



0310641046

Eugene "Gene" Moore Fee: \$64.00
Cook County Recorder of Deeds
Date: 04/16/2003 10:04 AM Pg: 1 of 21

750 72 90 D2 SC6 ALL

Cross Reference Instrument Nos. 04049661,
98552345, 0011218009 and 0021255494

875 East 112th Street
Chicago, Illinois

**AMENDED AND RESTATED MORTGAGE, SECURITY
AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS**

THIS INSTRUMENT ("**Mortgage**") WITNESSES: That MAYS PROPERTY MANAGEMENT COMPANY, LLP ("**Mortgagor**"), in consideration of One Dollar (\$1.00) and other good and valuable consideration the receipt of which is hereby acknowledged, hereby MORTGAGES and WARRANTS to BANK ONE, NA, a national banking association having its principal offices in Indianapolis, Indiana ("**Mortgagee**"), the real estate in Cook County, in the State of Illinois, described more particularly on Exhibit A attached hereto and made a part hereof for all purposes (all of such real estate being hereinafter referred to as the "**Real Estate**"), together with all rights, title and interests of Mortgagor now existing or hereafter arising, in and to:

(a) All rights, privileges, interests, tenements, hereditaments, easements and appurtenances in any way now or hereafter benefitting, belonging or appertaining to all or any of the Real Estate, including without limiting the generality of the foregoing all land lying within any roadway and strips adjoining all or any of the Real Estate, all minerals, oil, gas and other hydrocarbon substances thereon or therein and all air rights and water rights (collectively, the "**Easements and Appurtenances**");

(b) All buildings, structures and other improvements of every kind and description now or hereafter erected, constructed or placed on the Real Estate, together with all fixtures, machinery, equipment, apparatus, furniture, furnishings, heating and cooling systems, and other articles of personal property now or hereafter located in or upon, attached to or used or intended to be used in connection with the Real Estate, and all replacements thereof (collectively, the "**Improvements**");

(c) All extensions, improvements, betterments, substitutes, replacements, renewals, additions and appurtenances of or to the Easements and Appurtenances and of or to the Improvements (collectively, the "**Additions**");

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(d) All rents, revenue, issues, proceeds, income and profits of the Real Estate, the Easements and Appurtenances, the Additions and the Improvements, including all revenue and income derived from any leases and subleases of all or any of such property, and including all revenue and income derived from the lease, use or occupancy of all or any such property (including all of its rooms) by any tenants, guests, invitees or other occupants thereof (collectively, the "**Rents**"); and

(e) All awards, payments and proceeds of conversion, whether voluntary or involuntary, of any of the Real Estate, Easements and Appurtenances, Improvements, Additions and Rents, including without limitation, all insurance, condemnation and tort claims, rent claims and other obligations dischargeable in cash (collectively, the "**Proceeds**").

Hereinafter, the Real Estate, the Easements and Appurtenances, the Improvements, the Additions, the Rents and the Proceeds are referred to collectively as the "**Mortgaged Property.**"

This Mortgage is given to secure performance by Mortgagor of the covenants and agreements contained in this Mortgage and to secure, without duplication:

(a) Payment of the principal of, and interest on, the indebtedness evidenced by that certain Installment Business Loan Note, dated as of even date, executed by Mortgagor to the order of Mortgagee in the principal amount of Seven Million Four Hundred Seventy One Thousand Fifteen and 59/100 Dollars (\$7,471,015.59), as the same may be amended, restated, renewed, modified and/or extended from time to time and at any time (the "**Term Note**"), together with all other amounts now or hereafter owing under the Term Note;

(b) All "**Obligations**", as such term is defined in the Term Loan Agreement;

(c) Payment of all costs of collection and of all costs and reasonable attorneys' fees incurred by Mortgagee in the enforcement of this Mortgage; and

(d) Any and all modifications, renewals and extensions of one or more of the indebtedness, liabilities, obligations, the Term Note, and other instruments secured hereby, including without limitation: (i) modifications of the required principal payment dates or interest payment dates, deferring or accelerating payment dates wholly or partly; and (ii) modifications, extensions or renewals at a different rate of interest whether or not, in the case of a promissory note or contract, the modification, extension or renewal is evidenced by a new or additional promissory note or other contract.

The indebtedness, liabilities and obligations secured by this Mortgage are hereinafter collectively called the "**Indebtedness.**"

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The final payment of the Indebtedness evidenced by the Term Note is scheduled to become due on or before March 31, 2006.

Mortgagor hereby acknowledges and agrees that the Indebtedness includes, and that this Mortgage is given to secure, advances that may be made by Mortgagee to Mortgagor and obligations to Mortgagee that may be incurred by Mortgagor after the execution of this Mortgage ("**Future Advances**") and that this Mortgage shall secure all Future Advances of every kind and whenever occurring, provided however, that the maximum amount of unpaid Future Advances outstanding at any one time shall not exceed \$20,000,000.00, and the statement thereof not being a commitment by Mortgagee to make Future Advances, and provided, further, that the maximum amount of the Indebtedness secured by this Mortgage at any one time in all events shall not exceed \$20,000,000.00.

As used in this Mortgage, the term "**Term Loan Agreement**" shall mean that certain Term Loan Agreement, dated as of even date, between Mortgagee and Mortgagor, as the same may hereafter be modified, amended, restated and/or extended from time to time and at any time.

This Mortgage amends, and as so amended, restates and replaces the Mortgage, dated December 15, 1994, executed by Mortgagor in favor of Mortgagee, and recorded as Instrument No. 04049661 in the Office of the Cook County, Illinois Recorder, as amended by a Modification of Loan Documents, dated May 15, 1998, between Mortgagor and Mortgagee and recorded as Instrument No. 98552345 in the Office of the Cook County, Illinois Recorder, as amended by a Second Modification of Loan Documents, dated as of November 19, 2001, between Mortgagor and Mortgagee, and recorded as Instrument No. 0011218009 in the Office of the Cook County, Illinois Recorder, as amended by an Assumption and Modification of Mortgage, dated as of September 30, 2002, between Mortgagor and Mortgagee, and recorded as Instrument No. 0021255494 in the Office of the Cook County, Illinois Recorder.

All persons who have or may acquire an interest in the Mortgaged Property shall be deemed to have notice of and shall be bound by the terms of the Term Loan Agreement, the Term Note, this Mortgage, and any other instruments or documents made or entered into in connection herewith and the terms of the Indebtedness, including notice that the rate of interest on some or all of the Indebtedness may vary from time to time.

Mortgagor hereby further covenants with the Mortgagee as follows:

1. Payment of Sums Due. Mortgagor promptly will pay as and when due the Indebtedness, all without relief from valuation and appraisal laws and with reasonable attorneys' fees. Mortgagor waives demand, presentment for payment, notice of protest and notice of nonpayment or dishonor of the Term Note and of the Indebtedness.
2. Care and Condition of Mortgaged Property. Mortgagor shall (a) promptly repair, restore or rebuild any part of the Mortgaged Property which may become damaged or be destroyed; (b) keep the Mortgaged Property in good condition and thorough repair, without waste, and free from encroachments and mechanic's or materialman's lien or claims for lien not

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expressly subordinated to the lien of this Mortgage; (c) pay any indebtedness when due which may be secured by a lien or charge on the Mortgaged Property, whether or not superior, equal or junior to the lien of this Mortgage; (d) complete, or cause to be completed, within a reasonable time and in a good and workmanlike manner, any Improvements now or at any time hereafter in the process of erection, construction or installation; (e) comply, and cause any lessees and sublessees of the Mortgaged Property to comply with all requirements of law, municipal ordinances, restrictions of record or insurance covenants with respect to the Mortgaged Property and its use; (f) permit no removal or demolition of the Mortgaged Property (other than items of the Mortgaged Property which have become obsolete or are being replaced) without the prior written consent of Mortgagee; (g) observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation all uses), privileges, franchises and concessions which are applicable to any part of the Mortgaged Property or which have been granted to or contracted for by Mortgagor in connection with any existing or contemplated use of any part of the Mortgaged Property; (h) permit Mortgagee to enter upon and inspect the Mortgaged Property at all reasonable times and from time to time; and (i) promptly notify Mortgagee of the assertion of any material claim, or the filing of any material action or proceeding affecting the Mortgaged Property, of the occurrence of any material damage to the Mortgaged Property, or of any act or default under any contract, mortgage, lease, license or federal, state or local law or regulation in connection with or affecting in any material way, the Mortgaged Property.

3. Warranties. Mortgagor covenants and warrants that: (a) Mortgagor is lawfully seized of the Real Estate in fee simple, has valid and indefeasible title to the Mortgaged Property and has a good and legal right to mortgage the Mortgaged Property to Mortgagee; (b) all of the Mortgaged Property is and will remain free from all liens and encumbrances excepting only the lien of real estate taxes and assessments not yet delinquent, the easements and encumbrances more particularly described on **Exhibit B** attached hereto and made a part hereof for all purposes, and those liens and encumbrances which are in favor of Mortgagee, and Mortgagor will warrant and defend, at Mortgagor's expense, Mortgagor's rights, title and interests in and to the Mortgaged Property against all claims made thereon; and (c) the Real Estate is properly zoned and its present development and uses comply in all respects with all applicable zoning and other ordinances, laws and legal restrictions regulating development and use of the Real Estate.

4. Insurance.

(a) Mortgagor, at its sole cost and expense, shall obtain and keep in full force and effect such policies of insurance as Mortgagee shall from time to time require in such amounts and covering such risks as is industry norm in the same general area in which the Mortgaged Property is located, including, without limitation, the following:

(i) Insurance required under the terms of the Term Loan Agreement to be maintained by Mortgagor;

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(ii) Insurance at or above replacement cost against loss or damage to any of the Mortgaged Property by fire and any of the risks covered by insurance commonly known as "fire and extended coverage" and shall further provide flood insurance (if the Mortgaged Property is situated in an area designated as a flood risk area by the Director of the Federal Emergency Management Agency or as otherwise required by the Flood Disaster Protection Act of 1973 and regulations issued under it);

(iii) Comprehensive public liability insurance, including, without limitation, against claims for personal injury, bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passage ways;

(iv) During the course of all construction or repair, (A) workers' compensation insurance (including employer's liability insurance) for all persons engaged on or with respect to the Mortgaged Property in such amounts as are reasonably satisfactory to Mortgagee, or, if such limits are established by law, in such amounts, and (B) builder's completed value risk insurance against "all risks of physical loss" during construction, covering the total value of work performed and equipment, supplies and materials furnished; and

(v) If consistent with industry norm in the general area in which the Mortgaged Property is located (provided such insurance is generally available at reasonable rates), business interruption insurance.

In the event of any conflict between the requirements of the Term Loan Agreement and the terms of this subsection (a) with respect to the types and amounts of insurance Mortgagee shall maintain, the terms of the Term Loan Agreement shall control (a conflict is not created by the requirement of additional coverages, types or amounts of insurance.)

(b) All insurance required to be obtained and maintained by Mortgagee by the terms of this Mortgage and the Term Loan Agreement (the "**Required Insurance**") shall be provided by policies written in terms, amounts and by companies satisfactory to Mortgagee. Mortgagee shall be named as an additional insured on all liability policies; and losses under all other policies shall be payable to Mortgagee pursuant to a standard mortgagee endorsement satisfactory to Mortgagee. Mortgagee shall deliver to Mortgagee certificates for all policies of insurance (including but not limited to all policies of Required Insurance) acquired by Mortgagee to insure against any loss or damage to the Mortgaged Property.

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(c) Mortgagor hereby authorizes Mortgagee to obtain and/or maintain in effect any and all policies of Required Insurance in the event Mortgagor fails to do so, and Mortgagor agrees to reimburse Mortgagee for any premiums or other costs associated with obtaining Required Insurance which Mortgagee may pay.

(d) At least thirty (30) days prior to the expiration of each policy of Required Insurance, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the issuance of a renewal or replacement policy continuing such insurance in force as required by this Mortgage. All policies of Required Insurance shall contain a provision that such policies may not be canceled or amended (including any reduction of the scope or limits of coverage) without at least ten (10) days' prior written notice to Mortgagee. Upon Mortgagee's request, Mortgagor shall cause all bills, statements or other documents relating to the Required Insurance to be sent or mailed directly to Mortgagee.

(e) In the event of a foreclosure sale of all or any part of the Mortgaged Property pursuant to the enforcement of this Mortgage, the purchaser of the Mortgaged Property shall succeed to all rights of Mortgagor, including any rights to the proceeds of insurance and to unearned premiums, in and to all of the policies of Required Insurance. In the event of foreclosure sale, Mortgagee is hereby authorized, without the further consent of Mortgagor, to assign any and all policies of Required Insurance to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such policies.

(f) Mortgagor shall give Mortgagee immediate notice of any loss or damage covered by any Required Insurance. Except as otherwise provided in the Term Loan Agreement:

(i) In the event such loss or damage does not constitute a "**Major Loss**" (as hereinafter defined) and provided that no Default (as hereinafter defined) shall then exist, Mortgagor shall have the right to adjust such loss or damage and receive any monies paid for such loss or damage under any of the Required Insurance. Any such monies received by Mortgagor shall be used only for the purpose of restoring and/or replacing the Mortgaged Property which has been lost, damaged or destroyed.

(ii) In the event such loss or damage constitutes a Major Loss (as hereinafter defined), Mortgagor may adjust such loss or damage, but only with the consent of Mortgagee, which consent shall not be withheld unreasonably. Any monies paid for such loss or damage under any of the Required Insurance may be paid jointly to Mortgagor and Mortgagee and shall be used for the sole purpose of restoring and/or replacing the Mortgaged Property

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which has been lost, damaged or destroyed, provided, however, that no Default (as hereafter defined) shall have occurred and be continuing.

(iii) In the event such loss or damage shall occur at the time a Default has occurred and is continuing: (a) Mortgagee shall have the right to adjust such loss or damage and to execute and deliver on behalf of Mortgagor all proofs of loss, receipts, vouchers and acquittances in connection therewith and Mortgagor agrees to execute all of the foregoing on demand made by Mortgagee; and (b) any monies received as payment of any loss under any of the Required Insurance paid over to Mortgagee may be applied at the option of Mortgagee either to the prepayment of any portion, as Mortgagee may select, of the Indebtedness or to the reimbursement of Mortgagor for expenses incurred by Mortgagor in the restoration, repair or replacement of the Mortgaged Property which has been lost, damaged or destroyed. Each insuring company concerned is hereby authorized and directed to make payment for any such loss directly to Mortgagee rather than jointly to Mortgagee and any other party or parties.

In no event shall proceeds of the Required Insurance paid or payable to Mortgagor fail to be applied to restoration of the Mortgaged Property which has been lost, damaged or destroyed in such fashion as Mortgagee reasonably may require and in no event shall Mortgagor do or permit any action with respect to the Mortgaged Property which will increase the risk of hazard to the Mortgaged Property without first causing such increased risk to be fully insured. As used in this subsection (f), the term "**Major Loss**" shall mean any casualty loss or damage to any of the Mortgaged Property the repair, replacement or restoration of which will cost Ten Thousand Dollars (\$10,000.00) or more.

5. Taxes. Mortgagor will pay and discharge or cause to be paid and discharged when due, and before any penalty attaches, all taxes of every kind and nature (including real and personal property taxes), general and special assessments, water rates and sewer rents, and all other governmental, municipal and public dues, charges, fines and impositions whether of a like or different nature, imposed upon or assessed against Mortgagor or the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. Mortgagor will deliver to Mortgagee, not later than thirty (30) days after delinquency, duplicate receipts evidencing the payment of all such taxes, charges and assessments.

Mortgagor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any governmental authority upon the Mortgagee by reason of its interest in any Indebtedness or in any of the Mortgaged Property or by reason of any payment made to Mortgagee hereunder; but Mortgagor shall have no obligation to pay or discharge taxes which may be imposed from time to time upon this Mortgage and which are measured by and imposed upon the income of Mortgagee.

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6. Protection of Security by Mortgagee. Each and every covenant in this Mortgage shall be performed and kept by Mortgagor solely at Mortgagor's expense. At its option, but without any duty or obligation of any sort to do so and without in any way waiving or relieving any Default by Mortgagor under this Mortgage, Mortgagee may make any payment and perform any act required of Mortgagor to be made or performed by this Mortgage, in the event Mortgagor fails to make such payment when due or timely perform any such act, including but not limited to: payment of insurance premiums, taxes, charges and assessments; payment of prior encumbrances; and purchase, discharge, compromise or settlement of any tax lien or other lien or title, prior or on a parity with the lien of this Mortgage. As between Mortgagor and Mortgagee, all such liens and taxes shall be deemed valid. All monies so paid and all expenses incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced and expenses incurred by Mortgagee to protect the Mortgaged Property, and the security intended to be given by this Mortgage, including all costs, expenses and reasonable attorneys' fees, incurred by Mortgagee in respect of any and all legal or equitable proceedings which relate to this Mortgage or to the Mortgaged Property, shall constitute Indebtedness secured by this Mortgage and shall be immediately due and payable by Mortgagor without notice and with interest thereon at the "**Prime Rate**" (as such term is defined in the Term Loan Agreement) plus five percent (5%) per annum (hereinafter, the "**Default Rate**").

7. Transfer of Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, directly or indirectly (whether voluntarily, involuntarily or by operation of law) sell (whether outright or by land contract, conditional sales contract or any other such agreement), lease (other than leasing rooms to customers in the ordinary course of business), convey, transfer or in any way further encumber, mortgage or assign the Mortgaged Property or any of Mortgagor's rights, title or interests therein (each of such actions or events being hereinafter called a "**Transfer**").

8. Condemnation and Insurance Proceeds. Mortgagor shall cause all awards of damages and all other compensation payable directly or indirectly by reason of a condemnation for public or private use affecting any interest in the Mortgaged Property to be paid to Mortgagee. Except as otherwise provided in the Term Loan Agreement, Mortgagee shall hold such proceeds from condemnation or Required Insurance (if paid to Mortgagee) and make the same available for acquisition of property in replacement of the portion of the Mortgaged Property which was taken or for the repair or rebuilding of the portion of the Mortgaged Property which suffered damage or loss, as the case may be, provided each and all of the following conditions are met: (a) there shall exist no Default under this Mortgage, and no event shall have occurred which with notice or passage of time or both could or might become a Default hereunder; (b) Mortgagee shall have approved the acquisition of any such replacement property (as being similar to and having at least equal value as the property being replaced and at least equal utility to Mortgagor); and (c) this Mortgage (or, at Mortgagee's option, another mortgage upon like terms and conditions) shall constitute a lien upon such replacement property, subject to no other liens or encumbrances and Mortgagee shall have received, at Mortgagor's expense, one or more policies of title insurance covering such replacement property in amounts satisfactory to Mortgagee and insuring that such lien is subject only to such exceptions as Mortgagee may accept. If such replacement property is not acquired within ninety (90) days after the date of determination of the amount of such award, or if such repair or rebuilding of damaged

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Mortgaged Property is not begun within ninety (90) days after the casualty giving rise to such insurance proceeds, as the case may be, or if any of the foregoing conditions are not met at the time when such condemnation or insurance proceeds are to be applied to pay the price of such replacement property or of such repair or rebuilding, then Mortgagee shall have the option, exercisable in its absolute discretion and without regard to the adequacy of the security hereunder, to apply the amount of such proceeds or any portion thereof, after deducting Mortgagee's reasonable charges and expenses, on account of principal and accrued and unpaid interest under the Term Note and payment of the other Indebtedness. No such application shall have the effect of reducing or otherwise affecting the obligation of Mortgagor to make any payments as and when the same become due and payable in accordance with the terms of the Term Note, until payment in full of all of the Indebtedness. Any balance of such proceeds remaining after payment in full of said charges and expenses, and of the Indebtedness shall be paid by Mortgagee to Mortgagor. Application of all or any portion of such proceeds, or the release thereof, shall not cure or waive any Default or notice thereof or invalidate any acts done pursuant to such notice.

9. Security Agreement; Financing Statement.

(a) This Mortgage is intended to be a security agreement pursuant to the Indiana Uniform Commercial Code ("UCC") for (i) all monies and funds now or hereafter on deposit in any account maintained at the banking offices of Mortgagee by or for the benefit of Mortgagor, which monies, funds and account(s) are hereby PLEDGED by Mortgagor to Mortgagee as additional security for the Indebtedness, (ii) any and all fixtures, machinery, equipment, apparatus, heating and cooling systems, furniture, furnishings and appliances, and all other articles of personal property now or hereafter located in or upon, attached to or used or intended to be used in connection with all or any part of the Real Estate or all or any part of the Improvements now or hereafter located thereon, and all replacements thereof, and (iii) the Mortgaged Property, including without limitation any and all items of property specified above as part of the Mortgaged Property which, under applicable law, constitute fixtures; and Mortgagor hereby GRANTS Mortgagee a SECURITY INTEREST in all of the foregoing property, and in all additions thereto, substitutions therefor and proceeds therefrom for the purpose of securing all Indebtedness now or hereafter secured by this Mortgage. Mortgagor agrees to execute and deliver and authorizes Mortgagee to file such financing and continuation statements covering said property from time to time and in such form as Mortgagee may require to perfect and continue the perfection of Mortgagee's lien or security interest with respect to said property. Mortgagor shall pay all costs of filing such statements and renewals and releases thereof and shall pay all reasonable costs and expenses of any record searches for financing statements Mortgagee may reasonably require. Upon the occurrence of any Default hereunder, Mortgagee shall have the rights and remedies of a secured party under the UCC, as well as all other rights and remedies available at law or in equity, and, at Mortgagee's option, Mortgagee may also invoke the remedies provided elsewhere in this Mortgage as to such property.

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(b) This Mortgage constitutes a financing statement filed as a fixture filing under the UCC in the real estate records of the county in which the Mortgaged Property is located with respect to any and all fixtures included within the term "**Mortgaged Property**" and with respect to any goods or other personal property that may now be or hereafter become such a fixture. PARTS OF THE MORTGAGED PROPERTY ARE, OR ARE TO BECOME, FIXTURES ON THE REAL ESTATE.

(c) Mortgagor's address is:

Mays Property Management Company, LLP
5611 East 71st Street
Indianapolis, Indiana 46220
Attention: William G. Mays, general partner

(d) Mortgagee's address is:

Bank One, NA
Bank One Center/Tower, 4th Floor
111 Monument Circle
Indianapolis, Indiana 46277
Attn: Manager, Managed Assets Dept.

10. Default and Acceleration. It is expressly agreed by Mortgagor that time is of the essence of this Mortgage. Upon the occurrence of any Default, as hereinafter defined, and at any time thereafter, then, in any and every such case, the entire Indebtedness shall, at the option of Mortgagee, become immediately due and payable without any notice, presentment, demand, protest, notice of protest, or other notice of dishonor or demand of any kind, all of which are hereby expressly waived by Mortgagor, and Mortgagee shall have the right immediately to foreclose the lien created by this Mortgage against the Mortgaged Property, to enforce every other security interest created by this Mortgage and to institute any action, suit or other proceeding which Mortgagee may deem necessary or proper for the protection of its interests; provided that if an event described in subparagraphs 10(e) or 10(i) below shall occur, all Indebtedness shall become immediately due and payable. The following shall each constitute a "**Default**" for purposes of this Mortgage:

(a) Default in the performance by Mortgagor of any covenant, condition or term of this Mortgage and such default shall not have been remedied within thirty (30) days after the occurrence thereof;

(b) The occurrence of any Transfer prohibited by this Mortgage;

(c) The condemnation, seizure or appropriation of, or the occurrence of an uninsured casualty with respect to, any material (as determined by Mortgagee) portion of the Real Estate or Improvements;

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(d) The enactment of any law which deducts from the value of the Mortgaged Property for the purpose of taxation any lien thereon or imposes upon Mortgagee the payment of the whole or any part of the taxes, assessments, charges or liens required by the terms of this Mortgage to be paid by Mortgagor or changes in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Real Estate, the Improvements or any other of the Mortgaged Property or the manner of collection of taxes so as to affect this Mortgage or any other of the Indebtedness or the holder thereof or imposes a tax, other than a Federal or state income or franchise tax, on or payable by Mortgagee by reason of its ownership of the Indebtedness and, in such event Mortgagor, after demand by Mortgagee, does not pay such taxes or assessments or reimburse Mortgagee therefor or, in the opinion of counsel for Mortgagee, it might be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest costs beyond the maximum amount permitted by applicable law;

(e) Any part of the Mortgaged Property or all or any substantial part of the property or assets of Mortgagor or of any partner of Mortgagor is placed in the hands of any receiver, trustee or other officers or representatives of any court, or Mortgagor or any partner of Mortgagor consents, agrees or acquiesces to the appointment of any such receiver or trustee;

(f) Mortgagor's title to the Mortgaged Property, or any part thereof, becomes the subject matter of litigation which would, in the Mortgagee's opinion, with due consideration of any policy or policies of title insurance insuring the Mortgaged Property, upon final determination result in substantial impairment or loss of the security intended to be provided by this Mortgage;

(g) Actual or imminent alteration, demolition or removal of any of the Improvements, except as expressly allowed by this Mortgage;

(h) Mortgagor does, or permits to be done, anything that may in any way impair the lien of this Mortgage or impair the value of the Mortgaged Property or weaken or diminish the security intended to be given under and by virtue of this Mortgage;

(i) Mortgagor (i) institutes or consents to any proceedings in insolvency or bankruptcy, or for the adjustment, liquidation, extension or composition or arrangement of debts or for any other relief under any bankruptcy or insolvency law or laws relating to the relief or reorganization of debtors, (ii) is adjudicated a bankrupt, files an answer admitting bankruptcy or insolvency or in any manner is adjudged insolvent, or (iii) makes an assignment for the benefit of creditors or admits in writing an inability to pay debts as they become due;

(j) Any lienholder or creditor shall initiate an action to foreclose a lien or security interest on all or any part of the Mortgaged Property, whether such

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security interest or lien is superior, equal or junior to the security interest or lien held by Mortgagee on the Mortgaged Property; or

(k) The occurrence of an "**Event of Default**," as such term is defined in the Term Loan Agreement or the Term Note.

11. Possession of Mortgaged Property During Default. During the continuance of any Default, Mortgagee (or any person, firm or corporation designated to act on behalf of Mortgagee), with the irrevocable consent of Mortgagor herein given (a) may enter into and upon all or any part of the Mortgaged Property, may exclude Mortgagor therefrom and may hold, use, administer, operate, manage and control the Mortgaged Property, exercise all rights, privileges and powers of Mortgagor with respect thereto and conduct the business thereof, all to the same extent Mortgagor could do so, and (b) at the expense of Mortgagor and from time to time, may maintain and restore or complete the Improvements and in the course of completion may make such changes in the Improvements as Mortgagee deems desirable. Mortgagee shall be entitled to collect and receive all the Rents and to deduct therefrom the expenses of operating and conducting the business of the Mortgaged Property and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for taxes, assessments, Required Insurance and prior or other proper charges upon the Mortgaged Property as well as reasonable compensation for the services of Mortgagee. Any expenses of operating and conducting the business of the Mortgaged Property or as are otherwise incurred by Mortgagee pursuant to the provisions of this paragraph which remain unpaid after application of such Rents shall constitute Indebtedness secured by this Mortgage and shall be immediately due and payable by Mortgagor without notice and with interest thereon at the Default Rate. If Mortgagee shall exercise its rights as stated in this paragraph, Mortgagee shall apply the net amounts received or collected by it, after payment of expenses as aforesaid, to the payment of the Indebtedness, when and as the same shall become due and payable.

12. Expenses. All reasonable expenses, costs and other liabilities, including reasonable attorneys' fees, which Mortgagee may incur (a) in enforcing or defending this Mortgage (or its priority), (b) for any inspection, evaluation, appraisal, survey or other service in connection with any of the Mortgaged Property, (c) for any title examination or title insurance policy relating to the title to any of the Mortgaged Property or (d) in the exercise by Mortgagee of any rights or remedies granted by this Mortgage, shall be paid by Mortgagor upon demand by Mortgagee, together with interest thereon, from the date of expenditure until payment in full, at the Default Rate and shall constitute a part of the Indebtedness secured by this Mortgage.

13. Foreclosure Proceedings and Receiver. Immediately upon the commencement of any action, suit or other legal proceeding by Mortgagee to obtain judgment for any part of the Indebtedness or of any other nature in aid of the enforcement of the Term Note or this Mortgage, Mortgagor will, if required by Mortgagee, consent to the appointment of a receiver or receivers of the Mortgaged Property. Subject to the rights of tenants in possession, upon the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or in aid thereof or upon the commencement of any other judicial proceeding to enforce any right of Mortgagee, Mortgagee shall be entitled forthwith, as a matter of right, if it shall so elect, without the giving of notice to any other party, without regard to the adequacy or

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inadequacy of any security for the Indebtedness and without the requirement of any bond, to the appointment of such a receiver or receivers. To the extent it lawfully may do so, Mortgagor will not at any time insist upon, plead or in any other manner whatever claim or take any benefit or advantage of any valuation or appraisal law now or hereafter in force, or of any exemption from execution or sale of the Mortgaged Property now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage. Mortgagor hereby expressly waives, to the extent allowed by law, all right to have the Mortgaged Property marshaled upon any foreclosure of this Mortgage. Mortgagee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of this Mortgage. The right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of this Mortgage, or the foreclosure of the lien of this Mortgage. Upon any sale made under or by virtue of this Mortgage, Mortgagee may bid for and acquire the Mortgaged Property, or any part thereof, and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting the net sales price upon the Indebtedness.

14. No Exclusive Remedy. Each and every right, power and remedy herein conferred upon or reserved to Mortgagee is cumulative and is not intended to be exclusive of any other remedy or remedies, and shall be in addition to every other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee in the exercise of any right, power or remedy or any other right, power or remedy then or thereafter existing, shall constitute or shall be construed to be a waiver of any Default or any acquiescence therein; and every right, power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as and in such order as may be deemed expedient by Mortgagee.

15. Assignment of Leases and Rents.

(a) To secure payment and performance by Mortgagor of the Indebtedness, Mortgagor hereby grants, transfers and assigns to Mortgagee all of Mortgagor's rights, title and interests in, to and under all leases and tenancies now existing or hereafter entered into by and between Mortgagor and each and any tenant, lessee or sublessee of the Mortgaged Property or any part thereof (the "**Leases**"), and all rents, issues, income and profits of the same including without limitation all rentals reserved in any of the Leases now or hereafter due and any amendments, modifications, extensions and renewals thereof.

Until the occurrence of a Default, Mortgagor shall have the right to collect and receive, upon but not prior to accrual, all rents, issues and profits under and from the Leases and with respect to the Mortgaged Property. Subject to the rights of tenants in possession, upon or at any time during the continuance of a Default, Mortgagee at its option and without notice or demand, may enter upon, take possession of and operate the Mortgaged Property, as lessor, enforce, modify, and accept the surrender of any or all of the Leases, obtain and evict any of the lessees or sublessees under any of the Leases, fix or modify rents, and do any acts which Mortgagee deems proper to protect the security hereof, and, in its own name, sue

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for or otherwise collect and receive all rents, issues and profits due to Mortgagor under or pursuant to the Leases, including those past due and unpaid. Such rights may be exercised by Mortgagee without regard to other security, if any, for payment of the Indebtedness and without releasing Mortgagor or any guarantor of any of the Indebtedness from any obligation. Mortgagor hereby irrevocably appoints and constitutes Mortgagee as its true and lawful attorney-in-fact with full power of substitution for and on behalf of Mortgagor to request, demand, enforce payment of, collect and receive the rentals payable under the Leases, to change, modify, release, waive, terminate, alter, or amend the Leases or any of the terms or provisions thereof, including the rentals thereunder, to endorse any checks, drafts or orders evidencing payment of rentals under the Leases, and to do and perform any acts which Mortgagor might do for and on Mortgagor's own behalf; provided, however, Mortgagee shall not exercise such power unless a Default has occurred and is then continuing.

All rents collected by Mortgagee or a receiver pursuant to this paragraph 15 shall be applied first to the costs of taking control of, and managing and operating the Mortgaged Property and collecting the rents, including, but not limited to, reasonable attorneys' fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Mortgaged Property, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Property, and the costs of discharging any obligation or liability of Mortgagor as lessor or landlord of the Mortgaged Property and then toward payment of the Indebtedness secured hereby. Mortgagee shall have access to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those rents actually received. Mortgagee shall not be liable to anyone claiming under or through Mortgagor or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Mortgagee under the assignment made by this paragraph 15 prior to its assuming actual possession of the Mortgaged Property.

If the rents of the Leases are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the rents, any funds expended by Mortgagee for such purposes shall become Indebtedness of Mortgagor to Mortgagee secured by this Mortgage, and such amounts shall be payable upon notice from Mortgagee to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement until repaid at the Default Rate.

The entering upon and taking and maintaining of control of the Mortgaged Property by Mortgagee or a receiver and the application of rents as provided herein shall not cure or waive any Default or invalidate any other right or remedy of Mortgagee hereunder.

(b) Mortgagor hereby covenants and warrants to Mortgagee that
(i) Mortgagor is and will remain the lawful owner of the Leases and has not made

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any prior assignment of Mortgagor's right, title and interest in, to and under any of the Leases; (ii) Mortgagor has not accepted any advance rental payments under the Leases other than one month's advance and security deposits; and (iii) Mortgagor has not done and will not do anything which impairs the validity or security of this assignment.

(c) The assignment made by this paragraph 15 shall not operate to release or relieve Mortgagor, as lessor under the Leases, from the full performance of all of Mortgagor's obligations and covenants under the Leases. Mortgagor shall: (i) faithfully abide by, perform and discharge each and every material obligation, covenant and agreement to be performed by Mortgagor under the Leases; (ii) give prompt notice to Mortgagee of any notice of claim of default on the part of Mortgagor given or made by any tenant under any of the Leases; and (iii) at the sole cost and expense of Mortgagor, enforce, short of termination of the Leases, or secure the performance of, each and every material obligation, covenant, condition and agreement to be performed by the tenants under the Leases. Without the prior written consent of Mortgagee, Mortgagor shall not further encumber its right, title and interest in and to the Leases. Except in the ordinary course of Mortgagor's business, Mortgagor shall not anticipate rentals under the Leases or waive, excuse, condone or in any manner release or discharge any lessee thereunder, of or from the material obligations, covenants, conditions and agreements to be performed by such lessees, including the obligation to pay rentals in the manner and at the place and time specified therein.

(d) Mortgagor shall, at Mortgagor's sole cost and expense, appear in and defend any action or proceeding arising under, growing out of or in any manner connected with the Leases or the obligations, duties or liabilities of Mortgagor or the lessees or sublessees under the Leases and shall pay all costs and expenses, with interest thereon at the Default Rate, including reasonable attorneys' fees incurred by Mortgagee in any such action or proceeding in which Mortgagee may appear, all such expenses being Indebtedness secured by this Mortgage.

(e) During the continuation of a Default, Mortgagee, at its option but without the assumption of any of Mortgagor's obligations as lessor and without notice to or demand on Mortgagor, and without releasing Mortgagor from any obligation under the Leases or this Mortgage, may perform any obligation of Mortgagor under any of the Leases. In the exercise of such power, Mortgagee shall be entitled to reimbursement by Mortgagor for all of Mortgagee's costs and expenses, including reasonable attorneys' fees, and the same shall be payable upon demand, with interest thereon from the date paid or incurred at the Default Rate, and shall be Indebtedness secured by this Mortgage.

(f) Prior to assuming actual possession of the Mortgaged Property, Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge any obligation, duty or liability of Mortgagor

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under the Leases or otherwise. Mortgagee shall not be liable for any loss sustained by the Mortgagor resulting from Mortgagee's failure to let the Mortgaged Property after Default or from any other act or omission of the Mortgagee in managing the Mortgaged Property after Default, unless such loss is caused by the willful misconduct and bad faith of Mortgagee. Mortgagor agrees to indemnify Mortgagee against and hold it harmless from any and all liability, loss or damage which it may or might incur under the Leases for acts or omissions occurring prior to Mortgagee taking actual possession of the Mortgaged Property, or under or by reason of this assignment and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. In the event Mortgagee incurs any such liability, loss or damage, the amount thereof, including costs, expenses and reasonable attorneys' fees, together with interest at the Default Rate, shall be payable by Mortgagor upon demand and is Indebtedness secured by this Mortgage. This assignment shall not operate to place responsibility for the control, care, management or repair of the Mortgaged Property or any improvements thereon upon Mortgagee, nor shall it operate to make the Mortgagee responsible or liable for any waste committed on the Mortgaged Property or for any dangerous or defective condition of the property unless and until Mortgagee, in person or by agent, assumes actual possession of the Mortgaged Property.

(g) Mortgagor hereby authorizes and directs each and every tenant and occupant of the Mortgaged Property, or any part thereof, upon receipt from Mortgagee of written notice to the effect that a default exists under this Mortgage and such tenant is to pay over to Mortgagee all rents, income and profits arising or accruing from the Mortgaged Property, and to continue to do so until otherwise notified by the Mortgagee. Mortgagor agrees to facilitate in all reasonable ways Mortgagee's collection of such rent, and upon request will execute a written notice to each tenant and occupant directing payment to the Mortgagee. Upon the payment in full of all of the Indebtedness secured hereby, the assignment made in this Paragraph 15 shall terminate.

16. Provisions Severable. In the event any one or more of the provisions contained in this Mortgage, the Term Loan Agreement or in the Term Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein. The invalidity of any provision of this Mortgage in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

17. Further Assurances and Fees. Mortgagor will, at the cost of Mortgagor and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further act, deed, conveyances, mortgage, security agreement, assignment, notice of assignment,

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transfer and assurance as Mortgagee shall from time to time reasonably require, for the better assuring, conveying, assigning, transferring, securing and confirming unto Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage. Mortgagor will pay for filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any financing statement and continuation statement and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, or any instrument of further assurance. Such amounts shall be payable on demand and shall bear interest from the date of expenditure until payment in full at the Default Rate.

18. Defense of Claims--Expenses and Indemnification of Mortgagee--Subrogation. Mortgagor promptly shall notify Mortgagee in writing of the commencement, or threat of institution, of any legal proceedings affecting or which may affect materially Mortgagee's interest in the Mortgaged Property, or any part thereof, and shall take such action, employing attorneys satisfactory to Mortgagee, as may be necessary fully to preserve, protect and defend Mortgagor's and Mortgagee's rights affected thereby. Mortgagee may take such independent action in connection therewith as Mortgagee in its discretion may deem proper. Mortgagor will indemnify and save Mortgagee harmless from any loss, damage, expense, or reasonable attorney's fees which may be incurred by Mortgagee by reason of any suit or proceeding to which Mortgagee is made a party on account of this Mortgage, and any loss, damage, expense or attorneys' fees so incurred by Mortgagee shall be a part of the Indebtedness secured by this Mortgage and shall be immediately due and payable by Mortgagor, without notice, with interest thereon at the Default Rate. In the event Mortgagee pays, discharges or satisfies, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property, or any part thereof, from the proceeds of this Mortgage, Mortgagee shall be subrogated to the rights of the holder of such lien as fully as if such lien had been assigned to Mortgagee.

19. Applicable Law. This Mortgage shall be governed by the laws of the State of Indiana.

20. Successors and Assigns. The grants, covenants, terms, provisions and conditions of this Mortgage shall (a) run with the land, (b) apply and extend to, be binding upon and inure to the benefit of Mortgagor, Mortgagor's heirs, administrators, successors and assigns and all persons claiming under or through Mortgagor, and the word "**Mortgagor**," when used herein, shall include all such persons, and (c) shall apply and extend to, be binding upon and inure to the benefit of Mortgagee and its successors and assigns. The word "**Mortgagee**" when used herein shall include the successors and assigns of Mortgagee.

21. Miscellaneous. The captions used in this Mortgage are for convenience only and are not to be construed as defining or limiting the provisions of this Mortgage. Any and all covenants in this Mortgage from time to time may by instrument in writing signed by Mortgagee and Mortgagor be waived to such extent and in such manner as Mortgagee may

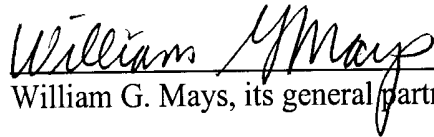
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desire, but no such waiver shall affect or impair Mortgagee's rights hereunder, except to the extent specifically stated in such written instrument. No waiver by Mortgagee of any Default shall constitute a waiver of, or consent to, any subsequent Default. All changes to or modifications of this Mortgage must be in writing signed by Mortgagee and Mortgagor and, if this Mortgage is recorded, shall not be effective until being recorded. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession of the Mortgaged Property in the absence of a taking of actual possession of the Mortgaged Property by Mortgagee. In the exercise of the powers herein granted Mortgagee, no liability shall be asserted or enforced against Mortgagee by Mortgagor, all such liability and claims of liability being expressly waived and released by Mortgagor.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage this 31st day of March, 2003.

MAYS PROPERTY MANAGEMENT
COMPANY, LLP

By:



William G. Mays, its general partner

("Mortgagor")

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Exhibit A
(Real Estate)

The following real estate in Cook County, Illinois:

LOT 21 (EXCEPT THE WEST 151.53 FEET THEREOF) AND ALL OF LOT 22 IN PULLMAN INDUSTRIAL PARK, BEING A SUBDIVISION OF PART OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 22 AND PART OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 23 NORTH OF THE INDIAN BOUNDARY LINE IN TOWNSHIP 37 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Commonly known as: 875 East 112th Street, Chicago, Illinois.

25-23-102-006-0000

Property of Cook County Clerk's Office