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Date: 04/01/2004 11:49 AM Pg: 1 of 37

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## MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

by

**COLE TAYLOR BANK, not personally, but solely as Trustee under Trust Agreement dated  
January 1, 1998, and known as Trust Number 98-7815, LISA-ILENE REAL ESTATE COMPANY  
and SUSAN JEAN CORPORATION,**

**to and for the benefit of**

**CHARTER ONE BANK**

**THIS DOCUMENT PREPARED BY AND  
AFTER RECORDING RETURN TO:**

Much Shelist  
2030 Main Street, Suite 1200  
Irvine, California 92614  
Attn: Glenn D. Taxman, Esq.

37 K2Y

Box 400-CTCC

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## MORTGAGE, CONSTRUCTION LEASEHOLD MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("**Mortgage**") is made as of March 30<sup>th</sup>, 2004 (the "**Effective Date**"), by COLE TAYLOR BANK, not personally, but solely as Trustee under Trust Agreement dated January 1, 1998, and known as Trust Number 98-7815 ("**Trustee**"), LISA-ILENE REAL ESTATE COMPANY, an Illinois corporation ("**Lisa**"), and SUSAN JEAN CORPORATION, a Delaware corporation ("**Susan**"; together with Trustee and Lisa are sometimes collectively referred to as, "**Mortgagor**"), to and for the benefit of CHARTER ONE BANK, N.A., a national banking association, its successors and assigns ("**Mortgagee**").

### RECITALS:

(A) Mortgagee has agreed to loan to Mortgagor the principal amount of One Million Nine Hundred Thousand and No/100 Dollars (\$1,900,000.00) ("**Loan**") for the refinance of existing debt. The Loan is evidenced by a certain Promissory Note of even date herewith (as amended, restated or replaced from time to time, "**Note**") made by Mortgagor payable to Mortgagee in the principal amount of the Loan and due on April 1, 2014 ("**Maturity Date**"), except as may be accelerated or extended pursuant to the terms hereof or of the Note, or any other "Loan Document" (as defined in the Note).

(B) A condition precedent to Mortgagee's extension of the Loan to Mortgagor is the execution and delivery by Mortgagor of this Mortgage.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

Mortgagor hereby mortgages, grants, assigns, releases, warrants and conveys to Mortgagee, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as "**Premises**" to the extent that such property is realty, and the "**Collateral**" to the extent that such property is personalty), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

**THE REAL ESTATE** located in the State of Illinois and legally described on Exhibit A attached hereto and made a part hereof ("**Real Estate**");

**TOGETHER WITH** all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf ("**Improvements**");

**TOGETHER WITH** all easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents,

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issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same;

**TOGETHER WITH** all rents, revenues, issues, profits, proceeds, income, royalties, "accounts," including "health-care-insurance receivables," escrows, letter-of-credit rights (each as defined in the Code hereinafter defined), security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by Mortgagor thereon, to be applied against the Indebtedness (hereinafter defined); provided, however, that Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

**TOGETHER WITH** all interest of Mortgagor in and to any and all leases now or hereafter on the Premises, whether written or oral (collectively, "**Leases**"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease;

**TOGETHER WITH** all fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness (as hereinafter defined); notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code of the State of Illinois in effect from time to time ("**Code**"), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee, as a secured party, and Mortgagor, as Debtor, all in accordance with the Code; and

**TOGETHER WITH** all of Mortgagor's interests in "general intangibles" including "payment intangibles" and "software" (each as defined in the Code) now owned or hereafter acquired and related to the Premises, including, without limitation, all of Mortgagor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Mortgagor is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to Mortgagor thereunder; (iii) all intellectual property related to the Premises; and (iv) all choses in action and causes of action relating to the Premises;

**TOGETHER WITH** all of Mortgagor's accounts now owned or hereafter created or acquired as relate to the Premises, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any

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goods, services or other property represented by any of the foregoing; (iv) monies due to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor); (v) "securities", "investment property," "financial assets," and "securities entitlements" (each as defined in the Code), and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Premises;

**TOGETHER WITH** all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premise, or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

**TO HAVE AND TO HOLD** the Premises, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession (subject to the Lease) of the Premises after the occurrence of any Event of Default; Mortgagee hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

**FOR THE PURPOSE OF SECURING:** (i) the payment of the Loan and all interest, late charges, prepayment premium (if any) exit fee (if any), interest rate swap or hedge expenses (if any), reimbursement obligations, fees and expenses for letters of credit issued by Mortgagee for the benefit of Mortgagor, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, any interest rate swap or hedge agreement now or hereafter entered into between Mortgagor and Mortgagee and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Mortgagor or any other obligor to or benefiting Mortgagee which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; (iii) the "Other Loans" and the "Other Notes" (both as defined herein); (iv) the reimbursement to Mortgagee of any and all sums incurred, expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, any of the other Loan Documents, any interest rate swap or hedge agreement or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, "**Indebtedness**").

## **IT IS FURTHER UNDERSTOOD AND AGREED THAT:**

1. **Title.** Mortgagor represents, warrants and covenants that (a) Mortgagor is the holder of the fee simple title and the leasehold title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of Mortgagee and as otherwise described on Exhibit B attached hereto ("**Permitted Exceptions**"); and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, Mortgagor will:

a. promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose;

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b. keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to Mortgagor's right to contest liens as permitted by the terms of Paragraph 28 hereof);

c. pay when due the Indebtedness in accordance with the terms of the Note and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Mortgagor under the Note, this Mortgage and the other Loan Documents;

d. pay when due any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee (subject to Mortgagor's right to contest liens as permitted by the terms of Paragraph 28 hereof);

e. complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;

f. comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;

g. obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage;

h. make no material alterations in the Premises or demolish any portion of the Premises without Mortgagee's prior written consent, except as required by law or municipal ordinance;

i. suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Mortgagee's prior written consent;

j. pay when due all operating costs of the Premises;

k. not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Mortgagee's prior written consent;

l. provide and thereafter maintain adequate parking areas within the Premises as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; and

m. cause the Premises at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations.

3. **Payment of Taxes and Assessments.** Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "**Taxes**"), whether or not assessed against Mortgagor, if applicable to the Premises or any interest therein, or the

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Indebtedness, or any obligation or agreement secured hereby, subject to Mortgagor's right to contest the same, as provided by the terms hereof.

#### 4. Tax and Insurance Deposits.

a. Subject to the terms and conditions of subsection 4(d) below, Mortgagor shall pay to Mortgagee, in addition to the monthly payments under the Note and concurrently therewith in a single payment monthly until the Note is fully paid, a sum equal to annual real estate taxes, general and special assessments and premiums for insurance required hereunder (all as estimated by Mortgagee) less all sums previously paid therefor, divided by the number of full calendar months to elapse before the date which is one (1) month prior to the date when such taxes and assessments and insurance premiums will become due. Such sums shall be held by Mortgagee for payment of such taxes and assessments and insurance premiums as and when due. Mortgagee shall have the right to commingle and hold such sums with its general funds, and no interest shall accrue thereon in favor of Mortgagor.

b. Mortgagee shall have the right to make any and all payments notwithstanding that at that time any such tax, assessment or premium is then being protested or contested by Mortgagor, unless Mortgagor complies with the terms set forth in Paragraph 28 of this Mortgage.

c. Without limiting the rights of Mortgagee hereunder, including, without limitation, those provided in Paragraph 14 hereof, in the event of a sale of the Premises or any other part of the Premises pursuant to which Mortgagee permits the assignment of this Mortgage, any funds then on deposit with the Mortgagee shall, at Mortgagee's option, and thereupon automatically and without the necessity of further notice or written assignment, be transferred to and held thereafter for the account of the new owner, to be applied in accordance with the foregoing. If the Premises or any other part of the Premises is purchased by Mortgagee at foreclosure sale or is otherwise acquired by Mortgagee after an Event of Default, the remaining balance, if any, of the funds deposited with Mortgagee pursuant to subsection 4(a) above shall continue to be applied, subject to the security interest hereunder, first to Mortgagee's unreimbursed costs and expenses in such purchase or acquisition, then to reduce the indebtedness secured by this Mortgage, and the balance, if any, shall be paid to Mortgagor, subject to the order of the court having jurisdiction in any such proceeding.

d. Mortgagee hereby waives the requirement for deposit by Mortgagor of the sums described in subsection 4(a) above, for so long as (i) there is no default in the obligations of Mortgagor or any other person under this Mortgage or any of the Loan Documents, and no event which, with the giving of notice, passage of time or both, would constitute such a default, and (ii) Mortgagor delivers to Mortgagee, no later than five (5) days prior to the last day for payment of such sums without penalty or interest, evidence satisfactory to Mortgagee in Mortgagee's sole and absolute discretion, that all sums described in subsection 4(a) above have been paid in full. Upon failure of either of the foregoing conditions, the waiver set forth in this subsection 4(d) shall immediately and automatically become null and void, without notice from Mortgagee to Mortgagor.

5. Mortgagee's Interest In and Use of Deposits. Upon an Event of Default, Mortgagee may, at its option, apply any monies at the time on deposit pursuant to Paragraph 4 to cure an Event of Default or to pay any of the Indebtedness in such order and manner as Mortgagee may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, Mortgagor must immediately, upon demand by Mortgagee, deposit with Mortgagee an amount equal to the amount expended by Mortgagor from the deposits. When the Indebtedness is fully paid, any remaining deposits



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will be returned to Mortgagor. Such deposits are pledged as additional security for the Indebtedness and are not subject to the direction or control of Mortgagor. Mortgagee is not liable for any failure to apply to the payment of Taxes any amount so deposited unless Mortgagor, prior to an Event of Default, has requested Mortgagee in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. Mortgagee is not liable for any act or omission taken in good faith or pursuant to the instruction of Mortgagor.

## 6. Insurance.

a. Mortgagor shall keep, or cause to be kept, all of the following insurance policies with respect to the Premises in companies, forms, amounts and coverage reasonably satisfactory to Mortgagee, containing waiver of subrogation and first mortgagee clauses in favor of Mortgagee and providing for thirty (30) days' written notice to Mortgagee in advance of cancellation of said policies for non-payment of premiums or any other reason or for material modification of said policies, and ten (10) days' written notice to Mortgagee in advance of payment of any insurance claims under said policies to any person:

i. Insurance against loss or damage by fire and such other hazards, casualties and contingencies (including, without limitation, so-called all risk coverages) as Mortgagee reasonably may require, in an amount equal to the greater of (1) the Loan, or (2) the replacement cost of the Premises, with a replacement cost endorsement and in such amounts so as to avoid the operation of any coinsurance clause, for such periods and otherwise as Mortgagee reasonably may require from time to time.

ii. Comprehensive general public liability, property damage and indemnity insurance, including, without limitation, so-called assumed and contractual liability coverage and claims for bodily injury, death or property damage, naming Mortgagee as an additional insured, in such amounts as Mortgagee reasonably may from time to time require.

iii. Intentionally Deleted.

iv. Flood insurance in an amount as Mortgagee may reasonably require if the Premises is located in a Special Flood Hazard Area (as defined in the National Flood Insurance Act of 1968, as amended).

Mortgagor shall deliver renewal certificates of all insurance required above, together with written evidence of full payment of the annual premiums therefor at least thirty (30) days prior to the expiration of the existing insurance. Any such insurance may be provided under so-called "blanket" policies, so long as the amounts and coverages thereunder will, in Mortgagee's sole judgment, provide protection equivalent to that provided under a single policy meeting the requirements hereinabove.

b. In case of any material damage or destruction of the Premises, or any part thereof, or any interest therein or right accruing thereto, Mortgagor shall promptly give to Mortgagee written notice generally describing the nature and extent of such damage or destruction which has resulted or which may result therefrom. Mortgagee may appear in any such proceedings and negotiations and Mortgagor shall promptly deliver to Mortgagee copies of all notices and pleadings in any such proceedings. Mortgagor will in good faith, file and prosecute all claims necessary for any award or payment resulting from such damage or destruction. All costs and expenses incurred by Mortgagee in exercising its rights under this section shall constitute indebtedness secured by this Mortgage.

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c. Upon occurrence of any loss or damage to all or any portion of the Premises resulting from fire, vandalism, malicious mischief or any other casualty or physical harm (a "**Casualty**"), Mortgagee may elect subject to the provisions set forth below to collect, retain and apply as a Loan prepayment all proceeds (the "**Proceeds**") of any insurance policies collected or claimed as a result of such Casualty after deduction of all expenses of collection and settlement, including attorney's and adjusters' fees and charges. Mortgagor hereby authorizes Mortgagee, at Mortgagee's option, to collect, adjust and compromise any losses under any insurance with respect to the Premises which is kept, or caused to be kept, by Mortgagor, and hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, for such purposes. Any Proceeds remaining after payment in full of the Loan and all other sums due Mortgagee hereunder shall be paid by Mortgagee to Mortgagor without any allowance for interest thereon.

In the event Mortgagee elects to allow Mortgagor to restore or rebuild the Premises and such Proceeds would not be sufficient to restore or rebuild the Premises, then Mortgagor shall deposit with Mortgagee cash, letters of credit, surety bonds or equivalent assurances of the availability of funds with which to pay for the restoration or rebuilding of the Premises. Such letters of credit, surety bonds or equivalent assurances shall in all respects be in form, substance, execution and sufficiency acceptable to Mortgagee. Mortgagor shall promptly proceed with restoration of the Premises resulting from any such Casualty.

Unless Mortgagor provides Mortgagee evidence of the insurance coverages required hereunder, Mortgagee may purchase insurance at Mortgagor's expense to cover Mortgagee's interest in the Premises. The insurance may, but need not, protect Mortgagor's interest. The coverages that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Premises. 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. If Mortgagee purchases insurance for the Premises, Mortgagor will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

## 7. Condemnation.

a. In the event all or any part of the Premises or any easement or other appurtenance thereof shall be damaged or taken as a result of any taking by eminent domain, either permanent or temporary (a "**Taking**"), Mortgagor shall assign, transfer and set over unto Mortgagee all awards and other compensation heretofore or hereafter to be made (up to amounts due to Mortgagee under the Loan Documents) to the present and all subsequent owners of the Premises for any Taking, including severance and consequential damage and change in grade of streets (collectively, "**Taking Proceeds**"), or any claim for damages for any of the Premises taken or damaged under the power of eminent domain, and agrees that in the event the whole or any part of the Premises is taken by eminent domain proceedings, then all sums awarded as damages for the Taking shall be applied in reduction of the indebtedness secured by this Mortgage, but without imposition of the prepayment premium to such application. Any and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses to the fullest extent not then prohibited by applicable law, incurred by Mortgagee by reason of any condemnation, threatened condemnation or proceedings thereunder shall be secured hereby and Mortgagor shall reimburse Mortgagee therefor immediately, or Mortgagee shall have the right, at its option, to deduct such costs and expenses from any Taking Proceeds paid to Mortgagee hereunder. In the event that the Premises is wholly condemned, Mortgagee shall receive from

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Mortgagor and/or from the Taking Proceeds payment of the entire amount of the indebtedness secured by this Mortgage.

b. Subject to paragraph (a) of this Section, Mortgagor will immediately notify Mortgagee of the actual or threatened commencement of any Taking proceedings affecting all or any part of the Premises, including any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further covenants and agrees to make, execute and deliver to Mortgagee, from time to time upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments or other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning the Taking Proceeds and all other awards and compensation heretofore and hereafter to be made to Mortgagor, including the assignment of any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof, for any Taking, either permanent or temporary, under any such proceedings. In the event of a Taking, Mortgagee shall not be limited to the rate of interest paid on the award by the condemning authority but shall be entitled to receive out of the Taking Proceeds interest on the entire unpaid principal sum under the Note and the other Loan Documents at the applicable rate(s) provided therein. Mortgagor hereby assigns to Mortgagee so much of the balance of the Taking Proceeds payable by the condemning authority as is required to pay such interest.

c. Subject to paragraph (a) of this Section, Mortgagor hereby irrevocably authorizes and appoints Mortgagee its attorney-in-fact, coupled with an interest, to collect and receive any such Taking Proceeds from the authorities making the same, to appear in any proceeding therefor, to give receipts and acquittances therefor, and to apply the same to payment on account of the indebtedness secured hereby whether then matured or not. Mortgagor shall execute and deliver to Mortgagee on demand such assignments and other instruments as Mortgagee may require for such purposes.

8. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, Mortgagor shall pay such tax in the manner required by any such law. Mortgagor further agrees to reimburse Mortgagee for any sums which Mortgagee may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

9. **Lease Assignment.** Mortgagor acknowledges that, concurrently herewith, Mortgagor has executed and delivered to Mortgagee, as additional security for the repayment of the Loan, an Assignment of Rents and Leases ("**Assignment**") pursuant to which Mortgagor has assigned to Mortgagee interests in the Leases of the Premises and the rents and income from the Premises. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Mortgagor agrees to abide by all of the provisions of the Assignment.

10. **Effect of Extensions of Time and Other Changes.** If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of

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recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation, release or change.

11. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (b) the imposition upon Mortgagee of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness or the holders thereof, then Mortgagor, upon demand by Mortgagee, shall pay such Taxes or charges, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee it is or may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may declare all of the Indebtedness to be immediately due and payable.

12. **Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.** If an Event of Default has occurred, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. 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 in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Mortgagee's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional Indebtedness evidenced by the Note and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan, 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, then 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, 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. **Security Agreement.** This Mortgage is hereby deemed to be as well a Security Agreement and creates a security interest in and to the Collateral securing the indebtedness secured by

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this Mortgage. Without derogating any of the provisions of this instrument, Mortgagor to the extent permitted by law hereby:

a. grants to Mortgagee a security interest in and to all Collateral, including without limitation the items referred to above and the tax and insurance escrow payments and deposits made by Mortgagor pursuant to Paragraph 4 hereof, together with all additions, accessions and substitutions and all similar property hereafter acquired and used or obtained for use on or in connection with the Premises. The proceeds of the Collateral are intended to be secured hereby; however, such intent shall never constitute an expressed or implied consent on the part of Mortgagee to the sale of any or all Collateral;

b. agrees that the security interest hereby granted shall secure the payment of the indebtedness specifically described herein together with payment of any future debt or advancement owing by Mortgagor to Mortgagee with respect to the Premises. All of such indebtedness including future advances, shall be a lien from the time that this Mortgage is recorded with the Recorder of the County in which the Premises is located as provided in 735 ILCS 5/15-1302(b);

c. except as otherwise provided herein, agrees not to remove from the Premises, sell, convey, mortgage or grant a security interest in, or otherwise dispose of or encumber, any of the Collateral or any of the Mortgagor's right, title or interest therein, without first obtaining Mortgagee's written consent; Mortgagee shall have the right, at its sole option, to require Mortgagor to apply the proceeds from the disposition of Collateral in reduction of the indebtedness secured hereby;

d. agrees that if Mortgagor's rights in the Collateral are voluntarily or involuntarily transferred, whether by sale, creation of a security interest, attachment, levy, garnishment or other judicial process, without the prior written consent of Mortgagee, such transfer shall constitute an Event of Default hereunder;

e. agrees that upon or after the occurrence of any Event of Default, Mortgagee shall have all rights and remedies contemplated hereunder, including, without limitation, the right to take possession of the Collateral, and for this purpose Mortgagee shall have the right to enter upon any premises on which any or all of the Collateral is situated without being deemed guilty of trespass and without liability for damages thereby occasioned, and take possession of and operate the Collateral or remove it therefrom. Mortgagee shall have the further right, as Mortgagee may determine, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition, and to sell at public or private sale or otherwise dispose of, lease or utilize the Collateral and any part thereof in any manner authorized or permitted by law and to apply the proceeds thereof toward payment of any costs and expenses incurred by Mortgagee including, to the fullest extent not prohibited by applicable law, attorneys' fees and expenses, and toward payment of the indebtedness secured hereby, in such order and manner as Mortgagee may determine. To the fullest extent not prohibited by applicable law, Mortgagor expressly waives any notice of sale or other disposition of the Collateral and any other rights or remedies of a debtor or formalities prescribed by law relative to a sale or disposition of the Collateral or to exercise any other right or remedy existing after an Event of Default. To the extent any notice is required and cannot be waived, Mortgagor agrees that if such notice is deposited for mailing, postage prepaid, certified or registered mail, to the owner of record of the Premises, directed to the such owner at the last address actually furnished to Mortgagee at least five (5) days before the time of sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirements for giving of such notice;

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f. agrees, to the extent not prohibited by law and without limiting any rights and privileges herein granted to Mortgagee, that Mortgagee shall have the right to dispose of any or all of the Collateral at the same time and place upon giving the same notice, if any, provided for in this Mortgage, and in the same manner as the nonjudicial foreclosure sale provided under the terms and conditions of this Mortgage; and

g. authorizes Mortgagee to file, in the jurisdiction where this agreement will be given effect, financing statements covering the Collateral and the proceeds of the Collateral. At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more such financing statements pursuant to this Mortgage. To the extent permitted by law, a carbon, photographic or other reproduction of this instrument or any financing statement executed in accordance herewith shall be sufficient as a financing statement.

## 14. Restrictions on Transfer.

a. Mortgagor, without the prior written consent of Mortgagee, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a **"Prohibited Transfer"**:

i. The Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called **"Obsolete Collateral"**) no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

ii. All or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, and all or any part of the partnership interests in a partnership which is the beneficiary of Mortgagor [and all or any part of the member interests in a limited liability company which is the beneficiary of Mortgagor] [and all or any part of the shares of capital stock of a corporation which is the beneficiary of Mortgagor];

iii. Any shares of capital stock of a corporate Mortgagor, a corporation which is a general partner or managing member/manager in a partnership or limited liability company Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System);

iv. All or any part of the managing member or manager interest, as the case may be, in a limited liability company Mortgagor or a limited liability company which is a general partner of a partnership Mortgagor;

v. All or any part of the general partner or joint venture interest, as the case may be, of a partnership Mortgagor or a partnership which is a manager of a limited liability company Mortgagor or the conversion of a partnership Mortgagor to a corporation or limited liability company; or

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vi. If there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable, which directly or indirectly controls the day to day operations and management of Mortgagor [or Guarantor (as defined in the Note)] and/or owns a controlling interest in Mortgagor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Paragraph 14 shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock, membership, partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, (iv) to leases permitted by the terms of the Loan Documents, if any; or (v) gifts for estate planning purposes of any individual's interests in Mortgagor or in any of Mortgagor's general partners, members, shareholders or joint venturers to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, so long as Mortgagor is reconstituted, if required, following such gift and so long as either of Kip Poncher or Charles Poncher remain responsible for the management of the Premises and control of Mortgagor (or the beneficial interest or power of direct or indirect control in or to the trust under which Mortgagor is acting).

b. In determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Mortgagor and its partners/members/officers in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the Note. Mortgagor and its partners/members/officers are well experienced in borrowing money and owning and operating property such as the Premises were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agree that if this Paragraph 14 is deemed a restraint on alienation, that it is a reasonable one.

15. **Single Asset Entity.** Mortgagor shall not hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than the Premises, or become a shareholder of or a member or partner in any entity which acquires any property other than the Premises, until such time as the Indebtedness has been fully repaid. Mortgagor's articles of incorporation, partnership agreement or operating agreement, as applicable, shall limit its purpose to the acquisition,

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operation, management and disposition of the Premises, and such purposes shall not be amended without the prior written consent of Mortgagee. Mortgagor covenants:

- a. To maintain its assets, accounts, books, records, financial statements, stationery, invoices, and checks separate from and not commingled with any of those of any other person or entity;
- b. To conduct its own business in its own name, pay its own liabilities out of its own funds, allocate fairly and reasonably any overhead for shared employees and office space, and to maintain an arm's length relationship with its affiliates;
- c. To hold itself out as a separate entity, correct any known misunderstanding regarding its separate identity, maintain adequate capital in light of its contemplated business operations, and observe all organizational formalities;
- d. Not to guarantee or become obligated for the debts of any other entity or person or hold out its credits as being available to satisfy the obligations of others, including not acquiring obligations or securities of its partners, members or shareholders;
- e. Not to pledge its assets for the benefit of any other entity or person or make any loans or advances to any person or entity;
- f. Not to enter into any contract or agreement with any party which is directly or indirectly controlling, controlled by or under common control with Mortgagor (an "Affiliate"), except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any Affiliate;
- g. Neither Mortgagor nor any constituent party of Mortgagor will seek the dissolution or winding up, in whole or in part, of Mortgagor, nor will Mortgagor merge with or be consolidated into any other entity;
- h. Mortgagor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any constituent party of Mortgagor, Affiliate, any guarantor of the Note or any other person;
- i. Mortgagor now has and will hereafter have no debts or obligations other than normal accounts payable in the ordinary course of business, this Mortgage, and the Loan; and any other indebtedness or other obligation of Mortgagor has been paid in full prior to or through application of proceeds from the funding of the Loan.

16. **Events of Default; Acceleration.** Each of the following shall constitute an "Event of Default" for purposes of this Mortgage:

- a. Mortgagor shall fail to make payment of any sum of money due and payable under this Mortgage within fourteen (14) days after the date such payment is due as herein provided, or of the indebtedness evidenced by the Note, or any sum of money due and payable under any of the other Loan Documents on the date when the same is due and payable or within any applicable grace period; or
- b. Mortgagor shall file a voluntary petition in bankruptcy or under any bankruptcy act or similar law, state or federal, whether now or hereafter existing, or make an assignment for



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the benefit of creditors or file an answer admitting insolvency or inability to pay its or their debts generally as they become due, or shall fail to obtain a vacation or stay of any such proceedings which are involuntary within sixty (60) days after the institution of such proceedings, as hereinafter provided; or

c. Any plan of liquidation or reorganization is filed by or on behalf of Mortgagor or either in any bankruptcy, insolvency or other judicial proceeding, or a trustee or a receiver shall be appointed for the Premises in any involuntary proceeding and such trustee or receiver shall not be discharged or such jurisdiction relinquished, vacated or stayed on appeal or otherwise within sixty (60) days after the appointment thereof; or

d. Failure of Mortgagor to commence, diligently pursue and/or complete actions as and when provided in Paragraphs 2, 4 or 36 of this Mortgage; or

e. Any sale or transfer of the Premises in violation of Paragraph 14 of this Mortgage; or

f. The occurrence of an involuntary transfer under subsection 13(d) of this Mortgage; or

g. Any violation of the representations and warranties, or the filing of formal charges or commencement of proceedings as contemplated by Paragraph 38(o) of this Mortgage; or

h. Default shall be made in the due observance or performance of any of the other covenants, agreements or conditions required to be kept, performed or observed by Mortgagor under this Mortgage, and such default is not cured within thirty (30) days after written notice thereof has been delivered to Mortgagor by Mortgagee; provided, however if such default cannot reasonably be cured within the thirty (30)-day period, and Mortgagor promptly commences such cure within the thirty (30)-day period, then within such additional period during which Mortgagor diligently pursues and prosecutes such cure to completion and so long as the value of the Premises is not impaired;

i. Default shall be made in the due observance or performance of any of the covenants, agreements or conditions required to be kept, performed or observed by Mortgagor or any other party under the Note, or any of the other Loan Documents, and such default is not cured within the applicable grace period, if any, expressly provided for therein; or

j. The occurrence of a default under that certain Loan and Security Agreement (the "**Loan Agreement**") dated the Effective Date between Hawk Electronics, Inc., an Illinois corporation (the "**Corporation**"), as borrower, and Mortgagee, as lender, for a term loan in the principal amount of \$2,500,000.00.

then and upon any such Event of Default, the entire amount of the indebtedness hereby secured, shall, at the option of Mortgagee, become immediately due and payable, without execution or other process and without further notice or demand, all of which are hereby expressly waived. Upon and after any such Event of Default, the indebtedness hereby secured shall, at the option of Mortgagee, bear interest at the Default Rate, payable on demand. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity, nor extend or affect the grace period, if any.

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17. **Foreclosure; Expense of Litigation.**

a. When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 et seq., Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

b. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Mortgage, including the reasonable 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 until paid at the Default Rate and shall be secured by this Mortgage.

18. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as set forth in the Loan Documents.

19. **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Premises in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, 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

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decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

20. **Mortgagee's Right of Possession in Case of Default.** At any time after an Event of Default has occurred, Mortgagee shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Premises. Mortgagee, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Premises, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion 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. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

- a. cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- b. elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- c. extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date 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 Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- d. make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee deems are necessary;
- e. insure and reinsure the Premises and all risk, incidental to Mortgagee's possession, operation and management thereof; and
- f. receive all of such avails, rents, issues and profits.

21. **Application of Income Received by Mortgagee.** Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, 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 and leasing thereof (which shall include 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;

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b. to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

c. to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

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

a. If any provision in this Mortgage shall be inconsistent with any provision of the Act, 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 the Act.

b. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 19 of this Mortgage any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

c. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 12, 17 or 29 of this Mortgage, shall be added to the Indebtedness and/or by the judgment of foreclosure.

23. **Rights Cumulative.** Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

24. **Mortgagee's Right of Inspection.** Mortgagee and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times upon not less than forty-eight (48) hours prior notice to Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

25. **Release Upon Payment and Discharge of Mortgagor's Obligations.** Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Mortgagee in connection with the execution of such release.

26. **Notices.** Except for any notice required under applicable law to be given in another manner, any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (i) if hand delivered or if sent by telecopy, effective upon receipt, or (ii) if delivered by overnight courier

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service, effective on the day following delivery to such courier service, or (iii) if mailed by United States registered or certified mail, postage prepaid, return receipt requested, effective two (2) days after deposit in the United States mails; addressed in each case as follows:

If to Mortgagee: Charter One Bank, N.A.  
1215 Superior Avenue  
Cleveland, Ohio 44114  
Attn: Commercial Loan Servicing Department

And

Charter One Bank  
100 Addison Avenue, 2<sup>nd</sup> Floor  
Elmhurst, Illinois 60126  
Attn: John J. Dvorak

With a copy to: Much Shelist  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
Attn: Don S. Hershman, Esq.

If to Mortgagor: Lisa-Ilene Real Estate Company  
and Susan Jean Corporation  
511 Glenn Avenue  
Wheeling, Illinois 60090  
Attention: Charles Poncher

With copy to: Kelley Drye & Warren LLP  
333 West Wacker Drive, Suite 2500  
Chicago, Illinois 60606  
Attention: Susan Greenspon

or at such other address or to such other addressee as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

27. **Waiver of Rights.** The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "**Moratorium Law**" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

a. The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed

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to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15 - 1601 or other applicable law or replacement statutes;

b. The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

c. If the Mortgagor is a trustee, Mortgagor represents that the provisions of this paragraph (including the waiver of reinstatement and redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

28. **Contests.** Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (all herein called "**Contested Liens**"), and no Contested Liens shall constitute an Event of Default hereunder, if, but only if:

a. Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;

b. Mortgagor shall either pay under protest or deposit with Mortgagee the full amount (herein called "**Lien Amount**") of such Contested Lien, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;

c. Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);

d. Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

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29. **Expenses Relating to Note and Mortgage.**

a. Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage or any of the other Loan Documents, including without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

i. May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Document or the Premises are involved directly or indirectly;

ii. May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

iii. May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

iv. May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

v. May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the Indebtedness or the transfer of the Premises in lieu of foreclosure; or

vi. May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

b. All expenses, charges, costs and fees described in this Paragraph 29 shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

30. **Financial Statements.** Mortgagor represents and warrants that the financial statements for Mortgagor and the Premises previously submitted to Mortgagee are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Mortgagor or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial

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statements. No material adverse change has occurred in the financial condition of Mortgagor or the Premises from the dates of said financial statements until the date hereof. Mortgagor shall furnish to Mortgagee such financial information regarding Mortgagor, its constituent partners or members, as the case may be, the Premises and any guarantor of the Note as Mortgagee may from time to time reasonably request, which shall include, without any further request therefore:

- a. annual submission of personal financial statements for any guarantor of the Note no later than 120 days after the end of each calendar year, certified by such guarantor as true, correct and complete;
- b. annual federal income tax return for Mortgagor and for any guarantor of the Note no later than fifteen (15) days after filed; and
- c. cause the Corporation to furnish such financial statements are required pursuant to the terms of the Loan Agreement.

31. **Statement of Indebtedness.** Mortgagor, within seven days after being so requested by Mortgagee, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

32. **Further Instruments.** Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage and of the other Loan Documents.

33. **Additional Indebtedness Secured.** All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Mortgagee to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Mortgage. The maximum amount of indebtedness secured by this Mortgage shall not exceed two (2) times the amount of the Loan.

34. **Indemnity.** Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) (collectively, "**Claims**") of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Mortgagee in accordance with the terms of this Mortgage; provided, however, that Mortgagor shall not be obligated to indemnify or hold Mortgagee harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Mortgagee. All costs provided for herein and paid for by Mortgagee shall be so much



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additional Indebtedness and shall become immediately due and payable upon demand by Mortgagee and with interest thereon from the date incurred by Mortgagee until paid at the Default Rate.

35. **Subordination of Property Manager's Lien**. Any property management agreement for the Premises entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Premises shall be subject and subordinate to the lien of this Mortgage and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of an Event of Default hereunder. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagee shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

36. **Compliance with Environmental Laws**. Lisa and Susan each acknowledges that concurrently herewith each has executed and delivered to Mortgagee an Environmental Indemnity Agreement ("**Indemnity**") pursuant to which Lisa and Susan and Guarantor (as defined in the Note) fully indemnified Mortgagee for certain environmental matters concerning the Premises, as more particularly described therein. The provisions of the Indemnity are hereby incorporated herein and this Mortgage shall secure the obligations of Mortgagor thereunder. Mortgagor agrees to abide by all of the provisions of the Indemnity.

37. **Debt Service Ratio**.

a. So long as the Loan is outstanding Mortgagor shall not permit the ratio of Operating Cash Flow (as defined below) to Debt Service (as defined below) to be less than 1.00 to 1.00 ("**Debt Service Ratio**").

As used in this Agreement, "**Operating Cash Flow**" means, for the period from January 1 through December 31, all rental income (including minimum rent, additional rent, escalation and pass through payments) actually received by Mortgagor from the tenants pursuant to the terms of the Leases (excluding tenant security deposits) less the sum of all costs, taxes, expenses and disbursements of every kind, nature or description actually paid or due and payable during such period in connection with the leasing, management, operation, maintenance and repair of the Premises and of the personal property, fixtures, machinery, equipment, systems and apparatus located therein or used in connection therewith, but excluding (i) non-cash expenses, such as depreciation and amortization costs, (ii) state and federal income taxes, (iii) the non-current portion of capital expenditures determined in accordance with generally accepted accounting principles, and (iv) debt service payable on the Loan. In determining Operating Cash Flow, (a) extraordinary items of income, such as those resulting from casualty or condemnation shall be deducted from income and (b) real estate taxes and insurance premiums shall be treated as expenses to the extent of an annualized amount based upon the amount of the most recent bill for real estate taxes and insurance premiums.

b. As used in this Agreement, "**Debt Service**" equals the sum of all principal and interest payments on the Loan and any other indebtedness of Mortgagor that is due and payable.

c. Operating Cash Flow and Debt Service will be calculated by Mortgagee based on the financial information provided to Mortgagee by Mortgagor and independently verified by

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Mortgagee and the calculations so verified will be final and binding upon Mortgagor and Mortgagee.

d. If at any time Mortgagee reasonably believes that an event has occurred which will cause a decrease in the Operating Cash Flow (including, without limitation, an increase in the real estate taxes due to an increase in the assessed valuation of the Premises, the applicable tax rate or otherwise) and, as a result thereof, the ratio of Operating Cash Flow to Debt Service shall be less than 1.00 to 1.00, then an Event of Default shall be deemed to exist unless Mortgagor has delivered to Mortgagee evidence reasonably satisfactory to Mortgagee that the ratio of Operating Cash Flow to Debt Service as of such day is or shall be at least 1.00 to 1.00.

## 38. Miscellaneous.

a. Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

b. Invalidity of Provisions; Governing Law. In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Mortgagee shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

c. Municipal Requirements. Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this subparagraph shall be void.

d. Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

e. Option of Mortgagee to Subordinate. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by Mortgagee of a

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unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

f. **Mortgagee in Possession**. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

g. **Relationship of Mortgagee and Mortgagor**. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of Mortgagor and Mortgagee hereunder is solely that of debtor/creditor.

h. **Time of the Essence**. Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the other Loan Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

i. **No Merger**. The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Premises, and if Mortgagee acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

j. **Maximum Indebtedness**. Notwithstanding anything contained herein to the contrary, in no event shall the Indebtedness exceed an amount equal to 200% of the amount of the Loan; provided, however, in no event shall Mortgagee be obligated to advance funds in excess of the face amount of the Note.

k. **Consent to Jurisdiction** TO INDUCE MORTGAGEE TO ACCEPT THE NOTE, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS MORTGAGE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON MORTGAGOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO MORTGAGOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

l. **Waiver of Jury Trial**. MORTGAGOR AND MORTGAGEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR

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WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

m. **Complete Agreement.** This Mortgage, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Mortgagor and Mortgagee.

n. **Anti-Forfeiture.** Mortgagor hereby further expressly represents and warrants to Mortgagee that to the best of Mortgagor's knowledge there has not been committed by Mortgagor or any other person involved with the Premises or the Mortgagor any act or omission affording the federal government or any state or local government the right and/or remedy of forfeiture as against the Premises or any part thereof or any monies paid in performance of its obligations under the Note or under any of the other Loan Documents, and Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right and/or remedy of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or other injury, including without limitation, attorney's fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by Mortgagee in preserving its lien, security interest and other rights and interests in the Premises and any additional collateral under any of the Loan Documents in any proceeding or other governmental action asserting forfeiture thereof, by reason of, or in any manner resulting from, the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor, Mortgagee, any guarantor, any additional collateral under any of the Loan Documents or all or any part of the Premises under any federal or state law in respect of which forfeiture of the Premises or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result shall, at the election of the Mortgagee in its absolute discretion, constitute an Event of Default hereunder without notice or opportunity to cure.

o. **Trustee's Exculpation.** This document is executed by Trustee not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and no personal liability shall be asserted or be enforceable against said Trustee because or in respect of this document or the making, issue or transfer thereof, all such liability, if any, being expressly waived by Lender. It is expressly understood and agreed, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of Trustee, while in form purporting to be the representations, warranties, covenants, undertakings and agreements of Trustee, are nevertheless, each and every one of them, made and intended not as personal representations, warranties, covenants, undertakings and agreements by Trustee for the purpose or with the intention of binding Trustee personally, but are made and intended for the purpose of binding only that portion of the trust property specifically described in the Mortgage, and this instrument is executed and delivered by Trustee, not in its own right, but solely in the execution

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of the powers conferred upon it as Trustee. Nothing herein contained shall modify or discharge the personal liability expressly assumed by any Guarantor.

p. **Cross Collateralization**. Mortgagee is funding additional loans to the Corporation. The identity of such other loans (the “**Other Loans**”) and the other notes (together with all renewals, amendments, supplements, restatements, extensions, and modifications thereof and thereto, the “**Other Notes**”) evidencing the Other Loans subject thereto, are listed and identified on attached and incorporated **Exhibit C**.

As a condition of Mortgagee funding the Loan secured by the Note, Mortgagor has agreed that this Mortgage and the lien and security interest created by this Mortgage will additionally secure payment, performance and observance of all of the indebtedness, covenants, agreements, obligations and liabilities of the Corporation under the Other Notes and any and all of the other documents (the “**Other Loan Documents**”) given to evidence, secure or guarantee the Other Loans. It is Mortgagor’s express intent that the Note and the Other Notes be cross-collateralized and that all notes be entitled to the benefits of, *inter alia*, this Mortgage, the Loan Documents and the Other Loan Documents.

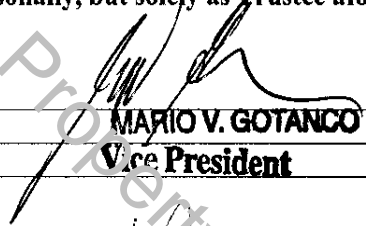
[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, Mortgagor has executed and delivered this MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING as of the Effective Date.

**MORTGAGOR:**

**COLE TAYLOR BANK,**  
not personally, but solely as Trustee aforesaid

By:   
Name: MARIO V. GOTANCO  
Title: Vice President

Attest:  
By:   
Name: LINDA E. HORCHER  
Title: Sr. Trust Officer

**LISA-ILENE REAL ESTATE COMPANY**  
an Illinois corporation

By: \_\_\_\_\_  
Charles Poncher, President

**SUSAN JEAN CORPORATION,**  
a Delaware corporation

By: \_\_\_\_\_  
Charles Poncher, President

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IN WITNESS WHEREOF, Mortgagor has executed and delivered this MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING as of the Effective Date.

**MORTGAGOR:**


**COLE TAYLOR BANK,  
not personally, but solely as Trustee aforesaid**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

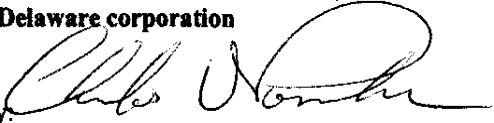
Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LISA-ILENE REAL ESTATE COMPANY,  
an Illinois corporation**

By:  \_\_\_\_\_  
Charles Poncher, President

**SUSAN JEAN CORPORATION,  
a Delaware corporation**

By:  \_\_\_\_\_  
Charles Poncher, President

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[Acknowledgement for Trustee]

STATE OF ILLINOIS            )  
  )  ss  
COUNTY OF COOK            )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **MARIO V. GOTANCO** and **LINDA L. HORCHER**, each an authorized officer of **COLE TAYLOR BANK**, who are personally known to me to be the same persons whose names are described to the foregoing instrument as such officers, appeared before me in person and acknowledged that he/she/they signed, sealed and delivered the said instrument as his/her/their free and voluntary act and as the free and voluntary act of the bank for the uses and purposes set forth therein.

GIVEN under my hand and notarial seal, as of 3/25, 2004.



*Sherry Smith*  
\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

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[Acknowledgement for Lisa]

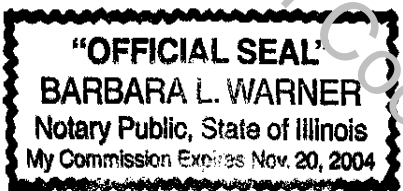
STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that **CHARLES PONCHER**, the President of LISA-ILENE REAL ESTATE COMPANY, an Illinois corporation (the "**Corporation**"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized officer, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act and deed of the Corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal as of March 25, 2004.

SEAL

  
\_\_\_\_\_  
Notary Public



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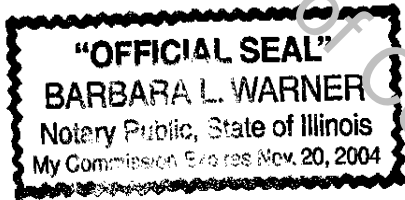
[Acknowledgement for Susan]

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that **CHARLES PONCHER**, the President of SUSAN JEAN CORPORATION, a Delaware corporation (the "**Corporation**"), who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such authorized officer, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act and deed of the Corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal as of March 25, 2004.

SEAL



A handwritten signature in cursive script, appearing to read "Barbara L. Warner", written over a horizontal line.

Notary Public

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## EXHIBIT A

### LEGAL DESCRIPTION OF PREMISES

#### **PARCEL 1:**

LOTS 39 AND 40 IN PALWAUKEE BUSINESS CENTER UNIT TWO, BEING A SUBDIVISION IN THE SOUTH EAST 1/4 OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### **PARCEL 2:**

LOTS 67 AND 68 IN PALWAUKEE BUSINESS CENTER UNIT THREE, BEING A SUBDIVISION IN THE SOUTH EAST 1/4 OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### **PARCEL 3:**

LOTS 1, 2, AND 3 IN BLOCK 5 IN AMERLINE SUBDIVISION OF PART OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**Address:** 511 Glenn Avenue, Wheeling, Illinois 60090

**P.I.N.(s):** 03-11-303-026; 03-11-410-001; 03-11-410-002;  
03-11-410-013 and 03-11-410-014

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## EXHIBIT B

### PERMITTED EXCEPTIONS

Those Schedule B, Part 1 and Part 2 Exception contained in Chicago Title Insurance Company's Proforma Loan Policy which have been approved by Mortgagee's counsel.

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EXHIBIT C

OTHER LOANS

Revolving Line of Credit Loan to the Corporation

Name of Note: Revolving Note

Principal Amount: \$2,500,000.00

Date of Other Note: March 30, 2004

Property of Cook County Clerk's Office