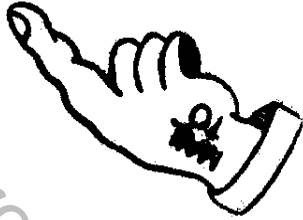




Doc#: 0430303104  
Eugene "Gene" Moore Fee: \$48.50  
Cook County Recorder of Deeds  
Date: 10/29/2004 03:00 PM Pg: 1 of 13

Prepared by & Mail to:

LARRY A. SULTAN  
1601 SHERMAN AV  
STE 200  
EVANSTON, IL 60201



Property

## MORTGAGE, SECURITY AGREEMENT, AND ASSIGNMENT OF RENTS

THIS MORTGAGE, SECURITY AGREEMENT, AND ASSIGNMENT OF RENTS is made and entered into as of OCTOBER 13, 2004, by and between 1359 S. KILDARE, LLC., ("Mortgagor"), whose address is 1830 N. WINCHESTER, #211, CHICAGO, IL., 60622; and JAMES F. MCDONNELL, ("Mortgagee"), whose address is 1451 W. HUTCHENSON, CHICAGO, IL. .

TO SECURE THE FULL AND PUNCTUAL PAYMENT, WHETHER AT STATED MATURITY OR ON ACCELERATION OF MATURITY, AND PERFORMANCE WHEN DUE OF THE OBLIGATIONS DESCRIBED BELOW, MORTGAGOR GIVES, GRANTS, REPRESENTS, WARRANTS, COVENANTS, AND AGREES AS FOLLOWS:

1. Grant. To the extent of Mortgagor's interest therein, Mortgagor does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant, and confirm to Mortgagee all of Mortgagor's estate, right, title, and interest, now owned or hereafter acquired, in and to the following property (the "Property") to have and to hold such Property forever:

1.1 Real Property. The real property described in Exhibit A, attached hereto and incorporated herein by this reference, now owned or hereafter acquired, including without limitation all easements, agreements, tenements, reversions, rights, remainders, licenses, privileges, and appurtenances belonging or in any way appertaining thereto, together with all the estate and rights of Mortgagor in and to land lying in streets and roads adjoining the real property (the "Real Property").

1.2 Improvements. All buildings, structures, improvements, fixtures, and articles of property now or at any time hereafter situated upon the Real Property or any part thereof, and all apparatus, appliances, furnaces, boilers, machinery, engines, motors, compressors, dynamos, elevators, fittings, piping, connections, conduits, ducts, equipment, furnishings, and other personal property, except personal property owned by tenants occupying the Property, of every kind and description now or hereafter affixed or attached to each such building, structure, improvement, equipment, or fixture, or otherwise situated upon the Real Property, including without limitation heating, cooling, lighting, plumbing, ventilation, air conditioning, refrigeration, cleaning, fire alarm, security and access control systems, and equipment, together with any and all alterations, repairs, replacements thereof, accessions and additions thereto, and any increases therein, added and substituted parts, equipment,

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accessories, supplies, and improvements, and all proceeds thereof, whether made by Mortgagor or any successor in interest.

1.3 Rents and Leases. All rents, issues, income, royalties, receipts, revenues, proceeds, and profits of the Property, subject to the right, power, and authority herein conferred to Mortgagee or reserved to Mortgagor to collect and apply the same, all existing and future leases of the Property, including without limitation any extensions, renewals, and subleases, all agreements for use and occupancy of the Property, and all guaranties of tenants' performances under the foregoing, together with the immediate and continuing right to collect and receive all of the rents, issues, income, royalties, receipts, revenues, proceeds, profits, and other income of any nature now or hereafter due, including without limitation security deposits and any income of any nature coming due during any redemption period under the foregoing, all proceeds payable under any policy of insurance covering loss of rents or destruction or damage to the Property, all proceeds derived from the termination or rejection of any lease in a bankruptcy or other insolvency proceeding, and all proceeds from any rights and claims of any kind that Mortgagor may have against any tenant under any lease.

1.4 Contracts. All permits, licenses, and franchises with respect to the Property; all plans, specifications, drawings, contracts, warranties and agreements required or used in connection with the ownership or operation of the Property; all compensation, awards, damages, rights of action, and proceeds, including without limitation the proceeds of any policies of insurance, arising out of or relating to a taking or damaging of the Property by reason of any public or private improvement, condemnation proceeding, or fire, earthquake, or other casualty; and return premiums or other payments upon any insurance at any time provided for the benefit of Mortgagee and refunds or rebates of taxes or assessments on the Property.

1.5 Proceeds. All additions, accessions, replacements, substitutions, proceeds, and products of the foregoing.

2. Obligations Secured. This Mortgage is given to secure the following:

2.1 Note Obligations. Payment of the sum of TWO HUNDRED AND FIFTY THOUSAND DOLLARS AND NO/100 Dollars (\$250,00000) with interest thereon according to the terms of a promissory note of even date herewith, payable to Mortgagee or order and made by Mortgagor (the "Note"), including without limitation all replacements, renewals, modifications, or extensions thereof, together with interest, fees, and late charges thereon or thereunder.

2.2 Other Obligations. Performance of each obligation of Mortgagor incorporated by reference or contained herein.

2.3 Other Expenses. Payment of any costs and expenses incurred or advances made by Mortgagee pursuant to this Mortgage or any other documents executed by Mortgagor evidencing, securing, or relating to the Note and any other document or instrument securing the payment of the indebtedness secured hereby.

3. Security Agreement. To the extent any portion of the Property is, or is construed to be, personal property, this Mortgage shall constitute a security agreement between Mortgagor, as debtor, and Mortgagee, as secured party, under the Uniform Commercial Code of the state in which the Property is located and any other applicable law. The grant of a security interest hereunder shall not be construed to derogate from or impair the lien or provisions of or rights of Mortgagee under this Mortgage with respect to any of the Property hereunder which is real

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property. Mortgagor grants a security interest to Mortgagee in any of the Property or rents that are personal property and also grants a security interest in the following property now owned or hereafter acquired by Mortgagor (the "Collateral"):

3.1 Personal Property. All furniture, furnishings, appliances, machinery, equipment, and other personal property, except personal property owned by tenants occupying the Property, of any kind now or hereafter located on the Property, used or intended to be used on the Property wherever actually located, and all rights of Mortgagor as lessee of any personal property described above.

3.2 Awards. All unearned premiums under insurance policies now or hereafter obtained by Mortgagor, all proceeds of the conversion, voluntary or involuntary, of any of the Property or the Collateral into cash or other liquidated claims, all refunds or rebates of taxes or assessments on the Property or Collateral, all rights of action in respect of the Property or Collateral, and all judgments, damages, awards, settlements, and compensation (including interest thereon) heretofore or hereafter made to the present and all subsequent owners of the Property or Collateral and any other property or rights conveyed or encumbered hereby for any injury to or decrease in the value thereof for any reason, or by any governmental or other lawful authority for the taking by eminent domain, condemnation, or otherwise of all or any part thereof.

4. Payment of Obligations. Mortgagor shall pay promptly the principal of, and interest on, the indebtedness evidenced by the Note in the manner therein provided.

5. Title. Mortgagor holds title to an indefeasible estate in fee simple in the Real Property and the Property described herein and good and absolute title to all of the Collateral and other property which does not constitute real property. Mortgagor will keep the Property and the Collateral free from statutory, governmental, and other liens of any kind. Other than as provided herein or as approved in writing by Mortgagee, there are no liens or encumbrances against or upon the same and none superior to this Mortgage will be created or suffered to be created by Mortgagor during the term of this Mortgage. Mortgagor has full right, power, and authority to make this Mortgage and will forever warrant and defend the Property and the Collateral unto Mortgagee and Mortgagee's successors and assigns against the claims of all persons or parties whomsoever.

6. Reserve for Taxes and Insurance Premiums. If Mortgagee so requests, Mortgagor shall pay to Mortgagee, in addition to the regular installments of principal and interest due under the terms of the Note, monthly until the Note is paid in full a sum equal to one-twelfth (1/12) of the annual taxes, assessments, and other impositions next due on the Property, as estimated by Mortgagee and sufficient to allow payment at least 30 days before the same become due; and a sum equal to one-twelfth (1/12) of the annual premiums that will next become due and payable on policies of fire, flood, rental value, and other insurance covering the Property and required under the terms hereof or of any other loan documents as estimated by Mortgagee and sufficient to allow payment at least 30 days before the same become due.

All such payments described in this Section 6 shall be held by Mortgagee in trust without any obligation arising for the payment of interest thereon to Mortgagor. In the event Mortgagor is not in default hereunder, Mortgagee shall apply such payment to all taxes, assessments, and other impositions and premiums next due. In the event of default by Mortgagor under this Mortgage, Mortgagee may apply any such payments held by Mortgagee to the payment of any indebtedness secured by this Mortgage in such manner as Mortgagee

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may elect.

7. Maintenance. Mortgagor shall protect and preserve the Property and the Collateral and maintain them in good condition and repair. Mortgagor shall not alter, remove, or demolish any improvements thereon or thereto, without Mortgagee's prior written consent. Mortgagor shall complete or restore promptly and in good and workmanlike manner any improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all costs incurred therefor. Mortgagor shall not commit or permit waste of the Property or the Collateral. Mortgagor shall cultivate, irrigate, fertilize, fumigate, prune, prevent freezing, and do all other acts which from the character and use of the Property may be reasonably proper or necessary, the specific enumerations herein not excluding the general. Mortgagor shall comply with all applicable laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property and not commit, suffer, or permit any act upon or concerning the Property in violation of law. Mortgagee may recover as damages for any breach of this covenant, the amount it would cost to put the Property in the condition called for herein, without the necessity of Mortgagee proving impairment of security.

## 8. Insurance

8.1 Casualty Insurance. Mortgagor shall provide and maintain, through a domestic or foreign company qualified to do business in the state in which the Property is located, insurance, including such endorsements as Mortgagee may request or require, against loss by fire (extended coverage), earthquake, flood, vandalism, malicious mischief, loss of rents and other hazards, casualties, and contingencies, as may be reasonably required from time to time by Mortgagee in such amounts and for such periods as may be reasonably required by Mortgagee, with Mortgagee named as loss payee as Mortgagee's interest may appear, and shall deliver all policies to Mortgagee, which delivery shall constitute an assignment to Mortgagee of all return premiums.

8.2 Liability Insurance. Comprehensive public liability insurance on an "occurrence basis" insuring against claims for personal injury, death, or property damage occurring in, on, or about the Property and adjoining streets, sidewalks, and passageways arising out of or in any way connected with the use, occupancy, possession, ownership, or condition (whether or not now existing) of the same. The limits of such coverage shall be no less than \$50,000.00 per occurrence. Such policy shall insure performance of Mortgagor's indemnity obligations hereunder and shall name Mortgagee as an additional insured, providing coverage for Mortgagee regardless of whether the asserted claim is also asserted against Mortgagor.

9. Defense of Security. Mortgagor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee and shall pay all costs and expenses, including cost of evidence of title and actual attorneys' fees, in any such action or proceeding in which Mortgagee may appear.

10. Payment of Taxes and Liens. Mortgagor shall pay when due and before delinquency all rents, taxes, and assessments and all encumbrances, charges, and liens or any installment thereof, with interest, that may now or hereafter be levied, assessed, or claimed against or may affect the Property or any part thereof which at any time appear to be prior or superior to this Mortgage and for which provision for payment has not been made from reserves required therefor hereunder. Upon request, Mortgagor shall provide to Mortgagee official receipts showing payment in full of the aforesaid. Upon default under this Section 10, Mortgagee may, at Mortgagee's option, pay any such sums without waiver of any other



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right of Mortgagee by reason of such default by Mortgagor, and without obligation or liability by Mortgagee to Mortgagor for any failure to exercise any such option. If Mortgagor is contesting, in good faith, the amount or validity of any tax, Mortgagor may do so by any lawful means, provided that Mortgagee receives prior notice of such contest, Mortgagee's interest in the Property is not jeopardized, in Mortgagee's judgment, Mortgagor has posted security satisfactory to Mortgagee, and Mortgagor promptly pays all amounts ultimately determined to be payable.

11. Mortgagee's Right to Protect Security. Should Mortgagor fail to make any payment or to do any act as herein provided, then Mortgagee, but without obligation to do so and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof, may make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purposes; commence, appear in, and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of Mortgagee appears to be superior hereto; and, in exercising any such powers, incur any liability and expend whatever amounts in Mortgagee's absolute discretion it may deem necessary therefor, including cost of evidence of title and employment of counsel. Mortgagor covenants and agrees to pay immediately and without demand all sums so expended by Mortgagee with all costs, fees, and expenses of this Mortgage and the Property secured hereby, with interest from the date of expenditure at the rate specified in the Note, which sums are secured by this Mortgage.

12. Repayment of Mortgagee's Expenditures. Mortgagor shall pay immediately, upon written notice to Mortgagor, all sums expended hereunder by Mortgagee, with interest from the date of expenditure at the rate provided in the Note, and the repayment thereof shall be secured hereby. Failure to repay any such expenditure with interest thereon within 30 days of the mailing of notice thereof shall constitute an event of default hereunder, at Mortgagee's option.

13. Sale, Transfer, or Encumbrance of Property. If Mortgagor or any successor in interest to the Property should, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, sell, convey, transfer, encumber, or alienate the Property, any part thereof, or any interest therein or be divested of Mortgagor's title or any interest therein in any manner, whether voluntary or involuntary, or if in the case Mortgagor, Mortgagor's successors or assigns is a corporation or partnership and Mortgagor's principal shareholders or partners, or any one of them should, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, sell, convey, transfer, encumber, pledge, or alienate a substantial portion of their shares in the corporation or interest in the partnership, either voluntarily or involuntarily, then in recognition of the reliance by Mortgagee on the ownership and management of the Property by Mortgagor which is a material inducement to Mortgagee to extend credit to Mortgagor and in recognition of the increased risk to Mortgagee upon the conveyance of the Property, shares, or interest, as the case may be, by Mortgagor, Mortgagor's principal shareholders or partners, Mortgagee, at Mortgagee's sole option, shall have the right to declare all sums secured hereby forthwith due and payable, or at Mortgagee's sole option, Mortgagee may increase the interest rate of the Note by an amount then to be determined by Mortgagee to compensate Mortgagee for Mortgagee's increased risk. The following shall not be deemed to constitute a sale, transfer, or encumbrance for purposes hereof: (a) creation of a purchase money security interest in items which may become affixed or attached to the Property; (b) a transfer by devise, descent, or operation of law

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upon the death of a joint tenant, if any; and (c) the grant of any leasehold interest of not more than five years, including any extension or renewal options, which does not involve or contain any purchase rights, options, or obligations in either the instrument granting the leasehold interest or any other agreement. If the interest rate on the Note is increased pursuant to this Section 13, any amortizing payments required on the Note shall automatically be increased by an amount sufficient to cover the increased interest charges arising as a result hereof. In addition, prior to the passage of title to or control of or an interest in the Property, Mortgagor shall give not less than 30 days' prior written notice to Mortgagee of any such sale, transfer, or encumbrance and deliver such information concerning the financial capability and experience of the party acquiring such title, control, or interest, as Mortgagee may in Mortgagee's discretion require. Waiver of any right granted to Mortgagee herein as to one transaction, event, or occurrence shall not be deemed to be a waiver of right as to any subsequent transaction, event, or occurrence.

14. Remedies. In addition to any other rights and remedies provided herein, in the Note, and in any document evidencing or securing the obligations secured hereby, or available at law or in equity, Mortgagee shall have the following rights and remedies upon and after any event of default:

14.1 Acceleration. Mortgagee, by written notice given to Mortgagor, may declare the entire principal of the Note then outstanding, and all accrued and unpaid interest thereon, and all other obligations of Mortgagor to Mortgagee related to any obligation secured hereby (including any prepayment penalty due under the Note upon acceleration thereof), to be due and payable immediately, anything in the Note or in this Mortgage to the contrary notwithstanding.

14.2 Mortgagee's Power of Enforcement. If an event of default shall have occurred, Mortgagee may, either with or without entry or taking possession as herein provided, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term hereof, of the Note and of every other instrument securing the Note, or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Property, under the judgment or decree of a court of courts of competent jurisdiction; and (c) to pursue any other remedy available to Mortgagee at law or in equity. Mortgagee shall take action either by such proceedings or by the exercise of Mortgagee's powers with respect to entry or taking possession, or both, as Mortgagee may determine. Without limiting the foregoing, Mortgagee is hereby authorized and empowered to grant, bargain and sell, release and convey the Property, at public sale, and to execute and deliver to the purchasers at such sale good and sufficient deeds of conveyance in law, pursuant to the statute in such case made and provided, rendering any surplus monies, after payment of the obligations secured hereby, attorneys' fees provided by law, and the costs of such sale, to Mortgagor.

14.3 Mortgagee's Right to Enter and Take Possession, Operate, and Apply Income

14.3.1 If an event of default shall have occurred, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of, and, if and to the extent permitted by law, Mortgagee or such officers or agents as Mortgagee may appoint, may enter and take possession of, all the Property and may exclude Mortgagor and Mortgagor's agents and employees wholly therefrom and may have joint access with Mortgagor to the books, papers, and accounts of Mortgagor; and Mortgagor will pay monthly in advance to Mortgagee, on Mortgagee's entry into possession, or to any receiver appointed to collect the rents, accounts,

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royalties, issues, profits, revenues, income and other benefits of the Property, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in possession of Mortgagor, and upon default in any such payment will vacate and surrender possession of such part of the Property to Mortgagee or to such receiver and, in default thereof, to the extent permitted by law, Mortgagor may be evicted by summary proceedings or otherwise.

14.3.2 If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Property to Mortgagee, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Mortgagee, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Mortgagee, Mortgagee's attorneys and agents, and all such costs, expenses, and compensation shall, until paid, be secured by the lien of this Mortgage.

14.3.3 Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage, and control the Property and conduct the business thereof, and, from time to time:

(a) Make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures and personal and other property;

(b) Insure or keep the Property insured;

(c) Manage and operate the Property and exercise all the rights and powers of Mortgagor in Mortgagor's name or otherwise with respect to the same; and

(d) Enter into agreements with others to exercise the powers herein granted Mortgagee, all as Mortgagee from time to time may determine; and Mortgagee may collect and receive all the rents, accounts, royalties, issues, profits, revenues, income, and other benefits thereof, including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee in such priority as Mortgagee may determine to (i) the payment of interest, principal, and other payments due and payable on the Note, or pursuant to this Mortgage, (ii) the cost of insurance, taxes, assessments, and other proper charges upon the Property or any part thereof, (iii) the compensation, expenses, and disbursements of the agents, attorneys, and other representatives of Mortgagee, and (iv) amounts advanced for any purpose recognized under this Section 14.3.3, including without limitation renting commissions and rental collection commissions paid to an agent of Mortgagee or of the receiver.

14.3.4 All costs, expenses, and liabilities of every character incurred by Mortgagee in managing, operating, and maintaining the Property not paid out of rent as provided above shall constitute advances and be demand obligations of Mortgagor, shall bear interest at the rate of interest set forth in the Note applicable after the occurrence of an event of default, and shall constitute a portion of the indebtedness secured hereby to the extent permitted by law. While in possession of the Property, Mortgagee or the receiver shall be liable to account only for rents, accounts, royalties, issues, profits, revenues, income, and benefits actually received.

14.3.5 Mortgagee shall surrender possession of the



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Property to Mortgagor only when all that is due upon such interest and principal, taxes and all amounts under any of the terms of this Mortgage, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent event of default shall occur and be continuing.

14.4 Receiver. If an event of default shall have occurred, Mortgagee, to the extent permitted by law and without regard to the value, adequacy, or occupancy of the security, shall be entitled as a matter of right if Mortgagee so elects to the appointment of a receiver to enter upon and take possession of the Property and to collect all rents, accounts, royalties, issues, profits, revenues, income, and other benefits thereof and apply the same as the court may direct. The receiver shall be entitled to hold, store, use, operate, manage, and control the Property and conduct the business thereof as would Mortgagee pursuant to Section 14.3.3 above and shall have all rights and powers permitted under the laws of the state in which the Property is located and such other powers as the court making such appointment shall confer. The expenses, including receiver's fees, attorneys' fees, costs, and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. Without limiting the foregoing or any other provision of this Mortgage, Mortgagor agrees that the failure of Mortgagor to pay any taxes or assessments assessed against the Property, or any installment thereof, or any premiums payable with respect to any insurance policy covering the Property, shall constitute waste. The right to enter and take possession of and to manage and operate the Property, and to collect the rents, accounts, royalties, issues, profits, revenues, income, and other benefits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee or such receiver shall be liable to account only for such rents, accounts, royalties, issues, profits, revenues, income, and other benefits actually received pursuant to this Section 14.4 or Section 14.3.3. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to, Mortgagee.

14.5 Suits to Protect the Property. Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as Mortgagee may deem advisable (a) to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Mortgage; (b) to preserve and protect Mortgagee's interest in the Property; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule, or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule, or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

14.6 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial case or proceedings affecting Mortgagor, Mortgagor's creditors or property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have Mortgagee's claims allowed in such case or proceedings for the entire obligations secured hereby, and for any additional sum which may become due and payable by Mortgagor after such date.

14.7 Application of Monies by Mortgagee. After the occurrence of an event of default, any monies collected or received by Mortgagee shall be applied to the payment of compensation, expenses, and disbursements of the agents, attorneys, and other representatives of Mortgagee, and the balance remaining shall be



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applied to the payment of the obligations secured hereby in such order as Mortgagee shall determine.

14.8 Delay or Omission No Waiver. No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power, or remedy accruing upon any event of default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such event of default or to constitute acquiescence therein. Every right, power, and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

14.9 Remedies Cumulative. No right, power, or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage, or any other instrument securing the Note is exclusive of any other right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or under the Note or any other instrument securing the Note, or now or hereafter existing at law, in equity, or by statute.

14.10 Purchase by Mortgagee. Upon any foreclosure sale, Mortgagee may bid for and purchase the Property and, upon compliance with the terms of sale, may hold, retain, and possess, and dispose of the Property in Mortgagee's own absolute right without further accountability. Upon any foreclosure sale, Mortgagee may, if permitted by law, and after allowing for costs and expenses of the sale, compensation, and other charges in paying the purchase price, apply any portion of or all of the obligations secured hereby in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

14.11 Uniform Commercial Code. Mortgagee shall have all of the remedies of a secured party under the Uniform Commercial Code of the state in which the Property is located and any other applicable law. To the extent permitted by law, Mortgagor expressly waives any notice of sale or other disposition and any other right or remedy of Mortgagee existing after an event of default hereunder, and to the extent any such notice is required and cannot be waived, Mortgagor agrees that as it relates to this Section 14, only if such notice is marked postage prepaid, to Mortgagor at the above address at least five days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice.

15. Maximum Interest Rate. If, under any circumstances whatever, fulfillment of any provision of this Mortgage, the Note which it secures, or any other instrument securing or evidencing this loan shall transcend the limit or validity prescribed by the usury statute or any other applicable law, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity so that in no event shall any exaction be possible under this Mortgage, the Note which it secures, or such other instrument that is in excess of the limit of such validity, but such obligation shall be fulfilled to the limit of such validity.

16. Financial Statements and Credit Reports. Upon request, Mortgagor shall furnish Mortgagee with copies of a current Financial Statement for Mortgagor, prepared by a certified public accountant and certified by Mortgagor as being an accurate, true, and complete statement of Mortgagor and, in addition, Mortgagor shall furnish Mortgagee, at Mortgagor's request, with copies of current credit reports for Mortgagor. Such reports and statements shall be in form and content satisfactory to Mortgagee.

17. Inspection of Property. Mortgagor shall allow Mortgagee and Mortgagee's representatives to inspect the Property and the Collateral at any reasonable time and from time to time.

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18. Late Charge. In the event that any payment or portion thereof is not paid within 3 days from the date the same is due, Mortgagor agrees to pay a late charge of \$30.00 for each day so overdue, if charged by Mortgagee.

19. Waiver of Default. By accepting payment of any sum secured hereby after its due date, Mortgagee does not waive Mortgagee's right either to require prompt payment when due of all other sums so secured or to declare default for failure to so pay. The waiver by Mortgagee or Mortgagor of the breach of any covenant may not be construed as waiving the breach of any other covenant or a subsequent breach of the same.

20. Assignment of Rents. As additional security, Mortgagor hereby gives to and confers upon Mortgagee the right, power, and authority, during the continuance of this Mortgage, to collect the rents, issues, and profits of the Property, reserving unto Mortgagor the right, prior to any default by Mortgagor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues, and profits as they become due and payable. Upon any such default, Mortgagee may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said Property or any part thereof; in Mortgagee's own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid; and apply the same, less costs and expenses of operation and collection, including actual attorneys' fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. Failure or discontinuance of Mortgagee at any time, or from time to time, to collect any such amounts shall not in any manner affect the subsequent enforcement by Mortgagee of the right, power, and authority to collect the same. The entering upon and taking possession of said Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. Mortgagor shall not collect rent from any tenant for any reason more than one month in advance of the accrual thereof unless approved in writing by Mortgagee. Nothing contained herein, nor the exercise of the right by Mortgagee to collect, shall be or be construed to be an affirmation by Mortgagee of any tenancy, lease, or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Mortgage to any such tenancy, lease, or option. Mortgagor shall not enter into any leases of the Property or any portion thereof, except on the terms and conditions first approved by Mortgagee in writing.

21. Right of Subrogation. Mortgagee is subrogated to the rights of all beneficiaries, mortgagees, lienholders, and owners directly or indirectly paid off or satisfied in whole or in part by the proceeds of the loan hereby secured, regardless of whether such persons upon receipt of such payment assigned or released, record their rights.

22. Prepayment Penalty. If the Note secured hereby provides any premium or penalty for prepayment of any indebtedness secured hereby, Mortgagor agrees to pay such premium or penalty if any such indebtedness shall be paid prior to the date thereof recited in such Note, even if and notwithstanding that Mortgagor shall have defaulted in payment thereof, or in performance of any agreement hereunder, and Mortgagee, by reason thereof, shall have declared all sums secured hereby immediately due and payable.

23. Execution of Further Instruments. Within 15 days of written request, Mortgagor shall execute, acknowledge, and deliver to Mortgagee a security agreement or other similar security instrument, in form satisfactory to Mortgagee, covering all

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property of any kind whatsoever owned by Mortgagor which, in the reasonable opinion of Mortgagee, is essential to the operation of the Property described herein and concerning which there may be any doubt whether the same has been conveyed or secured by and included within this Mortgage under the laws of the state in which the Property is located, and will further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement, or certificate or other document as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue, and extend the security interest thereunder and the priority of such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all reasonable costs and expenses incurred by Mortgagee in connection with the preparation, execution, and filing of any such document.

24. Notices. All notices to be given hereunder shall be deemed to have been given when given in writing by depositing the same in the United States mail, postage prepaid, registered or certified mail, and addressed to the party at the respective mailing address as herein set forth, and shall be deemed effective 24 hours thereafter unless otherwise specified herein. It is understood that each party may change the address to which notices may be sent by giving written notice of such change to the other party hereto in the manner herein provided.

25. Severance. Nothing contained herein nor any transaction related thereto shall be construed or shall so operate either presently or prospectively to require Mortgagor to do any act contrary to law; and if any clause or provision shall otherwise so operate, then such offensive clause or provision shall be null and void as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.

26. Time. Time is of the essence of this Mortgage and each and all of its provisions in which performance is a factor.

27. Environmental Laws. For the purposes hereof, the phrase "Hazardous Materials" shall mean and include any oil, hazardous substance, pollutant, contaminant, hazardous waste, hazardous material, dangerous waste, extremely hazardous waste, toxic waste, asbestos, or air pollution, as any such term or similar term as now or hereafter defined, used or understood in or under any federal, state, county, city, or other governmental statute, rule, ordinance, order, or regulation which relates in any way to the protection of the environment ("Environmental Laws"). Mortgagor warrants and covenants to the best of Mortgagor's knowledge as follows: There are no Hazardous Materials in, upon, or buried on or beneath the Real Property or the improvements thereof, nor have any Hazardous Materials been emitted or released therefrom in violation of any Environmental Laws. In no event shall Mortgagor bring onto, store upon, bury, use upon, emit, or release from, nor allow to be brought onto, stored upon, buried, used upon, emitted, or released from the Property or the improvements thereon, any Hazardous Materials in violation of any Environmental Laws. There are no underground storage tanks located on the Real Property, including any storage tanks which contain or previously contained any Hazardous Materials. Mortgagor shall not cause or permit any such tanks to be installed. Mortgagor shall indemnify and hold Mortgagee, Mortgagee's officers, directors, agents, and the Property harmless from any claim, cost, damage, expense, including attorneys' fees, monitoring costs, response costs, and penalties with respect to any breach or alleged breach of these warranties and covenants. These warranties and covenants shall survive the exercise of any remedies by Mortgagee, including without limitation foreclosure or obtaining title in lieu of foreclosure.

28. Attorneys' Fees. If any litigation is instituted to enforce or interpret any provision hereof, or to foreclose this Mortgage, the prevailing party shall be entitled to collect, in



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addition to all other amounts and relief, its court costs, title search costs, and reasonable attorneys' fees incurred both at and in preparation for trial and any appeal or review, such amount to be set by the court before which the matter is heard. If Mortgagee is the prevailing party, such costs and attorneys' fees shall be secured by this Mortgage.

29. Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the state in which the Property is located.

EXECUTED as of the day and year first above written.

MORTGAGOR: [Signature]  
1359 S. KILDARE, LLC.

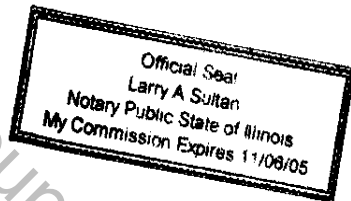
[Signature]

STATE OF ILLINOIS )  
COUNT OF COOK )

I, the undersigned, a notary public, do hereby certify that ~~MARC DEVEREAUX~~ ~~+ CLAYTON ROSE~~ personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and seal this 13 day of OCTOBER 2004.

[Signature] [Seal]



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## LEGAL DESCRIPTION

LOT 14 IN OGDEN'S RESUBDIVISION OF BLOCKS 154, 155, 156, 157 AND PART OF  
BLOCK 158 IN BRONSON'S ADDITION TO CHICAGO IN SECTION 4, TOWNSHIP  
39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK  
COUNTY, ILLINOIS

P.I.N. 17-04-212-044-0000  
17-04-212-045-0000