

③ 02-05762

COMMERCIAL MORTGAGE UNOFFICIAL COPY



THIS MORTGAGE made this 2<sup>nd</sup> day of January 2003 by Anthony J. Iuliano and Mary A. Iuliano (herein called "Mortgagor"), to Sterling Spring, L.L.C., an Illinois limited liability corporation, with an office located at 5432 West 54<sup>th</sup> Street, Chicago, Illinois 60638 (herein called "Mortgagee").

WHEREAS, Mortgagor has concurrently herewith, executed and delivered to Mortgagee a mortgage note in the original principal amount of Five Hundred Fifty Thousand Dollars (\$550,000.00) dated January 2, 2003 (the "Note"), which evidences the loan facility relating to, among other things, the premises, as defined below.

WHEREAS, the indebtedness evidenced by the Note, including the principal thereof and interest and premium, if any, thereon, and any amendments, extensions, modifications and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as provided herein or in the Note, are hereinafter called the "Liabilities".

NOW, THEREFORE, to secure payment of the Liabilities and in consideration of One Dollar (\$1.00) in hand paid, receipt whereof is hereby acknowledged, Mortgagor does hereby grant, remise, release, alien, convey, mortgage and warrant to Mortgagee, its successors and assigns, the real estate legally described on Exhibit A attached hereto and made a part hereof, which real estate, together with the property described in the next succeeding paragraph is herein called the "premises";

TOGETHER WITH all right, title and interest, including the right of use or occupancy, which Mortgagor may now have or hereafter acquire in and to (a) any lands occupied by streets, alleys or public places adjoining said premises or in such streets, alleys or public places; (b) all improvements, tenements hereditaments, gas, oil, minerals, easements, fixtures and appurtenances, and all other rights and privileges thereunto belonging or appertaining; (c) all apparatus, machinery, equipment, and appliances (whether single units or centrally controlled) of Mortgagor now or hereafter used to supply heat, gas, air conditioning, water, light, power, ventilation or refrigeration; (d) all screens, window shades, blinds, wainscoting, storm doors and windows, floor coverings and awnings of Mortgagor; (e) all apparatus, machinery, equipment and appliances of Mortgagor used or useful for or in connection with the maintenance and operation of said real estate or intended for the use or convenience of tenants, other occupants, or patrons thereof; (f) all replacements and substitutions for the foregoing whether or not any of the foregoing is or shall be on or attached to said real estate; and (g) all proceeds or the foregoing. It is mutually agreed, intended, and declared, that all of the aforesaid property owned by Mortgagor shall, so far as permitted by law, be deemed to form a part and parcel of said real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage.

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It is also agreed that if any of the property herein mortgaged is a fixture or of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a fixture filing or a Security Agreement, as the case may be, and Mortgagor agrees to execute, deliver and file or refile any financing statement, or other instruments Mortgagee may require from time to time to perfect or renew such security interest under the Uniform Commercial Code.

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As additional security for the Liabilities secured hereby, Mortgagor does hereby pledge and assign to Mortgagee from and after the date hereof (including any period of redemption), primarily and on a parity with said real estate, all the rents, issues and profits of the premises and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent for security or as earnest money or as down payment for the purchase of all or any part of the premises) under any and all present and future leases, contracts or other agreements relative to the ownership or occupancy of all or any portion of the premises and does hereby transfer and assign to Mortgagee all such leases and agreements (including all Mortgagor's rights under any contracts for the sale of any portion of the premises). Mortgagor agrees not to procure or accept the prepayment of any rents or other income from the premises for more than one month, except with the prior written consent of the Mortgagee. Mortgagor further agrees to execute and deliver such assignments of leases or assignments of land purchase contracts as Mortgagee may from time to time request. In the event of a default under the Note or this Mortgage, (1) Mortgagor agrees, upon demand, to deliver to the Mortgagee all leases, land purchase contracts and other agreements of the ownership or occupancy of any part of the premises, with such additional assignments thereof as Mortgagee may request and agrees that Mortgagee may assume the management of the premises and collect the rents and other income therefrom, applying the same upon the Liabilities and (2) Mortgagor hereby authorizes and directs all tenants, purchasers or other persons occupying or otherwise acquiring any interest in any part of the premises to pay all rents and other income due under said leases and agreements to Mortgagee upon request of Mortgagee. Mortgagor hereby appoints Mortgagee as its true and lawful attorney in fact to manage said property and collect the rents and other income, with full power to bring suit for collection of said rents and possession of said property, giving and granting unto said Mortgagee and unto its agent or attorney full power and authority to do and perform each and every act and thing whatsoever requisite and necessary to be done in the protection of the security hereby conveyed; provided, however, that this power of attorney and assignment of rents shall not be construed as an obligation upon said Mortgagee to make or cause to be made any repairs that may be needful or necessary and further provided, that this power of attorney shall not be exercised by Mortgagee until such time as an event of default has occurred hereunder or under the Note. Mortgagee shall receive such rents and other income of said premises, out of which it shall pay: (1) reasonable charges for collection hereunder, costs assignment of rents, (2) general and special taxes, insurance premiums and all of the Liabilities. This power of attorney and assignment of rents shall be irrevocable until this Mortgage shall have been satisfied and released of record and the releasing of this Mortgage shall act as a revocation of this power of attorney and assignments of rents shall be irrevocable until this Mortgage shall have been satisfied and released of rents. Mortgagee shall have and hereby expressly reserves the right and privilege (but assumes no obligation) under any and all oil, gas, or mineral leases of the premises, or any part thereof, now existing or hereafter made, and apply the same upon the Liabilities hereby secured, either before or after default hereunder.

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

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TO HAVE AND TO HOLD the premises, properties, rights and privileges hereby conveyed or assigned, unto Mortgagee, its successor and assigns, forever for the uses and purposes herein set forth. Mortgager hereby releases and waives all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois. Mortgagor is well seized of said real estate and premises in fee simple, and with full legal and equitable title to same, and that it is free and clear of encumbrances, except for the encumbrances as listed on **Exhibit B** attached hereto and incorporated herein ("Permitted Exceptions"). Mortgagor will forever defend the premises against all lawful claims in connection therewith.

The following provisions shall constitute an integral part of this Mortgage: covenants and agreements on Mortgagor's part to be performed or observed as provided in the Note, this Mortgage and all other documents which evidence, secure or guarantee the Liabilities.

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

(a) Mortgagor is duly authorized to execute and deliver this Mortgage and to perform the transactions contemplated herein.

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

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

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

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

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(f) Mortgagor has made a physical investigation of the premises and such other inquiry as may be reasonable, including, but not limited to the previous uses of the premises, and to the best of Mortgagor's knowledge no Hazardous Substances (as defined in section 2(c) hereof) are present on or affect the premises.

(g) Mortgagor's use and operation of the premises complies with all applicable zoning laws, regulations and ordinances (including health and safety laws). The premises are zoned to permit the current operation and use of the premises.

## 2. Maintenance, Repair, Compliance with Law, etc.

(a) Mortgagor agrees: (i) not to abandon the premises; (ii) to keep the premises in good, safe and insurable condition and repair and not to commit or suffer waste; and (iii) to refrain from impairing or diminishing the value of this Mortgage.

(b) Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any (i) material alterations of the premises except as required by law or ordinance; (ii) change in the intended use or occupancy of the premises for which the improvements were constructed, including without limitation any change which would increase any fire or other hazard; (iii) zoning reclassification with respect to the premises; (iv) unlawful use of, or nuisance to exist upon, the premises; (v) granting of any easements, licenses, covenants, conditions and declaration of use against the premise; or (vi) executions by Mortgagor of any leases.

(c) Mortgagor agrees not to cause or permit any toxic or hazardous substance or waste, or underground storage tanks, or any other pollutants which violate any local, state or federal laws or regulations (collectively, "Hazardous Substances"). If Mortgagee determines that Hazardous Substances either do or may exist at the premises, or in the event Hazardous Substances are present on or affect the premises, Mortgagor agrees to indemnify, defend and save Mortgagee, its successors and assigns, harmless, from and against the following: (i) any liability (loss), cost, damage or expense (including, without limitation, attorneys' fees and expenses) arising from the imposition or recording of a lien, the incurrence of any clean-up and removal costs or penalties under any hazardous waste, environmental protection, spill compensation, clean air and water, or other local, state or federal law (collectively, the "Environmental Laws") with respect to the premises, or to any other real or personal property owned by Mortgagor or liability to any third party in connection with any violation of the Environmental Laws or other action by Mortgagor or its agents, and (ii) any loss of value in the premises as a result of any such lien, such clean-up and removal costs, or such other liability incurred pursuant to (i) above, and (iii) any liability, loss, cost, damage or expense arising from any failure or defect in title occasioned by any of the applicable Environmental Laws.

## 3. Taxes, Liens.

(a) Mortgagor agrees to pay, not later than the due date and before any penalty or interest attaches, all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed or imposed on or against the premises and, at the request of Mortgagee, to exhibit



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to Mortgagee, official receipts evidencing such payments. As additional security for the loan, Mortgagor covenants and agrees to deposit at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee commencing on the first day of the first month following execution hereof, and on the first day of each month thereafter until the indebtedness secured by this Mortgage is fully paid, and all other obligations secured by this Mortgage are fully discharged, a sum equal to one-twelfth of the last total annual taxes and assessments for the last ascertainable year (general and special) on the premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). In addition, Mortgagor shall, except as hereinafter provided, concurrently with the disbursement of the loan evidenced by they Note and secured hereby, also deposit with Mortgagee an amount, based upon the taxes and assessments so ascertainable or so estimated by Mortgagee, as the case may be, for taxes and assessments on the Premises, on an accrual basis, for the period from January 1 of the year in which said loan was initially disbursed to and including the date of the first deposit in this paragraph hereinabove mentioned. Such deposits are to be held without any allowance of interest and need not be kept separate and apart, and are to be used for the payment of taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on subsequent deposit or deposits.

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

4. **Changes in Tax Laws.** Mortgagor agrees that, if the United States or the State of Illinois or any of their subdivisions having jurisdiction shall levy, assess, or charge any tax, assessment or imposition upon this Mortgage or the credit or indebtedness secured hereby or the interest of Mortgagee in the premises or upon Mortgagee by reason of or as holder of any of the foregoing then, Mortgagor shall promptly pay or reimburse Mortgagee for such taxes, assessments or impositions not later than the due date thereof.

5. **Restrictions on Transfer.** Mortgagor shall not, without the prior written consent of Mortgagee, create, effect, contract for, consent to, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing), whether direct or indirect, voluntarily or involuntarily, by operation of law or otherwise, of any interest in Mortgagor or the premises which occurs, is granted, accomplished, attempted or effectuated shall constitute a "Prohibited Transfer".

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Mortgagor acknowledges that Mortgagee shall be under no obligation to consent to any of the foregoing Prohibited Transfers and that any such consent may be subject to changes in the applicable interest rate charged in the Note, the imposition of a fee or to such other modifications to the terms and conditions in the Note, this Mortgage or any other security documents as Mortgagee in its sole discretion may determine.

## 6. Insurance.

(a) Mortgagor agrees to maintain in force at all times: (i) casualty, fire and extended coverage insurance (including, without limitation, windstorm, earthquake, explosion, flood and such other risks usual insured against by owners of like properties) on the premises in an amount not less than one hundred percent (100%) of the full insurable value of the mortgaged premises; (ii) comprehensive public liability against death, bodily injury and property damage not less than \$2,000,000 combined single limit for personal injury and property damage; (iii) boiler and machinery insurance; (iv) rental or business interruption insurance in amounts sufficient to pay, for a period of up to twelve (12) months, all amounts required to be paid by Mortgagor pursuant to the Note and this Mortgage; and (v) the types and amounts of insurance that are customarily maintained by owners or operators of like properties.

(b) All insurance required hereunder shall be with companies reasonably satisfactory to Mortgagee and in form, amounts and with coverage and deductibles reasonably satisfactory to Mortgagee and with a mortgagee's loss payable clause attached naming Mortgagee as mortgagee and as an additional insured. All companies shall have a Best Insurance Guide rating of "A-VIII" or better and shall be qualified to do business in the state in which the premises is located. All policies required hereunder shall provide that the insurance evidenced thereby shall not be canceled or modified without at least thirty (30.00) days' prior written notice from the insurance carrier to Mortgagee and shall provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Mortgagee. Mortgagor shall deliver renewal certificates of all insurance required hereunder, together with written evidence of full payment of the annual premiums therefor, at least thirty (30.00) days prior to the expiration of the existing insurance.

(c) Mortgagor shall notify Mortgagee, in writing, of any loss to the premises covered by insurance in excess of \$25,000.

(d) Upon the occurrence of any damage to or destruction of any improvements on the premises, in excess of \$25,000 ("Major Casualty"), provided Mortgagee permits the proceeds of insurance to be used for repairs, Mortgagor shall cause same to be restored, replaced or rebuilt as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such restoration, replacement or rebuilding shall be effected promptly and Mortgagor shall notify the Mortgagee if it appears that such restoration, replacement or rebuilding shall be unduly delayed. Any amounts required for repairs in excess of insurance proceeds shall be paid by Mortgagor.

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(e) Following a Major Casualty, the net insurance proceeds received by the Mortgagee under the provisions of this Mortgage or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the premises or any part thereof shall be applied by the Mortgagee, as its option, to the prepayment of the Note (whether or not the same is then due or otherwise adequately secured) or for restoration of such improvements (in which event the Mortgagee shall not be obligated to supervise restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Note). If Mortgagee elects to permit the use of insurance proceeds to restore such improvements it may do all necessary acts to accomplish that purpose including using funds deposited by Mortgagor with it for any purpose and advancing additional funds, all such additional funds to constitute part of the indebtedness secured by the Mortgage or Mortgagee may require Mortgagor to make such repairs and restoration pursuant to Paragraph 6(d). If Mortgagee elects to make the insurance proceeds available for the purpose of effecting such a restoration, any excess of insurance proceeds above the amount necessary to complete such restoration shall be applied as and for a prepayment of the Note. Notwithstanding the foregoing provisions, Mortgagee agrees that net insurance proceeds shall be made available for the restoration of the portion of the premises damaged or destroyed if written application for such use is made within sixty (60.) days after receipt of such proceeds and the following conditions are satisfied: (i) no Default shall have occurred or be continuing hereunder (and if such an event shall occur during restoration Mortgagee may, at its election, apply any insurance proceeds then remaining in its hands to the reduction of the indebtedness evidenced by the Note and the other indebtedness hereby secured), (ii) if the cost of repairs exceeds \$25,000 Mortgagor shall have submitted to Mortgagee Plans and specifications for the restoration which shall be satisfactory to it in Mortgagee's reasonable judgment, (iii) Mortgagor shall have submitted to Mortgagee evidence reasonably satisfactory to materialmen covering all work and materials necessary to complete restoration), that the cost to complete restoration is not in excess of the amount of insurance proceeds available for restoration, or, if a deficiency shall exist, Mortgagor shall have deposited the amount of such deficiency with Mortgagee, (iv) Mortgagor shall have obtained a waiver of the right of subrogation from any insurer under such policies of insurance, and (v) in Mortgagee's judgment, all restoration can be completed within thirty (30.00) days prior to the maturity date of the Note. Any insurance proceeds to be released pursuant to the foregoing provisions may, at the option of Mortgagee, be disbursed from time to time as restoration progresses to pay for restoration work completed and in place and such disbursements shall be disbursed in such manner as Mortgagee may reasonably determine. Mortgagee may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the restoration work free and clear of all liens or claims for lien. Mortgagee may deduct any such costs and expenses from insurance proceeds at any time held by Mortgagee. No interest shall be payable to Mortgagor upon insurance proceeds held by Mortgagee.

(f) Mortgagor shall provide Mortgagee a copy of all certificates and receipts for premiums in connection with the insurance described in Paragraph 6(a) above upon Mortgagee's request therefor.

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

8. **Stamp Tax.** Mortgagor agrees that, if the United States Government or any department, agency or bureau thereof or the State of Illinois or any of its subdivisions shall at any time require documentary stamps to be affixed to the Mortgagee, and Mortgagor agrees to indemnify Mortgagee against liability on the account of such documentary stamps, whether such liability arises before or after payment of the Liabilities and regardless whether this Mortgage shall have been released.

9. **Leases.** Mortgagor agrees faithfully to perform all of its obligations under all present and future leases or other agreements relative to the occupancy of the premises at any time assigned to Mortgagee by separate instrument as additional security, and to refrain from any action or inaction which would result in termination of any such leases or agreements or in the diminution of the value thereof or of the rents or revenues due thereunder. Mortgagor further agrees that any lease of the premises made after the date of recording of this Mortgage shall contain a covenant to the effect that such lessee shall, at Mortgagee's option, agree to attorn to Mortgagee as lessor and, upon demand, to pay rent to Mortgagee.

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

11. **Condemnation.** Mortgagor agrees that, if at any time it shall become aware of the institution of condemnation proceedings against the premises or any part thereof, it shall immediately inform Mortgagee of the pendency of such proceedings. Mortgagee may, at its option, participate in such proceedings, and Mortgagor agrees to provide Mortgagee with any evidence that Mortgagee may seek in connection with such proceedings. Mortgagor hereby assigns to Mortgagee, as additional security, all awards of damage resulting from condemnation proceedings or the taking of or injury to the premises for public use, and Mortgagor agrees that the proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all its expenses in connection with such proceedings, including reasonable attorneys' fees and expenses, to the reduction of the Liabilities hereby secured, and Mortgagee is hereby authorized, on behalf of and in the name of Mortgagor, to execute and deliver valid acquittance for and to appeal from any such award. Notwithstanding the foregoing, Mortgagee agrees that Mortgagee shall not apply the proceeds of any award made at such proceedings as and for payment on the Liabilities if the following conditions are satisfied: (i) the effect of such proceedings will not materially interfere with the ability of Mortgagor to utilize the premises; (ii) no Default shall have occurred and be continuing hereunder; and (iii) if the proceedings will result in a need to perform repairs upon the premises, the requirements listed in subparagraph (d) of Section 6 of the Mortgage concerning the application of insurance proceeds are satisfied.



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12. **Mortgagee's Performance of Mortgagor's Obligation.** Mortgagee agrees that, from and after the occurrence of a Default under this Mortgage, Mortgagee may, but need not, make any payment or perform any act hereinbefore required of Mortgagor, in any form and manner deemed expedient after the reasonable inquiry into the validity thereof. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not, (a) make full or partial payments of insurance premiums which are unpaid by Mortgagor, if any, and (b) purchase, discharge, compromise or settle any tax lien or any other lien, encumbrance, suit, proceeding or claim, or (c) redeem all or any part of the premises from any tax or assessment. All money paid for any of the purposes herein authorized and all other moneys advanced by Mortgagee to protect the premises and the lien hereof shall be additional Liabilities secured hereby and shall become immediately due and payable without notice and shall bear interest at the then applicable default interest rate under the Note ("Interest Rate") until paid to Mortgagee in full. In making any payment hereby authorized relating to taxes, assessments or prior or coordinate liens or encumbrances, Mortgagee shall be the sole judge of the legality, validity and priority thereof and of the amount necessary to be paid in satisfaction thereof.

13. **Inspection of Premises.** Mortgagee, or any person designated by Mortgagee in writing, shall have the right, from time to time hereafter, to call at the premises upon reasonable notice to Mortgagor.

14. **Default.** Any of the following occurrences or acts shall constitute an event of default under this Mortgage ("Default"): (i) the occurrence of a default under the Note which is not cured under applicable grace period, if any; (ii) the occurrence of a default under this Mortgage or any other security agreement securing the payment of the Note and such Default shall continue for thirty (30) days after written notice thereof from Mortgagee; (iii) Mortgagor (regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceedings, at law, in equity, or before any administrative tribunal, which have prevented or might have the effect of preventing Mortgagor from complying with the terms of this Mortgage) shall fail to observe or perform any of Mortgagor's covenants, agreements or obligations under this Mortgage, and such Default shall continue for thirty (30) days after written notice thereof from Mortgagee; (iv) a Default shall occur under any other document, agreement or instrument between Mortgagor and Mortgagee; (v) the occurrence of a Prohibited Transfer; or (vi) the premises or a substantial part thereof shall have been abandoned for thirty(30) consecutive days. If any such Default shall have occurred, then, to the extent permitted by applicable law, the following provisions shall apply:

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

(b) It shall be lawful for Mortgagee to immediately foreclose this Mortgage. The court in which any proceeding is pending for the purpose of foreclosure of this Mortgage may, at once or at any time thereafter, either before or after sale, without notice and without requiring bond, and without regard to the solvency or insolvency of any person liable for payment of the Liabilities secured hereby, and without regard to the then value of the premises or the occupancy thereof as a homestead, appoint a receiver (the provisions for the appointment of a receiver and assignment of rents being an express condition upon which the loan hereby secured is made) for the benefit of Mortgagee, with power to collect the rents, issues and profits of the premises, due and to become due, during such foreclosure suit and the full statutory period of redemption notwithstanding any

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redemption. The receiver, out of such rents, issues and profits when collected, may pay costs incurred in the management and operation of the premises, prior and necessary repairs to the premises, and may pay all or any part of the Liabilities or other sums secured hereby or any deficiency decree entered in such foreclosure proceedings.

(c) Mortgagee shall, at its option, have the right, acting through its agents or attorneys, with process of law to enter upon and take possession of the premises, expel and remove any persons, goods or chattels occupying or upon the same, to collect or receive all the rents, issues and profits thereof and to manage and control the same, and to lease the same or any part thereof, from time to time, and after deducting all maintenance, management and operation of the premises, apply the remaining net income upon the Liabilities or other sums secured hereby or upon any deficiency decree entered in any foreclosure proceedings.

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

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

(b) all other items advanced or paid by Mortgagee pursuant to this Mortgage, with interest thereon at the Interest Rate from the date of advertisement; and

(c) all court costs, attorneys' and paralegals' fees and expenses, appraiser's fees, advertising costs, notice expenses, expenditures for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title guarantees, title insurance policies, Torrens certificates and similar Liabilities secured hereby and immediately due and payable, with interest thereon at the Interest Rate, when paid or incurred by Mortgagee in connection with any proceedings, including but not limited to probate and bankruptcy proceedings, to which Mortgagee shall be a party, either as plaintiff, claimant or defendant, by reason of this Mortgage or any indebtedness hereby secured or in connection with the preparations for the commencement of any suit for the foreclosure, whether or not actually commenced, or sale by advertisement. The proceeds of any sale (whether through a foreclosure proceeding or Mortgagee's exercise of the power of sale) shall be distributed and applied to its items described in (a), (b) and (c) of this paragraph as Mortgagee may in its sole discretion determine, and any surplus of the proceeds of such sale shall be paid to Mortgagor.

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

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

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18. **Waiver of Right of Redemption and Reinstatement.** Mortgagor represents that it has been authorized to, and Mortgagor does hereby, waive (to the full extent permitted under Illinois law) any and all statutory or equitable rights of redemption from sale, for reinstatement or any other right under any "Moratorium Law" on behalf of Mortgagor and each and every person, except decree or judgment creditors of Mortgagor, acquiring any interest in or title to the premises subsequent to the date hereof.

19. **Representation of Title.** At the time of the delivery of these presents, the Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the premises which constitutes real property and owns good title to the portion of the premises which constitutes personal property and has good right, full power and lawful authority to convey and mortgage and grant a security interest in the same, in the manner and form aforesaid; that the same is fee and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, excluding Permitted Exceptions, and that Mortgagor shall and will forever defend the title to the premises against the claims of all persons whomsoever.

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

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

22. **Waiver of Jury Trial.** MORTGAGOR WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE SUBJECT MATTER OF THE NOTE OR THIS MORTGAGE. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY MORTGAGOR AND MORTGAGOR ACKNOWLEDGES THAT NEITHER MORTGAGEE NOR ANY PERSON ACTING ON BEHALF OF MORTGAGEE HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT.

23. **Miscellaneous.**

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

(b) Mortgagor certifies and agrees that the proceeds of the Note will be used for the purposes specified in Illinois Revised Statutes, Chapter 17, Section 6404 (or any substitute, amended or replacement statute), and that the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

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(c) Mortgagor agrees that this Mortgage is to be construed and governed by the laws of the State of Illinois. Wherever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Mortgage shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Mortgage.

(d) Upon full payment of all sums secured hereby or upon application on the Liabilities of the proceeds of any sale of the premises in accordance with the provisions of this Mortgage, at the time and in the manner provided, this conveyance shall be null and void and, upon demand therefore following such payment, a satisfaction of mortgage shall be provided by Mortgagee to Mortgagor.

(e) This Mortgage shall be binding upon the Mortgagor and upon the successors, assigns and vendees of the Mortgagor and shall inure to the benefit of the Mortgagee's successors and assigns. All references herein to the Mortgagor and to the Mortgagee shall be deemed to include their successors and assigns. Mortgagor's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession of or for the Mortgagor.

(f) All notices, demands, consents, requests, approvals, undertakings or other instruments required or permitted to be given in connection with this Mortgage shall be in writing and shall be sent by United States registered or certified mail, addressed to the [address shown on page one hereof, or such other] address as was last specified by either party in writing.

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

IN WITNESS WHEREOF, American National Bank and Trust Company of Chicago not personally but as Trustee as aforesaid, has caused these presents to be signed by one of its officers and its corporate seal to be hereunto affixed the day and year first above written.

Anthony J. Iuliano  
Anthony J. Iuliano

Mary A. Iuliano  
Mary A. Iuliano

STATE OF ILLINOIS )  
  ) SS  
COUNTY OF COOK )

Prepared by: Kienlen + Dietsch  
+ Mail to: 1776 S. Mapleville Rd  
#200  
Wheaton, Ill 60187

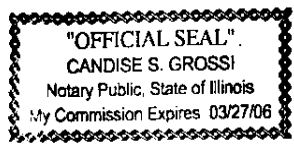
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I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify Anthony J. Iuliano and Mary A. Iuliano personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared as a free and voluntary act, for the uses and purposes therein set forth.



GIVEN under my hand and seal this 2nd day of January, 2003.

Candice S. Grossi  
NOTARY PUBLIC





E.N.A.  
SCHEDULE C  
**UNOFFICIAL COPY**

**PROPERTY DESCRIPTION**

The land referred to in this Commitment is described as follows:

**PARCEL 1: THE EAST 107.33 FEET (AS MEASURED ON THE NORTH AND SOUTH LINES) OF THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF SOUTH NEW ENGLAND AVENUE (AS DEDICATED BY INSTRUMENT RECORDED SEPTEMBER 23, 1957 AS DOCUMENT 17017838) WITH THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 18; THENCE NORTHERLY ALONG SAID WEST RIGHT OF WAY LINE OF SOUTH NEW ENGLAND AVENUE, A DISTANCE OF 23.0 FEET; THENCE WESTERLY ALONG A LINE 23.0 FEET NORTH OF (AS MEASURED PARALLEL WITH AND PERPENDICULAR TO) SAID SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 18, A DISTANCE OF 260.0 FEET FOR A PLACE OF BEGINNING; THENCE CONTINUING WESTERLY ALONG THE LAST DESCRIBED LINE, A DISTANCE OF 228.65 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SOUTH SAYRE AVENUE AS SHOWN ON PLAT RECORDED OCTOBER 16, 1962 AS DOCUMENT 18618830; THENCE NORTHERLY ALONG SAID EAST LINE OF SOUTH SAYRE AVENUE, A DISTANCE OF 200.0 FEET; THENCE EASTERLY ALONG A LINE PARALLEL WITH SAID SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 18 A DISTANCE OF 228.91 FEET TO A POINT 260.0 FEET WEST OF SAID WEST RIGHT OF WAY LINE OF SOUTH NEW ENGLAND AVENUE; THENCE SOUTHERLY ALONG A LINE PARALLEL WITH SAID WESTERLY RIGHT OF WAY LINE OF SOUTH NEW ENGLAND AVENUE, A DISTANCE OF 200.0 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.**

**PARCEL 2: THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF SOUTH NEW ENGLAND AVENUE (AS DEDICATED BY INSTRUMENT RECORDED SEPTEMBER 23, 1957 AS DOCUMENT NUMBER 17017838) WITH THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 18; THENCE NORTHERLY ALONG SAID WEST RIGHT OF WAY LINE OF SOUTH NEW ENGLAND AVENUE, A DISTANCE OF 23.0 FEET; THENCE WESTERLY ALONG A LINE 23.0 FEET NORTH OF (AS MEASURED PARALLEL WITH AND PERPENDICULAR TO) SAID SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 18, A DISTANCE OF 260.0 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING WESTERLY ALONG THE LAST DESCRIBED LINE, A DISTANCE OF 228.65 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF SOUTH SAYRE AVENUE AS SHOWN ON PLAT RECORDED OCTOBER 16, 1962 AS DOCUMENT NUMBER 18618830; THENCE NORTHERLY ALONG SAID EAST LINE OF SOUTH SAYRE AVENUE, A DISTANCE OF 200.00 FEET; THENCE EASTERLY ALONG A LINE PARALLEL WITH SAID SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH EAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 18, A DISTANCE OF 228.91 FEET TO A POINT 260.0 FEET WEST OF SAID RIGHT OF WAY LINE OF SOUTH NEW ENGLAND AVENUE; THENCE SOUTHERLY ALONG A LINE PARALLEL WITH SAID WESTERLY RIGHT OF WAY LINE OF SOUTH NEW ENGLAND AVENUE, A DISTANCE OF 200.0 FEET TO THE POINT OF BEGINNING (EXCEPT THE WEST 14 FEET OF SAID TRACT, AND EXCEPT THE EAST 107.33 FEET AS MEASURED ON THE NORTH AND SOUTH LINES THEREOF OF SAID TRACT), IN COOK COUNTY, ILLINOIS.**

PIN # 19-18-302-028-0000  
19-18-302-029-0000

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## EXHIBIT B

*PARTY WALL ALONG THE EAST LINE OF THE LAND AS DISCLOSED BY SURVEY DATED OCTOBER 19, 1981  
BY HOWARD E. BRAASCH, ILLINOIS REGISTERED LAND SURVEYOR.*

Property of Cook County Clerk's Office

30042168