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Doc#: 0808434071 Fee: \$94.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 03/24/2008 11:32 AM Pg: 1 of 30

**THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN  
TO:**

Chuhak & Tecson, P.C.  
Attention: Anne M. Wolniakowski  
30 South Wacker Drive, Suite 2600  
Chicago, Illinois 60606

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING (this "**Mortgage**") is made as of March 24, 2008 is executed by CHICAGO TITLE LAND TRUST COMPANY, an Illinois corporation, not personally, but solely as successor trustee (the "**Mortgagor**") under a Trust Agreement dated September 28, 1983 and known as Trust No. 59301 (the "**Trust Agreement**"), to and for the benefit of NORTH SHORE COMMUNITY BANK & TRUST COMPANY, a state banking association, its successors and assigns ("**Mortgagee**").

### **RECITALS**

A. Pursuant to the Loan and Security Agreement ("Loan Agreement") of even date herewith by RUTH FELD, AS SUCCESSOR TRUSTEE TO THE GEORGE H. FELD TRUST DATED OCTOBER 4, 1979, as amended and restated from time to time ("**Borrower**") Lender, the Lender has agreed to loan to the Borrower the principal amount of Five Hundred Thousand and 00/100 Dollars (\$500,000) (the "**Loan**"). The Loan shall be evidenced by that certain Promissory Note of even date herewith (as amended, restated or replaced from time to time, the "**Note**"), executed by the Borrower and made payable to the order of the Lender in the principal amount of the Loan and due on March 31, 2015 (the "**Maturity Date**"), except as may be accelerated pursuant to the terms hereof, of the Note or Loan Agreement or of any other document or instrument now or hereafter given to evidence or secure the payment of the Note or delivered to induce the Lender to disburse the proceeds of the Loan (the Note and the Loan Agreement, together with such other documents, as amended, restated or replaced from time to time, being collectively referred to herein as the "**Loan Documents**"). Capitalized terms not defined in this Mortgage shall have the meaning ascribed to such terms in the Loan Agreement.

B. A condition precedent to the Lender's extension of the Loan to the Borrower is the execution and delivery by the Mortgagor of this Mortgage.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

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Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Mortgagee, its successors and assigns, and grants a security interest in, the following described property, real estate, rights and interests (referred to collectively herein as the “**Property**”), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

The Mortgagor and Beneficiaries hereby mortgages, grants, assigns, remises, releases, warrants and conveys to the Lender, its successors and assigns, and grants a security interest in, the following described property, rights and interests (referred to collectively herein as the “**Property**”), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

(a) The real estate located in the County of Cook, State of Illinois and legally described on Exhibit A attached hereto and made a part hereof (the “**Real Estate**”);

(b) All improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by the Mortgagor and located on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of the Mortgagor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by the Mortgagor or on its behalf (the “**Improvements**”);

(c) All easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of the Mortgagor of, in and to the same;

(d) All rents, revenues, issues, profits, proceeds, income, royalties, Letter of Credit Rights (as defined in the Uniform Commercial Code of the State of Illinois (the “**Code**”) in effect from time to time), escrows, security deposits, impounds, reserves, tax refunds and other rights to monies from the Property and/or the businesses and operations conducted by the Mortgagor or Beneficiaries thereon to be applied against the Indebtedness (as hereinafter defined); provided, however, that the Mortgagor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

(e) All interest of the Mortgagor or Beneficiaries in all leases now or hereafter on the Property, whether written or oral (each, a “**Lease**”, and collectively, the “**Leases**”), together with all security therefor and all monies payable thereunder, subject,

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however, to the conditional permission hereinabove given to the Mortgagor or Beneficiaries to collect the rentals under any such Lease;

(f) All fixtures and articles of personal property now or hereafter owned by the Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, computer hardware and software used in the operation of the Property, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by the Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute Goods (as defined in the Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in the Lender, as a Secured Party, and the Mortgagor, as Debtor, all in accordance with the Code;

(g) All of the Mortgagor's accounts now owned or hereafter created or acquired as relate to the Property and/or the businesses and operations conducted thereon, including, without limitation, all of the following now owned or hereafter created or acquired by the Mortgagor: (i) Accounts (as defined in the Code), contract rights book debts, notes, drafts, and other obligations or indebtedness owing to the Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due or to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor); (v) Securities, Investment Property, Financial Assets and Securities Entitlements (each as defined in the Code); (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and (vii) all warranties, guarantees, permits and licenses in favor of the Mortgagor with respect to the Property; and

(h) All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from

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condemnation proceeds or the taking of the Property or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Property or proceeds of any sale, option or contract to sell the Property or any portion thereof.

TO HAVE AND TO HOLD the Property, unto the Lender, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Property after the occurrence of any Event of Default; the Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois.

**FOR THE PURPOSE OF SECURING:** (i) the payment of the Loan and all interest, late charges, prepayment premium, if any, exit fee, if any, interest rate swap or hedge expenses (if any), reimbursement obligations, fees and expenses for letters of credit issued by the Lender for the benefit of the Mortgagor, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the obligations and liabilities of the Mortgagor to the Lender under and pursuant to any agreements required under the Loan Agreement or Loan Documents, (iii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Beneficiaries or Mortgagor or any other obligor to or benefiting the Lender which are evidenced or secured by or otherwise provided in the Note, this Mortgage or any of the other Loan Documents; and (iv) the reimbursement to the Lender of any and all sums incurred, expended or advanced by the Lender pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, any of the other Loan Documents or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, the **"Indebtedness"**).

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.** The Mortgagor represents, warrants and covenants that (a) the Mortgagor is the holder of the fee simple title to the Property, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of the Lender and as otherwise described on Exhibit B attached hereto and made a part hereof (the **"Permitted Exception"**); (b) the Mortgagor has legal power and authority to mortgage and convey the Property, and (c) Borrower owns an undivided fifty percent (50%) beneficial interest and power of direction and RUTH FELD, AS TRUSTEE OF THE OF THE RUTH FELD TRUST DATED OCTOBER 4, 1979 ("Ruth's Trust") owns an undivided fifty percent (50%) beneficial interest in the Trust Agreement ("Borrower" and "Ruth's Trust" are referred to herein as "Beneficiaries"), each free from any lien, security interest, encumbrance or other right, title or interest of any other person or entity other than in favor of the Lender, and has the legal power and authority to direct the Mortgagor to mortgage and convey the Property.

2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** Mortgagor covenants that, so long as any portion of the Indebtedness remains unpaid, Mortgagor will:

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2.1 Promptly repair, restore or rebuild any Improvements now or hereafter on the Property which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose;

2.2 Keep the Property in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to Mortgagor's right to contest liens as permitted by the terms of Section 27 below);

2.3 Pay when due the Indebtedness in accordance with the terms of the Note, Loan Agreement, and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Mortgagor under the Note, this Mortgage and the other Loan Documents;

2.4 Pay when due any indebtedness which may be secured by a permitted lien or charge on the Property on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to Mortgagee (subject to Mortgagor's right to contest liens as permitted by the terms of Section 27 below);

2.5 Complete within a reasonable time any Improvements now or at any time in the process of erection upon the Property;

2.6 Obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Mortgage;

2.7 Make no material alterations in the Property or demolish any portion of the Property without Mortgagee's prior written consent, except as required by law or municipal ordinance or as set forth in the Loan Agreement;

2.8 Suffer or permit no change in the use or general nature of the occupancy of the Property, without Mortgagee's prior written consent;

2.9 Not initiate or acquiesce in any zoning reclassification with respect to the Property, without Mortgagee's prior written consent;

2.10 Provide and thereafter maintain adequate parking areas within the Property as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof;

2.11 Cause the Property at all times to be operated in compliance with all Laws.

3. **Payment of Taxes and Assessments.** Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein



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generally called "Taxes"), as set forth in the Loan Agreement, and Mortgagor will, upon written request, furnish to Mortgagee duplicate receipts therefor within ten (10) days after Mortgagee's request.

4. **Tax Deposits.** At Lender's option and after the occurrence of an Event of Default and at Mortgagee's request, Mortgagor shall deposit with Mortgagee, on the first day of each month until the Indebtedness are fully paid, a sum equal to one-twelfth (1/12th) of one hundred five percent (105%) of the most recent ascertainable annual Taxes on the Property. If requested by Mortgagee, Mortgagor shall also deposit with Mortgagee an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as estimated by Mortgagee. Such deposits are to be held without any allowance of interest and are to be used for the payment of Taxes next due and payable when they become due. So long as no Event of Default shall exist, Mortgagee shall, at its option, pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for the payment thereof. If the funds so deposited are insufficient to pay any such Taxes for any year (or installments thereof, as applicable) when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward subsequent deposits. Such deposits need not be kept separate and apart from any other funds of Mortgagee. Mortgagee, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

5. **Mortgagee's Interest In and Use of Deposits.** Upon an Event of Default, Mortgagee may, at its option, apply any monies at the time on deposit pursuant to Section 4 above to cure an Event of Default or to pay any of the Indebtedness in such order and manner as Mortgagee may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, Mortgagor shall immediately, upon demand by Mortgagee, deposit with Mortgagee an amount equal to the amount expended by Mortgagor from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to Mortgagor. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of Mortgagor. Mortgagee shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless Mortgagor, prior to an Event of Default, shall have requested Mortgagee in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. Mortgagee shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

6. **Insurance.**

6.1 Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Property insured against loss or damage by fire and such other hazards as may reasonably be required by Mortgagee and such

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other insurance as Mortgagee may from time to time reasonably require. Unless Mortgagor provides Mortgagee evidence of the insurance coverages required hereunder, Mortgagee may purchase insurance at Mortgagor's expense to cover Mortgagee's interest in the Property. The insurance may, but need not, protect Mortgagor's interest. The coverages that Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Mortgagee purchases insurance for the Property, Mortgagor will be responsible for the costs of such insurance, including, without limitation interest and any other charges which Mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Mortgagor may be able to obtain on its own.

6.2 Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to Mortgagee and such separate insurance is otherwise acceptable to Mortgagee.

6.3 In the event of loss, Mortgagor shall give prompt notice thereof to Mortgagee, which, if such loss exceeds the lesser of ten percent (10%) of the Indebtedness or \$50,000.00 ("**Threshold**"), shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses "(i)," "(ii)" and "(iii)" of the immediately succeeding sentence are not satisfied, then Mortgagee, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or less than the Threshold, (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and (iii) Mortgagee determines that the work required to complete the repair or restoration of the Property necessitated by such loss can be completed no later than six (6) months prior to the Maturity Date, then Mortgagee shall endorse to Mortgagor any such payment and Mortgagor may collect such payment directly. Mortgagee shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Mortgagee pursuant to the terms of this Section, after the payment of all of Mortgagee's expenses, either (i) on account of the Indebtedness, irrespective of whether such principal balance is then due and payable, whereupon Mortgagee may declare the whole of the balance of Indebtedness to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in Section 6.4 below; provided, however, that Mortgagee hereby agrees to permit the application of such proceeds to the restoration or repair of the damaged property, subject to the provisions of Section 6.4 below; if (i) after giving effect to any Leases which have been or could be terminated, the financial covenant(s), if any, set forth in the Note or any other Loan Document shall be satisfied, (ii) Mortgagee has received satisfactory evidence that such restoration or repair shall be completed no later than the date that is six (6) months prior to the Maturity Date, and (iii) no Event of Default, or event that with the passage of time, the giving of notice or both would constitute an Event of Default, then exists. If insurance proceeds are made available to Mortgagor by Mortgagee as hereinafter provided, Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Property so that the condition and value of the

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Property are substantially the same as the condition and value of the Property prior to being damaged or destroyed. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

6.4 If insurance proceeds are made available by Mortgagee to Mortgagor, Mortgagor shall comply with the following conditions:

(a) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Property, whether by fire or other casualty, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(b) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Property to the extent permitted in Section 6.3 above (which payment or application may be made, at Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be satisfied as to the following:

(i) No Event of Default or any event which, with the passage of time or giving of notice would constitute an Event of Default, has occurred;

(ii) Either such Improvements have been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuild the Property, free and clear of all liens, claims and encumbrances, except the lien of this Mortgage and the Permitted Exceptions, or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Property, Mortgagor has deposited with Mortgagee such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Property; and

(iii) Prior to each disbursement of any such proceeds, Mortgagee shall be furnished with a statement of Mortgagee's architect (the cost of which shall be borne by Mortgagor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Mortgagee and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Property; and Mortgagee shall be furnished with appropriate evidence of payment for labor or materials furnished to the Property, and total or partial lien waivers substantiating such payments.

(c) If Mortgagor shall fail to restore, repair or rebuild the Improvements within a time deemed satisfactory by Mortgagee, then Mortgagee, at its option, may (i) commence and perform all necessary acts to restore, repair or rebuild the Improvements for or on behalf of Mortgagor, or (ii) declare an Event of Default. If



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insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

7. **Condemnation.** If all or any part of the Property are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to Mortgagee, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor and the same shall be paid forthwith to Mortgagee. Such award or monies shall be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable and, at any time from and after the taking Mortgagee may declare the whole of the balance of the Indebtedness to be due and payable. Notwithstanding the provisions of this Section to the contrary, if any condemnation or taking of less than the entire Property occurs and provided that no Event of Default and no event or circumstance which with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and if such partial condemnation, in the reasonable discretion of Mortgagee, has no material adverse effect on the operation or value of the Property, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by Mortgagor, and Mortgagee hereby agrees that in such event it shall not declare the Indebtedness to be due and payable, if it is not otherwise then due and payable.

8. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Mortgagor or the Property, any tax is due or becomes due in respect of the execution and delivery of this Mortgage, the Note or any of the other Loan Documents, Mortgagor shall pay such tax in the manner required by any such law. Mortgagor further agrees to reimburse Mortgagee for any sum which Mortgagee may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee.

9. **Lease Assignment.** Mortgagor acknowledges that, concurrently herewith, Mortgagor has executed and delivered to Mortgagee, as additional security for the repayment of the Loan, an Assignment of Rents and Leases ("**Assignment**") pursuant to which Mortgagor has assigned to Mortgagee interests in the leases of the Property and the rents and income from the Property. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Mortgage. Mortgagor agrees to abide by all of the provisions of the Assignment.

10. **Effect of Extensions of Time and Other Changes.** If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Property or having an interest in Mortgagor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation, release or change.

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11. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (i) the deduction of any lien on the Property from the value thereof for the purpose of taxation or (ii) the imposition upon Mortgagee of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Mortgagor, or (iii) a change in the method of taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness or the holders thereof, then Mortgagor, upon demand by Mortgagee, shall pay such Taxes or charges, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the opinion of counsel for Mortgagee it is or may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may declare all of the Indebtedness to be immediately due and payable.

12. **Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.** If an Event of Default has occurred, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Property or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Property. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any Taxes referred to in Section 3 above or to protect the Property or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Loan Agreement) then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (i) sustaining the lien of this Mortgage or its priority, (ii) protecting or enforcing any of Mortgagee's rights hereunder, (iii) recovering any Indebtedness, (iv) any litigation or proceedings affecting the Note, this Mortgage, the Loan Agreement, any of the other Loan Documents or the Property, including without limitation, bankruptcy and probate proceedings, or (v) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Mortgage, the Loan Agreement, any of the other Loan Documents or the Property, shall be so much additional Indebtedness, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Interest Rate. The interest accruing under this Section 12 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional Indebtedness evidenced by the Note and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loans, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Property or any part thereof, then Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of such outstanding

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liens, charges and indebtedness, regardless of whether such liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. **Security Agreement.** Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Code with respect to (i) all sums at any time on deposit for the benefit of Mortgagor or held by Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the other Loan Documents and (ii) with respect to any personal property included in the granting clauses of this Mortgage or described on Exhibit C attached hereto, which personal property may not be deemed to be affixed to the Property or may not constitute a "fixture" (within the meaning of Section 9-102(41) of the Code) (which property is hereinafter referred to as "**Personal Property**"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "supporting obligations" (as defined in the Code) (all of such Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "**Collateral**"), and that a security interest in and to the Collateral is hereby granted to Mortgagee, and the Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Property; and the following provisions of this Section shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

13.1 Mortgagor (being the "debtor" as that term is used in the Code) is and will be the true and lawful owner of the Collateral and has rights in and the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

13.2 The Collateral is to be used by Mortgagor solely for business purposes.

13.3 The Collateral will be kept at the Real Estate and, except for Obsolete Collateral (as defined below), will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

13.4 The only persons having any interest in the Property are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted hereby.

13.5 No Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances

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benefiting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted hereby; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable. Mortgagor hereby irrevocably authorizes Mortgagee at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Mortgagor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Mortgagor is an organization, the type of organization and any organization identification number issued to Mortgagor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Mortgagor agrees to furnish any such information to Mortgagee promptly upon request. Mortgagor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Mortgagee in any jurisdiction prior to the date of this Mortgage.

13.6 Upon an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Mortgagor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Property. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Property. If Mortgagee so elects, the Property and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.



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13.7 The terms and provisions contained in this Section 13, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

13.8 This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Property is located.

13.9 To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of the Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

13.10 Mortgagor represents and warrants that:

- (a) Mortgagor is the record owner of the Property;
- (b) Mortgagor's chief executive office is located in the State of Illinois;
- (c) Mortgagor's state of formation is the State of Illinois; and
- (d) Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage.

13.11 Mortgagor agrees that:

(a) Where Collateral is in possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Mortgagee;

(b) Mortgagor will cooperate with Mortgagee in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(c) Until the Indebtedness is paid in full, Mortgagor will not change the state where it is located or change its corporate name without giving Mortgagee at least thirty (30) days' prior written notice in each instance.

## 14. Restrictions on Transfer.

14.1 Mortgagor, without the prior written consent of Mortgagee, shall not effect, suffer or permit any Prohibited Transfer (as defined in the next sentence). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of the Property or any

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part thereof or interest therein, excepting only sales or other dispositions of Collateral (“**Obsolete Collateral**”) no longer useful in connection with the operation of the Property shall constitute a “**Prohibited Transfer**” in such case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section 14 shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Property, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner’s heirs, legatees, devisees, executors, administrators, estate or personal representatives, or (iv) to leases permitted by the terms of the Loan Agreement or Loan Documents, if any.

14. In determining whether or not to make the Loan, Mortgagee evaluated the background and experience of Mortgagor and the Beneficiaries and their trustees/ beneficial owners/partners/members/officers in owning and operating property such as the Property, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Property which is Mortgagee’s security for the Note. Mortgagor and its partners/members/officers are well experienced in borrowing money and owning and operating property such as the Property, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm’s length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Mortgagee recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary junior financing placed upon the Property (i) may divert funds which would otherwise be used to pay the Note; (ii) could result in acceleration and foreclosure by any such junior encumbrances which would force Mortgagee to take measures and incur expenses to protect its security; (iii) would detract from the value of the Property should Mortgagee come into possession thereof with the intention of selling same; and (iv) would impair Mortgagee’s right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Property. In accordance with the foregoing and for the purposes of (i) protecting Mortgagee’s security, both of repayment and of value of the Property; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and collect assumption fees; and (iv) keeping the Property free of subordinate financing liens, Mortgagor agrees that if this Section 14 is deemed a restraint on alienation, that it is a reasonable one.

15. **Events of Default; Acceleration.** Each of the following shall constitute an “**Event of Default**” for purposes of this Mortgage:

15.1 The Borrower fails to pay (i) any installment of principal or interest payable pursuant to the terms of the Note and the continued non-payment for five (5) days thereafter, or (ii) any other amount payable to Lender under the Note, this Mortgage or any of the other Loan Documents within five (5) days after the date when any such payment is due in accordance with the terms hereof or thereof;

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15.2 The Mortgagor or the Borrower fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by the Mortgagor under the Note, this Mortgage or any of the other Loan Documents; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Property, and the priority, validity and enforceability of the liens created by the Mortgage or any of the other Loan Documents and the value of the Property are not impaired, threatened or jeopardized, then the Mortgagor shall have a period (the "Cure Period") of fifteen (15) days after the Mortgagor obtains actual knowledge of such failure or receives written notice of such failure to cure the same unless some different Cure Period duration is set forth in the Loan Agreement or other Loan Document;

15.3 the existence of any inaccuracy or untruth in any material respect in any certification, representation or warranty contained in this Mortgage or any of the other Loan Documents or of any statement or certification as to facts delivered to the Lender by the Mortgagor;

15.4 The Mortgagor files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of the Mortgagor or of all or any substantial part of the property of the Mortgagor, the Property or all or a substantial part of the assets of the Mortgagor are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within thirty (30) days;

15.5 the commencement of any involuntary petition in bankruptcy against the Mortgagor, or the institution against the Mortgagor of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of the Mortgagor which shall remain undismissed or undischarged for a period of sixty (60) days;

15.6 the dissolution, termination or merger of the Mortgagor or the failure of the Mortgagor to own legal title to the Real Estate;

15.7 the occurrence of an Event of Default under the Note, the Loan Agreement or any of the other Loan Documents; or

15.8 the occurrence of any default or event of default, after the expiration of any applicable periods of notice or cure, under any document or agreement evidencing or securing any other obligation or indebtedness of the Mortgagor and/or the guarantors to the Lender.

If an Event of Default occurs, the Lender may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to the Mortgagor, with interest thereon accruing from the date of such Event of Default until paid at the Default Rate.

## 16. Foreclosure; Expense of Litigation.

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16.1 When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with chapter 846 of the Illinois Compiled Statutes (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

16.2 In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Property. All expenditures and expenses of the nature mentioned in this Section and such other expenses and fees as may be incurred in the enforcement of Mortgagor's obligations hereunder, the protection of the Property and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, Loan Agreement, Loan Documents, or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Mortgagor, with interest thereon until paid at the Default Rate and shall be secured by this Mortgage.

17. **Application of Proceeds of Foreclosure Sale.** The proceeds of any foreclosure sale of the Property shall be distributed and applied in accordance with the Act and, unless otherwise specified therein, in such order as Mortgagee may determine in its sole and absolute discretion.

18. **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Property in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Property or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Property (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during such period, including, to the extent permitted by law, the right



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to lease all or any portion of the Property for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (i) the Indebtedness, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (ii) any deficiency upon a sale and deficiency.

19. **Mortgagee's Right of Possession in Case of Default.** At any time after an Event of Default has occurred, Mortgagor shall, upon demand of Mortgagee, surrender to Mortgagee possession of the Property. Mortgagee, in its discretion, may, with process of law, enter upon and take and maintain possession of all or any part of the Property, together with all documents, books, records, papers and accounts relating thereto, and may exclude Mortgagor and its employees, agents or servants therefrom, and Mortgagee may then hold, operate, manage and control the Property, either personally or by its agents. Mortgagee shall have full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Property, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Without limiting the generality of the foregoing, Mortgagee shall have full power to:

19.1 Cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;

19.2 Elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

19.3 Extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

19.4 Make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Property as Mortgagee deems are necessary;

19.5 Insure and reinsure the Property and all risks incidental to Mortgagee's possession, operation and management thereof; and

19.6 Receive all of such avails, rents, issues and profits.

20. **Application of Income Received by Mortgagee.** Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Property to the payment of or on account of the following, in such order as Mortgagee may determine:

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20.1 To the payment of the operating expenses of the Property, including cost of management and leasing thereof (which shall include compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

20.2 To the payment of taxes and special assessments now due or which may hereafter become due on the Property; and

20.3 To the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

21. **Compliance with Law.** If any provision in this Mortgage shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the section above any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of such provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

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

23. **Mortgagee's Right of Inspection.** Mortgagee and its representatives shall have the right to inspect the Property and the books and records with respect thereto at all reasonable times upon not less than twenty-four (24) hours prior notice to Mortgagor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

24. **Release Upon Payment and Discharge of Mortgagor's Indebtedness.** Mortgagee shall release this Mortgage and the lien hereof by proper instrument upon payment and discharge of all Indebtedness, including payment of all reasonable expenses incurred by Mortgagee in connection with the execution of such release.

25. **Notices.** Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or

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certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

If to Mortgagee:

North Shore Community Bank  
7800 Lincoln Avenue  
Skokie, IL 60077  
Attn: Joseph Santiago, Jr.

With a copy to:

Chuhak & Tecson, P.C.  
30 South Wacker Drive  
Suite 2600  
Chicago, Illinois 60606  
Attention: Anne M. Wolniakowski

If to Mortgagor:

\_\_\_\_\_

\_\_\_\_\_

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

26. **Waiver of Rights.** Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called Moratorium Law now or at any time hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

26.1 Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions applicable law or replacement statutes;

26.2 Mortgagor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to Mortgagee but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

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26.3 If Mortgagor is a trustee, Mortgagor represents that the provisions of this Section (including the waiver of reinstatement and redemption rights) were made at the express direction of Mortgagor's beneficiaries and the persons having the power of direction over Mortgagor, and are made on behalf of the trust estate of Mortgagor and all beneficiaries of Mortgagor, as well as all other persons mentioned above.

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

27.1 Mortgagor shall forthwith give notice of any Contested Lien to Mortgagee at the time the same shall be asserted;

27.2 Mortgagor shall either pay under protest or deposit with Mortgagee the full amount (the "**Lien Amount**") of such Contested Lien, together with such amount as Mortgagee may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Mortgagor may furnish to Mortgagee a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Mortgagee;

27.3 Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Property, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Interest Rate until paid, and payable upon demand);

27.4 Mortgagor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Mortgagor, or (ii) forthwith upon demand by Mortgagee if, in the opinion of Mortgagee, and notwithstanding any such contest, the Property shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of Mortgagee to obtain the release and discharge of such liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness bearing interest at the Default Interest Rate until paid, and payable upon demand; and provided further that Mortgagee may in such case use and apply monies deposited pursuant to this Mortgage and may demand payment upon any bond or title indemnity furnished as aforesaid.

28. **Expenses Relating to Loan Agreement, Notes and Mortgage.**

28.1 Mortgagor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Mortgage, the Loan Agreement, or any of the



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other Loan Documents, including, without limitation, Mortgagee's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Mortgage, the Loan Agreement, and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Mortgage and all federal, state, county and municipal taxes, and other taxes (provided Mortgagor shall not be required to pay any income or franchise taxes of Mortgagee), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage. Mortgagor recognizes that, during the term of this Mortgage, Mortgagee:

- (a) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Agreement or the Loan Documents or in which the Loan Agreement, Loan Documents, the Property are involved directly or indirectly;
- (b) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;
- (c) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Property, which event may or may not actually occur;
- (d) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;
- (e) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Property, the assumption of liability for any of the Indebtedness or the transfer of the Property in lieu of foreclosure; or
- (f) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

28.2 All expenses, charges, costs and fees described in this Section 28 shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with such interest, by Mortgagor forthwith upon demand.

29. **Further Instruments.** Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage, the Loan Agreement, and of the other Loan Documents.

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30. **Additional Indebtedness Secured.** All persons and entities with any interest in the Property or about to acquire any such interest should be aware that this Mortgage secures more than the stated principal amount of the Note and interest thereon; this Mortgage secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Mortgagee to operate, manage or maintain the Property or to otherwise protect the Property or the lien of this Mortgage.

31. **Indemnity.** Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) (collectively, "**Claims**") of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: (i) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (ii) the offer for sale or sale of all or any portion of the Property; and (iii) the ownership, leasing, use, operation or maintenance of the Property, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Property to Mortgagee in accordance with the terms of this Mortgage; provided, however, that Mortgagor shall not be obligated to indemnify or hold Mortgagee harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Mortgagee. All costs provided for herein and paid for by Mortgagee shall be so much additional Indebtedness and shall become immediately due and payable upon demand by Mortgagee and with interest thereon from the date incurred by Mortgagee until paid at the Default Interest Rate.

32. **Subordination of Property Manager's Lien.** Any property management agreement for the Property entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Property shall be subject and subordinate to the lien of this Mortgage and shall provide that Mortgagee may terminate such agreement at any time after the occurrence of an event of Default hereunder. Such property management agreement or a short form thereof, at Mortgagee's request, shall be recorded with the Recorder of Deeds of the county where the Property is located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Mortgagor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Mortgagee, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Mortgage.

33. **Compliance with Environmental Laws.** Mortgagor acknowledges that concurrently herewith Mortgagor has executed and delivered to Mortgagee an Environmental Indemnity Agreement ("**Indemnity**") pursuant to which Mortgagor has fully indemnified Mortgagee for certain environmental matters concerning the Property, as more particularly

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described therein. The provisions of the Indemnity are hereby incorporated herein and this Mortgage shall secure the obligations of Mortgagor thereunder. Mortgagor agrees to abide by all of the provisions of the Indemnity.

## 34. Miscellaneous.

34.1 Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee, its successors and assigns and any holder or holders, from time to time, of the Note.

34.2 Conflict. In the event of any conflict between the terms and conditions of this Mortgage and the Loan Agreement, or of any other Loan Document, the Lender shall have the right at its discretion to determine which term or condition shall govern and prevail.

34.3 Invalidity of Provisions; Governing Law. In the event that any provision of this Mortgage is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Mortgagor and Mortgagee shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Mortgage and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect. This Mortgage is to be construed in accordance with and governed by the laws of the State of Illinois.

34.4 Municipal Requirements. Mortgagor shall not by act or omission permit any building or other improvement on Property not subject to the lien of this Mortgage to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the Property or any interest therein to be so used. Similarly, no building or other improvement on the Property shall rely on any Property not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section shall be void.

34.5 Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Property having an interest in the Property prior to that of Mortgagee. The failure to join any such tenant or tenants of the Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Property, any statute or rule of law at any time existing to the contrary notwithstanding.

34.6 Option of Mortgagee to Subordinate. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to

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any and all leases of all or any part of the Property upon the execution by Mortgagee of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Property are situated.

34.7 Mortgagee in Possession. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Property by Mortgagee pursuant to this Mortgage.

34.8 Relationship of Mortgagee and Mortgagor. Mortgagee shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Mortgagor or of any lessee, operator, concessionaire or licensee of Mortgagor in the conduct of their respective businesses, and, without limiting the foregoing, Mortgagee shall not be deemed to be such partner, joint venturer, agent or associate on account of Mortgagee becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage, any of the other Loan Documents, or otherwise. The relationship of Mortgagor and Mortgagee hereunder is solely that of debtor/creditor.

34.9 Time of the Essence. Time is of the essence of the payment by Mortgagor of all amounts due and owing to Mortgagee under the Note and the other Loan Documents and the performance and observance by Mortgagor of all terms, conditions, obligations and agreements contained in this Mortgage and the other Loan Documents.

34.10 No Merger. The parties hereto intend that this Mortgage and the lien hereof shall not merge in fee simple title to the Property, and if Mortgagee acquires any additional or other interest in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

34.11 Waiver of Jury Trial. **MORTGAGOR AND MORTGAGEE (WHO HAS NOT RETAINED COUNSEL) BY ACCEPTANCE HEREOF EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST MORTGAGEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS MORTGAGE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.**

34.12 Complete Agreement. This Mortgage, the Note, the Loan Agreement and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the this Mortgage, Note, Loan Agreement, and Loan Documents



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may not be modified, altered or amended except by an agreement in writing signed by both Mortgagor and Mortgagee.

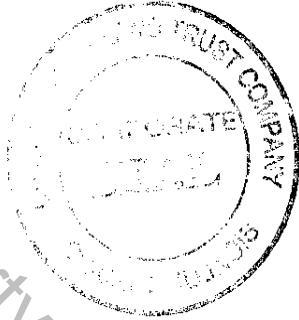
34.13 Trustee's Exculpation. This Mortgage is executed by Chicago Title Land Trust Company (the "**Trustee**"), not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument). It is expressly understood and agreed that all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by the Trustee solely in its capacity as trustee and not personally. It is further understood and agreed that the Trustee merely holds title to the Property and has no agents, employees or control over the management of the Property and no knowledge or of other factual matters except as represented to the Trustee by the Beneficiary. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this Mortgage, all such liability being expressly waived by the Lender and by every person now or hereafter claiming any right or security hereunder; and the owner of any of the Indebtedness or cause of action for breach of any warranty, indemnity, representation, covenant, undertaking or agreement accruing hereunder shall look solely to the Trust estate or the Property conveyed for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in the Note provided or by action to enforce the personal liability of any guarantor.

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IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage, Security Agreement, Assignment of Leases and Rents, and Fixture Filing the day and year first above written.

CHICAGO TITLE LAND TRUST  
COMPANY, AS SUCCESSOR  
TRUSTEE TO AMERICAN NATIONAL  
BANK AND TRUST UNDER TRUST  
AGREEMENT SEPTEMBER 28, 1983 AND  
KNOWN AS TRUST NUMBER 59301



Property of Cook County

By: *Lidia Marinca*  
Name: LIDIA MARINCA  
Title: TRUST OFFICER

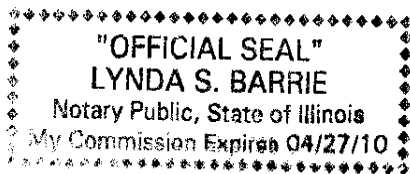
STATE OF IL )  
COUNTY OF Cook )

On this 21<sup>st</sup> day of March, 2008, before me, *the undersigned*, a Notary Public, personally appeared *\**, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to within the instrument and acknowledged to me that they executed the same in his/her capacity as an officer of Chicago Title Land Trust Company, successor trustee under a Trust Agreement dated September 28, 1983 and known as Trust No. 59301, and that by his/her signature on the instrument the person, or the entity on behalf of which the persons acted, executed the instrument for the uses and purposes therein stated.

*\** **LIDIA MARINCA**

(Seal)

*Lynda S. Barrie*  
Signature of Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION OF REAL ESTATE

LOT 7 AND THE EAST 42 FEET OF LOT 8 IN BLOCK 9 IN JOHN CULVER'S ADDITION TO NORTH EVANSTON BEING A SUBDIVISION OF LOTS 3 TO 10 AND EAST 33 FEET OF LOTS 1 AND 2 IN SMITH'S SUBDIVISION OF THE SOUTH PART OF QUILMETTE RESERVE WITH THE SOUTH 50 FEET OF THE EAST ½ OF LOT 3 AND LOTS 4 TO 9 IN BAXTERS SHARE OF SAID RESERVE IN COOK COUNTY, ILLINOIS.

PIN: 05-34-322-019-0000

Common address: 2725-27 Central Street, Evanston, Illinois

Property of Cook County Clerk's Office

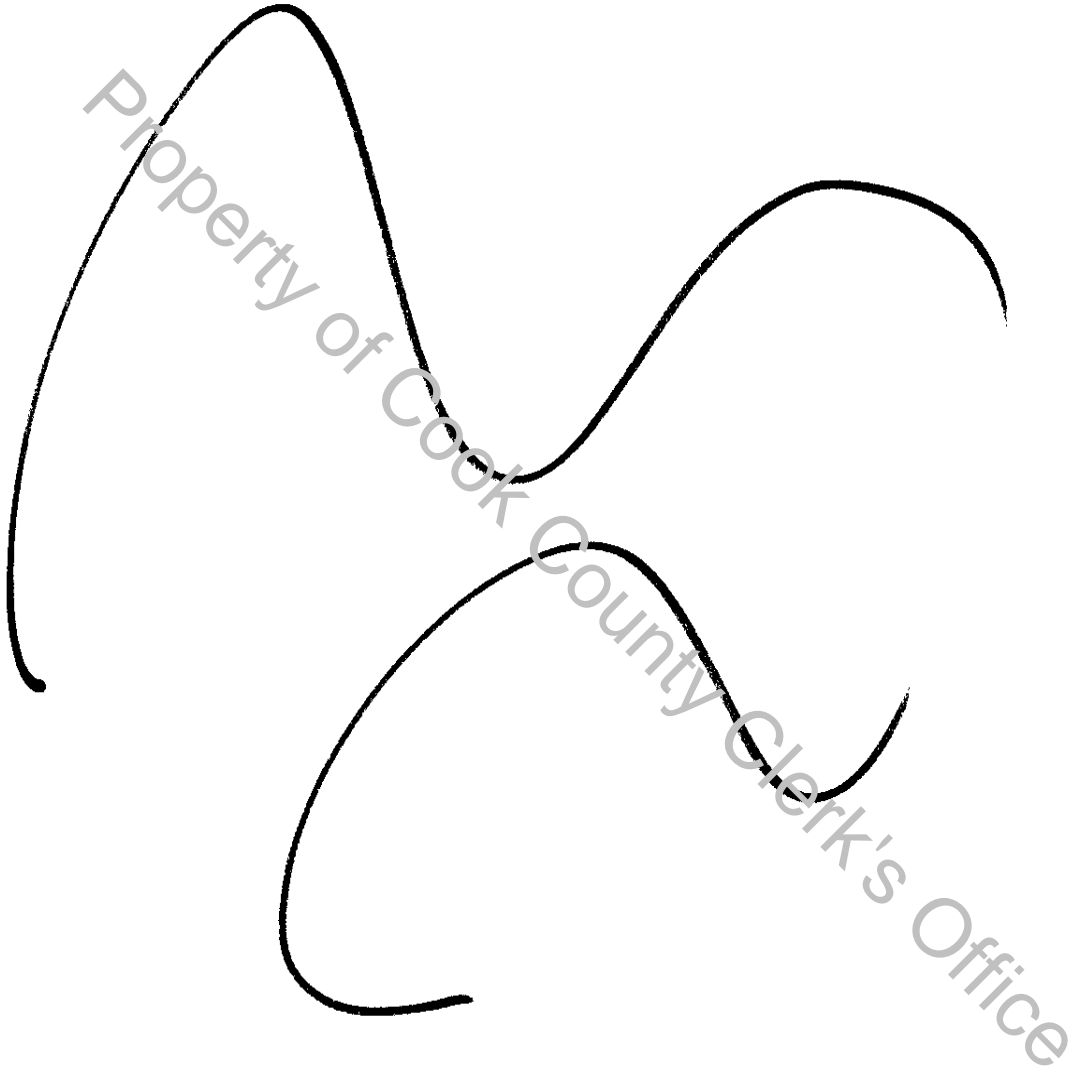
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## EXHIBIT B

### PERMITTED EXCEPTIONS

General real estate taxes not yet due and payable.

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## EXHIBIT C

### ADDITIONAL COLLATERAL

1. All personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, or used in connection with the real estate legally described on Exhibit A hereto (the "Real Estate") or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Mortgagor in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Mortgagor or on its behalf;
2. Any and all rents, revenues, issues, profits, proceeds, income, royalties, accounts including health care insurance receivables, escrows, reserves, impounds, security deposits and other rights to monies now owned or hereafter acquired and arising from or out of the Real Estate and/or the businesses and operations conducted by Mortgagor thereon.
3. All fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Real Estate or the improvements thereon, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor;
4. All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Real Estate or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Real Estate or improvements thereon or proceeds of any sale, option or contract to sell the Real Estate or improvements thereon or any portion thereof;
5. Any and all other personal property of any kind, nature or description, whether tangible or intangible, (including, without limitation, any and all goods, contract rights, franchises, licenses, permits, chattel paper (including electronic chattel paper), money, equipment, deposit accounts, documents, investment property, instruments, letter-of-credit rights, supporting obligations, and general intangibles including payment intangibles) of Mortgagor relating to or used in connection with the operation or maintenance of the Real Estate, whether now owned or hereafter acquired, or in which Mortgagor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise);

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6. Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing;

7. All of the books and records pertaining to the foregoing.

Property of Cook County Clerk's Office