

# UNOFFICIAL COPY

0021452856

4163/0258 18 001 Page 1 of 45  
2002-12-30 11:23:48  
Cook County Recorder 112.00



0021452856

8065580/KML-21

This Document prepared by  
(and should be mailed after  
recording to):

Jonathan E. Rothschild  
ROTHSCHILD, BARRY & MYERS  
55 West Monroe Street, Room 3900  
Chicago, IL 60603

## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Security Instrument") is made this 11<sup>th</sup> day of December, 2002, by SUBURBAN BANK & TRUST CO., as Successor Trustee to St. Paul Trust Company, as Successor Trustee to Beverly Trust Company, as Trustee U/T/A dated May 1, 1998, and known as Trust No. 74-2656, having its principal piece of business at 10312 South Cicero Avenue, Oak Lawn, IL 60453, as mortgagor ("Borrower"), to THE MANUFACTURERS LIFE INSURANCE COMPANY (U.S.A.), a Michigan corporation, having an address at 200 Bloor Street East, Toronto, Ontario, Canada M4W 1E5, Attention: U.S. Mortgage Department, as mortgagee ("Lender").

### RECITALS:

### ARTICLE 1

### GRANTS OF SECURITY

Section 1.1 Property Mortgaged. Borrower does hereby irrevocably (i) mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender and to its successors and assigns, for the use and benefit of Lender, and (ii) grant a security interest to Lender and to its successors and assigns, for the use and benefit of Lender, in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

BOX 333-CT

# UNOFFICIAL COPY

(b) Land Rights. All lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land that may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, and strips of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or will have an interest, now or hereafter located upon the Land or the Improvements, or appurtenant thereto, and used in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or will have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or used in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State of Illinois (the "Uniform Commercial Code"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(f) Leases and Rents. All leases and other agreements affecting the use, enjoyment or occupancy of all or any part of the Land or the Improvements heretofore or hereafter entered into whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), as the same may be amended from time to time (the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including all guarantees, letters of credit and any other credit support given by any guarantor in connection therewith, cash or securities deposited under the Leases to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits from the Land and the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(g) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for any other injury to or decrease in the value of the Property;

# UNOFFICIAL COPY

(h) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Tax Payments. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of any applications or proceedings for reduction;

(j) Rights. The right, in the name and on behalf of Borrower, to commence any action or proceeding to protect the interest of Lender in the Property and while an Event of Default (defined in Section 10.1) exists, to appear in and defend any action or proceeding brought with respect to the Property;

(k) Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, while an Event of Default exists, to receive and collect any sums payable to Borrower thereunder;

(l) Intangibles. All accounts, escrows, claims, deposits, trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles specific to or used in connection with the operation of the Property, if any;

(m) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing, including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(n) Secondary Financing. All of Borrower's right, power, or privilege to further encumber any of the Property for debt, it being intended by this provision to divest Borrower of the power to encumber, or to grant a security interest in any of the Property as security for the performance of any other obligation; and

(o) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (n) above.

Section 1.2 Assignment of Leases and Rents. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 3.7, Lender grants to Borrower a revocable license to collect and receive the Rents. Borrower will hold a sufficient portion of the Rents to discharge all current sums due on the Debt, for use in the payment of such sums.

Section 1.3 Security Agreement. This Security Instrument is both a real property Security Instrument and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Lender, as security for the Obligations (defined in Section 2.3), a security interest in the Property to the full extent that the Property may be subject to the

# UNOFFICIAL COPY

Uniform Commercial Code (said portion of the Property so subject to the Uniform Commercial Code, the "Collateral").

Section 1.4 Pledge of Monies Held. Borrower hereby pledges to Lender, and grants to Lender a security interest in, any and all monies now or hereafter held by Lender as additional security for the Obligations until expended or applied as provided in this Security Instrument.

## CONDITIONS TO GRANT

TO HAVE AND TO HOLD the above granted and described Property unto Lender and its successors and assigns, with power of sale in accordance with the terms and conditions hereof, for the use and benefit of Lender, and the successors and assigns of Lender, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Note and this Security Instrument, shall perform the Other Obligations as set forth in this Security Instrument and shall abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted will cease, terminate and be void.

## ARTICLE 2

### DEBT AND OBLIGATIONS SECURED

Section 2.1 Debt. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the following, in such order of priority as Lender may determine in its sole discretion (the "Debt"):

- (a) the payment of the indebtedness evidenced by the Promissory Note dated the date hereof by Borrower in favor of Lender in the principal amount of \$1,900,000.00 (as same may be amended, the "Note");
- (b) the payment of interest, default interest, late charges and other sums, as provided in the Note, this Security Instrument or the Other Security Documents (defined in Section 3.2);
- (c) the payment of all other monies agreed or provided to be paid by Borrower in the Security Documents (defined in Section 3.2);
- (d) the payment of all sums advanced pursuant to this Security Instrument to protect and preserve the Property and the lien and the security interest created hereby; and
- (f) the payment of all sums advanced and costs and expenses incurred by Lender in connection with the Debt or any part thereof, any renewal, extension, modification, consolidation, change, substitution, replacement, restatement or increase of the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender.

Section 2.2 Other Obligations. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "Other Obligations"):

- (a) the performance of all other obligations of Borrower contained herein;

# UNOFFICIAL COPY

(b) the performance of each obligation of Borrower contained in the Note in addition to the payment of the Debt and of Borrower or Indemnitor (defined in Section 10.1(d)) contained in the Security Documents; and

(c) the performance of each obligation of Borrower or Indemnitor contained in any renewal, extension, modification, consolidation, change, substitution, replacement for, restatement or increase of all or any part of the Security Documents.

Section 2.3 Debt and Other Obligations. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations will be referred to collectively below as the "Obligations."

Section 2.4 Payments. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt will not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks, but no default shall be asserted so long as such check or draft clears into good funds prior to the due date for such payment. Acceptance by Lender of any payment in an amount less than the amount then due will be deemed an acceptance on account only, and the failure to pay the entire amount then due will be and continue to be an Event of Default.

## ARTICLE 3

### BORROWER COVENANTS

Borrower covenants and agrees with Lender that:

Section 3.1 Payment of Debt. Borrower will pay the Debt at the time and in the manner provided in the Note and in this Security Instrument.

Section 3.2 Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents other than the Note or this Security Instrument now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note or the other Obligations (the "Other Security Documents"), are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein. The Note, this Security Instrument and the Other Security Documents are collectively referred to as the "Security Documents."

Section 3.3 Insurance.

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(i) Property Insurance. Insurance with respect to the Improvements and building equipment insuring against any peril included within the classification "All Risks of Physical Loss" in amounts at all times sufficient to prevent Lender from becoming a co-insurer within the terms of the applicable policies and under applicable law, but in any event such insurance will be maintained in an amount equal to the full insurable value of the Improvements, and building equipment, but not less than the outstanding principal balance of the Note, the term "full insurable value", to mean the



# UNOFFICIAL COPY

actual replacement cost of the Improvements and building equipment (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by an insurer, a recognized independent insurance broker or an independent appraiser selected and paid by Borrower and in no event less than the coverage required pursuant to the terms of any Lease. Borrower will also maintain insurance against loss or damage to such furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Borrower from time to time, to the extent applicable, in the amount of the cost of replacing the same, in each case, such costs to be determined annually. Each policy or policies will contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Lender's approval. The maximum deductible will be \$5,000.00;

(i) Liability Insurance. Comprehensive general liability insurance, including personal injury, bodily injury, death and property damage liability, insurance against any and all claims, including all legal liability to the extent insurable and imposed upon Lender and all court costs and attorneys' fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Property in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for properties comparable to the Property but in no event for a combined single limit of less than \$1,000,000.00 per person and \$1,000,000.00 per occurrence with an additional Excess and Umbrella Liability Policy of \$5,000,000.00. During any construction of the Property, Borrower shall require its general contractor for such construction to also provide the insurance required in this Subsection 3.3(a)(ii). Lender hereby retains the right to periodically review the amount of said liability insurance being maintained by Borrower and to require an increase in the amount of said liability insurance should Lender deem an increase to be reasonably prudent under then existing circumstances provided such increase is consistent with insurance generally required by institutional lenders for properties comparable to the Property. The maximum deductible under the policies described in this Subsection 3.3(a)(ii) will not exceed \$5,000.00;

(iii) Workers' Compensation Insurance. Statutory workers' compensation insurance with respect to any work on or about the Property covering all persons subject to the workers' compensation laws of the State of Illinois;

(iv) Business Interruption. Business interruption and/or loss of "rental income" insurance in an amount sufficient to avoid any co-insurance penalty and to provide proceeds which will cover a period of not less than one (1) year from the date of casualty or loss, the term "rental income" to mean the sum of (A) the total then ascertainable Rents payable under the Leases and (B) the total ascertainable amount of all other amounts to be received by Borrower from third parties which are the legal obligation of the tenants, reduced to the extent such amounts would not be received because of operating expenses not incurred during a period of non-occupancy of that portion of the Property then not being occupied. The amount of coverage will be adjusted annually to reflect the rents payable during the succeeding twelve (12) month period on an actual loss sustained basis. The maximum deductible under this Subsection 3.3(a) (iv) will not exceed \$5,000.00;

(v) Boiler and Machinery Insurance. Broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery, and electrical and mechanical equipment located in, on or about the Property and insurance against loss of occupancy or use arising from any breakdown in such amount per accident equal to the full replacement value of the Improvements on the Property or such other amount reasonably determined by Lender. If one or more large HVAC units is in operation at the Property, "System Breakdowns" coverage will be required, as determined by Lender. Minimum liability coverage per accident must equal the value of such unit(s);

# UNOFFICIAL COPY

(vi) Flood Insurance. If required by Subsection 5.6(a) hereof, flood insurance in an amount at least equal to the lesser of (A) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the indebtedness secured hereby if replacement cost coverage is not available for the type of building insured); or (B) the maximum insurance available under the appropriate National Flood Insurance Administration program.

(vii) Builder's Risk. During the period of any construction, renovation or alteration of the Improvements which exceeds the lesser of 10% of the principal amount of the Note or \$500,000.00, at Lender's request, a completed value, "All Risk" Builder's Risk form, or "Course of Construction" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration in an amount approved by Lender may be required. During the period of any construction of any addition to the existing Improvements, a completed value, "All Risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount approved by Lender, will be required.

(viii) Other Insurance. Such other insurance with respect to the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be reasonably required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, including, without limitation, earthquake and environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

(b) All insurance provided for in Subsection 3.3(a) hereof must (i) be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), (ii) be issued by one (1) or more domestic primary insurer(s) having a general policy rating of A or better and a financial class of VI or better by A.M. Best Company, Inc. (each such insurer, a "Qualified Insurer"), (iii) be in form satisfactory to Lender and Lender's insurance consultant, (iv) contain such provisions as Lender and Lender's insurance consultant deem necessary, (v) cite Lender's interest as mortgagee in standard non-contributory mortgagee clauses acceptable to Lender and Lender's insurance consultant effective as of the date hereof, and (vi) be maintained throughout the term of the Loan (as defined in the Note) without cost to Lender. All insurers providing insurance required by this Security Instrument must be authorized to issue insurance in Illinois. The Policy referred to in Subsection 3.3(a)(ii) above must name Lender as an additional named insured and the Policy referred to in Subsection 3.3(a)(i), (iv), (v) and (vi) above must provide that all proceeds be payable to Lender as set forth in Section 4.2 hereof. The Policies referred to in Subsections 3.3(a)(i), (v) and (vii) must also contain: (i) a standard "non-contributory mortgagee endorsement" or its equivalent relating, inter alia, to recovery by Lender notwithstanding the negligent or willful acts or omission of Lender; and (ii) to the extent available at commercially reasonable rates, a waiver of subrogation endorsement as to Lender. All Policies described in Subsection 3.3(a) above must contain (i) a provision that such Policies will not be cancelled, terminated or materially amended, nor expire, without at least thirty (30) days' prior written notice to Lender in each instance; and (ii) include effective waivers by the insurer of all claims for Insurance Premiums (defined below) against any mortgagees, loss payees, additional insureds and named insureds (other than Borrower). Notwithstanding the above, subject to review and approval by Lender's insurance consultant, the insurance policies referenced herein may be blanket policies. In the event that the Property or the Improvements constitutes a legal non-conforming use under applicable building, zoning or land use laws or ordinances, the policy must include an ordinance or law coverage endorsement which will contain Coverage A: "Loss Due to Operation of Law" (with a minimum liability limit equal to Replacement Cost With Agreed Value Endorsement), Coverage B: "Demolition Cost" and Coverage C: "Increased Cost of Construction" coverages. Certificates of insurance with respect to all renewal and replacement Policies must be delivered to Lender not less than thirty (30) days prior to the

# UNOFFICIAL COPY

expiration date of any of the Policies required to be maintained hereunder which certificates must bear notations evidencing payment of applicable premiums (the "Insurance Premiums"). Originals or certificates of such replacement Policies must be delivered to Lender promptly after Borrower's receipt thereof but in any case within thirty (30) days after the effective date thereof. If Borrower fails to maintain and deliver to Lender the original Policies or certificates of insurance required by this Security Instrument, upon ten (10) days' prior notice to Borrower, Lender may procure such insurance at Borrower's sole cost and expense, which cost will be paid or reimbursed by Borrower to Lender, or otherwise added to the Loan and secured by the Security Documents, together with interest at the applicable Default Rate (as defined in the Note) from the date of disbursement by Lender until Lender is repaid in full.

(c) Borrower will comply with all insurance requirements and will not bring or keep or permit to be brought or kept any article upon any of the Property or cause or permit any condition to exist thereon which would be prohibited by an insurance requirement, or would invalidate the insurance coverage required hereunder to be maintained by Borrower on or with respect to any part of the Property pursuant to this Section 3.3.

(d) If the Property is damaged or destroyed, in whole or in part, by fire or other casualty, Borrower will give prompt notice of such damage to Lender and provided that Borrower will have received the Net Proceeds (defined below), Borrower will promptly commence and diligently prosecute the completion of the repair and restoration of the Property as nearly as possible to the condition the Property was in immediately prior to such fire or other casualty, with such alterations as may be approved by Lender (the "Restoration") and otherwise in accordance with Section 4.2 of this Security Instrument.

(e) The insurance coverage required under Section 3.3(a) may be effected under a blanket policy or policies covering the Property and other properties and assets not constituting a part of the security hereunder; provided that any such blanket policy must specify, except in the case of public liability insurance, the portion of the total coverage of such policy that is allocated to the Property, and any sublimit in such blanket policy applicable to the Property, and must in any case comply in all other respects with the requirements of this Section 3.3.

(f) The delivery to Lender of the insurance policies or the certificates of insurance as provided above will constitute an assignment of all proceeds payable under such insurance as relating to the Property by Borrower to Lender as further security for the indebtedness secured hereby. In the event of foreclosure of this Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of Borrower in and to all proceeds payable under such policies then in force concerning the Property will thereupon vest in the purchaser at such foreclosure, or in Lender or other transferee in the event of such other transfer of title. Approval of any insurance by Lender will not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance.

(g) Lender will not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Lender has caused the insurance to be placed with the insurer after failure of Borrower to furnish such insurance. Borrower will not obtain insurance for the Property in addition to that required by Lender without the prior written consent of Lender, which consent will not be unreasonably withheld provided that (i) Lender is named insured on such insurance, (ii) Lender receives complete copies of all policies evidencing such insurance, and (iii) such insurance complies with all of the applicable requirements set forth herein.

## Section 3.4 Payment of Taxes, Etc.



# UNOFFICIAL COPY

(a) Subject to Section 3.5, Borrower will pay prior to the last day such taxes may be paid before they become delinquent all taxes, assessments, water rates, sewer rents, governmental impositions, and other charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all ground rents, maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property as same become due and payable. Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower will not suffer and will promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Property. Except to the extent sums sufficient to pay all Taxes and Other Charges have been deposited with Lender in accordance with the terms of this Security Instrument, Borrower will furnish to Lender paid receipts for the payment of the Taxes and Other Charges prior to the date the same would become delinquent. In the event Borrower does not pay any installment of taxes and assessments, Lender may, but shall not be obliged to pay any such installment, the cost of which shall be paid or reimbursed by Borrower to Lender, or otherwise added to the Loan and secured by the Loan Documents, together with interest at the Default Rate (as defined in the Note) from the date of disbursements by Lender until repaid in full.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes or Other Charges, provided that (i) no Event of Default has occurred and is continuing under any of the Security Documents, (ii) such proceeding will suspend the collection of the Taxes or Other Charges from Borrower and from the Property or Borrower will have paid all of the Taxes or Other Charges under protest, (iii) such proceeding will be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and will not constitute a default thereunder, (iv) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, (v) Borrower will have set aside adequate reserves for the payment of the Taxes or Other Charges, together with all interest and penalties thereon, unless Borrower has paid all of the Taxes or Other Charges under protest, (vi) neither Borrower or Lender will be subject to any criminal liability, (vii) Borrower pays, defends, indemnifies and holds Lender harmless of and from any and all losses, judgments, decrees and costs (including all reasonable attorneys' fees) incurred in connection with each such contest, and (viii) Borrower has furnished any security required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Taxes or Other Charges, together with all interest and penalties thereon, taking into consideration the amount in the Impound Fund available for payment of Taxes or Other Charges.

## Section 3.5 Impound Fund

(a) Borrower will establish an Impound Fund (defined below) sufficient to discharge its obligations for the payment of Taxes pursuant to Section 3.4 hereof. Initial deposits of Taxes will be made by Borrower to Lender in amounts determined by Lender in its discretion on the date hereof to be held by Lender in the Impound Fund. Additionally, Borrower will pay to Lender on the first day of each calendar month 1/12th of an amount which would be sufficient to pay the Taxes payable, or estimated by Lender to be payable, upon the due dates established by the appropriate taxing authority during the next ensuing twelve (12) months (the initial deposits together with the amounts described above will be called the "Impound Fund"). Borrower agrees to notify Lender immediately of any changes to the amounts, schedules and instructions for payment of any Taxes of which it has obtained knowledge and authorizes Lender or its agent to obtain the bills for Taxes and Other Charges directly from the appropriate tax authority. The Impound Fund and the payments of interest

# UNOFFICIAL COPY

or principal or both, payable pursuant to the Note will be added together and will be paid as an aggregate sum by Borrower to Lender. Provided there are sufficient amounts in the Impound Fund and no Event of Default exists, Lender will be obligated to pay the Taxes as they become due on their respective due dates, or such earlier dates as may be determined by Lender on behalf of Borrower by applying the Impound Fund to the payments of such Taxes required to be made by Borrower pursuant to Section 3.4 hereof. Lender will not be liable for any act or omission taken in good faith but only for its gross negligence or willful misconduct. If the amount of the Impound Fund exceeds the amounts due for Taxes pursuant to Section 3.4 hereof, Lender will, in its discretion, return any excess to Borrower or credit such excess against future payments to be made to the Impound Fund. In allocating such excess, Lender may deal with the person shown on the records of Lender to be the owner of the Property. If the Impound Fund is not sufficient to pay the items set forth in Section 3.4(a) and (b) above, Borrower will promptly pay to Lender, upon demand, an amount which Lender reasonably estimates as sufficient to make up the deficiency. The Impound Fund will not constitute a trust fund, and shall be held by Lender in a non-interest-bearing account or may be commingled with other monies held by Lender.

(b) Upon an assignment of this Security Instrument by Lender, Lender will have the right to pay over the balance of the Impound Fund in its possession to the assignee, Lender will thereupon be completely released from all liability with respect to such deposits and Borrower will look solely to the assignee or transferee with respect thereto. This provision will apply to every transfer of the Impound Fund to a new assignee.

**Section 3.6 Condemnation.** Borrower will promptly give Lender notice of the actual or threatened commencement of any condemnation or eminent domain proceeding and will deliver to Lender copies of any and all papers served in connection with such proceedings. Lender may participate in any such proceedings to the extent permitted by law. Upon an Event of Default, Borrower will deliver to Lender all instruments requested by it to permit such participation. Borrower will, at its expense, diligently prosecute any such proceedings, and will consult with Lender, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. Borrower will not make any agreement in lieu of condemnation of the Property or any portion thereof without the prior written consent of Lender in each instance, which consent will not be unreasonably withheld or delayed in the case of a taking of an insubstantial portion of the Property. Notwithstanding any taking by any public or quasi-public authority through eminent domain or otherwise (including, but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking), Borrower must continue to pay the Debt at the time and in the manner provided for its payment in the Note and in this Security Instrument and the Debt will not be reduced until any award or payment therefor has been actually received and applied by Lender, after the deduction of expenses of collection, to the reduction or discharge of the Debt. Lender will not be limited to the interest paid on the award by the condemning authority but will be entitled to receive out of the award interest at the rate or rates provided herein or in the Note. If the Property or any portion thereof is taken by the power of eminent domain, Borrower will promptly commence and diligently prosecute the Restoration of the Property and otherwise comply with the provisions of Section 4.2 of this Security Instrument. If the Property is sold, through foreclosure or otherwise, prior to the receipt by Lender of the award or payment, Lender will have the right, whether or not a deficiency judgment on the Note has been sought, recovered or denied, to receive the award or payment, or a portion thereof sufficient to pay the Debt.

## **Section 3.7 Leases and Rents**

(a) Except as otherwise consented to by Lender, all Leases must be written on a standard form of lease previously approved by Lender. No material changes may be made to the Lender-approved standard lease without the prior written consent of Lender. Borrower will promptly furnish

# UNOFFICIAL COPY

Lender upon request with executed copies of all Leases. All proposed leases are subject to the prior approval of Lender, which approval shall not be unreasonably withheld or delayed, except that, if no Event of Default exists, all proposed tenant leases which meet the following requirements (the "Qualified Leases") (i) which are signed with a *bona fide*, independent third party tenant on the Borrower's previously approved standard form of Lease, having commercially reasonable terms for the proximate market area; (ii) it is for a space of less than 5,000 square feet; (iii) it is for a term of five (5) years or less including all extension options; and (iv) Lender is promptly furnished with a fully executed copy of such new Lease, and (v) which do not contain any terms which would materially affect Lender's rights under this Security Instrument, the Note or the Other Security Documents, will not be subject to the prior approval of Lender. Any requested approval for a new lease not satisfying the above requirements must be in writing and include the terms of the proposed lease, the identity of the proposed tenant and current credit and financial information on the proposed tenant. All future leases of any portion of the Property must contain a provision requiring the tenant under such lease(s) to comply with Title I and Title III of the Americans with Disabilities Act of 1990 ("ADA") as applied to leased premises. All existing and future tenants will, at Lender's option, be advised of the assignment of the lessor's interest under Leases to Lender and will be put on notice not to make any payments in advance under the Leases other than the current month's rent and security deposits required by the terms of the relevant Lease. At Lender's option, all executed Leases will be subordinate to the Security Instrument and, at Lender's option, all tenants will be required to sign subordination and attornment agreements.

Upon the written request of Borrower, Lender may, in its sole discretion, provide a non disturbance agreement to an existing tenant(s) or approved new tenant(s), in form satisfactory to Lender upon receipt by Lender of a satisfactory subordination and attornment agreement(s).

(b) Notwithstanding any conflicting provision or term contained in any subordination agreement signed by the parties hereto and any tenant of Borrower, Borrower (i) will observe and perform all the obligations imposed upon the lessor under the Leases if the failure to perform or observe the same would materially and adversely affect the value of the Property taken as a whole and will not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) will promptly send copies to Lender of all notices of default which Borrower sends or receives thereunder; (iii) will enforce in a commercially reasonable manner all of the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed; (iv) will not collect any of the Rents more than one (1) month in advance (provided that a security deposit will not be deemed rent collected in advance); (v) will not execute any other assignment of the lessor's interest in the Leases or the Rents except in connection herewith; (vi) will not, (A) materially alter, modify or change the terms of the Leases without the prior written consent of Lender, or (B) cancel or terminate any Lease (except for defaults thereunder) or accept a surrender thereof or convey or transfer or suffer or permit a conveyance or transfer of the Land or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, lessees thereunder; (vii) will not, alter, modify or change the terms of any guaranty, letter of credit or other credit support with respect to the Leases (the "Lease Guaranty") or cancel or terminate such Lease Guaranty without the prior written consent of Lender; (viii) will not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Lender; (ix) will exercise any options of any nature contained in any Lease at the direction of Lender; (x) will appear in and defend any action or proceeding arising under, growing out of or in any manner connected with any Lease or the obligations, duties or liabilities of any tenants thereunder; (xi) will furnish to Lender, within ten (10) days of written request by Lender, a written statement containing the names of all tenants and the terms of all Leases, and (xii) will execute and deliver to Lender such further assurances and assignments as Lender may reasonably request from time to time within five (5) days of demand therefor.



# UNOFFICIAL COPY

Section 3.8 Maintenance of Property. Borrower, at its sole cost and expense, will cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property will not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the prior, written consent of Lender. Borrower will promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.6 hereof and will complete and pay for any structure at any time in the process of construction or repair on the Land. Borrower will not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is, or hereafter becomes, a nonconforming use, Borrower will not cause or permit the nonconforming use or Improvement to be discontinued or abandoned without the prior written consent of Lender.

Section 3.9 Waste. Borrower will not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof. If any public agency or authority requires, or commences any proceedings for, the demolition or removal of any Improvements and Lender has good cause to believe that its security for the Debt will be impaired as a result of such actions, then, unless Borrower undertakes to contest such action in the manner provided in Section 3.10 of this Security Instrument and pursues such contest to a successful conclusion, such action will constitute an Event of Default under this Security Instrument.

### Section 3.10 Compliance With Laws.

(a) Borrower will promptly comply with all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations or court orders affecting the Property, or the use thereof including the ADA, as amended, (collectively, "Applicable Law").

(b) Borrower will provide Lender with provide Lender with copies of any of violation given with respect to the Property. During the term of the Loan, Borrower will deliver to Lender copies of any additional material permits or approvals or disapprovals issued with regard to the Property within ten (10) days of receipt thereof.

(c) Notwithstanding any provisions set forth herein or in any document regarding Lender's approval of alterations of the Property, Borrower will not alter the Property in any manner which would materially increase Borrower's responsibilities for compliance with Applicable Laws without the prior written approval of Lender. Lender's approval of the plans, specifications, or working drawings for alterations of the Property will create no responsibility or liability on behalf of Lender for their completeness, design, sufficiency or their compliance with Applicable Laws. The foregoing provisions of this Section 3.10(c) apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of compliance with Applicable Laws from an independent architect, engineer, or other person acceptable to Lender.

(d) Borrower will give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or



# UNOFFICIAL COPY

investigations which relate to compliance with Applicable Laws.

(e) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the Applicable Laws affecting the Property, provided that (i) no Event of Default has occurred and is continuing under the Note, this Security Instrument or any of the Other Security Documents; (ii) Borrower is permitted to do so under the provisions of any other mortgage, deed of trust or deed to secure debt affecting the Property; (iii) such proceeding is permitted under and conducted in accordance with the provisions of any other instrument to which Borrower is subject and does not constitute a default thereunder; (iv) neither the Property nor any part thereof or interest therein nor any of the tenants or occupants thereof is affected in any material adverse way as a result of such proceeding; and (v) Borrower has furnished to Lender all other items reasonably requested by Lender.

## Section 3.11 Books and Records.

(a) Borrower and Indemnitee agree to keep adequate books and records of account in accordance with methods acceptable to Lender in its reasonable discretion, consistently applied and furnish to Lender:

(i) independently audited annual operating statements (or at Lender's sole discretion, annual operating statements prepared by an accountant and certified by the Borrower) detailing all income and expenditures from the operation of the Property, in the form required by Lender, to be delivered to Lender within ninety (90) days of the end of each calendar year (in addition, if requested by Lender, certified operating statements shall be furnished to Lender on a monthly basis for the first twelve (12) months from the date hereof, and on a quarterly basis thereafter);

(ii) a current rent roll listing in reasonable detail the material terms of all tenancies, to be delivered to Lender within ninety (90) days of the end of each calendar year;

(iii) annual financial statements of Borrower in the form required by Lender, prepared and certified by Borrower, to be delivered to Lender within ninety (90) days of the end of each fiscal year of Borrower;

(iv) within thirty (30) days after the end of each calendar year, Borrower's certificate listing (a) the policies of insurance outstanding and in force as of December 31 of such year, in respect to the Property, (b) the names of the companies issuing such insurance, (c) the amounts and expiration date or dates of such insurance and (d) the risk covered thereby, and stating that such insurance complies with the covenants contained in Section 3.3 hereof; and

(v) such other financial statements as Lender may reasonably request.

(b) In the event of an Event of Default or the failure to provide the annual operating statement, financial statement, or other items described above, Lender will have the right to have independent auditors of Lender's choice inspect the books and other records of Borrower at all reasonable times to obtain and verify the necessary information. The cost of such inspection and audit will be paid by Borrower.

(c) All financial and other information and materials provided to or obtained by Lender pursuant to this Section 3.11 will be Lender's property for all purposes, but Lender, pursuant to this Section 3.11, will maintain such information and materials as confidential in accordance with

# UNOFFICIAL COPY

Lender's policy with respect thereto.

Section 3.12 Payment For Labor and Materials. Borrower will promptly pay when due all bills and costs for labor and materials incurred in connection with the Property and never permit to exist beyond the due date thereof in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Exceptions (defined in Section 5.1).

Section 3.13 Performance of Other Agreements. Borrower will observe and perform each and every material term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, except where failure to observe or perform the same would not have a material adverse affect.

Section 3.14 Change of Name, Identity or Structure. Borrower will not change Borrower's name, identity (including any trade name or names) or Borrower's structure without notifying the Lender of such change in writing at least thirty (30) days prior to the effective date of such change and without first obtaining the prior written consent of the Lender.

Section 3.15 Existence. Borrower will continuously maintain (a) its existence and will not dissolve or permit its dissolution, and (b) its rights to do business in the State of Illinois.

## ARTICLE 4

### SPECIAL COVENANTS

Borrower covenants and agrees with Lender that:

Section 4.1 Property Use. The Property will be used only as an office building and for no other use.

Section 4.2 Restoration After Casualty/Condemnation. In the event of a casualty or a taking by eminent domain, the following provisions will apply in connection with the restoration of the Property:

(a) If (i) the Net Proceeds (defined below) do not exceed \$100,000.00 ("Casualty Amount"); (ii) the costs of completing the restoration as reasonably estimated by Borrower are less than or equal to the Casualty Amount; (iii) no Event of Default exists; (iv) the Property and its use after the restoration will be in compliance with, all applicable zoning laws, ordinances, rules and regulations (including all applicable Environmental Laws (defined in Section 12.1)); and (v) such fire or other casualty or taking, as applicable, does not materially impair access to the Property or the Improvements; then the Net Proceeds will be disbursed directly to Borrower and Borrower will commence and diligently prosecute to completion, subject to Force Majeure (defined below), the restoration of the Property to as nearly as possible the condition it was in immediately prior to such fire or other casualty or to such taking. If no Event of Default exists, Borrower may settle any insurance claims with respect to the Net Proceeds which in the aggregate are less than or equal to the Casualty Amount. Lender has the right to participate in and reasonably approve any settlement for insurance claims with respect to the Net Proceeds which in the aggregate are greater than the Casualty Amount. If an Event of Default exists, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claim and to collect and to make receipt for any such payment. If the Net Proceeds are received by Borrower,

# UNOFFICIAL COPY

such Net Proceeds must, until the completion of the related work, be held in trust for Lender and segregated from other funds of Borrower to be used to pay for the cost of the restoration in accordance with the terms hereof.

(b) If the Net Proceeds exceed the Casualty Amount, or if Borrower is not entitled to the Net Proceeds pursuant to Subsection 4.2(a), such Net Proceeds will, subject to the provisions of the Leases that are superior to the lien of this Security Instrument or with respect to which subordination, non-disturbance agreements binding upon Lender have been entered into concerning the deposits of Net Proceeds, be paid to Lender to be held by Lender to be made available to Borrower for the restoration in accordance with the provisions of this Subsection 4.2(b). Borrower will commence and diligently prosecute to completion, subject to Force Majeure (defined below), the restoration (in the case of a taking, to the extent the Property is capable of being restored). "Net Proceeds" means: (i) the net amount of all insurance proceeds received by Lender under the Policies carried pursuant to Subsections 3.3(a)(i), (iv), (v), (vi) and (vii) of this Security Instrument as a result of such damage or destruction, after deduction of its reasonable costs and expenses (including, but not limited to reasonable counsel fees), if any, in collecting the same, or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 3.6 of this Security Instrument, after deduction of its reasonable costs and expenses (including, but not limited to reasonable counsel fees), if any, in collecting the same, whichever the case may be. "Force Majeure" means: Borrower will be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond Borrower's control such as, without limitation, all labor disputes, civil commotion, war, war-like operations, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire or other casualty, inability to obtain any materials or services, and acts of God.

(i) The Net Proceeds paid to Lender pursuant to this Subsection 4.2(b) will be made available to Borrower for payment of, or reimbursement of Borrower's expenses in connection with, the restoration, only upon satisfaction of the following conditions:

(A) the damaged or condemned Property can be restored to the same use, character and value as existed immediately prior to the casualty or condemnation;

(B) in the event the Net Proceeds are insufficient to restore the Property as required in clause (a) above, Borrower has deposited with Lender, prior to the first advance of the Net Proceeds, sufficient funds to enable the completion of the restoration as reasonably determined by Lender;

(C) the restoration is conducted under the supervision of a duly qualified architect acceptable to, and with plans and specifications approved by, Lender;

(D) disbursements will be made on a progress basis subject to Lender obtaining a certificate executed by Borrower, the architect and the general contractor indicating the disbursement is to pay for costs of the restoration not previously paid and that the amount of the disbursement does not exceed the aggregate of costs incurred or paid on account of restoration together with such supporting evidence, including invoices and lien waivers, as Lender may require;

(E) Lender receives a satisfactory title insurance policy or endorsement, covering title as of the date of each disbursement showing no liens or encumbrances against the Property other than Permitted Exceptions;

(F) a ten percent (10%) holdback will be retained until Lender receives

# UNOFFICIAL COPY

satisfactory evidence that all claims enforceable by lien have been paid in full, satisfactory provision for payment has been made or the time period within which a lien may be filed has expired, if applicable, and Lender receives a certificate from the architect that the restoration has been completed in accordance with all laws, rules, regulations, permits, ordinances, permissions and agreements applicable to such restoration; and

(G) after the restoration, either existing Leases or replacement leases will be in effect.

(ii) Until disbursed in accordance with this Subsection 4.2 (b), the Net Proceeds are additional security for the Obligations. The Net Proceeds will be administered by Lender or Lender's agent, the costs and expenses of which shall be the responsibility of the Borrower and may be commingled with other funds of Lender and will bear interest.

(iii) All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the restoration including reasonable counsel fees and disbursements and fees and disbursements of an independent consulting engineer selected by Lender (the "Casualty Consultant"), will be paid by Borrower.

(iv) Lender will not be obligated to make disbursements of the Net Proceeds more frequently than once every calendar month.

(v) If no Event of Default exists, the excess, if any, of the Net Proceeds after the Casualty Consultant certifies to Lender that the restoration has been completed in accordance with this Subsection 4.2(b), and the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the restoration have been paid in full, will be remitted by Lender to Borrower.

(c) All Net Proceeds not required (i) to be made available for the restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Subsection 4.2(b)(v) will be retained and may be applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion deems proper or, at the discretion of Lender, the same will be paid, either in whole or in part, to Borrower. If Lender receives and retains Net Proceeds, the lien of this Security Instrument will be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Debt.

Section 4.3 Security Deposits; Lease Termination Funds. Any fee, including but not limited to a surrender fee, settlement amount, accelerated rent, refund of unamortized tenant improvements, or other payment by or on behalf of a tenant to Borrower in connection with the termination or a reduction of the size of the leased premises (collectively, the "Lease Termination Funds"), whether voluntarily or involuntary, shall be delivered by Borrower to Lender upon receipt by Borrower. If no Event of Default then exists, the Lease Termination Funds shall be released to Borrower upon the re-lease of the space, at market rates, for which the Lease Termination Funds were paid and upon the satisfaction of Lender's re-lease requirements. The Lease Termination Funds may be held by Lender or its agent in a non-interest bearing account or may be commingled with Lender's other funds. Lender may apply all or any of the Lease Termination Funds against the Obligations during the continuation of an Event of Default.



# UNOFFICIAL COPY

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1 Warranty of Title. Borrower has good and marketable title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the "Permitted Exceptions"). Borrower will forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and will forever warrant and defend the same to Lender against the claims of all persons whomsoever. Upon the recordation of this Security Instrument and the filing of a UCC Financing Statement in the office of the Illinois Secretary of State, Lender will have a first priority perfected security interest in all personal property owned by Borrower to the extent a security interest is established in such property by filing a UCC Financing Statement in any location.

Section 5.2 Authority. Borrower (and the undersigned representative of Borrower, if any) has full power, authority and legal right to execute this Security Instrument, and to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to the terms hereof and to keep and observe all of the terms of this Security Instrument on Borrower's part to be performed.

Section 5.3 Legal Status and Authority. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the State of Illinois; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own the Property and carry on its business as now conducted and proposed to be conducted. Borrower now has and will continue to have the full right, power and authority to operate the Property, to encumber the Property as provided herein and to perform all of the other obligations to be performed by Borrower under the Note, this Security Instrument and the Other Security Documents.

Section 5.4 Validity of Documents. (a) The execution, delivery and performance of the Note, this Security Instrument and the Other Security Documents and the borrowing evidenced by the Note (i) are within the power and authority of Borrower; (ii) have been authorized by all requisite organizational action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law (including any usury laws), any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this instrument with the Cook County Recorder and except for Uniform Commercial Code filings relating to the security interest created hereby), and (b) the Note, this Security Instrument and the Other Security Documents constitute the legal, valid and binding obligations of Borrower.

Section 5.5 Litigation. There is no action, suit or proceeding, judicial, administrative or

# UNOFFICIAL COPY

otherwise (including any condemnation or similar proceeding), pending or, to the best of Borrower's knowledge, threatened or contemplated against Borrower, if any, an Indemnitor (defined in Subsection 10.1(d)), if any, or against or affecting the Property that (a) has not been disclosed to Lender, and has a material, adverse effect on the Property or Borrower's or any Indemnitor's ability to perform its obligations under the Note, this Security Instrument or the Other Security Documents, or (b) is not adequately covered by insurance, each as determined by Lender in its reasonable discretion.

## Section 5.6 Status of Property.

(a) No portion of the Improvements is located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended, or any successor law, or, if any portion of the Improvements is now or at any time in the future located within any such area, Borrower has obtained and will maintain the insurance prescribed in Section 3.3 hereof.

(b) Borrower has obtained all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Property and the conduct of its business and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification.

(c) The Property and the present and contemplated use and occupancy thereof are in full compliance with all Applicable Laws, including, but not limited to, zoning ordinances, building codes, land use and Environmental Laws, laws relating to the disabled including, but not limited to, the ADA and the Fair Housing Act, as amended (the "FHA"), and other similar laws, and Borrower will maintain the Property and perform all alterations, modifications and additions to the Property in compliance with all Applicable Laws, including but not limited to, the ADA and/or FHA, as the same may be amended from time to time, to the extent the ADA and/or FHA applies thereto.

(d) The Property is served by all utilities required for the current or contemplated use thereof. All utility service is provided by public utilities and the Property has accepted or is equipped to accept such utility service.

(e) All public roads and streets necessary for service of and access to the Property for the current or contemplated use thereof have been completed, are serviceable and all-weather and are physically and legally open for use by the public.

(f) The Property is served by public water and sewer systems.

(g) The Property is free from damage caused by fire or other casualty.

(h) All costs and expenses of any and all labor, materials, supplies and equipment used in the construction of the Building have been or will be paid in full or otherwise satisfied.

(i) Borrower has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property and property of service providers) used in connection with the operation of the Property, free and clear of any and all security interests, liens or encumbrances, except the lien and security interest created hereby.

(j) All liquid and solid waste disposal, septic and sewer systems located on the Property

# UNOFFICIAL COPY

are in a good and safe condition and repair and in compliance with all Applicable Laws.

(k) All security deposits relating to the Leases reflected on the certified rent roll delivered to Lender have been collected by Borrower except as noted on the certified rent roll, are being held in a segregated account, and Borrower shall not commingle any such funds with any other funds of Borrower.

(l) Borrower has received no notice of an actual or threatened condemnation or eminent domain proceeding by any public or quasi-public authority.

(m) All the Improvements lie within the boundaries of the Property.

Section 5.7 No Foreign Person. Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, and the related Treasury Department regulations, including temporary regulations.

Section 5.8 Separate Tax Lot. The Property is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or Improvements not constituting a part of such lot or lots, and no other land or Improvements is assessed and taxed together with the Property or any portion thereof.

Section 5.9 Illegal Activity. No portion of the Property has been or will be purchased, improved, fixtured, equipped or furnished with proceeds of any criminal or other illegal activity and, to the best of Borrower's knowledge, there are no illegal activities or activities relating to controlled substances at the Property.

Section 5.10 Leases. Except as disclosed in the certified rent roll for the Property delivered to and approved by Lender, (a) Borrower is the sole owner of the entire lessor's interest in the Leases; (b) the Leases are valid and enforceable; (c) the terms of all alterations, modifications and amendments to the Leases are reflected in the certified rent roll delivered to and approved by Lender; (d) none of the Rents reserved in the Leases have been assigned or otherwise pledged or hypothecated (except to Lender); (e) none of the Rents have been collected for more than one (1) month in advance (provided that a security deposit will not be deemed rent collected in advance); (f) the premises demised under the Leases have been completed and the tenants under the Leases have accepted the same and have taken possession of the same on a rent-paying basis; (g) there exist no offsets or defenses to the payment of any portion of the Rents; (h) Borrower has received no notice from any tenant challenging the validity or enforceability of any Lease; (i) all payments due under the Leases are current and are consistent with the certified rent roll for the Property delivered to and approved by Lender at closing; (j) no tenant under any Lease is in default thereunder, or is a debtor in any bankruptcy, reorganization, insolvency or similar proceeding, or has demonstrated a history of payment problems which suggest financial difficulty; (k) there are no agreements with the tenants under the Leases other than expressly set forth in each Lease; (l) the Leases are valid and enforceable against Borrower and the tenants set forth therein; (m) no Lease contains an option to purchase, right of first refusal to purchase, or any other similar provision; (n) no person or entity has any possessory interest in, or right to occupy, the Property except under and pursuant to a Lease; (o) each Lease is subordinate to this Security Instrument, either pursuant to its terms or a recorded subordination agreement; (p) no Lease has the benefit of a non-disturbance agreement that would be considered unacceptable to prudent institutional lenders; and (p) no brokerage commissions or finders fees are due and payable regarding any Lease.

Section 5.11 Financial Condition. (a) Borrower is solvent, and no bankruptcy, reorganization, insolvency or similar proceeding under any state or federal law with respect to

# UNOFFICIAL COPY

Borrower has been initiated, (b) it has received reasonably equivalent value for the granting of this Security Instrument, and (c) the granting of this Security Instrument does not constitute a fraudulent conveyance.

Section 5.12 Business Purposes. The Loan evidenced by the Note is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes. The credit transaction evidenced by the Note is specifically exempted under Regulation Z issued by the Board of Governors of the Federal Reserve System and Title I (Truth-in-Lending Act) of the Consumer Credit Protection Act and no disclosures are required to be given under such regulations and federal laws in connection with the subject transaction.

Section 5.13 Taxes. Borrower and any Indemnitor have filed all federal, state, county, municipal, and city income and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Neither Borrower nor any Indemnitor knows of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.14 Mailing Address. Borrower's mailing address, as set forth in the opening paragraph hereof or as changed in accordance with Article 16, is true and correct.

Section 5.15 No Change in Facts or Circumstances. To Borrower's knowledge, all information, all financing statements, rent rolls, reports, certificates and other documents submitted in connection with the commitment letter issued by Lender dated October 24, 2002 (as amended on November 1, 2002 and November 5, 2002) and accepted by Borrower (the "Commitment") or in satisfaction of the terms thereof, are accurate, complete and correct in all respects. Borrower has no knowledge of any adverse change in any condition, fact, circumstance or event that would make any such information inaccurate, incomplete or otherwise misleading.

Section 5.16 Disclosure. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.17 Third Party Representations. Each of the representations and the warranties made by each Guarantor and Indemnitor herein or in any Other Security Document(s) is true and correct in all material respects.

## ARTICLE 6

### DEBTOR/CREDITOR RELATIONSHIP

Section 6.1 Relationship of Borrower and Lender. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Security Documents will be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

## ARTICLE 7

### FURTHER ASSURANCES

Section 7.1 Recording of Security Instrument, Etc. Upon the execution and delivery of this Security Instrument and thereafter, from time to time, Borrower will cause this Security



# UNOFFICIAL COPY

Instrument and any of the Other Security Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the Other Security Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any mortgage supplemental hereto, any security instrument with respect to the Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

**Section 7.2 Further Acts, Etc.** Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender will, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender, the property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing or recording this Security Instrument, or for complying with all Applicable Laws. Borrower hereby irrevocably authorizes Lender at any time, and from time to time, to file and/or record in any jurisdiction any initial financing statements and amendments thereto, and Borrower, on demand, will execute and deliver, and hereby authorizes Lender and execute in the name of Borrower or without the signature of Borrower to the extent Lender may lawfully do so, one (1) or more financing statements or other instruments, to evidence or perfect more effectively the security interest of Lender in the Property.

## **Section 7.3 Changes in Tax, Debt Credit and Documentary Stamp Laws**

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Lender's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Lender is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Lender or unenforceable or provide the basis for a defense of usury, then Lender will have the option by written notice of not less than thirty (30) days to declare the Debt immediately due and payable.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction will otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction is required by law, Lender will have the option, by written notice of not less than thirty (30) days, to declare the Debt immediately due and payable.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State requires revenue or other stamps to be affixed to the Note, this Security Instrument, or any of the Other Security Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

# UNOFFICIAL COPY

Section 7.4 Estoppel Certificates After request by Lender, Borrower, within ten (10) days, will furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the terms of payment and maturity date of the Note, (v) the date installments of interest and/or principal were last paid, (vi) that, except as provided in such statement, there are no defaults or events which with the passage of time or the giving of notice or both, would constitute an Event of Default under the Note or the Security Instrument, (vii) that the Note and this Security Instrument are valid, legal and binding obligations and have not been modified or, if modified, giving particulars of such modification and (viii) whether any offsets or defenses exist against the obligations secured hereby and, if any are alleged to exist, a detailed description thereof.

Section 7.5 Flood Insurance. After Lender's request, Borrower will deliver evidence satisfactory to Lender that no portion of the Improvements is situated in a federally designated "special flood hazard area" or, if it is, that Borrower has obtained insurance meeting the requirements of Section 3.3(a)(1).

Section 7.6 Amended Financing Statements. Borrower will execute and deliver to the Lender, prior to or contemporaneously with the effective date of any such change, any financing statement or financing statement change required by Lender to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Lender, Borrower will execute a certificate in form satisfactory to Lender listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

## ARTICLE 8

### DUE ON SALE/ENCUMBRANCE

#### Section 8.1 Sale and Transfer.

(a) If Borrower sells or transfers the Property, or any part thereof or interest therein, or if any beneficial interest in Borrower is sold, transferred or assigned, all without Lender's prior written consent (given in Lender's sole discretion), such action will conclusively be deemed to increase Lender's risk and Lender, at its option, may declare the entire balance owing on the Note and all interest accrued thereon immediately due and payable.

(b) Lender specifically reserves the right to withhold its consent or to condition its consent to a sale, transfer, or change in control upon such conditions or requirements as Lender may determine in its sole discretion including by way of illustration but not by way of limitation, the following: (i) Lender's approval of the financial condition and/or management ability of the purchaser, assignee, transferee or subsequent owner of the Property; (ii) an agreement to assume all of Borrower's obligations under the Security Documents; (iii) an agreement to escalate the interest rate of the Note up to the prevailing market rate at that time but subject to applicable law; (iv) the payment of a transfer fee determined by Lender in its sole discretion; and (v) payment of any expenses incurred by Lender as a result of the sale, transfer, assignment or conveyance of the Property or change in control of Borrower, whether or not consent is granted or the sale, transfer or change in control is consummated.

(c) For the purposes of this Section 8.1, the terms "sale, transfer or change in control" shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, transfers made to subsidiary or affiliate entities, transfers made to a reconstituted

# UNOFFICIAL COPY

partnership (general, limited or limited liability), transfers by any partnership (general, limited or limited liability) to the partners or vice versa, transfers by any partner, shareholder, member or trustee to other partners, shareholders, members or trustees or to third parties, transfers by any corporation or limited liability company to its shareholders or members or vice versa, any merger or consolidation, any assignment of beneficial interests in a land trust, any sale by land contract or other title retaining contract, any subordinate lien or other encumbrance placed on or permitted against the Property, or any contract or agreement to do any of the foregoing. Notwithstanding the foregoing, the terms "sale, transfer or change in control" shall not include (i) a sale or transfer due to death, mental incapacity or court order of marital separation and settlement, or (ii) a sale or transfer for estate planning purposes, provided that in any case Lender receives: (A) written notification of the proposed sale, transfer or change in control at least thirty (30) days prior to the effective date of the proposed transaction (or as soon as practicable in the case of a sale, transfer or change in control due to death or mental incapacity); (B) a reasonable administration fee, as determined by Lender in its sole discretion, along with Lender's reasonable attorney's fees and expenses and other out-of-pocket costs and expenses; and (C) complete documentation pertaining to the sale, transfer or change in control, including the names, addresses and taxpayer identification numbers of all relevant parties, within thirty (30) days after completion of the transaction.

(d) Notwithstanding the above, the Borrower shall have a one time right to sell or transfer all or any of the Borrower's interest in the Property, provided the Borrower obtains the prior written consent of Lender. Lender specifically reserves the right to include conditions upon its consent to a sale, transfer, assignment or conveyance and the assumption of its Loan (as defined in the Note) including, without limitation, satisfaction of each of the following conditions:

(1) Delivery and approval of current financial statements of the proposed purchaser. Should the proposed purchaser be a corporate entity, limited liability company, limited partnership or otherwise, the current financial statements of its principal shareholder(s), principal member(s) or general partner(s) are required.

(2) Resume of the proposed purchaser, detailing its/their experience and expertise as owners and managers of commercial real estate. Said resume shall further detail the structure and/or ownership interests of all parties comprising the proposed purchaser.

(3) Copy of the contract of sale, together with evidence of the earnest money deposit.

(4) Copies of any pending or proposed management agreements with any third party management company(ies).

(5) Current rent roll.

(6) Income and expense statements, reflecting the operations of the Property for the past twelve (12) months.

(7) Pro forma income and expense statements, projecting the operations for the next twelve (12) months.

(8) Payment of a transfer fee equal to one percent (1%) of the outstanding principal balance owing.

(9) Payment of any and all expenses, legal, or otherwise, incurred by Lender as a result of reviewing, and if applicable, permitting the proposed sale, transfer, assignment or

# UNOFFICIAL COPY

conveyance of the Property.

(10) All of the foregoing information and documentation shall be provided to Lender for its review at least thirty (30) days prior to the closing date of the proposed sale.

(11) Lender is to be provided with the following documentation in conjunction with the sale or transfer:

- (a) an assumption agreement executed by the purchaser in form and substance satisfactory to Lender and its legal counsel;
- (b) consent of the Principal Affiliates (as hereinafter defined) and confirmation of the continued effectiveness of any applicable indemnities, guarantees or other agreements notwithstanding the transfer;
- (c) UCC-1 Financing Statement executed by the purchaser;
- (d) evidence of fire and extended, rent loss and liability insurance coverage provided by the purchaser as required by this Security Instrument;
- (e) organizational and other relevant documents of the purchaser, including taxpayer identification number;
- (f) opinion of counsel for the purchaser;
- (g) complete name and address of the purchaser, as well as all parties to whom notices should be sent; and
- (h) issuance to Lender of title insurance evidence that this Security Instrument will remain a valid first lien upon the Property, notwithstanding Lender's consent to such sale, transfer, assignment or conveyance.

(e) The term "Principal Affiliates" shall include all general partners and limited partners who have a controlling interest or who act as general partners of the Borrower (if the Borrower is a partnership), majority or controlling members or partners of the Borrower or its general partner (if the Borrower or its general partner is a limited liability company or limited liability partnership), and majority or controlling beneficiaries or shareholders of the Borrower or corporate general partners of the Borrower (if the Borrower or its general partner is a trust or corporation). Without limiting the generality of the preceding sentence, the term "Principal Affiliates" shall also include James W. Wolfenson, individually.

(f) Notwithstanding anything contained in Section 8.1 to the contrary, Borrower acknowledges, understands and agrees that the granting of consent to the sale, transfer or change in control of the Borrower's interest in the Property and the assumption of the indebtedness secured hereby shall in no way release the Borrower from any liability and/or recourse Lender may have unless otherwise agreed in writing.

(g) The failure of Lender to exercise any of its options in the event of a sale, transfer or change in control, on any one occasion shall not be deemed a waiver of its right to exercise any of its options in the event of a subsequent sale, transfer or change in control of the Property or of any interest therein.



# UNOFFICIAL COPY

(h) Notwithstanding anything contained in Section 8.1 to the contrary, any sale, transfer or change in control which violates the conditions set forth above shall be subject to an administrative fee in the amount of \$10,000.00 per occurrence in addition to any rights, remedies and/or costs and fees related thereto.

Section 8.2 Secondary Financing. Borrower recognizes that any secondary or junior financing placed upon the Property (a) may divert funds which would otherwise be used to pay the indebtedness secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Lender to take measures and incur expenses to protect its security; and (c) would impair Lender's right to accept a deed in lieu of foreclosure from Borrower, as a foreclosure by Lender would be necessary to clear the title to the Property. Therefore, except as set forth below, there will be no secondary financing during the term of the Loan and no subordinate debt instrument of any kind or other lien or encumbrance against the Property will be allowed at any time during the term of the Loan. Lender specifically reserves the right to include conditions upon its consent to such secondary financing including, without limitation, its review and approval of the following items:

(a) An executed copy of the application and/or commitment letter detailing the terms and conditions for such secondary financing, including, but not limited to, the interest rate, monthly payment, security and maturity date, and copies of all executed loan documents once available.

(b) A current rent roll and income and expense statement so that Lender can determine that the net operating income for the Property exceeds the combined debt service required by this Security Instrument and the proposed second mortgage by 1.20 times. In addition, the combined loan-to-value of the Loan and the proposed second mortgage must not exceed 75% (as determined by Lender). Net operating income shall be defined as total annual income less reasonable annual operating expenses and a ten percent (10%) allowance for vacancy and bad debts. Reasonable operating expenses shall include a management fee of five percent (5%) of effective gross income and a reserve for structural repairs of \$0.10 per square foot of the net rentable area of the Property.

(c) Written agreement (on a form provided by Lender's counsel and on terms satisfactory to Lender) executed by the second lender containing the following: (a) a standstill (non-foreclosure) agreement; (b) its acknowledgment that it understands and agrees that the secondary financing liens and encumbrances shall be subordinate to the Loan and this Security Instrument; and (c) its acknowledgment that in the event of a default under either this Security Instrument or the second mortgage, any costs, fees and expenses incurred by Lender with respect to such default and/or any subsequent foreclosure will be a prior claim to any claims of the second lender.

(d) Title endorsements and other evidence satisfactory to Lender and its counsel reflecting the relative priority of Lender's lien and security interest in the Property, including leases, easements and other permitted encumbrances, in relation to the proposed second mortgage.

## ARTICLE 9

### PREPAYMENT

Section 9.1 Prepayment Only in Accordance with Note. The Debt may be prepaid only in strict accordance with the express terms and conditions of the Note.

## ARTICLE 10

### DEFAULT

# UNOFFICIAL COPY

Section 10.1 Events of Default. The occurrence of any one or more of the following events will constitute an "Event of Default":

- (a) the failure to make any payment required by the Note on the date when due;
- (b) the failure to make any other payment required by this Security Instrument or the Other Security Documents on the date when due;
- (c) if Borrower violates any of the provisions of Sections 3.7 or 8.1;
- (d) if any representation or warranty of Borrower, Indemnitor (as defined in that certain Environmental Indemnity Agreement dated as of the date hereof (the "Environmental Indemnity") or any member, general partner, principal or beneficial owner of any of the foregoing, made herein or in the Environmental Indemnity or in any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Lender will have been false or misleading in any material respect when made;
- (e) if any default occurs under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods, if any;
- (f) except for the specific defaults set forth in this Section 10.1, any other default hereunder or under any of the Other Security Documents by Borrower, which default is not cured (i) in the case of any default which can be cured by the payment of a sum of money only, within five (5) days after written notice from Lender to Borrower, or (ii) in the case of any other default, within thirty (30) days after written notice from Lender to Borrower; provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower has commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period will be extended for so long as it will require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension will be for a period in excess of one hundred twenty days (120), unless, only in the case of cures that require construction or remedial work, such cure cannot with diligence be completed within such one hundred twenty (120) day period, in which case such period will be extended for an additional one hundred twenty days (120);
- (g) if Borrower or any Indemnitor makes an assignment for the benefit of creditors or if Borrower is generally not paying its debts as they become due;
- (h) if the Policies are not kept in full force and effect, or Borrower has not delivered evidence of the renewal of the Policies prior to their expiration as provided in Section 3.3(b);
- (i) if (i) Borrower or any Indemnitor commences any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, Borrower or any Indemnitor will make a general assignment for the benefit of its creditors; or (ii) there is commenced against Borrower or any Indemnitor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of ninety (90) days; or (iii) there is commenced against Borrower or any Indemnitor any case,

# UNOFFICIAL COPY

proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which has not been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or (iv) Borrower or any Indemnitor has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) Borrower or any Indemnitor is generally not, or is unable to, or admits in writing its inability to, pay its debts as they become due;

(j) (i) if any final judgment, order, or decree (collectively, a "judgment") is entered in any proceeding, judicial or administrative, including any contest permitted by this Security Instrument but excluding any condemnation proceeding to which the Lender is a party, that (A) materially and adversely affects the value, use, occupation, enjoyment or operation of the Property, or (B) adversely affects, or reasonably may tend to adversely affect, the validity, enforceability or priority of the lien or security interest created by any Security Document; or (ii) execution or other process, judicial or administrative, issues with respect to the Property; or (iii) any judgment for the payment of money in excess of \$25,000.00 is rendered against Borrower, any Indemnitor, or any manager, member, general partner or any stockholder of Borrower, and (C) in such event, and within thirty (30) days thereafter, the same is not stayed, released, satisfied, discharged, or provision made for its discharge in accordance with its terms; or (D) any such stay is vacated, released, or discharged for any reason, including affirmance on appeal, and such judgment or process is not within thirty (30) days thereafter released, satisfied, discharged, or provision made for its discharge in accordance with its terms;

(k) if any federal, state or local tax lien, or any claim or lien for labor, services or materials, or any other lien or encumbrance of any nature whatsoever, including a lis pendens or other notice of pendency involving the Property, is recorded or filed against Borrower or the Property and is not removed by payment or transferred to substitute security in the manner provided by law within sixty (60) days after notice or contested in the manner provided by this Security Instrument; or

(l) if a default occurs by Borrower under the terms or conditions of the Commitment beyond any applicable period of notice and grace.

## ARTICLE 11

### RIGHTS AND REMEDIES

#### Section 11.1 Remedies.

(a) Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce the rights of Lender against Borrower and in and to the Property, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

(i) declare the entire unpaid Debt to be immediately due and payable;

(ii) institute proceedings, judicial or otherwise, for the foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one (1) or more parcels or in several interests or portions and in any order or manner;

# UNOFFICIAL COPY

(iii) subject to the provisions of Article 15, institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the Other Security Documents;

(iv) subject to the provisions of Article 15, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the Other Security Documents;

(v) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Indemnitor, or of any person, firm or other entity liable for the payment of the Debt;

(vi) subject to any applicable law, the license granted to Borrower under Section 1.2 will automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (B) complete any construction on the Property in such manner and form as Lender deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Property; (D) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (E) require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (F) require Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (G) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender deems appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(vii) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including: (A) the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral, and (B) the right to request Borrower at its expense to assemble the Collateral and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Borrower in accordance with the provisions hereof at least ten (10) days prior to such action, will constitute commercially reasonable notice to Borrower;

(viii) apply any sums then deposited in the Impound Fund and any other sums held in escrow or otherwise by Lender in accordance with the terms of this Security Instrument or any Other Security Document to the payment of the following items in any order in its sole and absolute discretion:

(A) Taxes and Other Charges;



# UNOFFICIAL COPY

(B) Insurance Premiums;

(C) interest on the unpaid principal balance of the Note; and

(D) amortization of the unpaid principal balance of the Note; and all other sums payable pursuant to the Note, this Security Instrument and the Other Security Documents, including advances made by Lender pursuant to the terms of this Security Instrument;

(ix) surrender the Policies maintained pursuant to Article 3 hereof, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion deems proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums;

(x) apply the undisbursed balance of any Net Proceeds or any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender deems to be appropriate in its discretion;

(xi) prohibit Borrower and anyone claiming on behalf of or through Borrower from making use of or withdrawing any sums from any lockbox or similar account, if any;

(xii) terminate (without penalty, fee or other cost, expense or compensation due or owing) any management agreements, contracts or agents/managers responsible for the management of the Property if said property management is unsatisfactory to Lender or any receiver; and

(xiii) pursue such other remedies as Lender may have under applicable law.

(b) In the event of a sale, by foreclosure, or otherwise, of less than all of the Property, this Security Instrument will continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section 11.1 to the contrary, if any Event of Default as described in Subsection 10.1 (i)(i) or (ii) occurs, the entire unpaid Debt will be automatically due and payable, without any further notice, demand or other action by Lender.

(c) Lender may adjourn from time to time any sale by it to be made under or by virtue of this Security Instrument by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Lender, without further notice or publication, may make such sale at the time and place to which the same is so adjourned.

(d) Upon any sale made under or by virtue of this Section 11.1, whether made under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Lender may bid for and acquire the Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Lender is authorized to deduct under this Security Instrument.

Section 11.2 Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the Other Security Documents, may be applied by Lender to

# UNOFFICIAL COPY

the payment of the Debt in such priority and proportions as Lender in its discretion deems proper.

Section 11.3 Right to Cure Defaults. Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, cure the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest as provided in this Section 11.3, will constitute a portion of the Debt and will be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or in appearing in, defending, or bringing any such action or proceeding will bear interest at the Default Rate (as defined in the Note), for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate will be deemed to constitute a portion of the Debt and be secured by this Security Instrument and the Other Security Documents and will be immediately due and payable upon demand by Lender therefor.

Section 11.4 Actions and Proceedings. If an Event of Default exists, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 11.5 Recovery of Sums Required To Be Paid. Lender has the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt is due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 11.6 Examination of Books and Records. Lender, its agents, accountants and attorneys will have the right upon prior written notice to examine the records, books, management and other papers of Borrower and its affiliates or of any Indemnitee which reflect upon their financial condition, at the Property or at any office regularly maintained by Borrower, its affiliates or any Indemnitee where the books and records are located. Lender and its agents will have the right upon notice to make copies and extracts from the foregoing records and other papers. In addition, Lender, its agents, accountants and attorneys will have the right to examine and audit the books and records of Borrower and its affiliates or of any Indemnitee pertaining to the income, expenses and operation of the Property during reasonable business hours at any office of Borrower, its affiliates or any Indemnitee where the books and records are located.

## Section 11.7 Other Rights, Etc.

(a) The failure of Lender to insist upon strict performance of any term hereof will not be deemed to be a waiver of any term of this Security Instrument. Borrower will not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower or Indemnitee to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the Other Security Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the Other Security Documents.

# UNOFFICIAL COPY

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender will have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender will not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument will be separate, distinct and cumulative and none will be given effect to the exclusion of the others. No act of Lender will be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender will not be limited exclusively to the rights and remedies herein stated but will be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 11.8 Right to Release Any Portion of the Property. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder will have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument will continue as a lien and security interest in the remaining portion of the Property.

Section 11.9 Violation of Laws. If the Property is not in compliance with Applicable Laws, Borrower will use its best efforts necessary (as reasonably determined by Lender) to bring the Property into compliance; in addition, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 11.10 Right of Entry. Lender and its agents will have the right upon prior written notice to enter and inspect the Property at all reasonable times upon not less than five (5) business days' notice (except in the case of emergencies when no notice will be required) to Borrower.

## ARTICLE 12

### ENVIRONMENTAL HAZARDS

Section 12.1 Environmental Representations and Warranties. Borrower represents and warrants to Lender that except as set forth in any environmental assessment obtained by Lender prior to Closing, to the best of Borrower's knowledge: (a) there are no Hazardous Substances (defined below) or underground storage tanks in, on, or under the Property, except those that are both (i) in compliance with Environmental Laws (defined below) and with permits issued pursuant thereto, if any, and (ii) fully disclosed to Lender in writing pursuant to the written reports resulting from the environmental assessments of the Property delivered to Lender (the "Environmental Report"); (b) there are no past or present Releases (defined below) of Hazardous Substances in violation of any Environmental Law or which would require Remediation (defined below) by a governmental authority in, on, under, at, around, above or from the Property except as described in the Environmental Report; (c) there is no past or present non-compliance with Environmental Laws, or with permits issued pursuant thereto, in connection with the Property except as described in the



# UNOFFICIAL COPY

Environmental Report; (d) Borrower does not know of, and has not received, any written or oral notice or other communication from any person or entity (including a governmental entity) relating to Hazardous Substances or Remediation thereof, of possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual administrative or judicial proceedings in connection with any of the foregoing; and (e) Borrower has truthfully and fully provided to Lender, in writing, any and all information relating to environmental conditions in, on, under, at, around, above or from the Property that is known to Borrower and that is contained in Borrower's files and records, including any reports relating to Hazardous Substances in, on, under or from the Property and/or to the environmental condition of the Property. "Environmental Law" means any federal, state and local laws, statutes, ordinances, rules, regulations, orders, decrees and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Substances, relating to liability for or costs of Remediation or prevention of Releases of Hazardous Substances or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" includes the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. "Environmental Law" also includes any present and or future federal, state and local laws, statutes, ordinances, rules, regulations, orders, decrees and the like, as well as common law conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the property or requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Property to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in the Property. "Hazardous Substances" include any and all substances (whether solid, liquid or gas) (i) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or (ii) that may have a negative impact on human health or the environment, including the following: (1) asbestos, PCBs, radon, lead-based paint, urea formaldehyde, petroleum products; (2) any substances, materials, or wastes that are or become regulated by any local governmental authority, Illinois or the United States of America because of toxic, carcinogenic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment; and (3) any materials or substances that are listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) as amended from time to time. "Release" of any Hazardous Substance includes any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Substances. "Remediation" includes any response, remedial removal, or corrective action; any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance; any actions to prevent, cure or mitigate any Release of any Hazardous Substance; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances or to anything referred to in this Article 12.

Section 12.2 Environmental Covenants. Borrower covenants and agrees that so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property:



# UNOFFICIAL COPY

(a) all uses and operations on or of the Property, whether by Borrower or any other person or entity, will be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there will be no Releases of Hazardous Substances in, on, under, at, around, above or from the Property; (c) there will be no Hazardous Substances in, on, under, at, around, above or from the Property; (d) Borrower will keep the Property free and clear of all liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other person or entity (the "Environmental Liens"); (e) Borrower will, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to Section 12.3 below, including providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower will, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Lender after Lender has reason to believe this Section 12.2 has been violated (including sampling, testing and analysis of soil, water, air, building materials and other materials and substances whether solid, liquid or gas), and share with Lender the reports and other results thereof, and Lender and other Indemnified Parties (defined in Section 13.1) will be entitled to rely on such reports and other results thereof; (g) Borrower will, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate Remediation of any condition (including a Release of a Hazardous Substance) in, on, under or from the Property, (ii) comply with any Environmental Law, (iii) comply with any directive from any governmental authority, and (iv) take any other reasonable action necessary or appropriate for protection of human health or the environment; (h) Borrower will take all reasonable commercial efforts to prohibit any tenant or other user of the Property from doing any act that materially increases the dangers to human health or the environment, poses an unreasonable risk of harm to any person or entity (whether on or off the Property), impairs or may impair the value of the Property, is contrary to any requirement of any insurer, constitutes a public or private nuisance, constitutes waste, or violates any covenant, condition, agreement or easement applicable to the Property; and (i) Borrower will immediately notify Lender in writing promptly after it has become aware of (A) any presence or Releases or threatened Releases of Hazardous Substances in, on, under, from or migrating towards the Property which is required to be reported to a governmental authority under any Environmental Law, (B) any actual Environmental Lien affecting the Property, (C) any required Remediation of environmental conditions relating to the Property, or (D) any written or oral notice or other communication of which Borrower becomes aware from any source whatsoever (including a governmental entity) relating in any way to Hazardous Substances or Remediation thereof, possible liability of any person or entity pursuant to any Environmental Law, other environmental conditions in connection with the Property, or any actual or threatened administrative or judicial proceedings in connection with anything referred to in this Article 12. If at any time it is determined that there are any Hazardous Substances located in, on, under, around, at or above the Property which are subject to any federal, state or local law, statute, ordinance or regulation, court or administrative order or decree, or private agreement concerning the environment or occupational health and safety ("Environmental Requirements"), including Environmental Requirements requiring special handling of Hazardous Substances in their use, handling, collection, generation, storage, treatment or disposal, Borrower will commence with diligence to comply with all such Environmental Requirements within thirty (30) days after becoming aware of the presence of the Hazardous Substances and Environmental Requirements and will continue to diligently take all appropriate action, at Borrower's sole expense. Notwithstanding anything herein to the contrary, Lender will not be responsible for influencing or directing Hazardous Substances disposal decisions or treatment or other compliance with Environmental Substances, such being the sole responsibility of Borrower. Failure of Borrower to comply with all Environmental Laws will constitute an Event of Default.

Section 12.3 Lender's Rights. If Lender has grounds to suspect or receives notice that a Hazardous Substance or other environmental condition violates or threatens to violate any Environmental Law, or if an Event of Default exists, Lender, its environmental consultant, and any

# UNOFFICIAL COPY

other person or entity designated by Lender, including any receiver and any representative of a governmental entity, will have the right, but not the obligation, after notice to Borrower, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including conducting any environmental assessment or audit of the Property or portions thereof to confirm Borrower's compliance with the provisions of this Article 12, and Borrower will cooperate in all reasonable ways with Lender in connection with any such audit. Such audit will be performed in a manner so as to minimize interference with the conduct of business at the Property. If such audit is performed while an Event of Default exists or if such audit discloses that a violation of or a liability under any Environmental Law exists or if such audit was required or prescribed by law, regulation or governmental or quasi-governmental authority, Borrower will pay all costs and expenses incurred in connection with such audit; otherwise, the costs and expenses of such audit will be paid by Lender.

## ARTICLE 13

### INDEMNIFICATION

Section 13.1 Definitions. "Indemnified Parties" means Lender and any person or entity who is or will have been involved in the origination of this Loan, any person or entity who is or will have been involved in the servicing of this Loan, any person or entity in whose name the encumbrance created by this Security Instrument is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in this Loan as well as the respective directors, officers, shareholders, members, partners, employees, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including any other person or entity who holds or acquires or will have held a participation or other full or partial interest in this Loan or the Property, whether during the term of this Loan or as a part of or following a foreclosure of this Loan and including any successors by merger, consolidation or acquisition of all or a substantial portion of Lender's assets and business). "Losses" means any and all claims, suits, liabilities (including strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, or punitive damages, of whatever kind or nature (including attorneys' fees and other costs of defense).

Section 13.2 Security Instrument and/or Intangible Tax. Borrower will, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax on the making and/or recording of this Security Instrument, the Note or any of the Other Security Documents or in connection with a transfer of all or a portion of the Property pursuant to a foreclosure deed in lieu of foreclosure or otherwise.

Section 13.3 Environmental Indemnification. Each of the Borrower and the Principal Affiliates, jointly and severally, will indemnify, defend and save Lender harmless from any and all Losses of any kind, including those arising from injury to any person, including death, damage to or loss of use or value of real or personal property, and costs of Remediation, which may arise in connection with the presence of Hazardous Substances in, on, under, at, around or above the Property (including any claim by an adjacent owner), the contamination of the Property by any Hazardous Substances at any time whether or not such contamination was caused or permitted by Borrower, or the failure to comply with applicable Environmental Requirements. The indemnification obligations with respect to Hazardous Substances shall survive repayment of the Loan and release of this Security Instrument.

# UNOFFICIAL COPY

Section 13.4 Duty to Defend; Attorneys' Fees and Other Fees and Expenses. Upon written request by any Indemnified Party, Borrower will defend such Indemnified Party (if requested by any Indemnified Party, in the name of the Indemnified Party) by attorneys and other professionals approved by the Indemnified Parties. Notwithstanding the foregoing, any Indemnified Parties may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Indemnified Parties, their attorneys will control the resolution of claim or proceeding. Upon demand, Borrower will pay or, in the sole and absolute discretion of the Indemnified Parties, reimburse, the Indemnified Parties for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

## ARTICLE 14

### WAIVERS

Section 14.1 Waiver of Counterclaim. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with this Security Instrument, the Note, any of the Other Security Documents, or the Obligations.

Section 14.2 Marshaling and Other Matters. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Applicable Law.

Section 14.3 Waiver of Notice. To the extent permitted by Applicable Law, Borrower will not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 14.4 Waiver of Statute of Limitations. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Debt or performance of its Other Obligations.

Section 14.5 Sole Discretion of Lender. Wherever pursuant to this Security Instrument (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, will be in the sole and absolute discretion of Lender and will be final and conclusive, except as may be otherwise expressly and specifically provided herein.

Section 14.6 Waiver of Trial By Jury. BORROWER HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR



# UNOFFICIAL COPY

OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THE NOTE, THIS SECURITY INSTRUMENT OR THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

## ARTICLE 15

### LIMITED RECOURSE

Section 15.1 Limited Recourse. Notwithstanding anything to the contrary contained in this Security Instrument or in any Other Security Document (but subject to the provisions of Sections 15.2, 15.3, 15.4 and 15.5), Lender will not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note or this Security Instrument by any action or proceeding to collect damages or wherein a money judgment or any deficiency judgment or order or any judgment establishing any personal obligation or liability is sought against Borrower or any principal director, officer, employee, beneficiary, shareholder, partner, manager, member, trustee, agent or affiliate of Borrower or any person owning, directly or indirectly, any legal or beneficial interest in Borrower, or any successors or assigns of any of the foregoing (collectively, the "Exculpated Parties"). Lender may bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable Lender to enforce and realize upon this Security Instrument, the Other Security Documents, and the interest in the Property, the Rents and any other collateral given to Lender created by this Security Instrument and the Other Security Documents; provided, however, subject to the provisions of Sections 15.2, 15.3, 15.4 and 15.5, that any judgment in any action or proceeding will be enforceable against Borrower only to the extent of Borrower's interest in the Property, in the Rents and in any other collateral, if any, given to Lender in connection with the Note. Lender, by accepting the Note and this Security Instrument, agrees that it will not, except as otherwise provided below, sue for or demand any deficiency judgment against Borrower or any of the Exculpated Parties in any action or proceeding, under or by reason of or under or in connection with the Note, the Other Security Documents or this Security Instrument.

Section 15.2 Reservation of Certain Rights. The provisions of Section 15.1 will not (a) constitute a waiver, release or impairment of the Obligations; (b) impair the right of Lender to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Security Instrument; (c) affect the validity or enforceability of any indemnity, guaranty, master lease or similar instrument made in connection with the Note, this Security Instrument, or the Other Security Documents; (d) impair the right of Lender to obtain the appointment of a receiver; or (e) impair the enforcement of the Assignment of Leases and Rents executed in connection herewith.

Section 15.3 Exceptions to Limited Recourse. Notwithstanding the provisions of Article 15.1 to the contrary, Lender is entitled to commence and maintain an action against Borrower or any Principal Affiliate;

- (a) to exercise rights and remedies and/or perfect a lien or security interest against the Property;
- (b) to recover for any breach or default of or upon any guarantee, warranty or indemnity (including, without limitation, the Environmental Indemnity of even date herewith) executed by Borrower or any Principal Affiliate;
- (c) to recover an amount equal to the aggregate of the following:



# UNOFFICIAL COPY

(i) all rents, issues, profits and/or proceeds from the Property after the occurrence of an Event of Default which are applied other than in repayment of the Note or to reasonable operating costs related to the Property and paid to third parties unaffiliated with Borrower or with any Principal Affiliate;

(ii) all security, advance rental, lease termination or other deposits paid by tenants or managers of the Property and any interest accrued or due thereon, which are not, immediately after the occurrence of an Event of Default, turned over to Lender;

(iii) all insurance proceeds or condemnation awards which are applied other than in repayment of the Note or restoration of the Property or kept in accordance with the Security Documents, or in the case of rent loss insurance proceeds only, applied other than in payment of reasonable operating costs related to the Property and paid to third parties unaffiliated with Borrower or with any Principal Affiliate;

(iv) all losses incurred by Lender as a result of the failure to insure the Property as required by the terms of this Security Instrument or the Other Security Documents;

(v) all losses incurred by Lender as a result of: (A) any illegal, intentional or grossly negligent act or omission which results in the waste of, damage to, or impairment in value of the Property; (B) fraud or conversion; or (C) any false or misleading representation contained in the Commitment, this Security Instrument or in the Other Security Documents;

(vi) all outstanding taxes, assessments or other liens upon or against any of the Property which have not been paid or discharged, plus all penalties, interest, legal fees and other costs reasonably incurred and actually paid by Lender to pay or discharge the same, in the case where rents, issues, profits and/or proceeds from the Property were sufficient to pay or discharge the same (or Lender is not notified in advance to the contrary);

(vii) the cost incurred by Lender to:

(A) maintain and repair the Property to the standard required by the terms of this Security Instrument or the Other Security Documents if such standard has not been met by Borrower; or

(B) perform Borrower's obligations under Leases;

in each case, to the extent the rents, issues, profits and/or proceeds from the Property were sufficient to satisfy the costs of repair, maintenance and performance but not so applied (or Lender is not notified in advance to the contrary);

(viii) all costs and expenses incurred by Lender (including, without limitation, legal fees and costs):

(A) to enforce the obligations of Borrower or a Principal Affiliate under this Article 15;

(B) to foreclose, obtain appointment of a receiver, sell or take any other proceeding to enforce or collect the Note, this Security Instrument or the Other Security Documents and/or realize upon the Property, or in connection with any bankruptcy proceeding or application for arrangement or reorganization brought by or against Borrower or any Principal Affiliate, if

# UNOFFICIAL COPY

(1) Borrower or any Principal Affiliate hinders or contests, or causes another to hinder or contest, such proceedings; and (2) Lender prevails in such proceedings.

This limited recourse provision and the limitations on Lender's rights hereunder shall be null and void if and to the extent: (1) any part or all of the Property is lost due to forfeiture for any reason; or (2) in the event of a violation of the terms of this Security Instrument and the Other Security Documents relating to the sale, transfer or encumbering of the Property, the Borrower, or any interest in either, unless consented to in writing by Lender; with the effect in either case that Lender will have full recourse against any and all assets of Borrower and/or any Principal Affiliate without the restrictions or limitations of Section 15.1.

Section 15.4 Recourse. Notwithstanding the foregoing, the agreement of Lender not to pursue recourse liability as set forth in Section 15.1 above WILL BECOME NULL AND VOID and will be of no further force and effect in the event (a) the Property or any part thereof becomes an asset in (i) a voluntary bankruptcy or insolvency proceeding, or (ii) an involuntary bankruptcy or insolvency proceeding commenced by any Person (other than Lender) which is not dismissed within ninety (90) days of the filing thereof; (b) the Property or any part thereof is lost due to forfeiture for any reason not caused solely by Lender; (c) of a violation of the terms of the Security Documents relating to the sale, transfer or encumbrance of the Property by Borrower or any Principal Affiliate unless consented to in writing by Lender; with the effect that, in either case, Lender will have full recourse against any and all assets of Borrower and any Principal Affiliate without the restrictions or limitations of this Article 15.

Section 15.5 Bankruptcy Claims. Nothing herein will be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Debt secured by this Security Instrument or to require that all collateral will continue to secure all of the Debt owing to Lender in accordance with the Security Documents.

## ARTICLE 16

### NOTICES

Section 16.1 Notices. All notices or other written communications hereunder will be deemed to have been properly given if made in writing (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (b) one Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) Business Days after having deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Borrower:

James W. Wolfenson  
14535 John Humphrey Drive  
Suite 101  
Orland Park, IL 60462  
Fax: 708/460-6967

# UNOFFICIAL COPY

If to Lender: The Manufacturers Life Insurance  
Company (U.S.A.)  
200 Bloor Street East  
Toronto, Ontario Canada M4W 1E5  
Attention: U.S. Mortgage Department  
Loan Number: 841940  
Fax No. (416) 926-5921

With copies to: Manulife Financial  
20 North Wacker Drive  
Suite 1616  
Chicago, IL 60606  
Attn: Mr. Anthony J. Giannini  
Fax No. (312) 795-0069

and

Rothschild, Barry & Myers  
55 West Monroe Street  
Suite 3900  
Chicago, Illinois 60603  
Attn: Jonathan E. Rothschild  
Fax No. (312) 372-2350

or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. "Business Day" means a day on which commercial banks are not authorized or required by law to close in Illinois.

## ARTICLE 17

### APPLICABLE LAW

Section 17.1 Choice of Law. THIS SECURITY INSTRUMENT WILL BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS AND THE APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

Section 17.2 Usury Laws. This Security Instrument and the Note are subject to the express condition that at no time will Borrower be obligated or required to pay interest on the Debt at a rate which could subject the holder of the Note to either civil or criminal liability as a result of being in excess of the maximum interest rate which Borrower is permitted by applicable law to contract or agree to pay. If by the terms of this Security Instrument or the Note, Borrower is at any time required or obligated to pay interest on the Debt at a rate in excess of such maximum rate, the rate of interest under the Security Instrument and the Note will be deemed to be immediately reduced to such maximum rate and the interest payable will be computed at such maximum rate and all prior interest payments in excess of such maximum rate will be applied and will be deemed to have been payments in reduction of the principal balance of the Note. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt will, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum

# UNOFFICIAL COPY

lawful rate of interest from time to time in effect and applicable to the Debt for so long as the Debt is outstanding.

Section 17.3 Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Applicable Law.

Section 17.4 Inapplicable Provision. If any term of this Security Instrument or any application thereof is invalid or unenforceable, the remainder of this Security Instrument and any other application of the term will not be affected thereby.

## ARTICLE 18

### FUTURE ADVANCES

Section 18.1 Future Advances. This Security Instrument secures such future or additional advances (in addition to the principal amount of the Note) as may be made by Lender, at its exclusive option, to Borrower or its successors or assigns in title, for any purpose, to the same extent as if such future or additional advances were made on the date of the execution of this Security Instrument. The total amount of Debt secured by this Security Instrument may be increased or decreased from time to time, but the total unpaid balance so secured at any one time will not exceed the maximum principal amount of \$3,800,000.00 plus interest thereon and any disbursements made under the Security Instrument for the payment of impositions, taxes, assessments, levies, insurance, or otherwise, with interest on such disbursements. It is the intent of the parties that this Security Instrument will secure the payment of the Note and any additional advances made from time to time pursuant to any additional notes or otherwise, all of said indebtedness being equally secured hereby and having the same priority as any amounts advanced as of the date of this Security Instrument. It is agreed that any additional sum or sums advanced by Lender will be equally secured with, and have the same priority as, the original Debt and will be subject to all of the terms, provisions and conditions of this Security Instrument, whether or not such additional loans or advances are evidenced by other promissory notes of Borrower and whether or not identified by a recital that it or they are secured by this Security Instrument.

## ARTICLE 19

### COSTS

Section 19.1 Performance at Borrower's Expense. Borrower acknowledges and confirms that Lender will impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of its loans, (b) the release or substitution of collateral therefor, (c) obtaining certain consents, waivers and approvals with respect to the Property, or (d) the review of any Lease or proposed Lease or the preparation or review of any subordination, non-disturbance agreement (each an "Event"). Borrower will be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Lender or any governmental or quasi-governmental authority. Borrower agrees to pay, within ten (10) days after demand, all such fees (as the same may be increased or decreased from time to time), and any additional fees of a similar type or nature which may be imposed by Lender from time to time, upon the occurrence of any Event or otherwise. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses will include all reasonable legal fees and disbursements of Lender (whether of retained firms, the reimbursement for



# UNOFFICIAL COPY

the expenses of in-house staff or otherwise).

Section 19.2 Attorney's Fees for Enforcement. (a) Borrower will pay all legal fees incurred by Lender in connection with (i) the preparation of the Note, this Security Instrument and the Other Security Documents; and (ii) the items set forth in Section 19.1 above, and (b) Borrower will pay to Lender on demand any and all expenses, including legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Property or the Collateral or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property or the Collateral, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any default or Event of Default exists, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

## ARTICLE 20

### DEFINITIONS

Section 20.1 General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" will mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein"; the word "Lender" will mean "Lender and any subsequent holder of the Note"; the word "Note" will mean "the Note and any other evidence of indebtedness secured by this Security Instrument"; the word "person" will include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity; the word "Property" will include any portion of the Property and any interest therein; the phrases "attorneys' fees" and "counsel fees" will include any and all attorneys', paralegal and law clerk fees and disbursements, including fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights under this Security Instrument; and "including" will mean "including, without limitation" and "including, but not limited to."

Section 20.2 Headings, Etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

## ARTICLE 21

### MISCELLANEOUS PROVISIONS

Section 21.1 No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 21.2 Liability. If Borrower consists of more than one (1) person, the obligations and liabilities of each such person hereunder will be joint and several. This Security Instrument will be binding upon and inure to the benefit of Borrower and Lender and their respective subsidiaries, affiliates, successors and assigns forever.

Section 21.3 Duplicate Originals; Counterparts. This Security Instrument may be executed in any number of duplicate originals and each duplicate original will be deemed to be an original.

# UNOFFICIAL COPY

This Security Instrument may be executed in several counterparts, each of which counterparts will be deemed an original instrument and all of which together will constitute a single Security Instrument.

Section 21.4 Number and Gender. Whenever the context may require, any pronouns used herein will include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns will include the plural and vice versa.

Section 21.5 Entire Agreement. The Note, this Security Instrument and the Other Security Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Debt and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect thereto. Borrower hereby acknowledges that, except as incorporated in writing in the Note, this Security Instrument and the Other Security Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, this Security Instrument and the Other Security Documents.

Section 21.6 Assignment. At no cost to Borrower, Lender is entitled at any time and from time to time, without approval or notice, to assign, transfer or grant participation interests in all or any part or parts of the Loan, the Security Instrument or the Other Security Documents.

Section 21.7 Time of Essence. Time is of the essence hereof.

Section 21.8 Exculpation. This Mortgage is executed by Suburban Bank & Trust Co., as Successor Trustee to St. Paul Trust Company, as Successor Trustee to Beverly Trust Company, as Trustee U/T/A dated May 1, 1998, and known as Trust No. 74-2656 not personally, but in the exercise of the power and authority conferred upon and vested in it as such trustee (and said Suburban Bank & Trust Co., hereby warrants that it possesses full power and authority to execute the instrument) and it is expressly understood and agreed that nothing contained herein or in the Note, or in any other instrument given to evidence the indebtedness secured hereby shall be construed as creating any liability on the part of said mortgagor or grantor, or on said Suburban Bank & Trust Co., personally, to pay said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either impress or implied, herein contained, all such liability, if any, being hereby expressly waived by the legal owners or holders of the Note, and by every person now or hereafter claiming any right or security hereunder, and that so far as the mortgagor or grantor and said Suburban Bank & Trust Co., personally are concerned, the legal holders of the Note and owner or owners or any indebtedness accruing hereunder shall look solely to the premises hereby mortgaged or conveyed for the payment thereof by the enforcement of the lien created in the manner herein and in said Note provided or by action to enforce the personal liability of the guarantor or guarantors, if any. Trustee does not warrant, indemnify, defend title nor is it responsible for any environmental damage.

IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by Borrower as of the date first above written.

# UNOFFICIAL COPY

**BORROWER:**

**Suburban Bank & Trust Co., as Successor  
Trustee to St. Paul Trust Company, as Successor  
Trustee to Beverly Trust Company, as Trustee  
U/T/A dated May 1, 1998, and known as Trust  
No. 74-2656**

By: Rosemary Mazur  
Name: ROSEMARY MAZUR  
Its: VICE PRESIDENT

Property of Cook County Clerk's Office

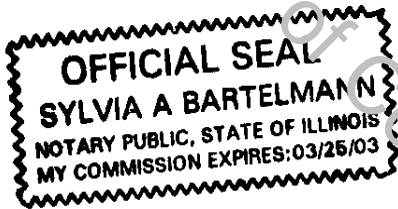
# UNOFFICIAL COPY

## ACKNOWLEDGMENT

STATE OF ILLINOIS        )  
                                  )  
COUNTY OF COOK        )        SS.

I, SYLVIA A. BARTELMANN, a Notary Public in and for said County, in the State aforesaid, do hereby certify that ROSEMARY MAZUR the VICE PRESIDENT of Suburban Bank & Trust Co., not personally, but solely as Trustee as aforesaid, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such VICE PRESIDENT, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 12<sup>th</sup> day of December, 2002.



*Sylvia A. Bartelmann*  
NOTARY PUBLIC

My Commission expires:

3-25-03



# UNOFFICIAL COPY

## EXHIBIT A

LOTS 2 AND 3 IN YANKEE SUBDIVISION BEING A SUBDIVISION OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 10, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address: 14535 John Humphrey Drive, Orland Park, IL 60462

PIN: 27-10-100-094

Property of Cook County Clerk's Office

21452856