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## MORTGAGE

THIS MORTGAGE (the "Mortgage") is made as of this 22 day of November, 1994, by LASALLE NATIONAL TRUST, N.A., not individually but solely as trustee under trust agreement dated April 1, 1994 and known as Trust No. 118924 ("Mortgagor"), to LASALLE NATIONAL BANK, a national banking association doing business in Chicago, Illinois ("Mortgagee").

## RECITALS

A. Trustee has acquired fee title to approximately 9 acres of vacant land (the "Land"), located in the Village of Schaumburg, Cook County, Illinois, and legally described in Exhibit A attached hereto and made a part hereof.

B. Mortgagor and William A. Shiner, Inc., an Illinois corporation (the "Corporation") have executed and delivered to Mortgagee a Note of even date herewith (the "Note") in the principal sum of Eight Hundred Fifty-Five Thousand and No/100 Dollars (\$855,000.00) made payable to the order of and delivered to Mortgagee, in and by which Note Mortgagor and Corporation promise to pay the said principal sum thereof and interest at the rate as provided in the Note. All of said principal and interest are made payable at such place as the holder or holders of the Note (the "Holders") may from time to time in writing appoint, and in absence of such appointment, then at the offices of Mortgagee in Chicago, Illinois.

C. The Note is secured by this Mortgage and a Payment Guaranty executed by William A. Shiner (the "Guarantor") (collectively, the "Loan Documents");

D. Initially capitalized terms used but not otherwise defined in this Mortgage have the same meanings given them in the Note.

## AGREEMENTS

NOW, THEREFORE, Mortgagor, in consideration of said debt and the Recitals set forth above and to secure the timely payment of both principal and interest thereof, in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this Mortgage, and to secure the performance of the covenants and agreements herein and in the Note and the Loan Documents contained and to be performed by Mortgagor and/or Corporation and/or the Guarantor, including all draws, payments, disbursements, charges and expenses made or incurred by Mortgagee from time to time under the Letter of Credit, does by these presents MORTGAGE, GRANT, REMISE, RELEASE, ALIEN AND CONVEY unto Mortgagee, its successors and assigns, the Land and all of its estate, right, title and interest therein, situate, lying and being in the Village of Schaumburg, County of Cook and State of Illinois, which is referred to as the "Real Estate";

TOGETHER with all and singular the easements, rights-of-way, licenses, privileges, tenements, appendages, hereditaments, waters, water courses, riparian rights, appurtenances, other rights, liberties and privileges thereunto belonging or in any wise

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appertaining, including without limitation any claim at law or in equity as well as any after-acquired title, franchise or license and the reversions and remainders thereof; and also all the rents, issues, proceeds and profits now or hereafter accruing therefrom;

TOGETHER with all rents, issues, profits, revenues, royalties, bonuses, receipts, rights and benefits due, payable or accruing or to accrue (including without limitation all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof, or under any contracts or options for the sale of all or any part of the Real Estate (including without limitation those accruing during any period allowed by law for the redemption of the Real Estate after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness secured hereby and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee.

TOGETHER with all the estate, right, title and interest, if any, of Mortgagor (including without limitation any after-acquired title, franchise or license and the reversions and remainders thereof), in and to the land lying within any alley, way, street, roadway, strips and gores, or beds adjoining the Real Estate,

TOGETHER with all property and rights, if any, which by the express provisions of this instrument are required to be subjected to the lien hereof and any additional property and rights that from time to time hereafter, by installation or writing of any kind, may be subjected to the lien hereof by Mortgagor or by anyone on the Mortgagor's behalf;

TOGETHER with all rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion with respect thereto;

TOGETHER with all buildings, structures and improvements now or hereafter erected or placed on the Real Estate, and all materials intended for construction, reconstruction, alteration and repair thereof, all of which materials shall be included with the Real Estate and subjected to the lien hereof immediately upon the delivery thereof to the Real Estate, and, also, together with all machinery, equipment, apparatus, goods, systems, fixtures and items of personal property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Real Estate or the buildings or improvements located thereon which are owned by Mortgagor, or any part thereof, and used or usable in connection with any present or future operation of the Real Estate, including without limitation all heating, lighting, incinerating, refrigerating, ventilating, air-conditioning, air-cooling, lifting, fire extinguishing, plumbing, cleaning, electrical, communication and power equipment, systems and apparatus; all gas, water and electrical equipment, systems, fixtures and apparatus; and all elevators, escalators, switchboards, computers, engines, motors, tanks, pumps, screens, storm doors, storm windows, shades, blinds, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all renewals, additions and accessories to and replacements of and substitutions for each and

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all of the foregoing (all such machinery, equipment, apparatus, goods, systems, fixtures, renewals, additions, accessories, replacements and substitutions are a part of the Real Estate and are declared to be a portion of the security for the indebtedness secured hereby whether in single units or centrally controlled, and whether physically attached to the Real Estate or the buildings or improvements thereon, or not; and the enumeration of any specific items of property shall in no wise exclude or be held to exclude any items of property not specifically enumerated); and all revenues, receivables, income and accounts now or hereafter acquired and arising from any or all of the foregoing; and the proceeds of any and all of the foregoing;

TOGETHER with all judgments, settlements, awards and other compensation heretofore made or hereafter to be made to the present and all subsequent owners of the Real Estate for any taking by eminent domain, either permanent or temporary, of all or any part of the Real Estate or any easement or appurtenance thereof, including without limitation for severance and consequential damage therefor or for change in grade of streets. All of the foregoing enumerated in this and the preceding six paragraphs, together with the Real Estate, are herein sometimes collectively referred to as the "premises". All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby. As to any of the property aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as Secured Party (as said term is defined in the Uniform Commercial Code), securing said indebtedness and obligations. Mortgagor covenants that it is lawfully seized of the premises, that the same are unencumbered (except as herein provided in Section 1 below), and that it has good right, full power and lawful authority to convey and mortgage the same.

TO HAVE AND TO HOLD the premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

## REPRESENTATIONS, COVENANTS AND AGREEMENTS OF MORTGAGOR

The Mortgagor represents, covenants and agrees with the Mortgagee as follows:

1. Title. Mortgagor has good and marketable fee simple title to the premises, subject only to those title exceptions accepted in writing by Mortgagee prior to Loan Opening, and is lawfully seized and possessed of the same, and has the full power, authority and right to convey the same and to execute and deliver this Mortgage; and the premises are unencumbered except as may be herein expressly provided.

2. Maintenance, Repair and Restoration of Improvements, Payment and Contest of Prior Liens, Etc.

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(a) Mortgagor shall (i) promptly repair, restore or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed; (ii) keep the premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), subject, however, to the rights of Mortgagor set forth in Section 2(b) hereof; (iii) pay when due any indebtedness which may be secured by a lien or charge on the premises on a parity with or superior to the lien hereof and comply with all requirements of all loan documents evidencing or securing such indebtedness, and upon request, exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (iv) complete within a reasonable time any building or buildings or any improvements now or at any time in the process of erection upon the premises, in accordance with the terms of the Note; (v) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the premises and the use thereof; (vi) make no material alterations in the premises except as required by law or municipal ordinance or as permitted by and in accordance with the Note; (vii) suffer or permit no change in the general nature of the occupancy of the premises, without Mortgagee's written consent; (viii) initiate or acquiesce in no zoning variation or reclassification, without Mortgagee's written consent; and (ix) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note.

(b) Anything in Section 2(a)(ii) of this Mortgage to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Lien not expressly subordinated to the lien hereof, and defer payment and discharge thereof during the pending of such contest, provided; (i) that such contest shall have the effect of preventing the sale or forfeiture of the premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) that, within ten days after Mortgagor has been notified of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien; and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, either (1) a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable; or (2) an endorsement to the Title Policy, in form and substance reasonably acceptable to Mortgagee, insuring Mortgagee against any loss or damage that may be incurred as a result of or in connection with such Lien. In case Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to pay the amount of the Lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money on deposit. If the amount of money so deposited shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mort-

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gagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with sufficient funds to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made.

(c) Mortgagor will not cause or permit the premises to be in violation of, or do anything or permit anything to be done which will subject the premises to, any remedial obligations under any applicable environmental laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended, and the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980 and the Hazardous and Solid Waste Amendments of 1984, as amended. Mortgagor will, to the extent required by the Requirements, disclose to the applicable governmental authorities all relevant facts, conditions and circumstances, if any, pertaining to the premises and will promptly notify Mortgagee in writing of any existing, pending or, to the actual knowledge of Mortgagor, threatened investigation or inquiry by any governmental authority in connection with any applicable environmental laws. Mortgagor shall obtain any and all applicable permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the premises by reason of any applicable environmental laws. Mortgagor will not use the premises or allow the premises to be used in a manner which will result in the disposal or other release of any hazardous substance or solid waste on or to the premises and covenants and agrees to keep or cause the premises to be kept free of any hazardous waste or contaminants and to remove the same (or if removal is prohibited by law, to take whatever action is required by law) promptly upon discovery at its sole expense. In the event Mortgagor does not remove the same or take such action within ten days after notice to Mortgagor, except in case of an emergency, in which event no notice need be given, and except where Lender's security is not impaired by such default by Mortgagor and such default cannot reasonably be cured within such ten-day period, only if Mortgagor fails to commence such cure within such ten-day period, to proceed with such cure thereafter in a reasonably diligent manner and to complete such cure within 30 days after service of such notice, Mortgagee may (but shall have no obligation) either declare an Event of Default under this Mortgage and exercise any and all remedies hereunder or cause the premises to be freed from the hazardous waste or contaminants (or if removal is prohibited by law, to take whatever action is required by law), and the cost of the removal or such other action shall be a demand obligation owing by Mortgagor to the Mortgagee pursuant to this Mortgage and shall be subject to the provisions of Section 12 hereof. Mortgagor grants to Mortgagee and its agents and employees access to the premises and the license (but Mortgagee shall have no obligation) to remove the hazardous waste or contaminants (or if removal is prohibited by law, to take whatever action is required by law).

### 3. Payment of Taxes.

(a) Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges

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against the premises when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments provided: (a) that such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the premises or any part thereof, or any interest therein, to satisfy the same; (b) that Mortgagor has, before such taxes or assessments shall have been increased by any interest, penalties or costs, notified Mortgagee in writing of the intention of Mortgagor to contest the same; and (c) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and, in the absence of such appointment, then at the place of payment designated in the Note, a sum of money which (when added to funds, if any, then on deposit for such taxes) shall be sufficient in the judgment of Mortgagee to pay in full such contested taxes and assessments and all penalties and interest that might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional penalties and interest whenever, in the judgment of Mortgagee, such increase is advisable. In lieu of such deposit, Mortgagor may deliver to Mortgagee an endorsement to the Title Policy, in form and substance reasonably acceptable to Mortgagee, insuring Mortgagee against any loss or damage that may be incurred as a result of or in connection with such taxes. In case Mortgagor shall fail to prosecute such objections with reasonable diligence or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may at its option apply the money so deposited in payment of or on account of such taxes and assessments, or that part thereof then unpaid, together with all penalties and interest thereon. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money on deposit. If the amount of the money so deposited shall be insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Mortgagor shall forthwith upon demand either (i) deposit with 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 Mortgagee shall have applied funds on deposit on account of such taxes and assessments, restore said deposit to a sufficient amount. Mortgagee shall, upon the final disposition of such contest, 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 thereon (provided Mortgagor is not then in default) when so requested in writing by Mortgagor and furnished with sufficient funds to make such payment in full and with an official bill for such taxes.

(b) Mortgagor shall, upon Mortgagee's demand, deposit with Mortgagee, commencing on the date specified in such demand therefor and on the first day of each month thereafter until the indebtedness secured by this Mortgage is fully paid, a sum equal to one-twelfth of the last total annual taxes and assessments for the last ascertainable year (general and special) on the premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). Mortgagor, concurrently with the disbursement of the Loan, will also deposit with Mortgagee an amount, based upon the taxes and assessments so ascertainable or so estimated by Mortgagee, as the case may be, for taxes and assessments on said premises, on an accrual basis, for the period from January 1, succeeding the

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year for which all taxes and assessments have been paid, to and including the date of the first deposit in this paragraph hereinabove mentioned. Such deposits are to be held in an interest-bearing account and are to be used for the payment of taxes and assessments (general and special) on said premises next due and payable when they become due. All interest on such deposits shall be used for payment of taxes and assessments in accordance with this Section 3(b). If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) for any year when the same shall become due and payable, Mortgagor shall within ten days after receipt of demand therefor, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full. If the funds so deposited exceed the amount required to pay such taxes and assessments (general and special) for any year, the excess shall be applied on a subsequent deposit or deposits.

#### 4. Intentionally Omitted.

5. Insurance. 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 at a minimum the following described policies of insurance in addition to any policies required by the Note, or the other Loan Documents (individually an "Insurance Policy" and collectively the "Insurance Policies"):

(a) During all periods in which any construction is taking place on or about the premises, All Risk Builder's Risk Insurance (non-reporting Form) for 100% of the completed value of the Improvements, insuring the premises, including without limitation materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, "X," "C" and "U" coverage, vandalism and malicious mischief coverage, and bearing a replacement cost agreed upon endorsement;

(b) Casualty insurance against loss and damage by all risks of physical loss or damage, including without limitation fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, flood (if all or any portion of the premises is located in a flood plain), and other risks covered by so-called "all risk" policies and extended coverage endorsements, and against loss or damage by malicious mischief, vandalism and sprinkler leakage in amounts not less than the full insurable replacement value of all Improvements, fixtures and equipment from time to time on the premises, but in any event in an amount sufficient to prevent Mortgagor from becoming a co-insurer of any partial loss under the applicable Insurance Policies, which shall be written on a replacement cost basis and any such Insurance Policies shall contain an "agreed amount endorsement" and Mortgagor shall have the appraisal on which this agreed amount is based updated not less than annually and a new "agreed amount endorsement" issued;

(c) Comprehensive general public liability insurance (including contractual liability coverage) against death, bodily injury and property damage in a base amount not less than \$5,000,000 combined single limit (which may be in the form of \$2,000,000 of base coverage and a \$3,000,000 umbrella policy);

(d) Steam boiler, machinery and pressurized vessel insurance, if any;

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(e) If the Federal Insurance Administration or the Secretary of Housing and Urban Development 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;

(f) All other types and amounts of coverage as are customarily maintained by owners or operators of like properties; and

(g) Workers' compensation insurance covering all liability arising from claims of employees and other persons performing any work or services upon, in, about or with respect to the premises, which insurance shall be maintained so as to comply with all applicable legal requirements.

If, in the reasonable judgment of Mortgagee, insurance coverages in addition to those described above are required in connection with the Development or the Loan, then Mortgagee may, at Mortgagor's expense as additional indebtedness hereby secured, procure such other policies of insurance, in such amounts, and carried in such companies, as it may select, and in such event, those policies of insurance shall be included within the definition of "Insurance Policies" set forth herein.

Mortgagor will procure, deliver to, and maintain for the benefit of Mortgagee such other insurance on the premises and in such amounts as from time to time Mortgagee may require against other casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of improvements, their construction, location, use and occupancy. Mortgagor will cause Mortgagee to be shown as an additional insured under such policies. Mortgagor will deliver such policy or policies or certificates of same to Mortgagee at its principal office or at such other place as it may designate in writing; and likewise will deliver to Mortgagee renewals of such policy or policies 45 days in advance of the expiration of the same, stamped "Paid" by the agent or company issuing same. Premiums on policies so furnished shall not be financed in any manner whereby any lender, upon default or otherwise, shall have the right or privilege of surrendering the policies for cancellation. All insurance furnished hereunder shall be subject to the approval of Mortgagee as to insurance companies, amounts, contents, substance, forms of policies and expiration dates. All insurance required by this Section 5 shall provide by endorsement or other manner that same may not be cancelled or amended without at least 30 days prior written notice to Mortgagee. If Mortgagor fails to procure and maintain any insurance required under this Mortgage, Mortgagee may (but shall not be obligated to) procure and maintain such insurance in the amounts provided above or in such lesser amounts as Mortgagee then deems appropriate and any amount paid by Mortgagee for such insurance shall become immediately due and payable by Mortgagor with interest as described in Section 12 hereof until paid and shall be secured by this Mortgage. Mortgagor shall not carry separate insurance concurrent in kind or form and contributing, in the event of loss, with any insurance required hereunder.

6. Covenant to Rebuild. Upon any loss or damage, Mortgagor shall immediately notify Mortgagee in writing, and the loss, if any, under each Insurance Policy shall be adjusted

destruction). In the case of loss or damage to buildings, structures or improvements, Mortgagor shall make emergency, permanent or temporary repairs or restore and replace the damaged or

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with the insurance company reasonably and in good faith by Mortgagee and all insurance proceeds shall be paid directly and solely to Mortgagee and applied to the Loan, the excess if any to be held as collateral by Mortgagee for the Loan and used for the first funds required thereafter in respect of the Development. Each insurance company is authorized and directed to make such adjustment with Mortgagor and Mortgagee and payment directly and solely to Mortgagee, and the Insurance Policies shall so stipulate, subject to the provisions set forth below. Mortgagor and Mortgagee shall sign all receipts, vouchers and releases required by the insurance companies in respect of the foregoing. Mortgagee shall not incur any liability in connection with the adjustment or collection of insurance claims and proceeds (or the failure thereof) regardless of the cause of such failure. If any sum or sums of money are received by Mortgagee by reason of any such insurance as aforesaid (the "insurance proceeds"), Mortgagee at its sole option may elect to apply such monies in payment or reduction of the indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, then Mortgagee may at its option declare the balance remaining unpaid on the Note and this Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Note as in a case of default.

Notwithstanding the foregoing, provided:

- (i) no Event of Default (as hereinafter defined), or event which with the lapse of time or the giving of notice or both shall constitute an Event of Default, has occurred and is continuing;
- (ii) the Tenants under the Leases affecting the premises has not terminated and does not have the right to terminate the Leases as a result of such damage or destruction; and
- (iii) the time required to complete repairs to or replacement or restoration of the premises shall not, in the reasonable estimation of Mortgagee, extend beyond the Loan Maturity Date,

then Mortgagor shall rebuild or restore the buildings and improvements on the premises and Mortgagee shall apply the insurance proceeds to reimburse Mortgagor for the cost thereof in accordance with this Section 6.

The following provisions shall apply regardless of whether Mortgagee elects or is required to apply insurance proceeds to reimburse Mortgagor as provided above:

- (a) Upon any damage to or destruction of the premises, the premises shall be restored or rebuilt so as to be of at least equal value and quality and substantially the same character as the premises were prior to such damage or destruction (if the Development was completed prior to such damage or destruction) or as the premises would have been after completing the Development (if the Development was not completed prior to the damage or destruction). In the case of loss or damage to buildings, structures or improvements, Mortgagor shall make emergency, permanent or temporary repairs or restore and replace the damaged or

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destroyed property in order to reduce or prevent further loss or so as not to impede or interfere with the normal operation of the premises.

(b) The repair or reconstruction shall be effected in accordance with the plans and specifications as approved by Mortgagee.

(c) As soon as reasonably possible after any loss, damage or destruction, Mortgagor shall furnish Mortgagee with an estimate of the cost of repairs, rebuilding and replacement (hereinafter called "restoration") prepared by an architect or other experienced construction cost estimator selected by Mortgagor and approved by Mortgagee, which approval shall not be unreasonably withheld or unduly delayed. If Mortgagee elects or is required to reimburse Mortgagor out of insurance proceeds, and the insurance proceeds in the hands of Mortgagee (after deducting all costs incurred by Mortgagee in collecting said insurance proceeds) are not sufficient to pay for the cost of restoration as so estimated, Mortgagor forthwith shall deposit with Mortgagee the amount estimated to be necessary to complete restoration, taking into account the amount of the insurance proceeds held by Mortgagee, and such amount deposited by Mortgagor shall be similarly held in trust by Mortgagee and disbursed as hereinafter provided. If Mortgagor shall fail to deposit the estimated amount necessary to complete restoration as aforesaid within thirty (30) days after receipt of said insurance proceeds, Mortgagee at its option shall have the right immediately to rescind its election to reimburse Mortgagor out of insurance proceeds, and to apply such proceeds to the payment of the indebtedness secured hereby, and if the same are insufficient to pay such amount if full, then Mortgagee may at its option declare the balance remaining unpaid on the Note and this Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein on the Note as in a case of default.

(d) If Mortgagee elects or is required to reimburse Mortgagor out of insurance proceeds, and if the insurance proceeds held by Mortgagee are estimated to be sufficient to pay for the restoration or, if such proceeds are insufficient and Mortgagor has deposited with Mortgagee an additional amount sufficient to pay for the restoration, Mortgagee shall pay out from time to time, but not more frequently than monthly, as restoration progresses, the cost of such restoration work which has been completed, as if such insurance proceeds were proceeds of the Loan. If such damage or destruction shall have occurred prior to the final disbursement of Loan proceeds, then all proceeds of fire or casualty insurance and funds deposited with Mortgagee by Mortgagor in accordance with Section 6(c) above shall first be fully disbursed before the disbursement of any further proceeds of the Loan.

Upon completion of the restoration any monies held by Mortgagee and not required to be applied to the restoration as aforesaid shall be applied first to the payment of accrued and unpaid interest on the outstanding principal balance of the Loan, and then to the payment of the outstanding principal balance of the Loan.

(e) In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, shall be applied in payment or reduction of the

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indebtedness secured hereby or in payment or reduction of 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 to the owner of the equity of redemption if it shall then be entitled to the same or as the court may direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then, and in every such case, each successive redeemer may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies 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 the said insurance policies.

(f) Mortgagor agrees that in the event the premises are damaged or destroyed by fire or other casualty, then Mortgagor will repair and restore the premises as provided in Section 6(a) hereof without regard to the availability or adequacy of insurance proceeds with respect to such damage, destruction or casualty. Nothing herein contained shall be deemed to excuse Mortgagor from such obligation.

7. Mortgagee's Interest In and Use of Deposits. Upon the occurrence of an Event of Default hereunder, Mortgagee may at its option, without being required to do so, apply any monies at the time on deposit pursuant to any provision of this Mortgage against any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that neither Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested said depository in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes and assessments or insurance premiums.

8. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, or recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to

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indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note, or recording of this Mortgage.

9. Intentionally Deleted.

10. Effect of Extensions of Time and Amendments. If the payment of the indebtedness secured by this Mortgage or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

Any person or entity taking a junior mortgage or other lien upon the premises or any interest therein, shall take said lien subject to the rights of Mortgagee herein to amend, modify, and supplement this Mortgage, the Note, the Loan Documents, or any other document or instrument evidencing, securing, or guaranteeing the indebtedness hereby secured and securing, or guaranteeing the indebtedness hereby secured and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of said indebtedness, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section 10 contained shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the premises be sold, conveyed, or encumbered.

11. Effect of Changes in Laws Regarding Taxation. In the event of the enactment after this date of any law of the State of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagee's interest in the premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the Holders, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable 90 days from the giving of such notice.

12. Mortgagee's Performance of Defaulted Acts: Subrogation. In case a default hereunder shall occur and not be cured on or before the expiration of any applicable grace or cure period, Mortgagee may, but need not make any payment or perform any act herein or in any Loan Documents evidencing or securing the indebtedness secured hereby or any indebtedness

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secured by a prior encumbrance, required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and, if this is a leasehold mortgage, make payments of any rents due or to become due or perform any act under any underlying lease, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale of forfeiture affecting the premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable upon demand and with interest thereon at the Default Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the premises or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, the Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Mortgagee's Reliance on Tax Bills, Etc. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

14. Acceleration of Indebtedness in Case of Default. Each of the following shall constitute an Event of Default under this Mortgage: (a) the occurrence of an "Event of Default" as defined in any of the terms and provisions of any of the Loan Documents (other than this Mortgage) securing the indebtedness secured hereby, including, but not limited to, the Assignment of Rents and Leases described in Section 18 hereof; or (b) if default be made in the due and punctual payment of principal or interest due under the Note or if default shall occur and continue for five days after written notice in the payment of any other sum due thereunder or hereunder, unless a different (or no) cure period is otherwise expressly specified in this Mortgage; or (c) if the premises shall be abandoned; or (d) if Mortgagor shall fail to maintain the insurance policies described in Section 5 hereof; or (e) if default shall be made in the due observance or performance of any other of the non-monetary covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor and such default shall continue for 30 days after service of written notice thereof or, where Mortgagee's security is not impaired (other than in a *de minimis* manner) by such non-monetary default and if such non-monetary default cannot reasonably be cured within said 30-day period, the failure to commence curing said default within said 30-day period, to proceed

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with such cure thereafter in a reasonably diligent manner, and to complete such cure within 90 days after expiration of such 30-day period; or (f) any event described in Section 37 hereof shall occur, then and in every such case the whole of said principal sum hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable, together with accrued interest thereon, without notice to Mortgagor.

15. Foreclosure: Expense of Litigation. If an Event of Default has occurred hereunder, or when the indebtedness hereby secured, or any part thereof, shall become due, either (a) by lapse of time; (b) by acceleration under any of the provisions of the Note, of this Mortgage or of any other instrument evidencing or securing the Loan; or (c) otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and to exercise any one or more of the remedies provided in the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *et seq.*, as in effect from time to time (the "Act"). It is further agreed that if default be made in the payment of any part of the secured indebtedness and such default shall not be cured on or before the expiration of any applicable grace or cure period, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right, to the extent permitted by law, to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the premises pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

In connection with any foreclosure of the lien hereof (including any partial foreclosure) or to enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all reasonable expenditures and expenses which may be paid or incurred, whether by force or after the entry of any decree or judgment of foreclosure, by or on behalf of Mortgagee for reasonable attorneys' fees and expenses, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to

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items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title and value 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 the value of the premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the premises, including probate and bankruptcy proceedings, or in preparations 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 Rate and shall be secured by this Mortgage.

Without limiting the liability of Mortgagor as set forth above, Mortgagor shall indemnify Mortgagee and its officers, directors, employees and agents, and hold them harmless from and against all claims, injury, damage, loss and liability of any and every kind to any persons or property by reason of (i) the construction of the improvements on the Land; (ii) the operation or maintenance of the premises; or (iii) any other action or inaction by, or matter which is the responsibility of, Mortgagor.

16. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order:

First, on account of all reasonable costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Section hereof; Second, whether incurred before or after the entry of any decree or judgment of foreclosure, the reasonable expenses of securing possession before sale, holding, maintaining and preparing the real estate for sale including, without limitation, payment of taxes and other governmental charges, premiums on hazard and liability insurance, receiver's and management fees, reasonable attorneys' fees and other legal expenses incurred by Mortgagee, and all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; Third, all principal and interest remaining unpaid on the Note; Fourth, satisfaction of claims in order of priority adjudicated in the judgment of foreclosure or order confirming the sale; and Fifth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

17. Appointment of Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, or at any time as permitted by law, wherever Mortgagee is entitled to possession of the premises, at Mortgagee's request, the court in which such complaint is filed shall appoint a receiver of the premises. Mortgagee shall be entitled to designate the receiver. Such appointment may be made either before or after sale, without notice to the extent permitted by law, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any Holders may be appointed as such receiver. Such receiver shall have possession of the premises and other

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property subject to this Mortgage during the foreclosure, shall have the full power and authority to operate, manage and conserve such property, and shall have the usual powers of receivers in like cases. Without limiting the foregoing, such receiver shall have the power and authority: (a) 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, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide, subject to court approval, for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers 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; (c) insure the premises against loss by fire or other casualty; (d) employ counsel, custodian, janitors or other help; (e) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period; and (f) as specified in ¶ 15-1704 of the Act. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (x) the indebtedness secured hereby, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (y) the deficiency in case of a sale and deficiency.

18. Observance of Lease Assignment. In the event Mortgagor, as additional security for the payment of the indebtedness described in and secured hereby, has sold, transferred and assigned, or may hereafter sell, transfer and assign, to Mortgagee, its successors and assigns, any interest of Mortgagor as lessor in any lease or leases, Mortgagor expressly covenants and agrees that if Mortgagor, as lessor therein, shall fail to perform and fulfill any term, covenant, condition or provision in said lease or leases, or any of them, on Mortgagor's part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if an Event of Default shall occur under the provisions of the Assignment of Rents and Leases of even date herewith made by Mortgagor to Mortgagee as security for the Loan, then, and in any such event, such breach or default shall constitute an Event of Default hereunder and at the option of Mortgagee, and without notice to Mortgagor, all unpaid indebtedness secured by this Mortgage shall, notwithstanding anything in the Note or in this Mortgage to the contrary, become due and payable as in the case of other Events of Default.

19. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole 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, forthwith, upon demand of Mortgagee, Mortgagor shall

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surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises or any part thereof personally, or by its agent or attorneys, as for condition broken. In such event Mortgagee, in its discretion, upon request may, with process of law, 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 Mortgagor or then owner of the premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, 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 or security of the avails, rents, issues, and profits of the premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof to the extent provided by any non-disturbance agreements; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may, subject to court approval, provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers 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; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; (f) to receive all of such avails, rents, issues and profits; and (g) during the pendency of legal proceedings to foreclose the lien hereof to exercise the powers specified in ¶ 15-1703 of the Act; 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 Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, except any such liability, loss, damage, claim or demand arising from the gross negligence or willful misconduct of Mortgagee. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

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Notwithstanding any provisions of this Section to the contrary, during the pendency of legal proceedings to foreclosure the lien hereof, Mortgagee's right to possession shall be subject to the provisions of ¶ 15-1701 of the Act.

20. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 19 hereof, shall have full power to use and apply the avails, rents, issues and profits of the premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the premises, including cost of management, sales and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the premises,

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the premises, and of placing the premises in such condition as will, in the reasonable judgment of Mortgagee, make it readily marketable; and

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

21. Mortgagee's Right of Inspection. Mortgagee shall have the right to inspect the premises at all reasonable times and access thereto shall be permitted for that purpose.

22. Condemnation. In the event the premises are taken or damaged under the power of eminent domain or by condemnation, or by conveyance in lieu thereof, Mortgagor shall restore or rebuild the premises. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or any claim for damages for any of the premises taken or damaged under the power of eminent domain or by condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, Mortgagee may, at its option, declare the balance remaining unpaid on the Note and this Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Note as in the case of a default.

Notwithstanding the foregoing, if

(i) no Event of Default or event which with the lapse of time or the giving of notice or both shall constitute an Event of Default has occurred and is continuing;

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(ii) the Tenant under the Lease affecting the premises has not terminated and does not have the right to terminate the Lease as a result of such taking; and

(iii) the time required to complete repairs to or replacement or restoration of the premises shall not, in the reasonable estimation of Mortgagee, extend beyond the Loan Maturity Date,

then Mortgagor shall rebuild or restore the buildings and improvements on the premises, and the proceeds shall be held by Mortgagee and used to reimburse Mortgagor for the cost thereof, in accordance with the plans and specifications as approved by Mortgagee. The proceeds of the award shall be paid out in the same manner as is provided in Section 6 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagor shall pay such cost in excess of the award, before being entitled to reimbursement out of the award. Any surplus which may remain out of said award after payment of such cost of rebuilding or restoration shall, be applied first to the payment of accrued and unpaid interest on the outstanding principal balance of the Loan, and then to the outstanding principal balance of the Loan.

23. Release upon Payment and Discharge of Mortgagor's Obligations: Partial Release. If Mortgagor shall fully pay all principal and interest on the Note, and all other indebtedness secured hereby and comply with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, then this Mortgage shall be null and void. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby and payment of a reasonable fee to Mortgagee for the execution of such release. Upon receipt by Mortgagee of the Mandatory Principal Prepayment, Mortgagee shall release this Mortgage and the lien thereof, as to the Home Depot Land only, by proper instrument.

24. Giving of Notice. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (i) if delivered by messenger, when delivered, (ii) if mailed, on the third business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, (iii) if airtel, telegraphed or teletyped, four hours after being dispatched by telex, telegram or telecopy, if such fourth hour falls on a business day within the hours of 9:00 a.m. through 5:00 p.m. of the time in effect at the place of receipt, or at 9:00 a.m. on the next business day thereafter if such fourth hour is later than 5:00 p.m., or (iv) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier; in every case addressed to the party to be notified as follows:

In the case of Mortgagor, to:

William A. Shiner, Inc.  
c/o Mid-Northern Equities Management, Ltd.

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828 Nerge  
Roselle, Illinois 60172  
Fax: (708) 351-9160  
with a copy to:

Randy S. Gussis  
Shaw, Gussis, Fox and Domanskis  
111 West Washington Street  
Suite 707  
Chicago, Illinois 60602  
Fax: (312) 541-0155

In the case of Mortgagee, to:

LaSalle National Bank  
120 South LaSalle Street  
Chicago, Illinois 60603  
Attention: Thomas Bobak  
Fax: (312) 750-6467

with a copy to:

Terrence E. Budny  
Bell, Boyd & Lloyd  
Three First National Plaza  
Suite 3100  
Chicago, Illinois 60602  
Fax: (312) 372-2098

or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection or refusal to accept or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

25. Waiver of Defense; Remedies Not Exclusive. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other remedy herein or by law provided or permitted, but each shall be cumulative and shall

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be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given hereby to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. No waiver of any default of the Mortgagor hereunder shall be implied from any omission by the Mortgagee or Holders to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the penalty or Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee or Holders at any time thereafter to demand and collect payment of interest at such post maturity or penalty rate or of late charges, if any.

## 26. Compliance With Illinois Mortgage Foreclosure Law.

(a) In the event that any provisions in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with Act.

(b) Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law, except such rights as are expressly limited by the provisions of this Mortgage.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under ¶ 15-1510 and ¶ 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Paragraph 15 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

27. Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in ¶ 15-1201 of the Act) or residential real estate (as defined in ¶ 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to redemption as allowed under ¶ 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisalment, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

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28. Furnishing of Financial Statements to Mortgagee. Mortgagor shall deliver or cause to be delivered to Mortgagee financial statements for the Mortgagor and General Partner.

29. Binding on Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of the Holders from time to time and of the successors and assigns of the Mortgagee.

30. Definitions of "Mortgagor" and "Mortgagee." The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof; (b) said original Mortgagor's successors and assigns; and (c) all owners from time to time of the premises. The words "Holders" and "Mortgagee" when used herein shall include all successors and assigns of the original Holders and Mortgagee identified in the preambles hereof.

31. Captions. The captions and headings of various paragraphs of this Mortgage 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.

32. Disbursement of Loan Proceeds for Construction of Improvements. A portion of the indebtedness evidenced by the Note and secured hereby is to be used for the construction of certain improvements on the Land; and this Mortgage constitutes a construction mortgage as said term is defined in Section 9-113(1)(c) of the Uniform Commercial Code of Illinois. Mortgagor shall perform or cause to be performed all the agreements, obligations, terms, provisions and conditions of each and all of the Loan Documents to be kept and performed by either or both Mortgagor. All advances and indebtedness arising and accruing from time to time, and all expenses incurred by Mortgagee in connection with the enforcement or performance of its rights and remedies under the Loan Documents, whether or not the total amount thereof may exceed the face amount of the Note secured hereby, shall be secured hereby to the same extent as if the Loan Documents were fully recited in this Mortgage.

It is understood and agreed, however, that with respect to subsequent purchasers and mortgagees without actual notice, none of the advances or indebtedness arising or accruing under the Note, shall result in an increase of the indebtedness secured and to be secured hereby over the face amount of the Note beyond 100% of such face amount. In determining the amount of such increase there shall be excluded from any computation, all indebtedness which would constitute secured indebtedness under the terms of this Mortgage had this Section 32 been omitted herefrom.

Upon the occurrence of an Event of Default hereunder, in addition to any other remedies herein, at its election Mortgagee may enter upon the premises and perform any and all work and labor necessary to complete the buildings, improvements and other structures. To implement the rights of the Mortgagee under this Section 32, in addition to any other remedies which Mortgagee may have hereunder Mortgagee may in its sole discretion do any one or more of the following:

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(a) Enter upon the premises and complete the Development and employ watchmen, all at the risk, cost and expense of Mortgagor.

(b) At any time discontinue any work commenced in respect of the Development and change any course of action undertaken by it and not be bound by any limitations or requirements of time whether set forth herein or otherwise.

(c) Assume any construction contract made by Mortgagor in any way relating to the construction of the Development and take over and use all or any part of the labor, materials, supplies and equipment contracted for by Mortgagor, whether or not previously incorporated into the Development.

(d) In connection with any construction of the Development undertaken by Mortgagee pursuant to the provisions of this Section 32, Mortgagee may perform any one or more of the following:

(1) Engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials, supplies and equipment in connection with any construction of the Development;

(2) Pay, settle or compromise all bills or claims which may become liens against the Development, or which have been or may be incurred in any manner in connection with completing the Development or for the discharge of liens, encumbrances or defects in the title of the premises; and

(3) Take or refrain from taking such action hereunder as Mortgagee from time to time may determine.

Mortgagor shall be liable to Mortgagee for all sums paid or incurred to construct and equip the Development whether the same shall be paid or incurred pursuant to the provisions of this Section 32 or otherwise, and all payments made or liabilities incurred by Mortgagee hereunder of any kind whatsoever shall be paid by Mortgagor to Mortgagee upon demand with interest at the Default Rate from the date of payment by Mortgagee to the date of payment to Mortgagee and shall be secured by this Mortgage. For purposes of exercising the rights granted in this Section 32, Mortgagor hereby irrevocably constitutes and appoints Mortgagee its respective true and lawful attorney-in-fact with full power of substitution to execute, acknowledge and deliver any instruments and to do and perform any acts in the name of and on behalf of Mortgagor; this power of attorney shall be a power coupled with an interest and cannot be revoked.

33. Business Loan Recital. Mortgagor represents and agrees that the obligation secured hereby: (a) constitutes a business loan which comes within the purview of 815 ILCS 205/4(1)(c) (1992 Ed.); and (b) is an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 et seq.

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34. Execution of Separate Security Agreement, Financing Statements, Etc.

Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee a Security Agreement, Financing Statement or other similar security instruments, in form satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor, as the case may be, which in the sole opinion of Mortgagee is essential to the operation of the premises and which constitutes goods within the meaning of the Uniform Commercial Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this Mortgage under the laws of the state in which the premises are located, and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all reasonable costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and refiling of any such document.

35. Partial Invalidation: Maximum Allowable Rate of Interest.

Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage and the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. All agreements herein and in the Note are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to the Holders for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, *ipso facto*, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the Holders shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

36. Mortgagee's Lien for Service Charge and Expenses.

At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan



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proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the loan to be secured hereby, all in accordance with the application and loan commitment issued in connection with this transaction; provided, however, that in no event shall the total amount of loan proceeds disbursed plus such additional amounts exceed 150% of the face amount of the Note.

37. Maintenance of Mortgagor's Interests. In the event that Mortgagor shall, without Mortgagee's prior written consent, transfer, convey, alien, pledge, hypothecate or mortgage (or permit the same by another person or entity) the premises or any part thereof, such action or failure to act shall constitute an Event of Default under this Mortgage and the Mortgagee shall have the right, at its election under Section 14 hereof, to declare immediately due and payable the entire indebtedness secured hereby.

38. Applicable Law. This Mortgage, the Note and all other instruments evidencing and securing the loan secured hereby shall be construed, interpreted and governed by the laws of the State of Illinois.

39. Future Advances. This Mortgage secures all future advances made under the provisions of the Note, which future advances have the same priority as if all such future advances were made on the date of execution hereof. Nothing in this Section 39 or in any other provision of this Mortgage shall be deemed an obligation on the part of Mortgagee to make any future advances other than in accordance with the terms and provisions of this Mortgage.

40. Intentionally Deleted.

41. Letter of Credit. Pursuant to the provisions of the Note, the principal balance of the Note includes advances from time to time made to fund draws upon the Letter of Credit. Mortgagee shall at no time be required to make advances to fund draws on the Letter of Credit such that the amount so advanced exceeds Eight Hundred Fifty-Five Thousand and No/100 Dollars (\$855,000.00) at any time (the "Credit Amount"). The Credit Amount shall be deemed to be principal under the Note and shall be included within the indebtedness secured hereby, and, along with all draws, payments, disbursements, charges and expenses made or incurred by Mortgagee from time to time under the Letter of Credit, shall be secured by this Mortgage.

All advances made after the date hereof in respect of the Letter of Credit shall have the same priority as if such advances were made on the date hereof. Even if there is no existing debt outstanding at the time of any advance, this Mortgage shall constitute a lien for such future advance, if any, until all of the indebtedness secured by this Mortgage is paid in its entirety. Notwithstanding anything to the contrary herein contained, to the extent any statute, law, ordinance, rule, regulation or court opinion or determination requires the limitation of the indebtedness secured hereby in order to protect or assure the validity, enforceability or priority of this Mortgage or the lien hereof, then, to such extent, the indebtedness secured hereby will not exceed 150% of the face amount of the Note; provided, however, that in any event nothing herein shall limit the amount that shall be secured hereby when advanced in connection with the protection of or realization on the security hereof.

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42. Trustee Exculpation. This Mortgage is executed by LaSalle National Trust, N.A., in its capacity as Trustee aforesaid, not personally, but solely as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. All covenants, agreements and conditions to be performed by LaSalle National Trust, N.A. as Trustee hereunder are undertaken by it solely as Trustee as aforesaid and not individually, and no personal liability shall be asserted or enforceable against LaSalle National Trust, N.A. personally, by reason of any of such covenants, agreements, representations or warranties contained herein; but nothing herein contained shall be deemed a release or impairment of the indebtedness evidenced hereby or incurred pursuant hereto, nor prejudice the rights of Mortgagee from exercising any of its rights or remedies hereunder or under the Note or any or all of the Loan Documents, or from securing a deficiency or personal judgment against any subsequent owner of the premises who assumes the indebtedness evidenced hereby or incurred pursuant hereto; and nothing herein contained shall release, waive, modify or discharge the liability and responsibility of the Corporation, the Guarantor or of any other guarantor or any other persons or entities in respect hereof.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed by its President, and its corporate seal to be hereunto affixed and attested by its Secretary the day and year first above written.

MORTGAGOR:

LaSalle National Trust, N.A., not individually,  
but solely as Trustee aforesaid

By: \_\_\_\_\_

*Terrence E. Budny*  
Vice President

This instrument was prepared by and when recorded return to:

Terrence E. Budny  
Bell, Boyd & Lloyd  
Three First National Plaza  
Suite 3100  
Chicago, Illinois 60602

COOK COUNTY, ILLINOIS  
FILED FOR RECORD

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STATE OF ILLINOIS            )  
  )    SS  
COUNTY OF COOK            )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Corinne Bek personally known to me to be the Vice President of LaSalle National Trust, N.A., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President, she signed and delivered the said instrument, not personally but as Trustee as aforesaid, as her free and voluntary act, and as the free and voluntary act and deed of said bank, for the uses and purposes therein set forth.

Given under my hand and official seal, this 2nd day of March 1994.

*Patricia Schuh*  
OFFICIAL SEAL  
Notary Public  
PATRICIA SCHUH  
Notary Public, State of Illinois  
My Commission Expires Dec. 7, 1997

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Exhibit A

## LEGAL DESCRIPTION OF NORTHWEST CORNER OF SCHAUMBURG ROAD AND BARRINGTON ROAD REMAINDER (NOT INCLUDING HOME DEPOT SITE):

THAT PART OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF BARRINGTON ROAD, ACCORDING TO THE PLAT OF DEDICATION RECORDED APRIL 4, 1990 AS DOCUMENT NO. 90150222, (SAID WEST LINE OF BARRINGTON ROAD BEING A LINE 50.00 FEET, AS MEASURED AT RIGHT ANGLES, WEST OF AND PARALLEL WITH THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24) WITH THE SOUTHERLY LINE OF HOLMES WAY, ACCORDING TO THE PLAT OF DEDICATION RECORDED APRIL 4, 1990 AS DOCUMENT 9015022; THENCE SOUTH  $00^{\circ}10'51''$  EAST, ON THE WEST LINE OF BARRINGTON ROAD, A DISTANCE OF 1042.94 FEET; THENCE SOUTH  $89^{\circ}49'09''$  WEST, A DISTANCE OF 10.00 FEET; THENCE SOUTH  $00^{\circ}10'51''$  EAST, ALONG THE WEST LINE OF BARRINGTON ROAD, A DISTANCE OF 210.65 FEET; THENCE SOUTH  $43^{\circ}09'59''$  WEST, A DISTANCE OF 14.52 FEET TO THE NORTH LINE OF SCHAUMBURG ROAD, AS RELOCATED; THENCE SOUTH  $86^{\circ}28'50''$  WEST, ON SAID NORTH LINE, A DISTANCE OF 180.06 FEET TO A POINT OF CURVATURE; THENCE WESTERLY, ALONG SAID NORTH LINE, BEING A CURVED LINE CONVEX SOUTHWESTERLY HAVING A RADIUS OF 768.71 FEET, AN ARC DISTANCE OF 313.20 FEET TO A POINT WHICH IS AN ARC DISTANCE OF 311.51 FEET EAST OF A POINT OF TANGENCY IN SAID NORTH LINE; THENCE NORTH  $09^{\circ}17'04''$  WEST, A DISTANCE OF 76.26 FEET; THENCE NORTH  $67^{\circ}16'34''$  EAST, A DISTANCE OF 167.43 FEET; THENCE NORTH  $40^{\circ}00'17''$  EAST A DISTANCE OF 562.16 FEET; THENCE NORTH  $50^{\circ}00'00''$  WEST, A DISTANCE OF 459.00 FEET; THENCE SOUTH  $40^{\circ}00'00''$  WEST A DISTANCE OF 126.22 FEET; THENCE NORTH  $50^{\circ}$  WEST A DISTANCE OF 295.52 FEET; THENCE NORTH  $40^{\circ}$  EAST A DISTANCE OF 295.19 FEET TO THE SOUTHERLY LINE OF HOLMES WAY; THENCE NORTH  $82^{\circ}19'00''$  EAST, A DISTANCE OF 310.89 FEET TO A POINT OF CURVATURE IN SAID SOUTHERLY LINE; THENCE EASTERLY ALONG A CURVED LINE CONVEX NORTHERLY, HAVING A RADIUS OF 470.0 FEET, AN ARC DISTANCE OF 61.54 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS NORTH  $86^{\circ}04'04''$  EAST); THENCE NORTH  $89^{\circ}49'09''$  EAST, A DISTANCE OF 100.00 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

P.I.N. 06-24-201-007

Northwest corner of Schaumburg and Barrington Roads, Schaumburg, Illinois

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