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Doc#: 0504603134  
Eugene "Gene" Moore Fee: \$74.50  
Cook County Recorder of Deeds  
Date: 02/15/2005 04:34 PM Pg: 1 of 26

THIS INSTRUMENT PREPARED BY AND AFTER RECORDING RETURN TO:

Ernest D. Simon, Esq.  
Sachnoff & Weaver, Ltd.  
30 South Wacker Drive  
Suite 2900  
Chicago, IL 60606

COMMON ADDRESS OF THE PREMISES: 5620 W. 120th Street, Alsip, Illinois 60658  
Cook County, Illinois

P.I.N.: 24-29-201-032-0000

## SECOND MORTGAGE

THIS SECOND MORTGAGE (this "Mortgage") is made as of February 15, 2005 by Ronald Presbitero as Trustee under Declaration of Trust dated August 5, 1992 a/k/a Ronald Presbitero Revocable Trust (the "Mortgagor") having an address at 5620 W. 120th Street, Alsip, Illinois 60658 to Fifth Third Bank, N.A. (the "Bank") having an address 101 W. Stephenson, Freeport, Illinois 61032.

On November 9, 2004, a Judgment Order was entered in the case of Fifth Third Bank, Chicago v. Presbitero Drywall Co., Inc., Presbitero Printing Co., Inc., and Ronald Presbitero, individually, in the amount of \$5,647,300.30 plus interest at the rate of 9% per annum. Ronald Presbitero is beneficiary of Mortgage. A copy of the Judgment Order (the "Judgment") is attached hereto as Exhibit A.

In order to secure (i) the payment of the principal indebtedness under the Judgment and interest and premiums on the principal indebtedness under the Judgment; (ii) the payment of all other sums which may be at any time due under the Judgment ("Indebtedness"); and to secure the performance and observance of all the covenants, agreements and provisions contained in this Mortgage, the Judgment; and to charge the properties, interests and rights hereinafter

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TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Mortgagee and forming a part of or used in connection with the Land or the Improvements, including, but without limitation, any and all air conditioners, antennae, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, furnaces, furnishing, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks,

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

TOGETHER WITH all income from the Premises to be applied against the Indebtedness, provided, however, that Mortgagee may, so long as no Default has occurred hereunder, collect income as it becomes due, but not more than one (1) month in advance thereof;

TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Land, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagee of, in and to the same;

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

THE LAND located in the State of Illinois and legally described in Exhibit B attached hereto (the "Land");

described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagee DOES HEREBY MORTGAGE AND CONVEY unto Bank, its successors and assigns forever, the following described property, rights and interests (which are referred to herein as the "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Land (as hereinafter defined) and not secondarily;

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PROVIDED, NEVERTHELESS, that if Mortgagor shall pay in full when due the indebtedness and shall timely perform and observe all of the provisions herein and in the Judgment provided to be performed and observed by the Mortgagor, and the lien of this Mortgage and the interest of Bank in the Premises shall be released at the cost of Mortgagor but shall otherwise remain in full force.

MORTGAGOR COVENANTS that it is lawfully seized of the Land, that the same is unencumbered (other than that certain Mortgage made by Mortgagor to Harris Bank-Argo dated August 22, 1996 and recorded on August 22, 1996 as Document 96644843 in the Cook County, Illinois Recorder's Office [the "First Mortgage"]), and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend the Land and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

TO HAVE AND TO HOLD the Premises, unto the Bank, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Default as hereinafter defined; the Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois.

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Mortgagor hereby appoints Bank its attorney-in-fact and authorizes Bank, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Bank, of the indebtedness, notwithstanding the fact that the same may not then be due or that the indebtedness is otherwise adequately secured.

sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Land or the Improvements shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Bank as a secured party and Mortgagor as Debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 14 hereof; and

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3.2.1. Such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Mechanic's Lien;

3.2. *Contest of Mechanic's Liens Claims.* Notwithstanding the foregoing prohibition against encumbrances, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Lien and defer payment and discharge thereof during the pendency of such contest, provided that

3.1. *Prohibition.* Subject to the provisions of Paragraph 4 hereof, Mortgagor shall not create or suffer or permit any encumbrance to attach to or be filed against the Premises or any part thereof, excepting only (i) the lien of real estate taxes and assessments not due, (ii) any liens and encumbrances of Bank, (iii) any other lien or encumbrance permitted by the terms hereof, and (iv) the First Mortgages.

### 3. *Liens.*

2. *Maintenance, Repair, Compliance with Law, Use, etc.* Mortgagor shall (a) promptly repair or restore, any portion of the Improvements which may become damaged whether or not proceeds of insurance are available or sufficient for that purpose; (b) keep the Premises in good condition and free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any Improvements at any time in the process of erection upon the Premises; (e) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (g) comply with any restrictions of record with respect to the Premises and the use thereof; and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy; and (h) cause the Premises to be managed in a competent and professional manner. Without the prior written consent of Bank, Mortgagor shall not cause, suffer or permit any (i) material alterations of the Premises except as required by law or except as permitted or required to be made by the terms of any Leases approved by Bank; (ii) change in the intended use or occupancy of the Premises for which the Improvements were constructed; (iii) change in the identity of the person or firm responsible for managing the Premises; (iv) zoning reclassification with respect to the Premises; (v) unlawful use of, or nuisance to exist upon, the Premises; or (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Premises, other than use restrictions contained or provided for in Leases approved by Bank.

1. *Payment of Indebtedness.* Mortgagor shall (a) pay the Indebtedness by no later than October 1, 2005; (b) make payments of interest only on the unpaid principal balance at the rate of 9% per annum on the 1<sup>st</sup> day of March 2005 and the 1<sup>st</sup> day of each month thereafter until the Indebtedness is paid in full; and (c) punctually perform and observe all of the requirements of the Judgment. Mortgagor shall have the privilege of making prepayments on the principal of the Judgment (in addition to the required payments thereunder) without notice or penalty.

MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

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4.2.3. Mortgagor has deposited with Bank, at such place as Bank may from time to time in writing designate, a sum of money or other security acceptable to Bank that, when added to the monies or other security, if any, deposited with Bank pursuant to Paragraph 8 hereof, is sufficient, in Bank's judgment, to pay in full such contested Tax, including interest and penalties, and shall increase such deposit to cover additional interest and penalties whenever

costs; and

4.2.2. Mortgagor has notified Bank in writing of the intention of Mortgagor to contest the same before any Tax has been increased by any interest, penalties, or

same;

4.2.1. Such contest shall prevent the collection of the Taxes so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the

contest the validity or amount of any such Taxes, provided that

4.2. *Contest.* Mortgagor may, in good faith and with reasonable diligence,

4.1. *Payment.* Mortgagor shall pay when due, all taxes, assessments and charges of every kind levied or assessed against the Premises or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Mortgagor, and Mortgagor shall furnish to Bank receipts therefor on or before the date the same are due, and shall discharge any claim or lien relating to taxes upon the Premises, other than matters expressly permitted by the terms hereof.

## 4. Taxes.

Bank may, at its option, pay the Deposits, or any part thereof, to the Mechanic's Lien claimant if Mortgagor (i) fails to maintain sufficient Deposits or (ii) fails to act in good faith or with reasonable diligence in contesting the Mechanic's Lien claims. If the Mechanic's Lien contest is resolved in favor of the claimant and Mortgagor is not in default hereunder, Bank shall pay the Deposits, or any part thereof, to the claimant upon Bank's receipt of evidence satisfactory to Bank of the amount to be paid. Bank shall pay any remaining Deposits to Mortgagor, provided Mortgagor is not in default hereunder.

3.2.3. Mortgagor shall have either obtained a title insurance endorsement over such Mechanic's Lien insuring Bank against loss by reason of the Mechanic's Lien or Mortgagor shall have deposited with Bank at such place as Bank may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the judgment, a sum of money (the "Deposits") which shall be sufficient in the judgment of Bank to pay in full such Mechanic's Lien and all interest which might become due thereon. Mortgagor shall increase the Deposits whenever, in the judgment of Bank, such increase is advisable. The Deposits are to be held without any allowance of interest.

to contest such Mechanic's Lien; and

3.2.2. Within ten (10) days after Mortgagor has been notified of the filing of such Mechanic's Lien, Mortgagor shall have notified Bank in writing of Mortgagor's intention



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6.1. Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement in amounts not less than the full insurable replacement value of all improvements, fixtures and equipment from time to time on the Premises and bearing a replacement cost agreed amount endorsement;

6. *Insurance Coverage*. Mortgagee will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Bank may from time to time require, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

5. *Change in Tax Laws*. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Bank, Mortgagee or the Premises, any tax is imposed or becomes due in respect of the recording of this Mortgage, Mortgagee shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Bank the payment of the whole or any part of the taxes required to be paid by the Mortgagee, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages, or the interest of Bank in the Premises, or the manner of collection of taxes, so as to affect this Mortgage, the indebtedness of Bank, then, and Mortgagee, upon demand by Bank, shall pay such taxes, or reimburse Bank therefor on demand, unless Bank determines, in Bank's exclusive judgment, that such payment or reimbursement by Mortgagee is unlawful; in which event the indebtedness shall be due within thirty (30) days after written demand by Bank to Mortgagee. Nothing in this Paragraph 5 shall require Mortgagee to pay any income, franchise or excise tax imposed upon Bank, excepting only such which may be levied against the income of Bank as a complete or partial substitute for taxes required to be paid by Mortgagee pursuant hereto.

If Mortgagee fails to (i) prosecute such contest with reasonable diligence or (ii) maintain sufficient funds on deposit as hereinabove provided, Bank may, at its option, apply the monies and liquidate any securities deposited with Bank, in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, Mortgagee shall forthwith, upon demand, either deposit with Bank a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Bank has applied funds on deposit on account of such Taxes, restore such deposit to an amount satisfactory to Bank. Provided that Mortgagee is not then in default hereunder, Bank shall, after final disposition of such contest and upon Mortgagee's written request and Mortgagee's delivery to Bank of an official bill for such Taxes, apply the money so deposited in full payment of such Taxes or that part thereof then unpaid, together with all penalties and interest thereon.

Bank deems such an increase advisable. Any deposits made hereunder are to be held without any allowance of interest thereon.

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8.1. In case of loss or damage covered by any of the Insurance Policies, Bank (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) may at its option either (i) settle and adjust any claim under such Insurance Policies without the consent of Mortgagee, or (ii) allow Mortgagee to settle and adjust such claim without the consent of Bank; provided that in either case Bank shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by Bank in the adjustment and collection of insurance proceeds shall be so much additional indebtedness, and shall be reimbursed to Bank upon demand or may be deducted by Bank from said insurance proceeds prior to any other application thereof. Each insurance company which has issued an

8. Proceeds of Insurance. Mortgagee will give Bank prompt notice of any loss or damage to the Premises, and:

7. Insurance Policies. All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Bank. All Insurance Policies shall (i) include, when available, non-contributing Bank endorsements in favor of and with loss payable to Bank, (ii) include standard waiver of subrogation endorsements, (iii) provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Bank and (iv) provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Bank. Mortgagee will deliver all Insurance Policies premium prepaid, to Bank and, will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagee concurrent in form or contributing in the event of loss with the Insurance Policies. Insurance Policies maintained by tenants under the Leases may, if in conformity with the requirements of this Mortgage and if approved by Bank, be presented to Bank in satisfaction of Mortgagee's obligation to provide the insurance coverages provided by those Insurance Policies.

6.7. The types and amounts of coverage as are customarily maintained by owners or operators of like properties.

6.6. If the Federal Insurance Administration (FIA) has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available; and

6.5. Steam boiler, machinery and pressurized vessel insurance (if applicable to the Premises);

6.4. Rental or business interruption insurance in amounts sufficient to pay, for a period of up to one (1) year, all amounts required to be paid by Mortgagee pursuant to the judgment and this Mortgage;

6.3. Employer's Liability Insurance;

6.2. Comprehensive public liability liability against death, bodily injury and property damage in an amount not less than \$2,000,000;

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10. *Condemnation and Eminent Domain.* All awards (the "Awards") made to the present, or any subsequent, owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, are hereby assigned by Mortgagee to Bank. Bank may collect the Awards from the condemnation authorities, and may give appropriate acquittances therefor. Mortgagee shall immediately notify Bank of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Premises and shall deliver to Bank copies of all papers served in connection with any such proceedings. Mortgagee shall make, execute and deliver to Bank, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by Bank for the purpose of assigning the Awards to Bank. If any

9. *Disbursement of Insurance Proceeds.* Insurance proceeds held by Bank for restoration or repairing of the Premises shall be disbursed from time to time upon Bank being furnished with (i) evidence satisfactory to it of the estimated cost of the restoration or repair, (ii) funds sufficient in addition to the proceeds of insurance, to fully pay for the restoration or repair and to pay debt service on the Loan during the period of restoration or repair, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as Bank may require and approve. No payment made prior to the final completion of the restoration or repair shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Bank in its sole judgment; funds deposited hereunder other than insurance proceeds shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of Bank, together with funds deposited or irrevocably committed, to the satisfaction of Bank, by or on behalf of Mortgagee to pay the cost of such repair or restoration, shall be sufficient in the reasonable judgment of Bank to pay the entire unpaid cost of the restoration or repair, free of all liens or claims for lien. Any surplus remaining out of insurance proceeds held by Bank after payment of such costs of restoration or repair shall be paid to Mortgagee, provided Mortgagee is not in default hereunder. No interest shall be allowed to Mortgagee on account of any proceeds of insurance or other funds held by Bank.

8.3. Whether or not insurance proceeds are made available to Mortgagee, Mortgagee shall restore or repair the Improvements, to be of at least equal value, and of substantially the same character as prior to such casualty, all to be effected in accordance with plans, specifications and procedures approved in advance by Bank, and Mortgagee shall pay all costs of such restoring or repairing.

8.2. Bank shall, in its sole discretion, elect to apply the proceeds of Insurance Policies consequent upon any casualty either (i) to reduce the Indebtedness; or (ii) to reimburse Mortgagee for the cost of restoring or repairing the Premises subject to the conditions and in accordance with the provisions of Paragraph 10 hereof. In the event Bank applies the proceeds of Insurance Policies to the Indebtedness and such proceeds do not discharge that Indebtedness in full, the entire Indebtedness shall become immediately due and payable with interest thereon.

Insurance Policy is hereby authorized and directed to make payment for all losses covered by any Insurance Policy to Bank alone, and not to Bank and Mortgagee jointly.



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11. *Assignment of Rents, Leases and Profits.* To further secure the Indebtedness, Mortgagee hereby assigns unto Bank all of the rents, leases and income now or hereafter due under any Leases agreed to by Mortgagee or the agents of Mortgagee or which may be made or agreed to by Bank under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, rents and income thereunder, to Bank. Mortgagee hereby irrevocably appoints Bank its attorney-in-fact (this power of attorney and any other powers of attorney granted herein are powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Bank) with or without taking possession of the Premises as provided in Paragraph 18 hereof, to lease any portion of the Premises to any party upon such terms as Bank shall determine, and to collect all rents due under each of the Leases, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Bank would have upon taking possession pursuant to the provisions of Paragraph 18 hereof. Mortgagee represents that no rent has been or will be paid by any person in possession of any portion of the Premises for more than one installment in advance and that the payment of none of the rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Mortgagee. Mortgagee waives any rights of set-off against any person in possession of any portion of the Premises. Mortgagee agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing herein contained shall be construed as constituting Bank a mortgagee in possession in the absence of the taking of actual possession of the Premises by Bank pursuant to Paragraph 18 hereof. Mortgagee expressly waives all liability of Bank in the exercise of the powers herein granted Bank. Mortgagee shall assign to Bank all future leases upon any part of the Premises and shall execute and deliver, at the request of Bank, all such further assurances and assignments in the Premises as Bank shall from time to time require. Although the assignment contained in this paragraph is a present assignment, Bank shall not exercise any of the rights or powers conferred upon it by this paragraph until a Default shall exist under this Mortgage. Within thirty (30) days of Bank's written demand, Mortgagee will furnish Bank with executed copies of each of the Leases and

portion of or interest in the Premises is taken by condemnation or eminent domain, and the remaining portion of the Premises is not, in the judgment of Bank, a complete economic unit having equivalent value to the Premises as it existed prior to the taking, then, at the option of Bank, the entire Indebtedness shall immediately become due. After deducting from the Award, for such taking all of its expenses incurred in the collection and administration of the Award, including attorneys' fees, Bank shall be entitled to apply the net proceeds toward repayment of such portion of the Indebtedness as it deems appropriate without affecting the lien of this Mortgage. In the event of any partial taking of the Premises or any interest in the Premises, which, in the judgment of Bank, leaves the Premises as a complete economic unit having equivalent value to the Premises as it existed prior to the taking, and provided Mortgagee is not in default hereunder, the Award shall be applied to reimburse Mortgagee for the cost of restorer and rebuilding the Premises in accordance with plans, specifications and procedures approved in advance by Bank, and such Award shall be disbursed in the same manner as is provided above for the application of insurance proceeds. If all or any part of the Award is not applied for reimbursement of such restoration costs, the Award shall at the option of Bank be applied against the Indebtedness, in such order or manner as Bank shall elect, or paid to Mortgagee.

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13.8. This Mortgage is intended to be a financing statement within the purview of Section 9-102(39) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagee

13.7. The terms and provisions contained in this Paragraph 14 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

13.6. Upon Default hereunder, Bank shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagee can give authority therefor with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Bank shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagee's right of redemption in satisfaction of Mortgagee's obligations, as provided in the Code. Bank may require Mortgagee to assemble the Collateral and make it available to Bank for its possession at a place to be designated by Bank which is reasonably convenient to both parties. Bank will give Mortgagee at least twenty (20) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagee hereinafter set forth at least twenty (20) days before the time of the sale or disposition. Bank may buy at any public sale. Bank may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Bank so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by Bank, shall be applied against the indebtedness in such order or manner as Bank shall select. Bank will account to Mortgagee for any surplus realized on such disposition.

13.5. No Financing Statement (other than Financing Statements showing Bank as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagee will at its own cost and expense, upon demand, furnish to Bank such further information and will execute and deliver to Bank such financing statements and other documents in form satisfactory to Bank and will do all such acts as Bank may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Bank and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagee will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices whenever filing or recording is deemed by Bank to be desirable.

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14.4. All or any part of the partnership or joint venture interest, as the case may be, of a partnership Mortgagee or a Trustee Mortgagee if Mortgagee or such beneficiary is a partnership or a joint venture; in each case whether any such conveyance, sale, assignment, transfer, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Paragraph 15 shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, or (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives.

14.3. Any shares of capital stock of a corporate Mortgagee, a corporation which is a beneficiary of a trustee Mortgagee, a corporation which is a general partner in a partnership which is a general partner in a partnership which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealer's Automated Quotation System),

14.2. All or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagee is acting, if Mortgagee is a Trustee;

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

14. *Restrictions on Transfer.* Mortgagee shall not, without the prior written consent of Bank, effect, direct, transfer, assign, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

13.9. To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagee or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagee, as lessor thereunder.

(Debtor) and Bank (Secured Party) are hereinabove set forth. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located. Mortgagee is the record owner of the Premises.

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15. *Defaults*. If one or more of the following events (herein called "*Defaults*") shall occur:

15.1. If any default be made in the due and punctual payment of the monies required under the judgment or under this Mortgage, when due;

15.2. Except as provided under Paragraphs 16.3, 16.4 and 16.5 hereof, if default shall exist for any reason other than the nonpayment of money hereunder or under any other document or instrument regulating, evidencing, securing or guaranteeing any of the Indebtedness, and in each case after the expiration of the applicable cure period or if no express cure period is provided then in each case if such default shall continue for ten (10) days after notice thereof by Bank to Mortgage;

15.3. The occurrence of a Prohibited Transfer;

15.4. If any of the information contained in any documentation provided to Bank by Mortgage in conjunction with the Indebtedness shall not be true, accurate and complete in all material respects;

15.5. If (and for the purpose of this Subparagraph 16.5 only, the term Mortgage shall mean not only Mortgage, but also any beneficiary of a trustee Mortgage, any general partner in a partnership Mortgage or in a partnership which is a beneficiary of a trustee Mortgage, any owner of more than ten percent (10%) of the stock in a corporate Mortgage or a corporation which is the beneficiary of a trustee Mortgage and each person who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness or any of the covenants or agreements contained herein):

15.5.1. Mortgage shall file a voluntary petition in bankruptcy or for relief under the Federal Bankruptcy Act or any similar state or federal law;

15.5.2. Mortgage shall file a pleading in any proceeding admitting insolvency;

15.5.3. Within thirty (30) days after the filing against Mortgage of any involuntary proceeding under the Federal Bankruptcy Act or similar state or federal law, such proceedings shall not have been vacated;

15.5.4. A substantial part of Mortgage's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon;

15.5.5. Mortgage shall make an assignment for the benefit of creditors or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises;

15.5.6. Any default under the First Mortgages;



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17. *Right of Possession.* When the Indebtedness shall become due, whether by acceleration or otherwise, or if Bank has a right to institute foreclosure proceedings, Mortgagee shall, forthwith upon demand of Bank, surrender to Bank, and Bank shall be entitled to be placed in possession of the Premises as provided in the Act, and Bank, in its discretion and pursuant to court order, may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Mortgagee or the then owner of the Premises relating thereto, and may exclude Mortgagee, such owner, and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagee or such owner, or in its own name as Bank and under the powers herein granted:

16. *Foreclosure.* When the Indebtedness shall become due, whether by acceleration or otherwise, or should the Guarantor be in default under the Guaranty, Bank shall have the right to foreclose the lien hereof in accordance with the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-101, 201, et seq. (1987) (the "Act") and to exercise any other remedies of Bank provided in the judgment, this Mortgage, the Guaranty, the other Loan Documents, or which Bank may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Bank for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Bank may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of Bank and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Bank in any litigation or proceedings affecting this Mortgage, the judgment or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Mortgagee, with interest thereon at the Default Rate until paid.

15.5.7. Any order appointing a receiver, trustee or liquidator of Mortgagee or all or a major part of Mortgagee's property or the Premises is not vacated within thirty (30) days following the entry thereof;

then Bank may, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Bank hereunder, declare, without further notice, all Indebtedness immediately due with interest thereon at the Default Rate, whether or not such Default be thereafter remedied by Mortgagee, and Bank may immediately proceed to foreclose this Mortgage and to exercise any right provided by this Mortgage, the judgment, the other Loan Documents or otherwise.



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18. *Receiver*. Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint upon petition of Bank, and at Bank's sole option, a receiver of the Premises pursuant to the Act. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagee at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Bank hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to make leases to be binding upon

Without limiting the generality of the foregoing, Bank shall have all power, authority and duties as provided in the Act. Nothing herein contained shall be construed as constituting Bank a mortgagee in possession in the absence of the actual taking of possession of the Premises.

17.6. apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness in such order and manner as Bank shall select.

17.5. make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Bank, to insure and reinsure the Property and all risks incidental to Bank's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits,

17.4. extend or modify any then existing Leases and make new Leases of all or any part of the Premises, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond October 1, 2005 and the issuance of a deed to a purchaser at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagee, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser at any foreclosure sale, notwithstanding any redemption from sale, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

17.3. elect to disaffirm any Lease or sublease of all or any part of the Premises made subsequent to this Mortgage without Bank's prior written consent;

17.2. cancel or terminate any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Mortgagee to cancel the same;

17.1. hold, operate, manage, and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as Bank may deem necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagee;

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19. *Foreclosure Sale.* Except to the extent otherwise required by the Act, the proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, all items which under the terms hereof constitute indebtedness additional to the principal and interest evidenced by the judgment in such order as Bank shall elect with interest thereon as herein provided; Second, all principal and interest remaining unpaid on the judgment in such order as Bank shall elect; Third, all indebtedness owing under the Guaranty and lastly any surplus to Mortgagee and its successors and assigns, as their rights may appear.

20. *Insurance during Foreclosure.* All rights and powers of Bank under Paragraphs 9 and 10 hereof shall, from and after the entry of judgment of foreclosure, continue in the Bank as decree creditor until confirmation of sale. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors. In the event of foreclosure sale, Bank may, without the consent of Mortgagee, assign any Insurance Policies to the purchaser at the sale, or take such other steps as Bank may deem advisable to protect the interest of such purchaser.

all parties, including the mortgagee, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure, as provided in the Act. In addition, such receiver shall also have the power to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the judgment and beyond the date the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other provisions to be contained therein, shall be binding on Mortgagee and all the persons whose interest in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagee, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in payment in whole or in part of (a) the indebtedness or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

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22. *Bank's Performance of Mortgagor's Obligations.* In case of Default, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof and during any period of redemption, Bank may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any manner deemed expedient to Bank. Bank may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs, including management fees, of every kind in connection therewith, so that the Premises shall be usable for their intended purposes. All such monies paid and expenses incurred, including attorneys' fees, shall be so much additional Indebtedness, whether or not the Indebtedness, as a result thereof, shall exceed the face amount of the Judgment, and shall become immediately due with interest thereon at the Default Rate specified in the Judgment. Inaction of Bank shall never be considered as a waiver of any right accruing to it on account of any Default nor shall the provisions of this Paragraph or any exercise by Bank of its rights hereunder prevent any default from constituting a Default. Bank, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement

21. *Waiver of Right of Redemption and Other Rights.* To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Mortatorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in force to redeem the property or any part thereof, or relating to the marshalling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights to redemption and reinstatement under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise granted or delegated to Bank, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Judgment. If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Paragraph 22 (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons named above. Mortgagor acknowledges that the Premises do not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

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or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs thereof, may do so in such amounts and to such persons as Bank may deem appropriate. Nothing contained herein shall be construed to require Bank to advance monies for any purpose.

23. *Rights Cumulative.* Each right herein or in any of the other Loan Documents conferred upon Bank is cumulative and in addition to every other right provided by law or in equity, and Bank may exercise each such right in any manner deemed expedient to Bank. Bank's exercise or failure to exercise any right shall not be deemed a waiver of that right or any other right or a waiver of any default. Except as otherwise specifically required herein, Bank is not required to give notice of its exercise of any right given to it by this Mortgage.

24. *Successors and Assigns.*

24.1. *Holder of the Judgment.* This Mortgage and each provision hereof shall be binding upon Mortgagee and its successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of Bank and its successors and assigns. Wherever herein Bank is referred to, such reference shall be deemed to include the holder from time to time of the Judgment; and each such holder of the Judgment shall have all of the rights afforded hereby, and may enforce the provisions hereof, as fully as if Bank had designated such holder of the Judgment herein by name.

24.2. *Covenants Run with Land; Successor Owners.* All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. If the ownership of Premises or any portion thereof becomes vested in a person other than Mortgagee, Bank may, without notice to Mortgagee, deal with such person with reference to this Mortgage and the Indebtedness in the same manner as with Mortgagee without in any way releasing Mortgagee from its obligations hereunder. Mortgagee will give immediate written notice to Bank of any conveyance, transfer or change of ownership of the Premises, but nothing in this paragraph shall vary the effectiveness of the provisions of Paragraph 15 hereof.

25. *Effect of Extensions and Amendments.* If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security or guarantees therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Bank, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Bank to amend, modify, extend or release the Judgment, this Mortgage or any other Loan Document, in each case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.



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26. *Environmental Matters.* Mortgagee represents that it is currently in compliance with, and covenants and agrees that, it will manage and operate the Premises and will cause each tenant to occupy its demised portion of the Premises in compliance with, all federal, state and local laws, rules, regulations and ordinances relating to air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). Mortgagee further covenants and agrees that it shall not install or permit to be installed in the Premises asbestos or any substance containing asbestos and deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders respecting such material. Mortgagee shall remove from the Premises and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulation or ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between Mortgagee, Bank and/or any third party with respect to hazardous or toxic materials. Mortgagee shall send to Bank within five (5) days of receipt thereof, any citation, notice of violation or other notice of potential liability from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. Mortgagee agrees to indemnify, defend with counsel reasonably acceptable to Bank (at Mortgagee's sole cost), and hold Bank harmless against any claim, response or other costs, damages, liability or demand (including, without limitation, reasonable attorneys' fees and costs incurred by Bank) arising out of any claimed violation by Mortgagee of any of the foregoing laws, regulations or ordinances or breach of any of the foregoing covenants or agreements. The foregoing indemnity shall survive repayment of the Indebtedness.

27. *Future Advances.* At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Indebtedness the payment of all liquidated damages, attorneys' fees, expenses and advances due to or incurred by Bank in connection with the Indebtedness, all in accordance with this Mortgage, provided, however, that in no event shall the total amount of the Indebtedness, including loan proceeds disbursed plus any additional charges, exceed two hundred percent (200%) of the face amount of the Judgment.

28. *Execution of Separate Security Agreements, Financing Statements, etc.; Estoppel Letter.* Mortgagee will do, execute, acknowledge and deliver all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Bank shall require for the better assuring, conveying, mortgaging, assigning and confirming unto Bank all property mortgaged hereby or property intended so to be, whether now owned by Mortgagee or hereafter acquired. Without limitation of the foregoing, Mortgagee will assign to Bank, upon request, as further security for the Indebtedness, its interests in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments satisfactory to Bank, but no such assignment shall be construed as a consent by the Bank to any agreement, contract, license or permit or to impose upon Bank any obligations with respect thereto. From time to time, Mortgagee will furnish within five (5) days after Bank's request a written and duly acknowledged statement of the Indebtedness and whether any alleged offsets or defenses exist against the Indebtedness.



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37. *Captions and Pronouns.* The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.
36. *Time of the Essence.* Time is of the essence of the judgment, this Mortgage, and the other Loan Documents.
35. *No Joint Ventures.* Mortgagor acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event shall Bank be deemed to be a partner or joint venturer with Mortgagor. Bank shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any other of the Loan Documents.
34. INTENTIONALLY OMITTED.
33. *Inspection of Premises and Records.* Mortgagor shall keep full and correct books and records showing in detail the income and expenses of the Premises. Bank and its agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times.
32. INTENTIONALLY OMITTED.
31. *Governing Law.* The place of negotiation, execution, and delivery of this Mortgage and the location of the Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State. If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Bank any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Bank under the Act in the absence of said provision, Bank shall be vested with the rights granted in the Act to the full extent permitted by law.
30. *Option to Subordinate.* At the option of Bank, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Bank and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Premises are situated, of a unilateral declaration to that effect.
29. *Subrogation.* If any part of the Indebtedness is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Premises or any part thereof, then Bank shall be subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

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40. *Anti-forfeiture.* Mortgagor hereby expressly represents and warrants to Bank that there has not been committed by Mortgagor or any other person involved with the Premises any act or omission affording the federal government or any state or local government the right of forfeiture as against the Premises or any part thereof or any monies paid in performance of its obligations under the Judgment, Mortgage or under any of the other Loan Documents, and Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right of forfeiture. In furtherance thereof, Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to Bank (at Mortgagor's sole cost) and

With a copy to:

Sachnoff & Weaver, Ltd.  
30 South Wacker Drive  
Suite 2900  
Chicago, Illinois 60606  
Attention: Stephen T. Bobo

If to Bank:

Fifth Third Bank  
101 W. Stephenson  
Freeport, Illinois 61032  
Attention: James Barker

With copy to:

Springer, Brown, Covey  
Gaertner & Davis  
611 S. Addison Road  
Addison, Illinois 60101  
Attention: Michael J. Davis

If to Mortgagor:

Ronald Presbitero, Sr.  
5620 W. 120<sup>th</sup> Street  
Alsip, Illinois 60658

39. *Notices.* Any notice or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given when personally delivered, (ii) upon receipt if sent by a nationally recognized overnight courier addressed to a party at its address set forth above (along with copies to the parties listed in the last sentence of this Section), or (iii) on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth above, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, notice of the exercise of any right, power or option granted to Bank by this Mortgage is not required to be given. Any notice to the Bank shall also be delivered to the following:

38. *Severability.* If all or any portion of any provision of this Mortgage or the other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

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43. *First Mortgage.* Mortgage represents and warrants to Bank that there exist no default, or event with which the giving of notice or the passage of time, or both, would mature into an event of default, under the First Mortgage.

42. *No Merger.* It is the desire and intention of the parties hereto that this Mortgage and the lien hereof shall not merge in fee simple title to the Premises, unless a contrary intent is ever manifested by Bank as evidenced by an express statement to that effect in an appropriate document duly recorded. Therefore, it is hereby understood and agreed that should Bank acquire any additional or other interests in or to the Premises or the ownership thereof, then this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

41. *Jury Trial Waiver.* THE MORTGAGOR WAIVES, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTIONS BROUGHT BY EITHER THE MORTGAGOR OR BANK IN CONNECTION WITH THE INDEBTEDNESS.

hold Bank harmless from and against any claim or other cost (including, without limitation, reasonable attorneys' fees and costs incurred by Bank), damage, liability or injury by reason of the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgage, the Bank or all or any part of the Premises under any federal or state law in which forfeiture of the Premises or any part thereof or of any monies paid in performance of Mortgage's obligations under the Loan Documents is a potential result shall, at the election of Bank, constitute a Default hereunder without notice or opportunity to cure.

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Ronald Presbitero, Trustee as aforesaid



Presbitero Revocable Trust

Ronald Presbitero Declaration of Trust  
dated August 5, 1992 a/k/a Ronald

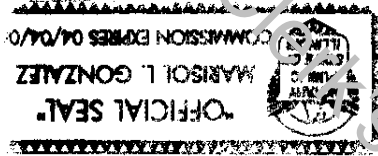
MORTGAGOR:

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly signed, sealed and delivered the day and year first above written.

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My Commission expires: 4/4/07

*[Handwritten Signature]*  
Notary Public

GIVEN under my hand and Notarial Seal, this 2nd day of February, 2005.

I, *MARISOL GONZALEZ*, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Ronald Presbitero, Trustee, personally known to me to be the same person whose name is subscribed to the foregoing instrument and as such Trustee, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of said Trust, for the uses and purposes therein set forth.

STATE OF ILLINOIS  
( )  
( ) ss.  
( )  
COUNTY OF DuPage  
I, *MARISOL GONZALEZ*



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EXHIBIT A  
TO  
MORTGAGE

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Property of Cook County Clerk's Office

Legal Description:

LOT 2 IN ALSIP INDUSTRIAL PARTNERS RESUBDIVISION, BEING A RESUBDIVISION OF LOTS 1 AND 2 IN ALSIP INDUSTRIAL PARTNERS, BEING A SUBDIVISION OF THE NORTHEAST ¼ OF SECTION 29, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN PER PLAT RECORDED JANUARY 25, 1996 AS DOCUMENT 96066693 IN COOK COUNTY, ILLINOIS

The Real Property or its address is commonly known as 5620 W. 120<sup>th</sup> Street, Alsip, IL 60658. The real Property tax identification number is 24-29-201-032-0000

**EXHIBIT B  
TO  
MORTGAGE**