

# UNOFFICIAL COPY

This instrument prepared by and after recording should be returned to:

FagelHaber LLC  
55 East Monroe Street  
40<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attention: Victor A. Des Laurier, Esq.

PIN Numbers: 10-29-303-017-0000  
10-29-400-008-0000

Common Address: 7420 North Lehigh Avenue  
Niles, Illinois 60714



Doc#: 0500433052  
Eugene "Gene" Moore Fee: \$96.00  
Cook County Recorder of Deeds  
Date: 01/04/2005 08:08 AM Pg: 1 of 37

## ASSIGNMENT OF RENTS AND LESSOR'S INTEREST IN LEASES

This Assignment of Rents and Lessor's Interest in Leases (this "Assignment") is executed and delivered as of the 16th day of December, 2004, by Perutz Properties, LLC, an Illinois limited liability company, with its principal office located at 7420 North Lehigh Avenue, Niles, Illinois 60714 ("Mortgagor"), to JPMorgan Chase Bank, N.A., a national banking association with an office located at 120 South LaSalle Street, Chicago, Illinois 60603 (the "Bank").

### I. BACKGROUND

WHEREAS, prior hereto, the Illinois Development Finance Authority ("Issuer") issued its Adjustable Rate Industrial Development Revenue Bonds, Series 1996 A (Tax Exempt) and Series 1996 B (Taxable) (Nimlok Company Project) in the original aggregate principal amount of \$3,600,000 (the "Bonds") pursuant to an Indenture of Trust dated as of October 1, 1996 (the "Indenture") between the Issuer and JPMorgan Chase Bank, N.A., a successor by merger to Bank One, Springfield, as Trustee ("Trustee") to obtain monies (the "Loan") which have been disbursed to Nimlok Company, a Delaware corporation ("Nimlok"), and used to finance a portion of the cost to acquire, construct, renovate and rehabilitate a manufacturing facility located at 7420 N. Lehigh, Niles, Illinois 60714 (the "Niles Property");

WHEREAS, to evidence and secure the obligations of Nimlok in connection with the Bonds, Nimlok has executed and delivered to Trustee and Issuer, as applicable, an Indenture, a Loan Agreement, an Arbitrage Compliance Agreement, a Tax Compliance Agreement, and various other certificates, indemnities, pledges, consents, contracts, notices, statements, notes, documents, instruments and agreements;

WHEREAS, the Bonds are secured by an Irrevocable Letter of Credit (the "Letter of Credit") in the original face amount of \$3,644,384 issued by the Bank (as successor by merger to Bank One, NA), in favor of the Trustee for the benefit of the owners of the Bonds, which Letter of Credit was issued pursuant to and in accordance with a Letter of Credit and Reimbursement Agreement dated as of October 1, 1996 by and between Nimlok and the Bank (as amended or restated from time to time, the "Reimbursement Agreement") whereby Nimlok is obligated to reimburse the Bank for all drawings made by the Trustee on the Letter of Credit and to pay certain other costs and expenses;

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WHEREAS, to evidence and secure the obligations and liabilities of Nimlok to the Bank in connection with the Loan and the Letter of Credit, Nimlok has executed and delivered to Bank the Reimbursement Agreement, that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement dated as of October 1, 1996, executed and delivered by Nimlok to the Bank (the "Nimlok Mortgage"), and an Application and Agreement for Letter of Credit. Nimlok has also executed various other security agreements, assignments, certificates and indemnities relating to the obligations evidenced by the Reimbursement Agreement;

WHEREAS, Mortgagor and Nimlok have requested that the Bank (i) consent to the sale, assignment and transfer by Nimlok to Mortgagor of fee simple title to the Niles Property, and (ii) provide a new term loan to Mortgagor in the principal amount of \$750,000 which shall be used to satisfy a portion of the purchase price for the Niles Property (collectively the "Financial Accommodations");

WHEREAS, the Bank is willing to provide the Financial Accommodations to Mortgagor and Nimlok, provided, among other things, (i) Mortgagor executes and delivers this Assignment to the Bank, and (ii) Mortgagor executes and delivers to the Bank that certain Mortgage and Security Agreement of even date herewith executed and delivered by Mortgagor to the Bank (as amended or restated from time to time, the "Mortgage"); and

WHEREAS, Mortgagor acknowledges and agrees that (i) Mortgagor is benefited by the Financial Accommodations provided by the Bank to Mortgagor and Nimlok, (ii) Mortgagor's execution and delivery of this Assignment is a material inducement to the Bank providing the Financial Accommodations to Mortgagor and Nimlok, and (iii) without this Assignment, the Bank would not have provided the Financial Accommodations to Mortgagor and Nimlok.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and understandings of the parties hereto set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor hereby covenants unto and agrees with the Bank as set forth in this Assignment. The foregoing recitals are hereby incorporated into the terms and conditions of this Assignment. Except as expressly set forth in this Assignment, all terms which have an initial capital letter where not required by the rules of grammar are defined in the Mortgage.

## II. ASSIGNMENT

A. To secure the full and timely payment and performance by the Obligors of the "Obligors' Liabilities" and the "Obligors' Covenants" (both as defined in the Mortgage), including, without limitation, the Obligors' Liabilities evidenced by or referenced in the Mortgage, the Reimbursement Agreement, the Term Note or this Assignment, Mortgagor hereby grants, conveys, transfers and assigns to the Bank:

1. all leases demising and leasing all or any part of the premises legally described on Exhibit "A" (the "Premises") attached hereto, any contract for the sale of all or any part of the Premises, or any other agreement for the use, sale or occupancy of all or any part of the Premises, whether heretofore, now or hereafter executed by Mortgagor and any renewals, extensions, modifications, amendments or substitutions thereto (collectively the "Leases"); and

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2. all rents, issues, deposits, income and profits now due or which may hereafter become due under or by virtue of the Leases, or any letting or demise of, or any agreement for the use, sale or occupancy of the Premises or any part thereof and all the avails thereof, now existing or hereafter made or agreed to or which may be made or agreed to under the powers herein granted, together with all guaranties and rights against guarantors of the obligations of the lessees under the Leases (collectively the "Income").

B. Mortgagor hereby irrevocably appoints the Bank as its true and lawful attorney-in-fact to:

1. rent, lease, let or sell all or any part of the Premises to any party or parties at such price and upon such terms as the Bank may determine; and

2. collect, sue for, settle and compromise all of the rents, issues, deposits, contracts for sale, income and profits now due or which may at any time hereafter become due, with the same rights and powers and subject to the same immunities, exoneration of liability, rights of recourse and indemnity as the Bank would have upon taking possession of the Premises pursuant to the provisions hereinafter set forth.

### **III. REPRESENTATIONS, WARRANTIES AND COVENANTS**

Mortgagor represents, warrants and covenants unto the Bank as follows:

A. The Leases and the Income are freely assignable by Mortgagor to the Bank, and Mortgagor has full power and authority to make the assignment provided for herein;

B. All Income due under the Leases has been fully and timely paid, and, except for those security deposits listed on Exhibit "B", Mortgagor is currently not in possession of any pre-paid Income;

C. None of the Income for any part of the Premises has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor;

D. Mortgagor is the sole owner of the entire interest in any currently existing Leases, and the Leases are valid and enforceable in accordance with their terms and have not been altered, modified or amended in any manner whatsoever;

E. There are no claims or causes of action in connection with the Leases which Mortgagor may have or which any party may have against Mortgagor;

F. Mortgagor has not, and will not at any time hereafter, assign or pledge to any person or entity, other than the Bank, any or all of the Leases or the Income;

G. The only Leases in effect with respect to the Premises are listed on Exhibit "C" attached hereto, full, correct and complete copies of which, including all amendments, have been delivered to the Bank;

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H. No defaults by Mortgagor or any lessee exist under the Leases and there exists no fact which, with the giving of notice or lapse of time or both, would constitute a default under the Leases. Mortgagor will promptly provide the Bank with copies of any notices of default sent or received by Mortgagor in connection with the Leases; and

I. Mortgagor shall:

1. observe and perform all the obligations imposed upon Mortgagor, as lessor, under the Leases and not do or permit to be done anything to impair the security thereof;

2. not consent to the assignment or subletting of the Premises without the prior written consent of the Bank;

3. not collect any of the Income in advance of the time when the same shall become due;

4. not materially alter, modify or change the terms of the Leases or any guarantees thereof, cancel or terminate the Leases or any guarantees thereof or accept a surrender thereof without the prior written consent of the Bank;

5. not alter, modify or change the terms of that certain Net Lease dated December 16, 2004, by and between Mortgagor and Nimlok (the "Nimlok Lease"), cancel or terminate the Nimlok Lease or accept a surrender of the Nimlok Lease, without in each instance the prior written consent of the Bank; and

6. deliver to the Bank all original Leases, including, but not limited to, all original Leases executed after the date hereof.

## IV. WAIVERS

A. Nothing herein contained shall be construed as constituting the Bank a "trustee in possession" or a "mortgagee in possession" in the absence of the taking of actual physical possession of the Premises by the Bank pursuant to the provisions hereinafter contained.

B. Mortgagor hereby waives any claim, cause of action or right of setoff against the Bank, its managers, members, employees and agents for any loss sustained by Mortgagor resulting from the Bank's failure to let the Premises after an "Event of Default" (hereinafter defined) or from any other act or omission of the Bank in managing the Premises, nor shall the Bank be obligated to perform or discharge, nor does the Bank hereby undertake to perform or discharge, any obligation, duty, or liability under the Leases created or incurred by Mortgagor prior to the time the Bank takes possession of the Premises (the "Pre-existing Obligations"). Mortgagor shall, and does hereby agree to indemnify the Bank for, and hold the Bank harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against the Bank by reason of any alleged obligations or undertakings on the Bank's part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases, including, but not limited to, any Pre-existing Obligations. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Premises upon the Bank, nor for the carrying out of any of the terms

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and conditions of the Leases prior to the time the Bank may take possession, nor shall it operate to make the Bank responsible or liable for any waste committed on the Premises by any lessee or any other persons or entities or for any dangerous or defective conditions of the Premises.

C. If the Bank incurs any liability for any Pre-existing Obligations under the Leases or under or by reason of this Assignment or in the good faith defense of any claims or demands relative to any Pre-existing Obligations, the amount thereof, including, but not limited to, costs, expenses, and attorneys' fees, shall be secured hereby and by the Mortgage Documents, and shall be due and payable from Mortgagor to the Bank on demand with interest thereon at the "Default Rate" set forth and defined in the Note.

## V. LEASES

A. If requested by the Bank, Mortgagor shall cause each lessee, whether now existing or hereafter arising, to execute and deliver to the Bank a Tenant Estoppel Certificate and Subordination Agreement, in form and substance acceptable to the Bank.

B. Mortgagor shall assign and transfer to the Bank all future Leases upon all or any part of the Premises and shall execute and deliver, immediately upon the request of the Bank, all such further assurances and assignments in the Premises as the Bank shall from time to time require.

## VI. EVENT OF DEFAULT

An "Event of Default" means the occurrence of (a) a breach, default or event of default under this Assignment, or (b) an "Event of Default" as defined in the Mortgage.

## VII. ENFORCEMENT OF THIS ASSIGNMENT

A. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that the Bank shall not exercise any of the rights and powers conferred upon it under Section II hereunder until the occurrence of an Event of Default.

B. The Bank, without in any way waiving an Event of Default, and without the institution of legal proceedings of any kind whatsoever, may, at its option, either in person by agent or by a receiver appointed by a court, take possession of the Premises and have, hold, manage, lease, sell and operate the same on such terms and for such period of time as the Bank may deem proper and either with or without taking possession of the Premises in its own name, sue for or otherwise collect and receive the Income and enforce the Leases, including, but not limited to, Income past due and unpaid, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto or thereof and to apply such Income as the Bank may determine in its sole discretion, including, but not limited to, the payment of:

1. all expenses of managing the Premises, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents, any other liens and premiums for all insurance which the Bank may deem necessary or desirable, and the costs of all alterations, renovations, repairs, or replacements, and all expenses incident to taking and retaining possession of the Premises;

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2. the principal sum, interest and any other indebtedness owed to the Bank by Mortgagor, together with all costs and attorneys' fees in such order of priority as to any of the items mentioned in this paragraph as the Bank, in its sole discretion, may determine, any statute, law, custom or use to the contrary notwithstanding;

3. taxes and special assessments now due or which may hereafter become due on the Premises; and

4. all repairs, decorating, renewals, replacements, alterations, additions, betterments or improvements of the Premises, and of placing the Premises in such condition as will, in the judgment of the Bank, make it readily rentable or saleable.

C. The exercise by the Bank of its rights provided herein and the collection of the Income and the application thereof as herein provided shall not be considered a waiver of any breach, default or Event of Default by Mortgagor under the Mortgage or the Other Agreements.

D. Mortgagor agrees that the Bank shall have full power to use such measures, legal or equitable, in its sole discretion or in the discretion of its successors, divisions, parents, affiliates, parents or assigns, as may be deemed proper or necessary to enforce the payment of the Income in connection with the Premises, including, but not limited to, actions for the recovery of rent, actions in forcible detainer and actions in distress of rent. This Assignment is and shall be primary and on a parity with the real estate conveyed by the Mortgage and not secondary. Mortgagor hereby grants to the Bank full power and authority to exercise each and every of the rights, privileges, and powers herein granted at any and all times hereafter, without notice to Mortgagor, and with full power, to the extent permitted by law, to cancel or terminate any of the Leases for any cause or on any ground, to elect to disaffirm any of the hereafter executed Leases or the Leases subordinated to the lien of the Mortgage, to make all the necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises, to insure and reinsure the same for all risks incidental to the Bank's possession, operation and management thereof, and to receive all Income.

E. Mortgagor agrees that the Bank may take or release other security for the payment of the Obligors' Liabilities, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the satisfaction of such Obligors' Liabilities without prejudice to any of its rights under this Assignment.

F. Upon issuance of a deed or deeds pursuant to foreclosure of the Mortgage, the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Mortgagor. Mortgagor hereby irrevocably appoints the Bank to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose.

G. Any amounts received by Mortgagor or their agents for performance of any actions prohibited by the terms of this Assignment, including any amounts received in connection with any cancellation, modification or amendment of any of the Leases and any amounts received by Mortgagor as Income, shall be held in trust by Mortgagor and immediately remitted to the Bank. Any person acquiring or receiving all or any part of such funds shall acquire or receive the same in trust for the Bank as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith. After the payment and satisfaction in full of the Obligors' Liabilities, any excess

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proceeds received by the Bank under this Paragraph VII.G shall be remitted to Mortgagor or as otherwise directed by a court of competent jurisdiction.

## **VIII. DIRECTION TO LESSEES**

Mortgagor hereby authorizes and directs any and all lessees or occupants of the Premises to pay over to the Bank all Income after the occurrence of an Event of Default and to continue to do so until otherwise notified by the Bank.

## **IX. OTHER**

A. This Assignment shall be binding upon Mortgagor and its successors, and permitted assigns, if any, and any party or parties holding title to the Premises by, through, or under Mortgagor. All of the rights, powers, privileges, and immunities herein granted and assigned to the Bank shall also inure to its successors, divisions, nominees, parents, subsidiaries, affiliates and assigns.

B. It is expressly understood that no judgment which may be entered on any debt secured or intended to be secured by the Mortgage shall operate to abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment and discharge of any and all Obligors' Liabilities and Obligors' Covenants now or hereafter owing to the Bank. This Assignment shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after sale.

C. The relationship between Mortgagor and the Bank is solely that of secured creditor and debtor, and nothing contained herein or in any of the Mortgage Documents shall in any manner be construed as making the parties hereto partners, joint venturers or any other relationship other than secured creditor and debtor.

D. If any provision of this Assignment is held to be invalid or unenforceable by a Court of competent jurisdiction, such provision shall be severed herefrom and such invalidity or unenforceability shall not affect any other provision of this Assignment, the balance of which shall remain in and have its intended full force and effect. However, if such invalid or unenforceable provision may be modified so as to be valid and enforceable as a matter of law, such provision shall be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.

E. The Exhibits referred to herein are attached hereto, made a part hereof and incorporated herein by this reference thereto.

F. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original.

G. MORTGAGOR AND THE BANK IRREVOCABLY AGREE, AND HEREBY CONSENT AND SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, AND THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, WITH REGARD TO ANY LITIGATION, ACTIONS OR PROCEEDINGS ARISING FROM OR RELATING TO OR IN CONNECTION WITH THIS ASSIGNMENT. MORTGAGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION, ACTIONS OR

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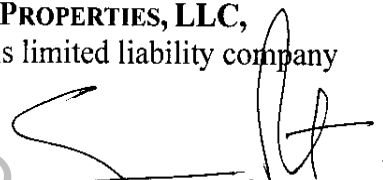
PROCEEDINGS FILED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

H. MORTGAGOR HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO MORTGAGOR AS SET FORTH IN THE MORTGAGE AND IN THE MANNER PROVIDED BY APPLICABLE STATUTE, LAW, RULE OF COURT OR OTHERWISE.

I. MORTGAGOR AND THE BANK EACH HEREBY ABSOLUTELY AND UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IN CONNECTION WITH ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER OR RELATED TO THIS ASSIGNMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED AND DELIVERED BY MORTGAGOR TO THE BANK.


IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first written above.

**PERUTZ PROPERTIES, LLC,**  
an Illinois limited liability company

By:   
Name: Simon PERUTZ  
Title: MANAGER.

Accepted as of the 16th day of  
December, 2004.

**JPMORGAN CHASE BANK, N.A.,**  
a national banking association

By:   
Its: Assistant Vice President



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STATE OF ILLINOIS )  
                                  ) S.S.  
COUNTY OF COOK    )

I, *Clinton P. Hansen*, a Notary Public in and for said County, in the State aforesaid, do hereby certify that *Bob Myers* who is personally known to me to be the *Asst. VP.* of JPMorgan Chase Bank, N.A., and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this *14* day of December, 2004.

*Clinton P. Hansen*  
Notary Public

My commission expires  
**OFFICIAL SEAL**  
**CLINTON P HANSEN**  
NOTARY PUBLIC, STATE OF ILLINOIS  
COMMISSION EXPIRES 12/31/06

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STATE OF ILLINOIS    )  
                                  ) S.S.  
COUNTY OF COOK    )

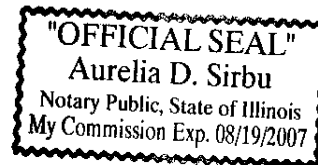
I, AURELIA SIRBU, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, who is personally known to me to be the **[member/manager]** of Perutz Properties, LLC, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16 day of December, 2004.

Aurelia D. Sirbu  
Notary Public

My commission expires:

8/19/2007



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**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

THE SOUTH 425 FEET OF THE EAST 18.5 ACRES (EXCEPT THE WEST 330.0 FEET THEREOF) OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THAT PART OF THE SOUTH 425 FEET OF LOT 5 OF MCDONNELL'S SUBDIVISION OF THE SOUTHEAST ¼ OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE WESTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD, IN COOK COUNTY, ILLINOIS.

**PIN PIN NUMBERS:** 10-29-303-017-0000  
10-29-400-008-0000

**COMMON ADDRESS:** 7420 North Lehigh Avenue  
Niles, Illinois 60714

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**EXHIBIT "B"**  
**SECURITY DEPOSITS**

*NONE*

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## EXHIBIT "C" LEASES

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*See Attached.*

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## NET LEASE

### 1. PARTIES.

This lease ("Lease"), dated as of December \_\_, 2004 is made by and between Perutz Properties, LLC, a limited liability company organized under the laws of the State of Illinois ("Lessor") and Nimlok Company, a Delaware corporation ("Lessee").

### 2. PREMISES LEASED.

2.1 Description of Premises. Lessor is the owner of certain real property located at 7420 N. Lehigh Avenue in the city of Niles in the State of Illinois and described on Exhibit A. The real property shown on Exhibit A, including the land, buildings and improvements constructed on the land as of the date of this Lease and including the fixtures which are an integral part of the buildings and other improvements, such as lights, heating and air conditioning equipment and the like are in this Lease called the Premises.

2.2 Lease of Premises. Lessor leases to Lessee, and Lessee leases from Lessor, the Premises, for the term, at the rental and upon all of the conditions set forth in this Lease.

### 3. TERM.

3.1 Term. The term of this Lease shall be for the period commencing on December \_\_, 2004 and ending on December \_\_, 2011, unless sooner terminated pursuant to any provisions of this Lease.

### 4. RENT.

4.1 Rent. Lessee shall pay, as rent for the Premises, the amount of \$550,920 per year, subject to adjustment as described in Paragraph 4.2 (the "Rent").

4.2 Adjustment of Rent. The Rent shall be adjusted as of the first day of January each year during the term of this Lease beginning January 1, 2006, and the Rent as so adjusted shall be the rent in effect for the year beginning with that first day of January. The adjusted Rent shall be equal to \$550,920

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multiplied by the ratio of the Consumer Price Index for all Urban Consumers published by the United States Department of Labor ("CPI-U") for the December immediately preceding that January to the CPI-U for December, 2004, provided that in no event shall the Rent adjusted based upon the CPI-U be an amount less than the Rent specified in Paragraph 4.1 for the initial year of this Lease. The CPI-U for both the reference month and the base month shall be determined on the basis of the first published final index.

4.3 Payment Terms. Rent shall be payable monthly in advance without offset or deduction. Rent for each month shall be equal to 1/12 of the applicable annual rent. Rent for any period of less than a month shall be equal to the number of days in that period divided by 30 and multiplied by the applicable monthly rent. Rent for each month shall be due and payable on the first day of that month. Rent for any period of less than a month shall be due and payable on the first day of that period. All payments of rent and any other payments required to be made to the Lessor under this Lease shall be made by wire transfer of immediately available funds to a bank account designated in writing by Lessor, or by such other reasonable means as Lessor notifies Lessee in writing.

4.4 Special Net Lease. This Lease is what is commonly called a "Net, Net, Net Lease." It is understood that the Lessor shall receive the Rent free and clear of any impositions, taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises. In addition to the Rent specified in this Lease, Lessee shall pay directly all impositions, insurance premiums, taxes, utilities and other operating charges, maintenance charges, construction costs, and any other charges, costs and expenses which arise or may be contemplated under any provisions of this Lease during its term. All of those charges, costs and expenses shall constitute "Additional Rent". Upon the failure of Lessee to pay any of those costs, charges or expenses, Lessor shall have the same rights and remedies as otherwise provided in this Lease for the failure of Lessee to pay Rent. It is the intention of the parties that this Lease shall not be terminable for any reason by the Lessee, and that Lessee shall not be entitled to any abatement of or reduction in Rent or Additional Rent payable under this Lease, except as expressly provided in this Lease. Any present or future law to the contrary shall not alter this agreement of the parties.

4.5 Absolute Obligations.

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(i) Each of Lessee's obligations to pay Rent and Additional Rent under this Lease shall be absolute and unconditional, and shall survive the expiration of or earlier termination of this Lease for any reason whatsoever. Lessee acknowledges and agrees that Lessee shall not be entitled to any abatement, deferral or suspension of Rent or Additional Rent, reduction of it or setoff against Rent or Additional Rent, including abatements, reductions, deferrals, suspensions, reimbursements or setoffs due, or alleged to be due, by reason of any past, present or future claims of Lessee against Lessor, either under this Lease or otherwise; nor, shall this Lease terminate, nor the obligations of Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Premises from whatsoever cause, any Liens or rights of others with respect to any of the Premises, the prohibition of or other restriction against the Lessee's use of all or any of the Premises, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any action, inaction or default by the Lessor as the lessor under this Lease, any defect in the title to, compliance with plans or specifications for, condition, design or fitness for use of all or any of the Premises, any insolvency of or any bankruptcy, reorganization or other proceeding against Lessee, Lessor or any other Person, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention and agreement of the parties to this Lease, and the basis of the bargain, that (to the extent permitted by applicable law) Rent or Additional Rent under this Lease shall continue to be payable in all events in the manner and at the times provided in this Lease. To the extent permitted by applicable law, Lessee waives any and all rights which it may now have or which at any later time may be conferred upon it, by statute or otherwise, to terminate, cancel or quit this Lease or surrender the Premises.

(ii) Without limiting the generality of the foregoing, Lessee covenants that it will remain obligated under this Lease in accordance with the terms of this Lease and will not take any action to terminate, rescind or avoid this Lease for any reason whatsoever.

(iii) Nothing in this Section 4.5 or in any other provision of this Lease shall preclude any separate, independent claim (other than by way of abatement or reduction of any amount at any time payable by the Lessee under this Lease) by the Lessee for the breach of any representation, covenant, undertaking or agreement made in this Lease by the Lessor.

(iv) If and to the extent the terms and provisions of this Section 4.5 contradict or conflict with any other terms or provisions set forth in this Lease, the terms and provisions of this Section 4.5 shall govern and control.

(v) Each of the Lessor and the Lessee acknowledge and agree that (a) the terms of this Lease cannot be modified or amended without, in each case, the prior written consent of JPMorgan Chase Bank, N.A. (the "Bank"), and (b) the Bank is relying upon the terms and provisions set forth in this Lease to provide certain loans and other financial accommodations to Lessor and to consent to the transfer of the Premises from Lessee to Lessor.



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## 5. USE.

5.1 Use. The Premises shall be used and occupied for light manufacturing, distribution and for general office use.

5.2 Compliance With Law. Lessee shall, at Lessee's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders and requirements (including any applicable environmental laws, rules, regulations and ordinances) in effect during the term or any part of the term of this Lease regulating the use by Lessee of the Premises. Lessee shall not use or permit the use of the Premises in any manner that will tend to create waste or nuisance. Lessee shall not cause, maintain or permit any outside storage on or about the Premises, without the prior written permission of Lessor. Lessee agrees to promptly notify Lessor of any violation of this Paragraph 5.2.

5.3 Condition of Premises. Lessee's occupancy of the Premises on commencement of the term shall constitute Lessee's acknowledgement that the Premises are in good and satisfactory condition. Lessee accepts the Premises and this Lease subject to all matters of record and to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises.

## 6. MAINTENANCE, REPAIRS AND ALTERATIONS.

6.1 Lessee's Obligations. Lessee shall maintain and keep in good order, condition and repair the Premises and every part of the Premises, structural and non-structural, (whether or not the portion of the Premises requiring repair, or the means of repairing that portion are reasonably or readily accessible to Lessee, and whether or not the need for those repairs occurs as a result of Lessee's use, any prior use, the elements or the age of that portion of the Premises), including without limitation all plumbing, heating, air conditioning, ventilating, electrical, lighting facilities and equipment within the Premises, fixtures, walls (interior and exterior), floors, windows and doors located within the Premises, and all landscaping, driveways, parking lots, fences and signs located on the Premises and sidewalks and parkways adjacent to the Premises.

6.2 Condition Upon Surrender. On the last day of the term of this Lease, or on any sooner termination, Lessee shall surrender the Premises to Lessor in the same condition as when

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received, broom clean, ordinary wear and tear accepted. Lessee shall repair any damage to the Premises occasioned by the removal or Lessee's trade fixtures, furnishings and equipment pursuant to Paragraph 6.4(a), including the patching and filling of holes and repair of structural damage.

6.3 Lessor's Rights. If Lessee fails to perform Lessee's obligations under this Paragraph 6, Lessor may enter the Premises, after ten days' prior written notice to Lessee, and put the Premises in good order, condition and repair. Any costs incurred by Lessor under this Paragraph 6.3 together with interest at the rate specified in Paragraph 14.4 shall become due and payable as additional rent to Lessor with Lessee's next rental installment, or with respect to costs incurred with respect to a breach of Paragraph 6.2, within thirty days of Lessee's receipt of Lessor's written notice of such costs.

## 6.4 Alterations and Additions.

(a) Lessee shall not, without Lessor's prior written consent, make any alterations, improvements, additions or Utility Installation, as defined below, in or about the Premises, except for non-structural alterations, improvements or additions not exceeding \$10,000 in cost. As used in this Paragraph 6.4 the term "Utility Installation" means bus ducting, power panels, wiring, fluorescent fixtures, space heaters, conduits, air conditioning equipment and plumbing. Lessor may require that Lessee remove any alterations, improvements, additions or Utility Installations at the expiration of the term and restore the Premises to their prior condition. Lessor may require Lessee to provide Lessor, at Lessee's expense, a lien and completion bond in an amount equal to 150% of the estimated cost of any improvements, to insure Lessor against any liability for mechanics' and materialmen's liens and to insure completion of the work. If Lessee makes any alterations, improvements, additions or Utility Installations without the prior approval of Lessor, Lessor may require Lessee to remove them.

(b) Any alterations, improvements, additions or Utility Installation in or about the Premises that Lessee desires to make which require the consent of the Lessor shall be presented to Lessor in written form, with proposed detailed plans. Any consent of Lessor shall be deemed conditioned upon Lessee acquiring a permit to do so from appropriate governmental agencies, the furnishing of a copy

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of that permit to Lessor prior to the commencement of the work and the compliance in a prompt and expeditious manner by Lessee with all conditions of that permit.

(c) Lessee shall pay, when due, all claims for labor or materials furnished to or for Lessee at or for use on the Premises which are or may be secured by any mechanics' or materialmen's lien against any interest in the Premises. Lessee shall give Lessor not less than ten days' notice prior to the commencement of any work in the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises as provided by law. If Lessee in good faith contests the validity of any lien, claim or demand, Lessee shall, at its sole expense, defend itself and Lessor against the same and shall pay and satisfy any adverse judgment that may be rendered on that claim before the enforcement of any lien or judgment against the Lessor or the Premises. If required by Lessor, Lessee shall furnish a surety bond satisfactory to Lessor in an amount equal to the contested lien, claim or demand indemnifying Lessor against liability for, and holding the Premises free from the effect or, that lien or claim. In addition, Lessor may require Lessee to pay Lessor's reasonable attorneys' fees and costs in participating in any action. Nothing in this Lease contained shall be deemed on construed in any way as constituting the consent or request of Lessor, express or implied, by inference or otherwise, to any contractor, sub-contractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or any part of the Premises, or as giving Lessee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanic's or other liens against the interest of Lessor in the Premises.

(d) Unless Lessor requires their removal, as set forth in Paragraph 6.4(a), all alterations, improvements, additions and Utility Installations (whether or not those Utility Installations constitute trade fixtures of Lessee) which may be made on the Premises, shall become the property of Lessor and remain upon and be surrendered with the Premises at the expiration of the term of this Lease. Notwithstanding the provisions of this Paragraph 6.4(d), Lessee's machinery, trade fixtures and equipment, shall remain the property of Lessee and may be removed by Lessee

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subject to the provisions of Paragraph 6.2. Lessor waives any and all rights it may have to Lessee's machinery and equipment, including a statutory or landlord's lien against such property.

## 7. INSURANCE; INDEMNITY.

7.1. Liability Insurance. Lessee shall, at Lessee's expense, obtain and maintain in force during the term of this Lease a policy of comprehensive public liability insurance insuring the Lessor against any liability arising out of the ownership, use, occupancy or maintenance of the Premises. That insurance shall be in an amount not less than Lessor shall from time to time determine, in its reasonable discretion. The limits of that insurance shall not, however, limit the liability of Lessee under this Lease. All bodily injury insurance and property damage liability insurance shall specifically insure the performance by Lessee of the indemnity agreement as to liability for injury to or death of persons and injury or damage to property as set forth in Paragraph 7.4.

## 7.2 Fire Insurance.

(a) Lessee shall, at Lessee's expense, obtain and maintain in force during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, in the amount of the full replacement value of the Premises, providing protection against all perils included within the classification of fire, extended coverage, vandalism and malicious mischief and special extended perils.

(b) Lessee shall maintain in full force and effect on all of its fixtures and equipment in the Premises and the leasehold improvements in the Premises a policy or policies of fire and extended coverage insurance and extended coverage insurance with standard covering endorsement to the extent of at least eighty percent of their insurable value. During the term of this Lease, the proceeds from any such policy or policies of insurance shall be used for the repair or replacement of the fixtures, equipment and leasehold improvements so insured. Lessor shall have no interest in the insurance upon Lessee's equipment, fixtures or leasehold improvements and will sign all documents necessary or proper in connection with the settlement of any claim or loss by Lessee. Lessor will not carry insurance on Lessee's possessions.

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7.3 Waiver of Subrogation. Lessee waives any and all right of recovery against Lessor, or against the officers, employees, agents and representatives of Lessor, or for loss to Lessee or damage to Lessee or its property or the property of others under its control, where that loss or damage is insured against under any insurance policy in force at the time of the loss and damage. Lessee shall, upon obtaining the policies of insurance required under this Lease, give notice to the insurance carrier or carriers that this waiver of subrogation is contained in this Lease.

7.4 Indemnity. Lessee shall indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the Premises, or from Lessee's conduct or from any activity, work or things done, permitted or suffered by Lessee, its agents, contractors, employees or invitees in or about the Premises or elsewhere (including any claims, costs or expenses arising or resulting from the breach of any applicable environmental laws, rules, regulations or ordinances). Lessee shall further indemnify and hold harmless Lessor from and against any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease, or arising from any negligence of the Lessee, or any of Lessee's agents, contractors, employees or invitees and from and against all costs, attorney's fees, expenses and liabilities incurred in the defense of any related claim or any action or proceeding brought on that claim. In case any action or proceeding is brought against Lessor by reason of any such claim, Lessee upon notice from Lessor shall defend that claim at Lessee's expense by counsel satisfactory to Lessor. Lessee, as a material part of the consideration to Lessor, assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause. Lessee waives all claims in respect of damage to property or injury to persons against Lessor.

7.5 Exemption of Lessor from Liability. Lessee agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income from Lessee's business or for damage to the goods, wares, merchandise or other property of Lessee, Lessee's employees, agents, contractors or invitees, whether such damage or injury is caused by or results from fire, steam, or other defects of pipes, sprinklers, wires appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the damage or injury results from conditions arising upon the Premises or from other sources or

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places, and regardless of whether the cause of damage or injury or the means of repairing the same is inaccessible to Lessee. Nothing contained in this Paragraph 7.5 shall be construed to excuse Lessor from liability caused by the gross negligence or willful misconduct of Lessor.

7.6 Insurance Policies. Insurance required to be maintained by Lessee under this Lease shall comply with all requirements of the mortgage on the Premises as of the date of this Lease (the "Mortgage") so long as the Mortgage is in effect and, in addition, shall be in companies holding a General Policyholders Rating of B plus or better as set forth in the most current issue of "Best's Insurance Guide" and shall name Lessor and, at Lessor's request, Lessor's mortgagee or beneficiary as an additional insured on all liability policies and shall name Lessor or, at Lessor's request, Lessor's first mortgagee or beneficiary as loss payee on the policy of insurance required by Paragraph 7.2(a), provided such first mortgagee or beneficiary agrees to customary escrow provisions for making the proceeds of such insurance available to pay costs of repair or replacement of the Premises. Within ten days after the commencement of the term of this Lease, and within five days of Lessor's written request during the term of this Lease, Lessee shall deliver to Lessor copies of policies of insurance required under Paragraph 7.1 and Paragraph 7.2 or certificates evidencing the existence and amounts of that insurance and, for policies required under Paragraphs 7.1 and 7.2(a), with loss clauses designating Lessor and each of the members and managers of Lessor as "additional insured". No policy shall be cancelable or subject to reduction of coverage or other modification except after thirty days prior written notice to Lessor. Lessee shall, within ten days prior to the expiration of any required insurance policies, furnish Lessor with renewals or "binders". If Lessee fails to do so, Lessor may order the insurance and charge the cost to Lessee, which amount shall be payable by Lessee upon demand. Lessee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in Paragraph 7.1 and Paragraph 7.2. If Lessee fails to procure and maintain any insurance as required by this Lease, and fails to cure such failure within ten days after written notice from Lessor, Lessor may, but shall not be required to, procure and maintain that insurance at the expense of Lessee.

## 8. DAMAGE OR DESTRUCTION.

8.1 Partial Damage or Destruction. If the Premises are damaged or partially destroyed to an extent that repair or

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replacement costs (as reasonably determined by Lessor) are less than 50% of the cost of replacement in the event of total destruction, Lessee shall repair the damage or replace the portion of the Premises destroyed as soon as reasonably possible. Repair and replacement pursuant to this Paragraph 8.1 shall be at Lessee's expense, whether or not the damage or destruction was caused by a peril covered or required to be covered by insurance, and Lessee shall have the right to receive the proceeds of any insurance provided under this Lease with respect to that damage or destruction on customary terms providing for prompt reimbursement of costs of such repair and replacement that is reasonable in the circumstances. Repairs and replacement pursuant to this Paragraph 8.1 shall be considered alterations which require the consent of Lessor for the purposes of Paragraph 6.4, which consent shall not be withheld unreasonably.

8.2 Substantial Damage or Destruction. If the Premises are damaged or destroyed, in either case to an extent that repair or replacement costs (as reasonably determined by Lessor) are 50% or more, but less than 90%, of the cost of replacement in the case of total destruction, Lessor may, at its option, (i) by notice to Lessee terminate this Lease as of the date of damage or destruction, in which case Lessor shall have the right to receive the proceeds of any insurance provided under this Lease with respect to that damage or destruction or (ii) require Lessee to repair the damage or replace the destroyed portion of the Premises on the same terms and conditions applicable to partial damage or destruction pursuant to Paragraph 8.1.

8.3 Total Damage or Destruction. If the Premises are damaged or destroyed to the extent that repair or replacement costs (as reasonably determined by Lessor) are 90% or more of the cost of replacement in the case of total destruction, this Lease shall terminate as of the date of destruction, and Lessor shall have the right to receive the proceeds of any insurance provided under this Lease with respect to that damage or destruction.

8.4 Abatement of Rent. If the Premises are partially or substantially destroyed or damaged and Lessee repairs or replaces the Premises pursuant to the provision of Paragraph 8.1 or 8.2, the Rent payable under either Paragraph 4.1 for the period during which repair or restoration continues (but in no event in excess of twelve months) shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired. Except for that abatement, if any, Lessee shall have no claim

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against Lessor for any damage suffered by reason of any damage, destruction, repair or restoration, regardless of the time required for performance of repairs or replacement.

## 9. REAL PROPERTY TAXES.

9.1 Payment of Taxes. Lessee shall pay Lessor an amount equal to all real property taxes applicable to the Premises during the term of this Lease. The real property taxes applicable to any partial calendar year in which this Lease is in effect shall be prorated between Lessee and Lessor. The real property taxes shall be payable on demand prior to the date on which Lessor is obligated to pay such taxes. Lessee may, at its own expense, in its own name or, with Lessor's consent, in the name of the Lessor, take reasonable steps to protest increases in real estate or ad valorem taxes on the Premises, to protest the inclusion of the Premises within any assessment levied on the Premises and to enter into arbitration of such matters. Lessor agrees to cooperate in such matters, provided Lessee reimburses Lessor for its out-of-pocket expenses. Lessee agrees to hold Lessor harmless from and against any liability, cost or expense suffered by Lessor as a result of Lessee's activities under this Paragraph 9.1.

9.2 Definition of "Real Property Tax". As used in this Lease, the term "real property tax" includes any form of general or special assessment, license fee, commercial rental tax, levy, penalty, or tax (other than inheritance or estate taxes), imposed by any authority having the direct or indirect power to tax, including any city, county state or federal government, or any school, agricultural, lighting, drainage or other improvement district, or any environmental surcharge as against any legal or equitable interest of Lessor in the Premises, as against the Lessor's right to rent or other income from the Premises, or as against Lessor's business of leasing the Premises.

## 9.3 Personal Property Taxes.

Lessee shall pay prior to delinquency all assessments, license fees and other charges assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises or elsewhere. When possible, Lessee shall cause those trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. Lessee will



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furnish Lessor with evidence satisfactory to Lessor of payment of amounts required to be paid by this Paragraph 9.3.

## 10. UTILITIES.

(a) Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any applicable taxes. Any deficiency in or failure of utility service shall not entitle Lessee to an abatement of rent.

(b) Lessee, at Lessee's expense, shall keep in good order, condition and repair all plumbing, heating, air conditioning, ventilating, electrical, and lighting facilities and equipment located within, or serving, the Premises.

## 11. ASSIGNMENT, SUBLETTING AND CHANGE IN CONTROLS.

11.1 Assignments. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, or otherwise transfer or encumber all or any part of Lessee's interest in this Lease or in the Premises without the Lessor's prior written consent. Any attempted assignment, transfer, mortgage or encumbrance without Lessor's consent shall be voidable, and shall constitute a breach of this Lease. To the extent permitted by the Mortgage, Lessee may sublet portions of the Premises with the Lessor's consent, which will not be unreasonably withheld.

11.2 No Release of Lessee. Regardless of Lessor's consent, no subletting or assignment shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the Rent, the Additional Rent and other payments required under this Lease and to perform all other obligations to be performed by Lessee under this Lease. The acceptance of payments by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision of this Lease. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting.

11.3 Attorney's Fees. If Lessor consents to a sublease or assignment under Paragraph 11.1, Lessee shall pay Lessor's reasonable attorney's fees incurred in connection with giving consent.

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## 12. DEFAULTS; REMEDIES.

12.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

(a) The vacating or abandonment of the Premises by Lessee.

(b) The failure by Lessee to make any payment of Rent, Additional Rent or any other payment required to be made by Lessee under this Lease, as and when due, where such failure shall continue for a period of ten days after written notice from Lessor to Lessee.

(c) The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in Paragraph 12.1(b) above, where that failure continues for a period of thirty days after written notice from Lessor to Lessee; provided however, that if more than thirty days are reasonably required for the cure of the default, Lessee shall not be deemed to be in default if Lessee commences the cure within the 30-day period and diligently completes it.

(d) (i) The making of any general assignment, or general arrangement for the benefit of creditors; (ii) the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to a bankruptcy (unless, in the case of a petition filed against Lessee, it is dismissed within sixty days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where that seizure is not discharged within thirty days.

12.2 Remedies. In the event of any material default or breach by Lessee, Lessor may at any time, with or without notice or demand and without limiting Lessor in the exercise of any

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right or remedy which Lessor may have by reason of the default or breach:

(a) Terminate this Lease by giving notice of termination to Lessee, in which event Lessee shall immediately surrender the Premises to Lessor and if Lessee fails so to do, Lessor may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Premises and expel or remove Lessee and any other person who may be occupying the Premises, or any part of the Premises, by force, if necessary, without having any civil or criminal liability for that action, and Lessee agrees to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of that termination, whether through inability to relet the Premises on satisfactory terms or otherwise, specifically including, but not limited to (i) all reasonable expenses necessary to relet the Premises which shall include the cost of renovating, repairing and altering the Premises for a new tenant or tenants, advertisements and brokerage fees and (ii) any increase in insurance premiums caused by the vacancy of the Premises. If termination is caused by the failure to pay Rent and/or the abandonment of any substantial portion of the Premises, Lessor may elect, by sending written notice of election to Lessee, to receive liquidated damages in an amount equal to the Rent payable under this Lease for the month during which this Lease is terminated times twelve which shall be in lieu of the payment of loss and damage Lessor may suffer by reason of termination as provided in the preceding sentence but which shall not be in lieu of or reduce in any way any amount (including accrued rent) or damages due to breach of covenant (whether or not liquidated) payable by Lessee to Lessor which accrued prior to the termination of this Lease. Nothing contained in this Lease shall limit or prejudice the right of Lessor to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to, or less than the amount of the loss or damages referred to above.

(b) Enter upon and take possession of the Premises and expel or remove Lessee or any other person who may be occupying the Premises, or any part thereof, by force, if

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necessary, without having any civil or criminal liability for that action and, without terminating this Lease, Lessor may (but shall be under no obligation to) relet the Premises or any part thereof for the account of Lessee, in the name of Lessee or Lessor or otherwise, without notice to Lessee for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such conditions (which may include concessions or free rent) and for such uses as Lessor in its absolute discretion may determine and Lessor may collect and receive any rents payable by reason of that reletting; and Lessee agrees to pay Lessor on demand all reasonable expenses necessary to relet the Premises which shall include the cost of renovating, repairing and altering the Premises for a new tenant or tenants, advertisements and brokerage fees, and Lessee further agrees to pay Lessor on demand any deficiency that may arise by reason of that reletting. Lessor shall not be responsible or liable for any failure to relet the Premises or any part of the Premises or for any failure to collect any rent due upon any such reletting. No re-entry or taking of possession of the Premises by Lessor shall be construed as an election on Lessor's part to terminate this Lease unless a written notice of termination is given to Lessee pursuant to Subparagraph 12.2(a) above.

(c) Enter upon the Premises by force if necessary without having any civil or criminal liability for that action, and do whatever Lessee is obligated to do under the terms of this Lease, and Lessee agrees to reimburse Lessor on demand for any expenses which Lessor may incur in effecting compliance with Lessee's obligations under this Lease and Lessee further agrees that Lessor shall not be liable for any damages resulting to Lessee from such action, whether caused by the negligence of Lessor or otherwise.

(d) Pursue any other remedy available to Lessor.

No action of Lessor, other than express written notice of termination, shall terminate this Lease.

12.3 Effect of Exercise of Remedies. No repossession of or re-entering on the Premises or any part of the Premises pursuant to Paragraph 12.2 above or otherwise and no reletting of the Premises or any part of the Premises pursuant to Paragraph

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12.2(b) shall relieve Lessee of its liabilities and obligations under this Lease, all of which shall survive such repossession or re-entering. Upon any such repossession or re-entering on the Premises or any part of the Premises by reason of the occurrence of an event of default, Lessee will pay to Lessor the rent required to be paid by Lessee.

12.4 Default by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within thirty days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Premises whose name and address has been furnished to Lessee in writing, specifying how Lessor has failed to perform that obligation, provided, however, that if more than thirty days are reasonably required for performance, Lessor shall not be in default if Lessor commences performance within that 30-day period and diligently completes it. Lessee shall additionally afford the holder of any first mortgage or deed of trust covering the Premises a reasonable opportunity to perform on behalf of Lessor. Lessee shall have no right to terminate this Lease except as otherwise specifically provided in this Lease.

## 13. CONDEMNATION.

If the Premises or any portion of the Premises is taken under the power of eminent domain, or sold under the threat of the exercise of this power ("condemnation"), this Lease shall terminate as to any part of the Premises so taken as of the earliest date the condemning authority takes title or possession. If more than fifteen percent of the surface area of the Premises is taken by the condemnation, Lessee may, on written notice to Lessor within ten days after Lessor shall have given Lessee written notice of the taking (or in the absence of that notice, within ten days after the condemning authority takes possession) terminate this Lease as of the date the condemning authority takes possession. If Lessee does not so terminate this Lease, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Rent shall be reduced in the proportion that the floor area of the Premises taken bears to the total area of the Premises. Any reward for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be property of Lessor, whether the award is made as compensation for diminution in value of the leasehold or the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any award for loss of or damage to Lessee's trade

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fixtures and removable personal property. If this Lease is not terminated by reason of a condemnation, Lessor shall repair any damage to the Premises caused by that condemnation except to the extent that Lessee has been reimbursed for that damage by the condemning authority. If the damages received by Lessor in connection with that condemnation are not sufficient to effect repair, Lessor may either make that repair at Lessor's expense or terminate this Lease.

## 14. GENERAL PROVISIONS.

### 14.1 Estoppel Certificate.

(a) Lessee shall at any time upon not less than ten days' prior written notice from Lessor execute, acknowledge and deliver to Lessor a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of the modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessor under this Lease, or specifying the defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises.

(b) Lessee's failure to deliver a statement as and within the time required by subparagraph 14.1(a) shall be conclusive upon Lessee (i) that this Lease is in full force and effect, without modification except as may be represented by Lessor, (ii) that there are no uncured defaults in Lessor's performance, and (iii) that not more than one month's Rent has been paid in advance.

(c) If Lessor desires to finance or refinance the Premises, Lessee agrees to deliver to any lender designated by Lessor such financial statements of Lessee as may be reasonably required by the lender. Those statements shall include the past three years' financial statements of Lessee. All financial statements shall be received by Lessor in confidence and shall be used only for the purposes set forth in this Lease.

14.2 Lessor's Liability. The term "Lessor" as used in this Lease shall mean only the owner at the time in question of the fee title of the Premises. In the event of any transfer of

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title, the Lessor named in this Lease (and in case of any subsequent transfers the then grantor) shall be relieved from and after the date of transfer of all liability with respect to Lessor's executory obligations; provided that any funds in the hands of Lessor or the then grantor at the time of transfer, in which Lessee has an interest, shall be delivered to the grantee. The obligations contained in this Lease to be performed by Lessor shall be binding on Lessor's successors and assigns, only during their respective periods of ownership.

14.3 Severability. The provisions of this Lease shall be interpreted where possible in a manner to sustain their legality and enforceability. The unenforceability of any provision of this Lease in a specific situation shall not effect the enforceability of that provision in another situation or the remaining provisions of this Lease.

14.4 Interest. Any amount due to Lessor not paid when due shall bear interest at a rate equal to the lesser of the prime rate (as published by the Wall Street Journal) plus 2% per month or the greatest rate allowed by applicable law. Payment of such interest shall not excuse or cure any default by Lessee under this Lease.

14.5 Time of Essence. Time is of the essence.

14.6 Captions. Article and paragraph captions are not a part of this Lease.

14.7 Incorporation of Prior Agreements; Amendments. This Lease contains all agreements of the parties with respect to any matter mentioned in this Lease. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified only by a writing, signed by the parties in interest at the time of the modification. Lessee agrees to consent to any amendment to this Lease reasonably required by a potential mortgagee of the Premises, except any such amendment which would materially adversely affect Lessee's rights under this Lease or materially increase Lessee's obligations under this Lease. Lessee agrees to consent to any amendment to this Lease reasonably requested by a potential mortgagee of the Premises if such amendment would not adversely affect Lessee's rights under this Lease or increase Lessee's obligations under this Lease.

14.8 Notices.

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(a) Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by regular mail, postage prepaid addressed to Lessor and Lessee respectively at the addresses set forth after their signatures at the end of this Lease.

(b) Notices given under the terms of this Lease shall be deemed delivered when received for (or deliberately refused) by the addressee either (i) after deposit in the United States mail, certified mail, return receipt requested and obtained or (ii) by local or air express courier, with a receipt for delivery obtained, or (iii) by personal service, with a receipt for delivery obtained.

(c) Either party may, by like notice to the other party, at any time and from time to time, designate a different address to which notices shall be sent.

14.9 Waivers. No waiver by Lessor of any provision of this Lease shall constitute a waiver of any other provisions of this Lease or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to or approval of any act shall not render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent by Lessor, and any failure by Lessor to enforce or demand strict compliance with any provision of this Lease, shall not be a waiver of any breach by Lessee of any provision of this Lease.

14.10 Recording. Lessee shall not record this Lease without Lessor's prior written consent, and any recordation without consent shall, at the option of Lessor, constitute a non-curable default by the Lessee. Either party shall upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes.

14.11 Holding Over. If Lessee remains in possession of the Premises or any part of the Premises after the expiration of the term of this Lease without the express written consent of Lessor, that occupancy shall be a tenancy from month to month at a rental in the amount of 150% of the last monthly Rent plus all other Additional Rent and other charges payable under this Lease.

14.12 Cumulative Remedies. No remedy or election granted to or provided for Lessor under this Lease shall be



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deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. In addition to other remedies provided in this Lease, Lessor shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this Lease, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Lease, or to any other remedy allowed to Lessor at law or in equity.

14.13 Covenants and Conditions. Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition.

14.14 Binding Effect: Choice of Law. Subject to any provision of this Lease restricting assignment or subletting by Lessee and subject to the provisions of Paragraph 14.2, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of Illinois.

14.15 Lessor's Access. Lessor and Lessor's agents may enter the Premises at reasonable times for the purpose of inspecting the Premises, showing the Premises to prospective purchasers or lenders, and making such alterations, repairs, and improvements or additions to the Premises as Lessor considers necessary or desirable. Lessor may at any time place on or about the Premises any ordinary "For Sale" signs and Lessor may at any time during the last one hundred eighty days of the term of this Lease place on or about the Premises any ordinary "For Sale" signs, all without rebate of rent or liability to Lessor. Lessor shall retain a key to all locked portions of the Premises (except vaults and locked file or storage cabinets) at all times. Lessee may not change locks upon the Premises without Lessor's prior consent.

14.16 Corporate Authority. Each individual executing this Lease on behalf of Lessee represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of Lessee in accordance with the organizational documents of Lessee, and that this Lease is binding upon Lessee in accordance with its terms and that the Lessee is duly qualified to transact business in the State of Illinois.

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14.17 Force Majeure. Any prevention, delay or stoppage due to strikes, labor disputes, acts of God, inability to obtain labor or materials, governmental restriction, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by that party for a period equal to the duration of the prevention, delay or stoppage, except the obligations imposed with regard to the payment of rent and other charges to be paid by Lessee pursuant to this Lease.

14.18 Quiet Possession. Lessor agrees that Lessee upon paying the rent and performing the covenants and conditions of this Lease may quietly have, hold and enjoy the Premises during the term of this Lease or any extension of this Lease.

14.19 Attorneys' Fees. Notwithstanding anything in this Lease to the contrary, in the event that any action or proceeding is brought to enforce any term, covenant or condition of this Lease on the part of Lessor or Lessee, the prevailing party in such litigation shall be entitled to recover reasonable attorneys' fees to be fixed by the court in such action or proceeding. Furthermore, both Lessor and Lessee shall be obligated to pay the attorneys' fees and expenses of the other party is made a party to litigation solely because of its being a party to this Lease without any allegation that such other party is in breach of this Lease or has participated in any wrongful conduct.

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In Witness Whereof, the undersigned have executed this Net Lease on the date first above written.

**Perutz Properties, LLC, Lessor**

By: 

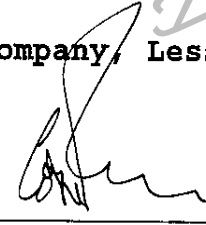
Name: Simon G.A. Perutz

Title: Manager

Address:

7420 N. Lehigh Avenue  
Niles, Illinois

**Nimlok Company, Lessee**

By: 

Name: Gerald E.A. Perutz

Title: Chairman

Address:

7420 N. Lehigh Avenue  
Niles, Illinois

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## EXHIBIT A

### DESCRIPTION OF THE PREMISES

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A large, stylized handwritten signature in black ink, consisting of several loops and flourishes, is written across the center of the page. The signature is partially obscured by a diagonal watermark.

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**EXHIBIT "B" TO UCC FINANCING STATEMENT**  
**JPMorgan Chase Bank, N.A., as Secured Party, and**  
**Perutz Properties, LLC, as Debtor**

LEGAL DESCRIPTION

THE SOUTH 425 FEET OF THE EAST 18.5 ACRES (EXCEPT THE WEST 350.0 FEET THEREOF) OF THE NORTHEAST ¼ OF THE SOUTHWEST ¼ OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THAT PART OF THE SOUTH 425 FEET OF LOT 5 OF MCDONNELL'S SUBDIVISION OF THE SOUTHEAST ¼ OF SECTION 29, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE WESTERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD, IN COOK COUNTY, ILLINOIS.

PIN NUMBERS:

10-29-303-017-0000  
10-29-400-008-0000

COMMON ADDRESS:

7420 North Lehigh Avenue  
Niles, Illinois 60714

Doc ID 406265.1

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