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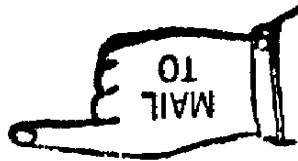
COOK COUNTY  
RECORDER  
JESSE WHITE  
ROLLING MEADOWS

03065148

93 DEC 23 PM 12: 15

This Instrument was prepared by  
and when recorded return to:

Drake D. Mertes, Esquire  
Dowd, Dowd & Mertes, Ltd.  
701 Lee Street, Suite 790  
Des Plaines, IL 60016



RECORDING 57.00  
MAIL 0.50  
# 03065148

## MORTGAGE

THIS MORTGAGE ("Mortgage") is made November 10, 1993, by LYNN F. NELLES, TRUSTEE OF THE LYNN F. NELLES TRUST DATED DECEMBER 20, 1991, having her principal office at 206 Waterford, Prospect Heights, Illinois 60070, ("Mortgagor") and granted to ARTHUR L. NELLES and EVELYN R. NELLES, his wife, having their principal office at 120 Evergreen Lane, Water Oak Country Club Estates, Ladylake, FL 32159, ("Mortgagee").

## RECITALS:

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of an amount not in excess of One Hundred Fifty Thousand Dollars (\$150,000) together with interest thereon from and after the date hereof as evidenced by, at the rates and upon the additional terms provided in, that certain Mortgage Note ("Note"), executed by Mortgagor and made payable to the order of and delivered to Mortgagee, and by this reference incorporated herein;

WHEREAS, the indebtedness evidenced by the Note is to be disbursed from time to time by the Mortgagee to or for the benefit of Mortgagor to the extent provided in and according to the provisions of the Note;

WHEREAS, the parties hereto intend and agree that all advances and indebtedness arising under the Note from time to time, whether or not the total amount of principal and interest exceeds or is less than the face amount of the Note, shall be secured by this Mortgage;

WHEREAS, as a condition of making the Loan evidenced by the Note, Mortgagee has required that Mortgagor mortgage the "Premises" (as hereinafter defined) to the Mortgagee, and Mortgagor has executed, acknowledged and delivered this Mortgage to secure the Note.

NOW, THEREFORE, in consideration of the sums advanced by Mortgagee to Mortgagor under the Note, and to secure the payment of the principal sum and interest thereon as evidenced by the Note, the performance of the covenants and agreements contained in this Mortgage and the Note executed pursuant thereto or hereto, and all of which are incorporated herein by reference as if fully written herein, the Mortgagor does, by these presents, grant, transfer, bargain, set over, pledge, convey and mortgage unto Mortgagee, its successors and assigns forever, the Real Estate and all of the Mortgagor's estate, right, title and interest therein situated

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in Cook County, Illinois, as legally described on Exhibit A, attached hereto and by this reference incorporated herein ("the Land").

Together with:

(i) All right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues and alleys adjoining the land; (ii) all and singular the tenements, hereditaments, easements, appurtenances, passages, liberties and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise or license, and the reversion and reversions and remainder and remainders thereof; (iii) all rents, income issues, proceeds and profits accruing and to accrue from the Premises herein defined; and (iv) all buildings and improvements of every kind and description now or hereafter erected or placed on the Land and all materials intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the Premises, and all fixtures, equipment, materials and other types of personal property (other than that belonging to tenants) used in the ownership and operation of the improvement situated thereon, including but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, draperies, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring and all renewals or replacements thereof or articles in substitution therefore, whether or not the same are or shall be attached to the Land in any manner with parking and other related facilities, in possession of Mortgagor and now or hereafter located in, on or upon, or installed in or affixed to the Real Estate legally described herein or any improvements or structures used in connection with all accessories and parts now attached or used in connection with any such equipment, materials and personal property or which may hereafter, at any time, be placed in or added thereto, and also any and all replacements and proceeds of any such equipment, materials and personal property, together with the proceeds of any of the foregoing; it being mutually agreed, intended and declared, that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the Real Estate and for the purpose of this Mortgage to be Real Estate, and covered by this Mortgage; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the Real Estate, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said terms is used in the Illinois Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party and Mortgagor as debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 12 hereof (all of the foregoing including the Real Estate, referred to collectively as the "Premises").

TO HAVE AND TO HOLD, the same unto the Mortgagee and its successors and assigns

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forever, for the purpose and uses herein set forth.

PROVIDED, HOWEVER, that if the Mortgagor shall pay the principal and all interest as provided by the Note, and shall pay all other sums herein or in the Note provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein or in the Note contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

TO INDUCE THE MORTGAGEE TO MAKE THE LOAN, MORTGAGOR FURTHER AGREES, REPRESENTS, WARRANTS AND COVENANTS TO THE MORTGAGEE AS FOLLOWS:

**1.00 PAYMENT OF PRINCIPAL AND INTEREST.** Mortgagor shall pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner herein and in the Note provided.

**2.00 TAXES AND OTHER CHARGES.**

2.01 Mortgagor shall promptly pay when due and shall deliver to Mortgagee the paid real estate tax bill for the Premises within thirty (30) days after the same shall be due to the applicable governmental agency. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such tax or assessments, provided that the following conditions have been satisfied: (i) that such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of said Premises or any part thereof, or any interest therein, to satisfy the same; (ii) that Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same, and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, a sum of money, bond, Letter of Credit or other security reasonably acceptable to Mortgagee which shall be sufficient in the reasonable judgment of the Mortgagee to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall at all times upon notice from Bank increase such amount to cover additional penalties and interest whenever, in the reasonable judgment of the Mortgagee, such increase is advisable.

2.02 In case the Mortgagor, after demand is made upon it by Mortgagee, shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds on deposit as hereinabove provided, the Mortgagee may, in its sole and exclusive discretion and at its sole option, upon notice to Mortgagor, apply the monies and/or liquidate the securities deposited with Mortgagor, in payment of, or on account of, such taxes and assessments, or any portion thereof then unpaid, including the payment of all penalties and interest thereon. The notice required herein to be given is and shall only be a requirement of notice of the occurrence of the application and/or liquidation; and, such application and/or liquidation may be simultaneous with the giving of said notice.

2.03 If the amount of the money and/or security so deposited shall be insufficient as

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aforesaid for the payment in full of such taxes and assessments, together with all penalties and interest thereon, the Mortgagee shall forthwith upon demand, either (i) deposit with the Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full, or, (ii) in case the Mortgagor shall have applied funds on deposit on account of such taxes, restore said deposit to an amount reasonably satisfactory to Mortgagee. Provided Mortgagor is not then in default hereunder, the Mortgagee shall, upon the final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill for such taxes, apply the money so deposited in full payment of such taxes and assessments or that part thereof then unpaid, together with all penalties and interest due thereon and return on demand the balance of said deposit, if any, to Mortgagor.

## 3.00 INSURANCE.

3.01 Insurance Coverage. Mortgagor will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Mortgagee may from time to time require, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

3.01(a) [INTENTIONALLY OMITTED]

3.01(b) Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement in amounts not less than the full insurable replacement value of all improvements, fixtures and equipment from time to time on the Premises and bearing a replacement cost agreed amount endorsement;

3.01(c) Comprehensive general liability against death, bodily injury and property damage in an amount not less than Five Hundred Thousand Dollars (\$500,000);

3.01(d) [INTENTIONALLY OMITTED]

3.01(e) [INTENTIONALLY OMITTED]

3.01(f) If the Federal Insurance Administration (FIA) has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available; and

3.01(g) The types and amounts of coverages as are customarily maintained by owners or operators of like properties.

3.02 Insurance Policies. Mortgagor shall pay promptly, when due, any and all premiums on the Insurance Policies, provided however, Mortgagee may, but is not required to, make such payments on behalf of Mortgagor in the event Mortgagor fails to pay promptly when due or in the event Mortgagee determines that Mortgagor may or will not be able to pay promptly, when

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due, such premiums. Further, Mortgagee may, but is not required to, acquire additional or different insurance on the Premises on behalf of the Mortgagor. All monies paid for such insurance hereunder shall be deemed, construed and become additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee upon payment or disbursement by Mortgagee without notice and with interest thereon at the Default Interest Rate as that phrase is defined in the Note. All Insurance Policies shall be in form, and with companies and amounts reasonably satisfactory to Mortgagee. All Insurance Policies shall (i) include, when available, non-contributing Mortgagee endorsements in favor of and with loss payable to Mortgagee, (ii) include standard waiver of subrogation endorsements, (iii) provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Mortgagee and (iv) provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Mortgagee. Mortgagor will deliver all Insurance Policies premium prepaid, to Mortgagee and, will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in form or contributing in the event of loss with the Insurance Policies. Insurance Policies maintained by tenants under the Leases may, if in conformity with the requirements of this Mortgage and if approved by Mortgagee, be presented to Mortgagee in satisfaction of Mortgagor's obligation to provide the insurance coverages provided by those Insurance Policies.

3.03 Proceeds of Insurance. Borrower will give Mortgagee prompt notice of any loss or damage to the Premises, and;

3.03(a) In case of loss or damage covered by any of the Insurance Policies, Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) may at its option either (i) settle and adjust any claim under such Insurance Policies without the consent of Mortgagor, or (ii) allow Mortgagor to settle and adjust such claim without the consent of Mortgagee; provided that in either case Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to Mortgagee upon demand or may be deducted by Mortgagee from said insurance proceeds prior to any other application thereof. Each insurance company which has issued an Insurance Policy is hereby authorized and directed to make payment for all losses covered by any Insurance Policy to Mortgagee alone and not to Mortgagee and Mortgagor jointly.

3.03(b) Mortgagee shall, in its sole discretion, elect to apply the proceeds of the Insurance Policies consequent upon any casualty either (i) to reduce the indebtedness under the Note ("Indebtedness"); or (ii) to reimburse Mortgagor for the cost of restoring or repairing the Premises subject to the conditions and in accordance with the provisions of Paragraph 3.04 hereof. In the event Mortgagee applies the proceeds of Insurance Policies to the Indebtedness and such proceeds do not discharge that Indebtedness in full, the entire Indebtedness shall become immediately due and payable with interest thereon at the Default Rate.

3.03(c) Whether or not insurance proceeds are made available to Mortgagor,

Mortgagor shall restore or repair the Improvements, to be of at least equal value, and of substantially the same character as prior to such casualty, all to be effected in accordance with plans, specifications and procedures approved in advance by Mortgagee, and Mortgagor shall pay all costs of such restoring or repairing.

3.04 Disbursement of Insurance Proceeds. Any Insurance proceeds held by Mortgagee for restoration or repairing of the Premises shall be disbursed from time to time upon Mortgagee being furnished with (i) evidence satisfactory to it of the estimated cost of the restoration or repair, (ii) funds sufficient in addition to the proceeds of insurance, to fully pay for the restoration and repair, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidence of cost, payment and performance as Mortgagee may require and approve. No payment made prior to the final completion of the restoration or repair shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Mortgagee in its sole judgement; funds other than insurance proceeds shall be disbursed prior to disbursement of such proceeds, except as may otherwise be provided in the Note; and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with the funds deposited or irrevocably committed, to the satisfaction of Mortgagee, together with the unpaid cost of the restoration or repair, free of all liens or claims for lien. Any surplus remaining out of insurance proceeds held by Mortgagee after payment of such costs of restoration or repair may be paid to Mortgagor, provided Mortgagor is not in default hereunder. No interest shall be allowed to Mortgagor on account of any proceeds of insurance or other funds held by Mortgagee.

## 4.00 CREATION OF LIENS.

4.01 Mortgagor shall not create, suffer or permit to be created or filed against the Premises, any mortgage lien or other lien whether superior or inferior to the lien of this Mortgage without prior written consent of Mortgagee, excepting only the lien of real estate taxes and assessments not yet due.

4.02 Notwithstanding the foregoing prohibition against encumbrances, Mortgagor may in good faith with reasonable diligence contest the validity or amount of any Mechanics' Liens and defer payment and discharge thereof during the pendency of such contest, provided that:

4.02(a) Such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Mechanics' Lien;

4.02(b) Within ten (10) days after Mortgagor has been notified of the filing of such Mechanics' Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Mechanics' Lien; and

4.02(c) Mortgagor shall have either obtained a title insurance endorsement over such Mechanics' Liens insuring Mortgagee against loss by reason of the Mechanics' Liens or Mortgagor shall have deposited with Mortgagee at such place as Mortgagee from time to time

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in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money (the "Deposits") which shall be sufficient in the judgment of Mortgagee to pay in full such Mechanics' Lien and all interest which might become due thereon. Mortgagor shall increase the Deposits whenever, in the judgment of Mortgagee, such increase is advisable. The Deposits are to be held without any allowance of interest.

Mortgagor may, at its option, pay the Deposits, or any part thereof, to the Mechanics' Lien claimant if Mortgagor (i) fails to maintain sufficient Deposits or (ii) fails to act in good faith or with reasonable diligence in contesting the Mechanics' Lien claims. If the Mechanics' Lien contest is resolved in favor of the claimant and Mortgagor is not in default hereunder, Mortgagee shall pay the Deposits, or any part thereof, to the claimant upon Mortgagee's receipt of evidence satisfactory to Mortgagee of the amount to be paid. Mortgagee shall pay any remaining Deposits to Mortgagor, provided Mortgagee is not in default hereunder.

4.03 Any waiver by Mortgagee of the provisions of this Paragraph shall not be deemed a waiver of the right of Mortgagee to insist upon strict compliance with the provisions of this Paragraph in the future.

## 5.00 PRESERVATION AND RESTORATION OF PREMISES AND COMPLIANCE WITH GOVERNMENTAL REGULATIONS.

5.01 Mortgagor shall not permit any building or other improvement on the Premises to be materially altered, removed or demolished, nor shall any fixture or appliances on, in, or about said building or improvements be severed, removed, sold or mortgaged, without the prior written consent of Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced promptly by similar fixtures, and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto except in favor of Mortgagee. Subject to conditions hereinafter set forth, Mortgagor shall promptly repair, restore or rebuild any buildings or improvements now or hereafter on the Premises which may become damaged or be destroyed. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction.

5.02 Mortgagor further agrees to permit, commit or suffer no waste, impairment or deterioration of the Premises or any part or improvement thereof; to keep and maintain the Premises and every part thereof in good repair and condition, subject to ordinary wear and tear, to effect such repairs as the Mortgagee may reasonably require, and, from time to time, to make all needful and proper replacements and additions thereto so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed; to comply with all statutes, orders, requirements or decrees relating to said Premises and as provided in any notice given by an federal, state or municipal authority; and to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and nonconforming uses)

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privileges, franchises and concessions which are applicable to the Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the said Premises.

6.00 [INTENTIONALLY OMITTED].

7.00 EMINENT DOMAIN.

7.01 So long as any portion of the principal balance evidenced by the Note remains unpaid, any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the Premises, by any governmental or other lawful authority for taking by condemnation or eminent domain, of the whole or any part of the Premises or any improvement located thereon, or any easement therein or appurtenant thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, to the extent of the unpaid indebtedness evidenced by the Note, which award Mortgagee is hereby authorized to give appropriate receipts and acquittance therefore, and, subject to terms hereinafter set after, Mortgagee shall apply the proceeds of such award as a credit upon any portion of the indebtedness secured hereby or, at its option, permit the same to be used to repair and restore the improvements in the same manner as hereinafter set forth with regard to insurance proceeds received subsequent to a fire or other casualty to the Premises.

7.02 Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of said Premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings.

7.03 Mortgagor shall make, execute and deliver to Mortgagee, at any time or times upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments, and/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards in accordance with and subject to the provisions hereof, and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding.

7.04 Notwithstanding anything aforesaid to the contrary, Mortgagor shall have the sole authority to conduct the defense of any condemnation or eminent domain proceeding and (so long as the amount of any condemnation or eminent domain award exceeds the unpaid principal balance evidenced by the Note) the sole authority to agree to and/or accept the amounts, terms and conditions of any and all condemnation or eminent domain settlements or awards.

7.05 If any portion of or interest in the Premises is taken by condemnation or eminent domain, and the remaining portion of the Premises is not, in the sole judgement of Mortgagee, a complete economic unit having equivalent value to the Premises as it existed prior to the

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taking, then, at the option of Mortgagee, the entire indebtedness secured hereby and evidenced by the Note shall immediately become due and payable.

7.06 In the event that Mortgagee elects to make available to the Mortgagor the proceeds of any award for eminent domain to restore any improvements on the Premises, no disbursement thereof shall occur unless Mortgagor is in compliance with each of the following conditions: (i) No Event of Default shall then exist under any of the terms, covenants and conditions of the Note, this Mortgage, or any other documents or instruments evidencing or securing the Note; (ii) Mortgagee shall first be given satisfactory proof that such improvements have been fully restored or that by the expenditure of such award, and any sums deposited with Mortgagee pursuant to the terms of subparagraph (iii) hereof, will be fully restored, free and clear of all mechanic's and materialmen's liens, except for liens for which adequate provision is made as required above within six (6) months from the date of such taking; (iii) In the event such award shall be insufficient to restore the improvements, Mortgagor shall deposit promptly with Mortgagee funds which, together with the award proceeds, would be sufficient to restore the improvements; (iv) the rental income to be derived from the improvements, subsequent to such taking by eminent domain, shall not adversely affect the Mortgagor's ability to pay the indebtedness evidenced by the Note; (v) The disbursement of the award will be made according to those provisions which relate to the disbursement of insurance proceeds for repair and restoration of the improvements and the conditions precedent to be satisfied by the Mortgagor with regard thereto; (vi) The excess of the proceeds of the award, above the amount necessary to complete such restoration, shall be applied as a credit upon any portion, as selected by Mortgagee, of the indebtedness secured hereby, but the proceeds of the award released by Mortgagee for restoration shall, in no event, be deemed a payment of the indebtedness secured hereby.

## 8.00 ACKNOWLEDGEMENT OF DEBT AND ESTOPPEL CERTIFICATE.

8.01 Mortgagor shall furnish to Mortgagee, or any of its successors and/or assigns, from time to time, in a form reasonably required by Mortgagee within thirty (30) days after Mortgagee's request, a written statement and acknowledgement of the amount then due upon the Note as of a specified date certain, whether any alleged offsets or defenses then exist against the indebtedness secured by this Mortgage, and any other matter reasonably requested by Mortgagee.

8.02 It is specifically acknowledged and understood by Mortgagor that Mortgagee shall rely on the trust of such statements and acknowledgements.

## 9.00 [INTENTIONALLY OMITTED]

10.00 ILLEGALITY OF TERMS HEREOF. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (i) to require Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate; or (ii) to require Mortgagor to make any payment or do any act contrary to law, and if any

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clause and provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such clause or clauses and provisions only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall correct any such error within a reasonable time.

**11.00 SUBROGATION.** In the event the proceeds of the loan made by the Mortgagee to the Mortgagor, or any part thereof, or any amount paid out or advanced by the Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then the Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

**12.00 [INTENTIONALLY OMITTED]**

**13.00 [INTENTIONALLY OMITTED]**

**14.00 [INTENTIONALLY OMITTED]**

**15.00 DEFAULT AND FORECLOSURE**

**15.01 Events of Default and Remedies.** The following shall constitute an Event of Default under this Mortgage: (i) any failure to provide and maintain the Insurance Policies specified above; or (ii) any default, after the expiration of any applicable grace period in the making of any payment owed under the Note; (iii) any default in the performance or observance of any other term, covenant, or condition in the Note, or in any other instrument now or hereafter evidencing or securing said indebtedness which default continues for fifteen (15) days, or such lesser time as may be specified in such document for such default; or (iv) if the Mortgagor, any beneficiary thereof, or any Guarantor of the Note secured hereby, shall file a petition in voluntary bankruptcy or under Chapter VII or Chapter XI of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, which action is not dismissed within thirty (3) days; or (v) if the Mortgagor, or any beneficiary thereof, or any Guarantor of the Note secured hereby, shall file an answer admitting solvency or inability to pay their debts or fail to obtain a vacation or stay or voluntary proceedings within thirty (3) days after the filing thereof; or (vi) if the Mortgagor, or any beneficiary thereof, or any Guarantor of the Note secured hereby, shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for the Mortgagor or its beneficiary which appointment is not relinquished within thirty (30) days for all or any portion of the Premises or its or their property in any involuntary proceeding; or (vii) any court shall have taken jurisdiction of all or any portion of the Premises or the property of the Mortgagor, or any beneficiary thereof, or any Guarantor of the Note secured hereby, in any involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Mortgagor or any beneficiary thereof, and such trustees or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within the thirty (30) days after appointment; or (viii) the Mortgagor, or any beneficiary thereof of any Guarantor of the Note secured hereby, shall make an assignment for the benefit of creditors, or shall admit in writing its or their insolvency or shall consent to the appointment

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of a receiver or trustee or liquidator of all or any portion of the Premises; or (ix) the untruth or falsity of any of the warranties contained herein, or the Assignment of Lease (s) and Rent(s) or any other document given by Mortgagor to Mortgagee as an inducement to enter into the Note and to secure collaterally or otherwise, the payment of the Note; or (x) if any action or similar proceeding is filed to foreclose or otherwise collect on any lien over which the title insurer will not mortgage title insurance to Mortgagee and which Mortgagor is not contesting in the manner provided above; or (xi) the occurrence of a Prohibited Transfer.

15.02 Acceleration of Maturity Date upon Default. Upon the occurrence of an Event of Default, the entire indebtedness secured hereby, including, but not limited to, principal and accrued interest shall, at the option of the Mortgagee and without demand or notice to Mortgagor, become immediately due and payable with interest accruing thereafter on the unpaid principal balance of the Note at the Default Interest Rate, as that phrase is defined in the Note and, thereupon, or at any time after the occurrence of any such Event of Default, the Mortgagee may: (i) proceed to foreclose this Mortgage by judicial proceedings according to the statutes in such case provided, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time; (ii) advance cash, insofar as the Mortgagee deems practicable, to protect its security for payment to such persons or entities and for such purposes as Mortgagee deems necessary or desirable under the circumstances, either out of the proceeds of the Mortgage Loan, or, if the proceeds of the Mortgage Loan is wholly disbursed or the remaining undisbursed are insufficient for such purposes, out of additional fund, and without limitation on the foregoing; (a) to pay any lien; (b) contest the validity thereof; (c) remedy any delay in construction; (d) pay attorneys, experts, and any other persons and their expenses in connection with the cure of any Event of Default; and (e) to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions or liens asserted against the Premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement, or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof, and the mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge; or payment otherwise relating to any other purpose herein and hereby authorized but not enumerated in this Paragraph, and may do so whenever, in its reasonable judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and, provided further, that in connection with any such advance, Mortgagee, in its option, may, and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All such advances and indebtedness authorized shall be repayable by Mortgagor upon demand with interest at the Default Interest Rate; (iii) To prosecute and defend all actions or proceedings in connection with the Premises or the construction of the improvements; and (iv) To take such action and require such performance as it deems necessary.

15.03 Expense of Litigation. In any suit to foreclose the lien of the Mortgage or enforce any other remedy of the Mortgagee under this Mortgage or the Note, all expenditures and

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expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs and cost (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 insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree, the true condition of the title to or value of the Premises. All expenditures and expenses of the nature in this Paragraph mentioned, and such expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney affecting this Mortgage, the Note or the Premises, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate until paid in full.

15.04 Mortgagee's Right of Possession in Case of Event of Default. In any case in which, under the provisions of this Mortgage, or the Note, the Mortgagee has a right to institute foreclosure proceedings whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof, or before or after sale thereunder, Mortgagor shall forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to be placed in possession of the Premises and provided by applicable law, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of said Premises, together with all documents, books, records, papers, and accounts of the Mortgagor or the then owner of the premises relating thereto, and may exclude the Mortgagor, its agents or servants, wholly therefrom, and may, in its own name as Mortgagee and under the powers herein granted: (i) hold, operate, manage and control the Premises and conduct the business, if any thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns, may be deemed proper or necessary to enforce the payment of security of the avails, rents, issues, and profits of the Premises including actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to the Mortgagor; (ii) cancel or terminate any lease or sublease or management agreement for any cause or on any ground which would entitle Mortgagor to cancel the same; (iii) elect to disaffirm any lease or sublease of all or any part of the Premises made subsequent to the Mortgage without Mortgagee's prior written consent; (iv) extend or modify any then existing lease(s) or management agreement(s) and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and shall also be binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge or the mortgage indebtedness, satisfactory of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (v) make all necessary or property repairs, decorations, renewal, replacements, alterations, additions, betterments, and improvements to the Premises as to Mortgagee may seem judicious, to insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all avails, rents, deposits, issues and profits; (vi) apply

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the net income, after allowing a reasonable fee for the collection thereof and the management of the Premises, to the payment of taxes, premiums and other charges applicable to the Premises, or in reduction of the Indebtedness under the Note in such order and manner as Mortgagee may select.

15.05 Mortgagee's Determination of Priority of Payments. Any avails, rents, issues, and profits of the Premises received by the Mortgagee after having taken possession of the Premises, or pursuant to any assignment thereof to the Mortgagee under the provisions of this Mortgage or the Note shall be applied in payment of or on account of the following, in such order as the Mortgagee (or in case of a receivership) as the Court may determine: (i) to the payment of the operation expenses of the Premises, which shall include reasonable compensation to the Mortgagee or the receiver and its agent or agents, if management of the Premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses or seeking and procuring tenants and entering into leases, established claims for damages, if any, and premiums on insurance hereinabove authorized; (ii) to the payment of taxes, special assessments, and water taxes now due or which may hereafter become due on the Premises, or which may become a lien prior to the lien of this Mortgage; (iii) to the payment of all repairs and replacements, of said Premises and of placing said property in such condition as will, in the judgment of Mortgagee or receiver, make it readily rentable; (iv) to the payment of any indebtedness secured hereby or under the Note or any deficiency which may result from any foreclosure sale; (v) any overplus or remaining funds to the Mortgagor, their successors or assigns, as their rights may appear.

15.06 Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose this Mortgage, the Court may, upon application, by Mortgagee and at Mortgagee's sole option, appoint a receiver of the Premises pursuant to applicable law. Such appointment may be made either before or after sale upon appropriate notice as provided by law and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the Premises, and without bond being required of the applicant. Mortgagee or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to take possession, control, and care of the Premises and to collect the rents, issues, and profits of the Premises during the pendency of such foreclosure suit, and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by the Mortgagor), as well as during any further times when the Mortgagor, its heirs, administrators, executors, successors, or the assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the Premises during the whole of said period, to extend or modify any then new lease(s) or management agreement(s), and to make new lease(s) or management agreement(s), which extensions, modification, and new lease(s) or management agreement(s) may provide for terms to expire, or for options to lease(s) to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder, it being understood and agreed that any such lease(s) and management agreement(s) and the option or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose

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interests in the Premises are subject to the lien hereof and upon the purchase or purchases at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

15.07 Application of Proceeds of Foreclosure Suit. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order or priority: (i) FIRST, on account of all costs and expenses incident to and incurred as a result of the foreclosure proceedings; (ii) SECOND, all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the Default Interest Rate; (iii) THIRD, all interest (calculated at the Default Interest Rate) remaining unpaid on the Note; (iv) FOURTH, all principal remaining unpaid on the Note; (v) FIFTH, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

15.08 Rescission of or Failure to Exercise. The failure of the Mortgagee to exercise the option for acceleration of maturity and/or foreclosure following any Event of Default as aforesaid, or to exercise any other option granted to the Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments hereunder, shall not constitute a waiver of any such Event of Default nor extended or affect any cure period, if any, but such option shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgement to that effect by the Mortgagee and shall not affect the Mortgagee's right to accelerate the maturity for any future Event of Default.

15.09 Sale of Separate Parcels, Right of Mortgagee to Purchase. In the event of any foreclosure sale of said Premises, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

15.10 Insurance During Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty Insurance Policies making the loss thereunder payable to said decree creditors. The foreclosure decree may further provide that in the case of one or more redemptions under said decree, each successive redemtor may cause the preceding loss clause to be attached thereto, making the loss thereunder payable to such redemtor. In the event of foreclosure sale, Mortgagee may, without the consent of Mortgagor, assign any Insurance Policies to the purchaser at the sale, or take such other steps as Mortgagee may deem advisable to protect the interest of such purchaser.

15.11 [INTENTIONALLY OMITTED]

15.12 Mortgagee's Performance of Mortgagor's Obligations. In case of Default, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof and during

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any period of redemption, Mortgagee may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any manner deemed expedient to Mortgagee. Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs, including management fees, of every kind in connection therewith, so that the Premises shall be usable for their intended purposes. All such monies paid and expenses incurred, including attorneys' fees, shall be so much additional Indebtedness, whether or not the Indebtedness, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due with interest thereon at the Default Rate specified in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default nor shall the provisions of this Paragraph or any exercise by Mortgagee of its rights hereunder prevent any default from constituting a Default. Mortgagee, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so with inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate. Nothing contain herein shall be construed to require Mortgagee to advance monies for any purpose.

**16.00 RIGHTS AND REMEDIES ARE CUMULATIVE.** All rights and remedies herein provided are cumulative and the holder of the Notes secured hereby and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right afforded by this Mortgage.

**17.00 GIVING OF NOTICE.** Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall be required or may be given to any party by another party or parties, it shall be in writing and, any law or statute to the contrary notwithstanding, shall be (1) hand delivered, (2) served by regular first class mail with affidavit of mailing, or (3) served by certified mail, return receipt requested, addressed as follows:

If to Mortgagee:

Arthur and Evelyn R. Nelles  
Water Oak Country Club Estates  
120 Evergreen Lane  
Ladylake, FL 32159

If to Mortgagor:

Lynn F. Nelles, Trustee of the  
Lynn F. Nelles Trust dtd 12/20/91  
206 Waterford  
Prospect Hts., IL 60070

or to such other address as a party may from time to time designate by notice to others, as



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herein provided.

Any notice hereunder shall be deemed to have been given on (1) the date of delivery if hand delivered, (2) the third business day following the date of postmarking if served by regular first class mail, (3) upon mailing as of the date postmarked if sent by certified mail, postage prepaid, return receipt requested. The failure of the addressee to accept any such certified mail shall not constitute a failure to give or receive proper notice.

**18.00 TIME IS OF THE ESSENCE.** It is specifically agreed that time is of the essence of this Mortgage. The waiver of the options or obligations secured hereby or under the Note shall not at any time thereafter be held to be abandonment of such rights. Except as otherwise specifically required, notice of the exercise of any option granted to the Mortgagee herein, or in the Note secured hereby is not required to be given.

**19.00 COVENANTS TO RUN WITH THE LAND.** All the covenants hereof shall run with the land.

**20.00 CAPTIONS.** The captions and headings of various paragraphs are for convenience only, and are not to be construed as defining or limiting in any way the scope or intent of the provisions hereof.

**21.00 OPTION TO SUBORDINATE.** At the option of Mortgagee, this Mortgage may become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution of Mortgage and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Premises are situated, of a unilateral declaration to that effect.

**22.00 GOVERNING LAW.** The place of negotiation, execution and delivery of this Mortgage and the location of the Premises being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State. If any provision of this Mortgage shall be inconsistent with any provision of applicable law, the provisions of the law shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the law. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under applicable law in the absence of said provision, Mortgagee shall be vested with the rights granted by law to the full extent permitted.

**23.00 BUSINESS LOAN.** The proceeds of the Note will be used for the purposes specified in Ill. Rev. Stat., Ch. 17, Paragraph 6404(1987) and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of said section.

**24.00 RELATIONSHIP.** Mortgagor acknowledges that the relationship between the

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parties is that of mortgagor and mortgagee and that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor. Mortgagee shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or the Note.

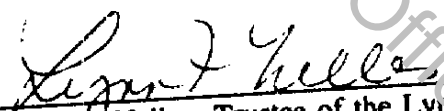
25.00 SEVERABILITY. If all or any portion of any provision of this Mortgage or the Note shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

26.00 BINDING ON SUCCESSOR AND ASSIGNS. Without expanding the liability of any guarantor contained in any instrument of Guaranty executed in connection herewith, this Mortgage and all covenants and provisions hereof shall run with the land and shall extend and be binding upon Mortgagor and all persons claiming under or through Mortgagor. The word "Mortgagor" when used herein, shall include all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein, shall include the successors and assigns of the Mortgagee named herein, and the holder of holders, from time to time, of the Note secured hereby. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

27.00 CONSENT. Wherever in this Mortgage, the consent of either the Mortgagor or Mortgagee is required, such consent shall not be unreasonably withheld.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be executed and effective as of the date first above written.

MORTGAGOR:

  
\_\_\_\_\_  
Lynn F. Nelles, Trustee of the Lynn F. Nelles  
Trust dated December 21, 1991

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## EXHIBIT A

### LEGAL DESCRIPTION

Lot 47 in the Shires of Prospect heights, being a Subdivision of the Northeast 1/4 of the Southwest 1/4 of Section 23, Township 42 North, Range 11, East of the Third Principal Meridian, according to the Plat thereof recorded November 5, 1986 as Document Number 86519270, in Cook County, Illinois.

Permanent Index No.:

03-23-318-026

Address of Property:

206 Waterford Drive  
Prospect Heights, Illinois 60070