

# UNOFFICIAL COPY



Doc#: 0707845004 Fee: \$70.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/19/2007 10:12 AM Pg: 1 of 24

**INSTRUMENT PREPARED BY:**

Ted J. Dale

**AND WHEN RECORDED MAIL TO:**

Blackwell Sanders Peper Martin LLP  
4801 Main Street - Suite 1000  
Kansas City, Missouri 64112

P.I.N. 31-26-311-003-0000, 31-26-311-004-0000,  
31-26-311-005-0000, 31-26-311-006-0000,  
31-26-3111-006-0000

3700-3740 Sauk Trail, Richton Park, Illinois

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
SECURITY AGREEMENT AND FINANCING STATEMENT**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FINANCING STATEMENT, made and entered into as of March 8, 2007, by and between: SAUK TRAIL PLAZA, LLC, an Illinois limited liability company ("Borrower"), with an address at 630 S. Wenonah, Oak Park, Illinois 60304, as mortgagor; ICA MORTGAGE CAPITAL, LLC, an Illinois limited liability company ("Lender"), with an address at c/o The Philipsborn Company, 222 South Riverside Plaza, Suite 2330, Chicago, Illinois 60606, as mortgagee (hereinafter, this "Mortgage").

WITNESSETH, THAT in consideration of Lender's agreement to make a loan to Borrower in the original principal amount of Two Million One Hundred Thousand and 00/100 Dollars (\$2,100,000.00) (the "Loan") and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby warrants, represents, covenants and agrees as follows:

**ARTICLE I**  
**Granting Clauses**

Section 1.01 Grant of Real Estate Security. Borrower hereby irrevocably grants, bargains, sells, mortgages, warrants, transfers, conveys, assigns, sets over and pledges to Lender all of the following described property (the "Mortgaged Estate"):

- (a) The real property located in the Village of Richton Park, County of Cook, State of Illinois, described on Exhibit A, attached hereto and incorporated herein, and all and singular the tenements, hereditaments and appurtenances thereto, together with all right, title and interest of Borrower in all easements, rights-of-way, gores or strips of land, surface waters, ground waters, watercourses, mineral interests and subsurface rights, alleys, streets and sidewalks, whether now owned or hereafter acquired, either in law or in equity, adjacent or appurtenant to or adjoining such real property (the "Land");

109707310/NNW  
1 of 5

24

# UNOFFICIAL COPY

(b) Any and all buildings and improvements now or hereafter erected or located on the Land, including all fixtures, attachments, appliances, equipment, machinery and other articles attached to such buildings and improvements (the "Improvements");

(c) All right, title and interest of Borrower in and to all tangible personal property now owned or hereafter acquired by Borrower and now or at any time hereafter located on the Land or within the Improvements and used in connection therewith, including all building materials stored on the Land, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment, all furniture, furnishings, equipment and other personal property owned by Borrower and used in connection with the operation of the Mortgaged Estate, and all renewals and replacement thereof (excluding any such property owned by a tenant of the Mortgaged Estate) (the "Personal Property"), all of which property shall, so far as permitted by law, be deemed to form a part and parcel of the real property and for the purpose of this Mortgage to be real estate and covered by this Mortgage;

(d) All of Borrower's interest in all existing and future accounts, contract rights, general intangibles, files, books of account, agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, operation or management of the Mortgaged Estate, whether now existing or entered into or obtained after the date hereof, including the "Leases" and "Rents" (as defined herein);

(e) All agreements for use and occupancy of any part of the Mortgaged Estate, now existing or hereafter entered into, including any and all extensions or modifications thereto (the "Leases"), and all of the rents, royalties, security deposits, income, receipts, revenues and other sums now due or which may hereafter become due to Borrower under any Lease or arising from the use and enjoyment of any part of the Mortgaged Estate, and all rights and remedies which Borrower may have against any party under the Leases (the "Rents"); and

(f) All the estate, interest, right, title or other claim or demand with respect to the proceeds of insurance and any and all awards made for the taking of any part of the Mortgaged Estate by the power of eminent domain, or by any proceeding or purchase in lieu thereof.

TO HAVE AND TO HOLD the Mortgaged Estate unto Lender and its successors and assigns, forever.

**Section 1.02 Grant of Security Interest.** With respect to any portion of the Mortgaged Estate which constitutes Personal Property, fixtures or other property or interests governed by the Uniform Commercial Code of the state in which the Mortgaged Estate is located (the "UCC"), this Mortgage shall constitute a security agreement between Borrower, as the debtor, and Lender, as the secured party, and Borrower hereby grants to Lender a security interest in such portion of the Mortgaged Estate. Borrower agrees to execute and deliver to Lender all financing and continuation statements and other information which are from time to time required to establish

# UNOFFICIAL COPY

and maintain the validity and priority of the security interests herein granted. Upon the occurrence of an "Event of Default" (as defined herein), Lender shall have all of the rights and remedies of a secured party available under the UCC with respect to the property encumbered by the security interests; provided, however, Lender may, at its option, dispose of such property in accordance with Lender's rights and remedies under this Mortgage, in lieu of proceeding under the UCC. Borrower hereby appoints Lender as its attorney-in-fact to execute, deliver and file any and all required financing statements, continuation statements and other instruments as Lender may require in order to perfect and maintain the security interests granted herein.

Section 1.03 Assignment of Leases and Rents. Borrower hereby assigns and transfers to Lender all of the Leases and Rents. The terms of such assignment are more specifically set forth in the separate Assignment of Leases and Rents dated as of the date hereof, executed by Borrower in favor of Lender and recorded simultaneously with this Mortgage, the terms of which Assignment of Leases and Rents are specifically incorporated herein by this reference.

Section 1.04 Secured Obligations. This Mortgage shall secure the following indebtedness and obligations, including all replacements, renewals, amendments, extensions, substitutions and modifications thereof:

(a) 1. Payment of all indebtedness and performance of all obligations and covenants of Borrower under or pursuant to (i) the Promissory Note dated as of the date hereof, executed by Borrower in favor of Lender in the aggregate principal amount of the Loan (the "Note"); (ii) this Mortgage; (iii) the Assignment of Leases and Rents; (iv) Environmental Indemnity Agreement dated as of the date hereof between Borrower and Lender (the "Environmental Indemnity"); and (v) all other "Loan Documents" (as defined herein); and

(1) Payment of all future advances and all sums advanced by Lender to protect the Mortgaged Estate or otherwise pursuant to the terms of the Loan Documents, with interest on all of the foregoing at the "Default Rate" (as defined in the Note) from the date of Lender's advance to the date of Borrower's repayment of same; provided, however, that in no event shall the amount secured hereby exceed two hundred percent (200%) of the original principal amount of the loan.

(b) The indebtedness and the obligations secured by this Mortgage which are described in paragraph (a) above are hereinafter referred to as the "Secured Obligations."

(c) This Mortgage, the Note, the Assignment of Leases and Rents, the Environmental Indemnity, and any other writing or instrument given to evidence or secure the payment or performance of any of the Secured Obligations are hereinafter collectively referred to as the "Loan Documents."

## ARTICLE II

### Payment and Performance

Section 2.01 Payment of Secured Obligations. Borrower shall pay all sums due under the Loan Documents without offset, counterclaim or defense, as and when the same shall become

# UNOFFICIAL COPY

due. Borrower shall fully and faithfully observe and perform all of the obligations of Borrower to be observed and performed under the Loan Documents.

Section 2.02 Warranty of Title. Borrower warrants and represents that: (i) Borrower has good and marketable title to an indefeasible estate in fee simple in the Land and Improvements; (ii) Borrower has good and marketable title to all of the rest of the Mortgaged Estate; and (iii) to Borrower's actual knowledge, such title of Borrower is free and clear of any liens or encumbrances except for those exceptions shown in the title insurance policy in favor of Lender insuring the lien of this Mortgage (the "Permitted Encumbrances"). Borrower shall preserve Borrower's title and interest in the Mortgaged Estate and will forever warrant and defend the validity and priority of the lien, security interest and assignments created herein against the claims of all persons whomsoever, subject only to the Permitted Encumbrances.

## ARTICLE III Taxes and Insurance

Section 3.01 Taxes. Borrower shall pay when due and before any penalty attaches or interest accrues, all general taxes, special taxes, assessments, water charges, sewer service charges, and other similar charges against or affecting the Mortgaged Estate or any property or equipment located on the Land, or which might become a lien upon the Mortgaged Estate (the "Taxes"). If any Tax may be legally paid in installments, Borrower shall have the right, at its option, to pay such Tax in installments.

### Section 3.02 Insurance.

(a) Borrower shall at all times keep in full force and effect the following policies of insurance with respect to the Mortgaged Estate: (i) commercial general public liability insurance in an amount of not less than \$2,000,000.00, combined single limit coverage for injury to persons and damage to property, with a deductible limit satisfactory to Lender; (ii) standard fire and extended coverage casualty insurance, with vandalism and malicious mischief coverage and so called "all risks" or "DIC" coverage in the amount of the full insurable value of the Mortgaged Estate on a replacement cost basis (but in any event not less than the amount of the Loan); (iii) loss of rents or business interruption insurance covering all Rents for a period of one (1) year, and (iv) such other policies of insurance as Lender may from time to time reasonably require.

(b) All insurance policies shall: (i) be issued by a company or companies rated "A" or better by A.M. Best & Company and otherwise reasonably satisfactory to Lender; (ii) name Lender as an additional insured and loss payee; and (iii) provide a minimum of thirty (30) days' written notice to Lender prior to the expiration or any cancellation or modification of such policies. Borrower shall provide Lender with certificates evidencing all required insurance. In the event Borrower shall fail to maintain the insurance required by this section, Lender may, but shall not be so obligated, procure such insurance as Lender shall deem necessary, and any amount so expended by Lender shall be secured by this Mortgage and be repayable by Borrower upon demand, with interest at the "Default Rate" (as defined in the Note).

# UNOFFICIAL COPY

(c) In the event of any damage or destruction to the Mortgaged Estate, Borrower shall promptly make proof of loss to the insurers, and, except as set forth in Article V of this Mortgage, Borrower shall not adjust or compromise any claim under such insurance without the prior written approval of Lender. Except as set forth in Article V of this Mortgage, all proceeds of such insurance shall be paid directly to Lender, and each insurer is hereby authorized and directed to make such payment directly to Lender. Any proceeds shall be applied first to the payment of all costs and expenses incurred by Lender in obtaining such proceeds. The balance of the proceeds, if any, shall be applied in accordance with the provisions of Article V.

Section 3.03 Tax and Insurance Escrow. On the first day of each calendar month, Borrower shall deposit with Lender or Lender's designated agent an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums and Tax payments for the Mortgaged Estate. Such deposits shall be non-interest bearing and are hereby pledged as additional security for the Secured Obligations. Upon receipt of bills, statements or other evidence of insurance premiums or Taxes due, Lender shall pay or cause to be paid such amounts out of the funds so deposited. If at any time such funds are insufficient to pay such amounts, Borrower shall immediately deposit an amount equal to the deficiency. Lender shall not be deemed a trustee of such funds or to be obligated to expend any amount in excess of such funds under this Section. If Borrower fails to deposit sufficient sums as required, Lender may, but shall not be so obligated, advance any amounts required to make up the deficiency, which advances shall be secured by this Mortgage and be repayable by Borrower upon demand, with interest at the Default Rate.

## ARTICLE IV Eminent Domain

Section 4.01 Eminent Domain. If all or any part of the Mortgaged Estate is taken or damaged by the exercise of the power of eminent domain or a conveyance in lieu thereof (a "Condemnation"), or should Borrower receive any notice or other information regarding any such proceeding, Borrower shall give prompt written notice thereof to Lender. Lender may participate in any Condemnation proceedings, and Borrower shall consult with Lender and its attorneys and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of Condemnation awards or sales in lieu thereof, and all judgments, decrees and awards for injury or damage to the Mortgaged Estate shall be paid to Lender and shall be applied first to all costs and expenses incurred by Lender in obtaining the proceeds. The balance of the proceeds, if any, shall be applied in accordance with the provisions of Article V, Restoration After Casualty/Condemnation.

## ARTICLE V Restoration After Casualty/Condemnation

Section 5.01 Restoration After Casualty/Condemnation. In the event of a damage or destruction by casualty or a taking by eminent domain, the following provisions shall apply in connection with the Restoration (defined below) of the Mortgaged Estate:

# UNOFFICIAL COPY

(a) If the Mortgaged Estate shall be damaged or destroyed, in whole or in part, by fire or other casualty, or if the Mortgaged Estate or any portion thereof is taken by the power of eminent domain, Borrower shall give prompt notice of such damage or taking to Lender and shall promptly commence and diligently prosecute completion of the repair and restoration of the Mortgaged Estate as nearly as possible to the condition the Mortgaged Estate was in immediately prior to such fire or other casualty or taking, with such alterations as may be approved by Lender (the "Restoration").

(b) The term "Net Proceeds" for purposes of this Article V shall mean: (i) the net amount of all insurance proceeds under the policies carried pursuant to Subsections 5.02 (a) of this Mortgage as a result of such damage or destruction, after deduction of Lender's reasonable costs and expenses (including, but not limited to reasonable attorney's fees), if any, in collecting the same, or (ii) the net amount of all awards and payments received by Lender with respect to a taking referenced in Section 4.01 of this Mortgage, after deduction of Lender's reasonable costs and expenses (including, but not limited to reasonable attorney's fees), if any, in collecting the same, whichever the case may be. If (i) the Net Proceeds do not exceed \$100,000.00 (the "Net Proceeds Threshold"); (ii) the costs of completing the Restoration as reasonably estimated by Borrower shall be less than or equal to the Net Proceeds and any additional amounts paid by Borrower; (iii) no Event of Default shall have occurred and be continuing under the Note, this Mortgage or any of the Loan Documents; (iv) the Mortgaged Estate and the use thereof after the Restoration will be in compliance with, and permitted under, all applicable zoning laws, ordinances, rules and regulations (including, without limitation, all applicable Environmental Requirements (defined in the Environmental Indemnity)); (v) (A) [INTENTIONALLY DELETED]; or (B) in the event that the Net Proceeds are condemnation awards, (x) less than twenty-five percent (25%) of the Land constituting the Mortgaged Estate is taken, such Land that is taken is located along the perimeter or periphery of the Land, no portion of the Improvements is located in condemned Land, and such taking does not materially impair access to the Mortgaged Estate, or (y) Borrower complies with the provision of Section 10.1 of this Mortgage in connection with the Land taken; and (vi) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note which will be incurred with respect to the Mortgaged Estate as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower, then the Net Proceeds will be disbursed directly to Borrower.

(c) If the Net Proceeds are greater than the Net Proceeds Threshold, such Net Proceeds shall be forthwith paid to Lender to be held by Lender in a segregated interest bearing account to be made available to Borrower for the Restoration in accordance with the provisions of this Section 5.01(c) and Section 5.02. The Net Proceeds held by Lender pursuant to Section 5.01 (c) shall be made available to Borrower for payment or reimbursement of Borrower's expenses in connection with the Restoration, subject to the following conditions and subject to the disbursement provisions of Section 5.02:

(i) No Event of Default shall have occurred and be continuing under the Note, this Mortgage or any of the Other Loan Documents;

# UNOFFICIAL COPY

(ii) Lender shall, within a reasonable period of time prior to request for initial disbursement, be furnished with an estimate of the cost of the Restoration accompanied by an independent architect's certification as to such costs and appropriate plans, which cost estimate and architect's certificate shall be subject to Lender's approval, not to be unreasonably withheld or delayed;

(iii) The Net Proceeds, together with any cash or cash equivalent deposited by Borrower with Lender, are sufficient to cover the cost of the Restoration as such costs are certified by the independent architect;

(iv) [Intentionally Deleted];

(v) (A) [INTENTIONALLY DELETED]; or (B) in the event that the Net Proceeds are condemnation awards, (x) less than twenty-five percent (25%) of the Land constituting the Mortgaged Estate is taken, such Land that is taken is located along the perimeter or periphery of the Mortgaged Estate, no portion of the Improvements is located in the condemned Lands and such taking does not materially impair access to the Mortgaged Estate, or (y) Borrower complies with the provisions of Section 10.1 of this Mortgage in connection with the Land taken;

(vi) Lender shall be satisfied that any operating deficits, including all scheduled payments of principal and interest under the Note, which will be incurred with respect to the Mortgaged Estate as a result of the occurrence of any such fire or other casualty or taking, whichever the case may be, will be covered out of (1) the Net Proceeds, or (2) other funds of Borrower;

(vii) Lender shall be satisfied that, upon the completion of the Restoration, the net cash flow of the Mortgaged Estate will be restored to a level sufficient to cover all carrying costs and operating expenses of the Mortgaged Estate, including, without limitation, debt service on the Note and all escrows for insurance premiums and Tax payments for the Mortgaged Estate.

(viii) The Restoration can reasonably be completed on or before the earliest to occur of (A) six (6) months prior to the Maturity Date (as defined in the Note); (B) the earliest date required for such completion under the terms of any major leases of the Mortgaged Estate; and (C) such time as may be required under all applicable zoning laws, ordinances, rules or regulations in order to repair and restore the Mortgaged Estate to as nearly as possible the condition it was in immediately prior to such fire or other casualty or to such taking, as applicable;

(ix) The Mortgaged Estate and the use thereof after the Restoration will be in compliance with, and permitted under, all applicable zoning laws, ordinances, rules and regulations (including, without limitation, all applicable Environmental Requirements (as defined in the Environmental Indemnity)).

# UNOFFICIAL COPY

## Section 5.02 Disbursement of Net Proceeds.

(a) The Net Proceeds held by Lender until disbursed in accordance with the provisions of this Article V shall constitute additional security for the Secured Obligations. The Net Proceeds other than the Net Proceeds paid under the Policy described in Section 3.02 (a) (iii) shall be disbursed by Lender to, or as directed by, Borrower, in an amount equal to the costs actually incurred from time to time for work in place as part of the Restoration less customary retainage from time to time during the course of the Restoration, not more frequently than once per month, upon receipt of evidence satisfactory to Lender that (A) all materials installed and work and labor performed (except to the extent that they are to be paid for out of the requested disbursement) in connection with the Restoration have been paid for in full, and (B) there exist no notices of pendency, stop orders, mechanic's or materialman's liens or notices of intention to file same, or any other liens or encumbrances of any nature whatsoever on the Mortgaged Estate arising out of the Restoration which have not either been fully bonded and discharged of record or in the alternative fully insured to the satisfaction of Lender by the title company insuring the lien of this Mortgage. The Net Proceeds paid under the Policy described in Section 3.02 (a) (iii) shall be disbursed by Lender to pay for debt service under the Loan evidenced by the Note, to pay other expenses incurred by Borrower in connection with the ownership and operation of the Mortgaged Estate, and the remainder thereof, to, or as directed by, Borrower to pay for the cost of the Restoration in accordance with this Section 5.02(a). Final payment shall be made after submission to Lender of all licenses, permits, certificates of occupancy and other required approvals of governmental authorization having jurisdiction and certification from the Casualty Consultant (as defined below) of Lender that the Restoration has been fully completed.

(b) Lender shall have the use of the plans and specifications and all permits, licenses and approvals required or obtained in connection with the Restoration. The identity of the contractors, subcontractors and materialmen engaged in the Restoration, as well as the contracts under which they have been engaged shall be subject to prior review and acceptance by Lender and an independent consulting engineer selected by Lender (the "Casualty Consultant"), such acceptance not to be unreasonably withheld or delayed. All costs and expenses incurred by Lender in connection with making the Net Proceeds available for the Restoration including, without limitation, reasonable counsel fees and disbursements and the Casualty Consultant's fees, shall be paid by Borrower.

(c) If at any time the Net Proceeds or the undisbursed balance thereof shall not, in the reasonable opinion of Lender, be sufficient to pay in full the balance of the costs which are estimated by the Casualty Consultant to be incurred in connection with the completion of the Restoration, Borrower shall deposit the deficiency (the "Net Proceeds Deficiency") with Lender before any further disbursement of the Net Proceeds shall be made. The Net Proceeds Deficiency deposited with Lender shall be held by Lender and shall be disbursed for costs actually incurred in connection with the Restoration on the same conditions applicable to the disbursement of the Net Proceeds, and until so disbursed pursuant to this Article V shall constitute additional security for the Secured Obligations.



# UNOFFICIAL COPY

(d) Except upon the occurrence and continuance of an Event of Default, Borrower shall settle any insurance claims with respect to the Net Proceeds which in the aggregate are less than the Net Proceeds Threshold. Lender shall have the right to participate in and reasonably approve any settlement for insurance claims with respect to the Net Proceeds which in the aggregate are greater than the Net Proceeds Threshold. If an Event of Default shall have occurred and be continuing, Borrower hereby irrevocably empowers Lender, in the name of Borrower as its true and lawful attorney-in-fact, to file and prosecute such claim and to collect and to make receipt for any such payment. If the Net Proceeds are received by Borrower, such Net Proceeds shall, until the completion of the related work, be held in trust for Lender and shall be segregated from other funds of Borrower to be used to pay for the cost of the Restoration in accordance with the terms hereof.

(e) The excess, if any, of the Net Proceeds and the remaining balance, if any, of the Net Proceeds Deficiency deposited with Lender after (i) the Casualty Consultant certifies to Lender that the Restoration has been completed in accordance with the provisions of this Article V, and (ii) the receipt by Lender of evidence satisfactory to Lender that all costs incurred in connection with the Restoration have been paid in full and all required permits, licenses, certificates of occupancy and other required approvals of governmental authorities having jurisdiction have been issued, shall be remitted by Lender to Borrower, provided no Event of Default shall have occurred and shall be continuing under the Note, this Mortgage or any of the Loan Documents.

(f) All Net Proceeds not required (i) to be made available for the Restoration or (ii) to be returned to Borrower as excess Net Proceeds pursuant to Section 5.02(e) shall be retained and applied by Lender toward the payment of the Debt whether or not then due and payable in such order, priority and proportions as Lender in its discretion shall deem proper or, at the discretion of Lender, the same shall be paid, either in whole or in part, to Borrower. If Lender shall receive and retain Net Proceeds, the lien of this Mortgage shall be reduced only by the amount received and retained by Lender and actually applied by Lender in reduction of the Debt without prepayment charge.

## ARTICLE VI

### Maintenance; Alterations; and Inspections

Section 6.01 Maintenance. Borrower shall: (i) maintain the Mortgaged Estate in good condition and repair, subject to ordinary wear and tear; (ii) not commit or suffer to be committed any waste of the Mortgaged Estate; (iii) comply with all laws, ordinances, regulations and restrictions now or hereafter affecting the Mortgaged Estate; and (iv) not do or permit to be done any act which would otherwise diminish the value of the Mortgaged Estate.

Section 6.02 Alterations. Borrower and its tenants shall not remove, demolish or alter any of the Improvements without the prior written approval of Lender; provided, however, that Borrower and its tenants may make interior, nonstructural alterations in an amount not to exceed \$100,000.00 in each calendar year. Borrower shall complete any construction or alteration of the Mortgaged Estate in a good and workmanlike manner.

# UNOFFICIAL COPY

Section 6.03 Inspections. Lender shall have the right at any time, upon reasonable prior notice to Borrower, to enter upon the Mortgaged Estate for the purpose of inspecting the same or to exercise any of its rights and remedies under the Loan Documents.

## ARTICLE VII Events Of Default; Remedies

Section 7.01 Events of Default. Each of the following shall be an "Event of Default" under this Mortgage:

- (a) Failure of Borrower to make any payment of principal or interest or any other payment under the Note or any other sum secured under any Loan Document within five (5) days of the date such payment shall be due and payable (calculated by including the due date);
- (b) Failure by Borrower to perform or observe any other covenant or agreement set forth in this Mortgage, and the continuance of such default for thirty (30) days after notice thereof from Lender specifying such default (provided that if such default cannot reasonably be cured within such thirty (30) day period, no Event of Default shall be deemed to exist if Borrower shall commence to cure such default within such thirty (30) day period and proceed with due diligence to complete such cure; but in any event, such default must be cured within ninety (90) days after Lender's notice);
- (c) The occurrence of a default or an "Event of Default" under any Loan Document other than this Mortgage which is not cured within the applicable cure period, if any, provided therein;
- (d) A final judgment is filed against Borrower or any guarantor of Borrower under any Loan Document which could materially impair the ability of Borrower or such guarantor to perform any of its obligations under any Loan Document, in the opinion of Lender, in its reasonable discretion;
- (e) Any representation, warranty or statement made by Borrower, any guarantor or other party under any Loan Document or any other affidavit or instrument executed or delivered with respect to the Loan shall be determined by Lender to be false or misleading in any material respect when made;
- (f) Except as provided for in Section 10.1 of this Mortgage, Borrower shall convey, alienate, transfer, mortgage, encumber, lease or assign ownership or control of all or any part of the Mortgaged Estate or any interest therein, whether legal or equitable, or in violation of Section 8.01 hereof, or Borrower shall be divested of its title or any interest in the Mortgaged Estate in any manner, whether voluntarily or involuntarily, or if there is any merger, consolidation or dissolution affecting Borrower;
- (g) Borrower (i) shall execute an assignment for the benefit of creditors or an admission in writing of Borrower's inability or failure to pay debts generally as they become due; or (ii) shall allow the levy against the Mortgaged Estate or any part thereof, of any execution, attachment, sequestration or other writ or action which is not vacated or

# UNOFFICIAL COPY

discharged within sixty (60) days after such levy; or (iii) shall allow the appointment of a receiver, trustee or custodian of Borrower or the Mortgaged Estate or any part thereof which receiver, trustee or custodian is not discharged within sixty (60) days after such appointment; or (iv) shall file as a debtor a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of, any law granting relief to any debtor, or takes any action in furtherance thereof; or (v) shall file a petition, complaint, answer or other instrument which seeks to effect a suspension of, or which has the effect of suspending, any of the rights or powers of Lender granted under any Loan Document; or (vi) shall allow the filing of a petition, case, proceeding or other action against Borrower as a debtor under any law granting relief to a debtor, or shall seek or allow appointment of a receiver, trustee, custodian or liquidator of Borrower or of the Mortgaged Estate, or any part thereof, or of any significant portion of Borrower's other property, and (x) Borrower shall admit, acquiesce in or fail to contest diligently the allegations thereof, or (y) such petition, case, proceeding or other action shall result in the entry of an order for relief or order granting the relief sought against Borrower, or (z) such petition, case, proceeding or other action is not permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days following the date of filing;

(h) The occurrence of any event described in paragraph (g) above with respect to any guarantor of the Secured Obligations or any other person or entity obligated in any manner to pay or perform the Secured Obligations;

(i) Borrower shall permit any person or entity to conduct activities on the Mortgaged Estate relating to the laundry and/or dry cleaning of clothing or other materials that are not restricted to a coin operated laundromat or a dry cleaner that is limited to the drop-off or pickup activities only (as opposed to the actual laundering or dry cleaning of clothing or other materials).

Section 7.02 Remedies. Upon the occurrence of an Event of Default, Lender shall have the right to take any one or more of the following actions:

(a) Declare all Secured Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind except as otherwise provided herein, and Borrower hereby waives notice of intent to accelerate the Secured Obligations;

(b) Commence an action to foreclose this Mortgage, appoint a receiver or specifically enforce any of the covenants of this Mortgage;

(c) Exercise any or all of the remedies available to a secured party under the UCC;

(d) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Estate or any part thereof and do any acts which it deems necessary or desirable to protect and preserve Lender's security; or

# UNOFFICIAL COPY

(e) Without notice to Borrower or anyone claiming under Borrower, and without regard to the value of the Mortgaged Estate, who may be Lender or an agent of Lender, to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Estate, and Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all of the usual powers and duties of receivers in like or similar cases and all powers and duties of Lender in case of entry as provided in Section 7.05.

If Lender shall exercise its right to declare all Secured Obligations to be due and payable, then any tender of payment after acceleration (other than pursuant to a statutory right to cure prior to foreclosure) shall be deemed to be a voluntary prepayment, and, in addition to such Secured Obligations, Borrower shall pay Lender as compensation to Lender for premature payment of the Loan, a prepayment charge which shall be equal to the prepayment charge set forth in Section 4(c) of the Note.

Section 7.03 Remedies Not Exclusive; No Waiver. Every power or remedy given Lender by any of the Loan Documents, or to which Lender otherwise may be entitled, may be exercised without prejudice to any other power or remedy, concurrently, independently, in any order or any manner from time to time and as often as may be deemed expedient by Lender. No remedy or power is intended to be exclusive of any other remedy or power, and Lender may pursue inconsistent remedies. The acceptance by Lender of the payment or performance of any Secured Obligation after an Event of Default shall not constitute a waiver of Lender's right to the prompt payment or performance of same, or to declare a default as herein provided. The acceptance by Lender of any sum in an amount less than the sum then due shall not constitute a waiver of Borrower's obligation to pay the entire sum, and such failure shall continue to be a default by Borrower notwithstanding Lender's acceptance of such partial payment. Consent by Lender to any action or inaction of Borrower which is subject to consent or approval shall not be deemed a waiver of any other or future right of Lender to consent under this Mortgage. Nothing set forth in this Mortgage shall be construed to constitute Lender as a "mortgagee in possession" in the absence of its actual taking possession of the Mortgaged Estate pursuant to the powers granted herein.

Section 7.04 Waivers. To the extent permitted by law, Borrower hereby agrees that it shall not at any time insist upon, plead, claim or take any benefit or advantage, in any way whatsoever, whether now or in the future, and Borrower hereby irrevocably waives, all of the following, whether the same exists under federal or state law, or otherwise at law or in equity:

- (a) Any right of redemption of any of the Mortgaged Estate after sale under this Mortgage;
- (b) All rights and claims it may have in or to any of the Mortgaged Estate as a "homestead exemption," or similar exemptions;
- (c) Any stay, extension or moratorium law which may extend the period for enforcement of this Mortgage or any period of redemption;

# UNOFFICIAL COPY

(d) Any and all right to require the marshaling of assets in connection with the exercise of any of Lender's remedies under this Mortgage, it being agreed that Lender shall have the right to determine, in its sole discretion, the order in which any of the Mortgaged Estate shall be sold, or the order in which any Secured Obligations are satisfied from the proceeds of such sale;

(e) Any right to trial by jury in any action, proceeding or counterclaim brought by any party against any other party on any matter arising out of or in any way connected with this Mortgage or the Loan Documents, the relationship between Borrower and Lender, or Borrower's use and occupancy of the Mortgaged Estate;

(f) Any law providing for the valuation or appraisal of all or any part of the Mortgaged Estate prior to or after any sale or sales made pursuant to this Mortgage;

(g) Personal service of process in any action or proceeding at any time commenced to enforce this Mortgage or any of the Loan Documents, Borrower hereby agreeing that such process shall be deemed properly and adequately served if sent to Borrower as provided in Section 13 of the Note;

(h) All notices not herein specifically required of Borrower's default under any of the Loan Documents, or of Lender's exercise, or election to exercise, any right, option or election under this Mortgage;

(i) Any and all technical or procedural errors, defects and imperfections in any of the Loan Documents or any proceedings instituted by Lender under this Mortgage; and

(j) Any claim or defense of Borrower contesting or challenging the personal jurisdiction of the "Courts" (as defined in Section 7.06 below), and any objection that Borrower may now or hereafter have to the laying of venue in the Courts for any suit, action or proceeding arising out of or relating to this Mortgage or any other Loan Document or any objection that such suit, action or proceeding in the Courts has been brought in an inconvenient forum.

Section 7.05 Preservation of Security. Notwithstanding the provisions of this Article VII; and in addition to any other rights or remedies of Lender under this Mortgage, after the occurrence of an Event of Default, Lender, in its sole discretion, without obligation to do so and without notice to or demand upon Borrower, and without releasing Borrower from any Secured Obligation or waiving any of Lender's rights under the Loan Documents, may cure such default of Borrower in such manner and to such extent as Lender may deem necessary to protect the security of this Mortgage. In connection therewith, without limiting its general powers, Lender shall have and is hereby given the right, but not the obligation:

(a) To enter upon and take possession of the Mortgaged Estate;

(b) To direct Borrower to terminate any management agent and employ such management agent as Lender may determine;

# UNOFFICIAL COPY

(c) To make additions, alterations, repairs and improvements to the Mortgaged Estate which Lender may consider necessary or proper to keep the Mortgaged Estate in good condition and repair;

(d) To appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Lender;

(e) To pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which, in the judgment of Lender, may affect the security of this Mortgage or be prior or superior hereto; and

(f) In exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants.

All costs and expenses incurred by Lender in connection with the exercise of the foregoing rights, including costs of evidence of title, court costs, appraisals, surveys and reasonable attorneys' fees, shall be secured by this Mortgage and be repayable by Borrower upon demand, with interest at the Default Rate.

## Section 7.06 Consent to Jurisdiction; Waiver; Other Forums.

(a) Any suit, action or proceeding arising out of or relating to this Mortgage or any other Loan Document, or any action or proceeding to execute on or otherwise enforce any judgment arising out of an Event of Default under this Mortgage or any other Loan Document can be brought by Lender in the applicable federal district court or in the state circuit court having jurisdiction for Richton Park, Cook County, Illinois (collectively, the "Courts"). By executing and delivering this Mortgage, Borrower, and its successors and assigns, hereby irrevocably and unconditionally submit to the non-exclusive personal jurisdiction of the Courts for any suit, action or proceeding arising out of or relating to this Mortgage or any other Loan Document, and irrevocably and unconditionally agree not to assert in any such proceeding before the Courts, by way of motion, as a defense or otherwise, any claim contesting or challenging the personal jurisdiction of the Courts. In addition, Borrower irrevocably waives, to the fullest extent permitted by law, (i) any objection that it may now or hereafter have to the laying of venue in the Courts for any suit, action or proceeding arising out of or relating to this Mortgage or any other Loan Document or (ii) any objection that such suit, action or proceeding brought in the Courts has been brought in an inconvenient forum.

(b) Nothing in this Section or in any other Loan Document shall be deemed to preclude Lender from bringing suit, action or proceeding arising out of or relating to this Mortgage or any other Loan Document in any other jurisdiction, provided, however, that Borrower may challenge such courts personal jurisdiction or argue that the court is not the proper venue or an incorrect forum.

# UNOFFICIAL COPY

## ARTICLE VIII General Covenants

### Section 8.01 Prohibition On Transfer.

(a) Borrower shall not, by operation of law or otherwise, sell, convey, alienate, transfer, mortgage, encumber, lease or assign ownership or control of all or any part of the Mortgaged Estate or any interest therein, whether legal or equitable (including rents, issues or profits arising therefrom), or in Borrower (including any general or limited partnership interests, shares of stock or any other equity, beneficial or ownership interest in Borrower, or beneficial interest in Borrower if Borrower is a land trust) without the prior written approval of Lender, in its sole discretion. Lender may withhold its approval for any reason or Lender may condition its approval upon an increase in the interest rate under the Note or the payment of a fee. Notwithstanding the foregoing, such approval of Lender shall not be required for any such transfer by devise or descent, or for the grant of a leasehold interest in the Mortgaged Estate of five (5) years or less upon then current market terms. Lender shall not unreasonably withhold, condition or delay its consent to the grant of a leasehold estate with a term in excess of five (5) years. Lender's consent will be deemed given if Lender fails to approve or reject the request within 10 business days of Borrower's written request for such consent.

(b) Notwithstanding the provisions of Section 8.01(a) above, in the event that Borrower desires to transfer all or any portion of the Mortgaged Estate, and provided that no Event of Default has occurred under the Loan Documents, Lender's consent to transfer of all or any portion of the Mortgaged Estate shall be subject to Lender's option to require, review and approve each of the following: (i) the creditworthiness of the proposed transferee; (ii) the management experience of the proposed transferee; (iii) [INTENTIONALLY DELETED]; (iv) the agreement of the transferee to assume and pay the Loan; (v) payment of a fee equal to one percent (1%) of the then outstanding principal balance of the Loan, plus Lender's costs (including reasonable attorney's fees) incurred in documenting such transfer; and (vi) other terms and conditions reasonably required by Lender. Further, Lender, in its sole judgment and discretion, may require principals of the transferee to deliver to Lender (i) an Environmental Indemnity Agreement on Lender's standard form (the "Replacement Environmental Indemnity Agreement"), and (ii) personal guaranties in form and substance equivalent to those delivered to Lender in connection with the original closing of this Loan (whether one or more, the "Replacement Guaranties"). Such transfer and assumption will not, however, release the Borrower or any guarantors from any liability to the Lender existing as of the date of the proposed transfer, but shall relieve the Borrower and all guarantors from any future liability arising from and after the date of such transfer, provided (i) persons or entities acceptable to Lender have executed and delivered to Lender the Replacement Environmental Indemnity Agreement and the Replacement Guaranties contemplated hereby, and (ii) Borrower has delivered to Lender an updated environmental site assessment in form and substance acceptable to Lender dated within fifteen (15) day prior to the date of transfer confirming that no adverse environmental conditions then exist with respect to the Premises. Lender shall not unreasonably withhold, condition or delay its consent should

# UNOFFICIAL COPY

Borrower seek to make a transfer in accordance with the terms and conditions set forth in this Section 8.01(b).

(c) Notwithstanding the provisions of Section 8.01(a) above, Lender will permit the following transfers of the Mortgaged Estate or of ownership within the Borrower entity without the one percent (1%) fee or change in the Loan terms provided that: (i) no Event of Default shall have occurred and be continuing under the Loan Documents or any separate documents guaranteeing Borrower's payment and performance of the Loan; (ii) Lender is promptly notified of such proposed transfer and provided with such documentation evidencing the transfer and the identity of the transferee as reasonably requested by Lender; (iii) assumption documents, if deemed necessary by Lender, in form acceptable to Lender are executed by the transferee; and (iv) Borrower reimburses Lender for all fees and expenses including reasonable attorney's fees associated with the Lender's review and documentation of the transfer:

(1) Any interest in the Borrower entity may be transferred upon the death of the holder of said interest but only by will or intestacy.

(2) Any interest in the Borrower entity may be voluntarily sold, transferred, conveyed or assigned to immediate family members or family trusts for estate planning purposes, provided that at all times there exists a minimum of fifty-one percent (51%) ownership and control of the Mortgaged Estate and the Borrower entity by parties owning interests existing as of the date of Loan closing. "Immediate family members" shall mean the spouse, children, grandchildren, siblings, and the children's siblings of each existing holder of an interest in Borrower, as of the date the Loan is made, or a trust for the benefit of one or more of any such persons.

(3) Any interest in the Borrower entity may be voluntarily sold, transferred or conveyed or assigned to another person owning an interest in Borrower as of the date of Loan closing.

(4) A transfer of the Mortgaged Estate by Borrower to a limited liability company of which Borrower or Richard L. Blaurock and Michael P. Nemlich are the sole managers.

(d) Notwithstanding the provisions of Section 8.01(a) above, and provided that no Event of Default has occurred under the Loan Documents, then Borrower may obtain secondary financing with the prior written consent of Lender and subject to the following terms and conditions: (i) Lender shall have the right to approve the secondary financing lender; (ii) Lender shall have the right to approve the terms and conditions of the secondary financing; (iii) the Loan to value ratio must not exceed, inclusive of the Secured Obligations, eighty percent (80%); and (iv) the net operating income of the Mortgage Estate, inclusive of the Secured Obligations, must equal 1.20 times the combined debt service of the Mortgaged Estate. Lender shall not unreasonably withhold, condition or delay its consent should Borrower seek to obtain secondary financing in accordance with the terms and conditions set forth in this Section 8.01(d).



# UNOFFICIAL COPY

Section 8.02 Compliance With Laws. Borrower shall promptly comply with all present and future federal, state and local laws, statutes and ordinances, and all covenants and restrictions of record affecting the Mortgaged Estate, including (i) the Occupational Safety and Health Act (OSHA), 29 U.S.C. § 651, and (ii) the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101. Borrower shall not initiate or acquiesce in any zoning reclassification or material change in the zoning affecting the Mortgaged Estate without the prior written approval of Lender.

Section 8.03 Notices. All notices, approvals or communications required or permitted to be given under this Mortgage shall be in writing and shall be deemed to have been properly given and received (i) if sent by hand delivery, then upon delivery, and (ii) if sent by overnight courier, then one (1) business day after dispatch. All such notices and communications shall be given to the parties at their respective addresses set forth in this Mortgage, or at such other addresses as either party may designate by notice in accordance with the terms of this Section.

Section 8.04 Legal Existence. If Borrower is a corporation, partnership, limited liability company or other entity, Borrower shall preserve and keep in full force and effect its legal existence and all franchises, rights and privileges under the laws of the state of its incorporation or formation and its standing and/or qualification to do business in the state in which the Mortgaged Estate is located.

Section 8.05 Liens and Subrogation Rights of Lender.

(a) Borrower shall not create, permit to accrue or suffer to exist upon any of the Mortgaged Estate, any security interest, judgment lien, mechanic's or materialman's lien, or any other lien, encumbrance, charge, retention or reservation of title, pledge, hypothecation or assignment as security, and shall promptly pay, when the same shall become due, all claims and demands of contractors, subcontractors, mechanics, materialmen, laborers and others which claims, if unpaid, might result in or permit the creation of a lien upon the Mortgaged Estate, and Borrower shall cause any such lien to be promptly paid and discharged or insured over, whether by payment, bonding or otherwise, within thirty (30) days after the filing of same.

(b) Lender, at its option, shall be subrogated, as further security for the Secured Obligations, to the lien of any lien, encumbrance or claim against the Mortgaged Estate paid out of the proceeds of the Loan, even though the same be released of record.

Section 8.06 Financial Statements. Borrower shall deliver to Lender, with reasonable promptness (and any event within ninety (90) days after the close of Borrower's fiscal year): (i) an income and expense statement with respect to the operation of the Mortgaged Estate for the immediately preceding fiscal year of Borrower, and (ii) a balance sheet and statement of profit and loss of Borrower for the immediately preceding fiscal year of Borrower. Each such operating and expense statement and financial statement shall be certified by the general partner or chief financial officer of Borrower, and shall fairly represent the financial condition of the Mortgaged Estate and of Borrower. Borrower shall also provide Lender with such additional information or records relating to the Mortgaged Estate or Borrower's financial condition as Lender may from time to time request.

# UNOFFICIAL COPY

Section 8.07 Successors. The terms and provisions of this Mortgage, and the rights and obligations of Borrower and Lender, shall inure to the benefit of and be binding upon Borrower and Lender and their successors and assigns.

Section 8.08 Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the state in which the Mortgaged Estate is located.

Section 8.09 Release of Mortgage. Upon payment in full of all of the Secured Obligations, Lender shall, upon demand of Borrower but in no event later than the time prescribed by applicable law, release the Mortgaged Estate from the lien of this Mortgage and shall furnish Borrower with a properly executed and recordable instrument evidencing such release.

Section 8.10 Estoppel Certificate. Within twenty (20) days after request by Lender, Borrower shall furnish Lender a duly acknowledged written statement, in form satisfactory to Lender, setting forth the amount of principal and interest then owing under the Note, any other charges payable under any Loan Documents, and stating whether any offsets or defenses exist to the indebtedness secured hereby.

Section 8.11 Lender's Approval. Except as otherwise specifically set forth herein, in any instance under this Mortgage in which Lender's approval shall be required, such approval may be given or withheld by Lender in Lender's sole discretion, and shall be final and conclusive. The granting of any approval by Lender shall not be deemed a waiver of such right of approval to any future matter, and all approvals by Lender must be in writing.

Section 8.12 Severability. If any term or provision of this Mortgage or the application thereof to any person or circumstance shall, to any extent, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof or any other circumstance or situation with respect to this Mortgage, and each remaining term and provision of this Mortgage shall be valid and be enforced to the fullest extent by law.

Section 8.13 Limited Liability. The liability of Borrower for the repayment of the indebtedness evidenced by the Note and the performance of the Secured Obligations shall be limited to the security given by Borrower and other parties for the Note and other Secured Obligations. Notwithstanding anything to the contrary contained herein, and notwithstanding any delay by Lender in exercising any right, remedy or privilege under any Loan Document, Borrower shall be jointly, severally and personally liable beyond the aforesaid limitation and beyond their interest in the security granted to Lender to the extent of: (i) any funds received by Borrower or any other person or entity for or on account of Borrower as security deposits under any Leases; (ii) any Rents received or held by Borrower after the occurrence of an Event of Default or any Rents received by Borrower which are prepaid more than one month in advance; (iii) all condemnation awards and payments and insurance proceeds received by Borrower that have not been applied as required by the terms of the Loan Documents; (iv) the cost to repair the Mortgaged Estate as a result of a casualty not reimbursed by insurance; (v) any liability, damage, cost or expense (including reasonable attorneys' fees) incurred by Lender as a result of any fraud, misrepresentation or bad faith by Borrower, its principals or any guarantor; (vi)

# UNOFFICIAL COPY

Borrower's obligations under the Environmental Indemnity and any liability, damage, cost or expense (including reasonable attorneys' fees) incurred by Lender under the terms of the Environmental Indemnity; (vii) any liability, damage, cost or expense (including reasonable attorneys' fees) incurred by Lender due to any waste of the Mortgaged Estate by Borrower or Borrower's representatives or tenants; (viii) the cost to correct any violations of the Americans With Disabilities Act; and (ix) any failure to pay delinquent Taxes, except for those Taxes which are payable after tender of a deed in lieu of foreclosure. Nothing contained herein shall limit or affect Lender's rights under any guaranty or other collateral which may now or hereafter be given in connection with the Note.

## ARTICLE IX

### Environmental Indemnity

Section 9.01 Hazardous Substances. Borrower shall not generate, store, use or dispose, or permit the generation, storage, use or disposal of, any "Hazardous Substance" (as defined in the Environmental Indemnity) on or about the Mortgaged Estate, unless: (i) the Hazardous Substance is used in minor amounts in the ordinary course of business of Borrower or tenants; and (ii) the Hazardous Substance is used or stored in full compliance with all applicable "Environmental Requirements" (as defined in the Environmental Indemnity). Borrower shall promptly notify Lender of any violation or suspected or alleged violation of any Environmental Requirements on or about the Mortgaged Estate of which Borrower becomes aware.

Section 9.02 Indemnity. Borrower shall indemnify, defend and save and hold harmless Lender from and against any and all losses, liabilities, damages, costs and expenses (including costs of remediation or cleanup, or defects in title to the Mortgaged Estate, and the reasonable fees and disbursements of Lender's counsel) asserted against or suffered or incurred by Lender and in any way relating to or arising out of the generation, storage, manufacturing, refining, releasing, transportation, treatment, disposal or other presence of any Hazardous Substance on or about or removed from the Mortgaged Estate, which indemnity shall survive: (i) the foreclosure of this Mortgage; (ii) any conveyance of the Mortgaged Estate in lieu of such foreclosure; (iii) the payment and performance of the Secured Obligations, (iv) the release of the lien of this Mortgage; and (v) any other transfer of Borrower's title to or interest in the Mortgaged Estate. Notwithstanding the foregoing, Borrower's indemnifications and representations shall not extend to any Hazardous Substances which first originate on the Mortgaged Estate subsequent to Lender's succession to title by virtue of a foreclosure or acceptance of a deed in lieu of foreclosure, but the burden shall be upon Borrower to conclusively prove that such origination occurred subsequent to Lender's succession to title. The terms and provisions of the Environmental Indemnity are specifically incorporated into this Article IX and made a part hereof.

## ARTICLE X

### Release Provisions

Section 10.1 Release Provision. Upon Borrower's written request (given at least thirty (30) days prior to proposed release date) during the term of the Loan, Lender will release from the lien of this Mortgage a portion of the Mortgaged Estate, including Improvements on the

# UNOFFICIAL COPY

Mortgaged Estate (the "Release Tract"); subject to and upon on the satisfaction of all of the following terms and conditions:

(a) There shall not exist as of the time of the Borrower's request for release, nor as of the time of release of the Release Tract, any default or Event of Default under any of the Loan Documents;

(b) The Mortgaged Estate not part of the Release Tract shall be known as the "Remaining Tract". The survey of the Mortgaged Estate required by the Lender as part of the closing process must clearly identify and provide a legal description for the Release Tract and Remaining Tract. The survey identifying the Release Tract and Remaining Tract shall be subject to the approval of the Lender in its sole and absolute discretion;

(c) Lender shall be provided with such evidence as it may require in order to verify that no violation of zoning or subdivision requirements with respect to the Remaining Tract shall exist upon closing of the release;

(d) Lender shall be provided with evidence satisfactory to it in its sole discretion that any and all necessary governmental approvals required for the subdivision of the Release Tract and the Remaining Tract have been obtained;

(e) Lender shall receive an endorsement to its loan title policy with respect to the Remaining Tract in form and substance satisfactory to Lender in its sole discretion insuring that the Remaining Tract has access to the same publicly dedicated streets as prior to the release of the Release Tract and amending the legal description to include only the Remaining Tract;

(f) Borrower shall make any principal reductions required by Lender in its sole discretion, and shall pay all costs, fees, and expenses incurred in connection with the release, including, without limitation, recording fees, title charges and Lender's attorney's fees;

(g) Borrower shall have created easements satisfactory to Lender in its sole discretion for utilities, signage, drainage, parking, ingress and egress and other appropriate purposes in, on and over the Release Tract for the benefit of the Remaining Tract to the extent required by Lender, and such easements shall be insured as appurtenances in Lender's loan policy via the endorsement required in item (e) above. The required easements shall include, without limitation, parking sufficient to meet all tenant lease requirements for tenants of the Remaining Tract;

(h) Borrower must obtain separate tax parcel numbers for the Release Tract and the Remaining Tract; and

(i) The parking ratio for the existing development on the Remaining Tract and any development on the Release Tract must provide for a parking ratio of not less than (a) the minimum ratio required by law to meet all code and zoning regulations, whichever is higher, or (b) the minimum number or ratio required by all tenant leases and applicable restrictions, covenants and conditions affecting the Property.

# UNOFFICIAL COPY

No partial release made hereunder or otherwise shall affect the liability of Borrower or any other person for the payment of the Loan, or affect the lien of the Mortgage upon the Remaining Tract for the outstanding principal balance of the Loan. Lender's release of the portion of Mortgaged Estate to be released: (a) shall not cure or waive, and shall not be deemed or construed to cure or waive, any Event of Default then in existence or invalidate any act done by Lender in response to any such Event of Default (including, without limitation, the delivery of any notice of default); and (b) shall not invalidate, extinguish, limit, impair, or otherwise affect any indemnity in favor of Lender with respect to the portion of Land released.

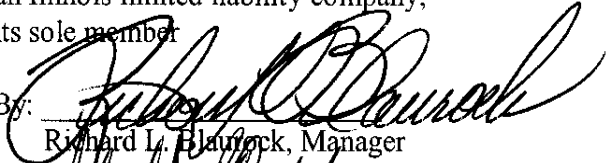
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE FOLLOWS]

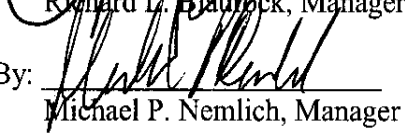
# UNOFFICIAL COPY

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly executed on the day and year set forth in the acknowledgment attached hereto and to be effective as of the date first set forth above.

SAUK TRAIL PLAZA, LLC,  
an Illinois limited liability company

By: Janmar Realty Partners, LLC,  
an Illinois limited liability company,  
its sole member

By:   
Richard L. Blaurock, Manager

By:   
Michael P. Nemlich, Manager

Acknowledgement  
Exhibit A: Legal Description

Signature Page - Mortgage

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF Illinois  
COUNTY OF Cook ) ss.

On this 8 day of March, 2007, before me, a Notary Public, in and for said County and State, personally appeared Richard L. Blaurock and Michael P. Nemlich, known to me to be the persons who executed the within instrument, and who stated that they are the Managers of Janmar Realty Partners, LLC, an Illinois limited liability company, the sole Member of Sauk Trail Plaza, LLC, an Illinois limited liability company, and that they executed the same in such capacity, for and on behalf of said limited liability company and as the free act and deed of said limited liability company.

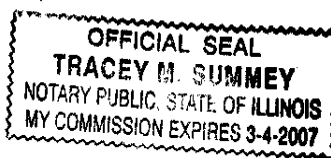
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, on the day and year last above written.

[SEAL]

Tracey M. Summey  
Notary Public

My Commission Expires:

3-4-2007



# UNOFFICIAL COPY

## EXHIBIT A

### Legal Description

LOTS 1 TO 11, BOTH INCLUSIVE, IN BLOCK 6 IN SAUK TRAIL ESTATES, A SUBDIVISION OF PART OF SECTION 26, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE EASTERLY RIGHT OF WAY OF THE ILLINOIS CENTRAL RAILROAD COMPANY, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 6, 1945, AS DOCUMENT NUMBER 13480686 IN COOK COUNTY, ILLINOIS.