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This instrument was prepared by and should be mailed to:

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Chicago, Illinois 60602

MORTGAGE AND ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT

This Mortgage and Assignment of Leases and Rents and Security Agreement (this "Mortgage") is made as of the 17th day of December, 2003, between North/Halsted, LLC, an Illinois limited liability company ("Mortgagor"), in favor of National City Bank of Michigan/Illinois ("Mortgagee" or "Lender").

ARTICLE 1

DEFINITIONS

1.1 **Definitions.** As used herein, the following terms shall have the following meanings:

**Assignment:** The assignment, contained in Article 3 of this Mortgage, from Mortgagor to Mortgagee, of all of Mortgagor's right, title and interest in and to the Leases and the Rents.

**Awards:** All awards and payments made or hereafter to be made by any municipal, township, county, state, Federal or other governmental agencies, authorities or boards or any other entity having the power of eminent domain to Mortgagor, including, but not limited to any awards and payments for any taking of all or a portion of the Mortgaged Property, as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain, or for any change or changes of grade of streets affecting the Mortgaged Property.

**Building or Buildings:** All buildings, improvements, alterations or appurtenances now, or at any time hereafter, constructed or located upon the Land or any part thereof.

**Environmental Indemnity Agreement:** The Environmental Indemnity Agreement, dated as of the date hereof, made by Mortgagor and Guarantors for the benefit of Lender.

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**Environmental Laws:** Any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6091 et seq.; the Comprehensive Environmental Response, Compensation Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended ("CERCLA"), and as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

**Event(s) of Default:** The happenings and occurrences described in Article 5 of this Mortgage.

**Fixtures:** All fixtures, systems, or Building equipment located upon or within the Land or Buildings or now or hereafter attached to, or installed in, or used in connection with, any of the Land or Buildings whether or not permanently affixed to the Mortgaged Property.

**Guarantors:** J. Michael Drew and Daniel A. Lukas.

**Guaranty:** The guaranty of even date executed by the Guarantors guaranteeing the Indebtedness and the Obligations under this Mortgage, the Note (as hereinafter defined), the Reimbursement Agreement, the Guaranty and all of the other Loan Documents.

**Hazardous Materials:** Any flammable explosives, radioactive materials, oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous wastes, toxic substances and similar substances and materials, including all substances and materials defined as hazardous or toxic wastes, substances or materials under any applicable rule, regulation, ordinance or law.

**Impositions:** All (i) real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Mortgaged Property which at any time prior to or after the execution of the other Loan Documents may be assessed, levied, or imposed upon the Mortgaged Property or the rent or income received therefrom or any use or occupancy thereof, and (ii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against the Mortgaged Property.

**Indebtedness:** The principal of and all interest on the Note and any and all other amounts, payments, sums or premiums due under the Note or any of the other Loan Documents and all other indebtedness of Mortgagor or Guarantors to Mortgagee under and/or secured by this Mortgage and

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by any of the other Loan Documents, or any amendments, modifications, renewals and extensions of any of the foregoing.

**Land:** The real estate described in Exhibit A attached hereto and commonly known as 755 West North Avenue, Chicago, Illinois.

**Leases:** Any and all leases, subleases, licenses, concessions or grants of other possessory interests now or hereafter in force, oral or written, covering or affecting the Mortgaged Property, or any part thereof, together with all rights, powers, privileges, options and other benefits of Mortgagor thereunder.

**Mortgaged Property:** The Land, the Buildings, the Fixtures, the Leases, the Personality and the Rents together with:

(i) all rights, privileges, permits, licenses, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances of the Buildings belonging or in any way appertaining thereto and all right, title and interest of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof;

(ii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Land, the Buildings, the Fixtures, the Leases and the Rents;

(iii) all the estate, right, title, interest, claim or demand whatsoever of Mortgagor, either at law or in equity, in and to the Awards, or payments with respect to casualties;

(iv) all furniture, furnishings, equipment, machinery, trade fixtures and all other personal property (other than the Fixtures) owned by Mortgagor now or hereafter located in, upon or about the Land, the Building, together with all accessions, replacements and substitutions thereto or therefor and the proceeds and products thereof; and

(v) all of the rents, revenues, income, profits, deposits, tenders and other benefits payable under the Leases and/or arising from the use and enjoyment of all or any portion of the Mortgaged Property.

**Mortgagee:** National City Bank of Michigan/Illinois, and its successors and assigns, and the holders, from time to time, of the Note.

**Mortgagee's Address:** One North Franklin Street, Suite 3600, Chicago, Illinois 60606.

**Mortgagor:** North/Halsted, LLC, and its successors and assigns and its successors in interest in and to the Mortgaged Property.

**Mortgagor's Address:** 656 West Randolph Street, Suite 400W, Chicago, Illinois 60661.

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**Note:** The Letter of Credit Note dated of even date with this Mortgage made by the Mortgagor to the order of Mortgagee, in the principal amount of TWENTY-TWO MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$22,250,000.00) ("Note").

**Obligations:** Any and all of the covenants, promises, agreements, warranties and other obligations (other than the Indebtedness) made or owing by Mortgagor to or due to Mortgagee under and/or as set forth in this Mortgage or any of the other Loan Documents, and any and all extensions, renewals, modifications and amendments of any of the foregoing.

**Other Loan Documents:** The Reimbursement Agreement, the Note, the Guaranty, and any and all other documents executed by the Mortgagor, or others, including, but not limited to any guarantors, now or hereafter securing the payment of the Indebtedness or the observance or performance of the Obligations.

All capitalized terms used in this Mortgage which are not specifically defined herein shall have the meaning specified in the Reimbursement Agreement.

## ARTICLE 2

### GRANT

2.1 **Grant.** To secure the payment of the Indebtedness and the performance and discharge of the Obligations, Mortgagor by these presents hereby grants, bargains, sells, assigns, mortgages, conveys and warrants unto Mortgagee the Mortgaged Property, to have and to hold the Mortgaged Property unto Mortgagee, its successors and assigns forever.

2.2 **Condition of Grant.** Provided always, that if Mortgagor promptly shall pay the entire Indebtedness as and when the same shall become due and payable and shall observe, perform and discharge the Obligations, then the other Loan Documents and the estate and rights hereby granted shall cease, terminate and become void, and shall be released by Mortgagee, at the cost and expense of Mortgagor, and, in case of failure of the Mortgagee to so release this Mortgage, all claims for statutory penalties are hereby waived.

2.3 **Doctrine of Merger.** Upon the foreclosure of this Mortgage, no assigned Lease shall be destroyed or terminated by application of the doctrine of merger or as a matter of law unless Mortgagee or any purchaser at such foreclosure sale so elects. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any assigned Lease unless Mortgagee or such purchaser gives written notice thereof to the applicable tenant or subtenant.

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## ARTICLE 3

### SECURITY INTEREST AND ASSIGNMENT OF LEASES AND RENTS

3.1 **Security Agreement.** This Mortgage shall be construed as a mortgage of a fee simple interest in real property and it shall also constitute a "Security Agreement" within the meaning of, and shall create a security interest under, the Uniform Commercial Code as adopted in the state in which the Mortgaged Property is located (the "UCC"), in the Fixtures.

3.2 **Security Interest.** Mortgagor hereby grants to Mortgagee a security interest under the UCC in the Fixtures and Mortgagee shall have all rights with respect thereto afforded to it by the UCC, in addition to, but not in limitation of, the other rights afforded to Mortgagee by the other Loan Documents.

3.3 **Financing Statements.** Mortgagor agrees to and shall execute and deliver to Mortgagee, in form satisfactory to Mortgagee, such "Financing Statements", if any, and such further assurances as Mortgagee may, from time to time, consider reasonably necessary to create, perfect and preserve Mortgagee's liens upon the Fixtures, and Mortgagee, at the expense of Mortgagor, may or shall cause such statements and assurances to be recorded and re-recorded, filed and re-filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such liens.

3.4 **Assignment of Leases and Rents.** In order to further secure payment of the Indebtedness and the observance, performance and discharge of the Obligations, Mortgagor hereby absolutely and irrevocably assigns and transfers to Mortgagee, all of Mortgagor's right, title and interest in and to the Leases and the Rents. Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact, with the right, at Mortgagee's option at any time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, either in Mortgagor's or Mortgagee's name, for all Rents. Notwithstanding the foregoing assignment of Leases and Rents, so long as no Event of Default has occurred which remains uncured, Mortgagor shall have a license (such license to be deemed revoked upon the occurrence of an Event of Default) to collect Rents, provided that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any subsequent assignment by Mortgagor shall be subject to the rights of the Mortgagee hereunder. This Assignment shall not be deemed or construed to constitute Mortgagee as a mortgagee in possession nor obligate Mortgagee to take any action or to incur expenses or perform or discharge any obligation, duty or liability. Exercise of any rights under this Section 3.4 and the application of the Rents to the Indebtedness or the Obligations shall not cure or waive any Event of Default.

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## ARTICLE 4

### COVENANTS

Until the entire Indebtedness shall have been paid in full, Mortgagor hereby covenants and agrees as follows:

4.1 **Compliance with Laws.** Mortgagor shall promptly and faithfully comply with, conform to and obey all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency and of every Board of Fire Underwriters having jurisdiction, or similar body exercising similar functions, which may be applicable to it or to the Mortgaged Property, or any part thereof, or to the use or manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Mortgaged Property, or any part thereof, whether or not such law, ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

4.2 **Payment of Impositions.** Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions, such Impositions or installments thereof to be paid prior to the day before any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof; provided, however, that if, by law, any Imposition may be paid in installments, Mortgagor may pay the same in such installments.

4.3 **Repair.** Mortgagor will keep the Mortgaged Property in good order and condition and make all necessary or appropriate repairs, replacements and renewals thereof and will use its best efforts to prevent any act or thing which might impair the value or usefulness of the Mortgaged Property, and Mortgagor will obtain the written consent of Mortgagee prior to (i) making any alterations or additions to the Mortgaged Property or (ii) removing any of the Buildings or Fixtures.

4.4 **Insurance.** Mortgagor will maintain insurance upon the Mortgaged Property against loss by fire and such other hazards, casualties and contingencies as are normally and usually covered by extended coverage policies in effect in the locality where the Mortgaged Property is situated and such other risks as may be specified by Mortgagee, from time to time, in amounts and with insurers acceptable to Mortgagee but not less than the lesser of (a) the amount of the Indebtedness, or (b) one hundred percent (100%) of the replacement value of the Buildings, Fixtures and Personalty. Mortgagor shall cause each insurance policy issued in connection therewith to provide (and the insurer issuing such policy to certify to Mortgagee) that (i) loss payments will be payable to Mortgagee as its interests may appear, such payments to be applied to the restoration, repair or replacement of the Mortgaged Property; provided, however, that if an Event of Default has occurred and is continuing or an event has occurred and is continuing which with the passage of time or the giving of notice would constitute an Event of Default, then such payments shall be applied to the payment of the Indebtedness; (ii) the interest of Mortgagee shall be insured regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy; (iii) if any such insurance policy be subject to cancellation or be endorsed or sought to be endorsed to

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effect a change in coverage for any reason whatsoever, such insurer will promptly notify Mortgagee and such cancellation or change shall not be effective as to Mortgagee until thirty (30) days after receipt by Mortgagee of such notice; and (iv) Mortgagee may, but shall not be obligated to, make premium payments to prevent such cancellation, and that such payments shall be accepted by the insurer. For purposes of this Section, replacement value of the Buildings, Fixtures and Personalty shall be equal to the cost of replacing the Buildings, Fixtures and Personalty, exclusive of the cost of excavation, foundations and footings below the lowest basement floor and shall be determined from time to time during the terms of the Note (but no more frequently than once in any twelve (12) calendar months) at the written request of Mortgagee by an engineer, appraiser, architect or contractor designated by Mortgagee, approved in writing by Mortgagor, and paid by Mortgagor. In addition, Mortgagor shall furnish to Mortgagee duplicate executed copies of each such policy at the time of execution hereof, and copies of each renewal policy not less than thirty (30) days prior to the expiration of the original policy or the preceding renewal policy (as the case may be), together with receipts or other evidence that the premiums thereon have been paid; and furnish to Mortgagee on or before fifteen (15) days after the close of each fiscal year of Mortgagor a statement of Mortgagor of the amounts of insurance maintained in compliance with this Subsection, of the risks covered by such insurance and of the insurance company or companies which carry such insurance.

#### 4.5 Disbursement of Insurance or Eminent Domain Proceeds.

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Mortgaged Property, where the damage or destruction is valued in excess of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00), whether by fire or other casualty or by a taking under the power of eminent domain, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, which approval will not unreasonably be withheld.

(b) Prior to each payment or application of any insurance proceeds or a condemnation or eminent domain award to the repair or restoration of the improvements upon the Mortgaged Property to the extent permitted herein (which payment or application may be made, at Mortgagee's option, through a construction escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be entitled to be satisfied as to the following:

(i) An Event of Default has not occurred;

(ii) Either (A) such improvements have been fully restored, or (B) the expenditure of money as may be received from such insurance proceeds or condemnation award will be sufficient to repair, restore or rebuild the Mortgaged Property, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage or, in the event such insurance proceeds or condemnation award shall be insufficient to repair, restore and rebuild the Mortgaged Property, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance

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proceeds or condemnation award, shall be sufficient to restore, repair and rebuild the Mortgaged Property; and

(iii) Prior to each disbursement of any such proceeds held by Mortgagee in accordance with the terms of this Paragraph 4.5 for the cost of any repair, restoration or rebuilding, Mortgagee shall be furnished with a statement of an architect selected by Mortgagee (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Mortgaged Property; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Mortgaged Property, and total or partial lien waivers substantiating such payments.

(c) Prior to the payment or application of insurance proceeds or a condemnation award to the repair, restoration or rebuilding of the improvements upon the Mortgaged Property to the extent permitted herein, there shall have been delivered to Mortgagee the following:

(i) A waiver of subrogation from any insurer with respect to Mortgagor or the then owner or other insured under the policy of insurance in question;

(ii) Such plans and specifications, such payment and performance bonds and such insurance, in such amounts, issued by such company or companies and in such forms and substances, as are required by Mortgagee.

(d) In the event Mortgagor shall fail to restore, repair or rebuild the improvements upon the Mortgaged Property within a time deemed satisfactory by Mortgagee, then Mortgagee, at its option, may commence and perform all necessary acts to restore, repair or rebuild the said improvements for or on behalf of Mortgagor. In the event insurance proceeds or condemnation award shall exceed the amount necessary to complete the repair, restoration or rebuilding of the improvements upon the Mortgaged Property, such excess shall be applied on account of the unpaid principal balance of the Loan, irrespective of whether such balance is then due and payable, and no Prepayment fee shall be applicable thereto.

(e) In the event Mortgagor commences the repair or rebuilding of any improvements located on the Mortgaged Property, but fails to comply with the conditions precedent to the payment or application of insurance proceeds or a condemnation or eminent domain award set forth in this Paragraph 4.5 or Mortgagor shall fail to restore, repair or rebuild the improvements upon the Mortgaged Property within a time deemed satisfactory by Mortgagee, and if Mortgagee does not restore, repair or rebuild the said improvements as provided in subparagraph (d) above, then such failure shall constitute an Event of Default.



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**4.6 Performance of Leases and Other Agreements.** Mortgagor will duly and punctually perform all material covenants and agreements expressed as binding upon it under the Lease or Leases and other agreements to which it is a party with respect to the Mortgaged Property or any part thereof, and will use its best efforts to enforce or secure the performance of each and every obligation and undertaking of the respective lessees under the Lease, and will appear and defend, at its cost and expense, any action or proceeding arising under or in any manner connected with the Lease or the obligations and undertakings of the lessor thereunder. Mortgagor will immediately notify Mortgagee in writing of any notice of default received by Mortgagor from the Lessee thereunder.

**4.7 Inspection.** Mortgagor will permit Mortgagee, at all reasonable times, to inspect the Mortgaged Property. Mortgagee shall have the right to enter onto the Mortgaged Property, at all times, upon reasonable notice, to inspect the Mortgaged Property for the existence of Hazardous Materials on the Mortgaged Property and to determine the compliance of the Mortgaged Property and its use with any law, rule or regulation relating to industrial hygiene or environmental conditions, including soil and ground water conditions and the compliance of the Mortgagor and the Mortgaged Property with the conditions and covenants set forth herein with respect to Hazardous Materials.

**4.8 Hold Harmless.** Mortgagor will employ legal counsel acceptable to the Mortgagee and who is not also representing the Mortgagee in any other matter, and will defend and hold Mortgagee harmless from any action, proceeding or claim affecting the Mortgaged Property, or the validity of the Note or the other Loan Documents. Mortgagor shall appear in and defend (or pay the reasonable expenses of Mortgagee to defend, if Mortgagor elects to allow Mortgagee to handle such defense) any action or proceeding purporting to affect the security of this Mortgage and/or the rights and/or powers of Mortgagee hereunder, and Mortgagor shall pay all costs and expenses (including costs of evidence of title and reasonable attorneys' fees) in any action or proceeding in which Mortgagee may so appear and/or any suit brought by Mortgagee to foreclose this Mortgage, to enforce any obligations secured by this Mortgage, and/or to prevent the breach hereof. Mortgagor's obligations under this Section 4.8 shall survive payment of the Indebtedness.

**4.9 Books and Records.** Mortgagor will maintain full and complete books of account and other records reflecting the results of its operations (in conjunction with its other operations as well as its operations of the Mortgaged Property), in accordance with generally accepted accounting principles, and furnish or cause to be furnished to Mortgagee such financial data and other information, including, without limitation, copies of all Leases, as Mortgagee shall, from time to time, reasonably request with respect to Mortgagor, Guarantors, and the ownership and operation of the Mortgaged Property, and Mortgagee shall have the right, at reasonable times and upon reasonable notice, to audit Mortgagor's books of account and records.

**4.10 Awards.** Mortgagor will file and prosecute its claim or claims for any Awards in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, if it so desires, to file such claim and

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collect any Awards and agrees that the proceeds of any Awards will be applied by Mortgagee in reduction of any portion of the Indebtedness as Mortgagee may determine in accordance with Article 7 hereof.

**4.11 Licenses.** Mortgagor shall keep in full force and effect all licenses, permits and other governmental approvals which are necessary for the operation of the Mortgaged Property and related facilities, and furnish evidence satisfactory to Mortgagee that the Mortgaged Property and the use thereof comply with all applicable zoning and building laws, regulations, ordinances and other applicable laws.

**4.12 Junior Financing.** Mortgagor shall not, without the prior written consent of Mortgagee, incur any additional indebtedness or create or permit to be created or to remain, any mortgage, pledge, lien, lease, encumbrance or charge on, or conditional sale or other title retention agreement, with respect to the Mortgaged Property or any part thereof or income therefrom, other than the other Loan Documents.

**4.13 Representations and Covenants of Mortgagor.** Mortgagor hereby represents and covenants to Mortgagee that:

(a) Mortgagor is qualified to do business in the State of Illinois and Mortgagor is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to Mortgagor or the Mortgaged Property.

(b) This Mortgage and each of the other Loan Documents, will not violate any provision of existing law (including, but not limited to, any law relating to usury), any order of any court or other agency or government, or any indenture, agreement or other instrument to which Mortgagor is a party or by which Mortgagor or any of their property is bound, or be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or violate the organizational documents or operating agreement of the Mortgagor or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Mortgagor, except as contemplated by this Mortgage and the other Loan Documents, and no action with respect thereto by Mortgagor is required.

(c) No consent or approval of any regulatory body to the execution, delivery and performance of this Mortgage and the other Loan Documents, the Guaranty, if any, or the transactions contemplated thereby is required by law.

(d) There are no suits, proceedings or investigations pending or to their knowledge, threatened against or affecting, at law or in equity, or before or by any governmental or administrative agency or instrumentality which, if adversely determined, would have a material adverse effect on the business or condition of Mortgagor.

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(e) No judgment, decree, or order of any court or governmental or administrative agency or instrumentality has been issued against Mortgagor which has or may have any material adverse effect on the business or financial condition of Mortgagor.

(f) All information, reports, papers and data given to Mortgagee with respect to Mortgagor and the Guarantors or others obligated under the terms of the other Loan Documents are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Mortgagee a true and accurate knowledge of the subject matter thereof.

(g) Mortgagor has good and marketable title in fee simple to the Mortgaged Property and good and marketable title to the Fixtures, free and clear of any prior assignment, liens, charges, encumbrances, security interests and adverse claims whatsoever.

(h) Mortgagor has not executed any prior collateral assignment of the Leases or of its right, title, interest therein, Mortgagor has delivered to Mortgagee a true and complete copy of all Leases assigned hereunder, together with all amendments, supplements and other modifications, and to the best of Mortgagor's knowledge, no material default by Mortgagor or Lessee under the Lease remains uncured.

(i) Mortgagor has filed all Federal, state, county and municipal income tax returns required to have been filed by them and have paid all taxes which have become due pursuant to any assessments received by it, and Mortgagor does not know of any basis for additional assessment in respect to such taxes.

(j) To the best of Mortgagor's knowledge, upon due inquiry, no release (a "Release") of Hazardous Material has occurred on the Mortgaged Property. Mortgagor has not received and Mortgagor represents that Mortgagors have not received any notice from any governmental agency or from any tenant under a Lease or from any other party with respect to any such Release.

Breach of such representations and warranties shall constitute an Event of Default under Section 5.5 hereof. Mortgagor shall promptly give written notice to Mortgagee of any breach under this Section 4.13.

**4.14 Mechanics' Lien.** Mortgagor shall not permit or suffer any mechanics' lien claims to be filed or otherwise asserted against the Mortgaged Property and Mortgagor shall promptly, and in any event within thirty (30) days after filing, discharge or cause to be discharged the same in case of the filing of any claims for lien or proceedings for the enforcement thereof.

**4.15 Hazardous Materials.**

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(a) Without limiting the generality of Section 4.1 hereof, Mortgagor shall not cause or permit and Mortgagor shall not allow each of the other Mortgagor's to cause or permit the violation of any of the Environmental Laws.

(b) In addition to the Environmental Indemnity Agreement of even date herewith made by the Mortgagor and the Guarantors in favor of Lender, Mortgagor shall indemnify and hold Mortgagee harmless from any loss, liability, cost, expense and/or claim (including without limitation the cost of any fines, remedial action, damage to the environment and cleanup and the reasonable fees of attorneys and other experts) arising from the use, release or disposal of any Hazardous Materials on, under or about the Mortgaged Property or the transport of any Hazardous Materials to or from the Mortgaged Property; and the violation of any law relating to industrial hygiene or environmental conditions in connection with the Mortgaged Property, including soil and ground water conditions; and the breach of any of the representations, warranties and covenants of Mortgagor with respect to Hazardous Materials set forth in this Section 4.15 and Section 4.13 hereof. Provided, however, the foregoing indemnification is not applicable to Hazardous Materials placed on the Mortgaged Property (by parties other than Mortgagor or any agents of Mortgagor) after Mortgagee has been awarded possession of the Mortgaged Property by a court of competent jurisdiction.

## ARTICLE 5

### EVENTS OF DEFAULT

The term "Event(s) of Default", as used in the other Loan Documents and in the Note shall mean the occurrence or happening, from time to time, of any one or more of the following:

5.1 **Reimbursement Agreement.** The occurrence of an Event of Default or Default under the Reimbursement Agreement.

5.2 **Laws Affecting Obligations and Indebtedness.** If subsequent to the date of this Mortgage, any governmental entity in which the Mortgaged Property is located passes any law (i) which renders payment of the Indebtedness and/or performance of the Obligations by Mortgagor unlawful, or (ii) which prohibits Mortgagee from exercising any of its material rights and remedies under this Mortgage or any of the Loan Documents.

5.3 **Destruction of Improvements.** If any of the Buildings or other improvements are demolished or removed or demolition or removal thereof is imminent, eminent domain proceedings excepted.

5.4 **Due On Sale.** If, without the prior written consent of Mortgagee, there is (i) sale, transfer, agreement for deed, conveyance, assignment, hypothecation or encumbrance, whether voluntary or involuntary, of all or part of the Mortgaged Property or any interest therein, or (ii) any sale, assignment, pledge, encumbrance or transfer to a third party of all or any part of the membership interests or units in the Mortgagor, or (iii) the seizure of the Mortgaged Property, or

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Fixtures or attachment of any lien thereon, whether voluntary or involuntary, which has not been removed or bonded off to Mortgagee's satisfaction within ten (10) days of such attachment.

5.5 **Loan Documents.** If an Event of Default occurs under any of the other Loan Documents.

## ARTICLE 6

### DEFAULT AND FORECLOSURE

6.1 **Remedies.** If an Event of Default shall occur Mortgagee may, at its option, exercise one or more of the following remedies:

(a) **Acceleration.** Declare the unpaid portion of the Indebtedness to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

(b) **Entry on Mortgaged Property.** To the extent permitted by applicable law, enter upon the Mortgaged Property and take possession thereof and of all books, records, and accounts relating thereto.

(c) **Operation of Mortgaged Property.** Hold, lease, operate or otherwise use or permit the use of the Mortgaged Property, or any portion thereof, in such manner, for such time and upon such terms as Mortgagee may deem to be in its best interest (making such repairs, alterations, additions and improvements thereto, from time to time, as Mortgagee shall deem necessary or desirable) and collect and retain all earnings, rents, profits or other amounts payable in connection therewith.

(d) **Enforcement of Mortgage.** Mortgagee, with or without entry, personally or by its agents or attorneys, insofar as applicable may: (a) sell the Mortgaged Property and all estate, right, title and interest, claim and demand therein, and right of redemption thereof, to the extent permitted by and pursuant to the procedures provided by law at one or more sales, and at such time and place upon such terms and after such notice thereof as may be required or permitted by law; (b) institute proceedings for the complete or partial foreclosure of this Mortgage; or (c) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, (without being required to foreclose this Mortgage) or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect.

(e) **Foreclosure and Private Sale.** Sell the Mortgaged Property, in whole or in part, (a) under the judgment or decree of a court of competent jurisdiction, or (b) at public

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auction (if permitted by the laws of the jurisdiction in which the Mortgaged Property is situated) in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law; and/or sell the Personalty and/or the Fixtures, in whole or in part, at one or more public or private sales, in such manner, at such time or times and upon such terms as Mortgagee may determine, or as provided by law.

(f) Receiver. Mortgagee shall be entitled, as a matter of strict right, and without regard to the value or occupancy of the security, or the solvency of the Mortgagor or of any of the Guarantors, or the adequacy of the Mortgaged Property as security for the Note to have a receiver appointed to enter upon and take possession of the Mortgaged Property, collect the Rents and profits therefrom and apply the same as the court may direct such receiver to have all the rights and powers permitted under the laws of the State where the Mortgaged Property is located. Mortgagor hereby waives any requirements on the receiver or Mortgagee to post any surety or other bond. Mortgagee or the receiver may also take possession of, and for these purposes use, any and all Personalty which is a part of the Mortgaged Property and used by Mortgagor in the rental or leasing thereof or any part thereof. The expense (including the reasonable receiver's fees, attorneys fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured by this Mortgage. Mortgagee shall (after payment of all costs and expenses incurred) apply such Rents, issues and profits received by it on the Indebtedness in the order set forth in Section 6.8 hereof. The right to enter and take possession of the Mortgaged Property, to manage and operate the same, and to collect the Rents, issues and profits thereof, whether by receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such Rents, issues and profits actually received by Mortgagee.

(g) Additional Rights and Remedies. With or without notice, and without releasing Mortgagor from any Indebtedness or Obligations, and without becoming a mortgagee in possession, Mortgagee shall have the right to cure any breach or default of Mortgagor and, in connection therewith, to enter upon the Mortgaged Property and to do such acts and things as Mortgagee deems necessary or desirable to protect the security hereof including, but without limitation to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the judgment of Mortgagee, is prior or superior hereto, the judgment of Mortgagee being conclusive as between the parties hereto; to obtain insurance to pay any premiums or charges with respect to insurance required to be carried hereunder; and to employ counsel, accountants, contractors and other appropriate persons to assist them.

(h) Other. Exercise any other remedy specifically granted under the other Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise, including the rights described below.

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6.2 **Separate Sales.** Any real estate or any interest or estate therein sold pursuant to any writ of execution issued on a judgment obtained by virtue of the Note, this Mortgage or the other Loan Documents, or pursuant to any other judicial proceedings under this Mortgage or the other Loan Documents, may be sold in one parcel, as an entirety, or in such parcels, and in such manner or order as Mortgagee, in its sole discretion, may elect.

6.3 **Remedies Cumulative and Concurrent.** The rights and remedies of Mortgagee as provided in the Note, this Mortgage and in the other Loan Documents shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or any of the Guarantors or against other obligors or against the Mortgaged Property, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof, nor shall the choice of one remedy be deemed an election of remedies to the exclusion of other remedies.

6.4 **No Cure or Waiver.** Neither Mortgagee's nor any receiver's entry upon and taking possession of all or any part of the Mortgaged Property, nor any collection of rents, issues, profits, insurance proceeds, condemnation proceeds or damages, other security or proceeds of other security, or other sums, nor the application of any collected sum to any Indebtedness and Obligations, nor the exercise of any other right or remedy by Mortgagee or any receiver shall impair the status of the security, or cure or waive any default or notice of default under this Mortgage, or nullify the effect of any notice of default or sale or prejudice Mortgagee in the exercise of any right or remedy, or be construed as an affirmation by Mortgagee of any tenancy, lease or option or a subordination of the lien of this Mortgage.

6.5 **Payment of Costs, Expenses and Attorneys' Fees.** Mortgagor agrees to pay to Mortgagee immediately and without demand all costs and expenses incurred by Mortgagee in exercising the remedies under the Note, this Mortgage and each of the other Loan Documents (including but without limit, court costs and reasonable attorneys' fees, whether incurred in litigation or not) with interest at the greater of the Default Rate or the highest rate payable under applicable law from the date of expenditure until said sums have been paid. Mortgagee shall be entitled to bid, at the sale of the Mortgaged Property held pursuant to the power of sale granted herein or pursuant to any judicial foreclosure of this instrument, the amount of said costs, expenses, attorneys fees and interest in addition to the amount of the other Indebtedness and Obligations as a credit bid, the equivalent of cash.

6.6 **Waiver of Redemption, Notice and Marshaling.** Mortgagor hereby waives and releases (a) any and all statutory or equitable rights of redemption whether arising before or after the entry of a judgment for foreclosure and sale, (b) all benefit that might accrue to Mortgagor and Guarantors by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisalment, valuation, stay of execution, exemption from civil process, moratorium, redemption or extension of time for payment; (c) unless specifically required herein, all notices of Mortgagor's default or of Mortgagee's election to exercise, or Mortgagee's actual

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exercise, of any option or remedy under the Note, this Mortgage, or the other Loan Documents; (d) any right to have the liens against Mortgaged Property marshaled; and (e) the right to plead or assert any statute of limitations as a defense or bar to the enforcement of the Note or the other Loan Documents.

**6.7 Power of Sale.** Mortgagee acknowledges that a power of sale provision is not currently enforceable under the Illinois Mortgage Foreclosure Act 735 ILCS 5/15-1101 et. seq. (the "Foreclosure Act"). Mortgagor acknowledges that in the event the Foreclosure Act is hereafter amended to permit the enforcement of a power of sale provision (the "Amendment"), such Amendment to the extent permitted by law, will be enforceable against the Mortgagor and allow Mortgagee to proceed under the Amendment, so long as the Event of Default under which Mortgagee is proceeding occurs on or after the effective date of the Amendment. Whereupon, Mortgagee may elect to sell the Mortgaged Property by power of sale and, upon such election, such notice of Event of Default and election to sell shall be given as shall be required by the Amendment. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, at the time and place specified in the notice of sale, Mortgagee, or such selling officer as required or allowed by the Amendment, shall sell such property, or any portion thereof specified by Mortgagee, at public auction to the highest bidder for cash in lawful money of the United States. Mortgagee may postpone the sale by public announcement thereof at the time and place noticed therefor. If the Mortgaged Property consists of several lots, parcels or interests, Mortgagee may designate the order in which the same shall be offered for sale or sold.

**6.8 Application of Proceeds.** The proceeds of any sale of all or any portion of the Mortgaged Property and the amounts generated by any holding, leasing, operation, or other use of the Mortgaged Property shall be applied by Mortgagee in the following order:

- (a) First, to the payment of reasonable costs and expenses of taking possession of the Mortgaged Property and of holding, using, leasing, repairing, improving and selling the same (including, without limitation, payment of any Impositions or other taxes);
- (b) Second, to the extent allowed by law, to the payment of reasonable attorneys' fees and other legal expenses, including expenses and fees incurred on appeals and legal expenses and fees of a receiver,
- (c) Third, to the payment of accrued and unpaid interest on the Indebtedness; and
- (d) Fourth, to the payment of the balance of the Indebtedness. The balance, if any, shall be paid to the parties entitled thereto.

**6.9 Strict Performance.** Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of this Mortgage or of the other Loan Documents or of the Note shall not be deemed to be a waiver of any of the terms or provisions of this Mortgage or of the other Loan Documents or the Note and Mortgagee and Mortgage shall have the right thereafter to insist upon strict performance by Mortgagor or the Guarantors of any and all of them.



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**6.10 No Conditions Precedent to Exercise of Remedies.** Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the Indebtedness shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage and/or the other Loan Documents, or by reason of the release, regardless of consideration, of all or any part of the security held for the Indebtedness, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of this Mortgage and/or the other Loan Documents without first having obtained the consent of Mortgagor, and in the latter event Mortgagor and all such other persons shall continue to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

**6.11 Release of Collateral.** Mortgagee may release, regardless of consideration, any part of the security held for the Indebtedness or Obligations without, as to the remainder of the security, in any way impairing or affecting the liens of the other Loan Documents or their priority over any subordinate lien. Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of any Indebtedness secured hereby or for performance of any Obligations contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after maturity of the Note, and without notice or consent: (a) release any person liable for payment of all or any part of the Indebtedness or for performance of any Obligations; (b) make any agreement extending the time or otherwise altering terms of payment of all or any part of the Indebtedness, or modifying or waiving any Obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (c) exercise or refrain from exercising or waive any right Mortgagee may have; (d) accept additional security of any kind; (e) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Mortgaged Property.

**6.12 Other Collateral.** For payment of the Indebtedness, Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

**6.13 Discontinuance of Proceedings.** In the event Mortgagee shall have proceeded to enforce any rights under this Mortgage or the other Loan Documents and such proceedings shall have been discontinued or abandoned for any reason, then in every such case Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been taken.

## ARTICLE 7

### CONDEMNATION

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**7.1 Condemnation.** To the extent of the outstanding Indebtedness, Mortgagor hereby assigns, transfers and sets over to Mortgagee all rights of Mortgagor to any award or payment in respect of (a) any taking of all or a portion of the Mortgaged Property as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain; (b) any such taking of any appurtenances to the Mortgaged Property or of vaults, areas or projections outside the boundaries of the Mortgaged Property, or rights in, under or above the alleys, streets or avenues adjoining the Mortgaged Property, or rights and benefits of light, air, view or access to said alleys, streets, or avenues or for the taking of space or rights therein, below the level of, or above the Mortgaged Property; and (c) any damage to the Mortgaged Property or any part thereof due to governmental action, but not resulting in, a taking of any portion of the Mortgaged Property, such as, without limitation, the changing of the grade of any street adjacent to the Mortgaged Property. Mortgagor hereby agrees to file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee, in the name of Mortgagor or otherwise, to collect and receipt for any such award or payment and, in the event Mortgagor fails to act, or in the event that an Event of Default has occurred and is continuing, to file and prosecute such claim or claims.

**7.2 Application of Proceeds.** All proceeds received by Mortgagee with respect to a taking of all or any part of the Mortgaged Property from governmental action resulting in a taking of the Mortgaged Property, shall be applied as follows, in the order of priority indicated:

- (a) To reimburse Mortgagee for all reasonable costs and expenses, including reasonable attorneys' fees incurred in connection with collecting the said proceeds;
- (b) To the payment of accrued and unpaid interest on the Note;
- (c) To the prepayment of the unpaid principal of the Note, without premium; and
- (d) To the payment of the balance of the Indebtedness. The balance, if any, will be paid to Mortgagor.

## ARTICLE 8

### MISCELLANEOUS

**8.1 Further Assurances.** Mortgagor shall and Mortgagor shall cause each of the other Mortgagor's to, upon the reasonable request of Mortgagee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of this Mortgage, to facilitate the assignment or transfer of the Note and the other Loan Documents, and to subject to the liens of the other Loan Documents, any property intended by the terms thereof to be covered thereby, and any renewals, additions, substitutions, replacements or betterments thereto. Upon any failure by Mortgagor to execute and deliver such instruments, certificates and other documents on or before ten (10) days after a written

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request therefor is given to Mortgagor, Mortgagee may make, execute and record any and all such instruments, certificates and Mortgagor irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

**8.2 Recording and Filing.** Mortgagor, at its expense, will cause the other Loan Documents, all supplements thereto and any financing statements at all times to be recorded and filed and re-recorded and re-filed in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

**8.3 Notice.** All notices, demands, requests and other communications required under the other Loan Documents and the Note shall be in writing and shall be deemed to have been properly given if sent by U. S. certified or registered mail, postage prepaid, or personal delivery, addressed to the parties and at the addresses and effective at the times set forth in Article 11 of the Reimbursement Agreement.

**8.4 Mortgagee's Right to Perform the Obligations.** If Mortgagor shall fail to make any payment or materially perform any act required by this Mortgage or the other Loan Documents, then, at any time thereafter, upon reasonable prior notice to or demand upon Mortgagor and without waiving or releasing any obligation or default, Mortgagee may make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Mortgaged Property for such purpose and to take all such action thereon and with respect to the Mortgaged Property as may be necessary or appropriate for such purpose. All sums so paid by Mortgagee, and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses so incurred together with interest thereon at the Default Rate, from the date of payment or incurring, shall constitute additions to the Indebtedness secured by the other Loan Documents, and shall be paid by Mortgagor to Mortgagee, on demand. If Mortgagee shall elect to pay any Imposition, Mortgagee may do so in reliance on any bill, statement or assessment procured from the appropriate public office, without inquiring into the accuracy thereof or into the validity of such Imposition. Mortgagor shall indemnify Mortgagee for all losses and expenses, including reasonable attorneys' fees, incurred by reason of any acts performed by Mortgagee pursuant to the provisions of this Section 8.4 or by reason of the other Loan Documents, and any funds expended by Mortgagee to which it shall be entitled to be indemnified, together with interest thereon at the Default Rate from the date of such expenditures, shall constitute additions to the Indebtedness and shall be secured by the other Loan Documents and shall be paid promptly by Mortgagor to Mortgagee upon demand.

**8.5 Covenants Running with the Land.** All covenants contained in this Mortgage and in the other Loan Documents shall run with the Mortgaged Property.

**8.6 Severability.** In case any one or more of the Obligations shall be invalid, illegal or unenforceable in any respect, the validity of the Note, this Mortgage, and the other Loan Documents and remaining Obligations shall be in no way affected, prejudiced or disturbed thereby.

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8.7 **Modification.** This Mortgage and the other Loan Documents and the terms of each of them may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

8.8 **Assumption.** The loans evidenced by the Note and secured by this Mortgage and the other Loan Documents are personal to Mortgagor, and Mortgagee made such loans to Mortgagor based upon the credit of Mortgagor and the Guarantors and Mortgagee's judgment of the ability of Mortgagor to repay the entire Indebtedness and therefore this Mortgage may not be assumed by any subsequent holder of an interest in the Mortgaged Property without Mortgagee's prior written consent. This Section 8.8 does not limit the effect and generality of Section 5.9 hereof. Mortgagor shall notify Mortgagee promptly in writing of any transaction or event described in Section 5.9 hereof.

8.9 **Tax on indebtedness or Mortgage.** In the event of the passage, after the date of this Mortgage, of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon Mortgagee the obligation to pay 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 as to affect the Mortgage or the Indebtedness, the entire unpaid balance of the Indebtedness shall, at the option of Mortgagee, after thirty (30) days written notice to Mortgagor, become due and payable; provided, however, that if, in the opinion of Mortgagee's counsel, it shall be lawful for Mortgagor to pay such taxes, assessments, or charges, or to reimburse Mortgagee therefor, then there shall be no such acceleration of the time for payment of the unpaid balance of the Indebtedness if a mutually satisfactory agreement for reimbursement, in writing, is executed by Mortgagor and delivered to Mortgagee within the aforesaid period.

8.10 **Maximum Rate of Interest.** Notwithstanding any provision in this Mortgage, or in any instrument now or hereafter relating to or securing the Indebtedness evidenced by the Note this Mortgage or the other Loan Documents the total liability for payments of interest and payments in the nature of interest, including, without limitation, all charges, fees, exactions, or other sums which may at any time be deemed to be interest, shall not exceed the limit imposed by applicable usury laws. In the event the total liability for payments of interest and payments in the nature of interest, including without limitation, all charges, fees, exactions or other sums which may at any time be deemed to be interest, shall, for any reason whatsoever, result in an effective rate of interest, which for any month or other interest payment period exceeds the limit imposed by the applicable usury laws, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice by, between, or to any party hereto, be applied to the reduction of the Indebtedness immediately upon receipt of such sums by Mortgagee, with the same force and effect as though Mortgagor had specifically designated such excess sums to be so applied to the reduction of the Indebtedness and Mortgagee had agreed to accept such sums as a premium-free payment of the Indebtedness, provided, however, that Mortgagee may, at any time and from time to time, elect, by notice in writing to Mortgagor to waive, reduce, or limit the collection of any sums (or refund to Mortgagor any sums collected) in excess of those lawfully collectible as interest rather than accept such sums as a prepayment of the Indebtedness.

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8.11 **Survival of Warranties and Covenants.** The warranties, representations, covenants and agreements set forth in this Mortgage and the other Loan Documents and Note shall survive the execution and delivery of the Note.

8.12 **Applicable Law.** This Mortgage and the other Loan Documents shall be governed by and construed according to the laws of the State of Illinois.

8.13 **Loan Expenses.** Mortgagor shall pay all reasonable costs and expenses in connection with the preparation, execution, delivery and performance of this Mortgage and the other Loan Documents, including (but not limited to) fees and disbursements of its and Mortgagee's counsel, recording costs and expenses, conveyance fee, documentary stamp, intangible and other taxes, surveys, appraisals and policies of title insurance, physical damage insurance, and liability insurance.

8.14 **Tax Escrow.** Mortgagor shall provide Mortgagee with written evidence of payment of all annual Impositions. If Mortgagor fails to provide written evidence of payment of the Impositions, then Mortgagee shall have the right to demand that Mortgagor also pay to Mortgagee on each of the monthly due dates of payments, as set forth in the Note, one twelfth of the annual Impositions and Mortgagor shall also pay into such account such additional amounts, to be determined by Mortgagee from time to time, as will provide a sufficient fund, at least thirty (30) days prior to the due dates of the next installment of such Impositions, for payment of such Impositions so as to realize the maximum discounts permitted by law. Amounts held hereunder by Mortgagee shall be in a non-interest bearing account. Upon assignment of this Mortgage, Mortgagee shall have the right to pay over the balance of such amounts then in its possession to the assignee and Mortgagee shall thereupon be completely released from all liability with respect to such amounts. Upon full payment of the Indebtedness, or, at the election of Mortgagee at any prior time, the balance of such amounts shall be paid over to Mortgagor and no other party shall have any right or claim thereto. Amounts held by Mortgagee pursuant to this Section 8.14 shall be made available to Mortgagor in sufficient time to allow Mortgagor to satisfy Mortgagor's obligations under this Mortgage and the other Loan Documents to pay Impositions when due.

8.15 **No Representations by Mortgagee.** By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee, pursuant to this Mortgage or the other Loan Documents, including (but not limited to) any officer's certificate, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

8.16 **Headings.** The article headings and the section and subsection captions are inserted for convenience or reference only and shall in no way alter or modify the text of such articles, sections and subsections.

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8.17 **Counterparts.** This Mortgage may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Mortgage.

8.18 **Collateral Protection Act.** Pursuant to the requirements of the Illinois Collateral Protection Act, Mortgagor is hereby notified as follows:

Unless the Mortgagor provides the Mortgagee with evidence of the insurance coverage required by this Mortgage, the Reimbursement Agreement or any of the other Loan Documents, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interests in the Mortgaged Property or any other collateral for the Indebtedness or Obligations. This insurance may, but need not protect Mortgagor's interests. The coverage the Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property or any other collateral for the Indebtedness or Obligations. Mortgagor may later cancel any insurance purchased by Mortgagee but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage, the Reimbursement Agreement or any of the other Loan Documents. If Mortgagee purchases insurance for the Mortgaged Property or any other collateral for the indebtedness or obligations, Mortgagor will be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the total outstanding indebtedness. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

8.19 **Additional Advances.** This Mortgage is given, to secure not only presently existing Indebtedness under the Loan Documents, but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage and although there may be no indebtedness secured hereby outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all Indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of the county in which the Mortgaged Property is located. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid principal balance of indebtedness secured hereby (including disbursements that the Mortgagee, may, but shall not be obligated to, make under this Mortgage, the Loan Documents, or any other document with respect thereto) at any one time outstanding may be substantially less but shall not exceed FORTY-FOUR MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$44,500,000.00), plus interest thereon, and any disbursements made for payment of taxes, special assessments, or insurance on the Mortgaged Property and interest on such disbursements, and all disbursements by Mortgagee pursuant to 735 ILCS 5/15-1302(b)(5) (all such Indebtedness being hereinafter referred to as the maximum amount secured hereby). This Mortgage shall be valid and have priority to the extent of the maximum amount secured hereby over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property given priority by law.

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8.20 **Jurisdiction and Venue.** Mortgagor hereby agrees that all actions or proceedings initiated by Mortgagor and arising directly or indirectly of this Mortgage or the other loan documents shall be litigated in the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois Eastern Division or, if Mortgagee initiates such action, any court in which Mortgagee shall initiate such action and which has jurisdiction. Mortgagor hereby expressly submits and consents in advance to such jurisdiction in any action or proceeding commenced by Mortgagee in any of such courts, and hereby waives personal service of the summons and complaint, or other process or papers issued therein, and agrees that service of such summons and complaint or other process or papers may be made by Registered or Certified Mail addressed to Mortgagor at the addresses to which notice is to be sent pursuant to this Mortgage. Mortgagor waives any claim that Cook County Illinois, or the Federal District Court for the Northern District of Illinois, Eastern Division, is an inconvenient forum or an improper forum based on lack of venue. Should Mortgagor after being so served, fail to appear or answer to any summons, complaint, process or papers so served within the number of days prescribed by law after the mailing thereof, Mortgagor shall be deemed in default and an order and/or judgment may be entered by the court against Mortgagor as demanded or prayed for in such summons, complaint, process or papers. The exclusive choice of forum for Mortgagor set forth in this section shall not be deemed to preclude the enforcement, by Mortgagee, of any action to enforce the same in any other appropriate jurisdiction, and each Mortgagor hereby waives the right, if any, to collaterally attack any such judgment or action.

[Signature Page Follows]

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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the date first above written.

**MORTGAGOR:**

**NORTH/HALSTED, LLC, an**  
Illinois limited liability company

By:   
Its: Gen. PARTNER

Property of Cook County Clerk's Office



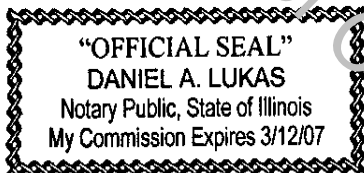
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## ACKNOWLEDGMENT

STATE OF ILLINOIS     )  
   ) SS.  
 COUNTY OF COOK        )

On December 17, 2003, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared J. Michael Drea, Mr. Drea of North/Halsted, LLC, personally known to me to be the person who executed the foregoing Mortgage and acknowledged to me that the execution thereof was his free and voluntary act and deed as for the uses and purposes mentioned in the Mortgage.

WITNESS my hand and official seal.



Daniel Lukas  
 Notary Public in and for the State of Illinois

My commission expires: \_\_\_\_\_

**UNOFFICIAL COPY****EXHIBIT A****LEGAL DESCRIPTION**

A TRACT OF LAND SITUATED IN THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 4. TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN; BOUNDED ON THE WEST BY THE EAST LINE OF NORTH HALSTED STREET; ON THE NORTH BY THE SOUTH LINE OF WEST NORTH AVENUE; ON THE SOUTH WEST BY THE NORTHEASTERLY LINE OF NORTH CLYBOURN AVENUE; ON THE SOUTH EAST BY THE NORTHWESTERLY LINE OF WEST WEED STREET AND ON THE EAST BY THE WEST AND SOUTHWESTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO TRANSIT AUTHORITY AND THE CONNECTION OF SAID RIGHT OF WAY LINE ACROSS THE EAST WEST ALLEY SOUTH OF AND PARALLEL TO WEST NORTH AVENUE, SAID TRACT INCLUDES ALL ALLEYS WITHIN ITS BOUNDARIES TOGETHER WITH THE FOLLOWING DESCRIBED LOTS: LOTS 1 THROUGH 6 IN THE SUBDIVISION OF LOT 157 AND LOTS 6 THROUGH 13 (EXCEPT THE EAST 16 FEET OF SAID LOT 6) IN THE SUBDIVISION OF LOT 158, LOT 13 AND LOTS 17 THROUGH 23 IN THE SUBDIVISION OF LOT 156; LOTS 1 AND 2 IN THE SUBDIVISION OF SUB-LOTS 14, 15 AND 16 IN THE SUBDIVISION OF LOT 156; LOT 2 (EXCEPT THAT PART CONVEYED TO THE NORTHWEST ELEVATED RAILROAD BY DEED RECORDED MAY 16, 1913 AS DOCUMENT 5186265) IN THE SUBDIVISION OF LOT 24 IN THE SUBDIVISION OF LOT 156, ALL IN THE SUBDIVISION OF LOTS 156, 157, 158 AND SUB-LOT 8 OF LOT 159 IN BUTTERFIELD'S ADDITION TO CHICAGO IN THE NORTH WEST 1/4 SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 2, 1863 IN BOOK 162 OF MAPS AT PAGE 11 AS DOCUMENT 70119. (EXCEPT THEREFROM THE NORTH 14 FEET OF THE EAST AND WEST 18 FOOT VACATED ALLEY WHICH ACCRUES TO LOTS 4 AND 5 AND THE EAST 16 FEET OF LOT 6 IN THE SUBDIVISION OF LOT 158, AND THAT PART OF SAID EAST AND WEST 18 FOOT VACATED ALLEY AND THAT PART OF THE 18 FOOT VACATED ALLEY EXTENDING NORTHEASTERLY AND SOUTHWESTERLY WHICH ACCRUES TO THAT PART OF LOT 2 IN THE SUBDIVISION OF LOT 24 IN THE SUBDIVISION OF LOT 156 CONVEYED TO THE NORTH WEST ELEVATED RAILROAD BY DEED RECORDED MAY 16, 1913 AS DOCUMENT 5186265 IN COOK COUNTY, ILLINOIS.

NOTE: THE AFORESAID SUBDIVISION RECORDED SEPTEMBER 2, 1863 WAS MADE BY MARY P. LEE BY JOHN V. LE MOYNE, HER ATTORNEY IN FACT, JANE A. JOHNSTON AND WILLIAM S. JOHNSTON, HER HUSBAND; WILLIAM B. OGDEN, LEVI ROSENFELD, JACOB ROSENFELD AND JOSEPH V. TOWNE. LOT 156 WAS ORIGINALLY SUBDIVIDED AS PART OF C. J. HULL'S SUBDIVISION OF LOTS 152, 155 AND 156. ALSO PART OF LOTS 153 AND 154 IN BUTTERFIELD'S ADDITION TO CHICAGO AFORESAID, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 19, 1858 AS DOCUMENT 97211. THE

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DIFFERENCE BETWEEN THE TWO SUBDIVISIONS OF LOT 156 IS THAT THE LATER SUBDIVISION DEDICATED PORTIONS OF LOTS FOR EXTENSION OF THE ALLEY.

Common address: 755 West North Avenue, Chicago, Illinois 60614

P.I.N.	17-04-100-001-0000	17-04-100-022-0000
	17-04-100-002-0000	17-04-100-023-0000
	17-04-100-003-0000	17-04-100-024-0000
	17-04-100-004-0000	17-04-100-027-0000
	17-04-100-005-0000	17-04-100-028-0000
	17-04-100-013-0000	17-04-100-032-0000
	17-04-100-014-0000	17-04-100-033-0000
	17-04-100-015-0000	17-04-100-034-0000
	17-04-100-016-0000	17-04-100-035-0000
	17-04-100-017-0000	17-04-100-036-0000
	17-04-100-018-0000	17-04-100-037-0000
	17-04-100-021-0000	

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