

UNOFFICIAL COPY



This instrument was prepared by
and when recorded return to:

Michael J. Roth, Esq.
Bell, Boyd & Lloyd LLP
70 W. Madison
Suite 3100
Chicago, Illinois 60602-4207

Doc#: 0816534060 Fee: \$90.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/13/2008 01:02 PM Pg: 1 of 28

1) gnt # 08-0323

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of June 5, 2008, by STANDARD BANK AND TRUST COMPANY, not personally but solely as Trustee ("Trustee") under a Trust Agreement dated April 18, 2006 and known as Trust No. 19416 ("Mortgagor"), to STANDARD BANK AND TRUST COMPANY ("Mortgagee").

Recitals

A. Mortgagor is the owner of fee title to certain real estate (the "Land") located in Chicago, Cook County, Illinois, and legally described in EXHIBIT A attached hereto and made a part hereof. Daniel K. Zolkowski and Amy T. Williamson, (individually and collectively "Borrower"), are identified on an unrecorded Joinder by Beneficiary executed of even date herewith as the beneficiaries of the Trust, and Borrower are the holders of the power of direction under the Trust.

B. Mortgagee has agreed to lend Mortgagor and Borrower the principal amount of FIVE HUNDRED FORTY-NINE THOUSAND DOLLARS (\$549,000) (the "Loan") for the purpose of funding the refinance of certain loans secured by the Land.

C. The Loan is evidenced by a Mortgage Note of even date here with from Mortgagor and Borrower to Mortgagee (the "Note"), made payable to the order of and delivered to Mortgagee, in and by which Note Mortgagor and Borrower promise to pay the said principal sum of the Loan and interest at the rate and in installments as provided in the Note, with a final payment of all principal and interest due and payable on the Maturity Date (as defined in the Note), and subject to acceleration, all as provided in the Note. All of said principal and interest are made payable at such place as the holder or holders of the Note (the "Holders") may from time to time in writing appoint, and in absence of such appointment, then at the offices of Mortgagee in Hickory Hills, Illinois.

D. The Note is secured by this Mortgage and by Additional Collateral (as defined in the Note) (collectively, with all other documents and instruments executed and delivered in connection with the Loan, the "Loan Documents").

UNOFFICIAL COPY

Agreements

NOW, THEREFORE, Mortgagor, in consideration of said debt and the Recitals set forth above and to secure the timely payment of both principal and interest thereof, in accordance with the terms and provisions of the Note and in accordance with the terms, provisions and limitations of this Mortgage, and to secure the performance of the covenants and agreements herein and in the Note and the other Loan Documents to be performed by Mortgagor and Borrower, does by these presents MORTGAGE, WARRANT, GRANT, REMISE, RELEASE, ALIEN AND CONVEY AND GRANT A SECURITY INTEREST unto Mortgagee, its successors and assigns, the Land and all of its estate, right, title and interest therein, situate, lying and being in Chicago, County of Cook and State of Illinois, which is referred to as the "Real Estate";

TOGETHER with all and singular the easements, rights-of-way, licenses, privileges, tenements, appendages, hereditaments, waters, water courses, riparian rights, appurtenances, other rights, liberties and privileges thereunto belonging or in any wise appertaining, including without limitation any claim at law or in equity as well as any after-acquired title, franchise or license and the reversions and remainders thereof; and also all the rents, issues, proceeds and profits now or hereafter accruing therefrom;

TOGETHER with all rents, issues, profits, revenues, royalties, bonuses, receipts, rights and benefits due, payable or accruing or to accrue (including without limitation all deposits of money as advanced rent or for security) under any and all leases or subleases and renewals thereof of, or under any contracts or options for the sale of all or any part of the Real Estate (including without limitation those accruing during any period allowed by law for the redemption of the Real Estate after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness secured hereby and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee;

TOGETHER with all the estate, right, title and interest, if any, of Mortgagor (including without limitation any after-acquired title, franchise or license and the reversions and remainders thereof), in and to the land lying within any alley, way, street, roadway, strips and gores, or beds adjoining the Real Estate;

TOGETHER with all property and rights, if any, which by the express provisions of this instrument are required to be subjected to the lien hereof and any additional property and rights that from time to time hereafter, by installation or writing of any kind, may be subjected to the lien hereof by Mortgagor or by anyone on the Mortgagor's behalf;

TOGETHER with all rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion with respect thereto;

TOGETHER with all buildings, structures and improvements now or hereafter erected or placed on the Real Estate, and all materials intended for construction, reconstruction, alteration

UNOFFICIAL COPY

and repair thereof, all of which materials shall be included with the Real Estate and subjected to the lien hereof immediately upon the delivery thereof to the Real Estate, and, also, together with all machinery, equipment, apparatus, goods, systems, fixtures and items of personal property of every kind and nature whatsoever, now or hereafter located in or upon or affixed to the Real Estate or the buildings or improvements located thereon and that are owned by Mortgagor, or any part thereof, and used or usable in connection with any present or future operation of the Real Estate, including without limitation all heating, lighting, incinerating, refrigerating, ventilating, air-conditioning, air-cooling, lifting, fire extinguishing, plumbing, cleaning, electrical, communication and power equipment, systems and apparatus; all gas, water and electrical equipment, systems, fixtures and apparatus; and all elevators, escalators, switchboards, computers, engines, motors, tanks, pumps, screens, storm doors, storm windows, shades, blinds, awnings, floor coverings, cabinets, partitions, conduits, ducts and compressors; and all renewals, additions and accessories to and replacements of and substitutions for each and all of the foregoing (all such machinery, equipment, apparatus, goods, systems, fixtures, renewals, additions, accessories, replacements and substitutions are a part of the Real Estate and are declared to be a portion of the security for the indebtedness secured hereby whether in single units or centrally controlled, and whether physically attached to the Real Estate or the buildings or improvements thereon, or not; and the enumeration of any specific items of property shall in no wise exclude or be held to exclude any items of property not specifically enumerated); and all revenues, receivables, income and accounts now or hereafter acquired and arising from any or all of the foregoing; and the proceeds of any and all of the foregoing;

TOGETHER with all judgments, settlements, awards and other compensation heretofore made or hereafter to be made to the present and all subsequent owners of the Real Estate for any taking by eminent domain, either permanent or temporary, of all or any part of the Real Estate or any easement or appurtenance thereof, including without limitation for severance and consequential damage therefor or for change in grade of streets. All of the foregoing enumerated in this and the preceding six paragraphs, together with the Real Estate, are herein sometimes collectively referred to as the "Premises". All of the land, estate and property hereinabove described, real, personal and mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the Real Estate and to be appropriated to the use of the Real Estate, and shall for the purposes of this Mortgage be deemed to be real estate and conveyed and mortgaged hereby. As to any of the property aforesaid which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of the Real Estate, this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as Secured Party (as said term is defined in the Uniform Commercial Code), securing said indebtedness and obligations. Mortgagor covenants that it is lawfully seized of the premises, that the same are unencumbered (except as herein provided in Section 1 below), and that it has good right, full power and lawful authority to convey and mortgage the same.

TO HAVE AND TO HOLD the premises unto the said Mortgagee, its successors and assigns, forever, for the purposes and uses herein set forth.

UNOFFICIAL COPY

REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF MORTGAGOR

The Mortgagor represents, warrants, covenants and agrees with the Mortgagee as follows:

1. Title. Trustee and Beneficiary represent and covenant, and Beneficiary warrants, that (a) Trustee is the holder of the fee simple title to all real property comprising the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of Mortgagee and as otherwise approved by Mortgagee ("Permitted Exceptions"); and (b) Trustee has legal power and authority to mortgage and convey the Premises.

2. Payment and Contest of Prior Liens, Etc.

(a) Mortgagor shall (i) keep the premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof (collectively called "Liens"), subject, however, to the rights of Mortgagee set forth in Section 2(b) hereof; (ii) pay when due any indebtedness which may be secured by a lien or charge on the premises on a parity with or superior to the lien hereof and comply with all requirements of all loan documents evidencing or securing such indebtedness, and upon request, exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (iii) complete within a reasonable time any building or buildings or any improvements now or at any time in the process of erection upon the premises (iv) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the premises and the use thereof; (v) make no material alterations in the premises except as required by law or municipal ordinance or as permitted in writing by Mortgagee; (vi) suffer or permit no change in the general nature of the occupancy of the premises, without Mortgagee's written consent; (vii) initiate or acquiesce in no zoning variation or reclassification, without Mortgagee's written consent; and (viii) pay each item of indebtedness secured by this Mortgage when due according to the terms hereof or of the Note.

(b) Anything in Section 2(a)(i) of this Mortgage to the contrary notwithstanding, Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any Lien and defer payment and discharge thereof during the pending of such contest, provided (i) that such contest shall have the effect of preventing the sale or forfeiture of the premises or any part thereof, or any interest therein, to satisfy such Lien; (ii) that, within ten days after Mortgagor has been notified of the assertion of such Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Lien; and (iii) that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Note, either (1) a sum of money which shall be sufficient in the judgment of Mortgagee to pay in full such Lien and all interest which might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional interest whenever, in the judgment of Mortgagee, such increase is advisable; or (2) an endorsement to the Title Policy, in form and substance reasonably acceptable to Mortgagee, insuring Mortgagee against any loss or damage that may be incurred as a result of or in connection with such Lien. In case Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to

UNOFFICIAL COPY

pay the amount of the Lien plus any interest finally determined to be due upon the conclusion of such contest, to the extent such amount exceeds the amount which Mortgagee will pay as provided below, or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may, at its option, apply the money so deposited in payment of or on account of such Lien, or that part thereof then unpaid, together with all interest thereon, and promptly return any remaining portion of such deposit to Mortgagor. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money on deposit. If the amount of money so deposited shall be insufficient for the payment in full of such Lien, together with all interest thereon, Mortgagor shall forthwith, upon demand, deposit with Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such Lien or that part thereof then unpaid, together with all interest thereon (provided Mortgagor is not then in default hereunder) when so requested in writing by Mortgagor and when furnished by Mortgagor with any additional funds necessary to make such payment in full and with evidence satisfactory to Mortgagee of the amount of payment to be made, and promptly return any remaining portion of such deposit to Mortgagor.

(c) Mortgagor will not cause or permit the premises to be in violation of, or do anything or permit anything to be done which will subject the premises to, any remedial obligations under any applicable environmental laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended, and the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980 and the Hazardous and Solid Waste Amendments of 1984, as amended. Mortgagor will, to the extent required by the Requirements, disclose to the applicable governmental authorities all relevant facts, conditions and circumstances, if any, pertaining to the premises and will promptly notify Mortgagee in writing of any existing, pending or, to the actual knowledge of Mortgagor, threatened investigation or inquiry by any governmental authority in connection with any applicable environmental laws. Mortgagor shall obtain any and all applicable permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures and equipment forming a part of the premises by reason of any applicable environmental laws. Mortgagor will not use the premises or allow the premises to be used in a manner which will result in the disposal or other release of any hazardous substance or solid waste on or to the premises except in minor amounts under conditions permitted by applicable laws. Minor amounts shall mean those amounts reasonably necessary in connection with the demolition, renovation, constructions, maintenance, operation or repair of the Land. Mortgagor covenants and agrees to keep or cause the premises to be kept free of any hazardous waste or contaminants and to remove the same (or if removal is prohibited by law, to take whatever action is required by law) promptly upon discovery at its sole expense. In the event Mortgagor does not remove the same or take such action within ten days after notice to Mortgagor, except in case of an emergency, in which event no notice need be given, and except where Mortgagee's security is not impaired by such default by Mortgagor and such default cannot reasonably be cured within such ten-day period, only if Mortgagor fails to commence such cure within such ten-day period, to proceed with such cure thereafter in a reasonably diligent manner and to complete such cure within 30 days after service of such notice, Mortgagee may (but shall have no obligation) either declare an Event of Default under this

UNOFFICIAL COPY

Mortgage and exercise any and all remedies hereunder or cause the premises to be freed from the hazardous waste or contaminants (or if removal is prohibited by law, to take whatever action is required by law), and the cost of the removal or such other action shall be a demand obligation owing by Mortgagor to the Mortgagee pursuant to this Mortgage and shall be subject to the provisions of Section 12 hereof. Mortgagor grants to Mortgagee and its agents and employees access to the premises and the license (but Mortgagee shall have no obligation) to remove the hazardous waste or contaminants (or if removal is prohibited by law, to take whatever action is required by law).

3. Payment of Taxes.

(a) Mortgagor shall pay before any penalty attaches all general taxes, and shall pay special taxes, special assessments, water charges, sewer service charges, and other charges against the premises when due, and shall, upon written request, furnish to Mortgagee duplicate receipts therefor. Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments provided: (i) that such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of the premises or any part thereof, or any interest therein, to satisfy the same; (ii) that Mortgagor has, before such taxes or assessments shall have been increased by any interest, penalties or costs, notified Mortgagee in writing of the intention of Mortgagor to contest the same; and (iii) that Mortgagor shall have either paid such taxes in full, under protest to the applicable Governmental Authority, or deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, and, in the absence of such appointment, then at the place of payment designated in the Note, a sum of money which (when added to funds, if any, then on deposit for such taxes) shall be sufficient in the judgment of Mortgagee to pay in full such contested taxes and assessments and all penalties and interest that might become due thereon, and shall keep on deposit an amount so sufficient at all times, increasing such amount to cover additional penalties and interest whenever, in the judgment of Mortgagee, such increase is necessary. In lieu of such deposit, Mortgagor may deliver to Mortgagee an endorsement to the Title Policy, in form and substance reasonably acceptable to Mortgagee, insuring Mortgagee against any loss or damage that may be incurred as a result of or in connection with such taxes. In case Mortgagor shall fail to prosecute such objections with reasonable diligence or shall fail to maintain sufficient funds on deposit as hereinabove provided, Mortgagee may at its option apply the money so deposited in payment of or on account of such taxes and assessments, or that part thereof then unpaid, together with all penalties and interest thereon, and promptly return any remaining portion of such deposit to Mortgagor. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money on deposit. If the amount of the money so deposited shall be insufficient for the payment in full of such taxes and assessments, together with all penalties and interest thereon, Mortgagor shall forthwith upon demand either (i) deposit with Mortgagee a sum which when added to the funds then on deposit shall be sufficient to make such payment in full, or (ii) in case Mortgagee shall have applied funds on deposit on account of such taxes and assessments, restore said deposit to a sufficient amount. Mortgagee shall, upon the final disposition of such contest, apply the money so deposited in full payment of such taxes and assessments or that part thereof then unpaid, together with all penalties and interest thereon (provided Mortgagor is not then in default) when so requested in writing by Mortgagor and furnished with any additional funds necessary to make such payment in full and with an official bill for such taxes.

UNOFFICIAL COPY

(b) Upon request by Mortgagee, Mortgagor shall deposit with Mortgagee on the first day of each month until the indebtedness secured by this Mortgage is fully paid a sum equal to one-twelfth of the last total annual taxes and assessments for the last ascertainable year (general and special) on the Premises (unless said taxes are based upon assessments which exclude the improvements or any part thereof now constructed, or to be constructed, in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed). All such deposits are to be held in an interest-bearing account and are to be used for the payment of taxes and assessments (general and special) on said Premises next due and payable when they become due. All interest on such deposits shall be used for payment of taxes and assessments in accordance with this Section 3(b). If the funds so deposited are insufficient to pay any such taxes or assessments (general and special) for any year when the same shall become due and payable, Mortgagor shall within ten days after receipt of demand therefor, deposit such additional funds as may be necessary to pay such taxes and assessments (general and special) in full.

4. Mortgage as Fixture Filing Financing Statement. This Mortgage is intended to serve as a fixture filing with respect to personal property and fixtures described in this Mortgage pursuant to the terms of the applicable provisions of the Uniform Commercial Code of the State of Illinois in effect from time to time. The filing is to be recorded with the Recorder of Deeds of Cook County, Illinois. In that regard, the following information is provided:

Name of Debtor:	STANDARD BANK AND TRUST COMPANY, not personally but solely as Trustee under a Trust Agreement dated April 18, 2006 and known as Trust No. 19416
Type of Organization:	Land Trust
State of Organization:	Illinois
Organizational Number:	N/A
Address of Debtor:	7800 W. 95th Street, Hickory Hills, IL 60457
Name of Secured Party:	STANDARD BANK AND TRUST COMPANY
Address of Secured Party:	10635 S. Ewing Avenue, Chicago, IL 60617

5. Insurance Coverages.

(a) Mortgagor will, at its expense, maintain the following insurance during the term of the Loan:

(i) comprehensive all risk insurance on the premises and all personal property therein, including contingent liability from operation of building laws, demolition costs and increased cost of construction endorsements, in each case (1) in an amount equal to 100% of the "Full Replacement Cost," which for purposes of this Mortgage shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation, but the amount shall in no event be less than the aggregate outstanding principal balance of the Note; (2) containing an agreed amount endorsement with respect to the premises and personal property, waiving all co-insurance provisions, (3) providing for no

UNOFFICIAL COPY

deductible in excess of \$50,000; and (4) containing an "Ordinance or Law Coverage" or "Enforcement" endorsement if any of the premises or the use thereof shall at any time constitute legal non-conforming structures or uses. The Full Replacement Cost shall be redetermined from time to time (but not more frequently than once in any twelve (12) calendar months) at the request of Mortgagee by an appraiser or contractor designated and paid by owner and approved by Mortgagee, or by an engineer or appraiser in the regular employ of the insurer. After the first appraisal, additional appraisals may be based on construction cost indices customarily employed in the trade. No omission on the part of Mortgagee to request any such ascertainment shall relieve Mortgagor of any of its obligations under this paragraph. In addition, Mortgagor shall obtain flood hazard insurance if any portion of the premises or Building is currently or at any time in the future located in a federally designated "special flood hazard area," or as otherwise reasonably required by Mortgagee provided that such insurance shall be on terms consistent with the comprehensive all risk insurance policy required under this paragraph 5(a)(i) except that the deductible on such insurance shall not be in excess of five percent (5%) of the appraised value of the premises;

(ii) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the premises, such insurance (1) to be on the so-called "occurrence" form with a combined single limit of not less than \$2,000,000; (2) to continue at not less than the aforesaid limit until required to be changed by Mortgagee in writing by reason of changed economic conditions making such protection inadequate; and (3) to cover at least the following hazards: (A) premises and operations; (B) products and completed operations on an "if any" basis; (C) independent contractors; and (D) blanket contractual liability covering the indemnities contained in this Mortgage to the extent the same is available;

(iii) if any of the premises is subject to leases, business income and rent loss insurance (1) with loss payable to Mortgagee; (2) covering all risks required to be covered by the insurance provided for in paragraph 5(a)(i); (3) containing an extended period of indemnity endorsement which provides that after the physical loss to the premises and personal property has been repaired, the continued loss of income will be insured on a gross rental income, gross profits or extended period of indemnity form for a period of no less than twelve (12) months, and notwithstanding that the policy may expire prior to the end of such period; and (4) in an amount equal to 100% of the projected gross income from the premises for a period of twelve (12) months. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on the date hereof and at least once each year thereafter based on Mortgagee's reasonable estimate of the gross income from the premises. All insurance proceeds payable to Mortgagee pursuant to this paragraph 5(a)(iii) shall be applied by Mortgagee to the indebtedness secured hereunder from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Mortgagor of its obligations to pay the indebtedness secured hereunder on the respective dates of payment provided for in the Note except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

(iv) at all times during which construction, repairs or alterations are being made with respect to the premises, (1) owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned

UNOFFICIAL COPY

commercial general liability insurance policy; and (2) the insurance provided for in paragraph 5(a)(i) written in a so-called builder's risk completed value form (A) insuring 100% of all hard costs and 25% of all soft costs; (B) on a non-reporting basis, (C) against all risks insured against pursuant to paragraph 5(a)(i), (D) including permission to occupy the premises, and (E) with an agreed amount endorsement waiving co-insurance provisions;

(v) as to any employees of Mortgagor, and as to the contractor, workers' compensation, subject to the statutory limits of the State of Illinois and employer's liability insurance (1) with a limit per accident and per disease per employee, and (2) in an amount for disease aggregate in respect of any work or operations on or about the premises, or in connection with the premises or its operation (if applicable), in each case reasonably required by Mortgagee;

(vi) comprehensive boiler and machinery insurance, if applicable, in amounts as shall be reasonably required by Mortgagee on terms consistent with the commercial general liability insurance policy required under paragraph 5(a)(ii);

(vii) umbrella liability insurance in an amount not less than \$2,000,000.00 per occurrence on terms consistent with the commercial general liability insurance policy required under paragraph 5(a)(ii);

(viii) motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leases vehicles containing minimum limits per occurrence of \$3,000,000 including any umbrella liability coverage; and

(ix) such other insurance in such amounts as Mortgagee or Mortgagee's insurance consultant from time to time may reasonably request against such other insurance hazards which at the time are commonly insured against for property similar to the premises located in or around the region in which the premises is located

(b) All insurance provided for in paragraph 5(a) hereof shall be obtained under valid and enforceable policies (the "Policies" or in the singular, the "Policy"), and shall be subject to the approval of Mortgagee as to insurance companies, amounts, forms, deductibles, loss payees and insurers. The Policies shall be issued by financially sound and responsible insurance companies authorized to do business in the state of Illinois and approved by Mortgagee. Each insurance company must have a rating of "A" or better for claims rating ability assigned by Standard & Poor's Ratings Group (the "Rating Agency") or, if the Rating Agency does not assign a rating for such insurance company, such insurance company must have a general policy rating of A or better and a financial class of VIII or better by A.M. Best Company, Inc. (each such insurer shall be referred to below as a "Qualified Insurer"). The Policies described in paragraph 5(a)(i), (ii), (iv) and (vi) shall designate Mortgagee as loss payee. Not less than thirty (30) days prior to the expiration dates of the Policies theretofore furnished to Mortgagee pursuant to paragraph 5(a), certified copies of the Policies marked "premium paid" or accompanied by evidence satisfactory to Mortgagee of payment of the premiums due thereunder (the "Insurance Premiums"), shall be delivered by Mortgagor to Mortgagee; provided, however, that in the case of renewal Policies, Mortgagor may furnish Mortgagee with binders therefor to be followed by the original Policies when issued.

UNOFFICIAL COPY

(c) Mortgagor shall not obtain (i) any umbrella or blanket liability or casualty Policy unless, in each case, such Policy is approved in advance in writing by Mortgagee and Mortgagee's interest is included therein as provided in this Mortgage and such Policy is issued by a Qualified Insurer, or (ii) separate insurance concurrent in form or contributing in the event of loss with that required in paragraph 5(a) furnished by, or which may be reasonably required to be furnished by, Mortgagor. In such event Mortgagor shall notify Mortgagee of the same and shall cause certified copies of each Policy to be delivered as required in paragraph 5(a). Any blanket Policy shall (1) specifically allocate to the premises, on an individual basis, the amount of coverage from time to time required hereunder, or (2) be written on an occurrence basis for the coverages required hereunder with a limit per occurrence in an amount equal to the amount of coverage required hereunder and shall otherwise provide the same protection as would a separate Policy insuring the premises, on an individual basis, in compliance with the provisions of paragraph 5(a).

(d) All Policies provided for or contemplated by paragraph 5(a), except for the Policy referenced in paragraph 5(a)(v), shall name Mortgagor and Mortgagee as the insured or additional insured, as their respective interests may appear, and in the case of property damage, boiler and machinery, flood and earthquake insurance, shall contain a so-called New York standard non-contributing Mortgagee clause in favor of Mortgagee showing Mortgagee as first mortgagee, loss payee and additional insured.

(e) All Policies provided for herein shall contain clauses or endorsements to the effect that:

(i) no act or negligence of Mortgagor, or anyone acting for Mortgagor, or of any tenant under any lease or other occupant, or failure to comply with the provisions of any Policy which might otherwise result in a forfeiture of the insurance or any part thereof, shall in any way affect the validity or enforceability of the insurance insofar as Mortgagee is concerned;

(ii) the Policy shall not be materially changed (other than to increase the coverage provided thereby) or cancelled without at least 30 days' written notice to Mortgagee and any other party named therein as an insured;

(iii) each Policy shall provide that the insurers thereof shall give written notice to Mortgagee if the Policy has not been renewed thirty (30) days prior to its expiration, and

(iv) Mortgagee shall not be liable for any insurance premiums thereon or subject to any assessments thereunder.

(f) If Mortgagor fails to procure and maintain any insurance required under this Mortgage, Mortgagee may (but shall not be obligated to) upon prior written notice to Mortgagor, procure and maintain such insurance, at Mortgagor's expense, in the amounts provided above or in such lesser amounts as Mortgagee may deem appropriate, in order to protect Mortgagee's interest in the premises. Such insurance may, but need not, protect Mortgagor's interest in the premises. Such insurance purchased by Mortgagee may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the premises. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with

UNOFFICIAL COPY

evidence acceptable to Mortgagee that Mortgagor has obtained and paid for such insurance as required under this Mortgage. If Mortgagee procures and maintains such insurance, Mortgagor shall be responsible for the costs of such insurance, including interest as described in Section 12 hereof and any other charges Mortgagee may impose in connection with the placement of such insurance, until the effective date of the cancellation or expiration of such insurance. All such costs, interest and charges shall become immediately due and payable by Mortgagor and shall be secured by this Mortgage. Such costs may be more than the cost of insurance Mortgagor may be able to obtain on its own.

6. Covenant to Rebuild. Upon any loss or damage to the improvements located on the Land, Mortgagor shall immediately notify Mortgagee in writing, and the loss, if any, under each insurance policy shall be adjusted with the insurance company reasonably and in good faith by Mortgagee and Mortgagor, jointly, and all insurance proceeds shall be paid directly and solely to Mortgagee, to be held and applied by Mortgagee as hereinafter set forth. Each insurance company is authorized and directed to make such adjustment with Mortgagor and Mortgagee and payment directly and solely to Mortgagee, and the insurance policies shall so stipulate, subject to the provisions set forth below. Mortgagor and Mortgagee shall sign all receipts, vouchers and releases required by the insurance companies in respect of the foregoing. Mortgagee shall not incur any liability in connection with the adjustment or collection of insurance claims and proceeds (or the failure thereof) regardless of the cause of such failure. If any sum or sums of money are received by Mortgagee by reason of any such insurance as aforesaid (the "insurance proceeds"), Mortgagee at its sole option may elect to apply such monies in payment or reduction of the indebtedness secured hereby, whether due or not, and if the same are insufficient to pay such amount in full, then Mortgagee may at its option declare the balance remaining unpaid on the Note and this Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Note as in a case of default.

Notwithstanding the foregoing, provided:

(i) no Event of Default (as hereinafter defined), or event which with the lapse of time or the giving of notice or both shall constitute an Event of Default, has occurred and is continuing; and

(ii) the time required to complete repairs to or replacement or restoration of the premises shall not, in the reasonable estimation of Mortgagee, extend beyond the Maturity Date,

then Mortgagor shall rebuild or restore the buildings and improvements on the premises and Mortgagee shall apply the insurance proceeds to reimburse Mortgagor for the cost thereof in accordance with this Section 6.

The following provisions shall apply regardless of whether Mortgagee elects or is required to apply insurance proceeds to reimburse Mortgagor as provided above:

(a) Upon any damage to or destruction of the premises, the premises shall be restored or rebuilt so as to be of at least equal value and quality and substantially the same character as the premises were prior to such damage or destruction. In the case of loss or

UNOFFICIAL COPY

damage to buildings, structures or improvements, Mortgagor shall make emergency, permanent or temporary repairs or restore and replace the damaged or destroyed property in order to reduce or prevent further loss or so as not to impede or interfere with the normal operation of the premises.

(b) The repair or reconstruction shall be effected in accordance with the plans as approved by Mortgagee.

(c) As soon as reasonably possible after any loss, damage or destruction, Mortgagor shall furnish Mortgagee with an estimate of the cost of repairs, rebuilding and replacement (hereinafter called "restoration") prepared by an architect or other experienced construction cost estimator selected by Mortgagor and approved by Mortgagee, which approval shall not be unreasonably withheld or unduly delayed. If Mortgagee elects or is required to reimburse Mortgagor out of insurance proceeds, and the insurance proceeds in the hands of Mortgagee (after deducting all costs incurred by Mortgagee in collecting said insurance proceeds) are not sufficient to pay for the cost of restoration as so estimated, Mortgagor forthwith shall deposit with Mortgagee the amount estimated to be necessary to complete restoration, taking into account the amount of the insurance proceeds held by Mortgagee, and such amount deposited by Mortgagor shall be similarly held in trust by Mortgagee and disbursed as hereinafter provided. If Mortgagor shall fail to deposit the estimated amount necessary to complete restoration as aforesaid within thirty (30) days after receipt of said insurance proceeds, Mortgagee at its option shall have the right immediately to rescind its election, or be released from the requirement, to reimburse Mortgagor out of insurance proceeds, and to apply such proceeds to the payment of the indebtedness secured hereby, and if the same are insufficient to pay such amount in full, then Mortgagee may at its option declare the balance remaining unpaid on the Note and this Mortgage to be due and payable forthwith and avail itself of any of the remedies provided herein or in the Note as in a case of default.

(d) If Mortgagee elects or is required to reimburse Mortgagor out of insurance proceeds, and if the insurance proceeds held by Mortgagee are estimated to be sufficient to pay for the restoration or, if such proceeds are insufficient and Mortgagor has deposited with Mortgagee an additional amount sufficient to pay for the restoration, Mortgagee shall pay out from time to time, but not more frequently than monthly, as restoration progresses, the cost of such restoration work which has been completed, provided Mortgagor complies with such conditions as may be established by Mortgagee with respect to such disbursements.

Upon completion of the restoration, any monies held by Mortgagee and not required to be applied to the restoration as aforesaid shall be applied first to the payment of accrued and unpaid interest on the outstanding principal balance of the Loan, and then to the payment of the outstanding principal balance of the Loan.

(e) In case of loss after foreclosure proceedings have been instituted, the proceeds of any such insurance policy or policies, if not applied as aforesaid in rebuilding or restoring the buildings or improvements, shall be applied in payment or reduction of the indebtedness secured hereby or in payment or reduction of the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid to the owner of the equity of redemption if it shall then be entitled to the same or as

UNOFFICIAL COPY

the court may direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statute in such case made and provided, then, and in every such case, each successive redeemer may cause the preceding loss clause attached to each insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redeemer. 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 the 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 the said insurance policies.

(f) Mortgagor agrees that in the event the premises are damaged or destroyed by fire or other casualty, then Mortgagor will repair and restore the premises as provided in Section 6(a) hereof without regard to the availability or adequacy of insurance proceeds with respect to such damage, destruction or casualty. Nothing herein contained shall be deemed to excuse Mortgagor from such obligation.

7. Mortgagee's Interest In and Use of Deposits. Upon the occurrence of an Event of Default hereunder, Mortgagee may at its option, without being required to do so, apply any monies of Mortgagor at the time on deposit pursuant to any provision of this Mortgage against any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. Mortgagee will give Mortgagor notice that it has so applied money on deposit, but such notice shall not be a condition to Mortgagee's right to so apply money. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the premises. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that neither Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes and assessments or insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested said depository in writing to make application of such funds to the payment of the particular taxes or assessments or the payment of the particular insurance premiums as the case may be for payment of which they were deposited, accompanied by the bills for such taxes and assessments or insurance premiums.

8. Stamp Tax. If, by the laws of the United States of America, or of any state having jurisdiction over Mortgagor, any tax is due or becomes due in respect of the issuance of the Note, or recording of this Mortgage, Mortgagor covenants and agrees to pay such tax in the manner required by any such law. Mortgagor further covenants to hold harmless and agrees to indemnify Mortgagee, its successors or assigns, against any liability incurred by reason of the imposition of any tax on the issuance of the Note, or recording of this Mortgage.

9. Prepayment of Note. Mortgagor shall at any time and from time to time have the right to prepay the Note (in addition to the required payments) in accordance with the terms and conditions set forth in the Note.

UNOFFICIAL COPY

10. Effect of Extensions of Time and Amendments. If the payment of the indebtedness secured by this Mortgage or any part thereof be extended or varied or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the premises, shall be held to assent to such extension, variation or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding such extension, variation or release.

Any person or entity taking a junior mortgage or other lien upon the premises or any interest therein, shall take said lien subject to the rights of Mortgagee herein to amend, modify, and supplement this Mortgage, the Note, the Loan Documents, or any other document or instrument evidencing, securing, or guaranteeing the indebtedness hereby secured and securing, or guaranteeing the indebtedness hereby secured and to vary the rate of interest and the method of computing the same, and to impose additional fees and other charges, and to extend the maturity of said indebtedness, and to grant partial releases of the lien of this Mortgage, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Nothing in this Section 10 contained shall be construed as waiving any provision contained herein which provides, among other things, that it shall constitute an Event of Default if the premises be sold, conveyed, or encumbered.

11. Effect of Changes in Laws Regarding Taxation. In the event of the enactment after this date of any law of the State of Illinois deducting from the value of land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the mortgagee's interest in the premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the Holders, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (a) it might be unlawful to require Mortgagor to make such payment or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable 90 days from the giving of such notice.

12. Mortgagee's Performance of Defaulted Acts; Subrogation. In case a default hereunder shall occur and not be cured on or before the expiration of any applicable grace or cure period, Mortgagee may, but need not make any payment or perform any act herein or in any Loan Documents evidencing or securing the indebtedness secured hereby or any indebtedness secured by a prior encumbrance, required of Mortgagor, in any form and manner deemed expedient, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and, if this is a leasehold mortgage, make payments of any rents due or to become due or perform any act under any underlying lease, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale of forfeiture affecting the premises or contest any tax or assessment. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith,

UNOFFICIAL COPY

including reasonable attorneys' fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable upon demand and with interest thereon at the Default Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Should the proceeds of the Note or any part thereof, or any amount paid out or advanced hereunder by Mortgagee, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the premises or any part thereof on a parity with or prior or superior to the lien hereof, then as additional security hereunder, the 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 said outstanding liens, charges and indebtedness, however remote, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Mortgagee's Reliance on Tax Bills, Etc. Mortgagee in making any payment hereby authorized: (a) relating to taxes and assessments, 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; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted.

14. Acceleration of Indebtedness in Case of Default. Each of the following shall constitute an Event of Default under this Mortgage: (a) the occurrence of an "Event of Default" as defined in any of the terms and provisions of any of the Loan Documents (other than this Mortgage) securing the indebtedness secured hereby, including, but not limited to, the Assignment of Rents and Leases; or (b) if the premises shall be abandoned; or (c) if default shall be made in the due observance or performance of the covenants and agreements to be kept or observed by Mortgagor as contained in Section 5 hereof; or (d) if default shall be made in the due observance or performance of any other of the non-monetary covenants, agreements or conditions hereinbefore or hereinafter contained, required to be kept or performed or observed by Mortgagor and such default shall continue for thirty (30) days after service of written notice thereof or, where Mortgagee's security is not impaired (other than in a de minimis manner) by such non-monetary default and if such non-monetary default cannot reasonably be cured within said 30-day period, the failure to commence curing said default within said 30-day period, to proceed with such cure thereafter in a reasonably diligent manner, and to complete such cure within thirty (30) days after expiration of such 30-day period; or (e) any event described in Section 36 hereof shall occur, then and in every such case the whole of the indebtedness, including accrued interest, hereby secured shall, at once, at the option of Mortgagee, become immediately due and payable, without notice to Mortgagor.

15. Foreclosure; Expense of Litigation. If an Event of Default has occurred hereunder, or when the indebtedness hereby secured, or any part thereof, shall become due, either (a) by lapse of time; (b) by acceleration under any of the provisions of the Note, of this Mortgage or of any other instrument evidencing or securing the Loan; or (c) otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof and to exercise any one or more of the remedies provided in the Illinois Mortgage Foreclosure

UNOFFICIAL COPY

Law, 735 ILCS 5/15-1101 *et seq.*, as in effect from time to time (the "Act"). It is further agreed that if default be made in the payment of any part of the secured indebtedness and such default shall not be cured on or before the expiration of any applicable grace or cure period, as an alternative to the right of foreclosure for the full secured indebtedness after acceleration thereof, Mortgagee shall have the right, to the extent permitted by law, to institute partial foreclosure proceedings with respect to the portion of said indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured indebtedness due (such proceeding being hereinafter referred to as a "partial foreclosure"), and provided that if foreclosure sale is made because of default of a part of the secured indebtedness, such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured indebtedness; and it is agreed that such sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured part of the secured indebtedness, but as to such unmatured part this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale had been made under the provisions of this Section. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate the secured indebtedness by reason of any uncured default or defaults upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to partial foreclosures without exhausting the right of full or partial foreclosure sale for any unmatured part of the secured indebtedness, it being the purpose to provide for a partial foreclosure sale of the secured indebtedness for any matured portion of the secured indebtedness without exhausting the power to foreclose and to sell the premises pursuant to any such partial foreclosure for any other part of the secured indebtedness whether matured at the time or subsequently maturing, and without exhausting any right of acceleration and full foreclosure.

In connection with any foreclosure of the lien hereof (including any partial foreclosure) or to enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all reasonable expenditures and expenses which may be paid or incurred, whether by force or after the entry of any decree or judgment of foreclosure, by or on behalf of Mortgagee for reasonable attorneys' fees and expenses, appraiser's 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, Torrens certificates, and similar data and assurances with respect to title and value 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 premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the premises, 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 at the Default Rate and shall be secured by this Mortgage.

UNOFFICIAL COPY

16. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order:

First, on account of all reasonable costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding Section hereof; Second, whether incurred before or after the entry of any decree or judgment of foreclosure, the reasonable expenses of securing possession before sale, holding, maintaining and preparing the real estate for sale including, without limitation, payment of taxes and other governmental charges, premiums on hazard and liability insurance, receiver's and management fees, reasonable attorneys' fees and other legal expenses incurred by Mortgagee, and all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; Third, all principal and interest remaining unpaid on the Note; Fourth, satisfaction of claims in order of priority adjudicated in the judgment of foreclosure or order confirming the sale; and Fifth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

17. Appointment of Receiver. After the occurrence of an Event of Default, prior to, upon, or at any time after the filing of a complaint to foreclose this Mortgage, whenever Mortgagee is entitled to possession of the premises, at Mortgagee's request, the court in which such complaint is filed shall appoint a receiver of the premises. Mortgagee shall be entitled to designate the receiver. Such appointment may be made either before or after sale, without notice to the extent permitted by law, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any Holders may be appointed as such receiver. Such receiver shall have possession of the premises and other property subject to this Mortgage during the foreclosure, shall have the full power and authority to operate, manage and conserve such property, and shall have the usual powers of receivers in like cases. Without limiting the foregoing, such receiver shall have the power and authority: (a) to collect the rents, issues and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide, subject to court approval, for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder 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 premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (c) insure the premises against loss by fire or other casualty; (d) employ counsel, custodian, janitors or other help; (e) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the premises during the whole of said period; and (f) as specified in ¶ 15-1704 of the Act. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (x) the indebtedness secured hereby, or by any decree

UNOFFICIAL COPY

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 (y) the deficiency in case of a sale and deficiency.

18. Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises or any part thereof personally, or by its agent or attorneys, as for condition broken. In such event Mortgagee, in its discretion, upon request may, with or without force and with or without process of law, to the extent permitted by law, enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof to the extent provided by any non-disturbance agreements; (c) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may, subject to court approval, provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder 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 premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the premises as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; (f) to receive all of such avails, rents, issues and profits; and (g) during the pendency of legal proceedings to foreclose the lien hereof to exercise the powers specified in ¶ 15-1703 of the Act; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the

UNOFFICIAL COPY

assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, except any such liability, loss, damage, claim or demand arising from the gross negligence or willful misconduct of Mortgagee. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees and expenses, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

Notwithstanding any provisions of this Section to the contrary, during the pendency of legal proceedings to foreclosure the lien hereof, Mortgagee's right to possession shall be subject to the provisions of ¶ 15-1701 of the Act.

19. Application of Income Received by Mortgagee. Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 18 hereof, shall have full power to use and apply the avails, rents, issues and profits of the premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the premises, including cost of management, sales and leasing thereof (which shall include reasonable 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;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the premises;

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the premises, and of placing the premises in such condition as will, in the reasonable judgment of Mortgagee, make it readily marketable; and

(d) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

20. Protective Advances. All reasonable advances, disbursements and expenditures made by Mortgagee after any applicable notice and cure periods, both before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act, including those provisions of the Act hereinbelow referred to:

(a) all advances by Mortgagee in accordance with the terms of this Mortgage to: (i) preserve or maintain, repair, restore or rebuild the improvements upon the premises; (ii) preserve the lien of this Mortgage or the priority thereof; or (iii) enforce this Mortgage, as referred to in Subsection (b) (5) of Section 5/15-1302 of the Act;

UNOFFICIAL COPY

- (b) payments by Mortgagee of: (i) installments of principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (ii) installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the premises or any part thereof; (iii) other obligations authorized by this Mortgage; or (iv) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;
- (c) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
- (d) reasonable attorneys' fees and other costs incurred: (i) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504 (d) (2) and 5/15-1510 of the Act; (ii) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (iii) in the preparation for the commencement or defense of any such foreclosure or other action;
- (e) Mortgagee's reasonable fees and costs, including attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1503 of the Act;
- (f) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;
- (g) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act;
- (h) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (i) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining or existing insurance in effect at the time any receiver or mortgagee takes possession of the premises imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (ii) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (iii) payments required or deemed by Mortgagee to be for the benefit of the premises under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the premises; (iv) shared or common expense assessments payable to any association or corporation in which the owner of the premises is a member in any way affecting the premises; (v) pursuant to any lease or other agreement for occupancy of the premises.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, and shall become immediately due and payable with interest thereon from the date of the advance until paid at the Default Interest Rate.

UNOFFICIAL COPY

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(10) of Section 5/15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (i) determination of the amount of indebtedness secured by this Mortgage at any time;
- (ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (iv) application of income in the hands of any receiver or Mortgagee in possession; and
- (v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Sections 5/15-1508 and Section 5/15-1511 of the Act.

21. Condemnation. Mortgagor shall give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (herein generally called a "Taking"), of all or any part of the premises, including damages to grade, and:

- (a) Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or other payment (herein generally called an "Award") consequent upon any Taking.
- (b) If in the judgment of the Mortgagee the Premises can be restored to an architectural and economic unit of substantially the same character and adequately securing the outstanding balance of the indebtedness secured hereby, and if no Event of Default or Incipient Default shall have occurred and be continuing, then the provisions of Section 6 of this Mortgage shall apply, with the Award being treated as insurance proceeds in the manner provided in such Section.
- (c) If in the judgment of Mortgagee the premises cannot be restored to an architectural and economic unit as provided above, or if an Event of Default or Incipient Default shall have occurred and shall be continuing, then at any time from and after the Taking, upon 30 days written notice to Mortgagor, Mortgagee may declare the entire balance of the indebtedness secured hereby to be, and at the expiration of such 30 day period the indebtedness secured hereby shall be and become, immediately due and payable.

UNOFFICIAL COPY

(d) Nothing contained in this Section 21 shall be deemed to excuse Mortgagor from restoring all damage resulting from such Taking regardless of whether the Award or Loan proceeds are adequate or available for such purpose.

22. Release upon Payment and Discharge of Mortgagor's Obligations. If Mortgagor or Borrower shall fully pay all principal and interest on the Note, and all other indebtedness secured hereby and comply with all of the other terms and provisions hereof to be performed and complied with by Mortgagor, then Mortgagee shall release this Mortgage and the lien hereof and of the other Loan Documents by proper instrument upon payment and discharge of all indebtedness secured hereby.

23. Intentionally Deleted.

24. Giving of Notice. All notices, waivers, demands, requests or other communications required or permitted hereunder shall, unless otherwise expressly provided, be in writing and be deemed to have been properly given, served and received (a) if delivered by messenger, when delivered, (b) if mailed, on the third (3rd) business day after deposit in the United States Mail, certified or registered, postage prepaid, return receipt requested, (c) if telexed, telegraphed or telecopied, two (2) hours after being dispatched by telex, telegram or telecopy, if such second (2nd) hour falls on a business day within the hours of 9:00 a.m. through 5:00 p.m. of the time in effect at the place of receipt, or at 9:00 a.m. on the next business day thereafter if such second (2nd) hour is later than 5:00 p.m., or (d) if delivered by reputable overnight express courier, freight prepaid, the next business day after delivery to such courier; in every case addressed to the party to be notified as follows:

In the case of Borrower, to:

Daniel K. Zolkowski
4940 N. Seeley
Chicago, Illinois 60625
Fax: _____

In the case of Mortgagor, to:

Standard Bank and Trust Company
7800 W. 95th Street
Hickory Hills, Illinois 60457
Attn.: Land Trust Department
Fax: (708) 598-2918

In the case of Mortgagee, to:

Standard Bank and Trust Company
10635 S. Ewing Avenue
Chicago, Illinois 60617
Attn.: Dan Spain
Fax: _____

UNOFFICIAL COPY

with a copy to:

Terrence E. Budny, Esq.
 Bell, Boyd & Lloyd LLP
 70 West Madison
 Suite 3100
 Chicago, Illinois 60602
 Fax: (312) 827-8055

or to such other address(es) or addressee(s) as any party entitled to receive notice hereunder shall designate to the others in the manner provided herein for the service of notices. Rejection or refusal to accept delivery or inability to deliver because of changed address or because no notice of changed address was given, shall be deemed receipt.

25. Waiver of Defense; Remedies Not Exclusive. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other remedy herein or by law provided or permitted, but each 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. Every power or remedy given hereby to Mortgagee or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time, and as often as it may be deemed expedient by Mortgagee and Mortgagee may pursue inconsistent remedies. No waiver of any default of the Mortgagor hereunder shall be implied from any omission by the Mortgagee or Holders to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No acceptance of any payment of any one or more delinquent installments which does not include interest at the penalty or Default Rate from the date of delinquency, together with any required late charge, shall constitute a waiver of the right of Mortgagee or Holders at any time thereafter to demand and collect payment of interest at such post maturity or penalty rate or of late charges, if any.

26. Compliance With Illinois Mortgage Foreclosure Law.

(a) In the event that any provisions in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with Act.

UNOFFICIAL COPY

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under ¶ 15-1510 and ¶ 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Section 15 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

27. Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisement, valuation, 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 and all who may claim through or under it waives any and all right to have the property and estates comprising the premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in ¶ 15-1201 of the Act) or residential real estate (as defined in ¶ 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under ¶ 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisement, homestead, exemption, stay, redemption and moratorium laws under any state or federal law

28. Furnishing of Financial Statements to Mortgagee. Mortgagor shall deliver or cause to be delivered to Mortgagee financial statements as required by the provisions of the Certificate of Representations, Warranties and Covenants of even date herewith.

29. Binding on Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of the Holders from time to time and of the successors and assigns of the Mortgagee.

30. Definitions of "Mortgagor" and "Mortgagee." The word "Mortgagor" when used herein shall include: (a) the original Mortgagor named in the preambles hereof; (b) said original Mortgagor's successors and assigns; and (c) all owners from time to time of the premises. The words "Holders" and "Mortgagee" when used herein shall include all successors and assigns of the original Holders and Mortgagee identified in the preambles hereof.

31. Captions. The captions and headings of various paragraphs of this Mortgage are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

32. Maximum Secured Indebtedness. Mortgagor shall perform or cause to be performed all the agreements, obligations, terms, provisions and conditions of each and all of the

UNOFFICIAL COPY

Loan Documents to be kept and performed by Mortgagor. All indebtedness evidenced by, arising or accruing under the Loan Documents, including all expenses incurred by Mortgagee in connection with the enforcement or performance of its rights and remedies under the Loan Documents, whether or not the total amount thereof may exceed the face amount of the Note secured hereby, shall be secured hereby to the same extent as if the Loan Documents were fully recited in this Mortgage.

It is understood and agreed, however, that with respect to subsequent purchasers and mortgagees without actual notice, none of the indebtedness arising or accruing under the Loan Documents, shall result in an increase of the indebtedness secured and to be secured hereby over the face amount of the Note beyond 200% of such face amount.

33. Execution of Separate Security Agreement, Financing Statements, Etc. Mortgagor, upon request by Mortgagee from time to time, shall execute, acknowledge and deliver to Mortgagee, a Security Agreement, Financing Statement or other similar security instruments, in form satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor, which in the sole opinion of Mortgagee is essential to the operation of the premises and which constitutes goods within the meaning of the Uniform Commercial Code or concerning which there may be any doubt whether the title to same has been conveyed by or security interest perfected by this Mortgage under the laws of the state in which the premises are located, and will further execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any financing statement, affidavit, continuation statement or certificate or other document as Mortgagee may request in order to perfect, preserve, maintain, continue and extend the security interest under and the priority of this Mortgage and such security instrument. Mortgagor further agrees to pay to Mortgagee on demand all reasonable costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing and re-filing of any such document.

34. Partial Invalidity; Maximum Allowable Rate of Interest. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and the Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage or the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. All agreements herein and in the Note are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance of the Note, or otherwise, shall the amount paid or agreed to be paid to the Holders for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other

UNOFFICIAL COPY

agreement referred to herein, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the Holders shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Note and not to the payment of interest.

35. Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage additionally secures the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or incurred by Mortgagee in connection with the loan to be secured hereby, all in accordance with the application and loan commitment issued in connection with this transaction.

36. Maintenance of Mortgagor's Interests. In the event that Mortgagor shall, without Mortgagee's prior written consent, sell, transfer, convey, alien, pledge, hypothecate or mortgage (or permit the same by another person or entity) the premises or any part thereof, such action or failure to act shall constitute an Event of Default under this Mortgage and the Mortgagee shall have the right, at its election under Section 14 hereof, to declare immediately due and payable the entire indebtedness secured hereby.

37. Applicable Law. This Mortgage, the Note and all other instruments evidencing and securing the loan secured hereby shall be construed, interpreted and governed by the laws of the State of Illinois.

38. Trustee Exculpation. This Mortgage is executed by Standard Bank and Trust Company, not personally, but solely as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee. All covenants, agreements and conditions to be performed by Standard Bank and Trust Company as Trustee hereunder and under the other Loan Documents are undertaken by it solely as Trustee as aforesaid and not individually, and no personal liability shall be asserted or enforceable against Standard Bank and Trust Company, personally, by reason of any of such covenants, agreements, representations or warranties contained herein; but nothing herein or in the other Loan Documents contained shall be deemed a release or impairment of the indebtedness evidenced thereby or incurred pursuant thereto, nor prejudice the rights of Lender from exercising any of its rights or remedies hereunder or under any or all of the Loan Documents, or from securing a deficiency or personal judgment against any subsequent owner of the premises who assumes the indebtedness evidenced thereby or incurred pursuant thereto; and nothing herein or in the other Loan Documents contained shall release, waive, modify or discharge the liability and responsibility of the Borrower, guarantors, or of any other persons or entities in respect of the Loan.

* * * * *

[Signature Page Follows]

UNOFFICIAL COPY

EXHIBIT A

Legal Description

LOT 7 AND THE NORTH 12.50 FEET OF LOT 8 IN BEST'S SUBDIVISION OF THE EAST ½ OF SECTION 29, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN #: 14-29-411-002-0000

Commonly Known As: 2643 N. Sheffield Avenue, Chicago, Illinois 60614

Property of Cook County Clerk's Office