

UNOFFICIAL COPY



Doc#: 0608145015 Fee: \$62.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 03/22/2006 10:28 AM Pg: 1 of 20

Space Above This Line For Recording Data

MORTGAGE

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is February 15, 2006. The parties and their addresses are:

MORTGAGOR:

1455 SOUTH MICHIGAN, L.L.C.
An Illinois Limited Liability Company
1455 South Michigan Avenue
Chicago, Illinois 60605

LENDER:

CENTIER BANK
Organized and existing under the laws of Indiana
600 EAST 84TH AVENUE
MERRILLVILLE, Indiana 46410

1. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, sells, conveys, mortgages and warrants to Lender, the following described property:

SEE ATTACHED EXHIBIT A

The property is located in Cook County at 1455 S. Michigan Avenue, Chicago, Illinois 60605. Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed \$4,320,000.00. This limitation of amount does not include interest, attorneys' fees and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

Box 400-CTCC

DONE AT CUSTOMER'S REQUEST

Page 7 of 101 DRAFT OF 4

20

UNOFFICIAL COPY

Space Above This Line For Recording Data

MORTGAGE

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is February 15, 2006. The parties and their addresses are:

MORTGAGOR:

1455 SOUTH MICHIGAN, L.L.C.
 An Illinois Limited Liability Company
 1455 South Michigan Avenue
 Chicago, Illinois 60605

LENDER:

CENTIER BANK
 Organized and existing under the laws of Indiana
 600 EAST 84TH AVENUE
 MERRILLVILLE, Indiana 46410

1. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, sells, conveys, mortgages and warrants to Lender, the following described property:

SEE ATTACHED EXHIBIT A

The property is located in Cook County at 1455 S. Michigan Avenue, Chicago, Illinois 60605.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed \$4,320,000.00. This limitation of amount does not include interest, attorneys' fees and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

UNOFFICIAL COPY

A. Specific Debt. A Promissory Note of even date herewith, drawn by Mortgagor to the order of Lender, in the principal amount of \$ 4,320,000.00, and all extensions, renewals, refinancings, modifications and replacements thereof (the "Note").

B. All Other Debts. All present and future debts from Mortgagor to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. Sums Advanced. Not in limitation of the foregoing, all sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Note and the other Secured Debts will be paid when due and in accordance with the terms of the Note, the other applicable Secured Debts, and this Security Instrument.

5. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

6. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

7. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. Notwithstanding the foregoing prohibition against encumbrances, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any mechanic's lien or the validity or amount of any other encumbrance acceptable to Lender, and defer payment and discharge thereof during the pendency of such contest, provided that Mortgagor, upon the direction of Lender, will furnish to Lender or to a title company designated by Lender such security or indemnity may require.

8. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:

A. A beneficial interest in Mortgagor is sold or transferred.

B. There is a change in either the identity or number of members of a partnership or similar entity.

C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.

However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Lender the following warranties and representations which will continue as long as this Security Instrument is in effect:

A. Power. Mortgagor is duly organized, and validly existing and in good standing in all jurisdictions in which Mortgagor operates. Mortgagor has the power and authority to enter into this transaction and to carry on Mortgagor's business or activity as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Mortgagor operates.

B. Authority. The execution, delivery and performance of this Security Instrument and the obligation evidenced by this Security Instrument are within Mortgagor's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Mortgagor is a party or to which Mortgagor is or any of Mortgagor's property is subject.

UNOFFICIAL COPY

A. Specific Debt. A Promissory Note of even date herewith, drawn by Mortgagor to the order of Lender, in the principal amount of \$ 4,320,000.00, and all extensions, renewals, refinancings, modifications and replacements thereof (the "Note").

B. All Other Debts. All present and future debts from Mortgagor to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. Sums Advanced. Not in limitation of the foregoing, all sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Note and the other Secured Debts will be paid when due and in accordance with the terms of the Note, the other applicable Secured Debts, and this Security Instrument.

5. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

6. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

7. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. Notwithstanding the foregoing prohibition against encumbrances, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any mechanic's lien, or the validity or amount of any other encumbrance acceptable to Lender, and defer payment and discharge thereof. During the pendency of such contest, provided that Mortgagor, upon the direction of Lender, will furnish to Lender or to a title company designated by Lender such security or indemnity may require.

8. TRANSFER OF AN INTEREST IN THE MORTGAGOR. If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if:

A. A beneficial interest in Mortgagor is sold or transferred.

B. There is a change in either the identity or number of members of a partnership or similar entity.

C. There is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity.

However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Security Instrument.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor makes to Lender the following warranties and representations which will continue as long as this Security Instrument is in effect:

A. Power. Mortgagor is duly organized, and validly existing and in good standing in all jurisdictions in which Mortgagor operates. Mortgagor has the power and authority to enter into this transaction and to carry on Mortgagor's business or activity as it is now being conducted and, as applicable, is qualified to do so in each jurisdiction in which Mortgagor operates.

B. Authority. The execution, delivery and performance of this Security Instrument and the obligation evidenced by this Security Instrument are within Mortgagor's powers, have been duly authorized, have received all necessary governmental approval, will not violate any provision of law, or order of court or governmental agency, and will not violate any agreement to which Mortgagor is a party or to which Mortgagor is or any of Mortgagor's property is subject.

UNOFFICIAL COPY

C. Name and Place of Business. Other than previously disclosed in writing to Lender, Mortgagor has not changed Mortgagor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve Mortgagor's existing name, trade names and franchises.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agent may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. DEFAULT. Mortgagor will be in default if any of the following occur:

A. Payments. Mortgagor fails to make a payment in full when due.

B. Insolvency or Bankruptcy. The dissolution or insolvency, or appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Business Termination. Mortgagor merges, dissolves, reorganizes, ends its business or existence, or Gerald W. Fogelson dies or becomes disabled; provided, however, that if, within thirty days after the death or disability of Gerald W. Fogelson, a substitute person acceptable to Lender acquires a controlling voting interest in Jerry 1455 South Michigan, L.L.C., such death or disability will not constitute a default hereunder.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired, based on a written appraisal.

UNOFFICIAL COPY

C. Name and Place of Business. Other than previously disclosed in writing to Lender, Mortgagor has not changed Mortgagor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve Mortgagor's existing name, trade names and franchises.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. DEFAULT. Mortgagor will be in default if any of the following occur:

A. Payments. Mortgagor fails to make a payment in full when due.

B. Insolvency or Bankruptcy. The dissolution or insolvency or, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Business Termination. Mortgagor merges, dissolves, reorganizes, ends its business or existence, or Gerald W. Fogelson dies or becomes disabled; provided, however, that if, within thirty days after the death or disability of Gerald W. Fogelson, a substitute person acceptable to Lender acquires a controlling voting interest in Jerry 1455 South Michigan, L.L.C., such death or disability will not constitute a default hereunder.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired, based on a written appraisal.

UNOFFICIAL COPY

M. Material Change. Without first notifying Lender, there is a material change in Mortgagor's business, including ownership, management, and financial conditions.

N. Insecurity. Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

Notwithstanding the foregoing, Mortgagor will not be in default under this Security Instrument if Lender determines that the occurrence giving rise to such default may reasonably be cured and, in the case of a default in the payment of monies, Mortgagor cures such default within ten (10) days after the due date of the applicable payment, or, in the case of a default in any performance other than the payment of monies, Mortgagor cures such default within thirty (30) days after Mortgagor receives notice of such default from Lender (or, if such default cannot reasonably be cured within 30 days, Mortgagor begins to cure such default within 30 days after Mortgagor receives notice of such default from Lender and thereafter diligently pursue the cure of such default), all as reasonably determined by Lender.

13. REMEDIES On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or funds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

Upon default, Lender will have the right, without declaring the whole indebtedness due and payable, to foreclose against all or any part of the Property and will have the right to possession provided by law. This Security Instrument will continue as a lien on any part of the Property not sold on foreclosure.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

In addition to, and not in limitation of, the foregoing and all other rights and remedies of Lender provided in this Security Instrument and/or any of the other documents evidencing the Secured Debts or otherwise provided at law:

A. Acceleration. Upon Mortgagor's breach of any covenant, warranty or condition or agreement of Mortgagor in this Security Instrument, in the Note, or in any of the other documents evidencing the Secured Debts, including but not limited to the covenants to pay when due any sums payable pursuant to the Note or otherwise secured by this Security Instrument, or in any other agreement or instrument executed by Mortgagor in connection herewith, Lender, at Lender's option, may declare all of the sums payable pursuant to the Note and/or otherwise secured by this Security Instrument to be immediately due and payable without further demand, and may foreclose this Security Instrument by judicial proceedings, and may invoke any other remedies permitted by applicable law or provided herein. Lender will be entitled to collect (in addition to all other monies which may be collected by Lender under this Security Instrument, under the Note, and/or under any of the other documents evidencing the Secured Debts, or otherwise executed in connection herewith) all costs and expenses incurred in pursuing such remedies, including, but not limited to, reasonable attorney's fees, appraisal fees, expert witness fees, costs of court reporters, travel expenses, costs of documentary evidence, abstracts and title reports.

B. Foreclosure. When all or any part of the amounts payable under or with respect to the Note, this Security Instrument and/or any of the other documents evidencing the Secured Debts (collectively, "Indebtedness"), become due, whether by acceleration or otherwise, Lender will have the right to foreclose the lien hereof for the Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Security Instrument, the Note, or any of the other documents evidencing the Secured Debts or otherwise executed in connection herewith, in accordance with the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101, *et seq.* (as amended from time to time, the "Act"). In the event of a foreclosure sale, Lender is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

C. Expenses of Foreclosure. In any suit to foreclose the lien hereof, there will be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert

UNOFFICIAL COPY

M. Material Change. Without first notifying Lender, there is a material change in Mortgagor's business, including ownership, management, and financial conditions.

N. Insecurity. Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

Notwithstanding the foregoing, Mortgagor will not be in default under this Security Instrument if Lender determines that the occurrence giving rise to such default may reasonably be cured and, in the case of a default in the payment of monies, Mortgagor cures such default within ten (10) days after the due date of the applicable payment, or, in the case of a default in any performance other than the payment of monies, Mortgagor cures such default within thirty (30) days after Mortgagor receives notice of such default from Lender (or, if such default cannot reasonably be cured within 30 days, Mortgagor begins to cure such default within 30 days after Mortgagor receives notice of such default from Lender and thereafter diligently pursue the cure of such default), all as reasonably determined by Lender.

13. REMEDIES On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

Upon default, Lender will have the right, without declaring the whole indebtedness due and payable, to foreclose against all or any part of the Property and will have the right to possession provided by law. This Security Instrument will continue as a lien on any part of the Property not sold on foreclosure.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

In addition to, and not in limitation of, the foregoing and all other rights and remedies of Lender provided in this Security Instrument and/or any of the other documents evidencing the Secured Debts or otherwise provided at law:

A. Acceleration. Upon Mortgagor's breach of any covenant, warranty or condition or agreement of Mortgagor in this Security Instrument, in the Note, or in any of the other documents evidencing the Secured Debts, including but not limited to the covenants to pay when due any sums payable pursuant to the Note or otherwise secured by this Security Instrument, or in any other agreement or instrument executed by Mortgagor in connection herewith, Lender, at Lender's option, may declare all of the sums payable pursuant to the Note and/or otherwise secured by this Security Instrument to be immediately due and payable without further demand, and may foreclose this Security Instrument by judicial proceedings, and may invoke any other remedies permitted by applicable law or provided herein. Lender will be entitled to collect (in addition to all other monies which may be collected by Lender under this Security Instrument, under the Note, and/or under any of the other documents evidencing the Secured Debts, or otherwise executed in connection herewith) all costs and expenses incurred in pursuing such remedies, including, but not limited to, reasonable attorney's fees, appraisal fees, expert witness fees, costs of court reporters, travel expenses, costs of documentary evidence, abstracts and title reports.

B. Foreclosure. When all or any part of the amounts payable under or with respect to the Note, this Security Instrument and/or any of the other documents evidencing the Secured Debts (collectively, "Indebtedness"), become due, whether by acceleration or otherwise, Lender will have the right to foreclose the lien hereof for the Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Security Instrument, the Note, or any of the other documents evidencing the Secured Debts or otherwise executed in connection herewith, in accordance with the Illinois Mortgage Foreclosure Act, 735 ILCS 5/15-1101, *et seq.* (as amended from time to time, the "Act"). In the event of a foreclosure sale, Lender is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Lender may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

C. Expenses of Foreclosure. In any suit to foreclose the lien hereof, there will be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert

UNOFFICIAL COPY

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 the title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of the Property and the maintenance of the lien of this Security Instrument, including the reasonable fees of any attorney employed by the Lender in any litigation or proceeding affecting this Security Instrument, the Note, or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding will be immediately due and payable by Mortgagor, with interest thereon until paid at the default rate and will be secured by this Security Instrument.

D. Compliance with Illinois Mortgage Foreclosure Law. If any provision in this Security Instrument is inconsistent with any provision of the Act, the provisions of the Act will take precedence over the provisions of this Security Instrument, but will not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. If any provision of this Security Instrument grants to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 24 of this Security Instrument any powers, rights or remedies prior to, upon or following the occurrence of an event of default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver will be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include reasonable attorneys' fees. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

15. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event,

UNOFFICIAL COPY

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 the title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of the Property and the maintenance of the lien of this Security Instrument, including the reasonable fees of any attorney employed by the Lender in any litigation or proceeding affecting this Security Instrument, the Note, or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding will be immediately due and payable by Mortgagor, with interest thereon until paid at the default rate and will be secured by this Security Instrument.

D. Compliance with Illinois Mortgage Foreclosure Law. If any provision in this Security Instrument is inconsistent with any provision of the Act, the provisions of the Act will take precedence over the provisions of this Security Instrument, but will not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the Act. If any provision of this Security Instrument grants to Lender (including Lender acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 24 of this Security Instrument any powers, rights or remedies prior to, upon or following the occurrence of an event of default which are more limited than the powers, rights or remedies that would otherwise be vested in Lender or in such receiver under the Act in the absence of said provision, Lender and such receiver will be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include reasonable attorneys' fees. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

15. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law. Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event,

UNOFFICIAL COPY

Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval. Lender will not make such request more than once in any one-year period unless Lender determines that there is a substantial possibility that any of the representations, warranties and/or agreements provided in this Section 15 may be inaccurate or breached.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

16. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

Notwithstanding the foregoing, in the case of any partial taking, if the Property may still be operated after such taking in substantially the same manner as the present operation (as determined by Lender), and if no uncured default has occurred and no event has occurred which, with the giving of notice and/or the passage of time would constitute a default, the proceeds of any award or settlement will be applied to the restoration of the Property, with any excess applied to the Secured Debts as determined by Lender.

17. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals will include a standard "mortgage clause" and, where applicable, "loss payee clause." If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption

UNOFFICIAL COPY

Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval. Lender will not make such request more than once in any one-year period unless Lender determines that there is a substantial possibility that any of the representations, warranties and/or agreements provided in this Section 15 may be inaccurate or breached.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

16. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

Notwithstanding the foregoing, in the case of any partial taking, if the Property may still be operated after such taking in substantially the same manner as the present operation (as determined by Lender), and if no uncured default has occurred and no event has occurred which, with the giving of notice and/or the passage of time would constitute a default, the proceeds of any award or settlement will be applied to the restoration of the Property, with any excess applied to the Secured Debts as determined by Lender.

17. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals will include a standard "mortgage clause" and, where applicable, "loss payee clause." If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption

UNOFFICIAL COPY

insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts. Notwithstanding the foregoing if, at the time insurance proceeds are received, no uncured default has occurred and no event has occurred which, with the giving of notice and/or the passage of time would constitute a default, the proceeds of will be applied to the restoration of the Property, with any excess applied to the Secured Debts as determined by Lender.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

18. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

19. CO-SIGNERS. If Mortgagor signs this Security Instrument but is not otherwise obligated to pay the Secured Debts, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debts and Mortgagor does not agree by signing this Security Instrument to be personally liable on the Secured Debts. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

20. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption, redemption, reinstatement and appraisal rights relating to the Property.

21. APPLICABLE LAW. This Security Instrument has been delivered in Merrillville, Lake County, Indiana. The substantive internal laws of the State of Indiana will apply for all purposes (except the creation and enforcement of liens on collateral located in other jurisdictions), including, without limitation, actions on this mortgage, the Note, or any other loan documents, whether such action is brought separately from the Security Instrument or before, concurrently or subsequently to the foreclosure of this Security Instrument.

22. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

23. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

24. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

25. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail, if to Lender at Lender's address listed in the DATE AND PARTIES section, or to such other address as Lender may designate from time to time in writing, and if to Mortgagor at:

UNOFFICIAL COPY

insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts. Notwithstanding the foregoing if, at the time insurance proceeds are received, no uncured default has occurred and no event has occurred which, with the giving of notice and/or the passage of time would constitute a default, the proceeds of will be applied to the restoration of the Property, with any excess applied to the Secured Debts as determined by Lender.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

18. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

19. CO-SIGNERS. If Mortgagor signs this Security Instrument but is not otherwise obligated to pay the Secured Debts, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debts and Mortgagor does not agree by signing this Security Instrument to be personally liable on the Secured Debts. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

20. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption, redemption, reinstatement and appraisal rights relating to the Property.

21. APPLICABLE LAW. This Security Instrument has been delivered in Merrillville, Lake County, Indiana. The substantive internal laws of the State of Indiana will apply for all purposes (except the creation and enforcement of liens on collateral located in other jurisdictions), including, without limitation, actions on this mortgage, the Note, or any other loan documents, whether such action is brought separately from the Security Instrument or before, concurrently or subsequently to the foreclosure of this Security Instrument.

22. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

23. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

24. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

25. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail, if to Lender at Lender's address listed in the DATE AND PARTIES section, or to such other address as Lender may designate from time to time in writing, and if to Mortgagor at:

UNOFFICIAL COPY

1455 South Michigan, L.L.C.
 1455 South Michigan Avenue
 Chicago, Illinois 60605
 Attention: Gerald W. Fogelson
 and B. Timothy Desmond
 Fax: (312) 663-9366

and to: Forest City Enterprises, Inc.
 Terminal Tower, Suite 1000B
 50 Public Square
 Cleveland, Ohio 44113
 Attention: Mr. Jerome Ferstman
 Fax: (216) 619-0199

with copies to:

Schain, Burney, Ross & Citron, Ltd.
 222 North LaSalle Street
 Suite 1910
 Chicago, Illinois 60601
 Attention: Richard H. Levy
 Fax: (312) 332-4514

and to: Forest City Enterprises, Inc.
 Terminal Tower, Suite 1160
 50 Public Square
 Cleveland, Ohio 44113
 Attention: General Counsel
 Fax: (216) 263-6206

or to such other address as Mortgagor may designate from time to time in writing. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

26. WAIVER OF CERTAIN STATUTORY MATTERS. Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner 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 providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions 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 to 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. Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and will be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15-1601, *et seq.*, or other applicable law or replacement statutes;

B. Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Lender 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;

C. Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce the Note or any other obligation secured by this Security Instrument.

UNOFFICIAL COPY

1455 South Michigan, L.L.C.
 1455 South Michigan Avenue
 Chicago, Illinois 60605
 Attention: Gerald W. Fogelson
 and B. Timothy Desmond
 Fax: (312) 663-9366

and to: Forest City Enterprises, Inc.
 Terminal Tower, Suite 1000B
 50 Public Square
 Cleveland, Ohio 44113
 Attention: Mr. Jerome Ferstman
 Fax: (216) 619-0199

with copies to:

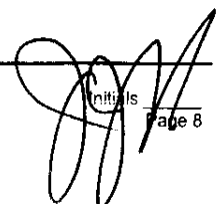
Schain, Burney, Ross & Citron, Ltd.
 222 North LaSalle Street
 Suite 1910
 Chicago, Illinois 60601
 Attention: Richard H. Levy
 Fax: (312) 332-4514

and to: Forest City Enterprises, Inc.
 Terminal Tower, Suite 1160
 50 Public Square
 Cleveland, Ohio 44113
 Attention: General Counsel
 Fax: (216) 263-6206

or to such other address as Mortgagor may designate from time to time in writing. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

26. WAIVER OF CERTAIN STATUTORY MATTERS. Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner 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 providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions 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 to 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.** Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and will be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15-1601, *et seq.*, or other applicable law or replacement statutes;
- B.** Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Lender 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;
- C.** Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce the Note or any other obligation secured by this Security Instrument.


 Initials
 Page 8

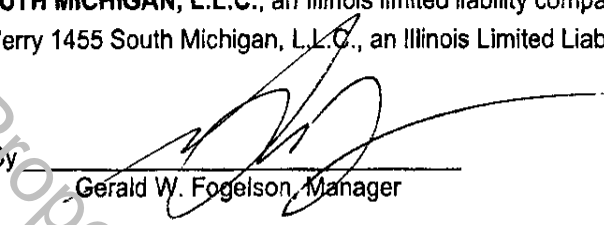
UNOFFICIAL COPY

SIGNATURES. By signing, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument. This Security Instrument is being executed by Mortgagor by its two Managers, with one Manager signing on this page and one Manager signing on the following page.

MORTGAGOR:

1455 SOUTH MICHIGAN, L.L.C., an Illinois limited liability company

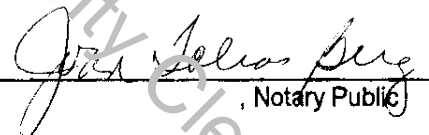
By: Jerry 1455 South Michigan, L.L.C., an Illinois Limited Liability Company, Its Manager

By 
Gerald W. Fogelson, Manager

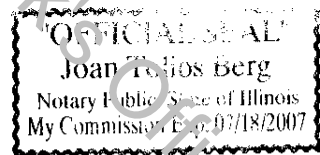
STATE OF Illinois)
COUNTY OF Cook) SS:

BEFORE ME, the undersigned, a Notary Public, on February 14, 2005, personally appeared Gerald W. Fogelson, personally known to me to be the same person whose name is subscribed to the foregoing Mortgage as Manager of Jerry 1455 South Michigan, L.L.C., as Manager of 1455 South Michigan, L.L.C., and being first duly sworn by me upon oath, acknowledged that he has read and understands the foregoing and that he has affixed his name to and delivered the foregoing as his own free and voluntary act and as the free and voluntary act of said limited liability companies for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.


Joan Tobias Berg
Notary Public

Commission Expires: 7/18/07

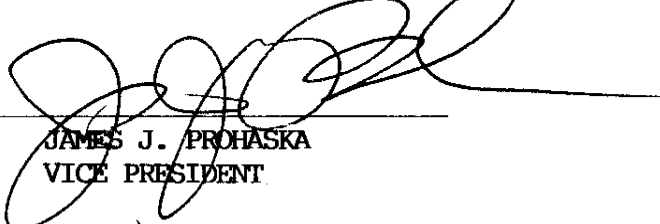


UNOFFICIAL COPY

MORTGAGOR:

1455 SOUTH MICHIGAN, L.L.C., an Illinois limited liability company

By: Forest City Central Station, Inc., an Ohio Corporation, Its Manager

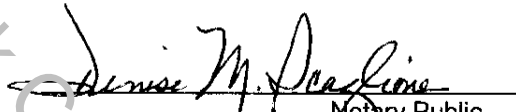
By 
JAMES J. PROHASKA
VICE PRESIDENT

STATE OF Ohio)
 COUNTY OF Cuyahoga)

SS:

BEFORE ME, the undersigned, a Notary Public, on February 13, 2005, personally appeared James J. Prohaska, personally known to me to be the same person whose name is subscribed to the foregoing Mortgage as Vice President of Forest City Central Station, Inc., as Manager of 1455 South Michigan, L.L.C., and being first duly sworn by me upon oath, acknowledged that he has read and understands the foregoing and that he has affixed his name to and delivered the foregoing as his own free and voluntary act and as the free and voluntary act of said corporation and said limited liability companies for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.


 , Notary Public

Commission Expires: _____



Denise M. Scaglione, Notary Public
 STATE OF OHIO
 My Commission Expires April 21, 2007

Prepared by and return to:

Demetri J. Retson
Kopko Genetos & Retson LLP
8585 Broadway, Suite 480
Merrillville, Indiana 46410
219-755-0400; fax: 219-755-0410


 Page 10

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1: LOTS 29 AND 30 IN THE SUBDIVISION OF LAVANTIA SPRING ADMINISTRATRIX IN THE NORTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT FROM SAID PREMISES SO MUCH AS IS TAKEN FOR PUBLIC ALLEY), IN COOK COUNTY, ILLINOIS.

PARCEL 2: THAT PART OF THE SOUTH 48 ACRES OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING IN THE EAST LINE OF MICHIGAN AVENUE AT A POINT 12.233 CHAINS NORTH OF THE SOUTH LINE OF SAID FRACTIONAL 1/4 SECTION (SAID POINT BEING ON THE SOUTH LINE OF LAND FORMERLY OF GILES SPRING) RUNNING THENCE EAST, A DISTANCE OF 160.00 FEET; THENCE SOUTH, A DISTANCE OF 25.70 FEET; THENCE WEST, A DISTANCE OF 160.00 FEET TO THE EAST LINE OF MICHIGAN AVENUE AND THENCE NORTH, A DISTANCE OF 25.70 FEET TO THE POINT OF BEGINNING, BEING THE SAME AS:

ALL OF LOT 4 IN BLOCK 20 OF ASSESSOR'S DIVISION OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT FROM SAID PREMISES SO MUCH AS IS TAKEN FOR PUBLIC ALLEY), IN COOK COUNTY, ILLINOIS.

PARCEL 3: LOTS 1 AND 2 IN FOSTER AND BUSBY'S SUBDIVISION OF LOTS 11 TO 14 OF ASSESSOR'S DIVISION OF LOTS 2 AND 3 OF BLOCK 20 AND 8.94 FEET NORTH OF AND ADJOINING SAME OF ASSESSOR'S DIVISION OF PART OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Tax Numbers: 17-22-108-012-0000
 17-22-108-013-0000
 17-22-108-014-0000
 17-22-108-015-0000

Commonly known as: 1455 South Michigan Avenue, Chicago, Illinois 60605

UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1: LOTS 29 AND 30 IN THE SUBDIVISION OF LAVANTIA SPRING ADMINISTRATRIX IN THE NORTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT FROM SAID PREMISES SO MUCH AS IS TAKEN FOR PUBLIC ALLEY), IN COOK COUNTY, ILLINOIS.

PARCEL 2: THAT PART OF THE SOUTH 48 ACRES OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN; BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING IN THE EAST LINE OF MICHIGAN AVENUE AT A POINT 12.233 CHAINS NORTH OF THE SOUTH LINE OF SAID FRACTIONAL 1/4 SECTION (SAID POINT BEING ON THE SOUTH LINE OF LAND FORMERLY OF GILES SPRING) RUNNING THENCE EAST, A DISTANCE OF 160.00 FEET; THENCE SOUTH, A DISTANCE OF 25.70 FEET; THENCE WEST, A DISTANCE OF 160.00 FEET TO THE EAST LINE OF MICHIGAN AVENUE AND THENCE NORTH, A DISTANCE OF 25.70 FEET TO THE POINT OF BEGINNING, BEING THE SAME AS:

ALL OF LOT 4 IN BLOCK 20 OF ASSESSOR'S DIVISION OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT FROM SAID PREMISES SO MUCH AS IS TAKEN FOR PUBLIC ALLEY), IN COOK COUNTY, ILLINOIS.

PARCEL 3: LOTS 1 AND 2 IN FOSTER AND BUSBY'S SUBDIVISION OF LOTS 11 TO 14 OF ASSESSOR'S DIVISION OF LOTS 2 AND 3 OF BLOCK 20 AND 8.94 FEET NORTH OF AND ADJOINING SAME OF ASSESSOR'S DIVISION OF PART OF THE NORTHWEST FRACTIONAL 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Tax Numbers: 17-22-108-012-0000
 17-22-108-013-0000
 17-22-108-014-0000
 17-22-108-015-0000

Commonly known as: 1455 South Michigan Avenue, Chicago, Illinois 60605

Initials
 Page 1

