of Mortgagor under the Loan Instruments.

1.6.6 [Intentionally Omitted].

1.6.7 Renewal of Policies. At least thirty (30) days prior to the expiration date of any policy evidencing insurance required under this Section 1.6.7, a renewal thereof satisfactory to Lender shall be delivered to Lender or substitution therefor, together with receipts or other evidence of the payment of any premiums then due on such renewal policy or substitute policy.

1.6.8 Insurance Escrow. If directed by Lender in writing, Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Section 1.6, but not in lieu of such obligations, deposit with Lender on the first day of each calendar month throughout the term of the Loan, a sum in an amount determined by Lender from time to time by written notice to Mortgagor, in order to accumulate funds sufficient to permit Lender to pay all premiums payable in connection with the insurance required hereunder at least thirty (30) days prior to the date or dates on which they shall become due. Mortgagor hereby pledges to Lender, and grants to Lender a security interest in, any and all such deposits as security for the Loan. Upon demand by Lender, Mortgagor shall deliver to Lender such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Lender to pay such premiums thirty (30) days prior to the date they shall become due. Any deposits received pursuant to this Section 1.6.8 shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender and Lender shall have no obligation to pay interest on amounts deposited with Lender pursuant to this Section 1.6.8. If any Event of Default occurs, any part or all of the amounts then on deposit or thereafter deposited with Lender under this Section 1.6.8 may at Lender's option be applied to payment of Mortgagor's Liabilities in such order as Lender may determine.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0021349831

1.7 Non-Impairment of Lender's Rights. Nothing contained in this Mortgage shall be deemed to limit or otherwise affect any right or remedy of Lender under any provision of this Mortgage or of any statute or rule of law to pay and, upon Mortgagor's failure to pay the same, Lender may pay any amount required to be paid by Mortgagor under Sections 1.4, 1.5 and 1.6 and the amount so paid by Lender shall bear interest at the Default Rate (as defined in the Note), and, together with interest, shall be added to Mortgagor's Liabilities. Mortgagor shall pay to Lender on demand the amount so paid by Lender, together with all accrued and unpaid interest thereon. The provisions of Section 1.4.3 are solely for the added protection of Lender and entail no responsibility on Lender's part beyond the allowing of due credit as specifically provided therein. Upon assignment of this Mortgage, any funds on hand shall be turned over to the assignee and any responsibility of Lender with respect to such funds shall terminate.

1.8 Care of the Mortgaged Property. Mortgagor shall preserve and maintain the Mortgaged Property in good and first class condition and repair. Mortgagor shall not, without the prior written consent of Lender, permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof. Except as otherwise provided in this Mortgage, no new improvements shall be constructed on the Mortgaged Property and no part of the Mortgaged Property shall be removed, demolished or altered in any material manner without the prior written consent of Lender.

1.9 Transfer or Encumbrance of the Mortgaged Property. Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, transfer, mortgage, lease (other than leases made in accordance with the provisions of this Mortgage) or encumbrance of, or any contract for any of the foregoing on an installment basis or otherwise pertaining to, the Mortgaged Property, any part thereof, any interest therein, the beneficial interest in Mortgagor or in any trust holding title to the Mortgaged Property or any interest in a corporation, partnership or other entity which owns all or part of the Mortgaged Property, whether by operation of law or otherwise, without the prior written consent of Lender having been obtained (i) to the sale, assignment, conveyance, mortgage, lease, option, encumbrance or other transfer and (ii) to the form and substance of any instrument evidencing or contracting for any such sale, assignment, conveyance, mortgage, lease, option, encumbrance or other transfer. Mortgagor shall not, without the prior written consent of Lender, further assign or permit to be assigned the rents from the Mortgaged Property, and any such assignment without the prior express written consent of Lender shall be null and void. Mortgagor shall not permit any interest in any lease of the Mortgaged Property to be subordinated to any encumbrance on the Mortgaged Property other than the Loan Instruments and any such subordination shall be null and void. Mortgagor agrees that in the event the ownership of the Mortgaged Property, any interest therein or any part thereof becomes vested in a person other than Mortgagor, Lender may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the Note, the Loan Instruments and Mortgagor's Liabilities without in any way vitiating or discharging Mortgagor's liability hereunder or Mortgagor's Liabilities. No sale of the Mortgaged Property, no forbearance to any person with respect to this Mortgage, and no extension to any person of the time for payment of the Note or any other Mortgagor's Liabilities given by Lender shall operate to release, discharge, modify, change or affect the original liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Lender. Mortgagor shall not permit the Mortgaged Property or any portion thereof to be submitted to the Condominium Property Act of the State of Illinois by filing a Declaration of Condominium Ownership or otherwise.

1.10 Further Assurances. At any time and from time to time, upon Lender's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Lender, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such further mortgages, security agreements, financing statements, instruments of further assurance, certificates and other documents as Lender may consider necessary or desirable in order to effectuate or perfect, or to continue and preserve the obligations under, the Guaranty, this Mortgage, any other Loan Instrument and any instrument evidencing or securing Mortgagor's Liabilities, and the lien of this Mortgage as a lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor, and unto all and every person or persons deriving any estate, right, title or interest under this Mortgage. Upon any failure by Mortgagor to do so, Lender may make, execute, record, register, file, re-record, re-register or re-file any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor to do so.

1.11 Security Agreement and Financing Statements.

(a) Mortgagor (as debtor) hereby grants to Lender (as creditor and secured party) a security interest under the Uniform Commercial Code in all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever constituting part of the Mortgaged Property. Mortgagor shall execute any and all documents, including without limitation financing statements pursuant to the Uniform Commercial Code, as Lender may request to preserve, maintain and perfect the priority of the first lien and security interest created hereby on property which may be deemed personal property or fixtures, and shall pay to Lender on demand any expenses incurred by Lender in connection with the preparation, execution and filing of any such documents. Mortgagor hereby authorizes and empowers Lender and irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor to execute and file, on Mortgagor's behalf, all financing statements and refilings and continuations thereof as Lender deems necessary or advisable to create, preserve and protect such lien. When and if Mortgagor and Lender shall respectively become the debtor and secured party in any Uniform Commercial Code financing statement affecting the Mortgaged Property (or Lender takes possession of personal property delivered by Mortgagor where possession is the means of perfection of the security interest), then, at Lender's sole election, this Mortgage shall be deemed a security agreement as defined in such Uniform Commercial Code, and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law, or, as to such part of the security which is also reflected in such financing statement, by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code.

(b) Without limitation of the foregoing, if an Event of Default occurs, Lender shall be entitled immediately to exercise all remedies available to it under the Uniform

UNOFFICIAL COPY

Property of Cook County Clerk's Office

Commercial Code and this Section 1.11. Mortgagor shall, in such event and if Lender so requests, assemble the tangible personal property at Mortgagor's expense, at a convenient place designated by Lender. Lender may publicly or privately sell or otherwise dispose of such fixtures, machinery, appliances, equipment, furniture and personal property upon such terms and in such manner as Lender may require. Mortgagor shall pay all expenses incurred by Lender in the collection of such indebtedness, including attorneys' fees and legal expenses, and in the repair of any real estate or other property to which any of the tangible personal property may be affixed. If any notification of intended disposition of any of the personal property is required by law, such notification shall be deemed reasonable and proper if given at least ten (10) days before such disposition. Any proceeds of the disposition of any of the personal property may be applied by Lender to the payment of the reasonable expenses of retaking, holding, preparing for sale and selling the personal property, including attorneys' fees and legal expenses, and any balance of such proceeds may be applied by Lender toward the payment of such of Mortgagor's Liabilities, and in such order of application, as Lender may from time to time elect. If an Event of Default occurs, Lender shall have the right to exercise and shall automatically succeed to all rights of Mortgagor with respect to intangible personal property subject to the security interest granted herein. Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Lender without the necessity of any further notice or action by Mortgagor. Lender shall not by reason of this Mortgage or the exercise of any right granted hereby be obligated to perform any obligation of Mortgagor with respect to any portion of the personal property nor shall Lender be responsible for any act committed by Mortgagor, or any breach or failure to perform by Mortgagor with respect to any portion of the personal property.

(c) Mortgagor and Lender agree that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing the express declaration and intention of the parties hereto, hereinabove stated, that everything used in connection with the production of income from the Mortgaged Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be regarded as part of the real estate encumbered by this Mortgage irrespective of whether (i) any such item is physically attached to the Land or Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender as determined by this instrument or adversely affecting the priority of Lender's lien granted hereby or by any other recorded document. Any such mention in any such financing statement is declared to be for the protection of Lender in the event any court or judge shall at any time hold with respect to clauses (1), (2) or (3) above, that notice of Lender's priority of interest, to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivisions or entity of the federal government, must be filed in the Uniform Commercial Code records.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

1.12 Assignment of Rents.

(a) The assignment of rents, income and other benefits contained in Section (G) of the Granting Clauses of this Mortgage shall be fully operative without any further action on the part of either party, and, specifically, Lender shall be entitled, at its option, upon the occurrence of an Event of Default hereunder, to all rents, income and other benefits from the Mortgaged Property, whether or not Lender takes possession of such property. Mortgagor hereby further grants to Lender the right effective upon the occurrence of an Event of Default to do any or all of the following, at Lender's option: (i) enter upon and take possession of the Mortgaged Property for the purpose of collecting the rents, income and other benefits; (ii) dispossess by the usual summary proceedings any tenant defaulting in the payment thereof to Lender; (iii) lease the Mortgaged Property or any part thereof; (iv) repair, restore and improve the Mortgaged Property; and (v) apply the rents, income and other benefits, after payment of certain expenses and capital expenditures relating to the Mortgaged Property, on account of Mortgagor's Liabilities in such order and manner as Lender may elect. Such assignment and grant shall continue in effect until Mortgagor's Liabilities are paid in full, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor to the entry upon and taking possession of the Mortgaged Property by Lender pursuant to such grant, whether or not foreclosure proceedings have been instituted. Neither the exercise of any rights under this section by Lender nor the application of any such rents, income or other benefits to payment of Mortgagor's Liabilities shall cure or waive any Event of Default or notice provided for hereunder, or invalidate any act done pursuant hereto or pursuant to any such notice, but shall be cumulative of all other rights and remedies. Notwithstanding the foregoing, so long as no Event of Default has occurred or is continuing, Mortgagor shall have the right and authority to continue to collect the rents, income and other benefits from the Mortgaged Property as they become due and payable but not more than thirty (30) days prior to the due date thereof. The existence or exercise of such right of Mortgagor to collect said rents, income and other benefits shall not operate to subordinate this assignment to any subsequent assignment of said rents, income or other benefits, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Lender hereunder.

(b) Mortgagor shall not permit any rent under any lease of the Mortgaged Property to be collected more than thirty (30) days in advance of the due date thereof and, upon any receiver, Lender, anyone claiming by, through or under Lender or any purchaser at a foreclosure sale coming into possession of the Mortgaged Property, no tenant shall be given credit for any rent paid more than thirty (30) days in advance of the due date thereof. Mortgagor shall act promptly to enforce all available remedies against any delinquent lessee so as to protect the interest of the lessor under the leases and to preserve the value of the Mortgaged Property.

1.13 After-Acquired Property. To the extent permitted by, and subject to, applicable law, the lien of this Mortgage, including without limitation the security interest created under Section 1.11, shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof.

1.14 Leases Affecting Mortgaged Property.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(a) Mortgagor shall comply with and perform in a complete and timely manner all of its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. Mortgagor shall give notice to Lender of any default by the landlord under any lease affecting the Mortgaged Property promptly upon the occurrence of such default, but, in any event, in such time to afford Lender an opportunity to cure any such default prior to the tenant having any right to terminate the lease. Each of the leases shall contain a provision requiring the tenant to notify Lender of any default by landlord and granting an opportunity for a reasonable time after such notice to cure such default prior to any right accruing to the tenant to terminate such lease. Mortgagor, if requested by Lender, shall furnish promptly to Lender (i) original or certified copies of all such leases now existing or hereafter created, as amended from time to time, and (ii) a current rent roll in form satisfactory to Lender. Lender shall have the right to notify at any time and from time to time any tenant of the Mortgaged Property of any provision of this Mortgage.

(b) The assignment contained in Section (H) of the Granting Clauses shall not be deemed to impose upon Lender any of the obligations or duties of the landlord or Mortgagor provided in any lease.

1.15 Management of Mortgaged Property. Mortgagor shall cause the Mortgaged Property to be managed at all times in accordance with sound business practice.

1.6 Execution of Leases. Mortgagor shall not permit any leases to be made of the Mortgaged Property or existing leases to be modified, terminated, extended or renewed without the prior written consent of Lender.

1.17 Expenses. Mortgagor shall pay when due and payable, and otherwise on demand made by Lender, all appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title insurance fees, escrow fees, attorneys' fees, court costs, documentary and expert evidence, fees of inspecting architects and engineers, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with any of the following:

(a) Any court or administrative proceeding involving Mortgagor, the Mortgaged Property or the Loan Instruments to which Lender is made a party or is subject to subpoena by reason of its being a holder of any of the Loan Instruments, including without limitation bankruptcy, insolvency, reorganization, probate, eminent domain, condemnation, building code and zoning proceedings;

(b) Any court or administrative proceeding or other action undertaken by Lender to enforce any remedy or to collect any indebtedness due under this Mortgage or any of the other Loan Instruments following a default thereunder, including without limitation a foreclosure of this mortgage or a public or private sale under the Uniform Commercial Code;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(c) Any remedy exercised by Lender following an Event of Default including foreclosure of this Mortgage and actions in connection with taking possession of the Mortgaged Property or collecting rents assigned hereby;

(d) Any activity in connection with any request by Mortgagor or anyone acting on behalf of Mortgagor that Lender consent to a proposed action which, pursuant to this Mortgage or any of the other Loan Instruments may be undertaken or consummated only with the prior consent of Lender, whether or not such consent is granted; or

(e) Any negotiation undertaken between Lender and Mortgagor or anyone acting on behalf of Mortgagor pertaining to the existence or cure of any default under or the modification or extension of any of the Loan Instruments.

If Mortgagor fails to pay said costs and expenses as above provided, Lender may elect, but shall not be obligated, to pay the costs and expenses described in this Section 1.17, and if Lender does so elect, then the amounts paid by Lender shall bear interest at the Default Rate and, together with interest, shall be added to Mortgagor's Liabilities. Mortgagor will, upon demand by Lender, reimburse Lender for all such expenses, together with all accrued and unpaid interest thereon. In the event of foreclosure hereof, Lender shall be entitled to add to the indebtedness found to be due by the court a reasonable estimate of such expenses to be incurred after entry of the decree of foreclosure. To the extent permitted by law, Mortgagor agrees to hold harmless Lender against and from, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including without limitation attorneys' fees, which may be imposed upon, asserted against, or incurred or paid by it by reason of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever, or asserted against it on account of any act performed or omitted to be performed hereunder, or on account of any transaction arising out of or in any way connected with the Mortgaged Property, this Mortgage, the other Loan Instruments or any of Mortgagor's Liabilities.

1.18 Lender's Performance of Mortgagor's Obligations.

(a) If Mortgagor fails to pay any tax, assessment, encumbrance or other imposition, or to furnish insurance hereunder, or to perform any other covenant, condition or term in this Mortgage, the Guaranty or any other Loan Instrument, Lender may, but shall not be obligated to, pay, obtain or perform the same. All payments made, whether such payments are regular or accelerated payments, and costs and expenses incurred or paid by Lender in connection therewith shall be due and payable immediately. The amounts so incurred or paid by Lender shall bear interest at the Default Rate and, together with interest, shall be added to Mortgagor's Liabilities. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any covenant, condition or term that Mortgagor has failed to perform or observe, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Performance or payment by Lender of any obligation of Mortgagor shall not relieve Mortgagor of such obligation or of the consequences of having failed to perform or pay the same and shall not effect the cure of any Event of Default.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(b) Without limitation of the foregoing, unless Mortgagor provides Lender with evidence of the insurance coverage required by this Mortgage, Lender may purchase insurance at Mortgagors' expense to protect Lender's interests in the Mortgaged Property. This insurance may, but need not, protect Mortgagor's interest. The coverage that Lender purchases may not pay any claim that Mortgagor may make or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Lender purchases insurance for the Mortgaged Property, Mortgagor will be responsible for the costs of such insurance, including interest and any other charges that may be imposed in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. Without limitation of any other provision of this Mortgage, the cost of such insurance shall be added to the indebtedness secured hereby. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

1.19 Payment of Superior Liens. To the extent that Lender, after the date hereof, pays any sum due under any provision of law or instrument or document creating any lien superior or equal in priority in whole or in part to the lien of this Mortgage, Lender shall have and be entitled to a lien on the premises equal in parity with that discharged, and Lender shall be subrogated to and receive and enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Lender to secure the Guaranty, and all obligations and liabilities secured hereby. Lender shall be subrogated, notwithstanding their release of record, to mortgages, trust deeds, superior titles, vendors' liens, mechanics' and materialmen's liens, charges, encumbrances, rights and equities on the Mortgaged Property to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances subject to the Guaranty or other indebtedness secured hereby.

1.20 Use of the Mortgaged Property. Mortgagor shall not suffer or permit the Mortgaged Property, or any portion thereof, to be used for any purpose other than for the purposes for which it is currently being used and, without limitation of the foregoing, Mortgagor shall not use or permit the use of the Mortgaged Property or any portion thereof for any unlawful purpose.

1.21 Litigation Involving Mortgaged Property. Mortgagor shall promptly notify Lender of any litigation, administrative procedure or proposed legislative action initiated against Mortgagor or the Mortgaged Property or in which the Mortgaged Property is directly or indirectly affected including any proceedings which seek to (i) enforce any lien against the Mortgaged Property, (ii) correct, change or prohibit any existing condition, feature or use of the Mortgaged Property, (iii) condemn or demolish the Mortgaged Property, (iv) take, by the power of eminent domain, any portion of the Mortgaged Property or any property which would damage the Mortgaged Property, (v) modify the zoning applicable to the Mortgaged Property, or (vi) otherwise adversely affect the Mortgaged Property. Mortgagor shall initiate or appear in any legal action or other appropriate proceedings when necessary to protect the Mortgaged Property from damage. Mortgagor shall, upon written request of Lender, represent and defend the

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0021349831

interests of Lender in any proceedings described in this Section 1.21 or, at Lender's election, pay the fees and expenses of any counsel retained by Lender to represent the interest of Lender in any such proceedings, in which event such fees and expenses shall be added to Mortgagor's Liabilities and shall bear interest at the Default Rate.

1.22 Environmental Matters.

(a) Mortgagor represents and warrants that Mortgagor has not generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials (as defined in the Loan Agreement), on or off the Mortgaged Property in any manner which at any time violates any Environmental Law (as defined in the Loan Agreement) or any license, permit, certificate, approval or similar authorization thereunder and the operations of the Mortgagor comply in all material respects with all Environmental Laws and all licenses, permits, certificates, approvals and similar authorizations thereunder; (ii) there has been no investigation, proceeding, complaint, order, directive, claim, citation or notice by any governmental authority or any other Person, nor is any pending or to the best of the Mortgagor's knowledge threatened, and Mortgagor shall immediately notify Lender upon becoming aware of any such investigation, proceeding, complaint, order, directive, claim, citation or notice and take prompt and appropriate actions to respond thereto, with respect to any non-compliance with or violation of the requirements of any Environmental Law by Mortgagor or the release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter, which affects Mortgagor or its business, operations or assets or any properties at which Mortgagor has transported, stored or disposed of any Hazardous Materials; (iii) Mortgagor has no material liability (contingent or otherwise) in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials; and (iv) without limiting the generality of the foregoing, Mortgagor shall, following the determination by Lender that there is non-compliance, or any condition which requires any action by or on behalf of Mortgagor in order to avoid any non-compliance, with any Environmental Law, at Mortgagor's expense, cause an independent environmental engineer acceptable to Lender to conduct such tests of the relevant site(s) as are appropriate and prepare and deliver a report setting forth the result of such tests, a proposed plan for remediation and an estimate of the costs thereof; and

(b) Mortgagor agrees to defend (with counsel satisfactory to Lender), protect, indemnify and hold harmless Lender, each affiliate or subsidiary of Lender, and each of their respective officers, directors, employees, attorneys and agents (each an "Indemnified Party") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature (including, without limitation, the disbursements and the reasonable fees of counsel for each Indemnified Party in connection with any investigative, administrative or judicial proceeding, whether or not the Indemnified Party shall be designated a party thereto), which may be imposed on, incurred by, or asserted against, any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state or local laws or regulations, including, without limitation, securities laws and regulations, Environmental Laws and commercial laws and regulations,

UNOFFICIAL COPY

Property of Cook County Clerk's Office

under common law or in equity, or based on contract or otherwise) in any manner relating to or arising out of this Mortgage or any other Loan Instrument, or any act, event or transaction related or attendant thereto, the making or issuance and the management of the Loans or the use or intended use of the proceeds of the Loans; provided, however, that Mortgagor shall not have any obligation hereunder to any Indemnified Party with respect to matters caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party, [further provided, that with respect to matters asserted by the Mortgagor, Mortgagor shall not have any obligations hereunder to any Indemnified Party in the event the Mortgagor has obtained a final nonappealable judgment in its favor]. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, Mortgagor shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each indemnified Party on demand, and, failing prompt payment, shall, together with interest thereon at the highest rate then applicable to Loans hereunder from the date incurred by each Indemnified Party until paid by Mortgagor, be added to the Mortgagor's Liabilities and be secured by the Mortgaged Property. The provisions of this paragraph shall survive the satisfaction and payment of the other Mortgagor's Liabilities and the release of this Mortgage.

1.23 Illinois Responsible Property Transfer Act. Mortgagor hereby represents, warrants and certifies that: (i) the execution and delivery of the Loan Instruments is not a transfer of "real property", as "real property" is defined in the Illinois Responsible Property Transfer Act (765 ILCS 90/1 et seq.), as amended from time to time ("RPTA"); (ii) there are no underground storage tanks located on, under or about the Mortgaged Property which are subject to the notification requirements under Section 9002 of the Solid Waste Disposal Act, as now or hereafter amended (42 U.S.C. ' 6991); and (iii) there is no facility located on or at the Mortgaged Property which is subject to the reporting requirements of Section 312 of the federal Emergency Planning and Community Right to Know Act of 1986 and the federal regulations promulgated thereunder (42 U.S.C. ' 11022), as "facility" is defined in RPTA.

ARTICLE TWO

DEFAULTS

2.1 Event of Default. The term "Event of Default," wherever used in this Mortgage, shall mean any one or more of the following events:

(a) The failure by Mortgagor: (i) to pay or deposit when due any deposit for taxes and assessments due hereunder or any other sums to be paid by Mortgagor hereunder or under the Guaranty; or (ii) to keep, perform, or observe any covenant, condition or agreement contained in Sections 1.4.1, 1.6.1, 1.6.2, 1.9 or 1.20 hereof; or (iii) to keep, perform or observe any other covenant, condition or agreement on the part of Mortgagor in this Mortgage.

(b) The occurrence of an "Event of Default" under and as defined in the Guaranty, the Loan Agreement, any of the other Loan Instruments or the First Mortgage in favor of America's Wholesale Lender.

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(c) The untruth of any warranty or representation made herein.

(d) An uninsured loss, damage, destruction or taking by eminent domain or other condemnation proceedings of any part of the Mortgaged Property.

ARTICLE THREE

REMEDIES

3.1 Acceleration of Maturity. If an Event of Default shall have occurred, Lender may declare Mortgagor's Liabilities to be immediately due and payable, and upon such declaration Mortgagor's Liabilities shall immediately become and be due and payable without further demand or notice. The foregoing shall not be in limitation of any provision contained in any other Loan Instrument, including without limitation any such provision pursuant to which Mortgagor's Liabilities become immediately due and payable without action or election by Lender.

3.2 Lender's Power of Enforcement. If an Event of Default shall have occurred, Lender may, either with or without entry or taking possession as provided in this Mortgage or otherwise, and without regard to whether or not Mortgagor's Liabilities shall have been accelerated, and without prejudice to the right of Lender thereafter to bring an action of foreclosure or any other action for any default existing at the time such earlier action was commenced or arising thereafter, proceed by any appropriate action or proceeding: (a) to enforce satisfaction of the Guaranty and/or any other of Mortgagor's Liabilities or the performance of any term hereof or any of the other Loan Instruments; (b) to foreclose this Mortgage and to have sold, as an entirety or in separate lots or parcels, the Mortgaged Property; and (c) to pursue any other remedy available to it. Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Lender may determine. Without limitation of the foregoing, if an Event of Default shall have occurred, as an alternative to the right of foreclosure for the full indebtedness evidenced by the Guaranty and the interest accrued thereon and any other Mortgagor's Liabilities, after acceleration thereof, Lender shall have the right to institute partial foreclosure proceedings with respect to the portion of Mortgagor's Liabilities so in default, as if under a full foreclosure, and without declaring all of Mortgagor's Liabilities to be immediately due and payable (such proceedings being referred to herein as "partial foreclosure"), and provided that, if Lender has not elected to accelerate all of Mortgagor's Liabilities and a foreclosure sale is made because of default in payment of only a part of Mortgagor's Liabilities, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of Mortgagor's Liabilities. Any sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured portion of Mortgagor's Liabilities, but as to such unmatured portion, this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Lender may elect, at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate Mortgagor's Liabilities by reason of any Event of Default upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. Lender may proceed with one or more partial

UNOFFICIAL COPY

Property of Cook County Clerk's Office

foreclosures without exhausting its right to proceed with a full or partial foreclosure sale for any unmatured portion of Mortgagor's Liabilities, it being the purpose to permit, from time to time a partial foreclosure sale for any matured portion of Mortgagor's Liabilities without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any partial foreclosure in respect of any other portion of Mortgagor's Liabilities, whether matured at the time or subsequently maturing, and without exhausting at any time the right of acceleration and the right to proceed with a full foreclosure. Lender's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, (i) Mortgagor, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property, and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, is hereby expressly authorized to enter and take possession of all or any portion of the Mortgaged Property and may exclude Mortgagor and the agents and employees of Mortgagor wholly therefrom and shall have joint access with Mortgagor to the books, papers and accounts of Mortgagor; and (ii) notwithstanding the provisions of any lease or other agreement to the contrary, Mortgagor shall pay monthly in advance to Lender, on Lender's entry into possession, or to any receiver appointed to collect the rents, income and other benefits of the Mortgaged Property, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Mortgagor, or any entity affiliated with or controlled by Mortgagor, and upon default in any such payment Mortgagor shall vacate and surrender possession of such part of the Mortgaged Property to Lender or to such receiver, and in default thereof Mortgagor may be evicted by summary proceedings or otherwise.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Lender's demand, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Lender, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Lender, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Lender, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Lender, to the extent permitted by law, may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

(i) perform such construction, make all necessary and proper maintenance, repairs, renewals, replacements, additions and improvements thereto and thereon, and purchase or otherwise acquire additional fixtures and personal property;

(ii) insure or keep the Mortgaged Property insured;

(iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor, on its behalf or otherwise, with respect to the same;

UNOFFICIAL COPY

Property of Cook County Clerk's Office

(iv) enter into agreements with others to exercise the powers herein granted Lender, all as Lender from time to time may determine; and Lender may collect and receive all the rents, income and other benefits of the Mortgaged Property, including those past due as well as those accruing thereafter; and shall apply the monies so received by Lender, in such order and manner as Lender may determine, to (1) the payment of amounts due under the Guaranty or pursuant to this Mortgage or to any other Mortgagor's Liabilities, (2) deposits for taxes and assessments, (3) the payment or creation of reserves for payment of insurance, taxes, assessments and other proper charges or liens or encumbrances upon the Mortgaged Property or any part thereof, and (4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Lender; and

(v) exercise such remedies as are available to Lender under the Loan Instruments or at law or in equity.

Lender shall surrender possession of the Mortgaged Property to Mortgagor only when all Mortgagor's Liabilities shall have been paid in full and all other defaults have been cured. However, the same right to take possession shall exist if any subsequent Event of Default shall occur.

3.4 Leases. Lender is authorized to foreclose this Mortgage subject to the rights, if any, of any or all tenants of the Mortgaged Property, even if the rights of any such tenants are or would be subordinate to the lien of this Mortgage. Lender may elect to foreclose the rights of some subordinate tenants while foreclosing subject to the rights of other subordinate tenants.

3.5 Purchase by Lender. Upon any foreclosure sale, Lender may bid for and purchase all or any portion of the Mortgaged Property and, upon compliance with the terms of the sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

3.6 Application of Foreclosure Sale Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property or any part thereof received by Lender shall be applied by Lender to the indebtedness secured hereby in such order and manner as Lender may elect.

3.7 Application of Indebtedness Toward Purchase Price. Upon any foreclosure sale, Lender may apply any or all of the indebtedness and other sums due to Lender under the Guaranty, this Mortgage or any other Loan Instrument to the price paid by Lender at the foreclosure sale.

3.8 Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws. Mortgagor hereby waives any and all rights of redemption. Mortgagor further agrees, to the full extent permitted by law, that in case of an Event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any reinstatement, appraisal, valuation, stay or extension laws now or hereafter in force, or take

UNOFFICIAL COPY

Property of Cook County Clerk's Office

any other action which would prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser thereof. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety.

3.9 Receiver - Lender in Possession. If an Event of Default shall have occurred, Lender, to the extent permitted by law and without regard to the value of the Mortgaged Property or the adequacy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right and without any additional showing or proof, at Lender's election, to either the appointment by the court of a receiver (without the necessity of Lender posting a bond) to enter upon and take possession of the Mortgaged Property and to collect all rents, income and other benefits thereof and apply the same as the court may direct or to be placed by the court into possession of the Mortgaged Property as mortgagee in possession with the same power herein granted to a receiver and with all other rights and privileges of a mortgagee in possession under law. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect all rents, income and other benefits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law and may be exercised concurrently therewith or independently thereof. Lender shall be liable to account only for such rents, income and other benefits actually received by Lender, whether received pursuant to this Section 3.9 or Section 3.3. Notwithstanding the appointment of any receiver or other custodian, Lender shall be entitled as pledgee to the possession and control of any cash, deposits or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to Lender.

3.10 Mortgagor to Pay Mortgagor's Liabilities in Event of Default; Application of Monies by Lender.

(a) Upon occurrence of an Event of Default, Lender shall be entitled to sue for and to recover judgment against Mortgagor for Mortgagor's Liabilities due and unpaid together with costs and expenses, including, without limitation, the reasonable compensation, expenses and disbursements of Lender's agents, attorneys and other representatives, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage; and the right of Lender to recover such judgment shall not be affected by any taking of possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of Mortgagor's Liabilities, Lender shall be entitled to enforce all other rights and remedies under the Loan Instruments.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any judgment by Lender under any of the Loan Instruments, and no attachment or levy of

UNOFFICIAL COPY

Property of Cook County Clerk's Office

execution upon any of the Mortgaged Property or any other property of Mortgagor, shall (except as otherwise provided by law) in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Lender hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before until Mortgagor's Liabilities are paid in full.

(d) Any monies collected or received by Lender under this Section 3.12 shall be applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Lender, and the balance remaining shall be applied to the payment of Mortgagor's Liabilities, in such order and manner as Lender may elect, and any surplus, after payment of all Mortgagor's Liabilities, shall be paid to Mortgagor.

3.11 Delay or Omission. No delay or omission of Lender in the exercise of any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

3.12 Waiver of Default. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies in respect thereof.

3.13 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender by the Guaranty, this Mortgage or any other Loan Instrument or any instrument evidencing or securing Mortgagor's Liabilities is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Guaranty or any other Loan Instrument or any instrument evidencing or securing Mortgagor's Liabilities, or now or hereafter existing at law, in equity or by statute.

ARTICLE FOUR

MISCELLANEOUS PROVISIONS

4.1 Heirs, Successors and Assigns Included in Parties. Whenever Mortgagor or Lender is named or referred to herein, heirs and successors and assigns of such person or entity shall be included, and all covenants and agreements contained in this Mortgage shall bind the successors and assigns of Mortgagor, including any subsequent owner of all or any part of the Mortgaged Property and inure to the benefit of the successors and assigns of Lender. This Section 4.1 shall not be construed to permit an assignment, transfer, conveyance, encumbrance or other disposition otherwise prohibited by this Mortgage.

4.2 Notices. All notices, requests, reports, demands or other instruments required or contemplated to be given or furnished under this Mortgage to Mortgagor or Lender shall be directed to Mortgagor or Lender as the case may be at the following addresses:

UNOFFICIAL COPY

Property of Cook County Clerk's Office

If to Lender:

LaSalle Bank National Association
135 South LaSalle Street
Chicago, Illinois 60603-4105
Attention: John Littrel

If to Mortgagor:

9245 S. Millard
Evergreen Park, Illinois
Attention: James B. Flanagan

Any such notices, requests, reports, demands or other instruments shall be (i) personally delivered to the offices set forth above, in which case they shall be deemed delivered on the date of delivery to said offices, (ii) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three (3) business days after deposit in the U.S. mail, postage prepaid, or (iii) sent by air courier (Federal Express or like service), in which case they shall be deemed delivered on the date of actual delivery. Either party may change the address to which any such notice, report, demand or other instrument is to be delivered by furnishing written notice of such change to the other party in compliance with the foregoing provisions.

4.3 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

4.4 Invalid Provisions. In the event that any of the covenants, agreements, terms or provisions contained in the Guaranty, the Note, this Mortgage or in any other Loan Instrument shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Guaranty, the Note or in any other Loan Instrument (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

4.5 Changes. Neither this Mortgage nor any term hereof may be released, changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by Mortgagor and Lender relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance. Any holder of a lien or encumbrance junior to the lien of this Mortgage shall take its lien subject to the right of Lender to amend, modify or supplement this Mortgage, the Guaranty or any of the other Loan Instruments, to extend the maturity of Mortgagor's Liabilities or any portion thereof, to vary the rate of interest chargeable under the Note and to increase the amount of the indebtedness secured hereby, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

4.6 Governing Law. This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Illinois

UNOFFICIAL COPY

Property of Cook County Clerk's Office

4.7 Required Notices. Mortgagor shall notify Lender promptly of the occurrence of any of the following: (i) receipt of notice from any governmental authority relating to the violation of any rule, regulation, law or ordinance, the enforcement of which would materially and adversely affect the Mortgaged Property; (ii) material default by any tenant in the performance of its obligations under any lease of all or any portion of the Mortgaged Property or receipt of any notice from any such tenant claiming that a default by landlord in the performance of its obligations under any such lease has occurred; or (iii) commencement of any judicial or administrative proceedings by or against or otherwise adversely affecting Mortgagor or the Mortgaged Property.

4.8 Future Advances. This Mortgage is given to secure a guaranty of not only existing indebtedness, but also future advances (whether such advances are obligatory or are to be made at the option of Lender, or otherwise) made by Lender under the Note, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all indebtedness secured hereby shall, in no event, exceed \$5,000,000.

4.9 Release. Upon full payment and satisfaction of Mortgagor's Liabilities, Lender shall issue to Mortgagor an appropriate release deed in recordable form.

4.10 Attorneys' Fees. Whenever reference is made herein to the payment or reimbursement of attorneys' fees, such fees shall be deemed to include compensation to staff counsel, if any, of Lender in addition to the fees of any other attorneys engaged by Lender. All attorneys' fees incurred by Lender in connection with the foreclosure of this Mortgage shall be recoverable in foreclosure.

4.11 Compliance with Mortgage Foreclosure Law. In the event that any provision in this Mortgage shall be inconsistent with any applicable statutory provision governing the creation, perfection or enforcement of mortgages, such provisions shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with such provisions. If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Lender under applicable law in the absence of said provision, Lender shall be vested with such rights applicable law 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 enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

4.12 WAIVER OF TRIAL BY JURY. TO INDUCE LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDINGS IN WHICH

UNOFFICIAL COPY

Property of Cook County Clerk's Office

MORTGAGOR AND LENDER ARE ADVERSE PARTIES, IN CONNECTION WITH THE Note, THIS MORTGAGE OR ANY OF THE OTHER LOAN INSTRUMENTS.\

4.13 CONSENT TO JURISDICTION, SERVICE OF PROCESS. TO INDUCE LENDER TO MAKE THE LOAN, MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY AGREES THAT ALL ACTIONS ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THE Note, THIS MORTGAGE OR ANY OF THE OTHER LOAN INSTRUMENTS SHALL BE INSTITUTED AND LITIGATED ONLY IN COURTS HAVING SITUS IN THE CITY OF CHICAGO, ILLINOIS, AND MORTGAGOR HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION AND VENUE OF ANY STATE OR FEDERAL COURT LOCATED AND HAVING SITUS IN SAID CITY OF CHICAGO, AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS. MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS, AND CONSENTS THAT, AT LENDER'S OPTION, ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO MORTGAGOR AT THE ADDRESS FOR MORTGAGOR INDICATED IN SECTION 4.2 ABOVE.

EACH MORTGAGOR HEREBY EXPRESSLY RELEASES AND WAIVES ALL RIGHTS AND BENEFITS UNDER AND BY VIRTUE OF THE HOMESTEAD EXEMPTION LAWS OF THE STATE OF ILLINOIS.

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officers as of the day and year first above written.



JAMES B. FLANNAGAN



MARY P. FLANNAGAN

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

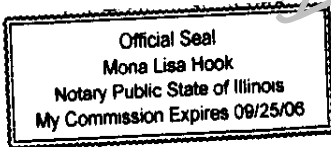
ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Mona Lisa Hook, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT MARY P. FLANNAGAN, 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 they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 24th day of NOVEMBER 2002.

Mona Lisa Hook
Notary Public



My Commission Expires:

9/25/06

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

EXHIBIT A

Legal Description

Address: 9245 S. Millard
Evergreen Park, Illinois

PIN No.: 24-02-313-019-0000

Legal Description.

LOT 30 IN BLOCK "B" IN FIRST ADDITION TO EVERGREEN PARK, A SUBDIVISION OF THE SOUTH 3/4 OF THE EAST 1/2 OF THE EAST 1/2 OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0021349831

SECOND MORTGAGE RIDER

1. This Second Mortgage Rider is attached to and forms a part of the Mortgage, dated October 12, 2002 executed by JAMES B. FLANNAGAN and MARY P. FLANNAGAN, in favor of LASALLE BANK NATIONAL ASSOCIATION, a national banking association.

2. Notwithstanding any contrary provision contained in this Mortgage, this Mortgage is and shall remain subordinate and junior to the lien of the mortgage (the "First Mortgage") dated May 4, 2001 and recorded as Document No. 0010432895, in favor of America's Wholesale Lender, (the "Senior Lender") but only to the extent of the total liabilities of Mortgagor under the First Mortgage. The First Mortgage was granted in connection with a loan (the "Senior Loan") in the amount of \$153,375, which was obtained from the Senior Lender.

3. I agree to timely perform all of my obligations, promises, and agreements which I have made and/or assumed under the First Mortgage and under the note (the "Senior Note") which was delivered to the Senior Lender in connection with the Senior Loan. However, if I fail to timely perform any of my obligations, promises and agreements which I have made and/or assumed under the First Mortgage and the Senior Note, I acknowledge that I will also be "in default" under this Mortgage even if I have otherwise complied with all of the terms and conditions of this Mortgage.

4. By acceptance of this Mortgage, Lender agrees that its lien rights hereunder, its rights to casualty or condemnation proceeds, and its right to require Mortgagor to deposit funds into a tax or insurance escrow shall be subject and subordinate to the rights of the Senior Lender under the First Mortgage.



JAMES B. FLANNAGAN



MARY P. FLANNAGAN

UNOFFICIAL COPY

Property of Cook County Clerk's Office