

UNOFFICIAL COPY

(Parcel 2) 6/10

4340379



0430047177

THIS INSTRUMENT PREPARED BY:

Bruce A. Salk
Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

Doc#: 0430047177
Eugene "Gene" Moore Fee: \$48.00
Cook County Recorder of Deeds
Date: 10/26/2004 11:39 AM Pg: 1 of 13

AND AFTER RECORDING MAIL TO:

First Eagle National Bank
1040 West Lake Street
Hanover Park, Illinois 60133
Attn: Kenneth Petropoulos

JUNIOR MORTGAGE AND SECURITY AGREEMENT

THIS JUNIOR MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as this "Mortgage") is made as of this 16th day of September, 2004 from FRANCIS JOSEPH and PHILOMENA FRANCIS (collectively, the "Mortgagor"), with a mailing address at 5428 N. Edens Parkway, Chicago, Illinois ~~60630~~ and FIRST EAGLE NATIONAL BANK ("Mortgagee"), with a mailing address at 1040 West Lake Street, Hanover Park, Illinois 60133;

WHEREAS, concurrently herewith the following Notes dated as of the date hereof were executed by North Star Trust Company, not personally, but as Trustee under Trust Agreement dated September 15, 2004, and known as Trust No. 04-7632, and delivered to the Mortgagee (each individually referred to as a "Note" and collectively referred to as the "Notes"): (i) a mortgage note in the principal amount of Eight Hundred Thousand and 00/100 (\$800,000.00) Dollars bearing interest at the rate specified therein (the "First Note"), due in the manner as provided therein and in any event on the 1st day of October, 2014, payable to the order of the Mortgagee, the terms and provisions of which First Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and (ii) a mortgage note made by in the principal amount of Four Hundred Eighty Thousand 00/100 (\$480,000.00) Dollars bearing interest at the rate specified therein (the "Second Note") due in the manner as provided therein and in any event on the 1st day of April, 2005, payable to the order of the Mortgagee, the terms and provisions of which Second Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length.

WHEREAS, the term "Notes" as used hereinafter shall be deemed to include the above-described Notes and all extensions, renewals, replacements, modifications and refinancings thereof.

NOW, THEREFORE, to secure: (a) the payment of the principal and interest on the Notes, when the same becomes due and payable (whether by lapse of time, acceleration or otherwise); (b) the payment of all other indebtedness, obligations and liabilities which this Mortgage secures pursuant to any of its terms, including, without limitation, all expenses and charges, legal or otherwise, including reasonable attorneys' fees, paid or incurred by the Mortgagee in realizing upon or protecting this Mortgage or the indebtedness secured hereby; and (c) the performance of Mortgagor's covenants and agreements under this Mortgage, Mortgagor, at the direction of

B

UNOFFICIAL COPY

Mortgagor, does hereby GRANT, MORTGAGE, CONVEY AND ASSIGN to Mortgagee, its successors and assigns, the real estate legally described on Exhibit "A" attached hereto and made a part hereof,

TOGETHER WITH (1) all buildings, improvements, fixtures, appurtenances, easements and hereditaments thereto belonging; and together with all equipment and machinery now or hereafter therein or thereon used to supply heat, gas, air conditioning, electrical, sprinkler systems, plumbing, water, light, power, refrigeration and ventilation; elevators, escalators, communication and electronic monitoring equipment, tanks, pumps and together with any other fixtures, equipment, machinery or other personal property now or hereafter placed on the above described property which shall be employed in connection with the operation, use, occupancy or enjoyment thereof; (2) all right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the rights-of-way, roads, streets, avenues and alleys adjoining the Mortgaged Premises; (3) all rents, issues, proceeds and profits accruing and to accrue from the Mortgaged Premises and all right, title and interest of Mortgagor in and to any and all leases approved by Mortgagee now or hereafter on or affecting the Mortgaged Premises, whether written or oral, and all other leases and agreements for the use thereof, and all renewals, extensions and substitutions thereof (collectively the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission of Mortgagee given to Mortgagor to collect the rentals to be paid pursuant thereto, provided an Event of Default (as hereinafter defined) shall not have occurred and be continuing; and (4) all proceeds heretofore or hereafter payable to Mortgagor by reason of loss or damage by fire and such other hazards, casualties and contingencies insured pursuant to the insurance policies hereinafter described and awards and other compensation heretofore or hereafter payable to Mortgagor for any taking by condemnation or eminent domain proceedings of all or any part of the Mortgaged Premises or any easement or appurtenance thereof, including severance and consequential damage. (Said real estate and all of the above collectively referred to herein as the "Mortgaged Premises")

TO HAVE AND TO HOLD the Mortgaged Premises unto Mortgagee, its successors and assigns forever, provided, however, that if and when all principal and accrued interest on the Notes and all other indebtedness and obligations hereby secured shall be paid in full, and Mortgagor shall perform all of the terms, covenants and agreements contained herein, then this Mortgage shall be released upon the written request and expense of Mortgagor.

Mortgagor covenants that Mortgagor is lawfully seized of the real estate hereby conveyed and has the right to mortgage, grant, assign, and convey the Mortgaged Premises; that the Mortgaged Premises are unencumbered, and that Mortgagor will warrant and defend generally the title to the Mortgaged Premises against all claims and demands, subject to any declarations, easements and restrictions of record existing on the date hereof, approved by Mortgagee.

MORTGAGOR HEREBY FURTHER COVENANTS TO MORTGAGEE AND AGREES AS FOLLOWS:

1. Mortgagor hereby agrees: (a) to pay when due, all indebtedness secured by this Mortgage, all interest thereon and all other indebtedness, obligations and liabilities which this Mortgage secures; (b) not to commit or permit to exist any waste of the Mortgaged Premises and to keep the Mortgaged Premises in good condition and repair; (c) to keep the Mortgaged Premises free of any mortgage,

UNOFFICIAL COPY

trust deed, mechanic's lien, or other lien or encumbrance (except this Mortgage); (d) not to suffer or permit unlawful use or any nuisance to exist upon the Mortgaged Premises; (e) not to remove or demolish any part of the improvements of a structural nature which would adversely affect the value of the Mortgaged Premises; (f) not to abandon the Mortgaged Premises; (g) to pay when due any indebtedness or liability which may be secured by a mortgage, lien, other encumbrance or charge on all or any part of the Mortgaged Premises equal or senior in priority to this Mortgage; (h) to complete within a reasonable time any buildings or improvements now or at any time in the process of erection upon the Mortgaged Premises; (i) immediately after destruction or damage to all or any part of the Mortgaged Premises to commence and promptly complete the rebuilding or restoration of buildings, improvements and all other property now or hereafter on the Mortgaged Premises unless Mortgagee elects to apply the proceeds of insurance to the indebtedness secured by this Mortgage as hereinafter provided; (j) to comply with all laws, regulations, rulings, ordinances, orders and all other requirements imposed by any governmental or other competent authority and with all restrictions, covenants and conditions relating to the Mortgaged Premises or to the use of thereof; (k) not to make or permit, without first obtaining the written consent of the Mortgagee, the use of the Mortgaged Premises for any purpose other than that for which it was used on the date of this Mortgage or the removal, demolition or sale of any building, improvement, fixture, machinery or equipment now or hereafter upon the Mortgaged Premises; (l) to keep and maintain such books and records as required by Mortgagee and to permit Mortgagee reasonable access to and the rights of inspection of such books and records; (m) to furnish to the Mortgagee such information and data with respect to the financial condition, business affairs and operations of Mortgagor and the Mortgaged Premises as may be reasonably requested (all such information and data to be prepared in accordance with generally accepted accounting principles consistently applied); (n) that no construction shall hereafter be commenced upon the Mortgaged Premises unless the plans and specifications for such construction have been submitted to and approved in writing by Mortgagee to the end that such construction shall not, in the reasonable judgment of the Mortgagee entail prejudice of any indebtedness secured hereby or the lien of this Mortgage; and (o) that if the Mortgaged Premises are now or hereafter located in an area which has been designated as a flood risk area by the Director of the Federal Emergency Management Agency or as otherwise required by the Flood Disaster Protection Act of 1973 (as amended from time to time) and regulations issued under it (collectively, the "Act"), the Mortgagor will keep the Mortgaged Premises covered for the duration of the Notes by flood insurance up to the maximum limit of coverage available under the Act.

2. Mortgagor shall keep the Mortgaged Premises continuously insured for the benefit of Mortgagee, until the indebtedness secured hereby shall be paid in full and discharged, against fire and such other hazards and risks customarily covered by the standard form of extended coverage endorsement available in the State of Illinois, including risks of lightning, windstorm, malicious mischief, vandalism and other extended coverage hazards, for full replacement value, and such other appropriate insurance as the Mortgagee may require from time to time. All insurance policies and renewals must be acceptable to Mortgagee, must provide for payment to the Mortgagee in the event of loss, must require thirty (30) days notice to the Mortgagee in the event of nonrenewal or cancellation, must be written by insurers acceptable to Mortgagee and have such monetary limits as Mortgagee shall require, and must be delivered to the Mortgagee. Should the Mortgagor fail to insure or fail to pay the premiums on any insurance or fail to deliver the policies or certificates or renewals to the Mortgagee, then the Mortgagee at its option may have the insurance written or renewed and pay the premiums for the account of Mortgagor. In the event of loss or damage, the proceeds of the insurance shall be paid to the Mortgagee alone. No loss or damage shall itself reduce

UNOFFICIAL COPY

the indebtedness secured hereby. All casualty policies shall contain a standard mortgagee clause naming Mortgagee as "Mortgagee and Loss Payee" and a Lender's loss payable endorsement in favor of Mortgagee. Mortgagor shall also provide a Comprehensive General Liability Policy naming Mortgagee as an "Additional Insured".

3. In the event of any loss or damage sustained by casualty for which insurance policies are in effect, the Mortgagee is authorized, to adjust, compromise and collect all claims thereunder without the consent of the Mortgagor and to execute and deliver on behalf of Mortgagor all necessary proofs of loss, receipts, vouchers, releases and such other documents as shall be required by the insurers to be executed. At the election of Mortgagee, the proceeds of any insurance may be applied to the reduction of the indebtedness secured by this Mortgage, whether or not then due, or may be applied to the cost of building or restoring of buildings and improvements on the Mortgaged Premises, or may be applied to both purposes in such proportion as the Mortgagee shall determine. That part of the Mortgaged Premises so damaged or destroyed shall be repaired or rebuilt, in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed) and all life, safety and environmental regulations, laws, ordinances (including zoning), rules and regulations of governmental authorities having jurisdiction thereover, so as to be as similar, as is reasonably possible, to the condition which existed prior to such casualty.

4. Mortgagor shall pay all general real estate taxes, special taxes, special assessments, water and sewer charges and all other taxes and charges on the Mortgaged Premises before any charge for nonpayment attaches or accrues, and shall furnish the Mortgagee, upon request, with the original or duplicate receipts therefor. If Mortgagor shall desire to contest any tax or special assessment, to avoid default under this Mortgage, Mortgagor shall pay such tax or assessment in full in the manner provided by law.

5. Mortgagor agrees to pay to Mortgagee each month a sum specified by Mortgagee and estimated by Mortgagee to be equal to one-twelfth of the total amount of the general property taxes to be assessed against the Mortgaged Premises for the year in which the deposit is made. Upon funding of the Notes, Mortgagor shall also deposit with Mortgagee an amount as estimated by Mortgagee which, when added to the monthly deposits to be made thereafter as provided for herein, shall assure to Mortgagee's satisfaction that there will be sufficient funds on deposit to pay general and special real estate taxes as they come due. Mortgagor shall also increase the monthly deposit for payment of all special assessments. The Mortgagee is hereby authorized to pay all taxes and special assessments as charged or billed without inquiry as to the accuracy or validity thereof. If deposits made hereunder for taxes and special assessments shall not be sufficient to pay the amounts billed as they become due, the Mortgagor shall pay the deficiency to Mortgagee on demand.

6. In case of default hereunder, Mortgagee may, at its option, at any time make any payment or perform any act herein required by Mortgagor in any form and manner deemed expedient by Mortgagee, and Mortgagee may, at its option, make full or partial payments of principal or interest on prior encumbrances, if any, pay delinquent taxes and insurance premiums and purchase, discharge or settle any tax lien or any other prior lien or claim, redeem from any tax sale or forfeiture affecting the Mortgaged Premises or contest any tax or assessment. All monies paid or incurred by Mortgagee in connection therewith including costs and attorneys' fees and any other monies advanced by Mortgagee to protect the Mortgaged Premises shall be so much additional indebtedness secured

UNOFFICIAL COPY

hereby and shall be immediately due and payable by Mortgagor together with interest at the Default Rate as defined in the Notes.

7. In the event that the Mortgaged Premises or any part thereof is taken by condemnation, Mortgagee is hereby empowered, to collect and receive any awards resulting therefrom ("Awards"), which shall, at the election of Mortgagee, be applied to the payment of the Notes or any other indebtedness secured hereby, or on account of rebuilding or restoring that part of Mortgaged Premises not so taken or damaged. If Mortgagee elects to permit the use of Awards for rebuilding or restoration of the Mortgaged Premises, the Mortgaged Premises shall be so rebuilt or restored in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed) and applicable laws, so as to be as similar, as is reasonably possible, to the condition which existed prior to condemnation. In the event the Awards are insufficient to pay for all costs of rebuilding or restoration, Mortgagor shall deposit with Mortgagee an amount equal to such excess costs prior to any disbursement.

8. To further secure payment of the Notes, all other indebtedness secured hereby and performance of all of the terms, covenants, conditions and agreements contained herein, Mortgagor hereby sells, assigns and transfers to Mortgagee all of its right, title and interest in and to all Leases and rentals, issues, proceeds and profits now due and which may hereafter become due pursuant thereto, it being the intention hereby to establish an absolute transfer and assignment thereof to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its agent, in its name and stead (with or without taking possession of the Mortgaged Premises), to rent, lease or let all or any part of the Mortgaged Premises to any party or parties, at such rental and upon such terms as Mortgagee shall, in its discretion, determine and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter and all presently due or which may hereafter become due pursuant to each and every Lease or any other tenancy existing or which hereafter exists on the Mortgaged Premises, with the same rights and powers and subject to the same rights and powers as Mortgagor would have. If no Event of Default under this Mortgage has occurred, Mortgagor shall have the right to collect all of the rents arising from Leases or renewals thereof. Upon an occurrence of an Event of Default, Mortgagee, at any time or times thereafter, may notify any and all of the tenants of the Leases that the Leases have been assigned to Mortgagee and Mortgagee may direct said tenants thereafter to make all rentals and payments due from tenants under the Leases directly to Mortgagee and shall have the right to enforce the terms of the Leases and obtain payment of and collect the rents, by legal proceedings or otherwise in the name of the Mortgagor. Mortgagor will at all times deliver to the Mortgagee duplicate originals or certified copies of all leases, agreements and documents relating to the Mortgaged Premises and shall permit access by the Mortgagee to its books and records, insurance policies and other papers for examination and making copies and extracts thereof. The Mortgagee, its agents and designees shall have the right to inspect the Mortgaged Premises at all reasonable times and access thereto shall be permitted for that purpose.

9. This Mortgage is given to and shall secure not only existing indebtedness, but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, as are made within twenty years from the date hereof, to the same extent as if future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of execution of this Mortgage, and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all such indebtedness and future advances from the time this Mortgage is filed for record in the office of the

UNOFFICIAL COPY

Recorder of Deeds of the county where the Mortgaged Premises described herein are located. The total amount of indebtedness that may be so secured may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed Two Million Five Hundred Sixty Thousand and 00/100 (\$2,560,000.00) Dollars, plus interest thereon, and any disbursements by Mortgagee made for the payment of taxes, special assessments or insurance on the Mortgaged Premises, with interest on such disbursements, and all costs of collection, including reasonable attorneys' fees.

10. If Mortgagor shall transfer, convey, alienate, pledge, hypothecate or mortgage the Mortgaged Premises or any part thereof, or any partner of Mortgagor shall transfer, convey, alienate, pledge or hypothecate all or any portion of his or her partnership interest in Mortgagor, Mortgagee, at its option, may accelerate the maturity of the Notes and declare it to be due and payable forthwith.

11. This Mortgage shall constitute a security agreement between Mortgagor and Mortgagee with respect to that portion of the Mortgaged Premises constituting property or interests in property, whether real or personal, including any and all sums deposited by Mortgagor and held by Mortgagee which are subject to the priority and perfection provisions of the Illinois Uniform Commercial Code. Therefore, to secure payment of the Notes and all other indebtedness and obligations of Mortgagor hereunder, Mortgagor hereby grants to Mortgagee a security interest in the Mortgaged Premises and in all such deposits and agrees that, upon an Event of Default, Mortgagee shall have all of the rights and remedies of a secured party under the Illinois Uniform Commercial Code.

12. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "moratorium laws" now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but does hereby waive the benefit of such laws. Mortgagor expressly waives any and all rights of redemption under any judgment or decree of foreclosure of this Mortgage, on its own behalf, on behalf of the beneficiaries of Mortgagor, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Mortgaged Premises subsequent to the date hereof, it being the intent of Mortgagor hereby that any and all such rights of redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable laws.

Mortgagor hereby further waives, on behalf of itself, all beneficiaries of Mortgagor, and any person claiming by or through Mortgagor or any beneficiary of Mortgagor, all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois, and all other homestead rights and benefits in the Mortgaged Premises, of every kind and description.

13. This Mortgage shall secure, in addition to all other indebtedness and obligations herein recited, any loss, liability, penalty, damage, expense, or judgment including reasonable attorneys' fees incurred by Mortgagee by reason of any actual or alleged violation of any applicable statute, ordinance, rule or regulation for the protection of the environment which occurs upon the Mortgaged Premises or any adjoining parcels or by reason of imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation ("Environmental Costs").

UNOFFICIAL COPY

14. Any one or more of the following shall constitute an event of default ("Event of Default") hereunder: (a) default in the payment, when due (whether by lapse of time, acceleration or otherwise) of the principal of or interest on the Notes and failure to cure within any applicable cure or grace period specified in the Notes, if any, or; (b) default in the payment, when due, of any other indebtedness hereby secured and such amount shall not be paid within ten (10) days after written notice thereof is sent to Mortgagor; or (c) default for more than thirty (30) days after written notice thereof is sent to Mortgagor in the observance or compliance with any other covenant, warranty, term or provision of this Mortgage or any other instrument or document securing the Notes or relating thereto; or (d) any representation or warranty made by Mortgagor herein or by Mortgagor, or any beneficiary of Mortgagor, or any guarantor of the Notes, in any other instrument or document securing the Notes or relating thereto or in any statement or certificate furnished by it or him pursuant hereto or thereto proves to be untrue or misleading in any material respect as of the date of issuance or making thereof; or (e) the Mortgaged Premises or any part thereof shall be assigned, sold, transferred or conveyed, whether voluntarily or involuntarily, by operation of law or otherwise, except for sales of obsolete, worn out or unusable fixtures or personal property which are concurrently replaced with similar fixtures or personal property at least equal in quality and condition to those sold and owned by Mortgagor free of any lien, charge or encumbrance other than the lien hereof; or (f) any indebtedness secured by a lien or charge on the Mortgaged Premises or any part thereof is not paid when due or proceedings are commenced to foreclose or otherwise realize upon any such lien or charge or to have a receiver appointed for the property subject thereto or to place the holder of such indebtedness or its representative in possession thereof; or (g) Mortgagor, or any guarantor of the Notes becomes insolvent or bankrupt or admits in writing its or his inability to pay its or his debts as they mature or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee, custodian or receiver for the major part of its or his property or such a trustee, custodian or receiver is appointed for Mortgagor, or any guarantor of the Notes or for the major part of the properties of any of them and is not discharged within thirty (30) days after such appointment, or bankruptcy, reorganization, arrangement, insolvency, readjustment, liquidation, dissolution or other proceedings for relief under any present or future bankruptcy laws or laws or other statute, law or regulation for the relief of debtors are instituted by or against Mortgagor, or any guarantor of the Notes and if instituted against such party are consented to or acquiesced in or are not dismissed within thirty (30) days after such institution, or Mortgagor, or any guarantor of the Notes takes any action in contemplation of or furtherance of any of the foregoing; or (h) there shall be any execution, attachment or levy on the Mortgaged Premises not stayed or released within thirty (30) days; or (i) any financial or other information submitted by Mortgagor or guarantor of the Notes proves untrue in any material respect; or (j) the Mortgaged Premises are abandoned; or (k) Mortgagor shall fail or refuse to pay Environmental Costs as herein defined; or (l) any hazardous substance or waste, industrial waste, pollution control waste or toxic substance, within the meaning of any applicable Federal, state or local environmental statute, ordinance, rule or regulation (collectively, "Hazardous Substances") shall be installed, used, generated, manufactured, produced, stored, released, discharged or disposed of on, under or about the Mortgaged Premises, or transported to or from the Mortgaged Premises, in violation of any Federal, state or local environmental statute, ordinance, rule or regulation; or (m) any beneficiary of Mortgagor shall fail or refuse voluntarily to clean up and to bear the cost of cleaning up all Hazardous Substances on, under or about the Mortgaged Premises within sixty (60) days after their discovery, or after receipt from any environmental agency or any other governmental unit or authority that a violation of any applicable Federal, state or local environmental statute, ordinance, rule or regulation has occurred; or (n) any guarantor of the Notes shall die or become incompetent, subject to the terms of the Notes; or (o)

UNOFFICIAL COPY

Mortgagor or any guarantor of the Notes shall terminate or dissolve, or cease doing business as a going concern.

15. When any Event of Default has occurred and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument and of the adequacy of the security for the Notes) and in addition to such other rights as may be available under applicable law, but subject at all times to any mandatory legal requirements: (a) Mortgagee may, by written notice to Mortgagor, declare the Notes and all unpaid indebtedness of Mortgagor hereby secured, including any interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind; (b) Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Illinois Uniform Commercial Code, have all the rights, options and remedies of a secured party under the Illinois Uniform Commercial Code; (c) Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law; or (ii) by the foreclosure of this Mortgage in any manner permitted by law; (d) Mortgagee shall, as a matter of right, without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed of all or any part of the Mortgaged Premises and rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise; (e) Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof and manage, operate, insure, repair and improve the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the Mortgaged Premises. Mortgagee may also take possession of, and for these purposes use, any and all personal property contained on or about the Mortgaged Premises and used in the operation, rental or leasing thereof or any part thereof. Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues and profits of the Mortgaged Premises or any part thereof (and for such purpose Mortgagor does hereby irrevocably constitute and appoint Mortgagee its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, Mortgagor irrevocably acknowledging that any payment made to Mortgagee hereunder shall be a good receipt and acquittance against Mortgagor to the extent so made) and to apply same to the reduction of the indebtedness hereby secured. The right to enter and take possession of the Mortgaged Premises and use any personal property thereon, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expense (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be so much additional indebtedness hereby secured which Mortgagor promises to pay upon demand together with interest at

UNOFFICIAL COPY

the Default Rate applicable to the Notes at the time such expenses are incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon at the Default Rate, as defined in the Notes, at the time such costs are incurred.

16. All rights and remedies set forth in this Mortgage are cumulative and the holder of the Notes and of every other obligation secured hereby may recover judgment herein, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right or remedy afforded hereby.

17. The Mortgagor will, within ninety (90) days after the end of each fiscal year of Mortgagor, furnish to the Mortgagee at the place where payments pursuant to the Notes are then payable, the personal financial statement and tax returns of Mortgagor and each guarantor or co-maker of the Notes, currently dated, and financial and operating statements of the Mortgaged Premises for such fiscal year, all in reasonable detail and in any event including a balance sheet and income statement. If the statements furnished shall not be prepared in accordance with generally accepted accounting principals consistently applied, or if Mortgagor fails to furnish the same when due, Mortgagee may audit or cause to be audited the books of the Mortgaged Premises, the Mortgagor, and/or each guarantor or co-maker of the Notes, at Mortgagor's expense, and the cost of such audit, together with interest at the default rate, as defined in the Notes, shall be payable upon demand. Mortgagor will deliver to Mortgagee such other financial information regarding Mortgagor, any guarantor or co-maker of the Notes, and the Mortgaged Premises, as Mortgagee may request from time to time.

18. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Notes.

19. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, express or implied, by Mortgagee to or of any breach or default by Mortgagor in the performance by Mortgagor of any obligations contained herein shall be deemed a consent to or waiver by Mortgagee of such performance in any other instance or any other obligation hereunder. The failure of Mortgagee to exercise either or both of its remedies to accelerate the maturity of the indebtedness secured hereby and/or to foreclose the lien hereof following any Event of Default hereunder, or to exercise any other remedy granted to Mortgagee hereunder or under applicable law in any one or more instances, or the acceptance by Mortgagee of partial payments of such indebtedness shall neither constitute a waiver of any such Event of Default or of Mortgagee's remedies hereunder or under applicable law nor establish, extend or affect any grace period for payments due under the Notes, but such remedies shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may at Mortgagee's option be rescinded by written acknowledgment to that effect by Mortgagee and shall not affect Mortgagee's right to accelerate maturity upon or after any future Event of Default.

UNOFFICIAL COPY

20. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Notes.
21. Mortgagor represents and agrees that the proceeds of the Notes will be used for business purposes and that the Notes and this Mortgage are exempt from limitations upon lawful interest, pursuant to the terms of Section 205/4 of Chapter 815 of the Illinois Compiled Statutes.
22. If by the laws of the United States of America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Notes, the Mortgagor shall pay such tax in the manner required by such law.
23. All communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or three (3) business days after mailing by United States certified mail, return receipt requested, first class mail, postage prepaid, addressed to the parties hereto at their addresses as shown at the beginning of this Mortgage or to such other and different address as Mortgagor or Mortgagee may designate pursuant to a written notice sent in accordance with the provisions hereof.
24. This Mortgage shall be construed in accordance with and governed pursuant to the laws of the State of Illinois. Whenever possible, each provision of this Mortgage shall be interpreted in such a manner as to be effective and valid pursuant to applicable law; provided, however, that if any part hereof shall be prohibited by or invalid thereunder, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remaining provisions of this Mortgage.
25. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective heirs, executors, administrators, successors, vendees and assigns of such parties, whether so expressed or not. In addition, all covenants, promises and agreements of Mortgagor herein shall be binding upon any other parties claiming any interest in the Mortgaged Premises under Mortgage. If more than one party signs this instrument as Mortgagor, then the term "Mortgagor" as used herein shall mean all of such parties, jointly and severally. In addition, the term "Mortgagor" shall include all persons claiming under or through Mortgagor and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Notes or this Mortgage.
26. Mortgagee agrees to release the lien of this Mortgage upon payment in full of the Second Note.

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage the day and year first above written.



Francis Joseph



Philomena Francis

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

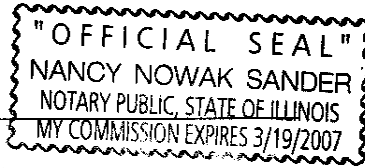
I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that FRANCIS JOSEPH personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 16 day of September 2004.

Nancy Nowak Sander

Notary Public

My Commission Expires:



STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

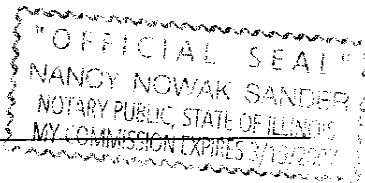
I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that PHILOMENA FRANCIS personally appeared before me this day and subscribed her name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 16 day of September, 2004.

Nancy Nowak Sander

Notary Public

My Commission Expires:



UNOFFICIAL COPY

EXHIBIT "A"

LEGAL DESCRIPTION

PIN: 13-09-207-038-0000

ADDRESS: 5428 N. Edens Parkway, Chicago, Illinois

LOT 5 IN KATHERINE MILLER'S ADDITION TO FOREST GLEN, BEING A RESUBDIVISION IN THE NORTHEAST FRACTIONAL 1/4 OF SECTION 9, TOWNSHIP 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED APRIL 29, 1960 AS DOCUMENT NO. LR 1919460 IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office