



Doc#: 0536133106 Fee: \$96.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/27/2005 09:42 AM Pg: 1 of 37

This instrument was prepared by,
and after recording return to:

Lynn Lucchese-Soto
Berger, Newmark & Fenchel P.C.
303 W. Madison Street
23rd Floor
Chicago, Illinois 60606
(312)782-5050

Street Address:
1075 and 1125 West Golf Road
Hoffman Estates, Illinois

P.I.N.: 07-16-100-012-0000
07-16-100-012-0000

ABOVE SPACE FOR RECORDER'S USE ONLY

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**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF LEASES AND RENTS-FIXTURE FILING**

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF LEASES AND RENTS - FIXTURE FILING made this 21st day of December, 2005 by **GANNON & GOLF LTD**, an Illinois corporation, (hereinafter referred to as the "Mortgagor"), whose address is, 1075 and 1125 West Golf Road, Hoffman Estates, Illinois, in favor of **ROYAL AMERICAN BANK**, an Illinois banking corporation (hereinafter, together with its successors and assigns, including each and every from time to time holder of the Mortgage Note hereinafter referred to, called the "Mortgagee"), whose address is One Tiffany Pointe, Bloomingdale, Illinois 60108.

WHEREAS, Mortgagor is indebted to Mortgagee in an amount not to exceed the principal sum of FIVE MILLION SEVEN HUNDRED SIXTY-FIVE THOUSAND and no/100 Dollars (\$5,765,000.00), which indebtedness is evidenced by a certain Note (the "Note") of even date herewith in the amount of FIVE MILLION SEVEN HUNDRED SIXTY-FIVE THOUSAND and no/100 Dollars (\$5,765,000.00) made by Mortgagor and payable to the order of and delivered to Mortgagee; and

WHEREAS, the unpaid principal amount and all accrued and unpaid interest due under the Note, if not sooner paid, shall be due on Maturity Date. All such payments on account of the indebtedness evidenced by the Note shall be first applied to interest on the unpaid principal balance and the remainder to principal and all of said principal and interest being made payable at such place as the holder of the Note may from time to time in writing appoint, and in the absence of such appointment, then at the office of Mortgagee, at the address indicated above or at such other address as Mortgagee may from time to time designate in writing, and

WHEREAS, the Mortgagor and Mortgagee have concurrently entered into a Construction Loan of even date herewith (hereinafter referred to as the "Loan Agreement") which sets forth certain additional covenants and agreements of Mortgagor.

NOW, THEREFORE, Mortgagor, to secure the payment of the Note with interest thereon, and any modifications, amendment, extensions and renewals thereof, in whole or in part, and the payment of all other sums with interest thereon advanced in accordance herewith

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or in the Note provided (hereinafter referred to as the "Indebtedness") to protect the security of this Mortgage, and the performance of the covenants and agreements of Mortgagor herein contained, does hereby mortgage, grant and convey to Mortgagee the real estate located in the Village of Hoffman Estates, County of Cook, State of Illinois as described on Exhibit A attached hereto and made a part hereof (hereinafter collectively referred to as the "Real Estate"), which Real Estate is presently unimproved and which, with the property herein described, is referred to herein as the "Premises" together with (unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Loan Agreement):

- (a) All of the Real Estate;
- (b) All buildings and other improvements now or at any time hereafter constructed or erected upon or located at the Real Estate, and all materials located on the Real Estate intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, together with and including, but not limited to, all fixtures, equipment, machinery, appliances and other articles and attachments now or hereafter forming part of, attached to or incorporated in any such buildings or improvements (all hereinafter referred to as the "Improvements");
- (c) All privileges, reservations, allowances, hereditaments, tenements and appurtenances now or hereafter belonging or pertaining to the Real Estate or Improvements;
- (d) All leasehold estates, right, title and interest of Mortgagor in any and all leases, subleases, arrangements or agreements relating to the use and occupancy of the Real Estate and Improvements or any portion thereof, now or hereafter existing or entered into (all hereinafter referred to as "Leases"), together with all cash or security deposits, advance rentals and other deposits or payments of similar nature given in connection with any Leases;
- (e) All rents, issues, profits, royalties, income, avails and other benefits now or hereafter derived from the Real Estate and Improvements, under Leases or otherwise (all hereinafter referred to as "Rents"), subject to the right, power and authority given to the Mortgagor in the Assignment hereinafter referred to, to collect and apply the Rents;
- (f) All right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or Improvements, or any portion thereof or interest therein, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by Mortgagor;
- (g) Any interests, estates or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;
- (h) All right, title and interest of Mortgagor now owned or hereafter acquired in and to
 - (i) any land or vaults lying within the right-of-way of any street or alley, open or proposed, adjoining the Real Estate; (ii) any and all alleys, sidewalks, strips and gores of land adjacent to or used in connection with the Real Estate and Improvements; (iii) any and all rights and interests of every name or nature forming

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part of or used in connection with the Real Estate and/or the operation and maintenance of the Improvements; (iv) all easements, rights-of-way and rights used in connection with the Real Estate or Improvements or as a means of access thereto, and (v) all water rights and shares of stock evidencing the same;

- (i) All right, title and interest of Mortgagor in and to all tangible personal property (hereinafter referred to as "Personal Property"), owned by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or Improvements or used or useful in connection therewith, including, but not limited to:
- (i) all furniture, furnishings and equipment furnished by Mortgagor to tenants of the Real Estate or Improvements;
 - (ii) all building materials and equipment located upon the Real Estate and intended to be incorporated in the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements;
 - (iii) all machines, machinery, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, sprinkler protection, waste removal, refrigeration and ventilation, and all fire sprinklers, alarm systems, electronic monitoring equipment and devices;
 - (iv) all tractors, mowers, sweepers, snow removal equipment and other equipment used in maintenance of exterior portions of the Real Estate; and
 - (v) all maintenance supplies and inventories; but provided that there shall be excluded from and not included within the term "Personal Property" as used herein and hereby mortgaged and conveyed, any accounts, other intangibles, trade inventory, equipment, trade fixtures, furniture, furnishings or other property of tenants, managing agent of the Premises or third party contractors; all lamps, chandeliers and other lighting fixtures;
 - (vi) all office furniture, equipment and supplies;
 - (vii) all kitchen equipment, including refrigerators, ovens, dishwashers, range hoods and exhaust systems and disposal units;
 - (viii) all laundry equipment, including washers and dryers;
- (j) All the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) the proceeds of insurance in effect with respect to the Premises, and (ii) any and all awards, claims for damages and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade

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of streets and awards and compensation for severance damages (all hereinafter generally referred to as "Awards").

MORTGAGOR COVENANTS that Mortgagor is lawfully seized of the real estate hereby conveyed and has the right to mortgage, grant and convey the Premises, that the Premises are unencumbered and that Mortgagor will warrant and defend generally the title to the Premises against all claims and demands and further that the Premises hereby mortgaged and conveyed or intended so to be, together with the rents, issues and profits thereof, and hereby conveyed unto the Mortgagee forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Illinois (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all rights to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined;

FOR THE PURPOSE OF SECURING the payment of the Indebtedness with interest thereon evidenced by the Note and any and all modifications, extensions and renewals thereof, and all other Indebtedness and the performance and observance by Mortgagor of all of the terms, provisions, covenants and agreements on Mortgagor's part to be performed and observed under the Assignment referred to in Section 29 hereof; provided that the aggregate of the Indebtedness shall at no time exceed \$20,000,000.

PROVIDED, NEVERTHELESS, and these presents are upon the express condition that if all of the Indebtedness shall be duly and punctually paid and all the terms, provisions, conditions and agreements herein contained on the part of the Mortgagor to be performed or observed shall be strictly performed and observed, then this Mortgage and the estate, right and interest of the Mortgagee in the Premises shall cease and become void and of no effect.

AND IT IS FURTHER AGREED THAT:

1. **Payment of Indebtedness.** The Mortgagor will duly and promptly pay each and every installment of the principal of, if any and interest and premium, if any, on the Note, and all other Indebtedness, as the same become due, and will duly perform and observe all of the covenants, agreements and provisions herein or in the Note provided on the part of the Mortgagor to be performed and observed.
2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** In addition, Mortgagor will:
 - (a) Promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed;
 - (b) Keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien not expressly subordinated to the lien hereof;
 - (c) Pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;

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- (d) Complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;
- (e) Comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
- (f) Make no material alterations in the Premises, except as required by law or municipal ordinance, or except which are presently under construction and known to Mortgagee or which are consented to, set forth in the Project Budget in writing, by Mortgagee;
- (g) Suffer or permit no change in the general nature of the occupancy of the Premises or consent to any change in any existing private restrictive covenants, zoning ordinances or other public or private restriction, without the Mortgagee's prior written consent;
- (h) Pay when due all operating costs of the Premises;
- (i) Initiate or acquiesce in no zoning reclassification with respect to the Premises, without the Mortgagee's prior written consent which consent shall not be unreasonably withheld;
- (j) Provide, improve, grade, surface and thereafter maintain, clean, repair, police and adequately light parking areas within the Premises which areas shall be of sufficient size to accommodate standard-sized automobiles as may be required by law, ordinance or regulation, together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;
- (k) Not reduce, build upon, obstruct, redesignate or relocate any such parking areas, sidewalks, aisles, streets, driveways, sidewalk cuts or paved areas or rights-of-way or lease or grant any rights to use the same to any other person except tenants and invitees of tenants of the Premises, without the prior written consent of the Mortgagee; and
- (l) Pay all utility charges incurred in connection with the Premises and all improvements thereon and maintain all utility services now or hereafter available for use at the Premises.

3. **Taxes.** Subject to Mortgagors rights under Section 33 hereof, the Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all hereinafter referred to as "Taxes"), whether or not assessed against the Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby; and Mortgagor will, upon written request, furnish to the Mortgagee duplicate receipts therefor; provided that (a) in the event that any law or court decree has the effect of deducting from the value of land for the purposes of taxation any lien thereof, or imposing upon the Mortgagee the payment in whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or changing in any way the law relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or

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the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness or the holder thereof, then, and in any such event, the Mortgagor upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor; and (b) nothing in this Section 3 contained shall require the Mortgagor to pay any income, franchise or excise tax imposed upon the Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes on the Premises, and then only in an amount computed as if the Mortgagee derived no income from any source other than its interest hereunder.

4. Insurance Coverage

- (a) **Casualty.** Mortgagor shall keep the improvements now existing or hereafter erected on the Premises, the Collateral, all property (whether real, personal or mixed) incorporated therein and all materials and supplies delivered to the Premises for use in connection with the construction of any Improvements, together with all equipment used for that purpose, constantly insured against loss or damage under such types and forms of insurance policies and in such amounts and for such periods as Mortgagee may from time to time reasonably require, and Mortgagor shall pay promptly, when due, any premiums on such insurance. Unless Mortgagee otherwise agrees, all such insurance shall be carried with companies reasonably acceptable to Mortgagee holding a current Policyholder's Alphabetic and Financial Size Category Rating according to A.M. Best's Insurance Reports reasonably acceptable to Mortgagee, and shall have attached thereto standard noncontributing mortgage clauses in favor of Mortgagee, as well as standard waiver of subrogation endorsements. The Improvements and all such property, materials, supplies and equipment shall be insured to an amount equal to one hundred percent (100%) of the full insurable value thereof (but in no event less than actual replacement value without deduction for depreciation) at all times against loss or damage by fire, lightning, wind storm, explosion, riot and civil commotion, vandalism and malicious mischief, theft and such other risks as are usually included under what is now known as broad form extended coverage. Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of a change of ownership or of occupancy of the Premises (without implying or creating any waiver of the right of approval thereof by Mortgagee), immediate notice thereof by mail shall be delivered to all insurers. With respect to all claims of any size at any time during the existence of an Event of Default time during the existence of an Event of Default, Mortgagor irrevocably appoints the Bank and all officers, employees or agents designated by the Bank as Mortgagor's true and lawful attorney and agent in fact for the purpose of making, settling and adjusting claims under such policies of insurance, endorsing the name of Mortgagor on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect to such policies of insurance. If Mortgagor at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required above, or to pay any premium in whole or in part relating thereto, the Bank, without waiving or releasing any of the Obligations of Mortgagor or any Event of Default, may at any time or times thereafter, but shall be under no obligation to do so, obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto which the Bank deems necessary or advisable. All sums so disbursed by the Bank, including reasonable attorney's fees, court costs, expenses and other charges relating thereto, shall be

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part of the Obligations of the Mortgagor, payable by the Mortgagor to the Bank on demand.

- (b) Liability. Mortgagor shall carry and maintain in full force at all times comprehensive public liability insurance as may be required from time to time by Mortgagee in forms, amounts, and with companies satisfactory to Mortgagee, and Mortgagor will apply all insurance proceeds under such policies to the payment and discharge of the liabilities in respect of which such proceeds are collected. The amounts of coverage shall not be less than \$5,000,000 combined single limit and that the policy or policies shall name Mortgagee as an additional insured party thereunder.
- (c) Rental or Business Interruption Insurance. If and so long as the Premises, or any portion thereof, are leased, Mortgagor shall carry and maintain in force at all times rental value insurance with respect to that portion of the Premises, if any which is leased. If and so long as the Premises, or any portion thereof, are not leased, the Mortgagor shall carry and maintain in full force at all times business interruption insurance with respect to that portion of the Premises not leased. All such insurance required pursuant to this subparagraph 4(c) shall be in such amounts, in form and with companies satisfactory to Mortgagee.
- (d) Flood Insurance. The Mortgagor shall carry and maintain in force at all times flood insurance in accordance with the provisions of the Flood Disaster Protection Act of 1973, as amended, if the area in which the Premises are situated is designated as an "A" zone as defined in said act, in an amount satisfactory to Mortgagee, and Mortgagor shall comply with such other requirements of said act as are appropriate.
- (e) Workers' Compensation Insurance. The Mortgagor shall carry and maintain in force at all times workers' compensation insurance, naming Lender as an additional insured, covering all employees of the Mortgagor working on or about the Premises and death, injury and/or property damage occurring on or about the Premises or resulting from activity thereat, with statutory limits of liability for death of or injury to persons.
- (f) Other Insurance. Mortgagor shall procure and maintain insurance against such other perils and risks (exclusive of the perils and risks insured against under subparagraphs 4(a), (b) and (c) above) as Mortgagee shall reasonably request from time to time. All such insurance shall be maintained under policies containing such provisions and coverages and being in such amounts as are approved by Mortgagee, which policies shall name Mortgagee as insured thereunder.
- (g) Policies. Unless Mortgagee otherwise agrees, all policies of insurance required hereunder to be maintained by the Mortgagor, together with evidence that the premium therefor covering a period of not less than one (1) year has been prepaid, shall be deposited with Mortgagee. All policies of insurance required hereunder shall provide for, among other things, Mortgagee being named as loss payee thereunder payment of losses notwithstanding any acts or omissions of the Mortgagor and giving written notice to Mortgagee of their expiration or cancellation at least thirty (30) days prior to such event occurring. Not less than thirty (30) days prior to the expiration of any such policy, Mortgagor shall provide to Mortgagee evidence of an appropriate renewal or replacement policy and evidence of the premium payment therefor, as

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aforesaid. All policies of insurance required hereunder shall contain Mortgagee's loss payable endorsements in favor of Mortgagee.

4.1 **Insurance Policies.** All policies of insurance to be maintained and provided as required by Section 4 hereof shall:

- (a) Be in forms, companies and amounts as set forth at Article V (c) of the Loan Agreement (but not more than the amount of the Mortgage), and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee, with the exception of the Employer's Liability policy which names only the Mortgagor as additional insured;
- (b) If available, contain endorsements or provisions that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such policies as against Mortgagee;
- (c) Be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer;
- (d) Provide for thirty (30) days' prior written notice of cancellation to Mortgagee; and
- (e) In the event that any policy of insurance required hereunder shall at any time lapse, then the Mortgagor shall pay to Mortgagee the sum of \$100 in order to reimburse Mortgagee for its administrative expenses whether or not said policy is reinstated by the Mortgagor; and Mortgagor will deliver all policies, including additional and renewal policies, to Mortgagee, and in case of insurance policies about to expire, the Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

5. **Deposits for Taxes and Insurance Premiums.** As long as no Event of Default (as hereinafter defined) has occurred, Mortgagee shall not require any tax and insurance premium deposits. Upon the occurrence, however, of an Event of Default, Mortgagee may, at its option require that the payment of Taxes and insurance policy premiums ("Premiums") will be made when due:

- (a) Mortgagor shall, deposit with Mortgagee on the first business day of each month, an amount equal to one-twelfth (1/12) of the Taxes and Premiums thereof to become due with respect to the Premises between one (1) and thirteen (13) months after the date of such deposit; provided that in the case of the first such deposit, Mortgagor shall deposit in addition an amount which, when added to the aggregate amount of monthly deposits to be made hereunder with respect to Taxes and Premiums to become due within thirteen (13) months after such first deposit, will provide (without interest) a sufficient fund to pay such Taxes and Premiums, one (1) month prior to the date when they are due; provided, however that Mortgagee shall not accumulate or retain in any such fund more than the amount of one (1) month's deposit on the day after any payment of taxes or premium is made. The amounts of such deposits (herein generally called "Tax and Insurance Deposits") shall be based upon Mortgagee's good faith estimate of the amount of Taxes and Premiums. Mortgagor shall promptly upon the demand of Mortgagee make additional Tax and Insurance Deposits as Mortgagee may from time to time require due to (i) failure of Mortgagee to require, or failure of

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Mortgagor to make, Tax and Insurance Deposits in previous months, (ii) underestimation of the amounts of Taxes and/or Premiums, due dates and, or (iii) application of the Tax and Insurance Deposits pursuant to Section 6(c) hereof. Mortgagee shall hold all Tax and Insurance Deposits without any allowance of interest thereon.

- (b) Mortgagee will, out of the Tax and Insurance Deposits, upon the presentation to Mortgagee by Mortgagor of the bills therefor, pay the Taxes and Premiums or will, upon the presentation of receipted bills therefor, reimburse Mortgagor for such payments made by Mortgagor. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and Premiums when the same shall become due, then Mortgagor shall pay to Mortgagee on demand the amount necessary to make up the deficiency.
- (c) Mortgagee may, at its option, apply any Tax and Insurance Deposits on hand to the Indebtedness, in such order and manner as Mortgagee may elect. When the Indebtedness has been fully paid, any remaining Tax and Insurance Deposits shall be paid to Mortgagor. All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness, and shall be held by Mortgagee irrevocably to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of Mortgagor.
- (d) Notwithstanding anything herein contained to the contrary, Mortgagee shall not be liable for any failure to apply the Tax and Insurance Deposits unless Mortgagor shall have (i) requested Mortgagee in writing to make application of such Deposits to the payment of the Taxes or Premiums and (ii) presented Mortgagee with bills for such Taxes or Premiums.
- (e) The provisions of this Mortgage are for the benefit of Mortgagor and Mortgagee alone. No provision of this Mortgage shall be construed as creating in any other party any rights in and to the Tax and Insurance Deposits or any rights to have the Tax and Insurance Deposits applied to payment of Taxes and Premiums. Mortgagee shall have no obligation or duty to any third party to collect Tax and Insurance Deposits.

6. **Proceeds of Insurance.** The Mortgagor will give the Mortgagee prompt notice of any damage to or destruction of the Premises; and

- (a) In case of loss covered by policies of insurance, the Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without consent of the Mortgagor provided however so long as no Event of Default shall have occurred and be continuing, the settlement and adjustment of any such claims shall be made with the mutual consent of the Mortgagor, or (ii) allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that the Mortgagor may itself adjust and collect losses aggregating not in excess of Fifty Thousand Dollars (\$50,000.00); provided further that in any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by the Mortgagee in the adjustment and

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collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to the Mortgagee upon demand;

- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (hereinafter referred to as an "Insured Casualty") and if, in the reasonable judgment of the Mortgagee, the Premises can be restored prior to Loan maturity, to an architectural and economic unit of the same character and not less valuable than the same was prior to the Insured Casualty, and adequately securing the outstanding balance of the Indebtedness, and the insurers do not deny liability to the insureds, then, if no Event of Default shall have occurred and be then continuing, and if there was no event of default, whether continuing or not, at the time of occurrence of damage or destruction which resulted in said loss, the proceeds of insurance may be applied to reimburse the Mortgagor for the cost of restoring, repairing, replacing or rebuilding (hereinafter referred to as "Restoring") the Premises or any part thereof subject to Insured Casualty, as provided for in Section 8 hereof; so long as this Mortgage is not in default, such insurance proceeds, after deducting therefrom any expenses incurred in the collection thereof, shall be made available by Mortgagee for the Restoring of the Premises; provided that Mortgagor shall furnish evidence sufficient to Mortgagee that there are sufficient funds available for the rebuilding or restoration of the Premises.
- (c) If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Insured Casualty, upon sixty (60) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness to be, and at the expiration of such sixty (60) day period the Indebtedness shall be and become, immediately due and payable.
- (d) Except as provided for in Subsection (b) of this Section 7, Mortgagee shall apply the proceeds of insurance (including amounts not required for Restoring effected in accordance with Subsection (b) above) consequent upon any Insured Casualty upon the Indebtedness, in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness made out of insurance proceeds as aforesaid;
- (e) In the event that proceeds of insurance, if any, shall be made available to the Mortgagor for the Restoring of the Premises, Mortgagor hereby covenants to Restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction; all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (f) Any portion of insurance proceeds remaining after payment in full of the Indebtedness shall be paid to Mortgagor;
- (g) Interest, at the Mortgagee's published money market rate shall be payable by Mortgagee on account of any insurance proceeds at any time held by Mortgagee, provided Mortgagor delivers written instructions relative to such investment to Mortgagee and such investment instructions do not unreasonably interfere with the payment of expenses or costs incurred in the Restoring of the Premises;

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- (h) Nothing contained in this Mortgage shall create any responsibility or liability upon the Mortgagee to (i) collect any proceeds of any policies of insurance, or (ii) Restore any portion of the Premises damaged or destroyed through any cause.

7. **Condemnation.** The Mortgagor will give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (hereinafter referred to as a "Taking"), of all or any part of the Premises, including damages to grade, and:

- (a) Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any Award consequent upon any Taking, subject to Section 7(f) below;
- (b) if in the reasonable judgment of the Mortgagee, the Premises can be restored to an architectural and economic unit of the same character and not less valuable than the Premises prior to such Taking and adequately securing the outstanding balance of the Indebtedness, then if no Event of Default, as hereinafter defined, shall have occurred and be then continuing, the Award shall be applied to reimburse Mortgagor for the cost of Restoring the portion of the Premises remaining after such Taking, as provided for in Section 8 hereof;
- (c) If, in the reasonable judgment of Mortgagee, the Premises cannot be restored to an architectural and economic unit as provided for in Subsection (b) above, then at any time from and after the Taking, upon sixty (60) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness to be, and at the expiration of such sixty (60) day period the Indebtedness shall be and become, immediately due and payable;
- (d) Except as provided for in Subsection (b) of this Section 7, Mortgagee shall apply any Award (including the amount not required for Restoration effected in accordance with Subsection (b) above) upon the Indebtedness in such order or manner as the Mortgagee may elect; provided that no premium or penalty shall be payable in connection with any prepayment of the Indebtedness made out of any Award as aforesaid;
- (e) In the event that any Award shall be made available to the Mortgagor for Restoring the portion of the Premises remaining after a Taking, Mortgagor hereby covenants to Restore the remaining portion of the Premises to be of at least equal value and of substantially the same character as prior to such Taking, all to be effected in accordance with plans and specifications to be first submitted to and approved by the Mortgagee;
- (f) Any portion of any Award remaining after payment in full of the Indebtedness shall be paid to Mortgagor;
- (g) Interest at the Mortgagee's published money market rate shall be payable by Mortgagee on account of any Award at any time held by Mortgagee, provided Mortgagor delivers written instructions relative to such investment to Mortgagee and such investment instructions do not unreasonably interfere with the payment of expenses or costs incurred in the Restoring of the Premises.

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8. Disbursement of Insurance Proceeds and Condemnation Awards. In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with satisfactory evidence of the estimated cost of completion of the Restoring, with funds (or assurances reasonably satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and with such architect's certificates, waivers of lien, contractor's sworn statements and such other evidence of costs and payments as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such Restoring be submitted to and approved by the Mortgagee prior to commencement of work; and in each case:

- (a) No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time;
- (b) Funds other than proceeds of insurance or the Award shall be disbursed prior to disbursement of such proceeds;
- (c) At all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the purpose, shall be at least sufficient in the reasonable judgment of the Mortgagee to pay for the cost of completion of the Restoring, free and clear of all liens or claims for lien; and
- (d) If the cost of rebuilding, repairing or restoring the buildings and improvements can reasonably exceed the sum of \$50,000.00, then Mortgagee shall approve plans and specifications of such work before such work shall be commenced. Any surplus which remains out of said insurance proceeds after payment of such costs of building or restoring shall be paid to Mortgagor.

9. Stamp Tax. If, by the laws of the United States or America, or of any state having jurisdiction over the Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, the Mortgagor shall pay such tax in the manner required by such law.

10. Prepayment. At such time as the Mortgagor is not in default under the terms of the Note, or under the terms of this Mortgage, the Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise.

11. Effect of Extensions of Time, Amendments on Junior Liens and Others. Mortgagor covenants and agrees that:

- (a) If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, if any, and the lien and all provisions hereof shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, variation or release;

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- (b) Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of the Mortgagee herein to amend, modify and supplement this Mortgage, the Note and the Assignment (as defined in Section 29 hereof) hereinafter referred to, and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of the Indebtedness, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien;
- (c) Nothing in this Section contained shall be construed as waiving any provision of Section 16 hereof which provides, among other things, that it shall constitute an Event of Default if the Premises be sold, conveyed or encumbered;
- (d) Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release in any manner the liability of the original Mortgagor and Mortgagor's successor in interest. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Mortgagor and Mortgagor's successors in interest.

12. **Effect of Changes in Tax Laws.** In the event of the enactment after the date hereof by any legislative authority having jurisdiction of the Premises of any law deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the method of collecting taxes, so as to affect this Mortgage or the Indebtedness, or the holder hereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor, provided that if in the opinion of counsel for the Mortgagee the payment by Mortgagor of any such taxes or assessments shall be unlawful, then the Mortgagee may, by notice of to the Mortgagor accompanied by a copy of the opinion to that effect, declare the entire principal balance of the Indebtedness and all accrued interest to be due and payable on a date specified in such notice, not less than sixty (60) days after the date of such notice, and the Indebtedness and all accrued interest shall then be due and payable without premium or penalty on the date so specified in such notice.

13. **Mortgagee's Performance of Mortgagor's Obligations.** In case of an Event of Default as defined in Section 20 herein, the Mortgagee either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof, and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein which is required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and in connection therewith:

- (a) The Mortgagee may, but shall not be required to, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any tax or assessment;

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- (b) Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements upon the Premises and rent, operate and manage the Premises and such Improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and Improvements shall be operational and usable for their intended purposes;
- (c) All monies paid for any of the purposes herein authorized or authorized by any other instrument evidencing or securing the Indebtedness, and all expenses paid or incurred in connection therewith, including attorney's fees and any other monies advanced by the Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping, or to rent, operate and manage the Premises and such Improvements, or to pay any such operating costs and expenses thereof, or to keep the Premises and Improvements operational and usable for their intended purposes, shall be so much additional Indebtedness, whether or not they exceed the amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate specified in the Note (herein called the "Default Rate");
- (d) Inaction of the Mortgagee shall never be considered a waiver of any right accruing to it on account of any default on the part of the Mortgagor;
- (e) The Mortgagee, in making any payment hereby authorized (i) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale forfeiture, tax lien or title or claim thereof, (ii) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted, or (iii) in connection with the completion of construction, furnishing or equipping of the Improvements or the Premises or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate, and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

14. Inspection of Premises. Mortgagor will at all times deliver to Mortgagee duplicate originals or certified copies of all contracts in excess of \$50,000, agreements and documents relating to the Premises and shall permit access by Mortgagee to its books and records of the operations of the Premises, insurance policies and other papers for examination and making copies and extracts thereof. Mortgagee, its agents and designees shall have the right to inspect the Premises at all reasonable times and upon reasonable advance notice and access thereto shall be permitted for that purpose.

15. Financial Statements. The Mortgagor will furnish to the Mortgagee at the address of Mortgagee as stated herein or otherwise provided, such financial and operating statements of the Premises and financial statements and federal income tax returns of the Mortgagor as reasonably required by the Mortgagee.

16. Restrictions on Transfer. Subject to the provisions of Section 18 hereof, it shall be an immediate Event of Default hereunder if, without the prior written consent of the Mortgagee, a Prohibited Transfer (as hereinafter defined) shall occur. The Mortgagee may

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condition its consent to a Prohibited Transfer upon such increase in rate of interest payable upon the Indebtedness, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require. As used herein, a "Prohibited Transfer" shall occur if the Mortgagor shall create, effect, or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien (other than mechanics' liens), pledge, mortgage (other than the Subordinated Mortgage), security interest or other encumbrance or alienation of the Premises or any part thereof, or interest therein, including any ownership interest in the Mortgagor or any makers of the Note in addition to the Mortgagor herein, whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise, excepting only sales or other dispositions of Collateral as defined in Section 19 (hereinafter referred to as "Obsolete Collateral") no longer useful in connection with the operation of the Premises; provided that prior to the sale or other disposition thereof, such Obsolete Collateral shall have been replaced by Collateral, subject to the first and prior lien hereof, of at least equal value and utility.

The provisions of this Section 16 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, shares of stock of or partnership or joint venture interest in the Mortgagor or any beneficiary of Mortgagor or any other Trustee Mortgagor; and provided further that no consent by Mortgagee to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section 16, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Mortgagee consequent thereon.

17. **Permitted Transfers.** The provisions of Section 16 hereof shall not apply to any of the following:

- (a) Liens securing the Indebtedness;
- (b) The lien of current real estate taxes and assessments not in default;

18. **Security Agreement - Uniform Commercial Code.** This Mortgage constitutes a Security Agreement under the Uniform Commercial Code of the State of Illinois (hereinafter referred to as the "Code") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property including but not limited to all of Mortgagor's right, title and interest in and to, and grants to the Mortgagee a lien on and security interest in, all of its right, title and interest in and to the following assets of the Mortgagor, wherever located, whether now owned or hereafter acquired or arising, together with all replacements, additions, accessions, substitutions or improvements therefor or thereto, proceeds, including insurance proceeds and insurance claims, thereof and products thereof:

- (a) Accounts and all contract rights of Mortgagor;
- (b) General Intangibles;
- (c) Equipment
- (d) Inventory
- (e) Chattel Paper (as said term is defined in the UCC) and Instruments (as said term is defined in the UCC), whether negotiable or non-negotiable, whether now owned or hereafter acquired, together with all Documents (as said term is defined in the UCC) including but not limited to, any all Documents;
- (f) Instruments, documents of title, policies and certificates of insurance, deposits

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(including deposits by Debtors for the payment of tax and insurance escrows), cash, securities or other property owned by or in which it has an interest which are now or may be hereafter in possession of the Bank or as to which the Bank may now or hereafter control possession by documents of title or otherwise;

- (g) All liens, security, guaranties, endorsements, warranties and indemnities, and all insurance and claims for insurance relating thereto or arising in connection therewith; and
 - (h) All books and records pertaining to any of the foregoing including fixtures or property other than real estate (all hereinafter referred to as "Collateral"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section 19 shall not limit the generality or applicability of any other provision of this Mortgage, but shall be in addition thereto:
19. **Security Agreement Representations Warranties.** The Mortgagor represents and warrants:
- (a) The Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, and the lien of the Subordinated Mortgage;
 - (b) The Collateral is to be used by the Mortgagor solely for business purposes, being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor as landlord, to tenants of the Premises;
 - (c) The Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of the Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to the Real Estate but will not be affixed to any other real estate;
 - (d) The only persons having any interest in the Premises are the Mortgagor, Mortgagee and persons occupying the Premises as tenants only;
 - (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statement and other documents in form satisfactory to the Mortgagee, and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no adverse liens or encumbrances; and the Mortgagor will pay the cost of filing the same or filing or recording such Financing Statements or other documents, and this instrument, in all public offices whenever filing or recording is deemed by the Mortgagee to be necessary or desirable;
 - (f) Upon the occurrence of any Event of Default hereunder (regardless of whether the Code has been enacted in the jurisdiction where rights or remedies are asserted) and at any time thereafter (such Event of Default not having previously been cured), the Mortgagee at its option may declare the Indebtedness immediately due

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and payable, all as more fully set forth in Section 20 hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code);

- (g) The Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to the Mortgagor's right of redemption, if any, in satisfaction of the Mortgagor's obligations as provided in the Code; provided that (i) the Mortgagee without removal may render the Collateral unusable and dispose of the Collateral on the Premises (if this may be done without a breach of the peace), and (ii) the Mortgagee may require the Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties;
- (h) In exercising its right to sell, lease or otherwise dispose of the Collateral, the Bank may sell, lease or otherwise dispose of all or any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale or sales, with such notice as may be required by law, in lots or in bulk, all as the Bank, in its sole discretion, may deem advisable; such sales may be adjourned from time to time with or without notice;
- (i) The Bank shall have the right to conduct such sales on the Premises or elsewhere and shall have the right to use the Premises without charge for such sales for such time or times as the Bank may see fit. The Bank is hereby granted a license or other right to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, tradenames, trademarks, service marks and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in advertising for sale and selling any Collateral and Borrower's rights under all licenses and all franchise agreements shall inure to the Bank's benefit. The Bank shall have the right to sell, lease or otherwise dispose of the Collateral, or any part thereof, for cash, credit or any combination thereof, and the Bank may purchase all or any part of the Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of such purchase price, may set off the amount of such price against Borrower's Obligations.
- (j) The proceeds realized from the sale of any Collateral shall be applied first to the costs, expenses and attorneys' fees and expenses incurred by the Bank for collection and for acquisition, completion, protection, removal, storage, sale and delivery of the Collateral; second to interest due upon any of Borrower's Obligations; and third to the principal of Borrower's Obligations. If any deficiency shall arise, the Borrower shall remain liable to the Bank therefor.
- (k) The Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable

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notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of the Mortgagor determined as provided in Section 46 hereof, at least ten (10) days before the time of the sale or disposition;

- (l) The Mortgagee may buy at any public sale, and if the Collateral is a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at any private sale, in lots or in bulk, all as the Bank, in its sole discretion, may deem advisable; such sales may be adjourned from time to time with or without notice and any such sale may be held as part of and in conjunction with any foreclosure sale of the Real Estate comprised within the Premises, the Collateral and Real Estate to be sold as one lot if Mortgagee so elects;
- (m) The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness; and the Mortgagee will account to the Mortgagor for any surplus realized on such disposition, and promptly pay such surplus to the Mortgagor;
- (n) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof, so long as any part of the Indebtedness remains unsatisfied;
- (o) To the extent permitted by law, Mortgagor and Mortgagee agree that with respect to all items of Personal Property which are or will become fixtures on the Land, this Mortgage, upon recording or registration in the real estate records of the proper office, shall constitute a "fixture filing" within the meaning of the Uniform Commercial Code. Mortgagor is the record owner of the Land.
- (p) The terms and provisions contained in this Section 19 shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

20. **Events of Default.** If one or more of the following events (hereinafter referred to as "Events of Default") shall occur:

- (a) Any default shall occur in the due and punctual payment of principal or interest on the Note or any other indebtedness of the Mortgagor owed to Mortgagee when and as the same becomes due and such default shall not be cured within five (5) days following written notice thereof from Mortgagee to Mortgagor;
- (b) Any default shall under the terms of the Loan Agreement;
- (c) Any failure of Mortgagor for a period of thirty (30) days (except as to Events of Defaults specified elsewhere in this Section 20 or where a longer or shorter period is specified herein or in the other Loan Documents ("Loan Documents" shall mean those certain loan documents arising out of or executed in connection with the Indebtedness, including but not limited to the Note, this Mortgage, any assignment of rents and leases, escrow agreements and/or title policies) for a particular default

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after written notice from Mortgagee to Mortgagor to observe or perform any of the covenants of Mortgagor under the terms of this Mortgage or other of the Loan Documents except payment of the Note provided however in the event Mortgagor has commenced efforts to cure said default within said thirty (30) days and is diligently pursuing the same, such thirty (30) day cure period shall be extended for a period of time not to exceed an additional sixty (60) days;

- (d) The occurrence of a Prohibited Transfer;
- (e) The existence of any collusion, fraud, dishonesty or bad faith by or with the acquiescence of Mortgagor which in any way relates to or affects this Loan or the Project;
- (f) If at any time any material representation, statement, report or certificate made now or hereafter by Mortgagor is not true and correct, and such representation, statement, report or certificate is not corrected within thirty (30) days after written notice thereof;
- (g) If all or a substantial part of the assets of Mortgagor or the Guarantor is attached, seized, subjected to a writ or distress warrant, or is levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within thirty (30) days;
- (h) If Mortgagor is enjoined, restrained or in any way prevented by court order from performing any of their obligations hereunder or under the other Loan Documents or conducting all or a substantial part of its business affairs; or if a proceeding seeking such relief is not dismissed within forty-five (45) days of being filed or commenced; or if proceedings are commenced by any public or quasi-public body to acquire a material portion of the Premises or any interest therein by power or condemnation or eminent domain and such proceedings are not dismissed within forty-five (45) days of the commencement date;
- (i) If a notice of lien, levy or assessment is filed of record with respect to all or any part of the property of Mortgagor by the United States, or any other governmental authority, unless contestable and actually and diligently contested in accordance herewith;
- (i) Failure by Mortgagor to maintain all of their depository accounts with Mortgagee;
- (j) If default is made in the maintenance and delivery to Mortgagee of insurance required to be maintained and delivered hereunder, without notice or grace of any kind;
- (k) If any default shall exist under the provisions of Section 29 hereof, or under the Assignment referred to therein;
- (l) If there occurs a material adverse change in the financial condition of Mortgagor; or
- (m) If Mortgagor:

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- (i) Shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter in effect;
- (ii) Shall file an answer or other pleading in any proceedings admitting insolvency, bankruptcy, or inability to pay its debts as they mature;
- (iii) Within sixty (60) days after the filing against it of any involuntary proceedings under the Federal Bankruptcy Act or similar law, state or federal, now or hereafter in effect, such proceedings shall not have been vacated;
- (iv) Any order appointing a receiver, trustee or liquidator for it or for all or a major part of its property or the Premises shall not be vacated within sixty (60) days following entry thereof;
- (v) Shall be adjudicated a bankrupt;
- (vi) Shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises;
- (vii) If Mortgagor shall be dissolved, terminated or merged; or

then the Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, after giving five (5) days written notice (or such other period of time where a longer or shorter period is specified herein or in the Note for a particular default) to Mortgagor, all Indebtedness to be immediately due and payable, whether or not such default is thereafter remedied by the Mortgagor, and the Mortgagee may immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Note, the Assignment or by law or in equity conferred.

21. **Foreclosure.** When the Indebtedness, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and in connection therewith:

- (a) In any suit or proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale, all reasonable expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title, as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidder at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises; and

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- (b) All reasonable expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by the Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by the Mortgagor, with interest thereon at the Default Rate.
- (c) In the event of a deficiency upon a sale of the Premises pledged hereunder by Mortgagor, then Mortgagor shall forthwith pay such deficiency including all expenses and fees which may be incurred by the holder of the Note secured by this Mortgage in enforcing any of the terms and provisions of this Mortgage.

22. **Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 21 hereof; Second, all other items which, under the terms hereof, constitute Indebtedness additional to that evidenced by the Note, with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and lastly, any overplus to the Mortgagor, and its successors or assigns, as their rights may appear.

23. **Receiver.** Mortgagor consents and agrees that:

- (a) Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises;
- (b) Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of the Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and the Mortgagee hereunder, or any holder of the Note may be appointed as such receiver;
- (c) Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period;
- (d) The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

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(i) The Indebtedness or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to the foreclosure sale; or

(ii) The deficiency in case of a sale and deficiency.

24. Insurance Upon Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct; and:

- (a) In the case of foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redeemer may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer; and
- (b) In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies.

25. Compliance With Illinois Mortgage Foreclosure Law.

- (a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 735 ILCS 5/15 1101 et seq.) (hereinafter referred to as the "Act") the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.
- (b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon an Event of Default by Mortgagor which are more limited than the rights would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.
- (c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in any paragraph of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

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26. **Waiver of Statutory Rights.** The Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 5/15-1201 of the Act) or residential real estate (as defined in Section 5/15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 5/15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead exemption, stay, redemption and moratorium laws under any state or federal law.

27. **Forbearance.** Any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the indebtedness secured by this Mortgage.

28. **Waiver.** The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner whatever claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon the benefit or advantage of or from any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force or redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

- (a) The Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of the Mortgagor acquiring any interest or title to the Premises or beneficial interest in Mortgagor subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Chapter 735, Section 5/15-1601 of the Act or other applicable law or replacement statutes;
- (b) The Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to the Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and
- (c) If the Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the Trust Estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

29. **Assignment of Leases and Rents.**

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- (a) All of Mortgagor's interest in and rights under any leases hereinbefore or hereafter entered into with the consent of Mortgagee as provided herein, and all of the Rents, to become due, and including all prepaid rents and security deposits, are hereby absolutely, presently and unconditionally assigned and conveyed to Mortgagee to be applied by Mortgagee in payment of all sums due under the Note, and of all other sums payable under this Mortgage. Prior to the occurrence of any Event of Default, Mortgagor shall have a license to collect and receive all Rents, which license shall be terminated at the sole option of Mortgagee, without regard to the adequacy of its security hereunder and without notice to or demand upon Mortgagor, upon the occurrence of an Event of Default. It is understood and agreed that neither the foregoing assignment of Rents to Mortgagee nor the exercise by Mortgagee of any of its rights or remedies hereunder shall be deemed to make Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or any portion thereof, unless and until Mortgagee, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Collateral by any court at the request of Mortgagee or by agreement with Mortgagor, or the entering into possession of any part of the Collateral by such receiver, be deemed to make Mortgagee a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or operation of all or any portion thereof. Upon the occurrence of an Event of Default, this assignment shall constitute a direction to and full authority to each lessee under any Lease and each guarantor of any Lease to pay all Rents to Mortgagee without proof of the default relied upon. Mortgagor hereby irrevocably authorizes each lessee and guarantor to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any Rents due or to become due.
- (b) Mortgagor shall at all times fully perform the obligations of the lessor under all Leases. Mortgagor shall at any time or from time to time, upon request of Mortgagee, transfer and assign to Mortgagee in such form as may be satisfactory to Mortgagee, Mortgagor's interest in the Leases, subject to and upon the condition, however, that prior to the occurrence of an Event of Default hereunder, Mortgagor shall have a license to collect and receive all Rents under such Leases upon accrual, but not prior thereto, as set forth in subsection (a) above.
- (c) Mortgagee shall have the right to assign Mortgagor's right, title and interest in any leases to any subsequent holder of this Mortgage or any participating interest therein or to any person acquiring title to all or any part of the Collateral through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers herein provided to Mortgagee. Upon an Event of Default, Mortgagee shall have the right to execute new leases of any part of the Collateral, including leases that extend beyond the term of this Mortgage. Upon an Event of Default, and upon notice to Mortgagor, Mortgagee shall have the authority, as Mortgagor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of Mortgagor and to bind Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Collateral.
- (d) Nothing contained in this Section 29 shall be deemed to constitute Mortgagor's consent to any Lease affecting the Premises and Mortgagor hereby acknowledges that all leases are subject to Mortgagee's approval as provided herein.

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30. **Priorities With Respect To Leases.** If the Mortgagee shall execute and record (or register) in the public office wherein this Mortgage was recorded (or registered) a unilateral declaration that this Mortgage shall be subject and subordinate, in whole or in part, to any Lease, then upon such recordation (or registration), this Mortgage shall become subject and subordinate to such Lease to the extent set forth in such instrument; provided that such subordination shall not extend to or affect the priority of entitlement to insurance proceeds or any Award unless such instrument shall specifically so provide. Mortgagor has not and will not enter into any lease of the Premises without the express written consent of the Mortgagee and Mortgagee further agrees by execution of this Mortgage that any such lease shall be subject and subordinate to this Mortgage and any and all rights of the Mortgagor hereunder.

31. **Mortgagee In Possession.** Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by the Mortgagee.

32. **Business Loan.** It is understood and agreed that the loan evidenced by the Note and secured hereby is a business loan within the purview of the Illinois Interest Act (Chapter 815 ILCS, Section 205/4) (or any substitute, amended, or replacement statutes).

33. **Contests.** Notwithstanding anything to the contrary herein contained, Mortgagor shall have the right to contest by appropriate legal proceedings diligently prosecuted any taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanic's, materialmen's or other liens or claims for lien upon the Premises (all herein called "Contested Liens"), and no Contested Lien shall constitute an Event of Default hereunder, if, but only if:

- (a) Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;
- (b) Mortgagor shall deposit with Mortgagee and/or the Title Insurance Company (as said term is defined in the Loan Agreement) the full amount (herein called the "Lien Amount") of such Contested Lien or which may be secured thereby, together with such amount as Mortgagee or the Title Insurance Company, as the case may be, may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;
- (c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);
- (d) Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed;

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provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply for the purpose monies deposited as provided in Subsection 33(b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

34. **Indemnification.** Mortgagor does hereby covenant and agree that, except in cases of the gross negligence or the intentional acts of the Mortgagee:
- (a) Mortgagee shall have no responsibility for the control, care, management or repair of the Premises and shall not be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the premises resulting in loss, injury or death to any tenant, licensee, immediate stranger or other person;
 - (b) No liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers hereby granted to the Mortgagee, and Mortgagor hereby expressly waives and releases any such liability;
 - (c) Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (i) exercise by Mortgagee of any right hereunder, and (ii) any and all claims and demand whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the indebtedness or in any contracts, agreements or other instruments relating to or affecting the Premises; and all such liability, loss or damage incurred by the Mortgagee together with the costs and expenses, including reasonable attorneys' fees incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.
 - (d) In the event of foreclosure of the lien hereof, the foregoing provisions of this Section 34 shall expire upon the first to occur of (i) the Mortgagee or any party claiming by or through Mortgagee taking possession of the Premises; or (ii) the Mortgagee or any party claiming by or through Mortgagee acquiring title to the Premises, provided however said expiration shall only apply as to occurrences arising after the event giving rise to the expiration of the provisions of this Section 34.

35. **Mortgagor Not A Joint Venturer Or Partner.** Mortgagor and Mortgagee acknowledge and agree that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor or any beneficiary of Mortgagor; and without limiting the foregoing, Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or

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pursuant to any other instrument or document evidencing or securing any of the Indebtedness, or otherwise.

36. **Mortgagor's Statement.** Mortgagor, within ten (10) days upon request in person or within twelve (12) days upon request by mail, shall furnish a written statement duly acknowledged of all amounts due on any indebtedness secured hereby, whether for principal or interest on the Note or otherwise, and stating whether any offsets or defenses exist against the Indebtedness and covering such other matters with respect to any of the Indebtedness as Mortgagee may reasonably require.

37. **Maximum Interest Rate.**

- (a) Any agreements between Mortgagor and Mortgagee are expressly limited so that, in the event whatsoever, whether by reason of disbursement of the proceeds of the loans secured hereby or otherwise, shall the amount paid or agreed to be paid to Mortgagee for the use, detention or forbearance of the loan proceeds to be disbursed exceed the highest lawful contract rate permissible under any law which a court of competent jurisdiction may deem applicable thereto.
- (b) If fulfillment of the Note, any provision herein, in the Loan Documents or in any other instrument pledged as security for the Note, at the time performance of such provision becomes due, involves exceeding such highest lawful contract rate, then ipso facto, the obligation to fulfill the same shall be reduced to such highest lawful contract rate. If by any circumstance Mortgagee shall ever receive as interest an amount which would exceed such highest lawful contract rate, the amount which may be deemed excessive interest shall be applied in the manner set forth in the Note.

38. **Future Advances.** This Mortgage shall secure all future advances and loans, as well as all costs and expenses of performing and enforcing the Mortgagor's obligations under this Mortgage and the Loan Documents. All advances under the Note or under or pursuant to this Mortgage or the Loan Documents are obligatory advances and shall, to the fullest extent permitted by law, have priority over mechanics' liens and any and all other liens, charges and claims, if any, arising after this Mortgage is recorded.

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

40. **Title In Mortgagor's Successors.** In the event that the ownership of the Premises or any part thereof becomes vested in a person or persons other than the Mortgagor (a) the Mortgagee may, without notice to the Mortgagor, deal with such successor or successors in interest of the Mortgagor with reference to this Mortgage and the Indebtedness in the same manner as with the Mortgagor; and (b) the Mortgagor will give immediate written notice to the Mortgagee of any conveyance, transfer or change of ownership of the Premises; but nothing in this Section 40 contained shall vary or negate the provision of Section 17 hereof.

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41. **Rights Cumulative.** Each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

42. **Successors and Assigns.** This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns (including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein) and shall inure to the benefit of the Mortgagee and its successors and assigns and (a) wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder of from time to time of the Note, whether so expressed or not; and (b) each such from time to time holder of the note shall have and enjoy all of the rights, privileges, powers, options, benefits and security afforded hereby and hereunder, and may enforce every and all of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder was herein by name specifically granted such rights, privileges, powers, options, benefits and security and was herein by name designated the Mortgagee.

43. **Provisions Severable.** The enforceability of any provision or provisions hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

44. **Waiver of Defense.** No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

45. **Captions And Pronouns.** The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent or the provisions hereof. Whenever the context requires or permits, the singular number shall include the plural, the plural shall include the singular and the masculine, feminine and neuter genders shall be freely interchangeable.

46. **Addresses And Notices.** Any notice which any party hereto may desire or may be required to give to any other party shall be in writing, and the personal delivery thereof, by overnight delivery, or the passage of three days after the mailing thereof by registered or certified mail, return receipt requested, to the addresses initially specified in the introductory paragraph hereof, or to such other place or places as any party hereto may by notice in writing designate, shall constitute service of notice hereunder, with copies to:

IF TO MORTGAGEE:

Berger, Newmark & Fenchel P.C.
303 W. Madison Street, 23rd Floor
Chicago, Illinois 60606
Attn: Lynn Lucchese-Soto

IF TO MORTGAGOR:

Hardt & Stern
311 South Wacker Drive
Suite 4950
Chicago, Illinois 60606
Attn: John Stern

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47. **Mortgagor Will Not Discriminate.** Mortgagor covenants and agrees at all times to be in full compliance with provisions of law prohibiting discrimination on the basis of race, color, creed or national origin including, but not limited to, the requirements of Title VII of the 1968 Civil Rights Act, or any substitute, amended or replacement Acts.

48. **Interest At The Default Rate.** Without limiting the generality of any provision herein or in the Note contained, from and after the occurrence of any Event of Default hereunder, all of the Indebtedness shall bear interest at the Default Rate.

49. **Time.** Time is of the essence hereof and of the Note, Assignment and all other instruments delivered in connection with the Indebtedness.

50. **Governing Law.** This Mortgage shall be governed by, construed, applied and enforced in accordance with the laws of the State of Illinois, without regard to any conflict of laws principles, provided, however, that to the extent the mandatory provisions of the laws of another jurisdiction relating to (i) the perfection or the effect of perfection or non-perfection of the security interests in any of the property, (ii) the lien, encumbrance or other interest in the property granted or conveyed by this Mortgage, or (iii) the availability of and procedures relating to any remedy hereunder or related to this Mortgage are required to be governed by such other jurisdiction's laws, such other laws shall be deemed to govern and control. The invalidity, illegality or unenforceability of any provision of this Mortgage or the Loan Documents shall not affect or impair the validity legality or enforceability of the remainder of this Mortgage and the other loan documents, and to this end, the provisions of this Mortgage and the other loan documents are declared to be severable.

51. **Disbursement of Loan Proceeds of the Note for Construction of Improvements.** A portion of the indebtedness evidenced by the Note and secured hereby is to be used for the construction of the Project and this Mortgage constitutes a construction mortgage as said term is defined in Section 9-313 (1)c of the Uniform Commercial Code of Illinois. Mortgagor shall perform or cause to be performed all the agreements, obligations, terms, provisions and conditions of each and all of the Loan Documents to be kept and performed by Mortgagor. All advances and indebtedness arising and accruing from time to time, and all expenses incurred by Mortgagee in connection with the enforcement or performance of its rights and remedies under the Loan Documents, whether or not the total amount thereof may exceed the face amount of the Note secured hereby, shall be secured hereby to the same extent as if the Loan Documents were fully recited in this Mortgage.

It is understood and agreed, however, that with respect to subsequent purchasers and mortgagees without actual notice, none of the advances or indebtedness arising or accruing under the Loan Agreement, shall result in an increase of the indebtedness secured and to be secured hereby over the face amount of the Note beyond 100% of such face amount. In determining the amount of such increase there shall be excluded from any computation, all indebtedness which would constitute secured indebtedness under the terms of this Mortgage had this Section 51 been omitted herefrom.

Upon the occurrence of an Event of Default hereunder, in addition to any other remedies herein, at its election Mortgagee may enter upon the premises and perform any and all work and labor necessary to complete the buildings, improvements and other structures. To implement the rights of the Mortgagee under this Section 51, in addition to any other remedies

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which Mortgagee may have hereunder Mortgagee may in its sole discretion do any one or more of the following.

- (a) Enter upon the premises and complete the Project and employ watchmen, all at the risk, cost and expense of Mortgagor.
- (b) At any time discontinue any work commenced in respect of the Project and change any course of action undertaken by it and not be bound by any limitations or requirements of time whether set forth herein or otherwise.
- (c) Assume any construction contract made by Mortgagor in any way relating to the construction of the Project and take over and use all or any part of the labor, materials, supplies and equipment contracted for by Mortgagor, whether or not previously incorporated into the Development.
- (d) In connection with any construction of the Project undertaken by Mortgagee pursuant to the provisions of this Section 51. Mortgagee may perform any one or more of the following:
 - (i) Engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials, supplies and equipment in connection with any construction of the Project.
 - (ii) Pay, settle or compromise all bills or claims which may become liens against the Project, or which have been or may be incurred in any manner in connection with completing the Project or for the discharge of liens, encumbrances or defects in the title of the premises; and
 - (iii) Take or refrain from taking such action hereunder as Mortgagee from time to time may determine.

Mortgagor shall be liable to Mortgagee for all sums paid or incurred to construct and equip the Project whether the same shall be paid or incurred pursuant to the provisions of this Section 51 or otherwise, and all payments made or liabilities incurred by Mortgagee hereunder of any kind whatsoever shall be paid by Mortgagor to Mortgagee upon demand with interest at the Default Rate from the date of payment by Mortgagee to the date of payment to Mortgagee and shall be secured by this Mortgage. For purposes of exercising the rights granted in this Section 51, Mortgagor hereby irrevocably constitutes and appoints Mortgagee its respective true and lawful attorney-in-fact with full power of substitution to execute, acknowledge and deliver any instruments and to do and perform any acts in the name of and on behalf of Mortgagor, this power of attorney shall be a power coupled with an interest and cannot be revoked.

52. Hazardous Waste. The Mortgagor represents and warrants to the Mortgagee that (a) the Mortgagor has not used Hazardous Materials (as defined below), on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and, to the best of the Mortgagor's knowledge, no prior owner of the Premises or any existing or prior tenant, or occupant has used Hazardous Materials on, from or affecting the Premises in any manner which violates federal, state or local law, ordinances, rules, regulations or policies governing the

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use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials; (b) the Mortgagor has never received any notice of any violations (and is not aware of any existing violations of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials at the Premises and, to the best of the Mortgagor's knowledge, there have been no actions commenced or threatened by any party for noncompliance which affects the Premises; (c) Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials except to the extent that such Hazardous Materials are stored and/or used in compliance with all applicable federal, state and local laws and regulations; and, without limiting the foregoing, Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or occupant, a release, spill, leak or emission of Hazardous Materials onto the Premises or onto any other contiguous property; (d) the Mortgagor shall conduct and complete all investigations, including a comprehensive environmental audit, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Premises as required by all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the reasonable satisfaction of the Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities. If the Mortgagor fails to conduct a Phase I environmental audit reasonably required by the Mortgagee, then the Mortgagee may at its option and at the expense of the Mortgagor, conduct such audit.

Subject to the limitations set forth below, the Mortgagor shall defend, indemnify and hold harmless the Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to (a) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Premises, (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials with respect to the Premises, and/or (d) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the Mortgagee, which are based upon or in any way related to such Hazardous Materials used in the Premises. The indemnity obligations under this paragraph are specifically limited as follows:

- (i) The Mortgagor shall have no indemnity obligation with respect to Hazardous Materials that are first introduced to the Premises or any part of the Premises subsequent to the date that the Mortgagor's interest in and possession of the Premises or any part of the Premises shall have fully terminated by foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure;
- (ii) The Mortgagor shall not have indemnity obligation with respect to any Hazardous Materials introduced to the Premises or any part of the Premises by the Mortgagee, its successors or assigns.

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The Mortgagor agrees that in the event this Mortgage is foreclosed or the Mortgagor tenders a deed in lieu of foreclosure, the Mortgagor shall deliver the Premises to the Mortgagee free of any and all Hazardous Materials which are then required to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises.

For purposes of this Mortgage, "Hazardous Materials", includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.) and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule or regulation.

The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Mortgagor may have to the Mortgagee under the Indebtedness, any loan document, and in common law, and shall survive (a) the repayment of all sums due for the debt, (b) the satisfaction of all of the other obligations of the Mortgagor in this Mortgage and under any loan document, (c) the discharge of this Mortgage, and (d) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure. Notwithstanding anything to the contrary contained in this Mortgage, it is the intention of the Mortgagor and the Mortgagee that the indemnity provisions of this paragraph shall only apply to an action commenced against any owner or operator of the Premises in which any interest of the Mortgagee is threatened or any claim is made against the Mortgagee for the payment of money.

53. Statutory Compliance. Mortgagor covenants with and warrants and represents to Mortgagee that:

(a) the Mortgagor is in full compliance with any and all state, federal and local laws, ordinances, rules regulations and policies governing equal employment practices; restricting discrimination in telecommunication and public services, transportation and public accommodations and services operated by private entities are more fully set forth in the American with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.; Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. §2000 et seq.; the Rehabilitation Act of 1973, 29 U.S.C. §701; the Vietnam Era Readjustment Assistance Act of 1982, 38 U.S.C. §2012; the Illinois Human Rights Act, Ill. Rev. Stat. Ch. 68 §1-101 et seq. and any and all other relevant laws, ordinances, rules regulations and policies (hereinafter referred to as the "EEO Laws"); (b) the Mortgagor has never received any notice of any violation, and is not aware of any existing violations of federal, state or local laws, ordinances, rules, regulation or policies with respect to any EEO Laws and there have been no policies with respect to any EEO Laws and there have been no actions commenced or threatened with respect to same; and (c) Mortgagor represents and warrants that the premises are in compliance with the public accommodation and all other related federal, state and local laws, regulations, etc., and the Mortgagor shall take all actions necessary to insure continued compliance to same.

The Mortgagor shall defend, indemnify and hold harmless the Mortgagee, its employees, agents, officers and directors from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expense including attorney's fees, court costs, litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to

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the EEO laws as set forth above. The provisions of this section shall be in addition to and in no way limit the Mortgagor's obligations to the Mortgagee under any other sections of this Mortgage.

54. Release Upon Payment and Discharge of Mortgagor's Obligations; Partial Release. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon payment and discharge of all indebtedness secured hereby, including payment of reasonable expenses incurred by Mortgagee in connection with the execution of such release. If applicable, Mortgagee shall also issue partial releases of the lien of this Mortgage in accordance with and subject to the terms and conditions contained in the Loan Agreement. Any such partial release shall not impair in any manner the validity or priority of this Mortgage on the portion of the Premises or the security remaining, nor release the personal liability of any person, persons or entity obligated to pay any indebtedness secured hereby, for the full amount of the indebtedness remaining unpaid.

55. Non-Disturbance And Attornment. The Mortgagor, the Mortgagee and the Tenant (defined below) agree:

(a) Any lease of the Premises including but not limited to any certain Lease by and between Mortgagor and Infinity of Hoffman Estates, Inc. an Illinois corporation (the "Tenant") and all terms thereof, including, without limitation, any options to purchase, rights of first refusal, rights of set off, and any similar rights (hereinafter collectively referred to as the "Lease"), are and shall be subject and subordinate to the Mortgage, and to all amendments, modifications, replacements and extensions thereof; to the full extent of the principal, interest, fees, expenses and all other amounts secured thereby.

(b) In the event the Mortgagee elects to foreclose the Mortgage, the Mortgagee will not join Tenant in summary or foreclosure proceedings unless required by applicable law (and then only to the extent so required) as long as Tenant has not amended the Lease without the Mortgagee's prior written consent and is not in default under the Lease.

(c) No cancellation, modification, amendment, extension, or assignment of the Lease, and no subletting or prepayment of more than one month's rent shall be made without the Mortgagee's prior written consent.

(d) All rent payments shall be paid as provided under the Lease until Tenant has been otherwise notified by the Mortgagee or its successor and assign. Tenant agrees that, upon receipt of a notice from the Mortgagee or its successor or assign that there has been a default by Mortgagor under the Loan Documents, Tenant shall make all subsequent rent payments directly to the Mortgagee (or its successor or assign), or at the direction of the Mortgagee (or its successor or assign). All prepayments of more than one month's rent and any and all termination fees paid by Tenant, or at Tenant's direction, shall be payable jointly to the Mortgagee and Mortgagor.

(e) In the event that the Mortgagee shall succeed to the interest of Mortgagor under the Lease and there exists no default by Tenant under the Lease and Tenant has not amended the Lease without the Mortgagee's prior written consent, the Mortgagee agrees not to disturb or otherwise interfere with Tenant's possession of the leased premises for the unexpired term of the Lease, provided that the Mortgagee shall not be;

- i. liable for any act or omission of Mortgagor or any prior Landlord under the Lease;

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- ii. subject to any offsets or defenses which Tenant might have against Mortgagor or any prior Landlord;
- iii. bound by any rent or additional rent which Tenant might have paid for more than the current month to Mortgagor or any prior Landlord;
- iv. bound by any amendment or modification of the Lease made without the Mortgagee's prior written consent; or
- v. liable for any security deposit Tenant might have paid to Mortgagor or any prior Landlord, except to the extent the Mortgagee has actually received said security deposit.

(f) Upon the Mortgagee's succeeding to Mortgagor's interest under the Lease, Tenant covenants and agrees to attorn to the Mortgagee or a purchaser at a foreclosure or trustee's sale, to recognize such successor Landlord as Tenant's Landlord under the Lease, and to be bound by and perform all of the obligations and conditions imposed upon Tenant by the Lease. If requested by the Mortgagee or any subsequent owner, Tenant shall execute a new lease with the Mortgagee, for a term equal to the remaining term of the Lease and otherwise containing the same provisions and covenants of the Lease.

(g) Tenant shall deliver to the Mortgagee a copy of all notices Tenant delivers to or receives from Landlord in accordance with the notice provisions set forth herein. Prior to terminating the Lease due to a default by Mortgagor thereunder, Tenant agrees to notify the Mortgagee of such default and give the Mortgagee the opportunity to cure such default within the later of (i) thirty (30) days after the expiration of any notice and cure period or (ii) thirty (30) days of the Mortgagee's receipt of such notice (or, if such default cannot reasonably be cured within such thirty (30) day period, the Mortgagee shall have such longer time as may be necessary to cure the default; provided that the Mortgagee commences the cure within such period and diligently pursues the cure thereafter).

IN WITNESS WHEREOF, this Mortgage is executed and delivered as of the day and year first above written.

Mortgagor:

GANNON & GOLF LTD., an Illinois corporation

By: 

Paul D. Tamraz, President

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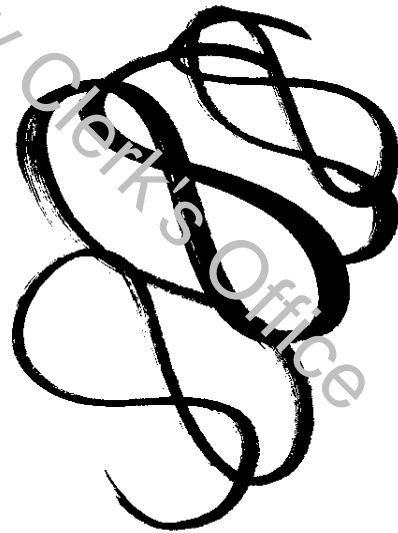
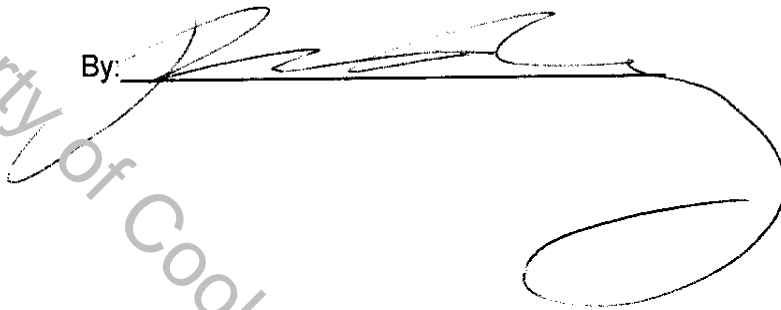
JOINDER

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the undersigned as future Tenant of Mortgagor hereby joins in the foregoing Mortgage, Security Agreement and Assignment of Lease and Rents - Fixture Filing ("Mortgage") for purposes of agreeing to be bound by all of the undertakings, representations and warranties contained in paragraph 55 of the Mortgage.

IN WITNESS WHEREOF, this Joinder has been executed and delivered as of this 21st day of December, 2005.

Tenant

By: _____



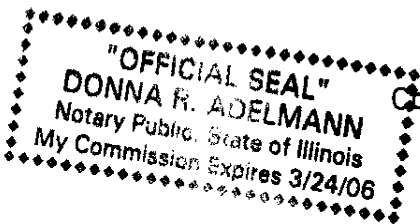
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY the above named PAUL D. TAMRAZ, President of GANNON & GOLF LTD., personally known to me to be the same person whose name is subscribed to the foregoing instrument, as such President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this 21ST day of ~~November~~ ^{DECEMBER}, 2005.

Donna R Adelmann
NOTARY PUBLIC



Commission expires 3/24, 2006

A large, stylized handwritten signature in black ink, which appears to be "Donna R. Adelmann".

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EXHIBIT A LEGAL DESCRIPTION

PARCEL 1
LOT 1 IN HOFFMAN HILLS COMMERCIAL SUBDIVISION UNIT NO.2, BEING A SUBDIVISION OF PART OF THE NORTHWEST ¼ OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2
LOT 1 IN HOFFMAN HILLS COMMERCIAL SUBDIVISION UNIT NO. 1, BEING A SUBDIVISION OF PART OF THE NORTHWEST ¼ OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 18, 1983 AS DOCUMENT 26867643, (EXCEPT THAT PART THEREOF BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE ON AN ASSUMED BEARING OF NORTH 85 DEGREES 42 MINUTES 23 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, 10.00 FEET; THENCE SOUTH 4 DEGREES 17 MINUTES 37 SECONDS EAST, 10.00 FEET; THENCE SOUTH 59 DEGREES 07 MINUTES 38 SECONDS WEST, 11.18 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 4 DEGREES 19 MINUTES 01 SECOND WEST ALONG THE WEST LINE OF SAID LOT 1, 15.00 FEET TO THE POINT OF BEGINNING), IN COOK COUNTY, ILLINOIS.

P.I.N.: 07-16-100-012-000

07-16-100-012-0000

Commonly known as: 1075 and 1125 west Golf Road, Hoffman Estates, Illinois