



Doc#: 0505902005  
Eugene "Gene" Moore Fee: \$56.00  
Cook County Recorder of Deeds  
Date: 02/28/2005 07:16 AM Pg: 1 of 17

PREPARED BY AND AFTER RECORDING  
RETURN TO:

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## OPEN-END MORTGAGE AND SECURITY AGREEMENT and FINANCING STATEMENT

This OPEN-END MORTGAGE AND SECURITY AGREEMENT and FINANCING STATEMENT (hereafter referred to as "Mortgage") made February 22, 2005, by and between, **NORTH STAR TRUST COMPANY, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 15, 2004 AND KNOWN AS TRUST NUMBER 04-7870**, whose address is c/o Marc Realty LLC, 55 E. Jackson Boulevard, Suite 500, Chicago, Illinois 60604 ("Mortgagor") and **FIRST UNION COMMERCIAL CORPORATION**, whose address is 201 South Jefferson Street, Roanoke, Virginia 24011 ("Bank").

### WITNESSETH:

To secure payment and performance of obligations under a Promissory Note (the "Note") dated of even date herewith, in the amount of \$13,000,000.00, made by Mortgagor payable to Bank, this Mortgage, any present or future Letters of Credit issued by Bank for the account of Mortgagor, other loan documents as defined in the Note (the "Loan Documents"), and swap agreements (as defined in 11 U.S.C. § 101) between Bank and Mortgagor, all other indebtedness of Mortgagor to Bank whenever borrowed or incurred, and any renewals, extensions, novations, or modifications of the foregoing and all obligations of Gerald Nudo and Laurence Weiner, two of the beneficiaries of Mortgagor, under that certain Environmental Compliance and Indemnity Agreement of even date herewith (collectively the "Obligations"), and in consideration of these premises and for other consideration, Mortgagor does mortgage, grant and convey unto Bank, its successors and assigns, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "Property"): (i) all those certain tracts of land in the City of Schaumburg, County of Cook, State of Illinois, described in EXHIBIT A attached hereto and made part hereof (the "Land"); (ii) all buildings and improvements now or hereafter erected on the Land; (iii) all fixtures, machinery, equipment and other articles of real, personal or mixed property attached to, situated or installed in or upon, or used in the operation or maintenance of, the Land or any buildings or improvements situated thereon, whether or not such real, personal or mixed property is or shall be affixed to the Land; (iv) all building materials, building machinery and building equipment delivered on site to the Land during the course of, or in connection with, any construction, repair or renovation of the buildings and improvements situated or to be situated thereon; (v) all leases, licenses or occupancy agreements of all or any part of the Land and all extensions, renewals, and modifications thereof, and any options, rights of first refusal or guarantees relating thereto; all rents, income, revenues, security deposits, issues, profits, awards and payments of any kind payable under the leases or otherwise arising from the Land; (vi) all contract rights, accounts receivable and general intangibles relating to the Land or the use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, franchise agreements, utility agreements and deposits; all maps,

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plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies; (vii) all estates, rights, tenements, hereditaments, privileges, easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights; and (viii) all "Proceeds" of any of the above-described property, which term shall have the meaning given to it in the Uniform Commercial Code of the jurisdiction where this Mortgage is recorded (the "UCC"), whether cash or non-cash, and including insurance proceeds and condemnation awards; and all replacements, substitutions and accessions thereof.

In the event that Mortgagor is the owner of a leasehold estate with respect to any portion of the Property and Mortgagor obtains a fee estate in such portions of the Property, then, such fee estate shall automatically, and without further action of any kind on the part of the Mortgagor, be and become subject to the security title and lien of this Agreement.

TO HAVE AND TO HOLD the Property and all the estate, right, title and interest, in law and in equity, of Mortgagor's in and to the Property unto Bank, its successors and assigns, forever.

Mortgagor REPRESENTS and COVENANTS that Mortgagor is lawfully seized of the Property, in fee simple, absolute, that Mortgagor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances. Mortgagor further represents and will forever defend all and singular the Property and title thereto to Bank and Bank's successors and assigns, against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS that if (i) all the Obligations (including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements (as defined in 11 U.S.C. § 101) secured hereunder) are paid in full, (ii) each and every representation, warranty, agreement, covenant and condition of this Mortgage, and the other Loan Documents, are complied with and abided by, and (iii) any and all swap agreements (as defined in 11 U.S.C. § 101) secured hereunder have matured or been terminated, then this Mortgage and the estate hereby created shall cease and be null, void, and canceled of record.

To protect the security of this Mortgage, Mortgagor further represents and agrees with Bank as follows:

**Payment of Obligations.** That the Obligations shall be timely paid and performed.

**Future Advances.** This Mortgage is given to secure not only existing Obligations, but also future advances, including obligations under swap agreements to the same extent as if such future advances and obligations under swap agreements are made on the date of the execution of this Mortgage. The principal amount (including any swap agreements and future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed \$26,000,000.00, plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any existing or future Obligations secured by this Mortgage.

**Grant of Security Interest in Personal Property.** This Mortgage constitutes a security agreement under the UCC and shall be deemed to constitute a fixture financing statement. Mortgagor hereby grants a security interest in any personal property included in the Property. On request of Bank, Mortgagor will execute one or more Financing Statements in form satisfactory to Bank and will pay all costs and expenses of filing the same in all public filing offices, where filing is deemed desirable by Bank. Bank is authorized to file Financing Statements relating to the Property without Mortgagor's signature where permitted by law. Mortgagor appoints Bank as its attorney-in-fact to execute such documents necessary to perfect Bank's security interest on Mortgagor's behalf. The appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain outstanding.

Nothing herein obligates Bank to provide credit in excess of the Obligations.

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**Leases, Subleases and Easements.** Mortgagor shall maintain, enforce and cause to be performed all of the terms and conditions under any lease, sublease or easement which may constitute a portion of the Property. Mortgagor shall not, without the consent of Bank, which shall not be unreasonably withheld or conditioned or delayed and deemed granted if not disapproved by Bank within twenty (20) days after notice by Mortgagor to Bank that includes in bold typeface font the phrase: "consent hereto deemed granted unless disapproved by Bank within twenty (20) days," enter into any new lease of all or any portion of the Property consisting of more than 10,000 square feet (a "Major Lease"), agree to the cancellation or surrender under any Major Lease, agree to prepayment of rents, issues or profits (other than rent paid at the signing of a lease or sublease), modify any Major Lease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option; and any such purported new lease, cancellation, surrender, prepayment or modification of a Major Lease made without the consent of Bank shall be void as against Bank.

**Required Insurance.** Mortgagor shall maintain with respect to the Property: (i) during construction of any improvements on the Property, "all-risk" builders risk insurance which must include windstorm, hail damage, fire and vandalism (non-reporting Completed Value with Special Cause of Loss form), in an amount not less than the completed replacement value of the improvements under construction, naming Bank as mortgagee and loss payee, and endorsed to provide that occupancy by any person shall not void such coverage; (ii) upon completion of construction and at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an "all risks" basis, including malicious mischief coverage, in an amount not less than the replacement cost thereof, including coverage for loss of rents or business interruption if applicable, naming Bank as loss payee and mortgagee; (iii) if the Property is required to be insured pursuant to the National Flood Reform Act of 1994, and the regulations promulgated thereunder, flood insurance is required in the amount equal to the lesser of the loan amount or maximum available under the National Flood Insurance Program, but in no event should the amount of coverage be less than the value of the improved structure, naming Bank as mortgagee and loss payee. If, after closing, the Property (or any part thereof) is remapped and if the vertical improvements are determined to be located in a special flood hazard area, Mortgagor must obtain and maintain a flood insurance policy. If, within forty-five (45) days of receipt of notification from Bank that the Property has been reclassified by FEMA as being located in a special flood hazard area, Mortgagor has not provided sufficient evidence of flood insurance, Bank is mandated under federal law to purchase flood insurance on behalf of Mortgagor, and Bank will add the associated costs to the principal balance of the Note. If the land or any portion thereof is located in a special flood hazard area, this Agreement may be terminated by Bank at its sole option; (iv) as applicable, insurance which complies with the workers' compensation and employers' liability laws of all states in which Mortgagor shall be required to maintain such insurance; and (v) liability insurance providing coverage in such amount as Bank may require but in no event less than \$1,000,000.00 combined single limit, naming Bank as an additional insured; and (vi) such other insurance as Bank may require from time to time.

All property insurance policies shall contain an endorsement or agreement by the insurer in form satisfactory to Bank that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor and the further agreement (within both the property and liability policies) of the insurer waiving rights of subrogation against Bank, and rights of set-off, counterclaim or deductions against Mortgagor.

All insurance policies shall be in form, provide coverages, be issued by companies and be in amounts satisfactory to Bank. At least 30 days prior to the expiration of each such policy, Mortgagor shall furnish Bank with evidence satisfactory to Bank that such policy has been renewed or replaced or is no longer required hereunder. All such policies shall provide that the policy will not be canceled or materially amended without at least 30 days prior written notice to Bank. In the event Mortgagor fails to provide, maintain, keep in force, and furnish to Bank the policies of insurance required by this paragraph, Bank may procure such insurance or single-interest insurance in such amounts, at such premium, for such risks and by such means as Bank chooses, at Mortgagor's expense; provided however, Bank shall have no responsibility to obtain any insurance, but if Bank does obtain insurance, Bank shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Mortgagor.

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**Insurance Proceeds.** After occurrence of any loss to any of the Property, Mortgagor shall give prompt written notice thereof to Bank.

In the event of such loss all insurance proceeds, including unearned premiums, shall be payable to Bank, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Bank and not to Bank and Mortgagor jointly. Bank is hereby authorized by Mortgagor to make proof of loss if not promptly made by Mortgagor, settle, adjust or compromise any claims for loss or damage under any policy or policies of insurance in excess of \$250,000 and Mortgagor appoints Bank as its attorney-in-fact to receive and endorse any insurance proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied. Notwithstanding the above, provided no default exists under the Loan Documents, Mortgagor shall have the right, with Mortgagee's reasonable consent, to settle any claims for loss or damage which do not exceed \$250,000 under any policy or policies of insurance and to use such proceeds in rebuilding and repairing the Property and improvements thereon, subject to providing Bank with evidence that the proceeds are adequate for such purposes (or will be supplemented by Mortgagor equity to cover any deficiency). Mortgagor shall pay the costs of collection, including attorneys' fees, of insurance proceeds payable on account of such damage or destruction. Mortgagor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Bank as security for payment of the Obligations.

Subject to Mortgagor's right to the use of the proceeds in the prior grammatical paragraph, in the event of any damage to or destruction of the Property, Bank shall have the option of applying or paying all or part of the insurance proceeds to (i) the Obligations in such order as Bank may determine, (ii) restoration, replacement or repair of the Property in accordance with Bank's standard construction loan disbursement conditions and requirements, or (iii) Mortgagor. Nothing herein shall be deemed to excuse Mortgagor from restoring, repairing and maintaining the Property as required herein.

Notwithstanding the foregoing, provided that all of the following conditions are fully satisfied by Mortgagor, Bank shall disburse insurance proceeds for repair and restoration of the Property in accordance with Bank's standard construction loan disbursement conditions and requirements: (i) no Default or event which, with the giving of notice or the passage of time, or both, would constitute a Default shall have occurred; (ii) Mortgagor shall have delivered evidence satisfactory to Bank that the Property can be fully repaired and restored at least six (6) months prior to the maturity of the Obligations; (iii) no Major Lease of the Property is cancelable or terminable by the tenant or Mortgagor on account of the casualty or, if it is, the tenant or Mortgagor (as applicable) has waived in writing its right to cancel; (iv) the work is performed under a contract reasonably satisfactory to Bank in accordance with plans and specifications and a budget reasonably satisfactory to Bank in accordance with all legal requirements; (v) Mortgagor shall have deposited with Bank for disbursement in the connection with the restoration the greater of: (A) the applicable deductible under the insurance policies covering the loss; or (B) the amount by which the cost of restoration of the Property to substantially the same value, condition and character as existed prior to such damage is estimated by Bank to exceed the net insurance proceeds; (vi) Mortgagor has paid as and when due all of Bank's costs and expenses incurred in connection with the collection and disbursement of insurance proceeds, including without limitation, inspection, monitoring, engineering and legal fees. If not paid on demand, at Bank's option, such costs may be deducted from the disbursements made by Bank or added to the sums secured by this Mortgage; and (vii) such other terms and conditions as Bank may reasonably require.

**Impositions; Escrow Deposit.** Mortgagor will pay all taxes, levies, assessments and other fees and charges imposed upon or which may become a lien upon the Property under any law or ordinance (all of the foregoing collectively "Impositions") before they become delinquent provided, however, provided no default exists, Mortgagor shall have the right to contest in good faith and with reasonable diligence the validity of any such liens or claims but not after any taxes are sold. Mortgagor shall provide Bank with evidence satisfactory to Bank showing Mortgagor's timely payment in full of all due and payable semi-annual real estate taxes and assessments on the Property. Upon request of Bank, Mortgagor shall add to each periodic payment required under the Note the amount estimated by Bank to



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be sufficient to enable Bank to pay, as they come due, all impositions which Mortgagor is required to pay hereunder. Payments requested under this provision shall be supplemented or adjusted as required by Bank from time to time. Such funds may be commingled with the general funds of Bank and shall earn interest. Upon the occurrence of a Default, Bank may apply such funds to pay any of the Obligations.

**Use of Property.** Mortgagor shall use and operate, and require its lessees or licensees to use and operate, the Property in compliance with all applicable laws (including, for example, the Americans with Disabilities Act and the Fair Housing Act) and ordinances, covenants, and restrictions, and with all applicable requirements of any lease or sublease now or hereafter affecting the Property. Mortgagor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Mortgagor shall not allow changes in the stated use of Property from that disclosed to Bank at the time of execution hereof. Mortgagor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and written consent of, Bank.

**Maintenance, Repairs and Alterations.** Mortgagor shall keep and maintain the Property in good condition and repair and fully protected from the elements to the satisfaction of Bank. Mortgagor will not remove, demolish or structurally alter any of the buildings or other improvements on the Property (except such alterations as may be required by laws, ordinances or regulations) without the prior written consent of Bank. Mortgagor shall promptly notify Bank in writing of any material loss, damage or adverse condition affecting the Property.

**Eminent Domain.** Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("Condemnation"), or should Mortgagor receive any notice or other information regarding such Condemnation, Mortgagor shall give prompt written notice thereof to Bank. Bank shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in and prosecute in its own name any action or proceedings relating thereto. Bank shall be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, and damages awarded to Mortgagor related to any Condemnation (the "Proceeds") are hereby assigned to Bank and Mortgagor agrees to execute such further assignments of the Proceeds as Bank may require. Bank shall have the option of applying or paying the Proceeds in the same manner as insurance proceeds as provided herein. Mortgagor appoints Bank as its attorney-in-fact to receive and endorse the Proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

**Environmental Condition of Property and Indemnity.** Mortgagor represents to Bank, except as reported by Mortgagor to Bank in writing in that certain Phase I Environmental Site Assessment prepared by Hygienetics Environmental Services dated December 16, 2004, as Project Number 3157.304, that: (i) Mortgagor has inspected and is familiar with the environmental condition of the Property; (ii) the Property and Mortgagor, and any occupants of the Property, are in compliance with and shall continue to be in compliance with all applicable federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time ("Environmental Laws"); (iii) to the best of Mortgagor's knowledge, the Property is not and has never been used to generate, handle, treat, store or dispose of, in any quantity, oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances or hazardous air pollutants ("Hazardous Materials") in violation of any Environmental Laws; (iv) no Hazardous Materials (including asbestos or lead paint in any form) are located on or under the Property or emanate from the Property; (v) to the best of Mortgagor's knowledge, there are no unregistered underground storage tanks on the Property that are subject to any underground storage tank registration laws or regulations; (vi) no notice has been received with regard to any Hazardous Material on the Property; (vii) to the best of Mortgagor's knowledge, no action, investigation or proceeding is pending or to Mortgagor's knowledge threatened which seeks to enforce any right or remedy against Mortgagor or the Property under any Environmental Law; and (viii) all licenses, permits and other governmental or regulatory actions necessary for the Property to comply with Environmental Laws shall be obtained and maintained and Mortgagor shall assure compliance therewith.

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Further, Mortgagor represents to Bank that, to the best of Mortgagor's knowledge, no portion of the Property is a protected welland. Mortgagor agrees to notify Bank immediately upon receipt of any citations, warnings, orders, notices, consent agreements, process or claims alleging or relating to violations of any Environmental Laws or to the environmental condition of the Property and shall conduct and complete all investigations and all cleanup actions necessary to comply with the Environmental Laws and to remove, in accordance with Environmental Laws, any Hazardous Material from the Property.

**Appraisals.** Mortgagor agrees that Bank may obtain an appraisal of the Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency, any other regulatory agency or at such other times as Bank may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by Bank. The cost of such appraisals shall be borne by Mortgagor. If requested by Bank, Mortgagor shall execute an engagement letter addressed to the appraiser selected by Bank. Mortgagor's failure or refusal to sign such an engagement letter, however, shall not impair Bank's right to obtain such an appraisal. Mortgagor agrees to pay the cost of such appraisal within 10 days after receiving an invoice for such appraisal.

**Inspections.** Subject to the rights of any tenants, Bank, or its representatives or agents, are authorized to enter at any reasonable time upon any part of the Property for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage.

**Liens and Subrogation.** Mortgagor shall pay and promptly discharge all liens, claims and encumbrances upon the Property. Mortgagor shall have the right to contest in good faith the validity of any such lien, claim or encumbrance, provided: (i) such contest suspends the collection thereof or there is no danger of the Property being sold or foreclosed while such contest is pending; (ii) Mortgagor first deposits with Bank a bond or other security satisfactory to Bank in such amounts as Bank shall reasonably require; and (iii) Mortgagor thereafter diligently proceeds to cause such lien, claim or encumbrance to be removed and discharged.

Bank shall be subrogated to any liens, claims and encumbrances against Mortgagor or the Property that are paid or discharged through payment by Bank or with loan proceeds, notwithstanding the record cancellation or satisfaction thereof.

**Waiver of Mortgagor's Rights.** To the fullest extent permitted by law, Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for: (i) any appraisal before sale of any portion of the Property, (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or any of the other Obligations, rights under the fifth and fourteenth amendments to the Constitution of the United States and any similar rights under the constitutions of any state, and any rights to hearing prior to the exercise by Bank of any right, power, or remedy herein provided to Bank.

To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisal, valuation, stay, extension or redemption, and Mortgagor for themselves and their respective heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Property, to the extent permitted by law, hereby waive and release all rights of valuation, appraisal, redemption, stay of execution, the benefit of all exemption laws, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Mortgagor further waives any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations.

**Payments by Bank.** In the event of default in the timely payment or performance of any of the Obligations, Bank, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Mortgagor is obligated. Further, Bank may pay such sums as Bank

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deems appropriate for the protection and maintenance of the Property including, without limitation, sums to pay Impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Mortgage or protect the lien hereof (including foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including Bankruptcy or arbitration. Any amounts so paid shall bear interest at the default rate stated in the Note and shall be secured by this Mortgage.

**Indemnification.** Mortgagor shall protect, indemnify and save harmless Bank from and against all losses, liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Damages") imposed upon, incurred by or asserted against Bank on account of (i) the Loan Documents or any failure or alleged failure of Mortgagor to comply with any of the terms or representations of this Agreement; (ii) any claim of loss or damage to the Property or any injury or claim of injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy or operation thereof but not after Mortgagor has conveyed or been foreclosed in ownership of the Property or after a deed in lieu of foreclosure or dispossession of Mortgagor from the Property other than by appointment of a receiver except as to any condition or occurrence or agreement existing prior thereto and except as set forth in that certain Environmental Compliance and Indemnity Agreement of even date herewith between Mortgagor and Bank, (iii) any failure or alleged failure of Mortgagor to comply with any law, rule or regulation applicable to the Property or the use, occupancy or operation of the Property (including, without limitation, the failure to pay any taxes, fees or other charges), provided that such indemnity shall be effective only to the extent of any Damages that may be sustained by Bank in excess of any net proceeds received by it from any insurance of Mortgagor (other than self-insurance) with respect to such Damages, (iv) any Damages whatsoever by reason of any alleged action, obligation or undertaking of Bank relating in any way to or any matter contemplated by the Loan Documents, (v) any claim for brokerage fees or such other commissions relating to the Property or any other Obligations, or (vi) any and all liability arising from any leases related to the Property but not after Mortgagor has conveyed or been foreclosed in ownership of the Property or after a deed in lieu of foreclosure or dispossession of Mortgagor from the Property other than by appointment of a receiver except as to any condition or occurrence or agreement existing prior thereto. Nothing contained herein shall require Mortgagor to indemnify Bank for any Damages resulting from Bank's gross negligence or its willful and wrongful acts. The indemnity provided for herein shall continue, survive and remain in full force and effect notwithstanding the repayment of the Obligations, a foreclosure, a cancellation or termination of record of this instrument and the transfer of the Property and shall extend to the officers, directors, employees and duly authorized agents of Bank. Notwithstanding the foregoing, the Bank, at Mortgagor's sole cost and expense, may retain separate counsel to (i) monitor the counsel chosen by Mortgagor if such counsel represents Mortgagor and Bank, (ii) represent the Bank if the Bank reasonably determines that there may be a conflict of interest between Mortgagor and Bank and (iii) represent the Bank if the Bank reasonably determines that the Bank may have liability for such claim in excess of \$100,000 or the Property or any collateral may be materially impaired in the sole discretion of Bank. In the event the Bank incurs any Damages arising out of or in any way relating to the transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such Damages shall be added to the Obligations, shall bear interest, to the extent permitted by law, at the interest rate borne by the Obligations from the date incurred until paid and shall be payable on demand.

**Due on Sale or Further Encumbrance or Transfer of an Interest in Mortgagor.** Without the prior written consent of Bank in each instance, Mortgagor shall not (i) sell, convey, transfer or encumber the Property, or any part thereof or interest therein, whether legal or equitable, (ii) cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, or (iii) enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) if Mortgagor or any general partner or member of Mortgagor, is a corporation, partnership, limited liability company, trust or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership,



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limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity including, without limitation, changes in stockholders, partners, members, managers, trustees, beneficiaries, or their respective interests, except for estate planning purposes; (d) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases. Notwithstanding the foregoing, provided Mortgagor is not in Default under this Mortgage or any other Loan Document, Mortgagor shall have the right to make or suffer a change of ownership or beneficial ownership including a change in membership interests in Mortgagor or its beneficiaries provided that such change does not effectively remove control of Mortgagor either directly or indirectly from its current control by the guarantors.

Bank's consent, if required, to any conveyance or encumbrance may be conditioned upon an increase in the interest rate specified in the Note (or other Obligations), an extension or curtailment of the maturity of the Obligations, or other modification of the Note or this instrument.

Notwithstanding anything to the contrary contained herein, Mortgagor may convey the Property provided: (i) there is no Default, or event which with the giving of notice or passage of time or both could constitute a Default, under the Loan Documents, (ii) Mortgagor pays all fees and expenses in connection with such sale, and (iii) Mortgagor executes such documents as Bank shall require. Upon such conveyance, Bank shall issue: (a) a release of the lien of this Mortgage, (b) a release of the lien of that certain Junior Open-End Mortgage and Security Agreement and Financing Statement of even date herewith from Mortgagor to Bank relating to the Property, and (c) a release of the lien of that certain Junior Open-End Mortgage and Security Agreement and Financing Statement of even date herewith from North Star Trust Company, not individually but solely as Trustee under Trust Agreement dated November 15, 2004 and known as Trust No. 04-7871 to Bank relating to the property located at 3701 Algonquin Road, Rolling Meadows, Illinois.

**Remedies of Bank on Default.** Failure of Mortgagor or any other person liable to timely pay or perform any of the Obligations is a default ("Default") under this Mortgage, except that, a Default based upon nonpayment of the principal and interest due under the Note may be cured within 5 days of the date such payment is due, a Default based upon any nonpayment of any payment other than principal or interest may be cured within ten (10) days after written notice thereof by Bank, and any other Default may be cured within 30 days after written notice thereof is mailed to the Mortgagor by Bank, provided that if such Default cannot be cured within 30 days and Mortgagor commences and proceeds diligently to cure the Default then such cure period shall be extended for a period of 90 days. The Mortgagor's right to cure shall be applicable only to curable defaults and shall not apply, without limitation, to Defaults based upon False Warranty or Cessation; Bankruptcy. Any default under: (i) that certain Open-End Mortgage and Security Agreement and Financing Statement dated of even date herewith from North Star Trust Company, not Individually but solely as Trustee under Trust Agreement Dated November 15, 2004 and known as Trust Number 04-7871 for the benefit of Bank, (ii) that certain Junior Open-End Mortgage and Security Agreement and Financing Statement dated of even date herewith from North Star Trust Company, not Individually but solely as Trustee under Trust Agreement Dated November 15, 2004 and known as Trust Number 04-7871 for the benefit of Bank, and (iii) that certain Junior Open-End Mortgage and Security Agreement and Financing Statement dated of even date herewith from North Star Trust Company, not Individually but solely as Trustee under Trust Agreement Dated November 15, 2004 and known as Trust Number 04-7870 for the benefit of Bank, shall be deemed a Default hereunder.

Bank shall not exercise its remedies to collect the Obligations except as Bank reasonably deems necessary to protect its interest in collateral securing the Obligations during a cure period. Upon the occurrence of Default the following remedies are available, without limitation, to Bank: (i) Bank may exercise any or all of Bank's remedies under this Mortgage or other Loan Documents including, without limitation, acceleration of the maturity of all payments and Obligations, including any swap agreements (as defined in 11 U.S.C. § 101) with Bank (provided that the early termination shall be governed by the default and termination provisions of said swap agreements); (ii) Bank may take immediate possession of



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the Property or any part thereof (which Mortgagor agrees to surrender to Bank) and manage, control or lease the same to such persons and at such rental as it may deem proper and collect and apply Rents to the payment of: (a) the Obligations, together with all costs and attorneys' fees; (b) all Impositions and any other levies, assessments or liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and (c) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Bank in its sole discretion may determine. The taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property; (iii) Bank may apply to any court of competent jurisdiction for the appointment of a receiver for all purposes including, without limitation, to manage and operate the Property or any part thereof, and to apply the Rents therefrom as hereinabove provided. In the event of such application, Mortgagor consents to the appointment of a receiver, and agrees that a receiver may be appointed without notice to Mortgagor, without regard to whether Mortgagor has committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Obligations; (iv) Bank may exercise all the remedies of a mortgagee as provided by law and in equity including, without limitation, foreclosure upon this Mortgage and sale of the Property, or any part of the Property, at public sale conducted according to applicable law (referred to as "Sale") and conduct additional Sales as may be required until all of the Property is sold or the Obligations are satisfied; (v) With respect to any portion of the Property governed by the UCC, Bank shall have all of the rights and remedies of a secured party thereunder. Bank may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property; (vi) Bank may bid at Sale and may accept, as successful bidder, credit of the bid amount against the Obligations as payment of any portion of the purchase price; and (vii) Bank shall apply the proceeds of Sale, first to any fees or attorney fees permitted Bank by law in connection with Sale, second to expenses of foreclosure, publication, and sale permitted Bank by law in connection with Sale, third to the Obligations, and any remaining proceeds as required by law.

**Miscellaneous Provisions.** Mortgagor agrees to the following: (i) All remedies available to Bank with respect to this Mortgage or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Bank in exercising any remedy shall operate as a waiver of that remedy or of any Default. Any payment by Bank or acceptance by Bank of any partial payment shall not constitute a waiver by Bank of any Default; (ii) Mortgagor represents that Mortgagor (a) is (1) an adult individual and is sui juris, or (2) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization; (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Mortgage and any other Loan Document to which it is a party. (iii) The provisions hereof shall be binding upon and inure to the benefit of Mortgagor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Bank, its successors and assigns and any future holder of the Note or other Obligations; (iv) Any notices, demands or requests shall be sufficiently given Mortgagor if in writing and mailed or delivered to the address of Mortgagor shown above or to another address as provided herein and to Bank if in writing and mailed or delivered to First Union Commercial Corporation: Bob Flaa, Mail Code WS6014, 77 West Wacker Drive, Chicago, Illinois 60601, or such other address as Bank may specify from time to time and in the event that Mortgagor changes Mortgagor's address at any time prior to the date the Obligations are paid in full, that party shall promptly give written notice of such change of address by registered or certified mail, return receipt requested, all charges prepaid. Notices to Bank must include the mail code. (v) This Mortgage may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (vi) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Mortgage; (vii) If the lien of this Mortgage is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made

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shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations and if any clause, provision or obligation hereunder is determined invalid or unenforceable the remainder of this Mortgage shall be construed and enforced as if such clause, provision or obligation had not been contained herein; (viii) This Mortgage shall be governed by and construed under the laws of the jurisdiction where this Mortgage is recorded; (ix) Mortgagor by execution and Bank by acceptance of this Mortgage agree to be bound by the terms and provisions hereof.

**Trustee Exculpation.** This Mortgage is executed by North Star Trust Company, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing contained herein or in the Note shall be construed as creating any liability on Trustee personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any being expressly waived by Bank and by every person now or hereafter claiming any right or security hereunder, and that so far as Trustee personally is concerned, the legal holder or holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein provided, or by action to enforce the personal liability of any guarantors of the indebtedness hereby secured, or by proceeding against any other collateral security therefor.

MORTGAGOR AND BANK AGREE THAT THEY SHALL NOT HAVE A REMEDY OF PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SPECIAL DAMAGES AGAINST THE OTHER IN ANY DISPUTE OR MATTER WITH RESPECT TO THE LOAN DOCUMENTS AND HEREBY WAIVE ANY RIGHT OR CLAIM TO PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SPECIAL DAMAGES THEY HAVE NOW OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY DISPUTE OR MATTER WITH RESPECT TO THE LOAN DOCUMENTS WHETHER SUCH IS RESOLVED BY ARBITRATION OR JUDICIALLY.

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IN WITNESS WHEREOF, Mortgagor has signed and sealed this instrument as of the day and year first above written.

**Mortgagor**

**NORTH STAR TRUST COMPANY, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 15, 2004 AND KNOWN AS TRUST NUMBER 04-7870**

By: *David Prewfield*  
Its: VICE PRESIDENT

Attest:  
By: *Martin S. Edwards*  
Name: MARTIN S. EDWARDS

Property of Cook County Clerk's Office



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State of Illinois  
City of Chicago

David Rosenfeld

I certify that before me appeared this day, \_\_\_\_\_ (Name), a person known to me, who after being sworn stated individually that he is a **VICE PRESIDENT** of **North Star Trust Company** and is duly authorized to act on behalf of said Company acting, that said instrument was signed by him, and being informed of the contents thereof, acknowledged execution of the forgoing instrument on behalf of said Company.

Witness my hand and official seal, this 22<sup>nd</sup> day of February, ~~2004~~ 2005

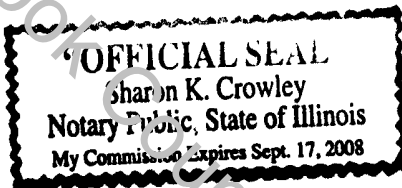
Notary Seal

Sharon K. Crowley, Notary Public

Sharon K. Crowley  
(Printed Name of Notary)

My Commission Expires: \_\_\_\_\_

State of Illinois  
City of Chicago



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**EXHIBIT A**  
(Legal Description)

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CHICAGO TITLE INSURANCE COMPANY

## LOAN POLICY (1992) SCHEDULE A (CONTINUED)

POLICY NO.: 1401 008250651 D2

5. THE LAND REFERRED TO IN THIS POLICY IS DESCRIBED AS FOLLOWS:

PARCEL 1:

LOT 6A IN THE RESUBDIVISION OF PARTS OF LOTS 2, 5, 6 AND 7 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTH WEST 1/4 AND THE NORTH EAST 1/4 AND THE SOUTH EAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT FILED MARCH 23, 1972 AS DOCUMENTS LR2613782 AND 21844681, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY DEED FROM CHICAGO TITLE AND TRUST COMPANY, A CORPORATION OF ILLINOIS, AS TRUSTEE UNDER TRUST AGREEMENT DATED APRIL 9, 1964 KNOWN AS TRUST NUMBER 46746 TO JEROME N. ARENDT DATED MARCH 13, 1972 AND FILED APRIL 3, 1972 AS DOCUMENT LR2615495 FOR INGRESS AND EGRESS FOR VEHICULAR AND PEDESTRIAN TRAFFIC OVER AND ACROSS THE PERIMETER ROAD FORMING THE BOUNDARY OF THE PROPERTY COMMONLY KNOWN AS "WOODFIELD MALL".

PARCEL 3:

PERPETUAL NON EXCLUSIVE EASEMENT (SUBJECT TO ALL RESTRICTIONS, COVENANTS AND DOCUMENTS OF RECORD) FOR PEDESTRIAN AND VEHICULAR TRAFFIC IN THOSE STRIPS OF LAND WHICH ARE DESIGNED AS "ACCESS ROADS" AND "RING ROAD" ON EXHIBIT B OF THE OPERATING AGREEMENT, FOR THE PURPOSE OF PROVIDING INGRESS AND EGRESS FROM PARCEL 1 AND THE PUBLIC ROADWAY WHICH INTERSECTS OR ABUTS WITH ANY SUCH ACCESS ROAD, AS CREATED BY THE AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 20, 1993 AS DOCUMENT 03043701.

PARCEL 4:

PERPETUAL NON EXCLUSIVE EASEMENT (SUBJECT TO ALL RESTRICTIONS, COVENANTS AND DOCUMENTS OF RECORD) A FOR COMMON UTILITY FACILITIES FOR THE INSTALLATION, USE, OPERATION, MAINTANENCE, REPAIR, ENLARGEMENT, REPLACEMENT, RELOCATION AND REMOVAL OF COMMON UTILITY FACILITES SERVING PARCEL 1 AS CREATED BY THE AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 20, 1993 AS DOCUMENT 03043701, OVER PORTIONS OF THE FOLLOWING LAND

LOT 1 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

(SEE ATTACHED)

THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED.



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CHICAGO TITLE INSURANCE COMPANY

## LOAN POLICY (1992) SCHEDULE A (CONTINUED)

1401 008250651 D2

ALSO:

LOT 2B, LOT 2C, AND LOT 2D IN THE PLAT OF RESUBDIVISION OF PART OF LOT 2 IN WOODFIELD AND LOT 2A IN THE RESUBDIVISION OF PARTS OF LOTS 2, 5, 6 AND 7 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

LOT 3 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

(EXCEPT THAT PART OF LOT 3 BOUNDED AND DESCRIBED AS FOLLOWS):

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 3; THENCE SOUTHEASTERLY ALONG THE EAST LINE OF SAID LOT 3, A DISTANCE OF 7.119 FEET TO A POINT; THENCE WESTERLY ALONG A STRAIGHT LINE HAVING A BEARING OF SOUTH 88 DEGREES, 17 MINUTES 05 SECONDS WEST, A DISTANCE OF 141.25 FEET TO AN ANGLE POINT, SAID POINT BEING 4 FEET SOUTH OF, AS MEASURED PERPENDICULAR TO THE NORTH LINE OF LOT 3; THENCE WESTERLY ALONG A STRAIGHT LINE TO A POINT IN THE NORTH LINE BEING 206.21 FEET WESTERLY OF THE POINT OF BEGINNING AS MEASURED ALONG THE NORTH LINE OF LOT 3; THENCE 206.21 FEET EASTERLY ALONG SAID NORTH LINE TO THE POINT OF BEGINNING;

AND EXCEPT THAT PORTION OF LOT 3 TAKEN IN CASE NUMBER 90 L 50573, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 3; THENCE SOUTH 00 DEGREES 30 MINUTES 20 SECONDS WEST, BEARING BASED ON ILLINOIS STATE PLANE COORDINATES EAST ZONE, ALONG THE WEST LINE OF SAID LOT 3 A DISTANCE OF 11.81 FEET; THENCE NORTH 87 DEGREES 48 MINUTES 11 SECONDS EAST 30.70 FEET; THENCE NORTH 87 DEGREES 56 MINUTES 41 SECONDS EAST 888.43 FEET; THENCE NORTH 88 DEGREES 27 MINUTES 36 SECONDS EAST 71.38 FEET TO THE EAST LINE OF SAID LOT 3; THENCE NORTH 47 DEGREES 06 MINUTES 19 SECONDS WEST ALONG THE EAST LINE 11.58 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF GOLF ROAD PER CONVEYANCE TO THE STATE OF ILLINOIS RECORDED AS DOCUMENT 21663903; THENCE SOUTH 88 DEGREES 18 MINUTES 15 SECONDS WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE 141.25 FEET; THENCE NORTH 88 DEGREES 50 MINUTES 05 SECONDS WEST ALONG THE SOUTHERLY RIGHT OF WAY LINE 70.71 FEET TO THE NORTH LINE OF SAID LOT 3, BEING THE WESTERLY TERMINUS OF SAID CONVEYANCE AFORESAID; THENCE SOUTH 87 DEGREES 53 MINUTES 41 SECONDS WEST ALONG SAID NORTH LINE 770.53 FEET TO THE POINT OF BEGINNING.

ALSO:

LOT 4 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT PART LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE BEING AT A POINT IN THE EAST LINE OF LOT 4 POINT BEING 15.437 FEET SOUTHERLY OF THE NORTHEAST CORNER; THENCE WESTERLY ALONG A STRAIGHT LINE HAVING A BEARING OF SOUTH 89 DEGREES 12 MINUTES 14 SECONDS WEST, A DISTANCE OF 61.67 FEET TO A POINT; THENCE ALONG

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CHICAGO TITLE INSURANCE COMPANY

## LOAN POLICY (1992) SCHEDULE A (CONTINUED)

1401 008250651 D2

A STRAIGHT LINE HAVING A BEARING OF SOUTH 88 DEGREES 21 MINUTES 27 SECONDS WEST, A DISTANCE OF 62.58 FEET TO A POINT ON THE WEST LINE OF LOT 4, SAID POINT BEING 14.14 FEET SOUTHERLY TO THE NORTHWESTERLY CORNER OF LOT 4.

ALSO:

LOT 5A IN THE RESUBDIVISION OF PARTS OF LOTS 2, 5, 6 AND 7 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

LOTS 7B, 7C AND 7D IN PART OF RESUBDIVISION OF LOTS 2, 5, 6 AND 7 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4 AND THE NORTHEAST 1/4 AND THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

LOT 8 IN WOODFIELD, BEING A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

LOT 10 IN WOODFIELD, A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALSO:

LOT 11 IN WOODFIELD, A SUBDIVISION OF PART OF THE NORTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THAT PART BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 11; THENCE NORTH 0 DEGREES 29 MINUTES 34 SECONDS EAST, ALONG THE WEST LINE OF LOT 11, A DISTANCE OF 128.88 FEET TO THE POINT OF BEGINNING; THENCE NORTH 0 DEGREES 29 MINUTES 34 SECONDS EAST ALONG THE WEST LINE OF LOT 11, A DISTANCE OF 251.20 FEET TO THE NORTHWESTERLY CORNER OF LOT 11; THENCE SOUTH 43 DEGREES 40 MINUTES 00 SECONDS EAST ALONG THE EASTERLY LINE OF LOT 11, A DISTANCE OF 226.53 FEET; THENCE SOUTH 46 DEGREES 20 MINUTES 00 SECONDS WEST PERPENDICULARLY TO THE LAST DESCRIBED LINE, A DISTANCE OF 125.40 FEET; THENCE SOUTH 89 DEGREES 22 MINUTES 48 SECONDS WEST, A DISTANCE OF 67.86 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PIN: 07-13-200-022

Address: 1051 Perimeter Drive, Schaumburg, IL

THIS POLICY VALID ONLY IF SCHEDULE B IS ATTACHED.

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## Schedule A to UCC

Schedule A to UCC from **NORTH STAR TRUST COMPANY, NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 15, 2004 AND KNOWN AS TRUST NUMBER 04-7870** ("Debtor") and for the benefit of **FIRST UNION COMMERCIAL CORPORATION** ("Secured Party").

### Description of Collateral:

**ALL OF DEBTOR's** right, title and interest in and to the following, whether now existing or hereafter acquired: (i) all fixtures, machinery, equipment and other articles of real, personal or mixed property attached to, situate or installed in or upon, or used in the operation or maintenance of, the real property (the "Land") known as 1051 Perimeter Drive, Schaumburg, Illinois wherein the record owner is Debtor, or any buildings or improvements situated thereon, whether or not such real, personal or mixed property is or shall be affixed to the Land; (ii) all building materials, building machinery and building equipment delivered on site to the Land during the course of, or in connection with, any construction, repair or renovation of the buildings and improvements situated or to be situated thereon; (iii) all leases, licenses or occupancy agreements of all or any part of the Land and all extensions, renewals, and modifications thereof, and any options, rights of first refusal or guarantees relating thereto; all rents, income, revenues, security deposits, issues, profits, awards and payments of any kind payable under the leases or otherwise arising from the Land; (iv) all contract rights, accounts receivable and general intangibles relating to the Land or the use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, franchise agreements, utility agreements and deposits; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies; and (v) all proceeds of any of the above-described property, whether cash or non-cash, and including insurance proceeds and condemnation awards; and all replacements, substitutions and accessions thereof.