



Drafted by and when recorded return to:
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8/10/2019 Drafted

AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT,
ASSIGNMENT OF RENTS AND LEASES,
FIXTURE FILING AND FINANCING STATEMENT

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THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND LEASES, FIXTURE FILING AND FINANCING STATEMENT ("Mortgage") is made and granted this 31 day of January, 2003, by ~~LASALLE BANK/NBD~~ ^{National Association,} as Successor Trustee to NBD Bank, as Successor Trustee to NBD Trust Company of Illinois, not personally but as Trustee under Trust Agreement dated May 5, 1988, and known as Trust No. 66-5879, whose address is ~~One South Northwest Highway, Park Ridge, Illinois 60068~~ ^{and not personally, 135 S LaSalle Street, Chgo, IL 60603} (the "Trust"), and **ADELPHI ENTERPRISES LIMITED PARTNERSHIP**, an Illinois limited partnership, Beneficiary of the Trust (the "Beneficiary"), whose address is 2000 North Waukegan Road, Glenview, Illinois 60025 (the Trust and the Beneficiary are collectively called the "Mortgagor"), to **COMERICA BANK**, a Michigan banking corporation, whose address is Comerica Tower at Detroit Center, 500 Woodward Avenue, Detroit, Michigan 48226 (the "Bank").

The Trust and Northern Trust Bank/Lake Forest, not personally but as Trustee under that certain Trust Agreement dated August 8, 1989, and known as Trust No. 8/80 (the "Former Land Trust"), have previously signed and delivered to Bank the following mortgage (the "Prior Mortgage"):

Mortgage executed by the Trust and the Former Land Trust in favor of Bank, dated April 27, 1993, and recorded on May 4, 1993, as Document No. 93330877, in the office of the Cook County Register of Deeds.

The Former Land Trust has conveyed, or concurrently herewith shall convey, all of its interest in the Premises to the Trust.

The Trust, as the mortgagor, and Bank, as the mortgagee under the Prior Mortgage, desire to amend and restate in their entirety the terms and conditions of the Prior Mortgage. Accordingly, the Trust and Bank, together with the Beneficiary who agrees to be bound by the terms hereof, agree that the Prior Mortgage is hereby amended and restated on the terms and conditions set forth in this Mortgage.

*successor trustee to American National Bank and Trust Company of Chicago,

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THIS MORTGAGE SECURES FUTURE ADVANCES AND IS A FUTURE ADVANCE MORTGAGE UNDER APPLICABLE LAW. THE MAXIMUM PRINCIPAL AMOUNT EXCLUDING PROTECTIVE ADVANCES, THAT MAY BE SECURED BY THIS MORTGAGE IS FIFTEEN MILLION DOLLARS (\$15,000,000).

GRANTING CLAUSE

In order to secure payment of the Indebtedness (hereinafter defined) and the performance of the covenants, terms and conditions hereof and of any of the Documents (hereinafter defined), Mortgagor does **MORTGAGE AND WARRANT** to Bank, subject only to the Permitted Encumbrances (hereinafter defined), real estate owned by Mortgagor situated in Cook County, Illinois described more particularly on Exhibit A attached hereto;

Together with all buildings and improvements now or hereafter existing upon the real estate or any part thereof, and all heretofore or hereafter vacated alleys, streets and sidewalks abutting the real estate and all easements, licenses, rights-of-way and privileges benefitting the real estate or in anywise appertaining thereto, if any, and together with all Fixtures (hereinafter defined); and

Together with all of the rents, profits and leases of the Premises (hereinafter defined) and all of the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining and any and all reversion, and remainders, and all of the estate, right, title, interest, property, claim and demand whatsoever of Mortgagor in and to the Premises and any part thereof; and

Mortgagor grants to Bank a security interest in all of the Fixtures, but if the same be deemed to be part of the real estate then Mortgagor mortgages and Beneficiary warrants such Fixtures to Bank. Mortgagor grants to Bank a security interest in the Accounts and Specific Intangibles (all hereinafter defined), and all proceeds of the foregoing.

DEFINITIONS

FOR THE PURPOSE OF THIS MORTGAGE UNLESS THE CONTEXT SHALL OTHERWISE REQUIRE:

A. **"Accounts"** are any right to payment in which Mortgagor has an interest arising out of ownership of the Premises and include all rents, profits and income of the Premises (to the extent the same are or may hereafter be subject to the Uniform Commercial Code as adopted in the jurisdiction where the Premises are situated) and all accounts receivable which are any part of or arise from such rents, profits and income which otherwise relate in any way to the Premises.

B. **"Asbestos"** shall have the meanings provided under the Relevant Environmental Laws, and shall include, but not be limited to, asbestos fibers and friable asbestos which represents a health risk, as such terms are defined under the Relevant Environmental Laws.

C. **"Documents"** shall mean any instruments, documents, notes or agreements evidencing or securing the Indebtedness.

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D. **“Event of Default”** shall have the meaning set forth in paragraph 11.

E. **“Fixtures”** are all goods and equipment which are or hereafter become fixtures and are located upon or within the Premises or are now or hereafter attached to the Premises or Fixtures, including, but not limited to, any and all partitions, dynamos, screens, awnings, motors, engines, boilers, furnaces, pipes, plumbing, cleaning, call and sprinkler systems, fire extinguishing apparatus and equipment, water tanks, heating, ventilating, air-conditioning and air-handling equipment, built-in refrigerated rooms, gas and electric machinery, elevators and elevator equipment and appurtenances and equipment, permanently affixed to the real estate and all replacements thereof and all proceeds of such Fixtures.

F. **“Hazardous Wastes”** shall mean any of the following as defined by the Relevant Environment? Laws: solid wastes; toxic or hazardous substances, wastes, or contaminants (including, but not limited to, polychlorinated biphenyls (“PCB’s”), and urea formaldehyde foam insulation); and discharges of sewage or effluent.

G. **“Indebtedness”** shall mean all obligations of the Beneficiary or the Trust under this Mortgage and all indebtedness and obligations now and hereafter owing to Bank by Mortgagor, including, without limitation, payment of \$5,400,000 according to certain evidence of even date herewith, and any other indebtedness and obligations that are evidenced by any instruments, documents and agreements that have been executed by another person or persons, together with any and all extensions, renewals and modifications thereof, provided, however, that notwithstanding anything hereinabove to the contrary the maximum Indebtedness secured hereby at any one time shall not exceed \$15,000,000 plus all costs of enforcement and collection of this Mortgage, the Note and the other Documents, plus the total amount of any advances made pursuant to the Documents to protect the collateral and the security interest and lien created hereby; together with interest on all of the foregoing as provided in the Documents.

H. **“Note”** shall mean any promissory note or notes executed and delivered by the Beneficiary or the Trust in favor of the Bank, together with any and all extensions, renewals and modifications, including, without limitation, the following: Construction Note from Beneficiary to Bank of even date herewith, in the principal amount of \$5,400,000 and a Master Revolving Note from Beneficiary to Bank dated September 1, 2000, in the principal amount of \$6,000,000.

I. **“Permitted Encumbrances”** are the liens and the encumbrances (if any) set forth on Exhibit B attached hereto.

J. Any reference to **“Premises”** shall be deemed to apply without limitation to all of the above described real estate, and to all buildings and improvements now or hereafter located thereon, and to all heretofore or hereafter vacated alleys, streets and sidewalks, easements, licenses, privileges, right-of-ways, reversions, remainders and all rights, titles, interests, property, claims and demands of Beneficiary and/or the Trust therein and to the rents, profits, income and leases of the Premises and to the Fixtures.

K. **“Relevant Environmental Laws”** shall mean all applicable federal, state and local laws, rules, regulations, orders, judicial determinations, and decisions or determinations by any judicial, legislative or executive body of any governmental or quasi-governmental entity, whether in the past, the present or the future, with respect to: (A) the installation, existence, or removal of, or exposure to, Asbestos on the Premises; (B) the existence on, discharge from, or

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removal from the Premises of Hazardous Wastes; and (C) the effects on the environment of the Premises or of any activity now, previously, or hereafter conducted on the Premises. The Relevant Environmental Laws shall include, but not be limited to, the following: (1) the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sections 9601 et seq.; the Superfund Amendments and Reauthorization Act, Public Law 99-499, 100 Stat. 1613; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321; the Safe Drinking Water Act, 42 U.S.C. Sections 300F et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 et seq.; the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; and the regulations promulgated in connection therewith; (2) Environmental Protection Agency regulations pertaining to Asbestos (including 40 C.F.R. Part 61, Subpart M); Occupational Safety and Health Administration regulations pertaining to Asbestos (including 29 C.F.R. Sections 1910.1001 and 1926.58); as each may now or hereafter be amended; and (3) any state and local laws and regulations pertaining to Hazardous Wastes and/or Asbestos.

L. **“Specific Intangibles”** are any and all of the right, title and interest of Mortgagor in and to (i) all insurance policies and the proceeds thereof or claims paid or to be paid thereunder relating in any manner to the Premises or to the rents thereof, and any return of premiums, and (ii) any awards or settlements of an eminent domain proceeding involving a taking of the Premises or any part thereof or any awards or settlements made in an eminent domain proceeding arising out of any claim of diminution in value of the Premises, (iii) any damage awards or settlements arising out of or connected with any lease or the breach of any lease or any damages to the Premises or to Mortgagor’s interest therein.

MORTGAGOR DOES HEREBY COVENANT AS FOLLOWS:

1. **Payment of Indebtedness.** Mortgagor shall pay the Indebtedness according to the terms of the Note, the Guaranty and the other Documents and shall perform all the terms, covenants and conditions hereof and of each of the Documents.

2. **Title.** At the time of the execution and delivery of this Mortgage, Mortgagor is well and truly seized of the Premises in fee simple, free of all liens, encumbrances and easements whatsoever, whether prior or subordinate hereto, except Permitted Encumbrances.

Mortgagor shall forever defend (and Beneficiary shall warrant) the Premises against any and all claims whatsoever, including all security interests. Except and to the extent of the Permitted Encumbrances, the lien created hereby is and shall be kept a first lien upon the Premises and the security interests created hereby shall be kept as first security interests in and upon the Fixtures, Accounts and Specific Intangibles and every part thereof. Mortgagor shall pay when due all amounts which might become a lien upon the Premises prior to this Mortgage. Mortgagor shall not grant or suffer a security interest in any of the Fixtures, Accounts or Specific Intangibles prior to the security interest granted to Bank. Mortgagor, upon Bank’s request, shall execute all other instruments necessary to confirm or protect the lien of this Mortgage and the security interests granted herein including, without limitation, security agreements, financing statements and renewals thereof.

3. **Taxes.** Mortgagor shall pay forthwith prior to the imposition of any penalty or interest all taxes and assessments that may be levied upon the Premises and shall promptly

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deliver to Bank receipts showing payment thereof. Mortgagor shall pay when due all taxes and assessments that may be levied upon or on account of this Mortgage or the Indebtedness secured hereby or upon the interest or estate in the Premises created or represented by this Mortgage, whether levied against Mortgagor or otherwise. If at any time internal revenue stamps are required to be affixed to this Mortgage or any other Document, Mortgagor shall pay for the same with any interest or penalties imposed in connection therewith. In the event that payment by Mortgagor, even if voluntarily made, of any tax referred to in this paragraph would be contrary to public policy or would result in the payment of interest in excess of the rate permitted by law, then Mortgagor shall have no obligation to pay the portion of such tax which would result in the violation of public policy or the payment of such excess interest; provided, however, in any such event, at any time after the enactment of the law providing for such tax, Bank, at its election, may declare the entire principal balance of the Indebtedness secured hereby, together with interest thereon, to be due and payable immediately.

4. **Waste, Alterations, Compliance with Law.** Mortgagor shall abstain from and shall not suffer the commission of waste on the Premises and shall keep the same in good repair (reasonable wear and tear excepted) and shall make replacements thereto as and when the same become necessary. Mortgagor shall promptly notify Bank, in writing, of the occurrence of any material loss or damage to the Premises. Mortgagor shall not materially alter the Premises or Fixtures, or remove the Fixtures from the Premises, or permit any tenant or other person to do so, other than in the ordinary course of business, without the prior written consent of Bank which consent shall not be unreasonably withheld; provided, however, Mortgagor may replace any Fixtures which require replacement in the exercise of Mortgagor's business judgment, with Fixtures of like or better quality than those replaced. Mortgagor shall not permit any portion of the Premises to be used for any unlawful purpose. Mortgagor shall comply in all material respects with all laws, ordinances, regulations and orders of all public authorities having jurisdiction thereof and all covenants, conditions and restrictions relating to the Premises or the use, occupancy and maintenance thereof. Mortgagor shall permit Bank at any time, and from time to time, to enter the Premises for the purpose of inspecting the same during normal business hours.

5. Hazardous Wastes.

A. **Representations and Warranties.** Except as set forth on Exhibit A to that certain Environmental Certificate dated February 12, 1993, in favor of the Bank, and as disclosed in the Phase I Environmental Site Assessment from Atwell-Hicks, Inc. dated October 21, 2002 (the "ESA"), the Mortgagor represents and Beneficiary warrants to the best of its knowledge and covenants to the Bank as follows:

(i) At all times since the vesting of title to the Premises in the Mortgagor and (to the best of Mortgagor's knowledge and belief) at all times prior to the vesting of title to the Premises in the Mortgagor, there are no and have been no violations of the Relevant Environmental Laws respecting the Premises and no consent orders have been entered with respect thereto.

(ii) At all times since the vesting of title to the Premises in the Mortgagor and (to the best of Mortgagor's knowledge and belief) at all times prior to the vesting of title to the Premises in the Mortgagor, there are no and have been no Hazardous Wastes or Asbestos either at, upon, under or within, or discharged or emitted

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at or from, the Premises, including, but not limited to, the air, soil, surface, and ground water; no Hazardous Wastes or Asbestos have flowed, blown or otherwise become present at the Premises from neighboring land; and no Hazardous Wastes or Asbestos have been removed from the Premises other than those Hazardous Wastes which are necessary and commercially reasonable for the conduct of the Beneficiary's business operated on the Premises and which Hazardous Wastes have been, at all times prior to the date hereof, and at all times hereafter shall be, handled and disposed of in compliance with all Relevant Environmental Laws and industry standards and in a commercially reasonable manner by the Mortgagor other than inventory sold in the ordinary course of Beneficiary's business.

(iii) The Premises will not be used for the purpose of storing Hazardous Wastes other than inventory sold in the ordinary course of Beneficiary's business, and no such storage or use will otherwise be allowed on the Premises which will cause or increase the likelihood of causing the release of Hazardous Wastes onto the Premises.

(iv) Mortgagor is not aware of any claims or litigation, and Mortgagor has not received any communication from any person (including any governmental authority), concerning the presence or possible presence of Hazardous Wastes or Asbestos at the Premises or concerning any violation or alleged violation of the Relevant Environmental Laws respecting the Premises. The Mortgagor shall promptly notify the Bank of any such claims and shall furnish Bank with a copy of any such communications received by Mortgagor.

(v) The Mortgagor shall notify Bank promptly and in reasonable detail in the event that the Mortgagor becomes aware of or suspects the presence of Hazardous Wastes (other than those Hazardous Wastes which are necessary and commercially reasonable for the conduct of the Mortgagor's business operated on the Premises and which Hazardous Wastes have been, at all times prior to the date hereof, and at all times hereafter shall be, handled and disposed of in compliance with all Relevant Environmental Laws and industry standards and in a commercially reasonable manner by the Mortgagor) or Asbestos or a violation of the Relevant Environmental Laws at the Premises.

(vi) The Mortgagor shall ensure that the Premises comply and continue to comply in all material respects with the Relevant Environmental Laws.

(vii) If the Premises are used or maintained so as to subject the Mortgagor, the Bank or the user of the Premises to a claim of violation of the Relevant Environmental Laws (unless contested in good faith by appropriate proceedings), the Beneficiary shall immediately remedy and fully cure any conditions arising therefrom, at its own cost and expense.

B. Mortgagor's Obligations. At its sole cost and expense, the Mortgagor shall:

(i) Pay immediately when due the cost of compliance with the Relevant Environmental Laws.

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(ii) Keep the Premises free of any lien imposed pursuant to the Relevant Environmental Laws.

C. Bank's Options. In the event that the Mortgagor fails to comply with the requirements of this paragraph 5 within sixty (60) days, after notice to the Mortgagor, Bank may, but shall not be obligated to, exercise its right to do one or more of the following: (i) declare that such failure constitutes an Event of Default under paragraph 11 herein; and/or (ii) take any and all actions, at the Mortgagor's expense, that Bank deems necessary or desirable to cure said failure of compliance.

All costs incurred pursuant to this paragraph 5 shall become immediately due and payable with interest thereon at the default rate set forth in the Note, and the amount thereof, including any such interest, shall, if incurred prior to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, be added to the Indebtedness and shall be secured by this Mortgage and each other Document granting Mortgage collateral or security for the Indebtedness.

D. Indemnity. Bank shall not be liable for and the Mortgagor shall immediately pay to Bank when incurred and shall indemnify, defend and hold Bank harmless from and against, all loss, cost, liability, damage and expense (including, but not limited to, reasonable attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that the Bank may suffer or incur (as holder of this Mortgage, as mortgagee in possession or as successor in interest to the Mortgagor as owner of the Premises by virtue of foreclosure or acceptance of a deed in lieu of foreclosure) as a result of or in connection in any way with any of the Relevant Environmental Laws (including the assertion that any lien existing pursuant to the Relevant Environmental Laws takes priority over the lien of this Mortgage), any environmental assessment or study from time to time undertaken or requested by the Mortgagor or Bank pursuant to paragraph 5 hereof, or breach of any covenant or undertaking by the Mortgagor herein; provided, however, the Mortgagor shall have no obligation hereunder to the Bank with respect to indemnified liabilities arising solely from the gross negligence or willful misconduct of the Bank. Any environmental audit conducted at the Bank's request shall not be deemed a waiver or relinquishment of the Bank's right to rely on the covenants, representations, warranties or agreements made herein and in any other Document, or to receive the protection and indemnity outlined above. If at any time the Bank reasonably believes that any Relevant Environmental Law has been or is being violated, the Bank shall have the right to cause an environmental audit to be conducted at Mortgagor's sole expense or to require Mortgagor, at Mortgagor's expense, to have an environmental audit done and to furnish evidence satisfactory to the Bank that no such violation has occurred.

E. Survival. The provisions of this paragraph 5 shall survive the foreclosure of this Mortgage, the delivery of a deed in lieu of foreclosure, and the payment of the Indebtedness.

6. Insurance. Mortgagor will cause all buildings, improvements, and other insurable parts of the premises to be insured against loss or damage by fire, by hazards included within extended coverage and by such other hazards as Bank from time to time may reasonably require, in such amounts and with such insurers as shall be reasonably acceptable to Bank, and Mortgagor shall cause all premiums on the insurance to be paid when due. Each policy evidencing such insurance shall provide that loss shall be payable to Bank as its interest shall

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appear at the time of the loss, shall contain a standard mortgage clause, shall be in form and substance acceptable to Bank in its reasonable discretion, and shall be delivered to Bank. Each policy shall provide that at least thirty (30) days' prior written notice of any cancellation of, or any material change in, the insurance shall be given to Bank by the insurer. Each renewal of each such policy shall be delivered to Bank at least thirty (30) days prior to the expiration date of the policy. Unless Mortgagor provides the Bank with evidence of the insurance coverage required by this Mortgage, the Bank may purchase insurance at Mortgagor's expense to protect its interests in the Premises. This insurance may, but need not, protect Mortgagor's interests. The coverage that the Bank purchases may not pay any claim that the Mortgagor makes or any claim that is made against the Mortgagor in connection with the Premises. The Mortgagor may later cancel any insurance purchased by the Bank, but only after providing the Bank with evidence that the Beneficiary has obtained insurance as required by this Mortgage. If the Bank purchases insurance for the Premises, the Mortgagor will be responsible for the costs of that insurance, including interest and any other charges the Bank may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The costs of the insurance may be more than the cost of insurance the Beneficiary may be able to obtain on its own. Upon foreclosure of this Mortgage or other transfer of the Premises in satisfaction of the Indebtedness, all right, title and interest of Mortgagor in and to any insurance policies then in force, including the right to any premium refund thereon, shall vest in the purchaser or grantee. In event of any loss of or damage to the premises, Mortgagor will give immediate notice thereof to Bank, and Bank shall have the right to make proof of the loss or damage, if Mortgagor does not promptly do so. Bank is authorized to settle, adjust, or compromise any claims for loss or damage under any such insurance policy if Mortgagor does not promptly do so.

If, prior to payment in full of the Indebtedness, the premises are destroyed (in whole or in part) or are damaged by fire or other casualty to such extent that the loss or damage resulting from any particular casualty is not greater than \$50,000 in the aggregate, the Mortgagor (i) will promptly repair, rebuild or restore the premises or part thereof damaged to substantially the same condition as that existing prior to such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Borrower and as will not impair the operating unity or materially alter the character of the premises, and (ii) will apply for such purpose so much as may be necessary of any insurance proceeds resulting from such claims or losses, as well as any additional monies of the Mortgagor necessary therefor.

If, prior to payment in full of the Indebtedness, the premises are destroyed (in whole or in part) or are damaged by fire or other casualty to such extent that the loss or damage resulting from any particular casualty is in excess of \$50,000, in the aggregate, the Mortgagor will promptly give written notice thereof to the Bank. All recovery of insurance proceeds resulting from claims of such losses shall be paid to and held by the Bank in a separate interest bearing account, whereupon: (i) the Mortgagor will proceed promptly to repair, rebuild or restore the premises or part thereof damaged or destroyed to substantially the same condition as that existing prior to such damage or destruction, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Mortgagor and as will not impair the operating unity or materially alter the character of the premises, and (ii) the Bank will apply so much as may be necessary of the insurance proceeds to payment of the costs of such repair, rebuilding or restoration, as the work progresses in accordance with the Bank's

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customary policies and procedures for construction loans including a ten percent (10%) retention on all draws for work completed. In the event the insurance proceeds are not sufficient to pay in full the cost of such repair, rebuilding or restoration, the Mortgagor will nonetheless complete the work thereof and will pay the portion of the cost in excess of the amount of insurance proceeds. The insurance proceeds shall be disbursed only in accordance with the Bank's usual construction lending policies and procedures. Within thirty (30) days after the date of damage or destruction, the Mortgagor may elect in writing to the Bank, not to use the insurance proceeds to repair, rebuild or restore the premises, in which case the insurance proceeds shall be applied to the Indebtedness, which shall thereupon be due in full.

7. **Escrows for Taxes and Insurance.** In the Event of Default and upon Bank's demand therefor, Mortgagor shall pay to Bank monthly, at the times provided in the Note for payment of principal and/or interest, installments for the purpose of paying taxes, assessments and insurance premiums. The amount of the installments to be paid may change from time to time as taxes, assessments and insurance premiums change. To determine the monthly installment, the amount and due date of each separate tax, assessment and insurance premium are first determined. The amount of the monthly installment is calculated by dividing each separate tax, assessment and insurance premium by twelve (12) and adding the resulting figures. The installments will be so timed as to assure to Bank that it will have sufficient funds to pay each respective tax, assessment or insurance premium one month before the due date. Additionally, upon Bank's demand for such installments, Mortgagor will deposit with Bank a sufficient sum for each tax, assessment or insurance premium, computed independently as set forth above, which, when added to the installments that come due before the next due date for such tax, assessment or premium, will give Bank sufficient funds to pay the same one month before the due date. All amounts paid to Bank hereunder will be held by Bank as additional security for the Indebtedness and shall be maintained in a separate escrow account and shall not be commingled by Bank with any other funds. Mortgagor shall not be entitled to receive interest on account of any sums held hereunder. Nothing contained herein shall in any manner limit the obligation of Mortgagor to pay taxes and assessments; provided, however, if no Event of Default has occurred hereunder nor any act occurred which with the giving of notice or passage of time or both would constitute an Event of Default hereunder and provided Beneficiary delivers to Bank at least thirty (30) days before the same become due all invoices, bills and statements respecting the foregoing items, the payments made under this paragraph shall be applied by Bank for the purposes for which they are made. In addition to the escrows for taxes and insurance, Beneficiary shall deposit with Bank, in Mortgagor's account all security deposits relating to the Premises which shall be returned as and when tenants are entitled thereto. Upon and during the continuance of an Event of Default by Beneficiary, Bank may, at its option, but without obligation on its part so to do, apply all amounts held (other than security deposits which shall be held for the purpose intended) toward the payment of taxes, assessments and insurance premiums and/or toward the payment of any amounts payable by Mortgagor to Bank under this Mortgage and/or toward the payment of the Indebtedness or any portion thereof, whether or not the same is then due and payable.

8. **Performance by Bank.** If an Event of Default shall occur with respect to the obligations for the payment of any taxes or assessments or in making repairs or replacements or in procuring and maintaining insurance and paying the premiums therefor, or in keeping or performing any other covenant, term or condition hereof, Bank may, at its option and without any obligation on its part so to do, pay the taxes and assessments, make such repairs and

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replacements, effect such insurance, pay the premiums, and perform any other covenant, term or condition of Mortgagor herein. All amounts expended by Bank hereunder shall be secured hereby and shall be due and payable by Mortgagor to Bank forthwith on demand, with interest thereon at the rate at which interest accrues in the Note on amounts after the same become due.

9. **Statutory Waste.** Nonpayment of any taxes or assessments levied or assessed upon the Premises, except to the extent being contested by an appropriate proceedings being diligently pursued by Mortgagor, or nonpayment of any insurance premium upon any insurance policy relating to the Premises, or any part thereof, shall constitute an Event of Default hereunder and shall constitute waste, and shall entitle Bank to exercise any remedies which may be available on account of such waste pursuant to the terms hereof or under any statute or law now or hereafter in effect. Mortgagor hereby consents to the appointment of a receiver should Bank elect any such remedy.

10. **Payment of Bank Costs.** In the event that Bank is made a party to any suit or proceedings instituted after the date hereof by reason of the interest of Bank in the Premises, or if Bank is required to arbitrate or negotiate any claim asserted against it by reason of its interest in the Premises, whether or not such claim results in a suit or proceeding, Mortgagor shall reimburse Bank for all costs and expenses, including reasonable attorneys' fees. All amounts incurred by Bank hereunder shall be secured hereby and shall be due and payable by Mortgagor to Bank forthwith on demand, with interest thereon at the rate at which interest accrues on the Note on amounts after the same become due. Wherever in this Mortgage or in any other Document an obligation is imposed upon Mortgagor to pay the reasonable attorney's fees of Bank, such fees shall be deemed to include all reasonable fees incurred, whether such fees are incurred in consulting an outside or in-house attorney or in a proceeding of any kind and if in a proceeding, whether at the trial or appellate stages.

11. **Default and Remedies.**

A. The following shall be deemed events of Default under this Mortgage:

(i) If default occurs in the payment or performance of any of the Indebtedness, when and as it shall be due and payable, whether at maturity or otherwise.

(ii) If default occurs in the performance of any obligation to Bank under this Mortgage, under any Document or under any other mortgage, security agreement, loan agreement, assignment, guaranty, or other agreement that now or hereafter secures or relates to any indebtedness or obligation now or hereafter owing by the Beneficiary and/or the Trust to Bank or that secures or relates to any guaranty of any such other indebtedness or obligation ("Security Documents") and such default is not cured within the applicable time period provided for in such Security Documents.

(iii) If any warranty, representation or statement heretofore or hereafter made to Bank by the Beneficiary and/or the Trust or by any guarantor of all or part of the Indebtedness ("Guarantor") in this Mortgage or in any guaranty, Security Document, agreement, instrument, credit application, financial statement or otherwise, shall have been false in any material respect when made or furnished.

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(iv) If the Beneficiary and/or the Trust shall default in payment of the principal of or interest on any indebtedness for borrowed money now or hereafter owed to any person other than Bank and such default shall continue for a period sufficient to permit acceleration thereof.

(v) If Beneficiary or any of Beneficiary's members or any Guarantor shall dissolve, become insolvent or make an assignment for the benefit of creditors.

(vi) If Mortgagor, without the written consent of Bank, shall sell, convey, or transfer the Premises or any interest therein or any rents or profits therefrom or if any mortgage, lien, or other encumbrance, or any writ of attachment, garnishment, execution, or other legal process shall be issued against or placed upon the Premises or any interest therein or any rents or profits therefrom not contested in good faith and adequately secured against, except in favor of Bank, or if any part of the Premises or any interest therein shall be transferred by operation of law.

(vii) If all or any material part of the Premises shall be damaged or destroyed by fire or other casualty, or shall be taken by condemnation or power of eminent domain, and the Premises are not rebuilt or restored as provided in paragraph 6 hereof.

(viii) If any law or government regulation shall hereafter impose any tax or assessment upon mortgages on debts secured by mortgages so as to effect the interest of the Bank materially adversely, unless Mortgagor shall satisfactorily remedy such adverse effect upon the Bank within thirty (30) days after written notice shall have been given to Mortgagor by the Bank.

(ix) If any guaranty that now or hereafter secures payment or performance of all or any part of the Indebtedness shall be terminated or limited, for any reason, without the prior written consent or agreement of Bank.

(x) If any lease, land contract, or other agreement by which Mortgagor is leasing as tenant or purchasing any interest in the premises shall be declared by the lessor or seller thereunder to be forfeited or terminated or if any suit or other action shall be commenced to foreclose any such land contract or to recover possession of all or any part of the premises by reason of any default or alleged default under any such lease, land contract, or agreement.

(xi) If a voluntary or involuntary case in bankruptcy or receivership shall be commenced by or against Beneficiary or any of Beneficiary's members or any guarantor of the Indebtedness and shall not be discharged within sixty (60) days of commencement.

All or any part of the Indebtedness also may become, or may be declared to be, immediately due and payable under the terms and conditions contained in any Security Document, Instrument or other agreement heretofore or hereafter entered into between Bank and Mortgagor.

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B. Bank may at any time after the occurrence and during the continuance of any Event of Default (i) without further notice, declare the Indebtedness, including the then applicable prepayment premium, if any, to be due and payable immediately; (ii) exercise any and all other rights and remedies provided by this Mortgage or the Note or any other Document, or by law, including appointment of a receiver to which appointment Mortgageor consents. Mortgageor acknowledges that the commencement of foreclosure proceedings shall be deemed acceleration. Bank shall have the right from time to time to sue for any sums whether interest, damages for failure to pay principal or any installment thereof, taxes, installments of principal, or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not the principal sum secured or any other sums evidenced by the Note or secured by this Mortgage shall be due, and without prejudice to the right of Bank thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Mortgageor existing at the time such earlier action was commenced. Any payment made in accordance with the terms of this Mortgage by any person at any time liable for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage, or by any subsequent owner of the Premises, or by any other person whose interest in the Premises might be prejudiced in the event of a failure to make such payment, or by any stockholder, officer or director of a corporation which at any time may be liable for such payment or may own or have such an interest in the Premises, shall be deemed, as between the Bank and all persons who at any time may be liable as aforesaid or may own the Premises, to have been made on behalf of all such persons.

C. Any failure by the Bank to insist upon the strict performance by the Mortgageor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and the Bank, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Mortgageor of any and all of the terms and provisions of this Mortgage to be performed by the Mortgageor.

D. Neither the Mortgageor nor any other person now or hereafter obligated for the payment of the whole or any part of the Indebtedness shall be relieved of such obligation by reason of the failure of the Bank to comply with any request of the Mortgageor or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage or by reason of the release, regardless of consideration, of the whole or any part of the security held for the Indebtedness, or by reason of any agreement or stipulation between any subsequent owner or owners of the Premises and the Bank extending the time of payment or modifying the terms of the Documents without first having obtained the consent of the Mortgageor or such other person. In the latter event, the Mortgageor and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Bank.

E. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Premises, the Bank may release the obligation of anyone at any time liable for any of the Indebtedness or any part of the security held for the Indebtedness and may extend the time of payment or otherwise modify the terms of the Documents without, as to the security or the remainder thereof, in anywise impairing or affecting the lien of this Mortgage or the priority of such lien, as security for the payment of the Indebtedness as it may be so extended or modified, over any subordinate lien. Bank may resort

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for the payment of the Indebtedness to any other security therefor held by the Bank in such order and manner as the Bank may elect.

12. Specific Remedies Upon Event of Default.

A. Foreclosure. When the Indebtedness shall become due, whether by acceleration or otherwise, Bank shall have the right to foreclose the lien hereof in accordance with the Illinois Mortgage Foreclosure Act, Illinois Compiled Statutes 735 ILCS 5/15-1101 et seq., as amended (the "Act") and to exercise any other remedies of Bank provided in the Note or in the other Documents or which Bank may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Bank for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Bank may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of Bank and permitted by the Act to be included in such decree. All expenditures and expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Bank in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Mortgagor, with interest thereon at the default rate set forth in the Note or the other Documents until paid.

B. Right of Possession. When the Indebtedness shall become due, whether by acceleration or otherwise, or if Bank has a right to institute foreclosure proceedings, Mortgagor shall, forthwith upon demand of Bank, surrender to Bank, and Bank shall be entitled to be placed in possession of the Premises as provided in the Act, and Bank, in its discretion and pursuant to court order, may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Premises relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor or such owner, or in its own name as Bank and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as Bank may deem necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(ii) cancel or terminate any lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;

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(iii) elect to disaffirm any lease or sublease of all or any part of the Premises made subsequent to this Mortgage without Bank's prior written consent;

(iv) extend or modify any then existing leases and make new leases of all or any part of the Premises, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed to a purchaser at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser at any foreclosure sale, notwithstanding any redemption from sale, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Bank, to insure and reinsure the Premises and all risks incidental to Bank's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of taxes, insurance premiums and other charges applicable to the Premises, or in reduction of the Indebtedness in such order and manner as Bank shall select.

Without limiting the generality of the foregoing, Bank shall have all power, authority and duties as provided in the Act. Nothing herein contained shall be construed as constituting Bank as a mortgagee in possession in the absence of the actual taking of possession of the Premises.

C. Rights Under Uniform Commercial Code. Upon and during the continuance of an Event of Default, Bank shall have the remedies of a secured party under the Illinois Uniform Commercial Code, including without limitation, the right to notify account debtors and to collect or compromise or sue for collection of all or any Accounts and Specific Intangibles by any lawful means. For the purpose of taking possession of the Fixtures, Bank may enter upon any premises on which the Fixtures or any part thereof may be situated and hold the Fixtures upon the Premises (without charge to Bank), or dispose of the Fixtures or Goods on the Premises, or remove the same to such other place or places as Bank shall determine. Upon demand by Bank, Mortgagor shall assemble the Fixtures and make them available to Bank at the Premises. Any requirement of notice under the Uniform Commercial Code shall be met if such notice is mailed to Mortgagor, postage prepaid, at least ten (10) days before the event with respect to which notice is required. Bank shall be entitled to recover all expenses incurred by Bank in retaking, holding, preparing for sale, selling and collecting the Fixtures, Accounts and Specific Intangibles, together with reasonable attorneys' fees and other expenses incurred by Bank in protecting and enforcing its rights and remedies with respect to the Indebtedness, the Fixtures, Accounts and Specific Intangibles. Mortgagor, to the extent permitted by law, hereby knowingly and voluntarily waives any right Mortgagor may have to remain in possession of the Premises or to collect any rents or income therefrom during the pendency of any foreclosure proceedings and during any applicable redemption period. Also, paragraph 17 entitles the Bank to require immediate payment of the balance of the Indebtedness in full if the Premises are sold

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or otherwise transferred without the prior written consent of Bank. By execution of this Mortgage, the Mortgagor represents and acknowledges that the meaning and consequences of this paragraph have been discussed as fully as desired by the Mortgagor with the Mortgagor's legal counsel.

13. **Distribution Upon Sale.** Upon a foreclosure sale of the Premises or any part thereof, the proceeds of such sale shall, subject to applicable law, be applied in such order as Bank elects:

- A. To the payment of all costs of the suit or foreclosure, including reasonable attorneys' fees and the cost of title searches and abstracts;
- B. To the payment of all other expenses of Bank, including all monies expended by Bank and all other amounts payable by Mortgagor to Bank hereunder, with interest thereon;
- C. To the payment of all other Indebtedness including the interest thereon;
- D. To the payment of the surplus, if any, to Mortgagor or to whomsoever shall be entitled thereto.

14. **Sale in Parcels.** Upon any foreclosure sale of the Premises, the same may be sold either as a whole or in parcels, as Bank may elect and, if in parcels, the same may be divided as Bank may elect and, at the election of Bank, may be offered first in parcels, in any manner or order as Bank may elect in its sole discretion, and then as a whole, any law, statutory or otherwise, to the contrary notwithstanding, and Mortgagor hereby waives the right to require any such sale to be made in parcels or the right to select such parcels.

15. **Eminent Domain.** If all or any part of the Premises are taken, whether temporarily or permanently, under power of eminent domain or by condemnation, the proceeds of the award or other payment in relief thereof shall be utilized as provided in this paragraph 15. Until the proceeds from such takings aggregate more than \$100,000, the Mortgagor: (i) will promptly repair, rebuild or restore the Premises or part thereof not taken to substantially the same condition as that existing prior to such taking, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Mortgagor and as will not impair the operating unity or materially alter the character of the Premises, and (ii) will apply for such purpose so much as may be necessary of any proceeds resulting therefrom, any excess proceeds may be retained by the Mortgagor, as well as any additional monies of the Mortgagor necessary therefor.

If the aggregate proceeds from such takings are greater than \$100,000, the Mortgagor shall give the Bank prompt written notice thereof and such proceeds shall be paid directly to the Bank. The Mortgagor shall notify the Bank within thirty days after the date of the taking whether or not the Mortgagor intends to use the proceeds to repair, rebuild or restore the Premises, which shall be to substantially the same condition as that existing prior to such taking, with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Mortgagor and as will not impair the operating unity or materially alter the character of the Premises. If the Premises are to be repaired, rebuilt or

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restored, the proceeds shall be held by the Bank in a separate interest bearing checking account and disbursed in the manner provided for in paragraph 6 hereof. If the proceeds from the taking are not sufficient to pay in full the cost of such repair, rebuilding or restoration, the Mortgagor will nonetheless complete the work and will pay the portion in excess of the proceeds. If, after such rebuilding, restoration or repair, there remain any proceeds in the account not utilized, or, if Mortgagor elects not to rebuild, repair or restore the Premises, then any proceeds not used to repair, rebuild or restore the Premises shall be applied to the Indebtedness to the extent necessary to reduce the Indebtedness to an amount whereby the loan to value ratio (taking into account the fair market value of the Premises after the taking) does not exceed [75%]. Any proceeds in excess of that amount may be released to the Mortgagor.

16. Assignment of Leases and Rents.

A. As additional security for the payment of the Indebtedness and the performance of the covenants, terms and conditions contained herein and in any other Document, Mortgagor does hereby assign, mortgage and warrant to Bank, all rents, income and profits of the Premises and all present and future leases pertaining thereto and all guarantees of the tenant's obligations thereunder, together with the right in the Bank to enforce the leases, to take possession of the Premises and every part thereof, and to collect the rents and profits and to apply the same, as hereinafter provided, it being the intent hereby to establish an absolute transfer and assignment of all such leases, rents, income and profits to Bank. Mortgagor hereby irrevocably appoints Bank its attorney-in-fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Bank) with or without taking possession of the Premises as provided in paragraph 12B hereof, to lease any portion of the Premises to any party upon such terms as Bank shall determine, and to collect all rents due under each of the leases, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Bank would have upon taking possession pursuant to the provisions of paragraph 12B hereof. Notwithstanding this assignment, until an Event of Default occurs, Mortgagor shall have the right to collect the rents, profit and income of the Premises.

B. Mortgagor shall not, without the prior written consent of Bank, accept any prepaid rent under any lease of the Premises except for the then current month and security deposits; nor shall Mortgagor enter into any new lease of the Premises or any part thereof except in accordance with a form of lease approved in advance by Bank. Mortgagor shall not take or suffer any actions which would effectuate a merger of a lease with a fee so as to terminate the lessee's obligations. Any act in violation of this paragraph 16 B shall be void and of no effect.

C. Mortgagor shall perform all of the obligations of the lessor under all leases of the Premises or any part thereof in accordance with the terms and provisions thereof and shall not suffer or permit any impairment of the security thereof. Mortgagor shall manage the Premises and every part thereof in accordance with sound business practices. Mortgagor shall promptly take such actions as are reasonable and prudent to enforce the lessee's obligations under any lease. Bank shall have no obligations, responsibility or liability of lessor under any lease assigned hereby, and shall have no obligation to account for any security deposit unless the same has been actually deposited with Bank.

D. Mortgagor shall deliver to Bank within ten (10) days after written request from Bank a statement in writing setting forth the names of the tenants of the Premises, the

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expiration dates of the leases, and the amounts of rents and any other sums due thereunder, and together therewith shall furnish to Bank copies of all such leases. Mortgagor shall, upon written request, execute and deliver to Bank such other and further documents as may be reasonably appropriate to confirm the assignment of rents, profits, and leases made hereby.

E. Upon an Event of Default, Bank may, pursuant to the assignment herein contained, and in addition to exercising any and all other rights and remedies provided by this Mortgage or by law, including the appointment of a receiver (to which appointment Mortgagor consents), or by any other Document, with or without foreclosure or entry upon the Premises, demand, collect, sue for, receive, compromise, and compound all rents, income and arrears of rent as may then or thereafter be due and owing from the tenants, occupiers, lessees or assignees of any leases of the Premises and Mortgagor hereby authorizes and directs the tenants, occupiers, lessees or assignees of any lessees of the Premises to make payment to Bank of rent and any other sums then due and to become due under the leases upon receipt of written demand therefor by Bank, without liability for the determination of Bank's rights thereto. In such event, Bank shall have the power, either directly or through a rental agent selected by Bank, to operate, maintain and repair the Premises, and to amend any lease and to exercise any and all rights of Mortgagor with respect to any lease; and out of the rents and income thus received, after the payment of all costs and expenses of Bank, to retain all sums then or thereafter due hereunder. The rights and powers of Bank hereunder shall continue and remain in full force and effect until all amounts due Bank hereunder, including any deficiency resulting from foreclosure sale, are paid in full, and shall continue after commencement of foreclosure and after foreclosure sale and until expiration of any applicable period of redemption, notwithstanding the sale of the Premises to a purchaser other than Bank. Bank shall not be liable to Mortgagor or anyone claiming under or through Mortgagor by reason of anything done or left undone by Bank hereunder, except for damage resulting from gross negligence or willful misconduct of Bank.

F. Mortgagor covenants, represents and warrants to Bank that Mortgagor has not executed any prior assignment of the leases of the Premises, or of the rents, profits and income of the Premises except to Bank and Mortgagor covenants it will not hereafter execute any such assignment until such time as all Indebtedness secured hereby is fully paid and satisfied.

G. Mortgagor agrees that no holder of any subordinate lien shall have any right to terminate any lease of any portion of the Premises whether or not such lease is subordinate to this Mortgage.

17. **MORTGAGOR'S WAIVER OF RIGHTS.** THE MORTGAGOR ACKNOWLEDGES THAT THE TRANSACTION OF WHICH THIS MORTGAGE IS A PART IS A TRANSACTION WHICH DOES NOT INCLUDE EITHER AGRICULTURAL REAL ESTATE (AS DEFINED IN THE ILLINOIS MORTGAGE FORECLOSURE LAW, 735 ILCS 5/15-110 ET SEQ., HEREIN THE "ACT"), OR RESIDENTIAL REAL ESTATE (AS DEFINED IN THE ACT) EXCEPT AS OTHERWISE SET FORTH HEREIN, TO THE FULLEST EXTENT PERMITTED BY LAW, THE MORTGAGOR WAIVES THE BENEFIT OF ALL LAWS NOW EXISTING OR THAT MAY SUBSEQUENTLY BE ENACTED PROVIDING FOR (I) ANY APPRAISEMENT BEFORE SALE OF ANY PORTION OF THE MORTGAGED PROPERTY, (II) ANY EXTENSION OF THE TIME FOR THE ENFORCEMENT OF THE COLLECTION OF THE INDEBTEDNESS OR THE CREATION OR EXTENSION OF A PERIOD OF REDEMPTION FROM ANY SALE MADE IN

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COLLECTING SUCH DEBT AND (III) EXEMPTION OF THE MORTGAGED PROPERTY FROM ATTACHMENT, LEVY OR SALE UNDER EXECUTION OR EXEMPTION FROM CIVIL PROCESS. EXCEPT AS OTHERWISE SET FORTH HEREIN, TO THE FULL EXTENT THE MORTGAGOR MAY DO SO, THE MORTGAGOR AGREES THAT THE MORTGAGOR WILL NOT AT ANY TIME INSIST UPON, PLEAD, CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF ANY LAW NOW OR HEREAFTER IN FORCE PROVIDING FOR ANY APPRAISEMENT, VALUATION, STAY, EXEMPTION, EXTENSION, REINSTATEMENT OR REDEMPTION, OR REQUIRING FORECLOSURE OF THIS MORTGAGE BEFORE EXERCISING ANY OTHER REMEDY GRANTED HEREUNDER THE MORTGAGOR, FOR THE MORTGAGOR AND ITS SUCCESSORS AND ASSIGNS, AND FOR ANY AND ALL PERSONS EVER CLAIMING ANY INTEREST IN THE MORTGAGED PROPERTY, TO THE EXTENT PERMITTED BY LAW, HEREBY WAIVES AND RELEASES ALL RIGHTS OF REINSTATEMENT, REDEMPTION, VALUATION, APPRAISEMENT, STAY OF EXECUTION, NOTICE OF ELECTION TO MATURE OR DECLARE DUE THE WHOLE OF THE SECURED INDEBTEDNESS AND MARSHALLING IN THE EVENT OF FORECLOSURE OF THE LIENS HEREBY CREATED.

18. **Compliance with Illinois Mortgage Foreclosure Law.**

A. If any provision of this Mortgage is inconsistent with any applicable provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can fairly be construed in a manner consistent with the Act.

B. Without in any limiting or restricting any of Bank's rights, remedies, powers and authorities under this Mortgage, and in addition to all of such rights remedies, powers and authorities, Bank shall also have and may exercise any and all rights, remedies, powers and authorities which the holder of a mortgage is permitted to have or exercise under the provisions of the Act, as the same may be amended from time to time. If any provision of this Mortgage grants to Bank any right, remedies, powers or authorities upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Bank under the Act in the absence of said provision, Bank shall be vested with all of the rights, remedies, powers and authorities granted in the Act to the fullest extent permitted by law.

C. Without limiting the generality of the foregoing, all expenses incurred by Bank, to the extent reimbursable under 735 ILCS 5/15-1510, 735 ILCS 5/15-1512, or any other provisions of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in any other provision of this Mortgage, shall be added to the Indebtedness secured by this Mortgage and by the judgment of foreclosure.

19. **Transfer of Mortgagor's Interest.** It shall be an Event of Default hereunder if, without Bank's prior written consent, Mortgagor shall at any time cease to be the holder of the entire record title to and beneficial interest in the Premises or any part thereof, whether by sale or any other means whatsoever, or any lien or encumbrance is placed upon the Premises, even if inferior hereto, or Mortgagor executes any contract of sale or transfers possession of the Premises or any part thereof or assigns the right to receive the rents.

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20. **Security Agreement/Financing Statement.** This Mortgage is a mortgage, security agreement, fixture filing and financing statement under the Uniform Commercial Code. This instrument is also to be indexed in the index of fixture filings and financing statements. This instrument covers goods which are or are to become fixtures on the Premises. The names of the debtor and the secured party, the mailing address of the secured party from which information concerning this security interest may be obtained, the mailing address of the debtor and a statement indicating the types, or describing the items, of collateral, are as described herein, in compliance with the requirements of the Uniform Commercial Code. The Mortgagor's taxpayer identification number is 36-3718123. A copy of this Mortgage may be filed as a financing statement.

21. **Cumulative Remedies.** Each and every one of the rights, remedies and benefits provided to Bank herein or in any other Document shall be separate, distinct and cumulative and shall not be exclusive of any other of said rights, remedies or benefits, or of any other rights, remedies or benefits allowed by law. Any waiver by Bank of any default shall not constitute a waiver of any similar or other default. No act of the Bank shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

22. **Binding Effect.** All of the covenants and conditions hereof shall run with the land and shall be binding upon the successors and assigns of Mortgagor, and shall inure to the benefit of the successors and assigns of Bank. Any reference herein to "Bank," "Beneficiary" and "Mortgagor" shall include the successors and assigns of each.

23. **Severability.** The invalidity of any of the covenants, phrases or clauses in this Mortgage shall not affect the remaining portions hereof, and this Mortgage shall be construed as if such invalid covenant, phrase or clause had not been contained herein.

24. **Joint and Several Liability.** If Mortgagor consists of more than one party, the term "Mortgagor" shall include all such parties and they shall be jointly and severally liable under any and all obligations, covenants and agreements of the Mortgagor contained herein.

25. **Mortgagor's Certificate.** Mortgagor, upon Bank's request, shall certify, by a writing duly acknowledged, to the Bank or to any proposed assignee of this Mortgage, the amount of the Indebtedness then owing and whether any offsets, counterclaims or defenses exist against the Indebtedness, within ten (10) days after the request is made.

26. **Notice.** Any notice hereunder shall be sufficient if made in writing and delivered to Mortgagor by mail to Adelphi Enterprises Limited Partnership, 2000 North Waukegan Road, Glenview, Illinois 60025, and shall be deemed made and delivered two (2) business day after deposit thereof in the mails, postage paid.

27. **Business Loan.** The Mortgagor stipulates, represents, warrants, affirms, and agrees that the Indebtedness secured by this Mortgage constitutes a "business loan" within the meaning of 815 ILCS 205/4(1)(c).

28. **Effect of Headings.** The headings of each paragraph are descriptive only and have no legal effect.

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

30. **No Personal Liability of Trustee.** This Mortgage is executed by LaSalle Bank ~~N.A./~~ ^{National Association,} as Successor Trustee to NBD Bank, as Successor Trustee to NBD Trust Company of Illinois, not personally, but as Trustee under Trust No. 66-5879 (the "Trustee"), ^{and not personally} in the exercise of the power and authority conferred upon and vested in it as Trustee (and Trustee hereby warrants that it possesses full power and authority to execute this 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 Trustee, personally, to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being expressly waived by the Bank, the legal owner(s) or holder(s) of said Note, and by every person now or hereafter claiming any right or security hereunder; and that so far as the Trustee personally is concerned, the legal holder or holders of said Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby mortgaged or conveyed for the payment thereof, by the enforcement of the lien hereby created in the manner herein and in said Note provided or by action to enforce the personal liability of the guarantors, if any, or of the makers of the Note. All the covenants and conditions to be performed hereunder by Trustee are undertaken by it solely as Trustee as aforesaid and not individually, and no personal or individual liability shall be asserted or enforceable against Trustee, by reason of any of the covenants, statements, representations, indemnifications or warranties expressed or implied herein contained in this instrument.

It is also expressly understood and agreed by every person, firm or corporation claiming any interest under this document that Trustee shall have no liability, contingent or otherwise, arising out of, or in any way related to, (i) the presence, disposal, release or threatened release of any hazardous materials on, over, under, from or affecting the property soil, water, vegetation, building, personal property, persons or animals thereof; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such hazardous materials; (iii) any lawsuit brought or threatened, settlement reached or government order relating to such hazardous materials, and/or (iv) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Trustee which are based upon or in any way related to such hazardous materials including, without limitation, attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses.

Nothing contained in this paragraph shall limit the obligations of the Beneficiary or the Guarantors with respect to the Note, this Mortgage or the Indebtedness.

31. **Construction Mortgage.** This Mortgage is given to secure obligations incurred by Beneficiary for the construction of certain improvements to the Premises. It is intended that this Mortgage constitute a "construction mortgage" for purposes of Article 9 of the Uniform Commercial Code.

***successor trustee to American National Bank and Trust Company of Chicago**

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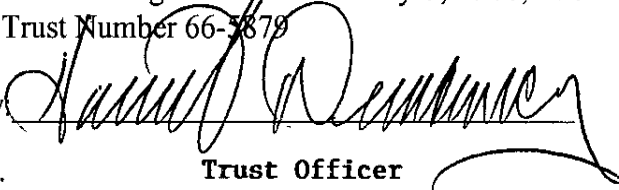
IN WITNESS WHEREOF, Mortgagor and Bank have executed this Mortgage as of the day and year first above written.

Mortgagor:

National Association*

LASALLE BANK ~~N.A.~~, as Successor Trustee to NBD Bank, as Successor Trustee to NBD Trust Company of Illinois, not personally, but as Trustee under Trust Agreement dated May 5, 1988, known as Trust Number 66-3879

By:

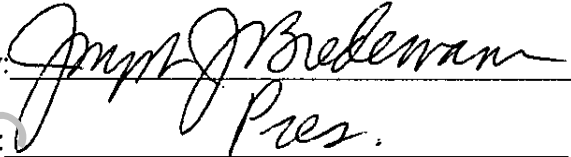

Trust Officer

Its:

ADELPHI ENTERPRISES LIMITED PARTNERSHIP

By: Adelphi Management Company,
General Partner

By:


Pres.

Its:

Bank:

COMERICA BANK

By:


Timothy D. Coakley

Its:

Vice President

STATE OF ILLINOIS)

: ss.

COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Harriet Denisevicz, the duly authorized Trust Officer of LaSalle Bank ~~N.A.~~, as Successor Trustee to NBD Bank, as Successor Trustee to NBD Trust Company of Illinois, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, personally appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

*successor trustee to American National Bank and Trust Company of Chicago

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February

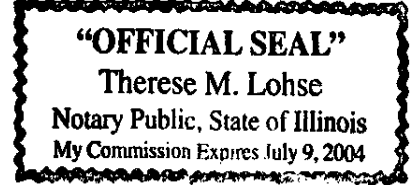
Given under my hand and official seal, this 3rd day of ~~January~~, 2003.

Therese M. Lohse

Notary Public

COOK County, Illinois

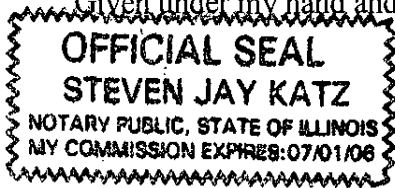
My Commission Expires: _____



STATE OF ILLINOIS)
 : SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Joseph John Brackman, the President of Adelphi Management Company, General Partner of Adelphi Enterprises Limited Partnership, an Illinois limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument, personally appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and official seal, this 31st day of January, 2003.



St J Katz

Notary Public

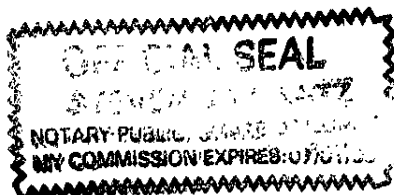
Cook County, Illinois

My Commission Expires: _____

STATE OF ILLINOIS)
 : SS.
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Timothy D. Coakley, a Vice President of Comerica Bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument, personally appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and wavier of the right of homestead.

Given under my hand and official seal, this 31st day of January, 2003.



St J Katz

Notary Public

Cook County, Illinois

My Commission Expires: _____



30485594

UNOFFICIAL COPY

EXHIBIT A
LEGAL DESCRIPTION

Land located in the Village of Glenview, Cook County, Illinois, described as:

Lot 1 in Adelphi Subdivision, being a resubdivision in the Northeast 1/4 of Section 26, Township 42 North, Range 12, East of the Third Principal Meridian in Cook County, Illinois.

*2000 DAWKESAN MS., GLENVIEW, IL
04-26-201-040, 041 + 042*

Property of Cook County Clerk's Office

30185534

UNOFFICIAL COPY

EXHIBIT B PERMITTED ENCUMBRANCES

Permitted Encumbrances consist of the following Schedule B Item Numbers set forth on Chicago Title Insurance Company Policy No. 1401 007424319 D2, with an effective date of May 4, 1993, issued by Chicago Title Insurance Company:

Item Nos. 3 through 21, inclusive

GRLIB:429577.2\022751-04981

Property of Cook County Clerk's Office

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