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Doc#: 0721533119 Fee: \$54.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 08/03/2007 01:13 PM Pg: 1 of 16

## AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (as subsequently amended or modified, this "*Mortgage*") is made effective as of the 27th day of July, 2007, by NL PROPERTIES, LLC, an Illinois limited liability company ("*Mortgagor*"), whose mailing address is One CityPlace Drive, Suite 540, Creve Coeur, Missouri 63141, to NATIONAL CITY BANK, a national banking association, with a place of business and mailing address at 120 S. Central Avenue, Suite 900, St. Louis, Missouri 63105 ("*Mortgagee*"). The following recitals are made a material part of this Mortgage.

A. Mortgagor and Mortgagee have entered into an Amended and Restated Loan Agreement dated of even date herewith (as subsequently amended, modified, renewed and restated, the "*Loan Agreement*") pursuant to which Mortgagee has agreed to lend and Mortgagor has agreed to borrow up to Eighteen Million Sixty Thousand and 00/100 Dollars (\$18,060,000.00). Capitalized terms used and not otherwise defined herein shall have the meaning provided in the Loan Agreement.

B. Pursuant to the Loan Agreement, Mortgagor has executed and delivered to Mortgagee that amended and restated promissory note of Mortgagor dated of even date herewith (as subsequently amended, modified, renewed and restated, the "*Note*"), which Note is payable to the order of Mortgagee in the principal amount of the Loan Amount, provides for a variable rate of interest as therein set forth, and has a stated final maturity date of July 27, 2009.

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C. Mortgagor is now or hereafter may become otherwise obligated or indebted to Mortgagee, and Mortgagee may make future advances to Mortgagor, and Mortgagor may incur future obligations to Mortgagee, whether pursuant to the Note or the Loan Agreement, or pursuant to other notes, contracts, guaranties, other Loan Documents or other evidences of indebtedness or obligations now or hereafter executed by Mortgagor in favor of Mortgagee.

D. This Mortgage amends and restates in its entirety that certain Mortgage, Leasehold Mortgage, Security Agreement, Assignment of Rents and Fixture Filing dated December 8, 2006.

E. THE PARTIES INTEND THAT THIS MORTGAGE SHALL SECURE THE PAYMENT OF ANY AND ALL OTHER PRESENT AND FUTURE INDEBTEDNESS (PRINCIPAL, INTEREST, FEES AND OTHER AMOUNTS), LIABILITIES AND OBLIGATIONS OF MORTGAGOR TO MORTGAGEE ARISING UNDER THE NOTE, THE LOAN AGREEMENT AND ANY OTHER LOAN DOCUMENTS, INCLUDING ANY AND ALL AMENDMENTS, MODIFICATIONS, EXTENSIONS OR RENEWALS THEREOF, WHETHER NOW EXISTING OR MADE OR INCURRED AFTER THE DATE OF EXECUTION OF THIS MORTGAGE, IN THE MAXIMUM PRINCIPAL AMOUNT (EXCLUSIVE OF SUMS SPENT FOR THE REASONABLE PROTECTION OF THE SECURITY OF THIS MORTGAGE), EIGHTEEN MILLION SIXTY THOUSAND AND NO/100 DOLLARS (\$18,060,000.00), PURSUANT TO 735 ILCS 5/15-1302(b), ALL OF WHICH AMOUNTS SHALL BE A LIEN FROM THE TIME THIS MORTGAGE IS RECORDED.

## CONVEYANCE

NOW, THEREFORE, as security for Borrower's Obligations, and in consideration thereof, and the sum of Ten Dollars (\$10.00) in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor by these presents does hereby mortgage and warrant unto Mortgagee, and assign, transfer, grant a continuing security interest in favor of Mortgagee, and to its successors and assigns, forever, the following described real estate, chattels, real property, personal property and other properties, interests and rights (hereinafter sometimes collectively referred to as the "*Mortgaged Property*"), now or hereafter situated in the County of Cook:

A. Land. All the estate, right, title and interest of Mortgagor in, to and under, or derived from the plots, pieces and parcels of land situated in the County of Cook, more particularly described on *Exhibit A* hereto (the "*Land*"), with the tenements, hereditaments, appurtenances and all the estates and rights of Mortgagor in and to the Land and all right, title and interest, if any, of Mortgagor in and to the streets, roads, sidewalks and alleys abutting the Land, and strips and gores within or adjoining the Land, the air space and right to use said air space above the Land and any transferable development or similar rights appurtenant thereto, all rights of ingress and egress by motor vehicle to parking facilities on or within the Land, all easements now or hereafter affecting or benefiting the Land, royalties and all rights appertaining to the use and enjoyment of the Land, including alley, drainage, mineral, water, oil and gas rights.

B. Improvements. All buildings, improvements and structures at any time, now or hereafter, erected, situated or placed thereon (the "*Improvements*").

C. Fixtures. All fixtures and personal property now or at any time hereafter annexed, affixed or attached to said Land and/or the buildings, improvements or structures thereon and all replacements, additions and substitutions thereof or thereto, including (but not limited to) all apparatus, appliances,

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machinery, equipment and articles used to supply or provide, or in connection with, heat, gas, air conditioning, plumbing, water, lighting, power, elevator, sewerage, cleaning, refrigeration, cooling, ventilation and sprinkler systems, all fire prevention and extinguishing apparatus, all security and access control apparatus, and all trees, plants and landscaping (the Land, together with the Improvements and Fixtures, is referred to herein as the "*Premises*").

D. Accounts, Contract Rights, Inventory and General Intangibles; Chattel Paper. All accounts, accounts receivable, lease payments, rental payments (including without limitation, rents and royalties payable with respect to oil, gas or minerals located on or under the Land), leases, lease rights, income, issues, profits, contract rights, documents, letter of credit rights, supporting obligations, instruments, promissory notes, and other forms of obligation and other rights to the payment of money, including without limitation, third party reimbursement obligations and all goods whose sale, lease, rental or other disposition by Mortgagor have given rise to accounts and have been returned to or repossessed or stopped in transit by Mortgagor, all inventory of Mortgagor, wherever located, whether under lease, in transit, held by others for Mortgagor's account, covered by warehouse receipts, purchase orders and/or contracts, or in the possession of any lessees, renters, carriers, forwarding agents, truckers, warehousemen, vendors or other Persons, including, without limitation, all raw materials, work in process, finished goods, supplies, goods, incidentals, office supplies and packaging and shipping materials; all general intangibles of any kind or nature whatsoever, including, without limitation, all patents, trademarks, copyrights and other intellectual property, and all applications for, registrations of and licenses of the foregoing, and all computer software, product specifications, trade secrets, licenses, trade names, service marks, goodwill, commercial tort claims, payment intangibles, tax refunds and rights to tax refunds; all of Mortgagor's chattel paper of any kind or nature whatsoever, including without limitation, all leases, rental agreements, installment sale agreements, conditional sale agreements, rights to acquire land or improvements, tangible chattel paper, electronic chattel paper, and other chattel paper relating to or arising out of the purchase, sale, rental, lease or other disposition of any of the Mortgaged Property.

E. Equipment; Claims; Books and Records. All goods, machinery, equipment, motor vehicles, trucks, tractors, trailers, appliances, furniture, furnishings, tools, transformers and other tangible personal property and accessories and parts relating thereto; all rights and/or claims of any kind whatsoever relating to the Premises (including damage, secured, unsecured, lien, priority and administration claims); together with the right to take any action or file any papers or process in any court of competent jurisdiction, which may in the opinion of Mortgagee be necessary to preserve, protect, or enforce such rights or claims, including the filing of any proof of claim in any insolvency proceeding under any state, Federal or other laws and any rights, claims or awards accruing to or to be paid to Mortgagor; all books, records, computer records, reports, tests, surveys, plans, specifications, permits, licenses (to the extent such permits and licenses are assignable), computer disks, ledger cards, programs and other computer materials, customer and supplier lists, invoices, orders and documents of any kind or nature relating to the foregoing or the development or operation thereof.

F. Personal Property. All other personal property, whether now owned or hereafter acquired by Mortgagor, and used or intended to be used in the possession, occupation or enjoyment thereof, and all replacements, additions and substitutions thereof and thereto, including (but not limited to) all fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with any of the Mortgaged Property or any of the improvements now or hereafter located thereon, including without limitation any and all air conditioners, antennae, appliances, apparatus, awnings, basins, boilers, bookcases, cabinets, carpets, chairs, cleaning and janitorial equipment and supplies, coolers, compactors, computers and computer equipment and wiring, copy machines, curtains, dehumidifiers, desks, doors, drapes, drapery equipment and apparatus, ducts, dynamos, elevators, engines, equipment, escalators,

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fans, fax machines, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, monitors, motors, pipes, plumbing, printers, pumps, radiators, screens, security systems, shades, shelving, sprinklers, tile and floor coverings, tables, telephones, ventilators, wall coverings, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, owned by Mortgagor and now or hereafter used for similar purposes in or in connection with any of the Mortgaged Property, all appliances, all shelving and storage apparatus, all construction goods and materials whether or not the same have been incorporated into the buildings or improvements thereon, and all tools, supplies and equipment used in connection with construction, repair, maintenance, janitorial or groundskeeping services thereon or therefor.

G. Accessions; Products and Proceeds. All accessions to any of the foregoing and all substitutions, renewals, improvements and replacements of and additions thereto; all after-acquired property of the nature described above; all products and proceeds of any of the foregoing, including, without limitation, insurance proceeds.

TO HAVE AND TO HOLD the said Mortgaged Property with the appurtenances and fixtures thereto appertaining or belonging and every part thereto unto said Mortgagee, and unto its successors and assigns, forever, for the purposes and uses herein set forth.

All of Borrower's Obligations, including without limitation, all future advances and all future obligations, shall have the same priority, to the same extent as if the same were made or incurred on the date of this Mortgage. This Mortgage shall constitute a lien even if no amounts are outstanding under the Loan.

## ARTICLE I

1.1 Representations and Warranties. Each Mortgagor hereby represents and warrants to Mortgagee as follows:

(a) that Mortgagor is lawfully seized and possessed of a good and indefeasible title and estate in fee simple to the Land, and no other Person holds any interest of any nature in the Land, other than pursuant to any Permitted Exception, and Mortgagor will forever warrant and defend the title to the Land and every part thereof unto Mortgagee against the claims and demands of all persons whomsoever;

(b) that the Mortgaged Property and every part thereof is free and clear of any and all Liens, encumbrances and charges of every kind and character, including Liens of general and special taxes and assessments, excepting taxes for the current year which are not yet due, excepting the lien of this Mortgage, and excepting any Permitted Exceptions;

(c) that all of the Mortgaged Property which constitutes "goods" under the Uniform Commercial Code, as enacted in the State of Illinois (as subsequently amended or modified, the "UCC") is located in the State of Illinois, except transformers the Borrower has purchased and that will be temporarily stored in North Carolina, but are to be delivered to, and installed on, the Land. The location of the only office where Mortgagor keeps its books and records respecting the Mortgaged Property is at One CityPlace Drive, Suite 540, Creve Coeur, Missouri 63141. Without Mortgagee's prior written consent, Mortgagor shall not (i) change the location of its books and records respecting the Mortgaged Property, (ii) change the location of any of the Mortgaged Property from the Premises or other offices noted above, (iii) establish any additional places of business or additional locations at which any of the Mortgaged Property will be located, stored or processed, or (iv) change its legal name.



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(d) Mortgagor's legal name is the exact name set forth in the first paragraph of this Mortgage. Mortgagor has not during the past five (5) years conducted business under any name other than the Mortgagor name specified herein. Mortgagor does not now and will not at any time during the term of this Agreement conduct business under any name other than the Mortgagor name specified herein and Mortgagor will not change its name or adopt or use any fictitious business name or trade name unless Mortgagor gives Mortgagee thirty (30) days prior written notice of the same. Mortgagor authorizes Mortgagee to file any and all additional financing statements and/or amendments thereto and other agreements, documents or notices as may be required by Mortgagee in connection with any such name change or adoption of name.

1.2 Continuation of Representations and Warranties. Mortgagor hereby covenants, warrants and agrees that the representations and warranties made herein shall be and shall remain true and correct as of the date hereof and at all times thereafter so long as any part of Borrower's Obligations shall remain outstanding.

1.3 Covenants. Mortgagor hereby expressly covenants and agrees with Mortgagee that:

(a) Payment of Obligations. Mortgagor will duly pay and perform Borrower's Obligations as and when the same shall become due and payable (subject to applicable cure periods, if any), according to the terms of the Loan Documents.

(b) Due on Sale or Encumbrance. Mortgagor will not, without the prior written consent of Mortgagee (except to the extent expressly permitted in the Loan Agreement), transfer, convey or otherwise part with title to any of the Mortgaged Property, or any portion thereof or ownership interest therein, or create or permit or allow to exist or to be created any mortgage, deed of trust, pledge or other Lien or encumbrance on any of the Mortgaged Property, other than this Mortgage and the Permitted Exceptions, and Mortgagor will not suffer or permit any mechanic's or materialmen's Lien or any other Lien of any nature whatsoever to attach to any of the Mortgaged Property or to remain outstanding against the same or any part thereof. If any such Lien shall be filed against the Mortgaged Property, Mortgagor shall be obligated to promptly have such Lien removed.

(c) Insurance. Mortgagor shall at all times at the cost and expense of Mortgagor keep all of the Mortgaged Property of an insurable nature constantly insured in accordance with the terms of the Loan Agreement.

(d) Indemnity. Mortgagor will protect, indemnify, defend and hold harmless Mortgagee from and against any and all claims, causes of action, suits, liabilities, damages, losses, costs and expenses (including Attorneys' Fees), of whatever nature, which may arise or result, directly or indirectly by reason of the use or occupation of the Mortgaged Property or any part thereof or any failure by Mortgagor to comply with the covenants contained herein, except for the gross negligence or willful misconduct of Mortgagee. Such obligation shall survive any termination of this Mortgage.

(e) Repairs. Mortgagor will at all times keep and maintain or cause to be kept and maintained, the Mortgaged Property and every part thereof in good order, repair and condition, without any liability of Mortgagee to any Person for damage for failure to repair or for any other cause, and Mortgagor will promptly make all needed and proper repairs, restorations, renewals and replacements thereof, so that at all times the value of the Mortgaged Property and every part thereof shall be fully preserved and maintained,

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and Mortgagor will not cause or permit any waste on or of the Mortgaged Property or otherwise allow the Mortgaged Property, or any part thereof, to depreciate in value by any act or neglect.

(f) Compliance. Mortgagor will not use or suffer or permit to be used the Mortgaged Property or any part thereof in any manner inconsistent with the rights of Mortgagee hereunder, or in violation of the provisions of any insurance policy or any rules or regulations of insurance underwriters, and will comply with, and maintain, use and cause the Mortgaged Property to at all times be in compliance with all Laws applicable to the Mortgaged Property or to the uses or purposes thereof.

(g) Condemnation. In the event the Mortgaged Property, or any part thereof, be taken through condemnation proceedings or by virtue of the exercise of the right of eminent domain or pursuant to governmental action, any and all amounts awarded in any such condemnation proceeding for the taking of the Mortgaged Property, or any part thereof, are hereby assigned to and shall be paid to Mortgagee, and when received by Mortgagee, after deducting all reasonable charges and expenses paid or incurred in connection with the collection thereof, the same may be applied to the prepayment, or partial prepayment, of Borrower's Obligations in such order and manner as Mortgagee may elect, or, at the option of Mortgagee, the same may be applied in whole or in part to the replacement of that part of the Mortgaged Property so taken, or to the repair or restoration of that part of the Mortgaged Property not so taken.

(h) Taxes. Mortgagor hereby covenants and agrees to pay any and all taxes, assessments, Liens and other charges that may be levied or assessed against the Mortgaged Property, or any part thereof, prior to the time the same shall become delinquent, and Mortgagor shall promptly provide Mortgagee with proof of payment thereof.

(i) Change in Taxation Laws. In the event of the enactment after the date hereof of any Law of the State of Illinois, the State of Missouri or the United States of America imposing a specific tax on notes, bonds, or other evidences of indebtedness or obligations secured by a mortgage or deed of trust on real estate, or in the event the laws now in force relating to taxes on notes, mortgages, bonds, or other evidences of indebtedness or obligations secured by mortgage or deed of trust shall be in any manner changed, or in case such a tax shall be assessed under any existing Law, as the result of which Mortgagee may become chargeable with the payment of any such taxes, then and in any such event, Mortgagor covenants and agrees to pay to Mortgagee, within thirty (30) days after written notice thereof, the amount of any such tax; provided that if Mortgagee shall be required by law to pay any such tax, all moneys so expended shall be due on demand, bear interest at the Default Rate and shall be secured hereby. If Mortgagor shall fail to pay or cause to be paid or to reimburse Mortgagee for advances as aforesaid to pay any such tax or taxes, or if by such law it should be illegal for Mortgagor to pay any such tax or taxes, then all of Borrower's Obligations shall, at the option of Mortgagee, become immediately due and payable without further notice, anything herein or in the other Loan Documents to the contrary notwithstanding; provided, however, that Mortgagor shall not be required to pay any such tax in excess of an amount which when added to the interest paid by Mortgagor on the Loan would exceed the maximum lawful rate allowed in the State of Missouri or the State of Illinois.

(j) Inspections. Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Property for the purpose of inspecting the same and/or for the purpose of performing any of the acts it is authorized to perform hereunder.

(k) Title Disputes. Should Mortgagee be made defendant in any suit involving the title to any of the Mortgaged Property, or involving the validity or priority of the lien of this Mortgage, then it is agreed that in every such case an attorneys' fee in a reasonable amount shall be fixed by the court in which

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said suit may be pending, and may be adjudged in favor of the attorney or attorneys of record representing said parties, which fee shall be adjudged against Mortgagor, on motion made therein therefor as a part of the costs of such proceedings, and that such reasonable costs and expenses of said parties, shall also be fixed and adjudged as costs therein by the court, and it is agreed that all such fees, costs and expenses of every such proceeding shall be adjudged against Mortgagor, and when so adjudged shall be secured by this Mortgage.

(l) Cure Payments. If Mortgagor shall fail to pay any tax, assessment, Lien or other charge levied or assessed against the Mortgaged Property, or any part thereof, or shall fail to keep and perform any of the covenants and conditions herein contained, Mortgagee shall be privileged, but shall not be obligated, to pay any such tax, assessment, Lien, rent or other charge, to redeem such property from any sale or foreclosure for taxes or assessments or Liens, to effect and pay for insurance required hereunder, to perform or pay for any other obligations, and to make such other disbursements as are necessary or advisable in the opinion of Mortgagee to cure any default of Mortgagor hereunder or protect the lien or the rights of Mortgagee hereunder, any and all such sums of money advanced for such purposes by Mortgagee shall be deemed part of Borrower's Obligations and shall be payable on demand with interest accruing from the time so advanced at the Default Rate, and failure on the part of Mortgagor to repay the amounts so advanced on demand shall constitute an Event of Default hereunder; provided, however, nothing herein contained shall be construed as requiring Mortgagee to effect such insurance or to advance or expend money or take any action for any of the purposes aforesaid.

(m) Additional Advances and Disbursements. If a Default or an Event of Default occurs, then Mortgagee shall have the right without notice to Mortgagor to advance all or any part of amounts owing or to perform any or all required actions. No such advance or performance shall be deemed to have cured such Default or Event of Default. All sums advanced and all expenses incurred by Mortgagee in connection with such advances or actions, and all other sums advanced or expenses incurred by Mortgagee hereunder or under applicable Law (whether required or optional) shall be part of Borrower's Obligations, shall bear interest at the Default Rate and shall be secured by this Mortgage and the other Loan Documents.

(n) Rent Assignment. This instrument is intended to create an absolute and present assignment to Mortgagee of the items of Mortgaged Property constituting leases, rents, revenues, royalties, income, issues and profits, and not merely the passing of a security interest; provided, that so long as no Event of Default exists hereunder, Mortgagor shall have the right and license to collect said rents, revenues, royalties, income, issues and profits as the same shall accrue.

(o) Security Agreement. This instrument is intended to be a security agreement pursuant to the UCC for any of the items specified as part of the Mortgaged Property which, under applicable Law, may be subject to a security interest pursuant to the UCC, and Mortgagor hereby grants Mortgagee a security interest in said items, whether now owned or hereafter acquired, and including all products and proceeds of said items. This Mortgage is a "construction mortgage" under the UCC and is entitled to all of the rights and benefits granted to such instruments therein. This Mortgage shall constitute a financing statement under the UCC, and Mortgagor irrevocably authorizes Mortgagee to file this instrument, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items specified as part of the Mortgaged Property. Mortgagor is the record owner of the Mortgaged Property. The addresses of Mortgagor and Mortgagee are as set forth in the introductory paragraph to this Mortgage. Any reproduction of this instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Mortgagor irrevocably authorizes Mortgagee to file (i) any financing statements describing the Mortgaged Property, as well as

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extensions, renewals and amendments thereof, and reproductions of this instrument, in such form as Mortgagee may require to perfect a security interest with respect to said items, in all jurisdictions in which such financing statements are required to be filed to perfect the grant of the security interest in the Mortgaged Property, (ii) financing statements covering "all assets" or "all personal property" of Mortgagor, as contemplated by Section 9-504 of the UCC, and (iii) financing statements describing any statutory liens held by Mortgagee. Mortgagor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Mortgagee may reasonably require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created pursuant to the UCC any other security interest in said items, including replacements and additions thereto. Upon the occurrence of an Event of Default as herein after provided, Mortgagee shall have the remedies of a secured party under the UCC and, at Mortgagee's option, may also invoke the remedies as otherwise provided in this instrument. In exercising any of said remedies, Mortgagee may proceed against the items of real property and any items of personal property specified as part of the Mortgaged Property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the UCC or of the remedies otherwise provided in this instrument or at Law.

(p) Control Over Mortgaged Property. Mortgagor shall cooperate with Mortgagee in obtaining control with respect to any part of the Mortgaged Property consisting of (i) deposit accounts (as such term is defined in the UCC), (ii) investment property (as such term is defined in the UCC), (iii) letter of credit rights (as such term is defined in the UCC), and (iv) electronic chattel paper (as such term is defined in the UCC).

## ARTICLE II

2.1 Events of Default. An event of default (each an "*Event of Default*") shall occur under this Mortgage and each of the other Loan Documents if any one or more of the following events shall occur: (a) if an Event of Default (as defined therein) shall occur under the Loan Agreement or any of the other Loan Documents; (b) if default shall be made by Mortgagor in the due performance or observance of any covenant, agreement or condition herein contained or required to be performed or observed by Mortgagor under this Mortgage; provided, however, except for those defaults expressly stated in this Section 2.1, no Event of Default shall occur if Mortgagor cures such default within thirty (30) days after Mortgagee gives Mortgagor written Notice of Default; (c) if any representation or warranty of any Mortgagor contained herein shall prove to be in any material respect incorrect or if there shall be any breach of any such representation or warranty; (d) if the Mortgaged Property or any portion thereof or ownership interest therein is sold, transferred, assigned or in any manner conveyed without the prior written consent of Mortgagee; (e) if a default or event of default shall occur and continue beyond the applicable cure period, if any, under or within the meaning of any other deed of trust or mortgage covering any of the Mortgaged Property; or (f) if any default occurs under Section 1.1, 1.2, 1.3(a), 1.3(b), 1.3(c), 1.3(e), 1.3(f), 1.3(g), 1.3(h), 1.3(i), 1.3(o) or 1.3(p) of this Mortgage.

2.2 Remedies. If an Event of Default occurs, Mortgagee shall have the right to do one or more of the following:

(a) Mortgagee may, at its option and without notice or demand to Mortgagor except as otherwise required by applicable law, declare all of Borrower's Obligations immediately due and payable regardless of maturity.



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(b) Mortgagee may, at its option and without notice or demand to Mortgagor except as otherwise expressly required by applicable Law, take immediate possession of some or all of the Mortgaged Property, with or without appointment of a receiver or application therefor, and lease or rent the same either in its own name or in the name of Mortgagor, and receive the rents, income, issues, profits and any other revenues thereof and apply the same, after payment of (to the extent permitted by law) all costs and expenses incurred by Mortgagee in doing the foregoing, including, but not limited to, Attorneys' Fees and disbursements, to Borrower's Obligations. Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact to, after the occurrence and during the continuance of an Event of Default, manage, repair, maintain, lease and rent the Mortgaged Property and collect all rents, income, issues, profits and any other revenues thereof, with full power and authority to bring suit to collect the same and to give receipts therefor; provided, however, that Mortgagee shall not be obligated to do so. This power granted Mortgagee shall be deemed coupled with an interest and shall be irrevocable.

(c) Mortgagee may institute an action of foreclosure on this instrument or to institute other proceedings according to Law for foreclosure, and prosecute the same to judgment, execution and sale, for the collection of Borrower's Obligations.

(d) Mortgagee may exercise in respect of the personal property Mortgaged Property all of the rights and remedies available to a secured party upon default under the applicable provisions of the UCC.

(e) Mortgagee may exercise any right or remedy available to it under the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101, et seq., or any other right or remedy available to it at Law or in equity.

2.3 Appointment of Receiver. While any Event of Default exists, Mortgagee shall be entitled to the appointment of a receiver to take possession of, and to operate, maintain, and manage the Mortgaged Property and to collect the rents, income, issues, profits and revenues from the Mortgaged Property and pay the same over to Mortgagee for application to Borrower's Obligations, in such order and manner as Mortgagee elects. Mortgagee shall be entitled to the appointment of such a receiver as a matter of right without regard to the value of the Mortgaged Property as security for Borrower's Obligations or the solvency of Mortgagor or anyone else who may be liable for the payment or performance of Borrower's Obligations.

2.4 Rights Pertaining to Foreclosure. The term "*Sale*" in this Section 2.4 refers to a non-judicial sale of an item of Mortgaged Property by Mortgagee or Mortgagee's agent (a "*Non-Judicial Sale*") or a sale of an item of the Mortgaged Property made pursuant to judicial proceedings for foreclosure (a "*Judicial Sale*"), as applicable under the circumstances. The term "*Selling Official*" in this Section 2.4 refers to a trustee, Mortgagee or Mortgagee's agent (in the case of a Non-Judicial Sale) and to the public officer who conducts the sale under execution or order of the court (in the case of a Judicial Sale).

(a) Upon any Sale of any item of Mortgaged Property, it shall not be necessary for the Selling Official to have present or constructively in his possession any of the Mortgaged Property.

(b) Upon the completion of every Sale, the Selling Official shall execute and deliver to each purchaser a bill of sale or deed of conveyance, as appropriate, for the items of the

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Mortgaged Property that are sold. Mortgagor hereby grants every such Selling Official the power as the attorney-in-fact of Mortgagor to execute and deliver in Mortgagor's name all deeds, bills of sale and conveyances necessary to convey and transfer to the purchaser all of Mortgagor's rights, title and interest in the items of the Mortgaged Property that are sold. Mortgagor hereby ratifies and confirms all that its said attorney-in-fact lawfully does pursuant to such power. Nevertheless, Mortgagor, if so requested by Selling Official or by any purchaser, shall ratify any such sale by executing and delivering to such Selling Official or to such purchaser, as applicable, such deeds, bills of sale or other instruments of conveyance and transfer as may be specified in any such request.

(c) The whole of the Mortgaged Property, real, personal and mixed, may be sold in one parcel as an entirety, or the Mortgaged Property may be sold in separate parcels as may be determined by Mortgagee in its discretion. At Mortgagee's discretion, the Mortgaged Property may be sold at one or more sales without Mortgagee waiving any of its rights hereunder and without Mortgagee being deemed to have made any election of remedies.

(d) The recitals contained in any instrument of conveyance or transfer made by a Selling Official to any purchaser at any Sale shall, to the extent permitted by law, conclusively establish the truth and accuracy of the matters stated therein, including, but not limited to, the amount of Borrower's Obligations, the occurrence of an Event of Default, and the advertisement and conduct of such Sale in the manner provided herein or under applicable law. All prerequisites to such Sale shall be presumed from such recitals to have been satisfied and performed.

(e) To the extent permitted by applicable Law, every Sale shall operate to divest all rights, title and interest of Mortgagor in and to the items of the Mortgaged Property that are sold, and shall be a perpetual bar, both at Law and in equity, against Mortgagor and Mortgagor's heirs, executors, administrators, personal representatives, successors and assigns, and against everyone else claiming the item sold either from, through or under Mortgagor or Mortgagor's heirs, executors, administrators, personal representatives, successors or assigns.

(f) A receipt from any Person authorized to receive the purchase money paid at any Sale shall be sufficient discharge therefor to the purchaser. After paying such purchase money and receiving such receipt, neither such purchaser nor such purchaser's heirs, executors, administrators, personal representatives, successors or assigns shall have any responsibility or liability respecting the application of such purchase money or any loss, misapplication or non-application of any of such purchase money, or to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(g) In any Sale, Mortgagee may bid for and purchase any of the Mortgaged Property being sold, and shall be entitled, upon presentment of the relevant Loan Documents, to apply the amount of Borrower's Obligations against the purchase price for the items of the Mortgaged Property so purchased. The amount so applied shall be credited against Borrower's Obligations in the same order as provided in Section 2.5.

(h) Mortgagor shall not apply for or avail itself of any appraisal, valuation, redemption, reinstatement, stay, extension or exemption laws, or any so-called "moratorium laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor, for itself, its successors and assigns, hereby wholly waives the period of redemption and any right of redemption or reinstatement provided under any existing or future law in the event of a foreclosure of this Mortgage. Mortgagor, for itself and all who may claim

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through or under it, hereby waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Mortgagor hereby waives any order or decree of foreclosure, pursuant to rights herein granted, on behalf of Mortgagor, and each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable Law.

(i) In connection with any disposition of all or any part of the Mortgaged Property, Mortgagee may comply with any applicable Law, and such compliance will not be considered to adversely affect the commercial reasonableness of any Sale of any of the Mortgaged Property. Mortgagee, may (i) sell the Mortgaged Property without giving any warranties as to the Mortgaged Property sold, and (ii) specifically disclaim any warranties of title or the like, and no such procedure shall adversely affect the commercial reasonableness of any sale of the Mortgaged Property or any part thereof. If Mortgagee sells any of the Mortgaged Property upon credit, Mortgagor will be credited only with payments actually made by the purchaser, received by Mortgagee, and applied to Borrower's Obligations. In the event any purchaser on credit fails to pay for the Mortgaged Property so purchased, Mortgagee may resell such Mortgaged Property, and Mortgagor shall be credited with the proceeds of the sale.

2.5 Application of Sale Proceeds. The purchase money, proceeds or avails of any Sale of Mortgaged Property, together with any other sums received by Mortgagee in any proceedings for the enforcement hereof, shall, except as herein expressly provided to the contrary, be applied as follows:

(a) First, to the payment of the costs and expenses of any such Sale, including compensation to Mortgagee, its agents and counsel, and of any judicial proceeding wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee hereunder, including, without limitation, the cost of obtaining title reports and/or insurance, together with interest thereon as provided herein, and all taxes and other charges, except any taxes or other charges subject to which the Mortgaged Property shall have been sold.

(b) Second, to the payment in full of the monetary Borrower's Obligations (including principal, interest, premium and fees) in such order as Mortgagee may elect.

(c) Third, to the payment of any other sums secured hereunder or required to be paid by Mortgagor pursuant to any provision of the Loan Documents.

(d) Fourth, to the extent permitted by applicable Law, to be set aside by Mortgagee as adequate security in its judgment for the payment of sums which would have been paid by application under clauses (a) through (c) above to Mortgagee, arising out of an obligation or liability with respect to which Mortgagor has agreed to indemnify Mortgagee, but which sums are not yet due and payable or liquidated.

(e) Fifth, to the payment of any withholding tax in accordance with applicable Federal, state or local Law.

(f) Sixth, to the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

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2.6 Additional Provisions as to Remedies. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy, but every remedy herein provided shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, or by statute; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time and as often as may be deemed expedient. No delay or omission by Mortgagee to exercise any right or power arising from any default shall impair any such right or power or shall be construed to be a waiver of any default or an acquiescence therein. In case Mortgagee shall have proceeded to enforce any right under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely, then, and in such and every such case, Mortgagor shall be restored to its former positions and rights hereunder in respect of the Mortgaged Property, and all rights, remedies and powers of Mortgagee shall continue as though no such proceedings had been taken. If any additional sum or sums shall become due and owing, by Mortgagor to Mortgagee, pursuant to the provisions hereof, the affidavit of Mortgagee shall be sufficient evidence of the fact that such additional sums are secured hereby in the amount set forth in such affidavit. No waiver of any breach or default hereunder shall constitute or be construed as a waiver by Mortgagee of any subsequent breach or default or of any breach or default of any other provisions of this Mortgage. Any waiver by Mortgagee must be in writing and will not be construed as a continuing waiver.

## ARTICLE III

3.1 This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all parties claiming by, through or under Mortgagor. All covenants and agreements of Mortgagor herein shall be joint and several.

3.2 Mortgagor acknowledges and agrees that all expenses and amounts expended by Mortgagee or owed to Mortgagee under any indemnity in this Mortgage, shall be due as and when incurred, bear interest at the Default Rate and shall constitute a part of Borrower's Obligations, and all indemnities contained in this Mortgage shall apply notwithstanding any negligent conduct or omission of Mortgagee (except to the extent of gross negligence or willful misconduct on the part of Mortgagee), are in addition to any legal liability or responsibility Mortgagor otherwise has, and shall survive the foreclosure of this Mortgage and the payment and performance of Borrower's Obligations.

3.3 If all or any portion of any provision of this Mortgage or any other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

3.4 The term "Mortgagee" shall be deemed to mean and include the endorsee(s), transferee(s) or the holder(s) at the time being of the Loan Documents and/or any of Borrower's Obligations, and the successor or successors and assigns of Mortgagee, and the covenants and agreements shall bind and inure to the benefit of the heirs, executors, personal representatives, successors and assigns of Mortgagor and the endorsee(s), transferee(s), successors and assigns of Mortgagee. In the event that ownership of any of the Mortgaged Property becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage or Borrower's Obligations in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment and performance of Borrower's Obligations or being deemed a consent to such vesting.



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3.5 Any notice, demand or other communication hereunder shall be given as provided in the Loan Agreement.

3.6 All of the grants, covenants, terms, agreements, provisions and conditions herein contained shall run with the land. Time is of the essence of all Mortgagor's obligations hereunder.

3.7 The captions or headings used herein are for the convenience of the parties and are not a part of this Mortgage. This Mortgage may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

3.8 To the extent that proceeds of the Loan or advances under this Mortgage are used to pay any outstanding Lien, charge or prior encumbrance against the Mortgaged Property, Mortgagee is hereby subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, in respect of whether said liens, charges or encumbrances are released.

3.9 To the extent that Mortgagee receives any payment on account of Borrower's Obligations and any such payment(s) or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside, subordinated and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal Law, common law or equitable cause, then, to the extent of such payment(s) received, Borrower's Obligations or part thereof intended to be satisfied any and all Liens, security interests, mortgages and/or other encumbrances upon or pertaining to any assets of Mortgagor and theretofore created and/or existing in favor of Mortgagee as security for the payment of such Borrower's Obligations shall be revived and continue in full force and effect, as if such payment(s) had not been received by Mortgagee and applied on account of Borrower's Obligations.

3.10 This Mortgage cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought. To the extent permissible under applicable law, any amendments or modifications heretofore or of Borrower's Obligations shall not affect the priority of the lien of this Mortgage.

3.11 Upon the foreclosure of the lien created hereby on the Mortgaged Property, as herein provided, any Lease then existing which is subordinate or has been subordinated to this Mortgage shall be terminated as a result of such foreclosure unless Mortgagee has entered into a written nondisturbance agreement with the tenant thereunder or unless Mortgagee has subordinated, in writing, this Mortgage to such Lease. If both the landlord's and tenant's interest under any Lease which constitutes a part of the Premises shall at any time become vested in any one person, this Mortgage and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee hereunder as to each separate estate. If any Lease which is or has been subordinated to this Mortgage contains an option or right in favor of the tenant thereunder to purchase all or any portion or interest in the Mortgaged Property, such option or right shall be subordinate in all respects to this Mortgage and the rights of Mortgagee hereunder, and the exercise of any such option or right shall not affect, release or terminate this Mortgage.

3.12 This Mortgage shall be governed by, and construed in accordance with, the law of the State of Illinois.

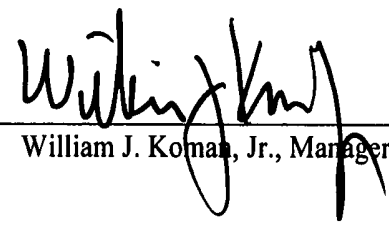
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IN WITNESS WHEREOF, Mortgagor has executed this Mortgage as of the day and year first above written.

**MORTGAGOR:**

**NL PROPERTIES, LLC**, an Illinois limited liability company

By: **CITYPLACE MEDICAL VENTURES, LLC**, a Missouri limited liability company, its authorized member

By:   
William J. Koman, Jr., Manager

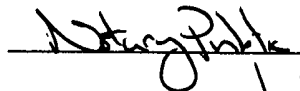
State of Missouri )

County of St. Louis )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of July, 2007 by **WILLIAM J. KOMAN**, the Manager of **CITYPLACE MEDICAL VENTURES, LLC**, a Missouri limited liability company, an authorized member of **NL PROPERTIES, LLC**, an Illinois limited liability company on behalf of such limited liability company.

 (signature)

Print Name: Garrick Hamilton

 (title)

My Commission Expires: 8/26/07

GARRICK HAMILTON  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires: Aug. 26, 2007

This instrument was prepared by, and upon recording return to, Jennifer A. Marler, Esq., Sonnenschein Nath & Rosenthal LLP, One Metropolitan Square, Suite 3000, St. Louis, Missouri 63102.

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## EXHIBIT A

### *Legal Description*

#### PARCEL 1:

LOT 1 IN DUKE REALTY CORPORATION NORTHLAKE TWO SUBDIVISION, A SUBDIVISION OF PART OF SECTIONS 30 AND 31, TOWNSHIP 40, NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

12-30-200-011-0000

#### PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN THE DECLARATION OF COVENANTS AND EASEMENTS DATED SEPTEMBER 29, 2004 AND RECORDED OCTOBER 7, 2004 AS DOCUMENT 0428118172 AND AS CREATED BY DEED FROM DUKE REALTY LIMITED PARTNERSHIP, AN INDIANA LIMITED PARTNERSHIP RECORDED JANUARY 2, 2007 AS DOCUMENT 0700233236 FOR VEHICULAR (INCLUDING TRUCK TRAFFIC) AND PEDESTRIAN INGRESS AND EGRESS TO AND FROM LOTS 1, 2 AND 3 AND THE ADJACENT PUBLIC RIGHT-OF-WAY KNOWN AS NORTHWEST AVENUE OVER THE LAND AS DEPICTED ON EXHIBIT B-1 ATTACHED THERETO AND AS AMENDED BY FIRST MODIFICATION TO DECLARATION OF EASEMENTS BY DUKE REALTY LIMITED PARTNERSHIP, AN INDIANA LIMITED PARTNERSHIP, NL QUALIFIED, LLC, A MISSOURI LIMITED LIABILITY COMPANY AND CELLI LEASING COMPANY, AN ILLINOIS CORPORATION RECORDED JANUARY 2, 2007 AS DOCUMENT NUMBER 0700233238.

#### PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 1 AS RESERVED IN DEED RECORDED OCTOBER 7, 2004 AS DOCUMENT 0428118173 FROM DUKE REALTY LIMITED PARTNERSHIP, AN INDIANA LIMITED PARTNERSHIP TO DUKE CONSTRUCTION LIMITED PARTNERSHIP FOR OVERHEAD POWER AND UNDERGROUND WATER SERVICE OVER THE FOLLOWING DESCRIBED LAND:

THAT PART OF LOT 2 IN DUKE REALTY CORPORATION NORTHLAKE TWO SUBDIVISION, BEING A SUBDIVISION OF PART OF SECTIONS 30 AND 31, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 28, 2004 AS DOCUMENT NO. 047244049, DESCRIBED BY COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 2; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, ON THE WEST LINE OF SAID LOT, 140.75 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 49.40 FEET; THENCE NORTH 89 DEGREES 43 MINUTES 31 SECONDS EAST, 22.41 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 50.16 FEET TO A POINT ON A LINE 10.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT; THENCE NORTH 89 DEGREES 59 MINUTES 01 SECONDS EAST, ON SAID PARALLEL

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LINE, 27.71 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST, 79.77 FEET; THENCE NORTH 26 DEGREES 27 MINUTES 05 SECONDS EAST, 89.11 FEET TO A POINT ON A LINE 10.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT; THENCE NORTH 89 DEGREES 59 MINUTES 01 SECONDS EAST, ON SAID PARALLEL LINE 22.34 FEET; THENCE SOUTH 26 DEGREES 27 MINUTES 05 SECONDS WEST, 111.02 FEET; THENCE SOUTH 89 DEGREES 44 MINUTES 14 SECONDS WEST, 62.70 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

## PARCEL 4:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN THE EASEMENT AGREEMENT DATED NOVEMBER 22, 2006 AND RECORDED JANUARY 2, 2007 AS DOCUMENT NUMBER 0700233237 BY DUKE REALTY LIMITED PARTNERSHIP, AN INDIANA LIMITED PARTNERSHIP AND NL QUALIFIED, LLC, A MISSOURI LIMITED LIABILITY COMPANY FOR ACCESS EASEMENT, 10 FEET IN WIDTH, FOR ACCESS, INGRESS AND EGRESS ON, OVER AND ACROSS THE DUKE PROPERTY AS SHOWN ON THE SITE PLAN ATTACHED THERETO AS EXHIBIT C AND UTILITY EASEMENT FOR THE INSTALLATION, OPERATION, UTILIZATION, REPAIR, REPLACEMENT, MAINTENANCE, REMOVAL AND USE OF UNDERGROUND UTILITIES INCLUDING, WITHOUT LIMITATION, TELEPHONE, ELECTRIC AND FIBER OPTIC LINES AND PURPOSES LOCATED THEREON WITHIN THE AREA OF THE ACCESS EASEMENT AS SHOWN ON THE SITE PLAN ATTACHED THERETO AS EXHIBIT C.