



Doc#: 0534118104 Fee: \$82.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/07/2005 03:20 PM Pg: 1 of 30

This document prepared by
and after recording return to:

Joanne M. Schreiner, Esq.
Dinsmore & Shohl LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
513-977-8200

Property Address and
PIN: _____

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") made this ^{30th} day of June, 2005, by **TRADE MART ASSOCIATES, LTD A LIMITED PARTNERSHIP**, a North Carolina limited partnership, having as its principal business address, c/o Jeffrey M. Schottenstein, 1000 Brickell Avenue, Suite 910, Miami, Florida 33131 (hereinafter called "Borrower") to **THE OHIO NATIONAL LIFE INSURANCE COMPANY**, an Ohio corporation, having as its principal business address, One Financial Way, Cincinnati, Ohio 45242 (hereinafter called "Lender"):

WITNESSETH:

WHEREAS, Borrower is indebted to Lender in the aggregate principal sum of Four Million Three Hundred Eighty-Six Thousand Three Hundred Eighty-Five and No/100 Dollars (\$4,386,385.00) as evidenced by (i) that certain Promissory Note Secured by Real Estate payable to Lender by Borrower in the principal amount of \$3,240,000.00 dated February 4, 2004 (the "Parcel A Note"), and (b) that certain Promissory Note payable to Lender by Borrower in the principal amount of \$1,146,385.00 dated June ^{30th}, 2005 (the "Parcel B Note") (the Parcel A Note and the Parcel B Note are collectively referred to herein as the "Notes"), with a maturity date of February 28, 2014, the terms of which are incorporated herein by reference (the "Loan"); and



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WHEREAS, Borrower desires to secure the payment of the Notes with interest and any renewals or extensions thereof, together with costs of collection and any other sums expended by Lender pursuant to the Mortgage, the Assignment of Leases, Rents and Profits ("Assignment of Leases"), and any other documents evidencing, securing or relating to the indebtedness evidenced by said Notes, the Mortgage, and the Assignment of Leases. The Mortgage and the Assignment of Leases, together with the Notes, the Loan commitments dated June 5, 2003, and June 30, 2005, together with any amendments thereto (collectively the "Ohio National Loan Commitment") between Lender and Borrower, and together with any other instruments evidencing, securing or relating to the indebtedness evidenced by said Notes, whether now or hereafter existing, are hereinafter collectively referred to as the "Loan Documents."

NOW, THEREFORE, as security for said indebtedness, Borrower, in consideration of the sum of Ten Dollars (\$10.00) in hand paid, and the foregoing premises, the receipt and sufficiency of which are hereby acknowledged, does hereby irrevocably mortgage, bargain, sell, grant, transfer, assign and convey unto Lender, its successors and assigns, the following described land, buildings, improvements, fixtures, furniture and appliances and other personal property, to-wit:

A. The real estate in Cook County, Illinois, described in Exhibit A, attached hereto and hereby incorporated within the Mortgage (hereinafter sometimes called the "Land"); and

B. TOGETHER WITH all Borrower's interest in and to all buildings and improvements now existing or hereafter erected thereon (the "Improvements," the Land and the Improvements being hereinafter sometimes called the "Premises" or the "Secured Premises") and

C. TOGETHER WITH all Borrower's interest in and to all tenements, hereditaments, easements, fixtures and appurtenances thereto pertaining or belonging, and all rents, issues and profits thereof (the "Appurtenances") for so long and during all such times as Borrower may be entitled thereto (which are pledged primarily and on a parity with said real estate and not secondarily), and including but not limited to all fixtures, apparatus, equipment or articles now or hereafter therein or thereon used to supply heat, gas, air cooling, air conditioning, water, light, power, sanitation, sprinkler protection, waste removal, refrigeration and ventilation, including (without restricting the foregoing), all engines, boilers, elevators, machinery and all other fixtures, apparatus, equipment, furniture, furnishings and articles owned by Borrower which are used or useful in connection with the operation of an office building and are now (or hereafter) located upon said Premises (collectively the "Fixtures"), it being understood that all of such descriptive items shall be deemed an accession to the freehold and a part of the realty as between the parties, and the enumeration of any specific articles of property shall in no wise result in or be held to exclude any items of property not specifically mentioned; and

D. TOGETHER WITH all Borrower's interest in and to all articles of personal property and any additions to, substitutions for, changes in or replacements of the whole or any part thereof (the "Personalty"), including without limitation all built-in furniture and installations, shelving, partitions, doorstops, awnings, window shades, Venetian blinds, light fixtures, fire hoses and brackets and boxes for the same, fire sprinklers, alarm systems, drapery rods and brackets, screens, carpets, plumbing, refrigerators, heating units, stoves, ovens, water heaters, incinerators, furniture and furnishings, communication systems, all specifically designed

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installations and furnishings, and all such goods and other chattels and personal property as are furnished by the Borrower as a landlord in letting or operating an unfurnished building and all of said articles of property (the specific enumeration herein not excluding the general) now or at any time hereafter affixed to, attached to, placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Premises or any portion thereof and owned by Borrower or in which Borrower now has or hereafter acquires an interest, and all building materials and equipment now or hereafter delivered to the Premises and intended to be installed or placed in or about the Premises; and

E. TOGETHER WITH all rents, issues and profits from the Premises, and leases of the Premises, or any portion thereof, now or hereafter entered into and all right, title and interest of the Borrower thereunder (the "Leases"), including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such Leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including, further, the right, upon the occurrence of an event of default, to receive and collect the rents thereunder, and

F. TOGETHER WITH all Borrower's rights to the proceeds of any fire or hazard insurance policy covering the Premises, or any part thereof, or any award in eminent domain proceedings for a taking or for loss of value of the Premises (jointly the "Proceeds"); and

G. TOGETHER WITH all products, proceeds and replacements to the above.

If at any time any of the property herein conveyed is of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, then Borrower hereby grants such a security interest to Lender and this instrument shall constitute a Security Agreement and Financing Statement if permitted by applicable law, and Borrower agrees to join with Lender in the execution of any financing statements and any other instruments that may be required for the perfection or renewal of such security interest under the Uniform Commercial Code. Lender shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of the State of Illinois including, without limitation, the right upon default hereunder or under the Notes to dispose of any such personal property in any manner now or hereafter permitted by the Uniform Commercial Code of the State of Illinois or in accordance with any other remedy provided by law.

The Land, Improvements, Premises, Appurtenances, Personalty, Fixtures, Leases and Proceeds herein conveyed and above referred to, and all replacements thereof, are hereinafter called the "Secured Property."

TO HAVE AND TO HOLD the Secured Property and all parts, rights, members and appurtenances thereof, to the use, benefit and behalf of the Lender, its successors and assigns, in fee simple forever, upon the trusts and for the uses and purposes hereinafter set out.

This conveyance is intended to operate and is to be construed as a mortgage, and is given for purposes of securing (collectively the "Indebtedness"):

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A. Payment to the order of Lender of the indebtedness evidenced by the Notes. At all times, regardless of whether any Loan proceeds have been disbursed, the Mortgage secures, as part of the Indebtedness hereinafter defined, the payment of all loan commissions, service charges, liquidated damages, attorneys' fees, expenses and advances due to or incurred by Lender in connection with the Indebtedness, all in accordance with the Notes and the Mortgage. All such advances are intended by the Mortgage and by Lender to be a lien on the Secured Property from the time that the Mortgage is recorded as provided in the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 (the "Act").

B. Payment of all sums that may become due Lender under the provisions of this instrument or the Notes, the Assignment of Leases, and the other Loan Documents.

C. Performance of each agreement of Borrower contained herein or in the Notes, the Mortgage and the other Loan Documents.

THIS CONVEYANCE IS MADE UPON THE CONDITION that if Borrower shall pay or cause to be paid the Notes (including payment of all sums as set forth in the Notes) secured hereby in accordance with the terms thereof, and any renewals, extensions or modifications thereof, and that if Borrower shall comply with all of the covenants, terms and conditions of the Loan Documents, then this conveyance shall be null and void and may be canceled of record at the request and cost of Borrower, provided Lender has not issued any letter of credit which remains outstanding securing the performance of Borrower.

TO PROTECT THE SECURITY OF THIS MORTGAGE, BORROWER COVENANTS AND AGREES:

1. Payment of Debt. Borrower will pay the Notes according to their terms, and all other sums secured hereby promptly as the same shall become due.

2. Taxes, Liens, Assessments and Charges.

A. Borrower will make regular monthly payments to a separate account for Lender's benefit, as provided in Section 4 below, and pay, before the same shall become delinquent, all taxes, liens, assessments and charges of every character now or hereafter levied or assessed upon or against the Secured Property and all utility charges, whether public or private. Upon demand, Borrower will furnish the Lender with receipts evidencing such payment; provided, however, that Borrower may, in good faith, contest any such amount due by posting bond in an amount sufficient to prevent any such amount due from becoming a lien on the Secured Property.

B. In the event of the passage after the date of this Mortgage of any law of the State of Illinois, causing any lien to be placed upon the Land or changing the laws now in force for the taxation of mortgages, deeds of trust or debts secured thereby, in such a way as Lender reasonably determines materially impairs the Secured Property, then and in such event, Borrower shall bear and pay the full amount of such taxes, provided that if for any reason payment by Borrower of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the Loan or indebtedness secured hereby wholly or partially usurious under any of the terms or

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provisions of the Notes, or the within Mortgage, or otherwise, Lender may, at its option and upon thirty (30) days prior written notice, declare the whole amount secured by the Mortgage, with interest thereon, to be immediately due and payable, or Lender may, at its option, pay that amount or the portion of such taxes as renders the Loan or indebtedness secured hereby unlawful or usurious, in which event Borrower shall concurrent therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

C. Borrower will not suffer any mechanic's, materialmen's, laborer's, statutory or other lien be created or to remain outstanding upon any part of the Secured Property unless the same is released or bonded within thirty days of filing.

3. Insurance.

A. Borrower will keep the Secured Property continuously insured in a company or companies and pursuant to insurance policies approved by Lender:

(i) against loss or damage by fire and extended coverage, vandalism and malicious mischief, and flood, if the Land lies in any flood prone or flood hazard area, in an amount not less than the reproduction cost of the improvements, as the same is defined in the appraisal for the Secured Property defined by Borrower to Lender on or prior to the date hereof, and in an amount sufficient to prevent Borrower from becoming a co-insurer in any loss, with a deductible satisfactory to Lender,

(ii) against claims for bodily injury, death or property damage occurring in, on or about the Premises with General Public Liability Insurance naming Lender as an additional insured and affording protection in an amount satisfactory to Lender but in any event with combined single limit coverage of at least Two Million and No/100 Dollars (\$2,000,000.00);

(iii) against loss of rental income for a period of not less than sixty (60) months;

(iv) against losses occasioned by the termination of the Leases by reason of condemnation or damage to the improvements located on the Secured Property; and

(iv) against such other hazards (including flood hazard insurance if applicable) and in such amounts as Lender in its sole discretion may require for the benefit of Lender, with loss, if any, payable to Lender as its interest may appear, pursuant to a mortgagee clause which shall be satisfactory to Lender.

Forthwith upon the issuance of such policies, the Borrower will deliver the same and all renewals thereof to Lender forty (40) days prior to the expiration of any prior policies and will also deliver to Lender receipts for any premiums paid thereon by Borrower or its tenant, as the case may be. Any policies furnished to Lender shall become its property in the event Lender becomes the owner of the Secured Property or any part thereof by judicial or nonjudicial sale or otherwise. Lender is hereby authorized

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and empowered to proceed with adjusting or compromising any loss under any insurance policy or policies on the Secured Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses to Lender. In case of loss under any such policy of insurance, Lender may apply the net proceeds to the payment of the indebtedness hereby secured, whether or not then due, or Lender may require the use of all or a portion of said net proceeds to repair or replace the Secured Property or to cure any then current default under this Mortgage or the Notes; however, the decision as to the application of such proceeds shall rest solely with Lender at its discretion. Notwithstanding the foregoing, Lender, at its sole option, may apply the insurance proceeds to reduce the then outstanding principal balance of the Loan. Any reduction of the then outstanding principal balance of the Loan as a result of the application of the casualty insurance proceeds shall be at par. For so long as the existing Lease (the "Advance Lease") in favor of Advance Stores Company (the "Existing Tenant") is in effect, the proceeds of any insurance policies described in clause (i) above maintained by the Existing Tenant shall be applied pursuant to the terms of such Lease. Notwithstanding anything herein to the contrary, the proceeds of any insurance policies described in clause (iv), shall be payable to Lender. Should Existing Tenant exercise its right to self-insure risks in accordance with Subsection 12(d) of the Advance Lease, Borrower shall not be required to provide insurance coverage for such self-insured risks unless Existing Tenant's senior, unsecured credit rating (consolidated, including Advance Stores Company, Incorporated or its parent company Advance Auto Parts, Inc.) is (or later becomes) less than BB- (Standard & Poor's) or Ba3 (Moody's) or BB (Iitch) or 3(NAIC) and, should Existing Tenant's credit rating be or thereafter fall below such thresholds, Borrower shall be required to immediately obtain insurance coverage for such risks, and to provide Lender with evidence of such coverage within sixty (60) calendar days of any subsequent credit downgrade. Notwithstanding the foregoing (i) to the extent that such self-insurance by Existing Tenant does not cover risks required to be insured under this Section 3, Borrower shall be required to obtain and maintain insurance covering such risks in compliance with the provisions of this Section 3, and (ii) Lender shall not be required to accept self insurance of the risks covered by the rent/business interruption insurance, and the required insurance coverage of such risks shall be maintained by or on behalf of Borrower at all times.

B. In the event of foreclosure of this Mortgage, or other transfer of title to the Secured Property or any part thereof in extinguishment of the indebtedness secured hereby, all right, title and interest of Borrower in and to any insurance policies then in force with respect to the property so transferred shall pass to the purchaser or grantee. In the event that prior to the extinguishment of the indebtedness, any claim under any hazard insurance policies had not been paid and distributed in accordance with the terms of this Mortgage, and any such claim shall be paid after the extinguishment of the indebtedness secured hereby, and the foreclosure of this Mortgage or other transfer of title to the property covered hereby shall have resulted in extinguishing the indebtedness secured hereby for an amount less than the total of the unpaid principal balance together with accrued interest plus costs and disbursements at the time of the extinguishment of the indebtedness secured hereby, then and, in that event, that portion of the payment in satisfaction of the claim which is equal to the difference between the total amount above-

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referred to and the amount in extinguishment of the indebtedness secured hereby shall belong to and be the property of Lender and shall be paid to Lender, and Borrower hereby assigns, transfers and sets over to Lender all of the Borrower's right, title and interest in and to said amount. The balance, if any, shall belong to Borrower.

C. If all or any part of the Secured Property shall be damaged by fire or other casualty, then Borrower will promptly restore the Secured Property to substantially the same condition as prior to any such damage, provided Lender elects to release insurance proceeds to Borrower for such purpose as provided herein.

D. All insurance policies required of Borrower must be written with companies which have a rating as published in the current issue of Best's Key Rating Guide of at least A:VIII, must be in form and content satisfactory to Lender, must cite Lender's interest as mortgagee, must be maintained in force throughout the term of the Loan without cost to Lender, must be deposited with Lender (if required), and must contain a provision for thirty (30) days prior written notice to Lender of the insurance company's intent to cancel the policy. The policy shall also provide that any loss shall be payable notwithstanding any act of negligence by Borrower which might otherwise result in forfeiture of such insurance.

4. Monthly Deposits. To secure further the payment of the taxes and assessments, and the payment of the premiums on the hazard insurance hereinabove referred to, Borrower will deposit with Lender, monthly, on the first day of each month, one-twelfth (1/12) of the annual charges for insurance premiums and real estate taxes, assessments, water, sewer and other charges which might become a lien upon the Secured Property. In addition, Borrower shall simultaneously therewith deposit with Lender a sum of money which, together with the monthly installments aforementioned, will be sufficient to make each of the payments aforementioned at least thirty (30) days prior to the date such payments are due. Should said charges not be ascertainable at the time any deposit is required to be made with Lender, the deposit shall be made on the basis of an estimate made by Lender in its sole discretion; and when the charges are fixed for the then-current year, Borrower shall deposit any deficiency with Lender. All funds so deposited with Lender shall be held by it, in escrow and, except to the extent required by applicable law, without interest, and provided that no default shall have occurred, shall be applied in payment of the charges aforementioned when and as payable, to the extent Lender shall have funds on hand. Upon the occurrence of any default (beyond any applicable cure period), the funds deposited with Lender pursuant hereto may be applied in payment of the charges for which such funds shall have been deposited, or to the payment of the indebtedness secured hereby, or upon any other charges affecting the security of Lender, as Lender sees fit, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Lender as herein provided, nor shall any application be deemed to affect any right or remedy of Lender hereunder or under any statute or rule of law. Borrower shall furnish Lender with bills for the charges for which deposits are required to be made hereunder and/or such other documents necessary for the payment of same, not later than thirty (30) days prior to the date upon which the charges first become payable.

5. Maintenance of Property and Compliance with Laws.

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A. Borrower will keep and maintain, or cause to be kept and maintained, the Secured Property, and all equipment, appurtenances and accessories thereto or thereon now or hereafter erected on the Land, in good condition and repair, will maintain all parking areas and ingress and egress easements, will not commit or suffer any waste, and will not do or suffer to be done anything which will materially increase the risk of fire or other hazard to the Secured Property or any part thereof, and shall keep and maintain all furniture, fixtures and appliances in good repair and condition and shall replace any such furniture, fixtures or appliances which become obsolete or worn out during the term hereof.

B. Borrower will not expand or extend the Premises except with the written consent of the Lender.

C. Borrower will not construct, restore, add to or alter the building or other improvement in the Premises, nor consent to or permit any such construction, restoration, addition or alteration without Lender's written consent, other than tenant improvements undertaken in the ordinary course of business or which are authorized by the terms of the Leases.

D. If the Secured Property is damaged by fire or any other cause, Borrower will give immediate written notice of the same to the Lender.

E. Lender or its representative is hereby authorized to enter upon the Premises and inspect the Secured Property at all reasonable times, subject to any restrictions set forth in the Leases.

F. Without limiting any other provision contained herein relating to the same or similar matters as hereinafter set forth, Borrower covenants and agrees that in the ownership, operation and management of the Secured Property, Borrower will observe and comply with all applicable federal, state and local statutes, ordinances, regulations, orders and restrictions, including, without limitation, the Americans with Disabilities Act and all zoning, building code, environmental protection, non-discrimination, and equal employment opportunity statutes, ordinances, regulations, orders and restrictions, whether now existing or hereafter enacted.

G. Borrower hereby represents and warrants to the best of its knowledge and belief: (i) that the location, construction, occupancy, operation and use of the Secured Property do not violate any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (record or otherwise) affecting the Secured Property, including without limitation all applicable zoning ordinances and building codes, flood disaster laws, non-discrimination laws and regulations, and health and environmental laws and regulations (hereinafter sometimes collectively called "Applicable Regulations"); (ii) without limitation of (i) above, that the Secured Property and Borrower are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or to any remedial obligations under any Applicable Regulations pertaining to health or the environment

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(hereinafter sometimes collectively called "Applicable Environmental Laws"), including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") (collectively "CERCLA/SARA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), and the Environmental Protection Act of Illinois, 415 ILCS 5/1, and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Secured Property; (iii) that Borrower has obtained all permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the Secured Property by reason of any Applicable Environmental Laws; and (iv) that the use which Borrower and any tenant occupying all or any portion of the Secured Property makes and intends to make of the Secured Property will not result in the generation, storing, handling, disposal or other release of any petroleum products or any hazardous substance or solid waste on or to the Secured Property, other than the lawful storage of janitorial cleaning solutions for use in the ordinary course of business at the parking garage located on the Secured Property. The terms (as used in this Mortgage) "hazardous substance" and "release" shall have the meanings specified in CERCLA/SARA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA/SARA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment and provided further, to the extent that the laws of the State of Illinois establish a meaning for "hazardous substance", "release", "solid waste" or "disposal" which is broader than that specified in either CERCLA/SARA or RCRA, such broader meaning shall apply.

Irrespective of the fact that Borrower has made the foregoing warranties and representations to the best of its knowledge and belief, Borrower nonetheless agrees to indemnify and hold Lender harmless from and against and to reimburse Lender with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Lender at any time and from time to time by reason of or arising out of: (a) the breach of any representation or warranty of Borrower set forth in subsections (i) through (iv) above of this Subsection G just as though they had been made in absolute terms without qualification or reservation; (b) the failure of the Borrower to perform any obligation herein required to be performed by Borrower; and (c) the ownership, construction, occupancy, operation, use and maintenance of the Secured Property prior to the date (the "Release Date") on which (i) the indebtedness secured by this Mortgage has been paid and performed in full and this Mortgage has been released, and (ii) if Lender or a designee or Lender becomes the owner of the Secured Property by way of foreclosure of the lien hereof, deed in lieu of such foreclosure or otherwise, the Secured Property has been sold by Lender; provided, however, this indemnity insofar as it relates to Lender shall not apply with respect to matters caused by or arising out of the negligence or willful misconduct of Lender. This indemnity applies, without limitation, to any violation on or before the Release Date of any Applicable Environmental Law in effect on or before the Release Date and any and all matters arising out of any act, omission, event or

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circumstance existing or occurring on or prior to the Release Date (including without limitation the presence on the Secured Property or release from the Secured Property of hazardous substances or solid waste disposed of or otherwise released prior to the Release Date), regardless of whether the act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence, but it shall not apply to any negligence or willful misconduct of Lender. All of the foregoing covenants, representations, warranties and indemnities made by Borrower shall be continuing and shall be true and correct for the period from the date hereof through and as of the Release Date with the same force and effect as if made each day throughout such period, and all of such covenants, representations, warranties, and indemnities shall survive the Release Date.

It is expressly acknowledged by Borrower that this covenant of indemnification shall survive any payment and satisfaction of the indebtedness evidenced by the Notes and secured by this Mortgage or, any foreclosure of the lien and security interest of this Mortgage and shall inure to the benefit of Lender in the event Lender becomes the successor-in-interest to the Secured Property.

In the event that a request is ever made to remove any hazardous substance from any portion of the Secured Property, Lender agrees that it need not be done until such removal and/or clean-up is mandated by an appropriate governmental agency or court of competent jurisdiction. Lender further agrees that Borrower may defend against any required removal and/or clean-up.

Upon the occurrence of a default past any applicable cure period hereunder, Borrower, or Lender at its option, shall obtain and deliver to the Lender at the sole cost and expense of the Borrower an environmental audit of the Secured Property prepared by a geohydrologist, an independent engineer or, other qualified consultant or expert approved by Lender, evaluating and confirming (i) whether any hazardous or other toxic substances are present in the soil or water at or adjacent to the Secured Property, and (ii) whether the operations at the Secured Property comply with all air quality and other applicable environmental laws. Lender reserves the right, upon reasonable notice, to enter and investigate the Secured Property and to take such samples as may be necessary to perform soil, water or other analyses. Borrower warrants that the future use of the Secured Property by either the Borrower or any lessee or any other third party shall not and will not violate any applicable air quality or other environmental laws of any nature and that it will notify Lender if it discovers that any have been or are about to be violated on the Secured Property by anyone.

6. Annual Statements and Audits. Borrower will keep and maintain in its offices full, true and accurate books of record and account, in accordance with generally accepted accounting practices consistently applied, showing in detail the earnings and expenses of Borrower's operation of the Premises, copies of all written contracts, leases and other instruments affecting the Secured Property, which books of record and account shall be open to the inspection by Lender and its agents at all reasonable times. In addition, Borrower shall deliver to Lender annually, detailed income and expense statements for Borrower and the Secured Property, prepared by a certified public accountant, within three (3) months after close of

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Borrower's fiscal year. Further, Borrower shall deliver to Lender annually and within three (3) months after the close of Borrower's fiscal year, personal financial statements, signed and dated, of Jeffrey M. Schottenstein and Marvin Greenfield. Borrower will deliver to Lender, semi-annually (or, unless requested otherwise by Lender, annually), a certified rent roll showing the names of all tenants, the amount of space leased, the annual rent being paid, the rent per square foot, and participation rent or expense reimbursements being paid by the tenants, the Lease expiration date, and the amount of vacant space.

7. Condemnation.

A. If all or any substantial part of the Secured Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by an entity having the right of eminent domain and any transfer by private sale in lieu thereof, either temporarily or permanently), the entire indebtedness secured hereby shall, at the option of Lender, become immediately due and payable. If all or any part of the Secured Property shall be damaged or taken through condemnation, Lender shall be entitled to all compensation, awards and other payments or relief therefor and is hereby authorized, at its option, to join with Borrower, or, upon Borrower's failure, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to Lender, who after deducting therefrom all its expenses, including reasonable attorneys' fees actually incurred (without statutory presumption), may, at its option, either release any monies so received by it for reconstruction of the Secured Property without affecting the security title of this Mortgage, or may apply the same to cure any then-current default or to the reduction of the last maturing installments of the indebtedness, whether or not then due and payable, or any other sums secured by this Mortgage and any balance of such monies then remaining shall be paid to Borrower. Borrower agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Lender may require. In the event of condemnation, Lender shall not be limited to the interest paid on the award by the condemning authority but shall be entitled to receive out of the award accrued interest on the entire unpaid principal balance at the rate provided in the Notes; Borrower, does hereby assign to Lender so much of the balance of the award payable by the condemning authority as is required to pay such total interest.

B. Borrower, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Secured Property or any portion thereof, will notify Lender of the pendency of such proceedings. Lender may participate in any such proceedings, and Borrower from time to time will deliver to Lender all instruments requested by it to permit such participation.

C. If Lender elects to apply the condemnation award to restore, repair or alter the remaining portion of the Secured Property, Borrower will promptly restore, repair or alter the remaining property in a manner satisfactory to Lender.

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D. Notwithstanding the above, if any part of the Secured Property shall be condemned by any governmental authority having jurisdiction over the Secured Property, or if so much of the Secured Property shall be condemned by any governmental authority having jurisdiction over the Secured Property that the Secured Property is in violation of any applicable parking, zoning, platting or other ordinances, or fails to comply with the terms of any Lease, in each case Lender shall be entitled to apply all condemnation proceeds to the repayment of the outstanding balance of the Loan, and Lender shall have the further right to call the Notes immediately due and payable in full without the imposition of a prepayment penalty.

E. Notwithstanding the foregoing, if any part of the Secured Property shall be condemned by any governmental authority having jurisdiction over the Secured Property, and as a result of such condemnation proceeding the Lease shall terminate pursuant to its terms, the tenant shall be deemed to have exercised an option to purchase the Secured Property as provided for in the Lease and all or a portion of the purchase price payable by tenant pursuant thereto shall be paid directly by the tenant to the Lender, to the extent necessary to fully repay the outstanding balance of the Loan at par.

8. Leases. Subject to the following provisions, all Leases of the Premises or any portion thereof shall be subject to the approval of, and satisfactory to, Lender. In addition:

A. Borrower shall faithfully perform all of the Lessor's material covenants under any Lease affecting the Premises and will use its best efforts to enforce or secure the performance of each and every material obligation of the tenant under each Lease.

B. Borrower shall neither do, neglect to do, nor permit to be done anything which may cause the modification or termination of any Lease, or of the obligations of any lessee or any person claiming through such lessee, or which may diminish or impair the value of any Lease, or the rents provided for therein, or the interest of the lesser or of Lender therein or thereunder.

C. Borrower will not, without the prior written consent of the Lender, assign the rents or any part thereof, from said premises, except as provided for herein or in that certain Assignment of Leases of even date herewith from Borrower as assignor, to Lender, as assignee.

D. Borrower will not accept prepayment of rents for more than one month under any Lease; and any such purported prepayment made without the written consent of the Lender shall be void as against the Lender.

E. Borrower shall not execute any other Mortgage or create or permit a lien which may be or become superior to any Leases affecting the Premises.

F. Borrower will give Lender immediate notice by certified mail of any notice of default or cancellation received from any tenant.

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G. Borrower represents and warrants that all representations made by it in any occupancy Leases entered into by Borrower with respect to any part of the Premises are true.

H. Borrower represents and warrants that all improvements and leased space demised and let pursuant to each Lease covering the whole or any part of the Premises have been completed to the satisfaction of the lessee, that lessee has accepted possession of such leased space and is open for business, that all rents and other charges due and payable under any such Lease have been paid, that none has been prepaid, except as expressly described under such Lease, and that there is no existing default or breach of any covenant or condition on the part of lessee under any such Lease.

I. Borrower will deliver to Lender semi-annually a certified rent roll showing the names of all tenants, the amount of space leased, the annual rental amounts being paid, the rent per square foot, any participation rent or rent reimbursements being paid by the tenants, the lease expiration date, and the amount of vacant space.

J. Unless approved otherwise by Lender, all future leases shall be triple net leases, with tenants being responsible for their pro rata share of property taxes, insurance and common area maintenance.

K. Unless otherwise approved by Lender, all Leases shall be for a minimum of three (3) years and shall be assigned to Lender.

9. Assignment of Rents, Issues and Profits.

A. Borrower does hereby bargain, sell, assign and set over unto Lender all rents, issues and profits which, whether before or after foreclosure, shall accrue and be owing for the use or occupancy of the Secured Property or any part thereof. For the purposes aforesaid, Borrower does hereby constitute and appoint the Lender its attorney-in-fact, irrevocably in its name to receive, collect and acknowledge receipt of all sums due or owing for such use and occupancy, as the same accrue. Out of the amount so collected the Lender, and its successors and assigns, are hereby authorized (but not obligated) to pay and discharge all obligations of the Borrower hereunder, including but not limited to, the obligation to pay the indebtedness secured by this Mortgage (and including any accelerated indebtedness) in such order as the Lender, its successors or assigns, may determine, and whether due or not, and to pay the remainder, if any, to the Borrower.

B. For the purposes aforesaid, Lender may enter the Premises and take possession of the Secured Property, manage and operate the same and take any action which, in Lender's judgment is necessary or proper to conserve the value of the Secured Property, but such action shall not constitute Lender as a mortgagee or lender in possession. The expense (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. Lender shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any rents actually received by Lender.

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C. So long as there shall exist no default hereunder, Borrower shall have the license to collect, as they accrue, all such rents, issues and profits. Borrower agrees to use such rents, issues and profits in payment of principal and for interest payable pursuant to the Notes and in payment of all taxes, assessments, water rates, sewer rates, insurance premiums and other charges on or against the Secured Property, to the extent not otherwise paid directly by the tenants under the Leases.

D. As additional and collateral security for the payment of the Notes, Borrower will, as requested from time to time by Lender, assign to Lender or its nominee by specific or general assignment, any Lease now or hereafter made upon the Premises, such assignments to be in form and content acceptable to Lender. For the aforesaid purposes, Borrower agrees to deliver to Lender, upon Lender's request, an original and one ink copy of each and every Lease which is at the time of such request outstanding upon the Premises and in addition thereto shall supply Lender at its request with a complete list of each and every Lease showing the name of tenant, area and location of space, leased, monthly rental, date to which paid, term of Lease, date of occupancy, date of expiration and any and every special provision, concession or inducement granted to tenant. After receipt of and review of said Leases by Lender, it shall return the original documents to Borrower.

10. Additional Security.

A. At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered to Lender, any and all other further instruments, certificates and documents as may, in the reasonable opinion of Lender based upon its experience with similarly situated borrowers and security property, be necessary or desirable in order to effectuate, complete, perfect or continue and preserve the obligation of Borrower under the Notes and the security title of this Mortgage. Borrower will reimburse the Lender for any reasonable and customary monies expended by Lender in making, executing and recording such instruments, certificates and documents.

B. Borrower shall from time to time, within thirty (30) days after request by Lender, execute, acknowledge and deliver to Lender such chattel mortgages, security agreements or other similar security instruments, in form and substance satisfactory to Lender, covering all personal property and fixtures of any kind whatsoever owned by Borrower or in which Borrower may have any interest which, in the opinion of Lender, is essential to the operation of the Premises. Borrower shall further from time to time within thirty (30) days after request by Lender, execute, acknowledge and deliver any financing statement, renewal, affidavit, certificate, continuation statement or other document as Lender may reasonably request in order to perfect, preserve, continue, extend or maintain the security interest under, and the priority of, this Mortgage or such chattel mortgage or other security instrument as a first lien. Borrower further agrees to pay to Lender on demand all reasonable costs and expenses incurred by Lender in connection with the preparation, execution, recording, filing and refiling of any such instrument or document, including the charges for examining title and title insurance premiums and the attorney's fee for rendering an opinion as to the priority of this Mortgage and of such chattel

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mortgage or other security instrument as a valid first and subsisting lien. However, neither a request so made by Lender nor the failure of Lender to make such a request shall be construed as a release of such property, or any part thereof; from the lien of this Mortgage, it being understood and agreed that this covenant and any such chattel mortgage, security agreement or other similar security instrument delivered to Lender are cumulative and given as additional security.

C. Borrower upon thirty (30) days prior written notice, shall furnish Lender a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any offsets or defenses exist against such principal and interest, and, if so, the particulars thereof.

11. Transfer or Encumbrance.

A. Borrower acknowledges that the continuous ownership of the Secured Property by Borrower is of a material nature to the transaction and the making of the Loan evidenced by the Notes and secured by this Mortgage. Therefore, Borrower agrees that in the event of any transfer of all or any part of the Secured Property, any legal or equitable interest therein or more than thirty (30%) in the aggregate of the limited partnership interests in Borrower, howsoever evidenced or occasioned, without the prior written approval of Lender (except as specifically contemplated in paragraph 12 below), then, at the option of Lender, such event shall constitute a default hereunder, and Lender shall have the right at its option to declare the entire unpaid principal balance under the Notes together with accrued interest immediately due and payable.

B. In the event that Borrower shall, without the prior written consent of Lender, sell, transfer or convey the right to control the operation of the Secured Property, such event shall constitute a default hereunder, and Lender shall have the right at its option to declare the entire unpaid balance of the Notes and all accrued interest immediately due and payable.

C. Should the Secured Property at any time be or become subject to the lien of any security deed or mortgage, other than this Mortgage, in connection with which payments on account of the indebtedness secured hereby are to be made directly or indirectly by or through the mortgagees or lender thereunder, regardless of whether or not payment of the indebtedness secured hereby is assumed by such mortgagee or Lender, such event shall constitute a default hereunder, and the Lender shall have the right at its option to declare the whole of the principal sum and accrued interest and other sums hereby secured immediately due and payable.

D. In the event of an approved transfer of the Secured Property, Borrower shall provide a management contract acceptable to Borrower, relating to the management of the Secured Property. In addition to other fees provided herein, in the event Lender approves a sale or transfer of the Secured Property, Borrower shall pay to Lender a fee equal to one percent (1.00%) of the outstanding principal balance of the Loan plus all legal and administrative expenses of Lender, required to consummate the necessary documentation, including but not limited to financial statements, credit reports, proposed

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instruments of conveyance, an updated title insurance report showing no adverse title consequences since the original funding hereof, and such formal opinions of counsel as Lender in its sole discretion shall require. This right to transfer shall apply only to the named Borrower and not to any subsequent transferee. It is understood that in any such situation, Borrower shall be solely liable for any legal and administrative expenses of Lender required to consummate the necessary documentation.

E. Borrower warrants that there is no lien on the Secured Property at the time of the execution of this Mortgage, and no subordinate mortgage shall be created on the Secured Premises without the prior written consent of Lender. If such approval shall be granted, the subordinate mortgage must include provisions stating that it is junior in lien and subordinate to the lien of this Mortgage. Any default under the subordinate lien shall constitute a default under this Mortgage.

12. Status of Borrower. Except as provided in Paragraph 11 above, and subject to qualifications made in certain other of the Loan Documents relating hereto, Borrower shall not, during the term of this Mortgage, amend or modify its partnership agreement or otherwise change or dissolve its limited partnership status without the prior written approval of Lender, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, Borrower shall have the following limited transfer rights:

(i) In the event of the death of a partner, stockholder, trustee or member, as the case may be, Borrower, not otherwise being in default under the Notes, Mortgage or any other documents securing the Loan, and upon prior written application to Lender, within ninety (90) days of the date of death of such deceased partner, stockholder, trustee or member, as the case may be, supported by such additional documentation as Lender (in its sole discretion) may require, Lender shall permit the transfer of such deceased partners, stockholders, trustees or members interest, as the case may be, to his/her heirs or testamentary beneficiaries; provided further, that any such heir or beneficiary must first execute such documentation required by Lender, by which such proposed transferee shall assume and guarantee that proportional share of the personal liability of the deceased partner, stockholder, trustee or member, as the case may be. In addition, such heir or beneficiary must execute such documentation required by Lender by which such proposed transferee agrees to comply with all terms, conditions and requirements of the loan documents. It is understood that in any such situation, Borrower shall be solely liable for any and all legal and administrative expenses of Lender required to consummate the necessary documentation.

(ii) In the event of a transfer of ownership interests among family members for estate planning purposes which aggregate less than voting control, Borrower not otherwise being in default under the Notes, Mortgage or any other documents securing the Loan, and upon prior written application to Lender, supported by such additional documentation as Lender (in its sole discretion) may require, including but not limited to copies of the proposed new Partnership Agreement, Articles of Incorporation, Trustee Agreement or Limited Liability Company Agreement, as the case may be, proposed instruments of conveyance, updated title report (showing no adverse title consequences since funding), financial statements, credit reports or other financing information, Lender

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shall permit the transfer; provided further, that any such transferee shall assume and guarantee the limited joint and several liability of the transferring partner, stockholder, trustee, or member, as the case may be. It is understood that in any such situation, Borrower shall be solely liable for any and all reasonable legal and administrative expenses Of Lender required to consummate the necessary documentation.

(iii) Lender will charge an administrative fee for processing any application seeking its consent to a change of title to the Secured Property. The minimum fee is .one thousand and 00/100 dollars (\$1,000.00) but said fee is subject to adjustment based upon the time spent to administer the requested change.

13. Expenses. Borrower will pay or reimburse Lender for all reasonable attorneys' fees actually incurred at customary hourly rates (without statutory presumption), costs and expenses incurred by Lender in any action, legal proceeding or dispute of any kind: (1) in which Lender is made a party or appears as party plaintiff or defendant; (2) affecting the indebtedness secured hereby, this Mortgage or any other document securing repayment of the indebtedness evidenced by the Notes or hereby, or the interest created therein; or (3) affecting the Secured Property, including but not limited to condemnation or foreclosure or the exercise of the power of sale under this Mortgage. Any such amounts paid by Lender shall be added to the indebtedness secured by this Mortgage. If this Mortgage is referred to attorneys for collection or foreclosure, Borrower shall pay all reasonable expenses incurred by the Lender, including reasonable attorneys' fees, interest and all costs of collection together with all statutory costs, disbursements, allowances and all abstracting costs, with or without the institution of an action or proceeding. All such amounts with interest thereon at the rate set forth in the Notes shall be deemed to be secured by this Mortgage and collectible from Borrower or out of the Secured Property.

14. Ownership.

A. Borrower warrants that it is lawfully seized and possessed of fee simple, marketable title to the Premises and has good right to convey the Secured Property, that the same is unencumbered by any lien, and that Borrower will warrant and defend the title thereto against the claims of all persons whomsoever, says and except those persons titled to the property characterized as Appurtenances, and except with respect to those Leases, easements and exceptions listed on the policy of title insurance delivered to Lender in connection with this loan.

B. Borrower covenants and warrants that the Notes and this Mortgage are valid and enforceable obligations of Borrower in accordance with the terms thereof and hereof, and that neither this Mortgage, the Notes, nor the performance or observance by Borrower of any of the matters or things provided for in the Notes or this Mortgage contravene any covenant in any indenture or agreement affecting the Borrower or its properties.

15. Failure of Borrower to Act.

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A. If Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against all or any portion of the Secured Property; in the payment of any utility charge, whether public or private; in the payment of any insurance premiums in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage or any other documents securing the repayment of the indebtedness evidenced by the Notes, and such default shall not have been cured within any applicable cure period, then Lender, at its option, may pay, perform or observe the same, and all payments made or reasonable costs incurred by Lender in connection therewith shall be secured hereby and shall be repaid by Borrower to Lender with interest thereon at the rate set forth in Paragraph 9 of the Notes until fully paid. Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender is hereby empowered, subject to the rights of tenants of the Premises under Leases then in existence, to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

B. Any amounts advanced by Lender which are the obligation of Borrower to pay under the terms of this Mortgage shall be added to the indebtedness secured hereby and bear interest at the default rate of interest as set forth in the Notes.

16. Default.

A. Definition. The term "default", or "Event of Default", wherever used in this Mortgage, shall mean any one or more of the following events:

(i) Failure by Borrower to pay when due any installment of principal or interest under the Notes, this Mortgage, or any other of the Loan Documents;

(ii) Failure by Borrower to keep or cause to be kept the Secured Property insured against loss and damage as required herein;

(iii) Default in any other covenant, condition or agreement contained in this Mortgage, in the Notes, or any other Loan Document, and such failure continues uncured for a period of thirty (30) days after written notice from Lender; provided, however, that in the case of a failure which cannot be cured with the exercise of all due diligence within such thirty (30) day period, the time within, which to cure shall be extended for a reasonable period determined by Lender, provided Borrower commences such cure within said thirty (30) day period and thereafter proceeds with all possible diligence to complete such cure;

(iv) The filing by Borrower of a voluntary petition in bankruptcy, or Borrower's adjudication as a bankrupt or insolvent, or the filing by Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under

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any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the filing against Borrower of a petition under any such statute, law or regulation which is not dismissed within sixty (60) days after its filing date, or Borrower's seeking, consent to, or acquiescence in the appointment of any trustee, receiver or liquidator of Borrower, of all or any substantial part of the Secured Property, or of any or all the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due;

(v) The assignment of rents or any part of the rents of the Secured Property, except for the execution of the Assignment of Leases to Lender;

(vi) Any default beyond any applicable cure period under the terms of any instrument secured by a lien on the Secured Property;

(vii) Any warranty or representation contained in this Mortgage or in any other affidavit, estoppel certificate, loan application, financial statement, or any of the Loan Documents made by Borrower or its officers, partners, borrowers or agents proves to be false or misleading in any material respect;

(viii) A judgment, writ or warrant of attachment or execution or similar process shall be entered and become a lien or be issued or levied against the Secured Property and shall not be released or fully bonded within thirty (30) days after its entry, issue or levy; or

(ix) Borrower shall be dissolved, liquidated or wound up or shall fail to maintain its existence as a North Carolina limited partnership in good standing.

B. Remedies. In case of an Event of Default, Lender may, at any time thereafter, at its option, without notice, and without bringing any legal action or proceeding unless expressly required by law, exercise any or all of the following remedies:

(i) Acceleration of Maturity. Declare the whole unpaid principal amount of the indebtedness secured hereby with interest accrued thereon to be due and payable without further notice or demand, time being of the essence of this Mortgage. No omission on the part of the Lender to exercise such option when entitled so to do shall be considered as a waiver of such right.

(ii) Foreclosure. Borrower and Lender have the benefit of all the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof, except to the extent specifically waived in the Mortgage.

(iii) Insurance. Wherever provision is made in the Mortgage for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Lender, or to confer authority upon Lender to settle or

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participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of Lender shall continue in Lender as judgment creditor or Lender until confirmation of sale.

(iv) Protective Advances. All advances, disbursements and expenditures made by Lender 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 the Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(a) all advances by Lender in accordance with the terms of the Mortgage to: (1) preserve or maintain, repair, restore or rebuild the improvements upon the mortgaged real estate; (2) preserve the lien of the Mortgage or the priority thereof; or (3) enforce the Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the Act;

(b) payments by Lender of: (a) when due installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (b) when due installments of 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; (c) other obligations authorized by the Mortgage; or (d) 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 15-1505 of the Act;

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

(d) attorneys' fees and other costs incurred: (1) in connection with the foreclosure of the Mortgage as referred to in Sections 15-1504(d)(2) and 15-1510 of the Act; (2) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of the Mortgage or arising from the interest of the Lender hereunder; or (3) in the presentation for the commencement or defense of any such foreclosure or other action related to the Mortgage or the mortgaged real estate;

(e) Lender's fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 15-1508 of the Act;

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(f) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 15-1512 of the Act;

(g) expenses incurred and expenditures made by Lender 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 which are required to be paid; (2) if Borrower'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 Lender whether or not Lender 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 Lender takes possession of the Property imposed by Subsection (c)(1) of Section 15-170+ of the Act; (4) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (5) payments required or deemed by Lender to be for the benefit of the Property or required to be made by the owner of the mortgaged real estate 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 in any way affecting the Property; (7) if the loan secured hereby is a construction loan, costs incurred by Lender for demolition, preparation for and completion of construction, as may be authorized by the applicable commitment, loan agreement or other agreement; (8) pursuant to any lease or other agreement for occupancy of the Property for amounts required to be paid by Borrower; and (9) if the Mortgage is insured payments of FHA or private mortgage insurance required to keep insurance in force.

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

The Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time the Mortgage is recorded pursuant to Subsection (b)(1) of Section 15-1302 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) determination of the amount of indebtedness secured by the Mortgage at any time;

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(2) the indebtedness found due and owing to Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming 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 Borrower in the Mortgage, computation of amount required to redeem, pursuant to Subsections (d)(2) and (e) of Section 15-1603 of the Act;

(4) determination of the amount deductible from sale proceeds pursuant to Section 15-1512 of the Act;

(5) application of income in the hands of any receiver or Lender in possession; and

(6) Lender in Possession. In addition to any provision of the Mortgage authorizing Lender to take or be placed in possession of the Property, or for the appointment of a receiver, Lender shall have the right, in accordance with Sections 15-1701 and 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 Lender, if and when placed in possession, shall have, in addition to any other powers provided in the Mortgage, all powers, immunities, and duties as provided for in Sections 15-1701 and 15-1703 of the Act.

(7) Waiver of Redemption. Borrower acknowledges that the Property does not constitute agricultural real estate, as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act. Pursuant to Section 15-1601(b) of the Act, Borrower hereby waives any and all right to redemption.

(v) Receiver. Secure the appointment of a receiver or receivers, as a matter of right for the Property whether such receivership be incident to a proposed sale of such Property or otherwise, and without regard to the value of the Property or the solvency of Borrower. Borrower hereby consents to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Lender in accordance with the Act. The appointment of such receiver, trustee or other appointee by virtue of any court order or Laws shall not impair or in any manner prejudice the rights of Lender to receive payment of the rents and income pursuant to the Lease Assignment.

C. Rights Under U.C.C. Lender in exercising its rights hereunder shall also have all of the rights and remedies provided by the Uniform Commercial Code of Illinois, including the right to proceed under its provisions governing default, as to any Personalty

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which may be included in the Secured Property separately from the real estate included therein, or to proceed as to all of the Secured Property in accordance with its rights and remedies with respect to said real estate. If Lender should elect to proceed separately as to such Personalty, Borrower agrees to make such Personalty available to Lender at a place or places acceptable to Lender, and if any notification of intended disposal of any of such Personalty is required by law, such notification shall be deemed reasonably and properly given if given at least ten (10) days before such disposition. Such Personalty need not be present at the place of sale; however, the published notice thereof shall state the time and place where such Personalty may be inspected prior to sale.

D. Discontinuance of Proceedings and Restoration of Parties. In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had taken place.

E. Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any other right, power or remedy of Lender, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power or remedy of Lender given hereunder or now or hereafter existing at law or in equity or by statute.

17. Business Loan Representation. Borrower represents and warrants to Lender that the Loan evidenced by the Note is a business loan transacted solely for the purpose of carrying on the business of Borrower and not a consumer transaction. The proceeds of the Note will be used only for the purposes specified in 815 ILCS 205/4 and the principal obligation secured by this Mortgage constitutes a "business loan" within the definition and purview of such section.

18. Estoppel Statement. Borrower, upon ten (10) days prior written notice, shall furnish Lender a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any offsets or defenses exist against such principal and interest.

19. General Provisions.

A. Headings. The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

B. Notice of Parties. Any notice to Borrower by Lender at any time shall not imply that such notice or any further or similar notice to Borrower was or is required. Any notice, demand, request or other communication given hereunder or in connection herewith (the "Notice(s)") shall be deemed sufficient if in writing and delivered personally or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Borrower at c/o Jeffrey M. Schottenstein, 1000 Brickell Avenue,

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Suite 910, Miami, Florida 33131 or at such other address as Borrower may designate by Notice to Lender given in like fashion. All Notices to Lender shall be sent to The Ohio National Life Insurance Company, One Financial Way, Cincinnati, Ohio 45242, Attn: Real Estate and Mortgages, or at such other address as Lender may designate by Notice to Borrower in like fashion. Notices shall be deemed given on the date when personally delivered or, if sent by certified or registered mail, on the day when mailed.

C. Successors and Assigns Included in Parties. Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included, provided that this provision shall not constitute consent to any sale, conveyance or transfer of the Secured Premises in contravention of the terms of this Mortgage or the Notes.

D. Number and Gender. Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

E. Changes and Modifications. This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of any change or modification is sought.

F. Applicable Law. The Notes and this Mortgage are to be construed as one contract and each is hereby referred to and made a part of the other. Both the Notes and Mortgage shall be enforced according to the laws of the State of Illinois without regard to principles of conflicts of laws. Neither the Notes nor this Mortgage shall be construed strictly against either Borrower or Lender.

G. Invalid Provisions to Affect No Others. The unenforceability or invalidity of any provision or provisions of this Mortgage as to any person or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other persons or circumstances, and all provisions hereof, in all other respects, shall remain valid and enforceable.

H. Usury Savings Clause. It is the intention of Borrower and Lender to conform strictly to the usury laws now or hereafter in force in the State of Illinois or the United States of America, and any interest payable under the Notes, this Mortgage, and/or any of the other documents or instruments executed by Borrower in connection with the Loan made or to be made under the Notes shall be subject to reduction to the maximum, non-usurious amount allowed under the usury laws of Illinois or the United States of America as now or hereafter construed by the courts having jurisdiction over such matters. In the event the maturity of the Notes is accelerated by reason of any provision of this Mortgage including, without limitation, an election by Lender resulting from an event of default (or an event of permitted acceleration) under this Mortgage or any other instrument given to secure the repayment of the indebtedness evidenced by the Notes, voluntary prepayment of the Notes, or otherwise, then earned interest may never include more than the maximum amount permitted by law, computed from the dates of each advance of Loan proceeds until payment, and any interest in excess of the maximum amount permitted by law shall be canceled automatically and, if theretofore paid, shall at

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the option of Lender either be rebated to Borrower or credited on the principal amount of the Notes, or, if all principal has been repaid, then the excess shall be rebated to Borrower. The aggregate of all interest (whether designated as interest, service charges, points or otherwise) contracted for, chargeable, or receivable under the Notes, this Mortgage or any other document executed in connection with this Loan shall under no circumstances exceed the maximum amount upon the unpaid principal balance of the Notes remaining unpaid from time to time. In the event such interest does exceed the maximum amount allowed under Illinois law, it shall be deemed a mistake and such excess shall be canceled automatically and if theretofore paid, credited as set forth above.

I. Non-Waiver Clause. It is agreed that time is of the essence of this instrument and that failure of Lender to exercise any of its options or rights hereunder or at any time to demand strict compliance with all of the terms of this Mortgage or of the Notes secured hereby, or of the Assignment of Leases, the Assignment of Contracts, the Assignment of Declarant's Rights or any other documents securing repayment of the indebtedness, shall not operate as a waiver of any of Lender's rights under this Mortgage or such other documents, nor give Borrower any additional rights under any statute of limitations or otherwise. Lender shall have the right thereafter to insist upon the strict performance by the Borrower of any and all of the terms hereof. Neither Borrower nor any other person now or hereafter obligated for the payment of the whole or any part of the amounts now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of Lender to comply with any request of Borrower or of any other person so obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Secured Property and Lender extending, from time to time, the time of payment or modifying the terms of the Notes or this Mortgage without first having obtained the consent of Borrower or such other person, and in the latter event, Borrower and all such other persons shall continue to be liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Lender; that regardless of consideration, and without the necessity for any notice to, or consent by, the holder of any subordinate lien on the Secured Property, or of the holder of any interest therein, or any part thereof, Lender may release the obligation of anyone at any time liable for any of the indebtedness as it may be so extended or modified, and Lender may resort for the repayment of the indebtedness secured hereby to any other security therefor held by the Lender in such order and manner as Lender may elect.

J. Waivers. With respect to the Secured Property as it secures repayment of all indebtedness hereunder, including any renewals or extensions thereof, to the full extent permitted by law, Borrower waives and renounces, for itself, its successors and assigns, any and all homestead and exemption rights, as well as the benefit of all valuation and appraisal privileges, and stay, redemption and moratoriums under or by virtue of the laws of Illinois or of the United States, now existing or hereafter enacted if

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and to the full extent permitted by applicable law, Borrower also waives trial by jury in any action brought on or with respect to this Mortgage.

20. Maximum Amount. The maximum amount secured by this Mortgage shall not exceed Five Million Five Hundred Thousand and no/100 Dollars (\$5,500,000.00).

21. Non Recourse. Borrower's liability with respect to the payment of principal and interest as required under the Notes shall be non recourse, and Lender's remedies for the repayment of the indebtedness and Borrower's other obligations under the Notes and under any of the other Loan Documents shall be limited to the Secured Property. Lender shall make no efforts to extract payments out of any other assets of Borrower or from any person or entity comprising Borrower or to seek judgment (except as hereinafter provided) for any sums which are or may be payable under the Notes, this Mortgage, or any of the other Loan Documents, as well as any claim or judgment (except as hereinafter provided) for any deficiency remaining after foreclosure of this Mortgage. Notwithstanding the above, nothing herein contained shall be deemed to be a release or impairment of the indebtedness evidenced by the Notes or the security therefore intended by the other Loan Documents or be deemed to preclude Lender from exercising its right to foreclose this Mortgage or to enforce any of its other rights or remedies under the Loan Documents. It is expressly understood and agreed that the aforementioned limitation on liability shall in no way affect or apply to Borrower's continued liability for the following terms and Borrower shall be fully liable for all loss, claim or damages sustained by Lender resulting from any of the foregoing:

- (i) fraud or misrepresentation made in connection with the Notes or any of the other Loan Documents governing, securing, or pertaining to the payment thereof;
- (ii) failure to pay taxes of the Secured Property prior to delinquency or to pay assessments, charges for labor or materials, or any other charges which may create liens on any portion of the Secured Property;
- (iii) the misapplication of (a) proceeds of insurance covering any portion of the Secured Property; (b) proceeds from the sale or condemnation of any portion of the Secured Property; or (c) rentals received by or on behalf of Borrower subsequent to the date on which Lender makes written demand therefore pursuant to any instrument governing, securing, or pertaining, to the payment of the Notes;
- (iv) causing or permitting waste to occur in, on, or about the Secured Property and failure to maintain the Secured Property, except ordinary wear and tear;
- (v) the return to Lender of all unearned advanced rentals and security deposits paid by tenants of the Secured Property and not refunded to or forfeited by such tenants;
- (vi) the return to Lender of any and all fees paid to Borrower by tenants of the Secured Property, which fees permit tenants to terminate their leases;
- (vii) loss by fire or casualty to the extent not compensated by insurance proceeds collected by Lender;

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(viii) the return of, or reimbursement for, all personal property owned by Borrower taken from the Secured Property by or on behalf of Borrower, out of the ordinary course of business, and not replaced by items of equal or greater value than the original value of the personal property so removed;

(ix) all court costs and reasonable attorneys' fees actually incurred which are provided for in the Notes or in any of the other Loan Documents governing, securing, or pertaining to the payment of the Notes;

(x) (a) removal of any chemical, material, or substance in excess of legal limits to which exposure is prohibited, limited, or regulated by any federal, state, county, or local authority which may or could pose a hazard to the health and safety of the occupants of the Secured Property, regardless of the source of origination; (b) the restoration of the Secured Property, to comply with all governmental regulations pertaining to hazardous waste found in, around, or under the Secured Property, regardless of the source of origination; and (c) any indemnity or other agreement to hold Lender harmless from and against any and all losses, liabilities, damages, injuries, costs, and expenses of any and every kind arising as a result of the existence and/or removal of hazardous materials, toxic substances, or hazardous waste and from the violation of hazardous waste laws. Borrower shall not be liable hereunder if the Secured Property becomes contaminated subsequent to Lender's acquisition of the Secured Property by foreclosure or acceptance of a deed in lieu thereof upon Borrower's delivery to Lender of a then current, written Phase I environmental audit report, prepared by an environmental engineer acceptable to Lender, which is satisfactory to Lender in form and content and which complies with Lender's current environmental audit requirements stating that the Secured Property is free from the presence of hazardous materials. In the event Lender determines a Phase II environmental audit report may be necessary after reviewing such Phase I report, Lender, in its sole discretion, may require said Phase II report be prepared by an environmental engineer acceptable to Lender. Such report must be satisfactory to Lender in form and content and must comply with Lender's current environmental audit requirements stating that the Secured Property is free from the presence of hazardous materials. Borrower shall be solely responsible to pay for all such reports. All such reports shall be delivered to Lender prior to the completion of any foreclosure action or deed in lieu thereof;

(xi) any enforcement or attempted enforcement by any third party of rights as described in Schedule B, items C or V, of Chicago Title Insurance Company loan policy number 008260814.

Liability under this Paragraph 21(x) shall extend beyond repayment of the Notes and compliance with the terms of this Mortgage unless at the time of repayment Borrower provides Lender with a then current, written Phase I environmental audit report, prepared by an environmental engineer acceptable to Lender, which is satisfactory to Lender in form and content and which complies with Lender's current environmental audit requirement stating that the Secured Property is free from the presence of hazardous materials. In the event Lender determines a Phase II environmental audit report may be necessary after reviewing the Phase I report, Lender, in its sole discretion, may require a

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Phase II report be prepared by an environmental engineer acceptable to Lender. Such report must be satisfactory to Lender in form and content and must comply with Lender's current environmental audit requirements stating that the Secured Property is free from the presence of hazardous materials. Borrower shall be solely responsible to pay for all such reports. All such reports shall be delivered to Lender prior to the completion of any foreclosure action or deed in lieu thereof. The burden of proof under this Paragraph 21(x) with regard to establishing the date upon which such chemical, material, or substance was placed or appeared in, on, or under the Secured Property shall be upon Borrower.

(xi) (a) any and all costs incurred in order to cause the Secured Property to comply with the accessibility provisions of The Fair Housing Act of 1988, the Americans With Disabilities Act, and any other accessibility laws, and (b) any indemnity or other agreement to hold Lender harmless from and against any and all losses, liabilities, damages, injuries, costs or expenses of any kind arising as a result of noncompliance with any accessibility laws; provided, however, Borrower shall not be liable for compliance with any accessibility laws that first become effective, or for any violation of any accessibility laws resulting from alterations or improvements to the Secured Property that are performed subsequent to Lender's actually taking possession of the Secured Property pursuant to foreclosure of this Mortgage or acceptance of a deed in lieu thereof.

(xii) Any amendment, modification or termination (other than terminations by Tenant specifically permitted under the Advance Lease or by operation of law) of the Advance Lease (as such term is defined in the Mortgage), or Borrower accepts any prepayment of rent under the Advance Lease beyond one month, without the prior written consent of Lender (which consent may be withheld by Lender in its sole discretion).

The obligations of Borrower in subparagraphs (i) through (xi) above, except as provided herein, shall survive the repayment and satisfaction of the Notes.

22. Miscellaneous. No part of the Property is being used for agricultural purposes or for a personal residence by Borrower or any partner of Borrower. The Property does not constitute agricultural real estate, as defined in Section 15-1201 of the Act, nor does the Property constitute residential real estate, as defined in Section 15-1219 of the Act.

23. Collateral Protection Act. The following notice is being provided to Borrower pursuant to the Collateral Protection Act (815 ILCS 180/1 et seq.) to allow Lender to place collateral protection insurance:

Unless Borrower provides Lender with evidence of the insurance required by this Mortgage, Lender may purchase insurance at Borrower's expense to protect Lender's interest in the Premises or any other collateral for the indebtedness secured hereby. This insurance may, but need not, protect Borrower's interests. The coverage Lender purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Premises or any other collateral for the indebtedness secured hereby. Borrower may later cancel, any insurance purchased by Lender, but only after providing Lender with evidence that Borrower has

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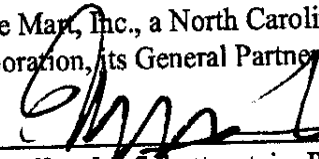
obtained insurance as required under by this Mortgage or any other Credit Instrument. If Lender purchases insurance for the Premises or any other collateral for the indebtedness secured hereby, Borrower shall be responsible for the costs of that insurance, including interest in any other charges that Lender may lawfully impose in connection with the placement of the insurance. The costs of the insurance may be added to the indebtedness secured hereby. The costs of the insurance may be ore than the cost of insurance that Borrower may be able to obtain on its own.

IN WITNESS WHEREOF, Borrower has caused this Mortgage and Security Agreement to be executed in its name under seal by authority duly given, as of the day and year first above written.

BORROWER:

**TRADE MART ASSOCIATES, LTD,
A LIMITED PARTNERSHIP,** a North Carolina limited partnership

By: Trade Mart, Inc., a North Carolina Corporation, its General Partner

By: 
Jeffrey M. Schottenstein, President

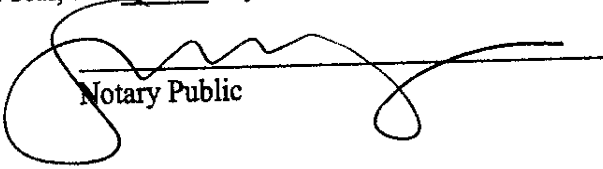
STATE OF Florida :
COUNTY OF Miami Dade : SS:

I, the undersigned, a Notary Public of the aforesaid County and State, do hereby certify that Jeffrey M. Schottenstein, President of Trade Mart, Inc., a North Carolina corporation, the general partner of Trade Mart Associates Ltd. A Limited Partnership, a North Carolina limited partnership, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited partnership.

Witness my hand and official stamp or seal, this 21st day of June, 2005.



Gayla Meyer
Commission # DD137527
Expires July 29, 2006
Bonded Thru
Atlantic Bonding Co., Inc.


Notary Public

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PARCEL 1: (PIN # 18-13-408-005-0000)

THE EAST 125.00 FEET OF LOT 22 (EXCEPT THE NORTH 83.00 FEET THEREOF AND EXCEPT THE EAST 17.00 FEET THEREOF) IN FREDERICK H. BARTLETT'S ARGO PARK SUBDIVISION OF THE EAST ½ OF THE SOUTHEAST ¼ (EXCEPT RAILROAD) OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: (PIN # 18-13-408-004-0000)

THE NORTH 83.00 FEET OF THE EAST 125.00 FEET OF LOT 22 (EXCEPT THE EAST 17.00 FEET THEREOF) IN FREDERICK H. BARTLETT'S ARGO PARK SUBDIVISION OF THE EAST ½ OF THE SOUTHEAST ¼ (EXCEPT RAILROAD) OF SECTION 13,

TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: (PIN # 18-13-408-001-0000)

THE SOUTH 228.24 FEET OF A VACATED ALLEY LYING WEST OF AND ADJOINING PARCELS 1 AND 2 LOCATED IN LOT 22 OF FREDERICK H. BARTLETT'S ARGO PARK SUBDIVISION OF THE EAST HALF OF THE SOUTHEAST QUARTER (EXCEPT RAILROAD) IN SECTION 13, TOWNSHIP 38 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS VACATED BY ORDINANCE RECORDED SEPTEMBER 3, 2004 AS DOCUMENT NUMBER 0424740105.