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Cook County Recorder of Deeds
Date: 06/02/2005 08:46 AM Pg: 1 of 14

TICOR # 396824

(SPACE ABOVE THIS LINE FOR USE BY RECORDER OF DEEDS)

MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT
(INCLUDING A UCC FINANCING STATEMENT)

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (herein "**Mortgage**") is made this 16th day of May, 2005, between **ANDRZEJ SULEWSKI**, personally, and **JADWIGA SULEWSKI**, personally, jointly and severally, whose address is 111 North Cedar, Wood Dale, Illinois, 60191 (herein "**Mortgagor**") and **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois Banking Corporation, having offices at 10 N. Dearborn Street, Suite 900, Chicago, Illinois 60602 (herein "**Mortgagee**").

WHEREAS, Mortgagor is indebted to Mortgagee in the Principal Sum of **ONE MILLION AND NO/100 (\$1,000,000.00) DOLLARS**, as evidenced by a certain Secured Promissory Note bearing even date herewith (the "**Note**") executed by Mortgagor and delivered to Mortgagee, evidencing a certain multiple advance, commercial real estate construction loan (the "**Loan**") providing for monthly installments of interest only as may be provided in the Note, with the balance of the indebtedness, if not sooner paid, due and payable on the Maturity Date as defined in such Note;

FOR GOOD AND VALUABLE CONSIDERATION AND TO SECURE TO LENDER (a) repayment of the principal, interest, and all other amounts payable to Mortgagee on the Note according to its tenor and effect, and all renewals, extensions and modifications thereof and any future advances thereunder, whether direct or indirect, due or to become due (provided, however that in no event shall the aggregate indebtedness secured hereby at any one time exceed five [5] times the aforementioned original Principal Sum of the Note); (b) the payment of all other sums, with interest thereon, advanced in accordance with the terms of the Note or herewith to protect the security of this Mortgage or other collateral for the Note; and (c) the performance and observance of all the covenants, provisions and agreements of Mortgagor herein and in the Note contained or other instrument given to further secure the performance of any obligation secured hereby or in any manner pertaining to the Loan evidenced by the Note, including but not limited to the "**Loan Documents**" as defined

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GUERARD, KALINA & BUTKUS
100 W. Roosevelt Road, Suite A-1
Wheaton, Illinois 60187

PIN: 10-07-201-046-0000

Property Address/Common Description:
Residential Construction Project ("Spec" Home) at
520 N. Rio Vista
Glenview, Illinois

After recording mail to:
The PrivateBank and Trust Company
Attn: Mr. Kevin M. Murphy (Commercial Loan Dept.)
1000 Green Bay Road
Winnetka, Illinois 60093

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and identified in the Note or the Construction Loan and Security Agreement (the "**Loan Agreement**"), and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Mortgagor, Mortgagor does hereby mortgage, grant, convey and assign to Mortgagee all of Mortgagor's right, title, and interest in the real estate located in the County of Cook, Illinois, and legally described in **Exhibit "A"** attached hereto and made a part hereof.

TOGETHER with all buildings, improvements, and tenements now or hereafter erected on the real estate, and all heretofore or hereafter vacated alleys and streets abutting the real estate, and all easements, licenses, leasehold rights, remainder rights and all other rights, as well as all appurtenances, rents, profits and awards, and all fixtures, machinery, equipment, engines, boilers, incinerators, building materials (including but not limited to concrete, steel, lumber, pipe, conduit, systems, controls, doors and windows), freezers, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the real estate including, but not limited to, those for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air and light and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, water heaters, attached floor coverings, furnishings, antennas, and all additional personalty located on the subject real estate, all of which, including replacements and additions thereto (excepting, however, any of the foregoing items which are movable trade fixtures or furnishings which are personal property belonging to tenants in possession) shall be deemed to be and remain a part of the real property covered by this Mortgage; and all of the foregoing, the real estate together with said property are herein collectively referred to as the "**Mortgaged Premises.**"

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, convey and assign the Mortgaged Premises, that the Mortgaged Premises are unencumbered, and that Mortgagor will warrant and defend generally the title to the Mortgaged Premises against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title policy insuring Mortgagee's interest in the Mortgaged Premises.

COVENANTS. Mortgagor and Mortgagee covenant and agree as follows:

1. Payment of Principal and Interest/Incorporation of Note Terms. Mortgagor shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges provided in the Note and all other sums secured by this Mortgage. The terms and provisions of the Note are incorporated into this Mortgage by this reference as if the same were fully set forth herein. The terms of the Note shall govern in the event of any inconsistency between the terms of this Mortgage and such Note terms.
2. Application of Payments. Unless applicable law provides otherwise, all payments received by Mortgagee from Mortgagor under the Note secured hereby or this Mortgage shall be applied by Mortgagee first to costs, expenses and other sums expended by Mortgagee pursuant to the Loan Documents then to any accrued and outstanding interest and then to principal and any other sums secured by this Mortgage in such order as Mortgagee, at Mortgagee's option, may determine; provided, however, that Mortgagee may, at Mortgagee's option, apply any sums payable pursuant to paragraph 6 hereof prior to interest on and principal of such Note.
3. Charges; Liens. Mortgagor shall pay all taxes, assessments, and other charges, fines and impositions attributable to the Mortgaged Premises which may attain a priority over this Mortgage by Mortgagor making payments when due, directly to the payee thereof. Mortgagor shall promptly furnish to Mortgagee all notices of amounts due under this paragraph, and Mortgagor shall promptly furnish Mortgagee receipts evidencing such payments. Mortgagor shall promptly discharge any lien which has priority over this Mortgage; provided, that Mortgagor shall not be required to discharge any such lien so long as Mortgagor shall in good faith contest such lien by, or defend against enforcement of the lien in, legal proceedings which in the opinion of Mortgagee operate to prevent the enforcement of the lien or forfeiture of the Mortgaged Premises or any part thereof and

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in conjunction therewith in each instance fully insure or bond over such lien to Mortgagee's satisfaction all within not more than thirty (30) days after the date such lien is first asserted or claimed.

4. Insurance. The Mortgagor will procure for, deliver to and maintain for the benefit of the Mortgagee during the term of this Mortgage, a policy or policies (a) insuring the Mortgaged Premises against fire, lightning, vandalism, malicious mischief, all other perils insured against under "extended coverage", and such other insurable perils as the Mortgagee may reasonably require, including, without limitation, perils covered under an "additional other perils" endorsement, for at least the greater of: (i) the full amount of the Loan (absolutely net of any deductibles or co-insurance); or (ii) ninety (90%) percent of the insurable replacement cost or value (whichever is greater) of the Mortgaged Premises, (b) affording such other or additional coverage as from time to time may be requested by the Mortgagee, including, without limitation, builder's risk insurance, comprehensive general liability insurance, umbrella liability insurance, boiler and pressurized vessel insurance, and, if any part of the Mortgaged Premises is in a flood area (as defined under the Flood Disaster Protection Act of 1973), flood insurance, unless Mortgagee in its sole discretion agrees in writing to waive or suspend the requirements of such flood insurance.

All insurance policies and renewals thereof shall: (a) be in a form and amount acceptable to Mortgagee and (b) shall include a standard mortgage clause in favor of and in form acceptable to Mortgagee and (c) provide thirty (30) days advance written notice to Mortgagee before cancellation or material modification. Mortgagee shall have the right to hold the policies, and Mortgagor shall promptly furnish to Mortgagee all renewal notices and all receipts of paid premiums. At least thirty (30) days prior to the expiration date of a policy, Mortgagor shall deliver to Mortgagee a renewal policy in form satisfactory to Mortgagee.

In the event of loss, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Mortgagor hereby authorizes and empowers Mortgagee as attorney-in-fact for Mortgagor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds and to deduct therefrom Mortgagee's expenses incurred in the collection of such proceeds; provided however, that nothing contained in this paragraph 4 shall require Mortgagee to incur any expense or take any action hereunder. In the event of a disbursement of insurance proceeds less than \$25,000.00 said funds shall be paid to Mortgagee and provided loan is not in default, Mortgagee shall disburse said funds in accordance with the reasonable instructions of Mortgagor relative to repair of the Mortgaged Premises. In the event of a disbursement of insurance proceeds in the amount of \$25,000.00 or more said funds shall be paid to Mortgagee and Mortgagor further authorizes Mortgagee, at Mortgagee's sole option, (a) to hold without interest the balance of such proceeds to be used to reimburse the cost of reconstruction or repair of the Mortgaged Premises or (b) in the event an Event of Default then or thereafter exists and/or if, in Mortgagee's reasonable judgment, such damage or destruction cannot be fully repaired and restored before the first to occur of the Maturity Date or three (3) months following the date of occurrence thereof and/or if, in Mortgagee's reasonable judgment, the value of the Mortgaged Premises and/or the debt to value of collateral ratio of the Loan secured hereby is or if upon reconstruction or repair will be materially adversely affected by such loss, then to apply the balance of such proceeds to the payment of the sums secured by this Mortgage, whether or not then due, in the order of application set forth in paragraph 2 hereof.

If the insurance proceeds are held by Mortgagee to reimburse Mortgagor for the costs of restoration and repair of the Mortgaged Premises, the Mortgaged Premises shall be restored to the equivalent of its original condition or such other condition as Mortgagee may approve in writing. Mortgagee may, at Mortgagee's option, condition disbursement of said proceeds on Mortgagee's receipt and approval of such plans and specifications by an architect satisfactory to Mortgagee; a current, complete and in balance budget; contractor's and owner's sworn statements and supporting waivers of lien from all contractors, subcontractors and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Mortgagee may require. Mortgagee may further condition disbursement of said proceeds upon compliance with

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Mortgagee's other customary construction lending practices and procedures, including, but not limited to, disbursement through a satisfactory title company construction escrow (with title insurance). If the insurance proceeds are applied to the payment of the sums secured by this Mortgage, any such application of proceeds to principal shall be subject to a prepayment penalty, if any, and shall not extend or postpone the due dates of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amounts of such installments. If the Mortgaged Premises is sold pursuant to paragraph 14 hereof or if Mortgagee acquires title to the Mortgaged Premises, Mortgagee shall have all of the rights, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Mortgaged Premises prior to such sale or acquisition.

5. Preservation and Maintenance of Mortgaged Premises. Mortgagor (a) shall not waste or permit impairment or deterioration of the Mortgaged Premises, (b) shall not abandon the Mortgaged Premises, (c) shall restore or repair promptly and in a good workmanlike manner all or any part of the Mortgaged Premises to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall thereof in good repair and shall replace fixtures, equipment, machinery and appliances on the Mortgaged Premises when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Mortgaged Premises, and (f) shall give notice in writing to Mortgagee of and, unless otherwise directed by Mortgagee, appear in and defend any action or proceeding purporting to affect the Mortgaged Premises, the security of this Mortgage or the rights or powers of Mortgagee. Neither Mortgagor nor any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Mortgaged Premises or (except for trade fixtures or equipment belonging to tenants or utilized in the manufacturing business of Mortgagor's beneficiary conducted on the Mortgaged Premises) any fixture, equipment, machinery or appliance in or on the Mortgaged Premises except when incident to the replacement of obsolete or worn fixtures, equipment, machinery and appliances with updated or like new items of like kind.

6. Protection of Mortgagee's Security. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which affects the Mortgaged Premises or title thereto or the interest of Mortgagee therein, including, but not limited to eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option may make such appearances, disburse such sums and take such action as Mortgagee deems necessary, in its reasonable discretion, to protect Mortgagee's interest, including, but not limited to, (a) disbursements of attorneys fees, (b) entry upon the Mortgaged Premises to make repairs, (c) procurement of satisfactory insurance as provided in paragraph 4 hereof. Any amounts disbursed by Mortgagee pursuant to this paragraph 6, with interest thereon, shall become additional indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the highest of the Default Rate(s) stated in the Note secured hereby. Nothing contained in this paragraph 6 shall require Mortgagee to incur any expense or take any action hereunder.

7. Inspection. Mortgagee may make or cause to be made reasonable entries upon and inspections of the Mortgaged Premises.

8. Books and Records. Mortgagor shall keep and maintain at all times at Mortgagor's address stated below, or such other place as Mortgagee may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Mortgaged Premises and the financial condition of the Mortgagor. Such books and records shall be subject to examination and inspection at any reasonable time by Mortgagee. Mortgagor shall, within ninety (90) days after the end of each fiscal year of Mortgagor, furnish to Mortgagee the following: (i) financial information relating to the Mortgagor, including U.S. income tax returns, and (ii) financial and operating statements of the Mortgaged Premises for such fiscal

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year, in reasonable detail, including quarterly operating statements relative to the business operations of Mortgagor's beneficiary, including a quarterly rent roll for the Mortgaged Premises, and in any event including such itemized statements of receipts and disbursements as shall enable Mortgagee to determine whether a breach described in paragraph 15 or other default hereunder ("**Event of Default**") then exists. Mortgagor shall additionally furnish such other financial information or operating statements as may be required under the Loan Agreement and other Loan Documents. Such financial and operating statements shall be prepared and certified at Mortgagor's expense in a manner acceptable to Mortgagee, and shall include a statement as to whether or not an Event of Default exists hereunder. For purposes of this Paragraph the term "Mortgagor" also means any beneficiary of Mortgagor (if Mortgagor is a land trust) and any guarantors of the Note.

9. Condemnation. Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Mortgaged Premises, or any part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name any action or proceeding relating to any condemnation or other taking of the Mortgaged Premises, whether direct or indirect, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any condemnation or other taking, whether direct or indirect, of the Mortgaged Premises, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned to and shall be paid to Mortgagee.

Mortgagor authorizes Mortgagee to apply such awards, payments, proceeds or damages, after the deduction of Mortgagee's expenses incurred in the collection of such amounts, at Mortgagee's option, to restoration or repair of the Mortgaged Premises or to payment of the sums secured by this Mortgage, whether or not then due, in the order of application set forth in paragraph 2 hereof, with the balance, if any, to Mortgagor. Any application of proceeds to principal shall be subject to a prepayment penalty, if any, and, unless Mortgagor and Mortgagee otherwise agree in writing, shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. Mortgagor agrees to execute such instruments required in connection with such condemnation or taking as Mortgagee may require.

10. Mortgagor and Lien Not Released. From time to time, Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns or of any junior lienholders, without liability on Mortgagee's part and notwithstanding Mortgagor's breach of any covenant or agreement of Mortgagor in this Mortgage, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of said indebtedness, release from the lien of this Mortgage any part of the Mortgaged Premises, take or release other or additional security, reconvey any part of the Mortgaged Premises, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Mortgagor to modify the rate of interest or period of amortization, if any, of any of the Note(s) secured hereby or change the amount of the monthly installments payable thereunder. Any actions taken by Mortgagee pursuant to the terms of this paragraph 10 shall not affect the obligation of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Mortgage and to observe the covenants of Mortgagor contained herein, and shall not affect the lien or priority of lien on the Mortgaged Premises. Mortgagor shall pay Mortgagee a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Mortgagee's option, for any such action if taken at Mortgagor's request.

11. Forbearance by Mortgagee Not a Waiver. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Mortgagee of payment of any sum secured by this Mortgage after the due date of such payment shall not be a waiver of Mortgagee's right to either require prompt when due of all

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other sums so secured. Mortgagee's receipt of any awards, proceeds or damages under paragraphs 4 and 9 hereof shall not operate to cure or waive Mortgagor's default in payment of sums secured by this Mortgage.

12. Real Estate Tax Escrow. In order to assure timely payment of real estate taxes, Mortgagee requires establishment of an escrow with Mortgagee for purposes of paying real estate taxes on the Mortgaged Premises. Mortgagor shall deposit with Mortgagee, as escrowee, such funds as are necessary, in Mortgagee's judgment, to meet the current real estate tax obligations related to the Mortgaged Premises plus a reserve of at least one-sixth (1/6) of the estimated annual real estate taxes and Mortgagor shall pay monthly to Mortgagee, in addition to other sums required under each of the Note(s) secured hereby, a sum equal to one-twelfth (1/12) of such annual real estate taxes, as estimated by Mortgagee. The sums paid under this paragraph shall be held by Mortgagee, without interest, and shall be applied by Mortgagee to the payment of the expenses for which sums respectively were deposited, as and when said expenses shall become due and before the same shall become delinquent, upon the request of Mortgagor for such payment and the presentation by Mortgagor to Mortgagee of a bill covering such expense. Further, Mortgagor shall promptly deposit with Mortgagee any additional funds required to pay such real estate taxes in the event the balance of funds on deposit in such escrow (including allocation for a reserve) is insufficient to pay any tax bill or when due. Mortgagor shall promptly furnish Mortgagee with copies of all tax bills and assessment notices received by Mortgagor from time to time. The provisions of this paragraph shall also apply to Mortgagor's beneficiary (if Mortgagor is a land trust).

The foregoing notwithstanding, in the event Mortgagee should ever elect to suspend the requirement of such real estate tax escrow it is understood and agreed that any such suspension is subject to Mortgagee's right to elect to reinstate such real estate tax escrow requirements upon the occurrence of either: (i) any Event of Default even if cured or (ii) failure by Mortgagor to furnish Mortgagee with satisfactory evidence of timely payment of real estate taxes within ten (10) days after each due date for such tax payments.

13. Restriction on Transfer. It shall be, without further notice, an immediate breach of and Event of Default under this Mortgage if, without the prior written consent of the Mortgagee, any of the following shall occur: if the Mortgagor shall create, effect, contract for, contract to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lease, lien, pledge, mortgage, security interest or other encumbrance or alienation of (i) the Mortgaged Premises or any part thereof, or any interest therein (ii) all or a portion of the beneficial interest of any land trust-Mortgagor or change in the power of direction, if Mortgagor is a land trust; (iii) if Mortgagor or any land trust-Mortgagor's beneficiary is a corporation, all or a portion of the stock of any such corporate Mortgagor or corporate beneficiary that results or could result in a material change in the identity of the person(s) or entity(ies) in control of the corporation; or (iv) if Mortgagor or any land trust-Mortgagor's beneficiary is a partnership, any general partner's interest (or any limited partner's interest exceeding in the aggregate ten [10%] percent of total limited partnership interests) in such Mortgagor or Mortgagor's beneficiary; in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this paragraph 13 shall not apply (a) to the lien of current taxes and assessments not in default, (b) to the lien of this Mortgage. The provisions of this Paragraph 13 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Mortgaged Premises. Anything to the contrary set forth in this Mortgage or the other Loan Documents notwithstanding, Mortgagee shall not be required to give any notice of default or opportunity to cure with respect to a breach or default of the foregoing restrictions on transfer.

14. Assignment of Rents and Leases; Appointment of Receiver; Mortgagee in Possession. As part of the consideration for and as additional security for the indebtedness lent by Mortgagee and evidenced by the Note, Mortgagor hereby absolutely and unconditionally assigns and transfers to Mortgagee all the rents, revenues, proceeds and deposits (collectively, the "**rents**") of the Mortgaged Premises, including those now due, past due, or to become due by virtue of any lease or other agreement of the sale, occupancy or use of all or any part of the

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Mortgaged Premises, regardless of to whom the rents, revenues, proceeds and deposits of the Mortgaged Premises are payable. This Assignment also includes assignment for collateral purposes of all right, title and interest of Mortgagor in and to any other occupancy agreements, leases, licenses, easements or other agreements resulting in revenue or income from the Mortgaged Premises. Mortgagor hereby authorizes Mortgagee or Mortgagee's agents to collect the aforesaid rents, revenues, proceeds and deposits and hereby directs each tenant, occupant, or purchaser, as the case may be, of the Mortgaged Premises to pay such rents and proceeds to Mortgagee or Mortgagee's agents; provided, however, that prior to written notice given by Mortgagee to Mortgagor of the Event of Default by Mortgagor relative to any covenant or agreement of Mortgagor in this Mortgage or the other Loan Documents, Mortgagor shall be permitted to collect and receive all rents, revenues, proceeds and deposits of the Mortgaged Premises as trustee for the benefit of Mortgagee and Mortgagor, to apply the rents, revenues, proceeds and deposits so collected to the sums secured by this Mortgage in the order provided in paragraph 2 hereof with the balance, so long as no Event of Default has occurred, to the account of Mortgagor, it being intended by Mortgagor and Mortgagee that this assignment of rents constitutes an **absolute assignment** and not an assignment for additional security only. Upon delivery of written notice by Mortgagee to Mortgagor of an Event of Default by Mortgagor of any covenant or agreement of Mortgagor contained in this Mortgage or the other Loan Documents, and without the necessity of Mortgagee entering upon and taking and maintaining full control of the Mortgaged Premises in person, by agent or by a court-appointed receiver, Mortgagee shall immediately be entitled to possession of all rents, revenues, proceeds and deposits of the Mortgaged Premises as specified in this paragraph 14 as the same become due and payable, including but not limited to rents, revenues, proceeds and deposits then due and unpaid, and all such rents, revenues, proceeds and deposits shall immediately upon delivery of such notice be held by Mortgagee as trustee for the benefit of Mortgagee only; provided, however, that the written notice by Mortgagee to Mortgagor shall contain a statement that Mortgagee exercises its rights to such rents, revenues, proceeds and deposits. Mortgagor agrees that commencing upon delivery of such written notice of any such breach or Event of Default each tenant, occupant or purchaser, as the case may be, of the Mortgaged Premises shall make such rents payable to and pay such rents, revenues, proceeds and deposits to Mortgagee or Mortgagee's agents on Mortgagee's written demand to each tenant, occupant or purchaser therefor, as the case may be, delivered to each tenant, occupant or purchaser, as the case may be, by mail or by delivery such demand to each unit, without any liability on the part of said tenant, occupant or purchaser to inquire further as to the existence of a default by Mortgagor.

Mortgagor hereby represents and warrants that Mortgagor has not executed any prior assignment of said rents or leases, that neither has performed, nor will perform, any acts or has not executed, and will not execute, any instrument which would prevent Mortgagee from exercising its rights under this paragraph 14, and that at the time of execution of this Mortgage, there has been no anticipation or prepayment of any of the rents, revenues, proceeds or deposits of the Mortgaged Premises. Mortgagor covenants that Mortgagor will not hereafter collect or accept payment of any rents of the Mortgaged Premises more than thirty (30) days prior to the due dates of such rents. Mortgagor further covenants that Mortgagor will execute and deliver to Mortgagee such further assignments of rents, revenues, proceeds or deposits of the Mortgaged Premises as Mortgagee may from time to time request.

Upon occurrence of an Event of Default under this Mortgage or the other Loan Documents, as aforesaid, Mortgagee may in person, by agent or by a court-appointed receiver, enter upon and take and maintain full control of the Mortgaged Premises in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents, revenues, proceeds and deposits of the Mortgaged Premises, the making of repairs to the Mortgaged Premises and the execution or termination of contracts providing for the management or maintenance of the Mortgaged Premises, all on such terms as Mortgagee deems best to protect the security of this Mortgage. In the event Mortgagee elects to seek the appointment of a receiver for the Mortgaged Premises upon breach of any covenant or agreement or Event of Default of Mortgagor in this Mortgage or any other Loan Document, Mortgagor hereby expressly consents to the appointment of such receiver. Mortgagee or the receiver shall be entitled to receive a reasonable fee for so managing the Mortgaged Premises.

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All rents, revenues, proceeds and deposits collected subsequent to delivery of written notice by Mortgagee to Mortgagor of an Event of Default under this Mortgage or the other Loan Documents, aforesaid, shall be applied first to the costs, if any, of taking control of and managing the Mortgaged Premises and collecting the rents, revenues, proceeds and deposits, including, but not limited to, attorney's fees, premiums on receiver's bonds, costs of repairs to the Mortgaged Premises, premiums on insurance policies, taxes, assessments and other charges on the Mortgaged Premises, and the costs of discharging any obligations or liability of Mortgagor as lessor, landlord, operator or licensor of the Mortgaged Premises and then to the sums secured by this Mortgage. Mortgagee or the receiver shall have access to the books and records used in the operation and maintenance of the Mortgaged Premises and shall be liable to account only for those rents, revenues, proceeds or deposits actually received by Mortgagee. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Mortgaged Premises by reason of anything done or left undone by Mortgagee under this paragraph.

If the rents, revenues, proceeds or deposits of the Mortgaged Premises are not sufficient to meet the costs, if any, of taking control of and managing the Mortgaged Premises and collecting the rents, revenues, proceeds or deposits any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Unless Mortgagee and Mortgagor agree in writing to other terms of payment, such amounts shall be payable upon notice from Mortgagee to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the highest of the Default Rate(s) stated in the Note secured hereby.

Any entering upon and taking and maintaining of control of the Mortgaged Premises by Mortgagee or the receiver and any application of rents, revenues or proceeds as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Mortgagee under applicable law or provided herein. This assignment of rents of the Mortgaged Premises shall terminate at such time as the indebtedness secured hereby is repaid in full and/or this Mortgage ceases to secure indebtedness held by Mortgagee.

15. Events of Default. The terms "Event of Default" or "Events of Default", wherever used in this Mortgage shall mean any one or more of the following events:

- (a) Failure by any Mortgagor to pay when due any payment under the Note secured hereby, this Mortgage or any other Loan Document and such failure continues for more than five (5) days after Mortgagee has given Mortgagor written notice thereof; or
- (b) Failure by any Mortgagor to duly observe or perform any other terms, covenant, condition or agreement of the Note secured hereby, this Mortgage or any other Loan Document and such failure continues for more than fifteen (15) days after Mortgagee has given Mortgagor written notice thereof; or
- (c) The occurrence of any other Event of Default (including, without limitation, occurrence of any so-called "cross-default" under other commercial financing provided by Mortgagee to any Mortgagor or any guarantor) under the Note, this Mortgage any other Loan Document and expiration of any applicable period of cure.
- (d) The filing by any Mortgagor or the beneficial interest owner of any land trust-Mortgagor ("beneficiary") of a voluntary petition in bankruptcy or Mortgagor's or beneficiary's adjudication as the bankrupt or insolvent, or the filing by Mortgagor or beneficiary of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's or beneficiary's seeking or consenting to or

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acquiescing in the appointment of any trustee, receiver or liquidator of itself or any portion of its assets or of all or any part of the Mortgaged Premises or of any or all of the rents, issues, profits or revenues thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing or its inability to pay its debts generally as they become due; or

- (c) The entry by a court of competent jurisdiction of any order, judgment or decree approving a petition filed against the Mortgagor or beneficiary seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other similar relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, of the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any part of the Mortgaged Premises or of any or all of the rents, issues, profits or revenues thereof without its consent or acquiescence, which appointment shall remain unvacated or unstayed for an aggregate of sixty (60) days (whether or not consecutive).

16. Acceleration Remedies. In case of an Event of Default or violation of Paragraph 13 hereof (Restrictions on Transfer), Mortgagee at Mortgagee's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further notice, presentment or demand and all sums secured by this Mortgage shall bear interest thereafter at the highest of the Default Rate(s) defined in the Note secured hereby and Mortgagee may foreclose this Mortgage by judicial proceeding. Mortgagee may exercise this option to accelerate during any default by the Mortgagor regardless of any prior forbearance. Mortgagee shall be entitled to collect all costs and expenses incurred in pursuant such remedies, including, but not limited to, attorney's fees, costs of documentary evidence, abstracts and title reports, and other costs of suit and Mortgagee at its option may foreclose this Mortgage by judicial proceeding and/or may invoke any other remedies provided by equity, applicable law or provided herein.

17. Notice. Except for any notice required under applicable law to be given in any other manner, (a) any notice to Mortgagor provided for in this Mortgage or in the Note secured hereby shall be given by personal service upon Mortgagor or by mailing of such notice by certified mail addressed to Mortgagor at:

All Mortgagor(s):
c/o Andrzej Sulewski
111 North Cedar
Wood Dale, Illinois 60191

or at such other address as Mortgagor may designate by notice to Mortgagee as provided herein, and (b) any notice to Mortgagee shall be given by certified mail, return receipt requested, to Mortgagee at:

The PrivateBank and Trust Company
10 S. Dearborn Street, Suite 900
Chicago, Illinois 60602

or to such other address as Mortgagee may designate by notice to Mortgagor as proved herein. Any notice proved for in this Mortgage or in the Note shall be deemed to have been given when personally served as hereinabove provided or, if mailed, on the second (2nd) business day following deposit of such notice in the United States Mail.

18. Successors and Assigns Bound; Agents; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor, subject to the provisions of paragraph 13 hereof. In exercising any rights hereunder or taking any actions provided for herein, Mortgagee may act through its employees, agents, attorneys or independent

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contractors as authorized by Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

19. Governing Law; Venue; Severability; Excess Interest. This Mortgage shall, at Mortgagee's option, be governed by the laws of the State of Illinois or the laws of the jurisdiction in which the Mortgaged Premises is located. Venue for all disputes and claims arising from this Mortgage shall, at Mortgagee's option is in the Illinois Circuit Court having jurisdiction in the County in which the subject part of the Mortgaged Premises are situated or in the Circuit Court of Cook County, Illinois. In the event that any provisions of this Mortgage or the Note secured hereby conflict with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provisions, and to this end the provisions of this Mortgage and such Note is declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor is interpreted so that any charge provided for in this Mortgage or in the Note, whether considered separately or together with other charges levied in connection with this Mortgage and the Note, violates such law, and Mortgagor is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Mortgagee in excess of the amounts payable to Mortgagee pursuant to such charges as reduced shall be applied by Mortgagee to reduce the principal of the indebtedness evidenced by the Note (in which case no prepayment penalty shall be applicable) or, at Mortgagee's option, shall be refunded to the Mortgagor. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor has been violated, all indebtedness which is secured by this Mortgage or evidenced by the Note and which constitutes interest, as well as all other charges levied in connection with such indebtedness which constitute interest, shall at Mortgagee's option be deemed to be allocated and spread over the stated term of the Note in any combination. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

20. Waiver. Notwithstanding the existence of any other security interests in the Mortgaged Premises held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Mortgaged Premises shall be subjected to the remedies provided herein. Mortgagee shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor and any party who now or hereafter acquires a security interest in the Mortgaged Premises and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein. Mortgagor also waives any right of set-off and/or recoupment Mortgagor may have against Mortgagee. **EACH MORTGAGOR FURTHER WAIVES ANY RIGHT MORTGAGOR MAY HAVE TO DEMAND A JURY TRIAL IN RELATION TO ANY ACTION BROUGHT BY MORTGAGEE TO EXERCISE ITS REMEDIES UNDER THIS MORTGAGE, THE NOTE OR THE OTHER LOAN DOCUMENTS.** To the extent permitted by law, Mortgagor waives any right of reinstatement and further waives the benefits of all present and future valuation, appraisal, stay, redemption and moratorium laws under any state or federal law. **FURTHER EACH MORTGAGOR HEREBY EXPRESSLY WAIVES ALL RIGHTS OF REDEMPTION PURSUANT TO THIS MORTGAGE.**

21. Indemnification. (A) Each Mortgagor agrees to indemnify and hold Mortgagee harmless from any and all claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments, awards, decrees, costs and expenses (including reasonable attorney's fees), arising directly or indirectly, in whole or in part, out of the acts and omissions whether negligent, willful or otherwise, of Mortgagor, or any of its officers, directors, agents, subagents, or employees, in connection with this Mortgage or as a result of: (i) ownership of the Mortgaged Premises or any part thereof or on the adjoining sidewalks, curbs, vaults and vault space, if any, adjacent parking areas, streets or ways; (ii) any use, non-use or condition of the Mortgaged Premises or any part thereof or the adjoining sidewalks, curbs, vaults and vault space, if any, the adjacent parking areas, streets or ways; (iv) any

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failure on the part of the Mortgagor to perform or comply with any of the terms of this Mortgage; or (v) the performance of any labor or services or the furnishing of any materials or other property with respect to the Mortgaged Premises or any part thereof. Any amounts payable to the Mortgagee under this Paragraph which are not paid within ten (10) days after written demand therefor by the Mortgagee shall bear interest at the highest of the Default Rate(s) defined in each of the Note(s). The obligations of the Mortgagor under this paragraph shall survive any termination or satisfaction of this Mortgage.

(B) Each Mortgagor further indemnifies the Mortgagee and agrees to hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Mortgagee for, with respect to, or as a direct or indirect result of (i) the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Mortgaged Premises or any other property legally or beneficially owned (or in which any interest or estate is owned) by the Mortgagor of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any so-called "Superfund" or "Superlien" law, or any other Federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any Hazardous Material), or (ii) the presence of any asbestos on or in the Mortgaged Premises (including, without limitation, the cost of removal) regardless of whether or not caused by, or within the control of Mortgagor. For purposes herein, the term "Hazardous Material" means and includes asbestos, PCB's and any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

(C) For purposes of the foregoing Paragraph 21, the term Mortgagor shall include any beneficiary or beneficiaries of any land trust-Mortgage (if any) and any Guarantors of the Loan, jointly and severally.

22. Business Loan. Each Mortgagor represents and warrants that the loan evidenced by the Note secured hereby is a business loan within the purview of Section 205/4(1)(c) of Chapter 815 of the Illinois Compiled Statutes and is likewise an exempted transaction under the Truth-in-Lending Act, 15 U.S.C. Section 1601 et seq.

23. Security Agreement and Financing Statement.

(A) Each Mortgagor and Mortgagee agree: (i) that this Mortgage shall constitute a Security Agreement and a Financing Statement within the meaning of the Uniform Commercial Code (the "**Code**") of the State of Illinois with respect to all sums on deposit with or held by the Mortgagee, as escrowee or otherwise, pursuant to the terms of this Mortgage or the other Loan Documents ("**Deposits**") and with respect to any item specified above as part of the Mortgaged Premises (including but not limited to building materials and supplies wheresoever situated) which, under applicable law could be personalty or otherwise subject to a security interest under the Code, which property may not be deemed to form a part of the Mortgaged Premises upon which this Mortgage is a lien or may not constitute a "**fixture**" (within the meaning of Section 9-313 of the Code), and all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof (said property, replacements, substitutions, additions and the proceeds thereof being sometimes herein collectively referred to for purposes of this Security Agreement as the "**Collateral**"); and (ii) that a security interest in and to the Collateral and Deposits is hereby granted to the Mortgagee; and (iii) that the Deposits and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee; all to secure payment of the Note and other indebtedness secured hereby and to secure performance by the Mortgagor of the terms, covenants and provisions hereof and of the other Loan Documents.

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(B) In the Event of Default under this Mortgage or any other Loan Document, the Mortgagee, pursuant to the appropriate provisions of the Code, shall have an option to proceed with respect to both the Mortgaged Premises and Collateral in accordance with its rights, powers and remedies with respect to the real property, in which event the default provisions of the Code shall not apply. The parties agree that if the Mortgagee shall elect to proceed with respect to the Collateral separately from the Mortgaged Premises, ten (10) days' notice of the sale of the Collateral shall be commercially reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. If the Collateral is sold in connection with a sale of all or part of the Mortgaged Premises, Mortgagor shall notify the Mortgagee prior to such sale and shall procure Mortgagee's consent to said sale and shall comply with all requirements as to partial release, set forth herein at Paragraph 24 hereof before Mortgagee shall be required to release or terminate its security interests as to the Collateral pertaining to said sold portion.

(C) The Mortgagor agrees that, without the written consent of the Mortgagee, Mortgagor will not remove or permit to be removed from the Mortgaged Premises any of the Collateral except that so long as the Mortgagor is not in default hereunder, Mortgagor shall be permitted to sell or otherwise dispose of the Collateral when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Mortgaged Premises, but only upon replacing the same or substituting for the same other Collateral at least equal in value and utility to the initial value and utility of that disposed of and in such a manner that said replacement or substituted Collateral shall be subject to the security interest created hereby and that the security interest of the Mortgagee shall be perfected and first in priority, it being expressly understood and agreed that all replacements, substitutions and additions to the Collateral shall be and become immediately subject to the security interest of this Mortgage and covered hereby. Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee at the cost of the Mortgagor: (i) such further financing statements and security documents and assurances as Mortgagee may require, to the end that the liens and security interest created hereby shall be and remain perfected and protected in accordance with the requirements of any present or future law; and (ii) an inventory of the Collateral in reasonable detail. Mortgagor covenants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances, title retention devices and security interests of others.

(D) The Mortgagor and Mortgagee agree, to the extent permitted by law, that: (i) all of the goods described within the definition of the term **"fixtures"** herein are or are to become fixtures on the Mortgaged Premises; (ii) this instrument, upon recording or registration in the real estate records of the proper office, shall also constitute a **"fixture filing"** within the meaning of applicable provisions of Article 9 of the Code; and (iii) Mortgagor is the record owner of the Mortgaged Premises.

24. Construction Mortgage. Each Mortgagor acknowledges and agrees that the proceeds of the Loan evidenced by the Note are intended to finance development construction and installation of certain improvements on the Mortgaged Premises, and accordingly, this Mortgage is a construction mortgage as said term is defined under applicable provisions of Article 9 of the Uniform Commercial Code. Each Mortgagor further covenants, represents and warrants for themselves as follows: (i) the improvements to be constructed on the Mortgaged Premises shall be completed in accordance with the terms and conditions of a certain Construction Loan and Security Agreement bearing even date herewith by and between each such Mortgagor and Mortgagee; (ii) upon the occurrence of a default or event of default, by any Mortgagor hereunder or under the Construction Loan and Security Agreement or other Loan Documents, and after notice and any cure period, if any, Mortgagee may: (a) declare the entire principal balance and accrued interest immediately due and payable; (b) complete the construction of the improvements and enter into any contract necessary to complete said construction, with all sums so expended shall bear interest at the highest applicable Default Rate stated in the Note; (c) exercise any remedies set forth herein or in the other Loan Documents; (iii) any and all advances made

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and indebtedness arising and accruing under the Construction Loan and Security Agreement, whether or not the total amount exceeds the face amount of the Note, shall be secured by this Mortgage.

25. Defeasance/Releases. Mortgagee agrees to release the lien of this Mortgage from the Mortgaged Premises upon payment to Mortgagee of all interest, principal and other sums due Mortgagee under the Note and other Loan Documents provided any further financing obligations of Mortgagee respecting the Loan have likewise been terminated.

IN WITNESS WHEREOF, each Mortgagor has executed this Mortgage on the date first written above.

x Andrzej Sulewski
ANDRZEJ SULEWSKI, individually

Jadwiga Sulewska
JADWIGA SULEWSKI, individually

pb\sulewski mtg\051105\cp

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that **ANDRZEJ SULEWSKI** and **JADWIGA SULEWSKI**, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth. **GIVEN** under my hand and official seal, his 16th day of May, 2005.

Liliana Klos-Nunez
Notary Public



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EXHIBIT "A"

LEGAL DESCRIPTION

LOT 73 (EXCEPT THE WEST 275 FEET THEREOF) IN GOLF ACRES, BEING A SUBDIVISION OF PART OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, AND PART OF THE SOUTHEAST ¼ OF SECTION 35, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 18, 1939, AS DOCUMENT 12370211, IN COOK COUNTY, ILLINOIS.

P.I.N.: 10-07-201-046-0000

COMMONLY KNOWN AS:

520 N. RIO VISTA

GLENVIEW, ILLINOIS

Property of Cook County Clerk's Office