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**CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES,  
RENTS AND CONTRACTS, SECURITY AGREEMENT  
AND  
FIXTURE FILING  
BETWEEN**

**CODY PROPERTIES, L.L.C.**

**AS MORTGAGOR**

**AND**

**TOYOTA MOTOR CREDIT CORPORATION, AS MORTGAGEE**

**DATED: May 2, 2005**

**LOAN AMOUNT: \$14,300,000**

**PROPERTY ADDRESS:**

**8210, 8230 AND 8300 WEST 159<sup>TH</sup> STREET  
ORLAND PARK, ILLINOIS**

**PERMANENT INDEX NO.:**

27-14-401-003  
27-14-401-004  
27-14-401-005  
27-14-401-015  
27-14-401-024

**BOX 334 CTI**

**UNOFFICIAL COPY****CHICAGO TITLE INSURANCE COMPANY**

**ORDER NUMBER:** 1410 008274312 OF  
**STREET ADDRESS:** 8210, 8230 & 8300 W. 159TH ST.  
**CITY:** ORLAND PARK **COUNTY:** COOK  
**TAX NUMBER:** 27-14-401-003-0000

**LEGAL DESCRIPTION:**

**PARCEL 1:** A PART (EXCEPTING THEREFROM THAT PORTION LYING SOUTH OF THE NORTH LINE OF PROPERTY, ACQUIRED FOR WIDENING OF 159TH STREET BY CONDEMNATION PROCEEDING BY CASE 71 L 1 2086 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS) OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, SAID PART DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH LINE OF SAID SOUTHEAST 1/4 BEING 823.79 FEET EAST OF THE SOUTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE NORTH 481.19 FEET ON A LINE (WHOSE NORTHERN TERMINUS IS ON THE NORTH LINE OF THE SOUTH 1/2 OF SAID SOUTHEAST 1/4 BEING 823.90 FEET EAST OF THE WEST LINE OF SAID SOUTHEAST 1/4 MEASURED NORMAL THERETO) TO A POINT; THENCE WEST 323.33 FEET ON A LINE 481.19 FEET NORTH OF AND PARALLEL WITH SAID SOUTH LINE OF SAID SOUTHEAST 1/4 TO A POINT ON A LINE 495.00 FEET EAST OF AND PARALLEL WITH SAID WEST LINE OF SAID SOUTHEAST 1/4; THENCE SOUTH 481.19 FEET ON SAID LINE 495.00 FEET EAST TO A POINT ON SAID SOUTH LINE OF SAID SOUTHEAST 1/4; THENCE EAST 328.79 FEET ON SAID SOUTH LINE OF SAID SOUTHEAST 1/4 TO SAID POINT OF BEGINNING OF SAID PART.

**PARCEL 2:** BEGINNING AT A POINT IN THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 14 THAT IS 823.79 FEET EAST OF THE SOUTHWEST CORNER OF SAID SOUTHEAST 1/4 OF SECTION 14 AND RUNNING NORTHERLY ALONG A STRAIGHT LINE WHOSE NORTHERN TERMINUS IS A POINT IN THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14 AFORESAID LOCATED 823.90 FEET EAST OF THE WEST LINE OF SAID SOUTHEAST 1/4 OF SECTION 14, A DISTANCE OF 500.00 FEET; THENCE EAST ALONG A LINE 500 FEET NORTH OF (BY RECTANGULAR MEASUREMENT) THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 14 A DISTANCE OF 391.18 FEET TO THE WESTERLY LINE OF THE 215.0 FEET WIDE RIGHT OF WAY OF THE COMMONWEALTH EDISON COMPANY, THENCE SOUTHWESTERLY ALONG THE SAID WESTERLY RIGHT OF WAY LINE OF THE COMMONWEALTH EDISON COMPANY, A DISTANCE OF 291.55 FEET TO A POINT THAT IS 208.90 FEET NORTH OF (BY RECTANGULAR MEASUREMENT) THAT SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 14, THENCE WESTERLY ALONG A LINE PARALLEL TO AND 208.90 FEET NORTH OF (BY RECTANGULAR MEASUREMENT) THE SAID SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 14, A DISTANCE OF 218.79 FEET TO A POINT THAT IS 356.06 FEET WEST OF THE EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14 AFORESAID; THENCE SOUTHERLY ALONG SAID LINE PARALLEL TO THE SAID EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14 AFORESAID TO THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 14, THENCE WESTERLY ALONG THE SAID SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 14, A DISTANCE OF 156.19 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

**PARCEL 3:** THE SOUTH 208.9 FEET (EXCEPT THE SOUTH 50 FEET THEREOF) OF THE EAST 356.06 FEET (EXCEPT THE EAST 156.06 FEET THEREOF) OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

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## CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND CONTRACTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES, RENTS AND CONTRACTS, SECURITY AGREEMENT AND FIXTURE FILING is made as of this 2<sup>nd</sup> day of May, 2005, from CODY PROPERTIES, L.L.C., an Illinois limited liability company, whose mailing address is c/o Lexus of Orland, 8485 West 159<sup>th</sup> Street, Tinley Park, Illinois 60477 ("Mortgagor"), in favor of TOYOTA MOTOR CREDIT CORPORATION, a California corporation, whose mailing address is 19001 South Western Avenue, P.O. Box 2958, Torrance, California 90509-2958 ("Mortgagee").

In consideration of the indebtedness herein recited and as security for payment of both principal and interest on the Note (as hereinafter defined), performance of Mortgagor's obligations under the Loan and Security Agreement of even date herewith among Mortgagor, the Guarantor (as defined in the Loan Agreement) and Mortgagee ("Loan Agreement") and performance of the other obligations set forth below, Mortgagor has granted, conveyed, bargained, sold, alienated, enfeoffed, released, confirmed, transferred, pledged, warranted, and mortgaged, and by these presents does hereby grant, convey, bargain, sell, alien, enfeoff, release, confirm, transfer, pledge, warrant, and mortgage unto Mortgagee, all of Mortgagor's estate, right, title, and interest in, to and under that certain real property located in the City of Orland Park, County of Cook, State of Illinois, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Land");

TOGETHER with all of Mortgagor's now or hereafter acquired estate, right, title and interest in, to and under all buildings, structures, improvements and fixtures now existing or hereafter erected on the Land and all right, title and interest, if any, of Mortgagor in and to the streets and roads, opened or proposed, abutting the Land to the center lines thereof, and strips within or adjoining the Land, the air space and right to use said space above the Land, all rights of ingress and egress on or within the Land, all easements, rights and appurtenances thereto or used in connection with the Land, including, without limitation, lateral support, alley and drainage rights, all revenues, income, rents, cash or security deposits, advance rental deposits, profits, royalties, and other benefits thereof or arising from the use or enjoyment of all or any portion thereof (subject however to the rights and authorities given herein to Mortgagor to collect and apply such revenues, and other benefits), all interests in and rights, royalties and profits in connection with all minerals, oil and gas and other hydrocarbon substances thereon or therein, and water stock, all options to purchase or lease, all development or other rights relating to the Land or the operation thereof, or used in connection therewith, including all of Mortgagor's right, title and interest in all fixtures, attachments, partitions, machinery, equipment, building materials, appliances and goods of every nature whatever now or hereafter located on, or attached to, the Land, excluding however, all new and used motor vehicles

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and automotive parts and accessories and inventory property of like kind or type together with replacements, substitutions and additions thereto, all of which, including replacements, substitutions and additions thereto, shall, to the fullest extent permitted by law and for the purposes of this Mortgage, be deemed to be real property and, whether affixed or annexed thereto or not, be deemed conclusively to be real property; and Mortgagor agrees to execute and deliver, from time to time, such further instruments and documents as may be required by Mortgagee to confirm the legal operation and effect of this Mortgage on any of the foregoing. All of the foregoing property described in this section (the "Improvements") together with the Land and the hereinafter defined Collateral shall be hereinafter referred to as the "Property".

MORTGAGOR HEREBY FURTHER GRANTS TO Mortgagee a security interest in the following with the understanding and intention that this Mortgage shall also constitute a security agreement pursuant to the Uniform Commercial Code ("Code") of the state in which the Property is located.

(A) All equipment, fixtures, inventory, goods, instruments, appliances, furnishings, machinery, tools, raw materials, component parts, work in progress and materials, and all other tangible personal property of whatsoever kind, excluding however, all new and used motor vehicles and automotive parts and accessories and inventory property of like kind or type together with replacements, substitutions and additions thereto, used or consumed in the improvement, use or enjoyment of the Property now or any time hereafter owned or acquired by Mortgagor, wherever located and all products thereof whether in possession of Mortgagor or whether located on the Property or elsewhere;

(B) To the extent such general intangibles are assignable, all "general intangibles" including "payment intangibles" and "software" (each as defined in the Code) and all general intangibles relating to design, development, operation, management and use of the Property including, but not limited to, (1) all names under which or by which the Property may at any time be owned and operated or any variant thereof, and all goodwill in any way relating to the Property and all service marks and logotypes used in connection therewith, (2) all permits, licenses, authorizations, variances, land use entitlements, approvals, consents, clearances, and rights obtained from governmental agencies issued or obtained in connection with the Property, (3) all permits, licenses, approvals, consents, authorizations, franchises and agreements issued or obtained in connection with the construction, use, occupation or operation of the Property, (4) all materials prepared for filing or filed with any governmental agency, and (5) the books and records of Mortgagor relating to construction or operation of the Property;

(C) All shares of stock or partnership interest or other evidence of ownership of any part of the Property that is owned by Mortgagor in common with others, including all water stock relating to the Property, if any, and all documents or rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the

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Property provided, however, that the foregoing shall not include any ownership interests in the Mortgagor;

(D) All accounts, deposit accounts, tax and insurance escrows held pursuant to this Mortgage, supporting obligations, letter of credit rights, accounts receivable, instruments, documents, documents of title, general intangibles, rights to payment of every kind, all of Mortgagor's rights, direct or indirect, under or pursuant to any and all construction, development, financing, guaranty, indemnity, maintenance, management, service, supply and warranty agreements, commitments, contracts, subcontracts, insurance policies, licenses and bonds now or anytime hereafter arising from construction on the Land or the use or enjoyment of the Property to the extent such are assignable;

(E) All of Mortgagor's accounts now owned or hereafter created or acquired as relate to the Property, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor (i) accounts receivable, contract rights, health care insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services, (ii) Mortgagor's rights in, to and under all purchase orders for goods, services, or other property, (iii) Mortgagor's rights to any goods, services or other property represented by any of the foregoing, (iv) monies due or to become due to Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of Mortgagor), (v) "securities", "investment property," "financial assets," and "securities entitlements" (each as defined in the Code), and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Mortgagor with respect to the Property; and

(F) All Condemnation Proceeds (including payments in lieu thereof) and Insurance Proceeds (as each of those terms are hereinafter defined) related to the Property as hereinafter set forth.

TOGETHER with all additions to, substitutions for and the products of all of the above, and all proceeds therefrom, whether cash proceeds or noncash proceeds, received when any such property (or the proceeds thereof) is sold, exchanged, leased, licensed, or otherwise disposed of, whether voluntarily or involuntarily. Such proceeds shall include any of the foregoing specifically described property of Mortgagor acquired with cash proceeds. Together with, and without limiting the above items, all Goods, Accounts, Documents, Instruments, Money, Chattel Paper and General Intangibles arising from or used in connection with the Property, as those terms are defined in the Code from time to time in effect. (All of the foregoing, including the above-described products and proceeds thereof, are collectively referred to as "Collateral".)

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MORTGAGOR HEREBY WARRANTS AND REPRESENTS that Mortgagor is the owner in fee title to the Property (and Mortgagor is the owner of the Collateral) free and clear of all liens and encumbrances except for those matters set forth on Exhibit "B" attached hereto and made a part hereof.

The personal property in which Mortgagee has a security interest includes goods which are or shall become fixtures on the Property. This Mortgage is intended to serve as a fixture filing pursuant to the terms of the applicable provisions of the Code of the state in which the Property is located. This filing is to be recorded in the real estate records of the appropriate city, town or county in which the Property is located. In that regard, the following information is provided:

Names of Debtor:	CODY PROPERTIES, L.L.C.
Address of Debtor:	See Section <u>4.3</u> hereof
Name of Secured Party:	TOYOTA MOTOR CREDIT CORPORATION
Address of Secured Party:	See section <u>4.3</u> hereof.

Mortgagor warrants and agrees that there is no financing statement covering the foregoing Collateral, the Property, or any part thereof, on file in any public office, except in favor of Mortgagee.

TO HAVE AND TO HOLD the Property hereby conveyed or mentioned and intended so to be, unto Mortgagee, its successors and assigns, forever subject to and for the purposes and uses herein set forth.

This Mortgage secures:

(A) The repayment of the indebtedness evidenced by that certain Note secured by Mortgage ("Note") of even date herewith with a maturity date as defined in the Loan Agreement subject to extension as provided in the Loan Agreement, executed by Mortgagor and payable to the order of Mortgagee, in the principal sum of FOURTEEN MILLION THREE HUNDRED THOUSAND DOLLARS (\$14,300,000) with interest thereon, as provided therein and all late charges, loan fees, commitment fees, prepayment fees and all extensions, renewals, modifications, amendments and replacements thereof;

(B) The payment of all other sums which may be advanced by or otherwise be due to Mortgagee under any provision of this Mortgage or under any other instrument or document referred to in clause (C) below, with interest thereon at the rate provided herein or therein;

(C) The performance of each and every covenant and agreement of Mortgagor contained (1) herein, in the Note, and or in the Loan Agreement and (2) in the obligations of

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Mortgagor upon any and all pledge or other security agreements, the Loan Agreement, any disbursement agreements, supplemental agreements, assignments (both present and collateral) and all instruments of indebtedness or security now or hereafter executed by Mortgagor in connection with any indebtedness referred to in this section including but not limited to the Assignment of Leases and Rents or for the purpose of supplementing or amending this Mortgage or any instrument secured hereby (all of the foregoing in this clause (C), as the same may be amended, modified or supplemented from time to time, being referred to hereinafter as "Related Agreements") and all costs and expenses, including reasonable attorneys' fees with respect to all such documents, including, without limitation, the negotiation and drafting of any loan settlement or workout agreement.

The parties hereby acknowledge and intend that all advances pursuant to the Loan Agreement whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 5/15-1302(b)(1) of the Illinois Mortgage Foreclosure Law (as the same may be amended from time to time, the "Act") Illinois Code of Civil Procedure, 735 ILCS 5/15-1101 et seq.

## ARTICLE I COVENANTS OF MORTGAGOR

To protect the security of this Mortgage, Mortgagor covenants and agrees as follows:

1.1 Performance of Obligations Secured. Mortgagor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges provided for in the Note and shall further perform fully and in a timely manner all other obligations of Mortgagor contained herein, in the Loan Agreement or in the Note or in any of the Related Agreement

1.2 Insurance. For all times during the period there remains any indebtedness under the Note, or any and all other indebtedness secured by this Mortgage, Mortgagor shall keep the Property insured against all risks or hazards as Mortgagee may require and as provided in the Loan Agreement. Such insurance shall be in policy form, amount and coverage satisfactory to Mortgagee, including, but not limited to:

(A) Fire and extended coverage property damage insurance, including, but not limited to all risk insurance (including Builder's Risk Insurance to be maintained during the courts of construction of the Property), in an amount equal to the full replacement value of the improvements, without coinsurance or deducting for depreciation, containing a waiver of subrogation clause and a deductible amount acceptable to Mortgagee;

(B) General public liability insurance, open lot and garage liability insurance in such form, amount and deductible satisfactory to Mortgagee, and naming Mortgagee as additional insured covering Mortgagee's interest in the Property;

(C) Business interruption or rent loss insurance endorsement in an amount acceptable to Mortgagee;

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(D) Flood insurance required by and obtainable through the National Flood Insurance Program sufficient to cover any damage which may be anticipated in the event of flood unless Mortgagor has provided Mortgagee evidence satisfactory to Mortgagee that no portion of the Property is located within the boundaries of the one hundred (100) year flood plain;

(E) Boiler and machinery insurance when risks covered thereby are present and Mortgagee requires such insurance;

(F) Worker's compensation insurance in amounts acceptable to Mortgagee; and

(G) Open – Lot and garage liability insurance.

(H) The insurance coverages described in subsections (A), (C), (D), (E) and (G) above shall name Mortgagee under a standard noncontributory mortgagee clause or otherwise directly insure Mortgagee's interest in the Property. All losses under said insurance shall be payable to Mortgagee in the manner provided in sections 1.4 and 1.5 hereof. All policies of insurance required under this section 1.2 shall be with a company or companies satisfactory to Mortgagee and authorized to do business in the state in which the Property is located. All policies of insurance shall provide that they will not be canceled or modified without thirty (30) days' prior written notice to Mortgagee. True copies of the above mentioned insurance policies or evidence of such insurance (in an ACORD Form satisfactory to Mortgagee) shall be delivered to and held by Mortgagee. True copies of all renewal and replacement policies or evidences of such insurance forms (in an ACORD Form satisfactory to Mortgagee) thereof shall be delivered to Mortgagee at least fourteen (14) days before the expiration of the expiring policies. If any renewal or replacement policy is not obtained as required herein, Mortgagee is authorized to obtain the same in Mortgagor's name and at Mortgagor's expense. Mortgagee shall not by the fact of failing to obtain any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of insurance contracts, solvency of insurance companies, or payment or defense of lawsuits, and Mortgagor hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

### 1.3 Condemnation.

(A) Immediately upon obtaining knowledge of the commencement or threat of any action in connection with (1) any condemnation, (2) any other taking of the Property or any part thereof by any public authority or private entity having the power of eminent domain, or (3) any conveyance in lieu of such condemnation or taking of the Property or any part thereof ("Condemnation"), Mortgagor shall notify Mortgagee in writing but in no event later than thirty (30) days after Mortgagor obtains knowledge of the commencement of or threat of a Condemnation. Mortgagee shall have the right, but not the obligation, to participate in any proceedings relating to any Condemnation and may, in its reasonable judgment, consent or withhold its consent to any settlement, adjustment, or compromise of any claims arising from the Condemnation and no such settlement, adjustment or compromise shall be final or binding upon Mortgagee without Mortgagee's prior consent.

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(A) In the event of a Condemnation of the Property which allows the Tenant (as that term is hereinafter defined) to terminate its Lease (as that term is hereinafter defined) and the Lease is terminated, then all proceeds of the Condemnation ("Condemnation Proceeds") shall be paid over to Mortgagee and shall be applied first toward reimbursement of the costs and expenses (including reasonable attorneys' fees) of Mortgagee, if any, in connection with the recovery of such Condemnation Proceeds, and then, in the reasonable judgment of Mortgagee but without regard to the adequacy of its security under this Mortgage, shall be applied against all amounts due herein or under the Note (without prepayment premium) and any remaining Condemnation Proceeds shall be released to the Mortgagor. In the event the Condemnation Proceeds are less than the outstanding principal balance and other amounts due hereunder, Mortgagor shall pay to Mortgagee the difference promptly upon demand.

(B) If less than all of the Property is taken by Condemnation and Mortgagee in its reasonable judgment determines that either the remainder of the Property can be operated as an economically viable entity at substantially the same level of operations as immediately prior to such Condemnation and provided the Lease is not terminated by Tenant, then Mortgagor shall diligently restore the Property to a condition and use as close as possible to its condition immediately prior to the Condemnation and all Condemnation Proceeds shall be made available to Mortgagor for such restoration. If the estimated cost of restoration, as reasonably determined by Mortgagee, is equal to or less than Two Hundred Thousand Dollars (\$200,000), all Condemnation Proceeds shall be released directly to Mortgagor for restoration of the Property. If the estimated cost of restoration exceeds Two Hundred Thousand Dollars (\$200,000), all Condemnation Proceeds shall be made available to Mortgagor in accordance with Mortgagee's then current construction loan disbursement procedures. In the event there are additional Condemnation Proceeds remaining following restoration, Mortgagee shall apply such amounts to reduce the outstanding principal balance of the Note (such payment shall not be subject to any prepayment premium) with any remaining balance to Mortgagor. Mortgagee shall have the right to obtain an opinion of an independent contractor or engineer satisfactory to Mortgagee, at Mortgagor's expense, to estimate the cost to restore the remaining portion of the Property. If the amount of the Condemnation Proceeds is not sufficient to restore the Property based on the opinion of an independent contractor or engineer, subject to revision as restorations are made, Mortgagor shall be obligated to pay the difference toward the restoration of the Property.

(C) If an Event of Default exists at any time from the time of a Condemnation through the completion of restoration and payment of any Condemnation Proceeds, the use of the Condemnation Proceeds shall be governed by the remedies set forth in Article III below. If an event has occurred which with notice, the passage of time, or both, could become an Event of Default, then, the Condemnation Proceeds shall be held by Mortgagee, pending cure of such event.

## 1.4 Damage to Property.

(A) Promptly upon obtaining knowledge of any damage to the Property or any part thereof, but in no event later than five (5) days after Mortgagor obtains such knowledge, Mortgagor

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shall notify Mortgagee of such damage in writing. Mortgagor shall diligently restore the Property to the same condition that existed immediately prior to the damage whether or not Insurance Proceeds (as hereinafter defined) are sufficient for such restoration.

(B) In the event that pursuant to the terms of the Lease, the Tenant is allowed to terminate the Lease upon the occurrence of a casualty and the Lease is terminated, then, at Mortgagee's sole option, either all proceeds of any insurance on the Property ("Insurance Proceeds") shall either (i) be applied by Mortgagee first to the reimbursement of any costs or expenses incurred by Mortgagee in connection with the damages and then be used to reduce the outstanding principal balance of the Note (such payment shall not be subject to any prepayment premium and all other amounts due hereunder) with any overage returned to Mortgagor; or (ii) be made available to Mortgagor to restore the improvements in accordance with Mortgagee's then current construction loan disbursement procedures. In the event the Insurance Proceeds are less than the amounts then due hereunder, Mortgagor shall pay to Mortgagee the difference between the amount due and the amount of the Insurance Proceeds.

(C) In the event the Lease requires the Tenant or the Mortgagor to restore the improvements after a casualty, and Tenant is not allowed to terminate the Lease or elects not to terminate the Lease, Insurance Proceeds will be held by Mortgagee and made available to Mortgagor for restoration of the Property in accordance with Mortgagee's then current construction loan disbursement procedures. If the amount of the Insurance Proceeds is not sufficient to restore the Property based upon an independent contractor's or engineer's opinion, subject to revision as restorations are made, Mortgagor shall be obligated to pay the difference toward the restoration of the Property.

(D) If an Event of Default exists at any time from the time of damage through the completion of restoration and the final release of any Insurance Proceeds to Mortgagor, the use of the Insurance Proceeds shall be governed by the remedies set forth in Article III below. If an event has occurred which with notice, the passage of time, or both, could become an Event of Default, then the Insurance Proceeds shall be held by Mortgagee or in the Escrow Fund, as applicable, pending cure of such event prior to the expiration of any applicable cure or grace period.

## 1.5 Intentionally Omitted.

## 1.6 Taxes, Liens and other Items.

(A) Mortgagor shall pay any and all taxes, bonds, assessments, fees, liens, charges, fines, impositions and any accrued interest or penalty thereon, and any and all other items which are attributable to or affect the Property by making payment prior to delinquency directly to the payee thereof and promptly furnish copies of paid receipts for these to Mortgagee. Mortgagor shall promptly discharge or bond any lien or encumbrance on the Property whether said lien or encumbrance has or may attain priority over this Mortgage or not. This Mortgage, together with the Permitted Exceptions listed on Exhibit "B", shall be the sole encumbrance on the Property and, if

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with the consent of Mortgagee it is not the sole encumbrance, then it shall be prior to any and all other liens or encumbrances on the Property. Provided that the priority of this Mortgage is not in any way affected, Mortgagor may in good faith protest the payment of any tax which it believes is unwarranted or excessive and may defer payment of such tax pending conclusion of such contest if legally permitted to do so and provided Mortgagee's security is not jeopardized in Mortgagee's sole opinion.

(B) As further security for the payment of the Note and the payment of real estate taxes, regular or special assessments and insurance premiums, Mortgagor shall, if an Event of Default has occurred and if required by Mortgagee, deposit one-twelfth (1/12) of the annual amounts of such items as estimated by Mortgagee, with each monthly payment on the Note, so that Mortgagee will hold a sufficient amount to pay all such charges not less than thirty (30) days prior to the date on which such items become due and payable. Mortgagee shall be furnished evidence to allow it to estimate such amounts, including paid receipts or annual insurance premium statements, assessment notices and tax receipts. All funds so deposited shall, until applied to the payment of the aforesaid items, as hereinafter provided, be held by Mortgagee without interest (except to the extent required under applicable law) and may be commingled with other funds of Mortgagee. All funds so deposited shall be applied to the payment of the aforesaid items only upon the satisfaction of the following conditions: (1) no Event of Default or event, which with notice or the passage of time or both could become an Event of Default, shall have occurred; (2) Mortgagee shall have sufficient funds to pay the full amounts of such items (which funds may include amounts paid solely for such purpose by Mortgagor in addition to the escrowed funds); and (3) Mortgagor shall have furnished Mortgagee with prior written notification that such items are due and with the bills and invoices therefor in sufficient time to pay the same before any penalty or interest attaches and before policies of insurance lapse, as the case may be, and shall have deposited any additional funds as Mortgagee may determine as necessary to pay such items.

(C) Mortgagee expressly disclaims any obligation to pay the aforesaid items unless and until Mortgagor complies with all of the provisions set forth in subsections 1.6(A) and (B). Mortgagor hereby pledges any and all monies now or hereafter deposited pursuant to subsection 1.6(B) as additional security for the Note and Related Agreements. If any Event of Default shall have occurred, or if the Note shall be accelerated as herein provided, all funds so deposited may, at Mortgagee's option, be applied as determined solely by Mortgagee or to cure said Event of Default or as provided in this section 1.6. In no event shall Mortgagor claim any credit against the principal and interest due hereunder for any payment or deposit for any of the aforesaid items.

## 1.7 Assignment of Leases, Contracts, Rents and Profits.

(A) Mortgagor hereby absolutely, presently and unconditionally grants, assigns, transfers, conveys and sets over to Mortgagee all of Mortgagor's right, title and interest in and to the following whether arising under the Leases, by statute, at law, in equity, or in any other way:

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(1) All of the Leases of the Property which are in effect on the date hereof, and entered into or in effect from time to time after the date hereof, including, without limitation, when entered into, that certain Lease Agreement ("Lease") between Mortgagor, as landlord, and Kowalis Motor Car, Inc., an Illinois corporation, as tenant ("Tenant") and all amendments, extensions, replacements, modifications and renewals thereof and all subleases, concession agreements, any ground leases or ground subleases and all other agreements affecting the same (the "Leases") and all guaranties thereunder;

(2) All of the rents, income, profits, revenue, royalties, judgments, Condemnation Proceeds, Insurance Proceeds, unearned insurance premiums and any other fees or sums payable to Mortgagor or any other person as landlord and other benefits and rights of the Property arising from the use, occupancy, operation or management of all or any portion thereof or from all the Leases, and any proceeds, deposits or security deposits relating thereto, including, without limitation, any award to Mortgagor made hereafter in any court involving any of the tenants under the Leases in any bankruptcy, insolvency, or reorganization proceeding in any state or federal court, and Mortgagor's right to appear in any action and/or to collect any such award or payment, and all payments by any tenant in lieu of rent (collectively, "Rents and Profits");

(3) All of Mortgagor's claims and rights (the "Bankruptcy Claims") to the payment of damages arising from any rejection by a lessee of any Lease under the Bankruptcy Code;

(4) All of Mortgagor's right, title and interest in and claims under any and all lease guaranties, letters of credit and any other credit support given by any guarantor in connection with any of the Leases (individually, a "Lease Guaranty", collectively, the "Lease Guaranties") to Mortgagor (individually, a "Lease Guaranty", collectively, the "Lease Guaranties");

(5) All proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims (collectively, "Proceeds");

(6) All rights, powers, privileges, options and other benefits of Mortgagor as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the debt under the Note or the other obligations under any Related Agreement), and to do all other things which Mortgagor or any lessor is or may become entitled to do under the Leases or the Lease Guaranties (collectively, "Other Rights"); and

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(7) To the extent assignable, all contracts, agreements, management, operating and maintenance agreements, warranties, licenses, permits, guaranties and sales contracts relating to the Property and the Collateral entered into by, or inuring to the benefit of, Mortgagor (the "Contracts").

(B) Notwithstanding the provisions of subsection 1.7(A), prior to the occurrence of any Event of Default hereunder, Mortgagee shall not exercise any of the rights or powers conferred upon Mortgagee by this section 1.7, and, subject to subsection 1.7(F), Mortgagor shall have a license to manage the Property; to collect, receive and use all Rents and Profits in accordance with the terms of the Leases; to let the Property and to take all actions which a reasonable and prudent landlord would take in enforcing the provisions of the Leases and Contracts; provided, however, that all amounts so collected shall be applied toward operating expenses, real estate taxes and insurance relating to the Property, capital repair items necessary to the operation, repair, maintenance and preservation of the Property, and the payment of sums due and owing under the Note, and this Mortgage prior to any other expenditure or distribution by Mortgagor. From and after the occurrence of an Event of Default (whether or not Mortgagee shall have exercised Mortgagee's option to declare the Note immediately due and payable), such license shall be automatically revoked without any action required by Mortgagee. Any amounts received by Mortgagor or its agents in the performance of any acts prohibited by the terms of this Mortgage, including but not limited to any amounts received in connection with any cancellation, modification or amendment of any of the Leases prohibited by the terms of this Mortgage and any amounts received by Mortgagor as rents, income, issues or profits from the Property from and after an Event of Default under this Mortgage, the Note, or any of the other Related Agreements, shall be held by Mortgagor as trustee for Mortgagee and all such amounts shall be accounted for to Mortgagee and shall not be commingled with other funds of the Mortgagor. Any person acquiring or receiving all or any portion of such trust funds shall acquire or receive the same in trust for Mortgagee as if such person had actual or constructive notice that such funds were impressed with a trust in accordance herewith.

(C) Upon the occurrence of an Event of Default, the Mortgagee shall have the right but not the obligation to perform as landlord under the Leases and as a party under the Contracts. The assignment of Rents and Profits set forth herein constitutes an irrevocable direction and authorization of all tenants under the Leases to pay all Rents and Profits to Mortgagee upon demand and without further consent or other action by Mortgagor.

(D) Neither the foregoing assignment of Rents and Profits, Leases and Contracts to Mortgagee nor the exercise by Mortgagee of any of its rights or remedies under Article III shall be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Property, unless Mortgagee, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Property by any court at the request of Mortgagee or by agreement with Mortgagor, or the entering into possession of the Property by such receiver, be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise liable in any manner with respect to the Property.

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(E) In the event Mortgagee collects and receives any Rents and Profits under this section 1.7 pursuant to any Monetary or Performance Default as defined in section 2.1 hereof, such collection or receipt shall in no way constitute a curing of the Monetary or Performance Default.

(F) Mortgagor shall not, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed: (1) enter into, or consent to or permit the assignment or subletting of any Leases; (2) alter, modify, change or terminate the terms of any Leases create or permit any lien or encumbrance which, upon foreclosure, would be superior to any such Leases or in any other manner impair Mortgagee's rights and interest with respect to the Rents and Profits; (3) pledge, transfer, mortgage or otherwise encumber or assign the Leases, the Contracts or the Rents and Profits; or (5) collect rents more than thirty (30) days prior to their due date.

(G) Mortgagor shall promptly give notice to Mortgagee of any default under any of the Leases regardless of whether such Leases were executed before or after the date of this Mortgage, together with a complete copy of any notices delivered to or by the tenant as a result of such default. Mortgagee shall have the right, but not the obligation, to cure any default of Mortgagor under any of the Leases and all amounts disbursed in connection with said cure shall be deemed to be indebtedness secured hereby.

(H) Mortgagee shall have the right to approve any lease forms used by Mortgagor for leases of space in the Property.

(I) Mortgagor hereby represents, warrants and agrees that:

- (1) Mortgagor has the right, power and capacity to make this assignment and that no person, firm or corporation or other entity other than Mortgagor has or will have any right, title or interest in or to the Leases or the Rents and Profits.
- (2) Mortgagor shall, at its sole cost and expense, perform and discharge all of the obligations and undertakings of the landlord under the Leases. Mortgagor shall enforce the performance of each obligation of the tenants under the Leases and will appear in and prosecute or defend any action connected with the Leases or the obligations of the tenants thereunder.

(J) Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this assignment. Should Mortgagee incur any liability, loss or damage under the Leases or under or by reason of this assignment, the amount thereof, including costs, expenses and attorneys' fees, shall be secured by this Mortgage; and Mortgagor shall reimburse Mortgagee therefor immediately upon demand, and upon failure of Mortgagor to do so, Mortgagee may declare all sums so secured to be immediately due and payable.



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(K) Mortgagee may take or release other security, may release any party primarily or secondarily liable for any indebtedness secured hereby, may grant extensions, renewals or indulgences with respect to such indebtedness, and may apply any other security therefor held by it to the satisfaction of such indebtedness, without prejudice to any of its rights hereunder.

(L) Nothing herein contained and no act done or omitted by Mortgagee pursuant to the powers and rights granted it herein shall be deemed to be a waiver by Mortgagee of its other rights and remedies under the Note, the Loan Agreement and this Mortgage, and this assignment is made and accepted without prejudice to any of the other rights and remedies possessed by Mortgagee under the terms thereof. The right of Mortgagee to collect said indebtedness and to enforce any other security therefor held by it may be exercised by Mortgagee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. It is the intent of both Mortgagor and Mortgagee that this assignment be supplementary to, and not in substitution or derogation of, any other provision contained in this Mortgage giving Mortgagee any interest in or rights with respect to the Leases or Rents and Profits.

(M) Neither this assignment nor pursuit of any remedy hereunder by Mortgagee shall cause or constitute a merger of the interests of the tenant and the Mortgagor under any of the Leases such that any of the Leases hereby assigned are no longer valid and binding legal obligations of the parties executing the same

(N) Mortgagor agrees, from time to time, to execute and deliver, upon demand, all assignments and any and all other writings as Mortgagee may reasonably deem necessary or desirable to carry out the purpose and intent hereof, or to enable Mortgagee to enforce any right or rights hereunder.

(O) Upon or at any time after the occurrence of an Event of Default, Mortgagee shall have the right to proceed in its own name or in the name of Mortgagor in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Mortgagor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease and under the Bankruptcy Code.

If there shall be filed by or against Mortgagor a petition under the Bankruptcy Code, and Mortgagor, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Mortgagor shall give Mortgagee not less than ten (10) days prior notice of the date on which Mortgagor shall apply to the bankruptcy court for authority to reject the Lease. Mortgagee shall have the right, but not the obligation, to serve upon Mortgagor within such ten (10) day period a notice stating that (i) Mortgagee demands that Mortgagor assume and assign the Lease to Mortgagee pursuant to Section 365 of the Bankruptcy Code and (ii) Mortgagee covenants to cure or provide adequate assurance of future performance under the Lease. If Mortgagee serves upon Mortgagor the notice described in the preceding sentence, Mortgagor shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within

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thirty (30) days after the notice shall have been given, subject to the performance by Mortgagee of the covenant provided for in clause (ii) of the preceding sentence.

1.8 Acceleration Upon Sale or Encumbrance. If Mortgagor or any member of Mortgagor shall make or allow a violation of the term provisions of Section 7.1 of the Loan Agreement without the prior written consent of Mortgagee, then Mortgagee shall have the right, at its option, to declare the indebtedness secured by this Mortgage, irrespective of the maturity date specified in the Note, immediately due and payable. Except as expressly consented to in writing by Mortgagee, Mortgagor shall not permit any additional encumbrances on the Property.

1.9 Preservation and Maintenance of Property. Mortgagor or its property manager, if applicable, shall, in the exercise of reasonable business judgment, keep the Property and every part thereof in good condition and repair, in accordance with sound property management practices and shall promptly and faithfully comply with and obey all laws, ordinances, rules, regulations, requirements and orders of every duly constituted governmental authority or agent having jurisdiction with respect to the Property. Mortgagor shall not permit or commit any waste, impairment, or deterioration of the Property, nor commit, suffer or permit any act upon or use of the Property in violation of law or applicable order of any governmental authority, whether now existing or hereafter enacted, or in violation of any covenants, conditions or restrictions affecting the Property or bring or keep any article in the Property or cause or permit any condition to exist thereon which would be prohibited by or invalidate the insurance coverage required to be maintained hereunder. Mortgagor shall not make any material structural changes or alterations to the Property nor remove or demolish the Improvements or any part thereof, except as contemplated by the Loan Agreement, without the prior written consent of Mortgagee. Mortgagor shall promptly restore any portion of the Property which may be damaged or destroyed as required hereunder. Mortgagor shall promptly bond or discharge any mechanics' liens against the Property.

Unless required by applicable law or unless Mortgagee has otherwise first agreed in writing, Mortgagor shall not make or allow any changes which will adversely affect the value of the Property to be made in the nature of the occupancy or use of the Property or any part thereof for which the Property or such part was intended at the time this Mortgage was delivered. Mortgagor shall not initiate or acquiesce in any change which will adversely affect the value of the Property or any zoning or other land use classification now or hereafter in effect and affecting the Property or any part thereof without in each case obtaining Mortgagee's prior written consent thereto.

1.10 Offset Certificates. Mortgagor, within three (3) days upon request in person or within ten (10) days upon request by mail, shall furnish a written statement duly acknowledged and notarized, of all amounts due on any indebtedness secured hereby or secured by any of the Related Agreements, whether for principal or interest on the Note or otherwise, and stating whether any offsets or defenses exist against the indebtedness secured hereby and covering such other matters with respect to any such indebtedness as Mortgagee may reasonably require.

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## 1.11 Intentionally Omitted.

1.12 Protection of Security; Costs and Expenses. Mortgagor and its property manager, if applicable, shall appear in and defend any action or proceeding purporting to affect the security of this Mortgage or any additional or other security for the obligations secured hereby, or the rights or powers of Mortgagee, and shall pay all costs and expenses actually incurred, including, without limitation, cost of evidence of title and actual attorneys' fees, in any such action or proceeding in which Mortgagee may appear, and in any suit brought by Mortgagee to foreclose this Mortgage or to enforce or establish any other rights or remedies of Mortgagee hereunder or under any other security for the obligations secured hereby. If Mortgagor fails to perform any of the covenants or agreements contained in this Mortgage or the Loan Agreement, or if any action or proceeding is commenced which affects Mortgagee's interest in the Property or any part thereof, including, eminent domain, code enforcement, or proceedings of any nature whatsoever under any federal or state law, whether now existing or hereafter enacted or amended, relating to bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, or to a decedent, then Mortgagee may, but without obligation to do so and without notice to or demand upon Mortgagor, perform such covenant or agreement and compromise any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or superior hereto. Mortgagor shall further pay all expenses of Mortgagee actually incurred. Any amounts disbursed by Mortgagee pursuant to this section shall be additional indebtedness of Mortgagor secured by this Mortgage and each of the Related Agreements as of the date of disbursement and shall bear interest at the rate set forth in the Note, from demand until paid. All such amounts shall be payable by Mortgagor immediately upon demand. Nothing contained in this section shall be construed to require Mortgagee to incur any expense, make any appearance, or take any other action.

## 1.13 Mortgagor's Covenants Respecting Collateral.

(A) Mortgagor shall execute and deliver financing and continuation statements covering the Collateral from time to time and in such form as Mortgagee may require to perfect and continue the perfection of Mortgagee's security interest with respect to such property, and Mortgagor shall pay all reasonable costs and expenses of any record searches for financing statements Mortgagee may require.

(B) Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created any other security interest in the Collateral, including replacements and additions thereto.

(C) Without the prior written consent of Mortgagee or except in the ordinary course of business, Mortgagor shall not sell, transfer or encumber any of the Collateral, or remove any of the Collateral from the Property unless Mortgagor shall promptly substitute and replace the property removed with similar property of at least equivalent value on which Mortgagee shall have a continuing security interest ranking at least equal in priority to Mortgagee's security interest in the property removed.

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(D) Mortgagor shall: (1) upon reasonable notice (unless an emergency or Event of Default exists) permit Mortgagee and its representatives to enter upon the Property to inspect the Collateral and Mortgagor's books and records relating to the Collateral and make extracts therefrom and to arrange for verification of the amount of Collateral, under procedures acceptable to Mortgagee, directly with Mortgagor's debtors or otherwise at Mortgagor's expense; (2) promptly notify Mortgagee of any attachment or other legal process levied against any of the Collateral and any information received by Mortgagor relative to the Collateral, Mortgagor's debtors or other persons obligated in connection therewith, which may in any way affect the value of the Collateral or the rights and remedies of Mortgagee in respect thereto; (3) reimburse Mortgagee upon demand for any and all costs actually incurred, including, without limitation, reasonable and actual attorneys' and accountants' fees, and other expenses incurred in collecting any sums payable by Mortgagor under any obligation secured hereby, or in the checking, handling and collection of the Collateral and the preparation and enforcement of any agreement relating thereto; (4) notify Mortgagee of each location at which the Collateral is or will be kept, other than for temporary processing, storage or similar purposes, and of any removal thereof to a new location, including, without limitation, each office of Mortgagor at which records relating to the Collateral are kept; (5) provide, maintain and deliver to Mortgagee originals or certified copies of the policies of insurance and certificates of insurance insuring the Collateral against loss or damage by such risks and in such amounts, form and by such companies as Mortgagee may require and with loss payable to Mortgagee, and in the event Mortgagee takes possession of the Collateral, the insurance policy or policies and any unearned or returned premium thereon shall at the option of Mortgagee become the sole property of Mortgagee; and (6) do all acts necessary to maintain, preserve and protect all Collateral, keep all Collateral in good condition and repair and prevent any waste or unusual or unreasonable depreciation thereof.

(E) Until Mortgagee exercises its right to collect proceeds of the Collateral pursuant hereto, Mortgagor will collect with diligence any and all proceeds of the Collateral. If an Event of Default exists, any proceeds received by Mortgagor shall be held in trust for Mortgagee, and Mortgagor shall keep all such collections separate and apart from all other funds and property so as to be capable of identification as the property of Mortgagee and shall deliver to Mortgagee such collections at such time as Mortgagee may request in the identical form received, properly endorsed or assigned when required to enable Mortgagee to complete collection thereof.

(F) Mortgagee shall have all of the rights and remedies granted to a secured party under the Code of the state in which the Collateral is located, as well as all other rights and remedies available at law or in equity. During the continuance of any Event of Default hereunder, under the Loan Agreement or under the Note, Mortgagee shall have the right to take possession of all or any part of the Collateral, to receive directly or through its agent(s) collections of proceeds of the Collateral (including notification of the persons obligated to make payments to Mortgagor in respect of the Collateral), to release persons liable on the Collateral and compromise disputes in connection therewith, to exercise all rights, powers and remedies which Mortgagor would have, but for the security agreement contained herein, to all of the Collateral and proceeds thereof, and to do all other acts and things and execute all documents in the name of Mortgagor or otherwise, deemed by

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Mortgagee as necessary, proper and convenient in connection with the preservation, perfection or enforcement of its rights hereunder.

(G) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor 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 Mortgagor, as lessor thereunder.

(H) Mortgagor represents and warrants that:

- (i) Mortgagor is the record owner of the Property;
- (ii) Mortgagor's chief executive office is located in the State of Illinois;
- (iii) Mortgagor's state of formation is the State of Illinois;
- (iv) Mortgagor's exact legal name is as set forth in the introduction to this Mortgage; and
- (v) Mortgagor's organizational identification number is 00667226.

(I) After any Event of Default hereunder, under the Loan Agreement or under the Note, Mortgagor shall, at the request of Mortgagee, assemble and deliver the Collateral and books and records pertaining to the Property at a place designated by Mortgagee, and Mortgagee may, with reasonable notice to Mortgagor (unless an emergency or Event of Default exists), enter onto the Property and take possession of the Collateral. It is agreed that public or private sales, for cash or on credit to a wholesaler or retailer or investor, or user of collateral of the types subject to the security agreement, or public auction, are all commercially reasonable since differences in the sales prices generally realized in the different kinds of sales are ordinarily offset by the differences in the costs and credit risks of such sales. The proceeds of any sale of the Collateral shall be applied in accordance with the priorities set forth in Section 3.7 of this Mortgage.

## 1.14 Covenants Regarding Financial Statements.

Mortgagor shall keep true books of record and account in which full, true and correct entries in accordance with sound accounting practice and principles applied on a consistent basis from year to year shall be made of all dealings or transactions with respect to the Property and shall deliver to the Financial Statements required pursuant to the Loan Agreement.

1.15 Environmental Covenants. Mortgagor covenants: (a) that no Hazardous Materials (as defined below) shall be installed, used, generated, manufactured, treated, handled, refined, produced, processed, stored or disposed of, in, on or under the Property, except in the ordinary course of the business of Tenant and only in accordance with Hazardous Materials Laws (as hereinafter defined);

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(b) that no activity shall be undertaken on the Property which would cause (1) the Property to become a hazardous waste treatment, storage or disposal facility under any Hazardous Material Law, (2) a release or threatened release of Hazardous Material from the Property in violation of any Hazardous Material Law, or (3) the discharge of Hazardous Material into any watercourse, body of surface or subsurface water or wetland, or the discharge into the atmosphere of any Hazardous Material which would require a permit under any Hazardous Material Law and for which no such permit has been issued; (c) that no activity shall be undertaken or permitted to be undertaken, by Mortgagor on the Property which would result in a violation under any Hazardous Material Law; and (d) to obtain and deliver to Mortgagee, within a reasonable time following completion of actions required by an appropriate governmental agency, certifications of engineers or other professionals reasonably acceptable to Mortgagee, in form and substance satisfactory to Mortgagee, certifying that all necessary and required actions to clean up, remove, contain, prevent and eliminate all releases or threats of release of Hazardous Materials on or about the Property to the levels required by the appropriate governmental agencies have been taken and, to the knowledge of such professional, the Property is then in compliance with applicable Hazardous Material Laws as then in effect and applicable to such actions. For purposes of this Mortgage, "Hazardous Materials" means and includes asbestos or any substance containing asbestos, polychlorinated biphenyls, any explosives, radioactive materials, chemicals known or suspected to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions, infectious wastes, any petroleum or petroleum-derived waste or product or related materials and any items defined as hazardous, special or toxic materials, substances or waste under any Hazardous Material Law, or any material which shall be removed from the Property pursuant to any administrative order or enforcement proceeding or in order to place the Property in a condition that is suitable for ordinary use. "Hazardous Material Laws" collectively means and includes any present and future local, state, federal or international law or treaty relating to public health, safety or the environment including without limitation, the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §6901 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. §1801 *et seq.*, the Clean Water Act, 33 U.S.C. §1251 *et seq.*, the Clean Air Act, as amended 42 U.S.C. §7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*, the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*, the Uranium Mill Tailings Radiation Control Act, 42 U.S.C. §7901 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. §655 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 *et seq.*, the National Environmental Policy Act, 42 U.S.C. §4321 *et seq.*, the Noise Control Act, 42 U.S.C. §4901 *et seq.*, and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 *et seq.*, and the amendments, regulations, orders, decrees, permits, licenses or deed restrictions now or hereafter promulgated thereunder.

1.16 Mortgagor's Continued Existence. Mortgagor shall at all times during the term of the Loan maintain its legal existence in Illinois and its qualification to do or transact business in the state of Illinois. So long as any of the indebtedness secured hereby remains outstanding, Mortgagor will

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provide Mortgagee with thirty (30) days prior written notice of any change in Mortgagor's name, address, organization identification number, or state of organization.

## ARTICLE II EVENTS OF DEFAULT

Each of the following shall constitute an event of default ("Event of Default") hereunder:

### 2.1 Monetary and Performance Defaults.

(A) Failure to make any payment due under the Note or to make any payment due under this Mortgage to Mortgagee or any other party, including without limitation, payment of escrow deposits, real estate taxes, insurance premiums and ground rents, if any, on or before the tenth (10<sup>th</sup>) day after such payment is due ("Monetary Default").

(B) Breach or default in the performance of any of the covenants or agreements of Mortgagor contained herein, or in any Related Agreement ("Performance Default"), if such Performance Default shall continue for thirty (30) days or more after written notice to Mortgagor from Mortgagee specifying the nature of the Performance Default; or

(C) The occurrence of an Event of Default under the Loan Agreement.

## ARTICLE III REMEDIES

Upon the occurrence of any Event of Default, Mortgagee shall have the following rights and remedies set forth in sections 3.1 through 3.8:

3.1 Acceleration. Notwithstanding the stated maturity date in the Note, Mortgagee may without notice or demand, declare the entire principal amount of the Note then outstanding and accrued and unpaid interest thereon, and all other sums or payments required thereunder to be due and payable immediately.

3.2 Entry. Irrespective of whether Mortgagee exercises the option provided in section 3.1 above, Mortgagee in person or by agent or by court-appointed receiver may, at its option, without any action on its part being required, without in any way waiving such Event of Default, with or without the appointment of a receiver, or an application therefor:

(A) take possession of the Property and conduct tests of, manage or hire a manager to manage, lease and operate the Property or any part thereof, on such terms and for such period of time as Mortgagee may reasonably deem proper, with full power to make, from time to time, all alterations, renovations, repairs or replacements thereto as may seem reasonably proper to Mortgagee including without limitation, completing the construction contemplated by the Loan Agreement;

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(B) with or without taking possession of the Property, collect and receive all Rents and Profits, notify tenants under the Leases or any other parties in possession of the Property to pay Rents and Profits directly to Mortgagee, its agent or a court-appointed receiver and apply such Rents and Profits to the payment of:

- (1) all reasonable costs and expenses incident to taking and retaining possession of the Property, management and operation of the Property, keeping the Property properly insured and all alterations, renovations, repairs and replacements to the Property;
- (2) all taxes, charges, claims, assessments, and any other liens which may be prior in lien or payment to this Mortgage or the Note, and premiums for insurance, with interest on all such items; and
- (3) the indebtedness secured hereby together with all costs and reasonable attorneys' fees, in such order or priority as to any of such items as Mortgagee in its sole discretion may determine, any statute, law, custom or use to the contrary notwithstanding;

(C) exclude Mortgagor, its agents and servants, wholly from the Property;

(D) have joint access with Mortgagor to the books, papers and accounts of Mortgagor relating to the Property, at the expense of Mortgagor;

(E) commence, appear in and/or defend any action or proceedings purporting to affect the interests, rights, powers and/or duties of Mortgagee hereunder, whether brought by or against Mortgagor or Mortgagee; and

(F) pay, purchase, contest or compromise any claim, debt, lien, charge or encumbrance which in the reasonable judgment of Mortgagee may affect or appear to affect the interest of Mortgagee or the rights, powers and/or duties of Mortgagee hereunder.

The receipt by Mortgagee of any Rents and Profits pursuant to this Mortgage after the institution of foreclosure or other proceedings under the Mortgage shall not cure any such Event of Default or affect such proceedings or any sale pursuant thereto. After deducting the expenses and amounts set forth above in this section 3.2, as well as just and reasonable compensation for all Mortgagee's employees and other agents (including, without limitation, reasonable and actual attorneys' fees and management and rental commissions) engaged and employed, the moneys remaining, at the option of Mortgagee, may be applied to the indebtedness secured hereby. Whenever all amounts due on the Note and under this Mortgage shall have been paid and all Events of Default have been cured and any such cure has been accepted by Mortgagee, Mortgagee shall surrender possession to Mortgagor. The same right of entry, however, shall exist if any subsequent



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Event of Default shall occur; provided, however, Mortgagee shall not be under any obligation to make any of the payments or do any of the acts referred to in this section 3.2.

Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all rights, powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

3.3 Judicial Action. Mortgagee may bring an action in any court of competent jurisdiction to foreclose this Mortgage or to enforce any of the covenants and agreements hereof. The Property may be foreclosed in parts or as an entirety.

3.4 Foreclosure. Mortgagee may institute an action of mortgage foreclosure against the Property, or take such other action at law or in equity for the enforcement of this Mortgage and realization on the Property or any other security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the principal debt and the premium payment, if applicable, with interest thereon at the rate stipulated in the Note to the date of default, and thereafter at the Default Rate specified in the Note, together with all other sums due by Mortgagor in accordance with the provisions of the Note and this Mortgage, including any sums which may have been advanced or loaned by Mortgagee to Mortgagor after the date of this Mortgage, and all sums which may have been advanced by Mortgagee for taxes, water or sewer rents, charges or claims, payments on prior liens, insurance, utilities or repairs to the Property, all costs of suit, together with interest at the interest rate set forth in the Note on any judgment obtained by Mortgagee from and after the date of any sheriff or other judicial sale until actual payment is made of the full amount due Mortgagee.

All advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage (collectively "Protective Advances"), shall be deemed secured by the lien of this Mortgage and shall have the same priority as the indebtedness evidenced by the Note, including as follows:

(A) all advances by Mortgagee in accordance with the terms of this Mortgage or the Loan Agreement to: (1) preserve, maintain, repair, construct, restore or rebuild the improvements upon the Property; (2) preserve the lien of the Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Section 5/15-1302 (b)(5) of the Act;

(B) payments by Mortgagee of: (1) principal, interest, or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (2) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (3) other

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obligations authorized by this Mortgage; or (5) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title as referred to in Section 5/15-1505 of the Act;

(C) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;

(D) reasonable and actual attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 5/15-1504(d)(2) and 5/15-1510 of the Act; (2) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (3) in preparation for or in connection with the commencement, prosecution or defense of any other action related to the Mortgage or the Property;

(E) Mortgagee's fees and costs, including reasonable and actual attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Section 5/15-1508(b)(1) of the Act;

(F) expenses deductible from proceeds of sale as referred to in Sections 5/15-1512(a) and (b) of the Act; and

(G) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) if the Property or any portion thereof constitutes one or more units under a condominium declaration, assessments imposed upon the unit owner thereof; (2) if Mortgagor's interest in the Property is a leasehold estate under a lease or sublease, rentals or other payments required to be made by the lessee under the terms of the lease or sublease; (3) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Section 5/15-1704(c)(1) of the Act; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments deemed by Mortgagee to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; (6) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member or in any way affecting the Property; (7) costs incurred by Mortgagee for demolition, preparation for and completion of construction, as may be authorized by the Loan Agreement or other agreement; and (8) payments required to be paid by Mortgagor or Mortgagee pursuant to any lease or other agreement for occupancy of the Property.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable without notice and with interest thereon from the date of the advances until paid at the rate of interest payable after default under the terms of the Note.

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This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Section 5/15-1302(b)(5) of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (1) any determination of the amount of indebtedness secured by this Mortgage at any time;
- (2) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness become due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (3) if right of redemption has not been waived by this Mortgage, computation of amounts required to redeem pursuant to Sections 5/15-1603(d)(2) and 5/15-1603(e) of the Act;
- (4) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (5) application of income in the hands of any receiver or mortgagee in possession; and
- (6) computation of any deficiency judgment pursuant to Sections 5/15-1508(b)(2), 5/15-1508(e) and 5/15-1511 of the Act.

3.5 Rescission of Notice of Default. Mortgagee, from time to time before Mortgagee's sale, public sale or deed in lieu of foreclosure, may rescind any such notice of breach or default and of election to cause the Property to be sold by executing and delivering to Mortgagor a written notice of such rescission, which notice, when recorded, shall also constitute a cancellation of any prior declaration of default and demand for sale or such documents as may be required by the laws of the state in which the Property is located to effect such rescission. The exercise by Mortgagee of such right of rescission shall not constitute a waiver of any breach or Event of Default then existing or subsequently occurring, or impair the right of Mortgagee to execute and deliver to Mortgagor, as above provided, other declarations of default and demand for sale, and notices of breach or default, and of election to cause the Property to be sold to satisfy the obligations hereof, nor otherwise affect any provision, agreement, covenant or condition of the Note and/or of this Mortgage or any of the rights, obligations or remedies of the parties hereunder.

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3.6 Mortgagee's Remedies Respecting Collateral. Mortgagee may, acting in good faith and a commercially reasonable manner, realize upon the Collateral, enforce and exercise all of Mortgagee's rights, powers, privileges and remedies in respect of the Collateral, dispose of or otherwise deal with the Collateral and exercise any and all other rights, powers, privileges and remedies afforded to a secured party under the laws of the state in which the Property is located as well as all other rights and remedies available at law or in equity.

3.7 Proceeds of Sales. The proceeds of any sale made under or by virtue of this Article III, together with all other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Article III or otherwise, shall be applied as follows:

(A) To the payment of the costs, fees and expenses of sale and of any judicial proceedings wherein the same may be made, including the cost of evidence of title in connection with the sale, compensation to Mortgagee, and to the payment of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest on all advances made by Mortgagee at the interest rate applicable under the Note, but limited to any maximum rate permitted by law to be charged by Mortgagee;

(B) To the payment of any and all sums expended by Mortgagee under the terms hereof, not then repaid, with accrued interest at the interest rate applicable under the Note, and all other sums (except advances of principal and interest thereon) required to be paid by Mortgagor pursuant to any provisions of this Mortgage, or the Note, or the Loan Agreement, or any of the Related Agreements, including, without limitation, all Protective Advances, all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage or in connection with the enforcement thereof, together with interest thereon as herein provided; and

(C) To the payment of the entire amount then due, owing or unpaid for principal and interest upon the Note, and any other obligation secured hereby, with interest on the unpaid principal at the rate set forth therein from the date of advancement thereof until the same is paid in full; and then

(D) The remainder, if any, to the person or persons, including Mortgagor, legally entitled thereto.

3.8 Condemnation and Insurance Proceeds. All Condemnation Proceeds, Insurance Proceeds and any interest earned thereon shall be paid over either by the condemning authority, insurance company or escrow agent to Mortgagee and shall be applied first toward reimbursement of the costs and expenses of Mortgagee (including reasonable attorneys' fees), if any, in connection with the recovery of such Proceeds, and then shall be applied in the sole and absolute discretion of Mortgagee and without regard to the adequacy of its security under this Mortgage (a) to the payment or prepayment of all or any portion of the Note; (b) to the reimbursement of expenses incurred by Mortgagee in connection with the restoration of the Property; or (c) to the performance of any of the covenants contained in this Mortgage as Mortgagee may determine.

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## 3.9 Waiver of Marshalling, Rights of Redemption, Homestead and Valuation.

(A) Mortgagor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Mortgage, hereby expressly waives and releases all rights to direct the order in which any of the Property shall be sold in the event of any sale or sales pursuant hereto and to have any of the Property and/or any other property now or hereafter constituting security for any of the indebtedness secured hereby marshalled upon any foreclosure of this Mortgage or of any other security for any of said indebtedness.

(B) To the fullest extent permitted by law, Mortgagor, for itself and all who may at any time claim through or under it, hereby expressly waives, releases and renounces all rights of redemption from any foreclosure sale, all rights of homestead, exception, monitoring reinstatements, forbearance, appraisement, valuation, stay and all rights under any other laws which may be enacted extending the time for or otherwise affecting enforcement or collection of the Note, the debt evidenced thereby, or this Mortgage.

The foregoing waiver of right of redemption shall be deemed to have been made pursuant to Section 5/15-1601 of the Act; Mortgagor hereby acknowledging that the Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act

3.10 Remedies Cumulative. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any Event of Default or any acquiescence therein. Every power and remedy given by this Mortgage to Mortgagee may be exercised separately, successively or concurrently from time to time as often as may be deemed expedient by Mortgagee. If there exists additional security for the performance of the obligations secured hereby, Mortgagee, at its sole option, and without limiting or affecting any of its rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever rights and remedies it may have in connection with such other security or in such order as it may determine. Any application of any amounts or any portion thereof held by Mortgagee at any time as additional security or otherwise, to any indebtedness secured hereby shall not extend or postpone the due dates of any payments due from Mortgagor to Mortgagee hereunder or under the Note, or under the Loan Agreement or under any of the Related Agreements, or change the amounts of any such payments or otherwise be construed to cure or waive any default or notice of default hereunder or invalidate any act done pursuant to any such default or notice.

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## ARTICLE IV MISCELLANEOUS

4.1 Severability. In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, but only to the extent that it is invalid, illegal or unenforceable.

4.2 Certain Charges and Brokerage Fees.

(A) Mortgagor agrees to pay Mortgagee's reasonable charge for each written statement requested of Mortgagee as to the obligations secured hereby, furnished at Mortgagor's request. Mortgagor further agrees to pay the reasonable charges of Mortgagee for any other service rendered Mortgagor, or on its behalf, connected with this Mortgage or the indebtedness secured hereby, including, without limitation, the delivery to an escrow holder of a request for full or partial release or reconveyance of this Mortgage, transmittal to an escrow holder of moneys secured hereby, changing its records pertaining to this Mortgage and indebtedness secured hereby to show a new owner of the Property, and replacing an existing policy of insurance held hereunder with another such policy.

(B) Mortgagor agrees to indemnify and hold Mortgagee harmless from any responsibility and/or liability for the payment of any commission charge or brokerage fees to anyone which may be payable in connection with the funding of the loan evidenced by the Note and this Mortgage or refinancing of any prior indebtedness, if applicable, based upon any action taken by Mortgagor. It is understood that any such commission charge or brokerage fees shall be paid directly by Mortgagor to the entitled parties.

4.3 Notices.

(A) All notices expressly provided hereunder to be given by Mortgagee to Mortgagor and all notices, demands and other communications of any kind or nature whatever which Mortgagor may be required or may desire to give to or serve on Mortgagee shall be in writing and shall be served by certified mail, return receipt requested, to the appropriate address set forth below, or at such other place as Mortgagor or Mortgagee, as the case may be, may from time to time designate in writing by ten (10) days prior written notice thereof. Any such notice or demand served by certified mail, return receipt requested, shall be deposited in the United States mail, with postage thereon fully prepaid and addressed to the party so to be served at its address stated below or at such other address of which said party shall have theretofore notified in writing, as provided above, the party giving such notice.

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(B) Mortgagor hereby requests that any notice, demand, request or other communication (including any notice of an Event of Default and notice of sale as may be required by law) desired to be given or required pursuant to the terms hereof be addressed to Mortgagor as follows:

Cody Properties, L.L.C.  
c/o Lexus of Orland  
8485 West 159<sup>th</sup> Street  
Tinley Park, Illinois 60477  
Attention: Eugene Kowalis

All notices and other communications to Mortgagee shall be addressed as follows:

Toyota Motor Credit Corporation  
19001 South Western Avenue  
P.O. Box 2958  
Torrance, California 90509-2958  
Attention: Operations Manager

with a copy to:

Kubasiak, Fylstra, Reizen & Rotunno, P.C.  
20 South Clark Street  
29th Floor  
Chicago, Illinois 60603  
Attention: Gregory A. Thorpe, Esq.

#### 4.4 Mortgagor Not Released; Certain Mortgagee Acts.

(A) Extension of the time for payment or modification of the terms of payment of any sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of Mortgagor. Mortgagee shall not be required to: commence proceedings against such successor or refuse to extend time for payment or otherwise modify the terms of payment of the sums secured by this Mortgage, by reason of any demand made by Mortgagor. Without affecting the liability of any person, including Mortgagor, for the payment of any indebtedness secured hereby, or the legal operation and effect of this Mortgage on the remainder of the Property for the full amount of any such indebtedness and liability unpaid, Mortgagee is respectively empowered as follows: Mortgagee may from time to time and without notice (1) release any person liable for the payment of any of the indebtedness; (2) extend the time or otherwise alter the terms of payment of any of the indebtedness; (3) accept additional real or personal property of any kind as security therefor, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or (5) alter, substitute or release any property securing the indebtedness.

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(B) Mortgagee may, at any time, and from time to time, (1) consent to the making of any map or plan of the Property or any part thereof; (2) join in granting any easement or creating any restriction thereon; (3) join in any subordination or other agreement affecting this Mortgage or the legal operation and effect or charge hereof; or (5) release or reconvey, without any warranty, all or part of the Property from the lien of this Mortgage.

4.5 Inspection. Upon reasonable prior notice and subject to the rights of tenants under the Leases, Mortgagee may at any reasonable time make or cause to be made entry upon and make inspections, reappraisals, surveys, construction and environmental testing of the Property or any part thereof in person or by agent, all at Mortgagee's sole cost and expense.

4.6 Release or Reconveyance or Cancellation. Upon the payment in full of all sums secured by this Mortgage, Mortgagee shall cancel and release this Mortgage and shall surrender this Mortgage and all notes evidencing indebtedness secured by this Mortgage to Mortgagor. The duly recorded release or reconveyance of the Property shall constitute a reassignment of the Leases by Mortgagee to Mortgagor. Such person or persons shall pay all fees of Mortgagee and costs of recordation, if any. The recitals in such release or reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof.

4.7 Statute of Limitations. Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to any and all obligations secured by this Mortgage.

4.8 Interpretation. Wherever used in this Mortgage, unless the context otherwise indicates a contrary intent, or unless otherwise specifically provided herein, the word "Mortgagor" shall mean and include both Mortgagor and any subsequent owner or owners of the Property, and the word "Mortgagee" shall mean and include not only the original Mortgagee hereunder but also any future owner and holder, including pledgees, of the Note or other obligations secured hereby. In this Mortgage whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the neuter includes the feminine and/or masculine, and the singular number includes the plural. In this Mortgage, the use of the word "including" shall not be deemed to limit the generality of the term or clause to which it has reference, whether or not non-limiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto.

4.9 Captions. The captions and headings of the Articles and sections of this Mortgage are for convenience only and are not to be used to interpret, define or limit the provisions hereof.

4.10 Consent. The granting or withholding of consent by Mortgagee to any transaction as required by the terms hereof shall not be deemed a waiver of the right to require consent to future or successive transactions. Mortgagor covenants and agrees to reimburse Mortgagee promptly on demand for all legal and other expenses incurred by Mortgagee or its servicing agent in connection with all requests by Mortgagor for consent or approval under this Mortgage.



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4.11 Delegation to Subagents. Wherever a power of attorney is conferred upon Mortgagee hereunder or the Related Agreements, it is understood and agreed that such power is conferred with full power of substitution, and Mortgagee may elect in its sole discretion to exercise such power itself or to delegate such power, or any part thereof, to one or more subagents.

4.12 Successors and Assigns. All of the grants, obligations, covenants, agreements, terms, provisions and conditions herein shall run with the land and shall apply to, bind and inure to the benefit of, the heirs, administrators, executors, legal representatives, successors and assigns of Mortgagor (but this shall not permit any assignment prohibited hereby) and the endorsees, transferees, successors and assigns of Mortgagee. In the event Mortgagor is composed of more than one party, the obligations, covenants, agreements, and warranties contained herein as well as the obligations arising therefrom are and shall be joint and several as to each such party.

4.13 Governing Law. THIS MORTGAGE IS INTENDED TO BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF ILLINOIS. THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS AND ANY COURT OF COMPETENT JURISDICTION OF THE STATE OF ILLINOIS SHALL HAVE JURISDICTION IN ANY ACTION, SUIT OR OTHER PROCEEDING INSTITUTED TO ENFORCE THE NOTE, THIS MORTGAGE AND THE RELATED AGREEMENTS. MORTGAGOR HEREBY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND WAIVES ANY AND ALL OBJECTIONS IT MAY HAVE AS TO VENUE IN ANY OF SUCH COURTS.

4.14 Illinois Mortgage Foreclosure Law.

(A) In the event that any provisions 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 Act.

(B) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by Law.

4.15 Changes in Taxation. If, after the date of this Mortgage, any law is passed by the state in which the Property is located or by any other governing entity, imposing upon Mortgagee any tax against the Property, or changing in any way the laws for the taxation of mortgages or deeds of trust or debts secured by mortgages or deeds of trust so that an additional or substitute tax is imposed on Mortgagee or the holder of the Note, Mortgagor shall reimburse Mortgagee for the amount of such taxes immediately upon receipt of written notice from Mortgagee. Provided, however, that such requirement of payment shall be ineffective if Mortgagor is permitted by law to pay the whole of such tax in addition to all other payments required hereunder, without any penalty or charge thereby

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accruing to Mortgagee and if Mortgagor in fact pays such tax prior to the date upon which payment is required by such notice.

4.16 Maximum Interest Rate. No provision of this Mortgage or of the Note shall require the payment or permit the collection of interest in excess of the maximum non-usurious rate permitted by applicable law. In the event such interest does exceed the maximum legal rate, it shall be canceled automatically to the extent that such interest exceeds the maximum legal rate and if theretofore paid, credited on the principal amount of the Note or, if the Note has been prepaid, then such excess shall be rebated to Mortgagor.

4.17 Time of Essence. Time is of the essence of the obligations of Mortgagor in this Mortgage and each and every term, covenant and condition made herein by or applicable to Mortgagor.

4.18 No Oral Modifications. This Mortgage may not be amended or modified orally, but only by an agreement in writing signed by the party against whom enforcement of any amendment or modification is sought.

4.19 Maximum Amount Secured. Notwithstanding any other provision of this Mortgage, in no event shall this Mortgage secure more than Twenty Nine Million Dollars (\$29,000,000).

4.20 Illinois Collateral Protection Act.

THIS IS A NOTICE GIVEN PURSUANT TO THE ILLINOIS COLLATERAL PROTECTION ACT 815 ILCS §180/1 ET SEQ:

Unless you provide us with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interest in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

4.21 Construction Loan. The Note evidences a debt created by one or more disbursements made by Mortgagee to Mortgagor to finance the cost of the construction of certain improvements upon the Land in accordance with the Loan Agreement and this Mortgage is a construction mortgage as defined in the Code. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and an Event of Default under any of the

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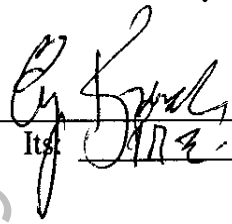
conditions or provisions of the Loan Agreement shall constitute an Event of Default hereunder. Upon the occurrence of any such Event of Default, Mortgagee may at its option declare the indebtedness evidenced by the Note immediately due and payable, or complete the construction of the improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage.

IN WITNESS WHEREOF, the undersigned has executed this Mortgage as of the day and year first hereinabove written.

MORTGAGOR:

CODY PROPERTIES, L.L.C., an  
Illinois limited liability company

By: \_\_\_\_\_



Its \_\_\_\_\_

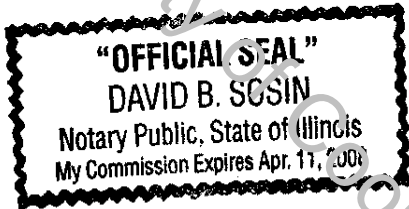
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STATE OF ILLINOIS )  
  ) SS:  
COUNTY OF COOK )

I, David B. Sosin, notary public in and for said county in the State aforesaid,  
DO HEREBY CERTIFY THAT Eugene Koualis, personally known to me to be the  
President of CODY PROPERTIES, L.L.C., an Illinois limited liability company, and personally  
known to me to be the person whose name is subscribed to the foregoing instrument, appeared before  
me this day in person and acknowledged that as (s)he signed and delivered the said instrument, as  
his/her free and voluntary act, and as the free and voluntary act of said company, for the uses and  
purposes set forth therein.

GIVEN under my hand and notarial seal this 2nd day of May, 2005.



D B S  
\_\_\_\_\_  
Notary Public

Property of Cook County Clerk's Office

**UNOFFICIAL COPY****CHICAGO TITLE INSURANCE COMPANY**

**ORDER NUMBER:** 1410 008254649 OF  
**STREET ADDRESS:** 8210, 8230 AND 8300 W. 159TH ST  
**CITY:** ORLAND PARK **COUNTY:** COOK  
**TAX NUMBER:** 27-14-401-003-0000

**LEGAL DESCRIPTION:**

PARCEL 1: THAT PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, AS HEREINAFTER DESCRIBED: BEGINNING AT A POINT 495 FEET EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14 AFORESAID; THENCE EAST 165 FEET TO A POINT; THENCE NORTH 262 FEET TO A POINT; THENCE WEST 165 FEET TO A POINT; THENCE SOUTH 262 FEET TO THE POINT OF BEGINNING, EXCEPT THE SOUTH 5 FEET THEREOF CONVEYED TO THE STATE OF ILLINOIS FOR THE USE OF THE DEPARTMENT OF PUBLIC WORKS & BUILDINGS BY DOCUMENT NUMBER 21310807, IN COOK COUNTY, ILLINOIS

PARCEL 2: A TRACT OF LAND IN THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 14 THAT IS 823.79 FEET EAST OF THE SOUTHWEST CORNER OF SAID SOUTHEAST 1/4 OF SECTION 14, AND RUNNING THENCE NORTHERLY ALONG A STRAIGHT LINE WHOSE NORTHERN TERMINUS IS A POINT IN THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14, AFORESAID LOCATED 823.90 FEET EAST OF THE WEST LINE OF SAID SOUTHEAST 1/4 OF SECTION 14, A DISTANCE OF 481.19 FEET; THENCE WEST ALONG A LINE THAT IS 481.19 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SECTION 14, A DISTANCE OF 328.83 FEET; THENCE SOUTH ALONG A STRAIGHT LINE, A DISTANCE OF 219.19 FEET TO A POINT, SAID POINT BEING 495.01 FEET EAST OF THE WEST LINE OF SAID SOUTHEAST 1/4 OF SECTION 14; THENCE EAST ALONG A LINE THAT IS 262.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 14, A DISTANCE OF 165.00 FEET; THENCE SOUTH ALONG A STRAIGHT LINE A DISTANCE OF 262.00 FEET TO A POINT ON THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 14, SAID POINT BEING 163.79 FEET WEST OF THE POINT OF BEGINNING; THENCE EAST ALONG THE SAID SOUTH LINE OF SECTION 14, 163.79 FEET TO SAID POINT OF BEGINNING, (EXCEPTING THEREFROM THAT PORTION ACQUIRED FOR WIDENING OF 159TH STREET), ALL IN COOK COUNTY, ILLINOIS.

PARCEL 3: THE SOUTH 208.9 FEET (EXCEPT THE SOUTH 50 FEET THEREOF) OF THE EAST 356.06 FEET (EXCEPT THE EAST 156.06 FEET THEREOF) OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 4: THE SOUTH 6 ACRES OF THE WEST 18 ACRES OF THE FOLLOWING PROPERTY TAKEN AS A SINGLE TRACT OF LAND: THE EAST 2/3 OF THE FOLLOWING DESCRIBED TRACT: THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING FROM SAID PREMISES THE FOLLOWING: "A THE WEST 165 FEET OF THE EAST 355 FEET OF THE SOUTH 314 FEET OF THE SOUTHEAST 1/4 OF SAID SECTION 14: ALSO "B" THE EAST 190 FEET OF THE SOUTH 327.5 FEET OF THE SOUTHEAST 1/4 OF SAID SECTION 14: ALSO "C" THE SOUTH 208.9

(CONTINUED)

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## CHICAGO TITLE INSURANCE COMPANY

ORDER NUMBER: 1410 008254649 OF  
 STREET ADDRESS: 8210, 8230 AND 8300 W. 159TH ST  
 CITY: ORLAND PARK COUNTY: COOK  
 TAX NUMBER: 27-14-401-003-0000

## LEGAL DESCRIPTION:

FEET OF THE EAST 356.06 FEET ) (EXCEPT THE EAST 156.06 FEET) OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 14: ALSO "D" THAT PART OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE NORTH LINE OF SAID SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14, WHICH POINT OF 74.44 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14 AFORESAID; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE A DISTANCE OF 1341.63 FEET TO A POINT IN THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 14, SAID POINT BEING 148.87 FEET WEST OF THE SOUTHEAST CORNER OF THE SAID SOUTHWEST 1/4 OF THE SAID SOUTHEAST 1/4 OF SECTION 14 (MEASURED ALONG THE SAID SOUTH LINE OF SAID SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14); THENCE EAST ALONG SAID SOUTH LINE OF SAID SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14, A DISTANCE OF 215.24 FEET TO A POINT (SAID POINT ALSO BEING 66.37 FEET EAST OF THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF SAID SOUTHEAST 1/4 OF SECTION 14); THENCE NORTHEASTERLY ALONG A LINE WHICH IS 215 FEET EASTERLY OF (MEASURED AT RIGHT ANGLES TO) AND PARALLEL WITH THE AFORESAID STRAIGHT LINE, A DISTANCE OF 1341.84 FEET TO A POINT ON THE SAID NORTH LINE OF SAID SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14, WHICH POINT IS 215.24 FEET EAST OF SAID POINT OF BEGINNING (AS MEASURED ALONG SAID NORTHWEST ALONG SAID NORTH LINE OF SAID SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14 TO THE POINT OF BEGINNING; ALSO THAT PART OF THE EAST 156.06 FEET OF THE SOUTH 208.0 FEET OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WESTERLY TO THE FOLLOWING DESCRIBED LINE; BEGINNING AT A POINT IN THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14, WHICH POINT OF 74.44 FEET WEST OF THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 14; THENCE SOUTHWESTERLY ALONG A STRAIGHT LINE A DISTANCE OF 1341.63 FEET TO A POINT IN THE SOUTH LINE OF SAID SOUTHEAST 1/4, SAID POINT BEING 148.87 FEET WEST OF THE SOUTHEAST CORNER OF THE SAID SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14 (AS MEASURED ALONG THE SOUTH LINE OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14), ALL IN COOK COUNTY, ILLINOIS

(EXCEPTING FROM THE ABOVE DESCRIBED PARCEL OF LAND: A TRACT OF LAND IN THE SOUTHEAST 1/4 OF SECTION 14, TO A POINT 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 14 THAT IS 823.79 FEET EAST OF THE SOUTHWEST CORNER OF SAID SOUTHEAST 1/4 OF SECTION 14 AND RUNNING NORTHERLY ALONG A STRAIGHT LINE WHOSE NORTHERN TERMINUS IS A POINT IN THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 14 AFORESAID LOCATED 823.90 FEET EAST OF THE WEST LINE OF SAID SOUTHEAST 1/4 OF SECTION 14 A DISTANCE OF 500.00 FEET; THENCE EAST ALONG A LINE 500 FEET NORTH OF (BY RECTANGULAR MEASUREMENT) THE SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 14 A DISTANCE OF 391.18 FEET TO THE WESTERLY LINE OF THE 215.0 FEET WIDE RIGHT OF WAY OF THE COMMONWEALTH EDISON COMPANY; THENCE SOUTHWESTERLY ALONG THE SAID WESTERLY RIGHT OF WAY LINE OF THE COMMONWEALTH EDISON COMPANY, A DISTANCE OF 291.55 FEET TO A POINT THAT IS 208.90

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## CHICAGO TITLE INSURANCE COMPANY

ORDER NUMBER: 1410 008254649 OF  
 STREET ADDRESS: 8210, 8230 AND 8300 W. 159TH ST  
 CITY: ORLAND PARK COUNTY: COOK  
 TAX NUMBER: 27-14-401-003-0000

### LEGAL DESCRIPTION:

FEET NORTH OF (BY RECTANGULAR MEASUREMENT) THAT SOUTH LINE OF SAID SOUTHEAST 1/4 OF SECTION 14, THENCE WESTERLY ALONG A LINE PARALLEL; TO AND 208.90 FEET NORTH OF "BY RECTANGULAR MEASUREMENT) THE SAID SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 14, A DISTANCE OF 218.79 FEET TO A POINT THAT IS 356.06 FEET WEST OF THE EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14 AFORESAID; THENCE SOUTHERLY ALONG SAID LINE PARALLEL TO THE SAID EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14 AFORESAID TO THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 14 THENCE WESTERLY ALONG THE SAID SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 14, A DISTANCE OF 156.19 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

*Recorded in Cook County Clerk's Office*

# UNOFFICIAL COPY

Property of Cook County Clerk's Office

Permanent Index Numbers: 27-14-401-003; 27-14-401-004; 27-14-401-005;  
27-14-401-015; and 27-14-401-024

Commonly known as: 8210, 8230 and 8300 West 159<sup>th</sup> Street, Orland Park, Illinois

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