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~~BE MAILED TO:~~

Harold S. Dembo, Esq.
KATZ RANDALL WEINBERG &
RICHMOND
333 West Wacker Drive
Suite 1800
Chicago, Illinois 60606
KRW File No. 08792.00900



RETURN TO: *M. Owens*
TICOR TITLE INSURANCE
203 N. LaSALLE, STE. ~~1400~~ 1390
CHICAGO, IL 60601
RE: *99002719*

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement (the "Mortgage") is made as of the 15th day of December, 1999, by FIRST MIDWEST TRUST COMPANY, not personally, but solely as Trustee under Trust Agreement dated October 15, 1999 and known as Trust Number 99-6601 (the "Trust"), having an address at 17500 Oak Park Avenue, Tinley Park, Illinois 60477-3988 and THORNCREEK INVESTMENT GROUP, INC., an Illinois corporation ("Beneficiary") having an address at 9700 West 197th Street, Mokena, Illinois 60048 in favor of SUCCESS NATIONAL BANK, a national banking association (the "Mortgagee"), having an address at One Marriott Drive, Lincolnshire, Illinois 60069. The Trust and Beneficiary are hereinafter collectively referred to as the "Mortgagor".

Trust, Beneficiary, Patrick Glenn ("Glenn"), Michael Regas ("Regas"), Vincent Kolodziej ("Kolodziej") and Scott Bogard ("Bogard") have executed and delivered to Mortgagee a Mortgage Note (the "Note") of even date herewith payable to the order of Mortgagee in the principal sum of NINE HUNDRED NINETY THOUSAND AND NO/100 (\$990,000.00) DOLLARS, bearing interest and payable as set forth in the Note, and due on January 15, 2005. In order to secure the payment of the principal indebtedness under the Note and interest and premiums on the principal indebtedness under the Note (and all replacements, renewals and extensions thereof, in whole or in part) according to its tenor, and to secure the payment of all other sums which may be at any time due under the Note or this Mortgage (collectively sometimes referred to herein as "Indebtedness" or the "Loan"); and to secure the performance and observance of all the provisions contained in this Mortgage, the Note, and any other loan documents (the "Loan Documents") of even date herewith made by Mortgagor, Glenn, Regas, Kolodziej, Bogard and Mortgagee; and to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor DOES HEREBY GRANT, BARGAIN, SELL, RELEASE, CONVEY, ASSIGN, TRANSFER, MORTGAGE and WARRANT to Mortgagee, its successors and assigns forever, the following described property, rights and interests (which are referred to herein as the "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Land (as hereinafter defined) and not secondarily:

THE LAND located in the State of Illinois and legally described in Exhibit "A" attached hereto (the "Land");

TICOR TITLE INSURANCE

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TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Mortgagor and on, used or intended to be used in connection with the Land or the improvements, 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 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 Mortgagor or on its behalf (the "Improvements");

TOGETHER WITH all easements, rights of way, gores of land, 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 Land, 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 Mortgagor of, in and to the same;

TOGETHER WITH all income from the Premises to be applied against the Indebtedness, provided, however, that Mortgagor so long as no Default has occurred hereunder, may collect income as it becomes due, but not more than one (1) month in advance thereof;

TOGETHER WITH all interest of Mortgagor in all leases now or hereafter on the Premises whether written or oral (the "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Mortgagor and forming a part of or used in connection with the Land or the Improvements, 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, 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 Land or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Land 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 said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party and Mortgagor as debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 14 hereof; and

TOGETHER WITH 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 Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and Mortgagor hereby appoints Mortgagee its attorney-in-fact and authorizes Mortgagee, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect and receive such proceeds, to give proper acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the Indebtedness, notwithstanding the fact that the same may not then be due or that the Indebtedness is otherwise adequately secured.

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

Mortgagor COVENANTS that it is lawfully seized of the Land, that the same is unencumbered, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend the Land and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

PROVIDED, NEVERTHELESS, that if Mortgagor shall pay in full when due the Indebtedness and shall timely perform and observe all of the provisions herein and in the Note provided to be performed and observed by the Mortgagor, then this Mortgage and the interest of Mortgagee in the Premises shall become void but shall otherwise remain in full force.

Mortgagor FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. **Payment of Indebtedness and Performance of Covenants.** Mortgagor shall (a) pay the Indebtedness when due; and (b) punctually perform and observe all of the requirements of the Note, this Mortgage and the Loan Documents, Mortgagor shall have the privilege of making prepayments on the principal of the Note (in addition to the required payments thereunder) in accordance with the terms and conditions set forth in the Note, but not otherwise.
2. **Maintenance, Repair, Compliance with Law, Use, etc.** Mortgagor shall (a) promptly repair or restore any portion of the Improvements which may become damaged whether or not proceeds of insurance are available or sufficient for that purpose; (b) keep the Premises in good condition and free from waste; (c) pay all operating costs of the Premises; (d) complete, within a reasonable time, any Improvements at any time in the process of erection upon the Premises; (e) comply with all requirements of law relating to the Premises or any part thereof by any governmental authority; (f) refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements; (g) comply with any restrictions of record with respect to the Premises and the use thereof, and observe and comply with any conditions necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to the Premises or its use and occupancy; and (h) cause the Premises to be managed in a competent and professional manner. Without the prior written consent of Mortgagee, Mortgagor shall not cause, suffer or permit any (i) material alterations of the Premises except as required by law or except as permitted or required to be made by the terms of any Leases approved by Mortgagee; (ii) change in the intended use or occupancy of the Premises for which the Improvements were constructed; (iii) change in the

identity of the person or firm responsible for managing the Premises; (iv) zoning reclassification with respect to the Premises; (v) unlawful use of, or nuisance to exist upon, the Premises; or (vi) granting of any easements, licenses, covenants, conditions or declarations of use against the Premises, other than use restrictions contained or provided for in Leases approved by Mortgagee.

3. **Liens.**

3.1 **Prohibition.** Subject to the provisions of Paragraph 4 hereof, Mortgagor shall not create or suffer or permit any encumbrance to attach to or be filed against the Premises or any part thereof, excepting only (i) the lien of real estate taxes and assessments not due, and (ii) any liens and encumbrances of Mortgagee.

3.2 **Contest of Mechanic's Liens Claims.** Notwithstanding the foregoing prohibition against encumbrances, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any mechanic's lien and defer payment and discharge thereof during the pendency of such contest, provided that:

3.2.1 Such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such mechanic's lien;

3.2.2 Within ten (10) days after Mortgagor has been notified of the filing of such mechanic's lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such mechanic's lien; and

3.2.3 Mortgagor shall have either obtained a title insurance endorsement over such mechanic's liens insuring Mortgagee against loss by reason of the mechanic's liens or Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may appoint from time to time in writing, and in the absence of such appointment, then at the place of payment designated in the Note, a sum of money (the "Deposits") which shall be sufficient in the judgment of Mortgagee to pay in full such mechanic's lien and all interest which might become due thereon. Mortgagor shall increase the Deposits whenever, in the judgment of Mortgagee, such increase is advisable. The Deposits are to be held without any allowance of interest.

Mortgagee, at its option, may pay the Deposits, or any part thereof, to the mechanic's lien claimant if Mortgagor (i) fails to maintain sufficient Deposits or (ii) fails to act in good faith or with reasonable diligence in contesting the mechanic's lien claims. If the mechanic's lien contest is resolved in favor of the claimant and Mortgagor is not in default hereunder, Mortgagee shall pay the Deposits, or any part thereof, to the claimant upon Mortgagee's receipt of evidence satisfactory to Mortgagee of the amount to be paid. Mortgagee shall pay any remaining Deposits to Mortgagor, provided Mortgagor is not in default hereunder.

4. **Taxes.**

4.1 **Payment.** Mortgagor shall pay when due, all taxes, assessments and charges of every kind levied or assessed against the Premises or any interest therein or any obligation or instrument secured hereby, and all installments thereof (all herein generally called "Taxes"), whether or not assessed against Mortgagor, and Mortgagor shall furnish to Mortgagee receipts therefor on

or before the date the same are due, and shall discharge any claim or lien relating to taxes upon the Premises.

4.2 **Contest.** Mortgagor, in good faith and with reasonable diligence, may contest the validity or amount of any such Taxes, provided that:

4.2.1 Such contest shall prevent the collection of the Taxes so contested and the sale or forfeiture of the Premises or any part thereof or interest therein to satisfy the same;

4.2.2 Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same before any Tax has been increased by any interest, penalties or costs; and

4.2.3 Mortgagor has deposited with Mortgagee, at such place as Mortgagee may designate from time to time in writing, a sum of money or other security acceptable to Mortgagee that, when added to the monies or other security, if any, deposited with Mortgagee pursuant to Paragraph 8 hereof, is sufficient, in Mortgagee's judgment, to pay in full such contested Tax, including interest and penalties, and shall increase such deposit to cover additional interest and penalties whenever Mortgagee deems such an increase advisable.

If Mortgagor fails to (i) prosecute such contest with reasonable diligence or (ii) maintain sufficient funds on deposit as hereinabove provided, Mortgagee, at its option, may apply the monies and liquidate any securities deposited with Mortgagee, in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Taxes, together with all penalties and interest thereon, Mortgagor shall forthwith, upon demand, either deposit with Mortgagee a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Mortgagee has applied funds on deposit on account of such Taxes, restore such deposit to an amount satisfactory to Mortgagee. Provided that Mortgagor is not then in default hereunder, Mortgagee, after final disposition of such contest and upon Mortgagor's written request and Mortgagor's delivery to Mortgagee of an official bill for such Taxes, shall apply the money so deposited in full payment of such Taxes or that part thereof then unpaid, together with all penalties and interest thereon.

5. **Change in Tax Laws.** If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagee, Mortgagor or the Premises, any tax is imposed or becomes due in respect of the issuance of the Note or the recording of this Mortgage, Mortgagor shall pay such tax in the manner required by such law. In the event that any law, statute, rule, regulation, order or court decree has the effect of deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Indebtedness, then Mortgagor, upon demand by Mortgagee, shall pay such taxes or reimburse Mortgagee therefor on demand, unless Mortgagee determines, in Mortgagee's exclusive judgment, that such payment or reimbursement by Mortgagor is unlawful; in which event the Indebtedness shall be due within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this Paragraph 5 shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such

which may be levied against the income of Mortgagee as a complete or partial substitute for taxes required to be paid by Mortgagor pursuant hereto.

6. **Insurance Coverage.** Mortgagor will insure the Premises against such perils and hazards, and in such amounts and with such limits, as Mortgagee may require from time to time, and in any event will continuously maintain the following described policies of insurance (the "Insurance Policies"):

6.1 Builder's Risk Insurance on an "all risks" basis for one hundred percent (100%) of the insurable value of all construction work in place or in progress from time to time, insuring the Premises, including materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, "X," "C" and "U" coverage, vandalism and malicious mischief coverage, bearing a replacement cost agreed amount endorsement;

6.2 Employer's Liability Insurance;

6.3 Casualty insurance against loss and damage by all risks of physical loss or damage, including fire, windstorm, flood, earthquake and other risks covered by the so-called extended coverage endorsement in amounts not less than the full insurable replacement value of all Improvements, fixtures and equipment from time to time on the Premises and bearing a replacement cost agreed amount endorsement;

6.4 Comprehensive public liability against death, bodily injury and property damage in an amount not less than Two Million and no/100 Dollars (\$2,000,000.00);

6.5 Rental or business interruption insurance in amounts sufficient to pay, for a period of up to one (1) year, all amounts required to be paid by Mortgagor pursuant to the Note and this Mortgage;

6.6 Steam boiler, machinery and pressurized vessel insurance (if applicable to the Premises);

6.7 If the Federal Insurance Administration (FIA) has designated the Premises to be in a special flood hazard area and designated the community in which the Premises are located eligible for sale of subsidized insurance, first and second layer flood insurance when and as available; and

6.8 Other commercially reasonable types and amounts of insurance coverage as may be required by Mortgagee from time to time.

7. **Insurance Policies.** All Insurance Policies shall be in form, companies and amounts reasonably satisfactory to Mortgagee. All Insurance Policies shall (i) include, when available, non-contributing Mortgagee endorsements in favor of and with loss payable to Mortgagee, (ii) include standard waiver of subrogation endorsements, (iii) provide that the coverage shall not be terminated or materially modified without thirty (30) days' advance written notice to Mortgagee, and (iv) provide that no claims shall be paid thereunder without ten (10) days' advance written notice to Mortgagee. Mortgagor will deliver all Insurance Policies premium prepaid, to Mortgagee, and will deliver renewal or replacement policies at least thirty (30) days prior to the date of expiration of any policy. The requirements of the preceding sentence shall apply to any separate policies of insurance taken out by Mortgagor concurrent in

form or contributing in the event of loss with the Insurance Policies. Insurance Policies maintained by tenants under the Leases, if in conformity with the requirements of this Mortgage and if approved by Mortgagee, may be presented to Mortgagee in satisfaction of Mortgagor's obligation to provide the insurance coverages provided by those Insurance Policies.

8. **Deposits for Taxes and Insurance Premiums.** In order to assure the payment of Taxes and insurance policy premiums ("Premiums") when due:

8.1 Mortgagor, if required by Mortgagee, shall deposit with Mortgagee on the first business day of each month, an amount equal to one-twelfth (1/12) of the Taxes and Premiums thereof to become due with respect to the Premises between one and thirteen months after the date of such deposit; provided that in the case of the first such deposit, Mortgagor shall deposit in addition an amount which, when added to the aggregate amount of monthly deposits to be made hereunder with respect to Taxes and Premiums to become due within thirteen months after such first deposit, will provide (without interest) a sufficient fund to pay such Taxes and Premiums, one month prior to the date when they are due. The amounts of such deposits (herein generally called "Tax and Insurance Deposits"), shall be based upon Mortgagee's estimate of the amount of Taxes and Premiums. Mortgagor, promptly upon the demand of Mortgagee, shall make additional Tax and Insurance Deposits as Mortgagee may require from time to time due to (i) failure of Mortgagee to require, or failure of Mortgagor to make, Tax and Insurance Deposits in previous months, (ii) underestimation of the amounts of Taxes and/or Premiums, due dates and amounts of Taxes and/or Premiums, or (iii) application of the Tax and Insurance Deposits pursuant to Paragraph 8.3 hereof. Additionally, upon the execution hereof, Mortgagor shall deposit with Mortgagee, as a Tax and Insurance Deposit, the amount of all Taxes and Premiums to become due and payable prior to the first monthly Tax and Insurance Deposit or within one month thereafter. Mortgagee shall hold all Tax and Insurance Deposits without any allowance of interest thereon.

Notwithstanding any provision hereof to the contrary, Mortgagee shall not require Mortgagor to make Insurance Deposits unless one or more of the following events has occurred: (i) a Default has occurred hereunder; (ii) Mortgagor has failed to provide for the payment of Premiums in a manner satisfactory to Mortgagee; or (iii) Mortgagor has failed to maintain the Insurance Policies in a manner satisfactory to Mortgagee.

8.2 Mortgagee, out of the Tax and Insurance Deposits, if required, upon the presentation to Mortgagee by Mortgagor of the bills therefor, will pay the Taxes and Premiums or, upon the presentation of receipted bills therefor, will reimburse Mortgagor for such payments made by Mortgagor. If the total Tax and Insurance Deposits on hand shall not be sufficient to pay all of the Taxes and Premiums when the same shall become due, then Mortgagor shall pay to Mortgagee on demand the amount necessary to make up the deficiency.

8.3 Upon a Default under this Mortgage, Mortgagee, at its option, may apply any Tax and Insurance Deposits on hand to the Indebtedness, in such order and manner as Mortgagee may elect. When the Indebtedness has been fully paid, any remaining Tax and Insurance Deposits shall be paid to Mortgagor. All Tax and Insurance Deposits are hereby pledged as additional security for the Indebtedness, and shall be held by Mortgagee irrevocably to be applied for the purposes for which made as herein provided, and shall not be subject to the direction or control of Mortgagor.

8.4 Notwithstanding anything herein contained to the contrary, Mortgagee shall not be liable for any failure to apply the Tax and Insurance Deposits unless Mortgagor, while no Default exists hereunder, shall have presented to Mortgagee the bills to pay such Taxes or Premiums.

8.5 The provisions of this Mortgage are for the benefit of Mortgagor and Mortgagee alone. No provision of this Mortgage shall be construed as creating in any other party any rights in and to the Tax and Insurance Deposits or any rights to have the Tax and Insurance Deposits applied to payment of Taxes and Premiums. Mortgagee shall have no obligation or duty to any third party to collect Tax and Insurance Deposits.

9. **Proceeds of Insurance.** Mortgagor will give Mortgagee prompt notice of any loss or damage to the Premises, and:

9.1 In case of loss or damage covered by any of the Insurance Policies, Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) may at its option either (i) settle and adjust any claim under such Insurance Policies without the consent of Mortgagor, or (ii) allow Mortgagor to settle and adjust such claim without the consent of Mortgagee provided that in either case, Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to Mortgagee upon demand or may be deducted by Mortgagee from said insurance proceeds prior to any other application thereof. Each insurance company which has issued an Insurance Policy is hereby authorized and directed to make payment for all losses covered by any Insurance Policy to Mortgagee alone, and not to Mortgagee and Mortgagor jointly. Notwithstanding the foregoing, provided there has occurred no Default hereunder, in the event the loss or damage is less than \$25,000.00, Mortgagor may settle and adjust the claim without the consent of Mortgagee and receive payment for the loss or damage.

9.2 Mortgagee, in its sole discretion, shall elect to apply the proceeds of Insurance Policies consequent upon any casualty either (i) to reduce the Indebtedness; or (ii) to reimburse Mortgagor for the cost of restoring or repairing the Premises subject to the conditions and in accordance with the provisions of Paragraph 10 hereof. In the event Mortgagee applies the proceeds of Insurance Policies to the Indebtedness and such proceeds do not discharge that Indebtedness in full, the entire Indebtedness shall become immediately due and payable with interest thereon at the Default Rate.

9.3 Whether or not insurance proceeds are made available to Mortgagor, Mortgagor shall restore or repair the Improvements, to be of at least equal value, and of substantially the same character as prior to such casualty, all to be effected in accordance with plans, specifications and procedures approved in advance by Mortgagee, and Mortgagor shall pay all costs of such restoring or repairing.

10. **Disbursement of Insurance Proceeds.** Insurance proceeds held by Mortgagee for restoration or repairing of the Premises shall be disbursed from time to time upon Mortgagee being furnished with (i) evidence satisfactory to it of the estimated cost of the restoration or repair, (ii) funds sufficient in addition to the proceeds of insurance, to fully pay for the restoration or repair, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and

such other evidence of cost, payment and performance as Mortgagee may require and approve. No payment made prior to the final completion of the restoration or repair shall exceed ninety percent (90%) of the value of the work performed from time to time, as such value shall be determined by Mortgagee in its sole judgment; funds other than insurance proceeds shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited or irrevocably committed, to the satisfaction of Mortgagee, by or on behalf of Mortgagor to pay the cost of such repair or restoration, shall be sufficient in the reasonable judgment of Mortgagee to pay the entire unpaid cost of the restoration or repair, free of all liens or claims for lien. Any surplus remaining out of insurance proceeds held by Mortgagee after payment of such costs of restoration or repair shall be paid to Mortgagor, provided Mortgagor is not in default hereunder. No interest shall be allowed to Mortgagor on account of any proceeds of insurance or other funds held by Mortgagee.

11. **Condemnation and Eminent Domain.** All awards (the "Awards") made to the present, or any subsequent, owner of the Premises, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises, are hereby assigned by Mortgagor to Mortgagee. Mortgagee shall have the right to apply for and settle Awards with the condemnation authorities. Mortgagee may collect the Awards from the condemnation authorities, and may give appropriate acquittances therefor. Mortgagor shall immediately notify Mortgagee of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting any part of the Premises and shall deliver to Mortgagee copies of all papers served in connection with any such proceedings. Mortgagor shall make, execute and deliver to Mortgagee, at any time upon request, free of any encumbrance, any further assignments and other instruments deemed necessary by Mortgagee for the purpose of assigning the Awards to Mortgagee. Notwithstanding the foregoing, provided there has occurred no Default hereunder, if the taking is less than \$25,000.00, Mortgagor shall have the right to apply for and settle the Awards and collect same from the condemnation authorities. If any portion of or interest in the Premises is taken by condemnation or eminent domain, and the remaining portion of the Premises is not, in the judgment of Mortgagee, a complete economic unit having equivalent value to the Premises as it existed prior to the taking, then, at the option of Mortgagee, the entire Indebtedness shall immediately become due. After deducting from the Award for such taking all of its expenses incurred in the collection and administration of the Award, including attorneys' fees, Mortgagee shall be entitled to apply the net proceeds toward repayment of such portion of the Indebtedness as it deems appropriate without affecting the lien of this Mortgage. In the event of any partial taking of the Premises or any interest in the Premises, which, in the judgment of Mortgagee, leaves the Premises as a complete economic unit having equivalent value to the Premises as it existed prior to the taking, and provided Mortgagor is not in default hereunder, the Award shall be applied to reimburse Mortgagor for the cost of restoration and rebuilding the Premises in accordance with plans, specifications and procedures approved in advance by Mortgagee, and such Award shall be disbursed in the same manner as is provided above for the application of insurance proceeds, provided that any surplus after payment of such costs shall be applied on account of the Indebtedness. If the Award is not applied for reimbursement of such restoration costs, the Award shall be applied against the Indebtedness, in such order or manner as Mortgagee shall elect.

12. **Assignment of Rents, Leases and Profits.** To further secure the Indebtedness, Mortgagor hereby assigns unto Mortgagee all of the rents, leases and income now or hereafter due under any Leases agreed to by Mortgagor or the agents of Mortgagor or which may be made or agreed to by Mortgagee under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, rents and income thereunder to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact (this power of attorney and any other powers of attorney granted herein are

powers coupled with an interest and cannot be revoked, modified or altered without the written consent of Mortgagee) with or without taking possession of the Premises as provided in Paragraph 18 hereof, to lease any portion of the Premises to any party upon such terms as Mortgagee shall determine, and to collect all rents due under each of the Leases, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon taking possession pursuant to the provisions of Paragraph 18 hereof. Mortgagor represents that no rent has been or will be paid by any tenant under a Major Lease, as defined in Section 13 below, for more than one installment in advance and that the payment of none of the rents for any portion of the Premises has been or will be waived, reduced or otherwise discharged or compromised by Mortgagor. Mortgagor waives any rights of set-off against any person in possession of any portion of the Premises. Mortgagor agrees that it will not assign any of the rents or profits of the Premises, except to a purchaser or grantee of the Premises. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of the Premises by Mortgagee pursuant to Paragraph 19 hereof. Mortgagor expressly waives all liability of Mortgagee in the exercise of the powers herein granted Mortgagee. Mortgagor shall assign to Mortgagee all future leases upon any part of the Premises and shall execute and deliver, at the request of Mortgagee, all such further assurances and assignments in the Premises as Mortgagee shall require from time to time. Although the assignment contained in this Paragraph is a present assignment, Mortgagee shall not exercise any of the rights or powers conferred upon it by this Paragraph until a Default shall exist under this Mortgage. Mortgagor grants Mortgagee a conditional license to operate the Premises and collect the rents until a Default shall exist under this Mortgage. Within thirty (30) days of Mortgagee's written demand, Mortgagor will furnish Mortgagee with executed copies of each of the Leases and with estoppel letters from each tenant in a form satisfactory to Mortgagee. If Mortgagee requires that Mortgagor execute and record a separate collateral assignment of rents or separate assignments of any of the Leases to Mortgagee, the terms of these assignments shall control in the event of a conflict with the terms of this Mortgage.

13. **Observance of Lease Assignment.** Mortgagor agrees that if any lessee under any of the Leases shall fail to pay its rent on a timely basis or to fulfill any material provision in said Lease or if Mortgagor shall terminate or modify any of the Leases which exceed ten percent (10%) of the square footage of the Premises or account for at least ten percent (10%) of the gross rental income of the Premises (a "Major Lease") without Mortgagee's prior written consent; or if Mortgagor shall suffer any default under the provisions of any assignment of any Lease given as additional security for the payment of the Indebtedness and such default shall not be cured within the applicable grace period provided therein, then such default shall constitute a Default hereunder and at the option of Mortgagee, and without notice to Mortgagor, the Indebtedness shall become due as in the case of other Defaults.

14. **Security Agreement.** Mortgagor and Mortgagee agree that this Mortgage shall constitute a security agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of the Mortgage, and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the Collateral and all of Mortgagor's right, title and

interest therein are hereby assigned to the 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 Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

14.1 Mortgageor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party.

14.2 The Collateral is to be used by Mortgageor solely for business purposes.

14.3 The Collateral will be kept at the Land and, except for Obsolete Collateral (as hereinafter defined), 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 Land but will not be affixed to any other real estate.

14.4 The only persons having any interest in the Premises are Mortgageor, Mortgagee and holders of interests, if any.

14.5 No Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgageor, 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 at any time or from time to time may request 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 benefitting Mortgagee and no other party; and Mortgageor 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.

14.6 Upon 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 Mortgageor 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 Mortgageor's right of redemption in satisfaction of Mortgageor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgageor 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 Mortgageor at least twenty (20) 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 twenty (20) 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 Premises. If Mortgagee so elects, the Premises 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.

14.7 The terms and provisions contained in this Paragraph 14, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

14.8 This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinabove set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located. Mortgagor is the record owner of the Premises.

14.9 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 said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

15. **Restrictions on Transfer.** Mortgagor, without the prior written consent of Mortgagee, shall not effect, suffer or permit any "Prohibited Transfer" (as defined herein). 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 any of the following properties or interests shall constitute a "Prohibited Transfer":

15.1 The Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

15.2 All or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a Trustee;

15.3 Any shares of capital stock of a corporate Mortgagor, a corporation which is a beneficiary of a trustee Mortgagor, a corporation which is a general partner in a partnership Mortgagor, a corporation which is a general partner in a partnership beneficiary of a trustee Mortgagor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate

trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System);

15.4 All or any part of the partnership or joint venture interest, as the case may be, of a partnership Mortgagor or a partnership beneficiary of a Trustee Mortgagor if Mortgagor or such beneficiary is a partnership or a joint venture;

15.5 Any membership interests of a limited liability company Mortgagor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Paragraph 15 shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, or (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficiary interests, or shares of stock or partnership or joint venture interests or membership 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. Notwithstanding the foregoing, shares of stock in a corporation, which is the beneficiary of the Mortgagor, may be transferred (i) to a shareholder's spouse, children, or to trusts created for estate planning purpose, (ii) to an entity owned or controlled by a shareholder or (iii) among the shareholders of the corporation.

16. **Defaults.** If one or more of the following events (herein called "Defaults") shall occur:

16.1 If Mortgagor, after the expiration of any applicable grace periods, shall fail to make payments of amounts owed under the Note or this Mortgage when due, including, but not limited to, insurance premiums;

16.2 If any default, after the expiration of any applicable grace periods, shall exist under any other document or instrument regulating, evidencing, securing or guarantying any of the Indebtedness;

16.3 The occurrence of a Prohibited Transfer;

16.4 If default shall continue for thirty (30) days after notice thereof by Mortgagee to Mortgagor in the punctual performance or observance of any other agreement or condition herein contained provided, however, Mortgagor shall not be in default if Mortgagor has commenced to cure same and is diligently proceeding to cure same and in all events cures same within ninety (90) days after notice;

16.5 If (and for the purpose of this subparagraph 16.5 only, the term "Mortgagor" shall mean not only Mortgagor, but also any beneficiary of a trustee Mortgagor, any general partner in a partnership Mortgagor or in a partnership which is a beneficiary of a trustee Mortgagor, any owner of more than ten percent (10%) of the stock in a corporate Mortgagor or a corporation which is the beneficiary of a trustee Mortgagor and each person who, as guarantor, co-maker or otherwise, shall be or become liable for or obligated upon all or any part of the Indebtedness or any of the covenants or agreements contained herein):

16.5.1 Mortgagor shall file a voluntary petition in bankruptcy or for relief under the Federal Bankruptcy Act or any similar state or federal law;

16.5.2 Mortgagor shall file a pleading in any proceeding admitting insolvency;

16.5.3 Within sixty (60) days after the filing against Mortgagor of any involuntary proceeding under the Federal Bankruptcy Act or similar state or federal law, such proceedings shall not have been vacated;

16.5.4 A substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within thirty (30) days;

16.5.5 Mortgagor shall make an assignment for the benefit of creditors or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Premises; or

16.5.6 Any order appointing a receiver, trustee or liquidator of Mortgagor or all or a major part of Mortgagor's property or the Premises is not vacated within thirty (30) days following the entry hereof;

16.6 If Mortgagor or any borrower, obligor or guarantor under the Loan Documents dies;

16.7 If Mortgagor or any obligor or guarantor fails to provide the financial information requested by Mortgagee from time to time relating to Mortgagor or any obligor or guarantor or the Premises; or

16.8 If Mortgagor or any obligor or guarantor fails after thirty (30) days prior written notice to maintain the bank account relationships required by Mortgagee with respect to the Premises pursuant to the Loan Documents;

then Mortgagee, at its option and without affecting the lien hereby created or the priority of said lien or any other right of Mortgagee hereunder, may declare, without further notice, all Indebtedness immediately due with interest thereon at the Default Rate, whether or not such Default is remedied thereafter by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage and to exercise any right provided by this Mortgage, the Note or otherwise. In the event of a default pursuant to Section 16.1 above, Mortgagee shall have the additional right to impose the Prepayment Penalty as defined in the Note.

17. **Foreclosure.** When the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof in accordance with applicable Illinois laws regarding mortgage foreclosure (the "Act") and to exercise any other remedies of Mortgagee provided in the Note, this Mortgage or which Mortgagee may have at law, in equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, 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 assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Premises, and any other expenses and expenditures which may be paid or incurred by or on behalf of Mortgagee and permitted by the Act to be included in such decree. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid.

18. **Right of Possession.** When the Indebtedness shall become due, whether by acceleration or otherwise, or if Mortgagee has a right to institute foreclosure proceedings, Mortgagor, forthwith upon demand of Mortgagee, shall surrender to Mortgagee, and Mortgagee shall be entitled to be placed in possession of the Premises as provided in the Act, and Mortgagee, in its discretion and pursuant to court order, may enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers, and accounts of Mortgagor or the then owner of the Premises relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and on behalf of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted may:

18.1 hold, operate, manage and control all or any part of the Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as Mortgagee may deem necessary to enforce the payment or security of the rents, issues, deposits, profits and avails of the Premises, including, without limitation, actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

18.2 cancel or terminate any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;

18.3 elect to disaffirm any Lease or sublease of all or any part of the Premises made subsequent to this Mortgage without Mortgagee's prior written consent;

18.4 extend or modify any then existing Leases and make new Leases of all or any part of the Premises, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Note and the issuance of a deed to a purchaser 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, all persons whose interests in the Premises are subject to the lien hereof, and the purchaser at any foreclosure sale, notwithstanding any redemption from sale, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

18.5 make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments and improvements in connection with the Premises as may seem judicious

to Mortgagee, to insure and reinsure the Property and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom; and

18.6 apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, to the payment of Taxes, Premiums and other charges applicable to the Premises, or in reduction of the Indebtedness in such order and manner as Mortgagee shall select.

Without limiting the generality of the foregoing, Mortgagee shall have all power, authority and duties as provided in the Act. Nothing contained herein shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises.

19. **Receiver.** Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint, upon petition of Mortgagee and at Mortgagee's sole option, a receiver of the Premises pursuant to the Act. Such appointment may be made either before or after sale, without notice, without regard to 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 or not the same shall then be occupied as a homestead; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the Act, including the power to make leases to be binding upon all parties, including the mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Premises after entry of a judgment of foreclosure, all as provided in the Act. In addition, such receiver shall also have the power to extend or modify any then existing leases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date 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 provisions to be contained therein, shall be binding upon Mortgagor and all the persons whose interest in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether or not there is a redemption, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have 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. The court, from time to time, may authorize the receiver to apply the net income from the Premises in payment in whole or in part of: (a) the Indebtedness or the indebtedness secured by a 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 the foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

20. **Foreclosure Sale.** Except to the extent otherwise required by the Act, the proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, all items which under the terms hereof constitute Indebtedness additional to the principal and interest evidenced by the Note in such order as Mortgagee shall elect with interest thereon as herein provided; and second, all

principal and interest remaining unpaid on the Note in such order as Mortgagee shall elect; and lastly, any surplus to Mortgagor and its successors and assigns, as their rights may appear.

21. **Insurance During Foreclosure.** In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay 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 as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors. The foreclosure decree may further provide that in the case of one or more redemptions under said decree, each successive redeemer may cause the preceding loss clause attached to each casualty Insurance Policy to be cancelled and a new loss payable clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee, without the consent of Mortgagor, may assign any Insurance Policies to the purchaser at the sale, or take such other steps as Mortgagee may deem advisable to protect the interest of such purchaser.

22. **Waiver of Right of Redemption and Other Rights.** To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, 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. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Premises be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption under the Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that, by invoking or utilizing any applicable law or laws or otherwise, hinder, it will not delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor acknowledges that the Premises do not constitute agricultural real estate or residential real estate.

23. **Mortgagee's Performance of Mortgagor's Obligations.** In case of Default, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof and during any period of redemption, Mortgagee may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any manner deemed expedient to Mortgagee. Mortgagee may, but shall not be required to, complete construction, furnishing and equipping of the Improvements and rent, operate and manage the Premises and the Improvements and pay

operating costs, including management fees, of every kind in connection therewith, so that the Premises shall be useable for their intended purposes. All such monies paid and expenses incurred, including attorneys' fees, shall be so much additional Indebtedness, whether or not the Indebtedness, as a result thereof, shall exceed the face amount of the Note, and shall become immediately due with interest thereon at the Default Rate specified in the Note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default nor shall the provisions of this Paragraph or any exercise by Mortgagee of its rights hereunder prevent any default from constituting a Default. Mortgagee, in making any payment hereby authorized (a) relating to Taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate. Nothing contained herein shall be construed to require Mortgagee to advance monies for any purpose.

24. **Rights Cumulative.** Each right herein conferred upon Mortgagee is cumulative and in addition to every other right provided by law or in equity, and Mortgagee may exercise each such right in any manner deemed expedient to Mortgagee. Mortgagee's exercise or failure to exercise any right shall not be deemed a waiver of that right or any other right or a waiver of any default. Except as otherwise specifically required herein, Mortgagee is not required to give notice of its exercise of any right given to it by this Mortgage.

25. **Successors and Assigns.**

25.1 **Holder of the Note.** This Mortgage and each provision hereof shall be binding upon Mortgagor and its successors and assigns (including, without limitation, each and every record owner from time to time of the Premises or any other person having an interest therein), and shall inure to the benefit of Mortgagee and its successors and assigns. Wherever Mortgagee is referred to herein such reference shall be deemed to include the holder from time to time of the Note; and each such holder of the Note shall have all of the rights afforded hereby, and may enforce the provisions hereof, as fully as if Mortgagee had designated such holder of the Note herein by name.

25.2 **Covenants Run with Land; Successor Owners.** All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. If the ownership of Premises or any portion thereof becomes vested in a person other than Mortgagor, Mortgagee, without notice to Mortgagor, may deal with such person with reference to this Mortgage and the Indebtedness in the same manner as with Mortgagor without in any way releasing Mortgagor from its obligations hereunder. Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Paragraph shall vary the provisions of Paragraph 15 hereof.

26. **Effect of Extensions and Amendments.** If the payment of the Indebtedness, or any part thereof, is extended or varied, or if any part of the security or guarantees therefor is 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 and effect; the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding

any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any part thereof or any interest therein, shall take the said lien subject to the rights of Mortgagee to amend, modify, extend or release the Note, this Mortgage or any other document or instrument evidencing, securing or guarantying the Indebtedness, in each 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.

27. **Environmental Matters.** Mortgagor represents that it is currently in compliance with, and covenants and agrees that, it will manage and operate the Premises and will cause each tenant to occupy its demised portion of the Premises in compliance with, all federal, state and local laws, rules, regulations and ordinances regulating, without limitation, air pollution, soil and water pollution, and the use, generation, storage, handling or disposal of hazardous or toxic substances or other materials (including, without limitation, raw materials, products, supplies or wastes). Mortgagor further covenants and agrees that it shall not install or permit to be installed in the Premises asbestos or any substance containing asbestos and deemed hazardous by or in violation of federal, state or local laws, rules, regulations or orders respecting such material. Mortgagor shall remove from the Premises and dispose of any such hazardous or toxic substances or other materials in a manner consistent with and in compliance with applicable laws, rules, regulations and ordinances and shall take any and all other action to remedy, rectify, rehabilitate and correct any violation of any applicable law, rule, regulation or ordinance concerning toxic or hazardous substances or any violation of any agreement entered into between Mortgagor, Mortgagee and/or any third party with respect to hazardous or toxic materials. Mortgagor and tenants of the Premises shall be permitted to utilize cleaning supplies or other substances in accordance with applicable laws and permits, if required, in the ordinary course of their respective businesses. Mortgagor shall send to Mortgagee within five (5) days of receipt thereof, any citation, notice of violation or other notice of potential liability from any governmental or quasi-governmental authority empowered to regulate or oversee any of the foregoing activities. Mortgagor agrees to indemnify, defend with counsel reasonably acceptable to Mortgagee (at Mortgagor's sole cost), and hold Mortgagee harmless against any claim, response or other costs, damages, liability or demand (including, without limitation, reasonable attorneys' fees and costs incurred by Mortgagee) arising out of any claimed violation by Mortgagor of any of the foregoing laws, regulations or ordinances or breach of any of the foregoing covenants or agreements. The foregoing indemnity shall survive repayment of the Indebtedness.

28. **Execution of Separate Security Agreements and Financing Statements; Estoppel Letter.** Mortgagor will do, execute, acknowledge and deliver all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as Mortgagee shall require for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by Mortgagor or hereafter acquired. Without limitation of the foregoing, Mortgagor will assign to Mortgagee, upon request, as further security for the Indebtedness, its interests in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments satisfactory to Mortgagee, but no such assignment shall be construed as a consent by Mortgagee to any agreement, contract, license or permit or to impose upon Mortgagee any obligations with respect thereto. From time to time, Mortgagor will furnish within five (5) days after Mortgagee's request a written and duly acknowledged statement of the amount due under the Note and under this Mortgage and whether any alleged offsets or defenses exist against the Indebtedness.

29. **Subrogation.** If any part of the Indebtedness is used directly or indirectly to satisfy, in whole or in part, any prior encumbrance upon the Premises or any part thereof, then Mortgagee shall be

subrogated to the rights of the holder thereof in and to such other encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

30. **Option 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 award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds for the county wherein the Premises are situated, of a unilateral declaration to that effect.

31. **Governing Law.** The place of negotiation, execution and delivery of this Mortgage and the location of the Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State. If any provision 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 the Act. 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.

32. **Business Loan.** Mortgagor represents and warrants that the loan evidenced by the Note and secured hereby is not a consumer loan with the purview of the consumer credit laws of the State of Illinois.

33. **Inspection of Premises and Records.** Mortgagor shall keep full and correct books and records showing in detail the income and expenses of the Premises. Mortgagee and its agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times with reasonable advanced notice.

34. **Financial Statements.** Mortgagor will furnish to Mortgagee (i) within thirty (30) days after the end of each calendar year, financial and operating statements of the Premises for such fiscal year, including, without limitation, a rent roll, a balance sheet and supporting schedules, detailed statement of income and expenditures and supporting schedules, including budgeted and actual cash flow statements, and (ii) within thirty (30) days of the required filing date, state and federal income tax returns of Mortgagor, and all obligors or guarantors of the Loan. Such financial and operating statements shall be prepared and certified in such manner as may be acceptable to Mortgagee, and Mortgagee, by notice in writing to Mortgagor, may require that the same be certified and prepared pursuant to audit, by a firm of independent certified public accountants satisfactory to Mortgagee, in which case such accountants shall state whether, during the course of their audit, they discovered or became aware of any information which would lead them to believe that a Default exists.

35. **Bank Accounts.** Mortgagor and each obligor or guarantor under the Loan shall maintain at all times during the term of the Loan all bank accounts relating to the operation of the business owned by Mortgagor and all other obligors or guarantors located at the Premises and elsewhere.

36. **No Joint Ventures.** Mortgagor acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor. Mortgagee shall not be deemed to be such a partner or joint venturer by reason

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of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any other of the Loan Documents.

37. **Time of the Essence.** Time is of the essence of the Note, this Mortgage, and any other document or instrument evidencing or securing the Indebtedness.

38. **Captions and Pronouns.** The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

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

40. **Notices.** Any notice or other communication which any party hereto may desire or may be required to give to any other party hereto shall be in writing, and shall be deemed given (i) when personally delivered, (ii) upon receipt, if sent by a nationally recognized overnight courier addressed to a party at its address set forth above, or (iii) on the second business day after being deposited in United States registered or certified mail, postage prepaid, addressed to a party at its address set forth above, or to such other address as the party to receive such notice may have designated to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, notice of the exercise of any right, power or option granted to Mortgagee by this Mortgage is not required to be given.

41. **Venue.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH ANY OF THE LOAN DOCUMENTS SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION.

42. **Waiver of Trial by Jury.** MORTGAGOR AND MORTGAGEE KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS MORTGAGE OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE OR ANY LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGOR AND MORTGAGEE ENTERING INTO THE LOAN TRANSACTION EVIDENCED BY THE NOTE AND MORTGAGE.

43. **Trustee's Exculpation.** This Mortgage is made and entered into by First Midwest Trust Company, not in its individual capacity, but solely in its capacity as trustee under the provisions of a Trust

Agreement dated October 15, 1999 and known as Trust No. 99-6601, pursuant to the power and authority conferred upon it under and by virtue of the terms and provisions of said Trust Agreement (and First Midwest Trust Company hereby represents that it is authorized and empowered to enter into this Mortgage in its capacity as Trustee, as aforesaid), and the covenants and undertakings herein made and entered into by it are made and entered solely for the purpose of binding the Trust estate, and it is expressly agreed by the parties hereto and by all persons claiming by, through or under them that no personal liability is assumed by or shall at any time arise or be asserted or enforced against First Midwest Trust Company, in its individual capacity, on account of this Mortgage or on account of the covenants herein contained.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly signed, sealed and delivered the day and year first above written.

Mortgagor:

FIRST MIDWEST TRUST COMPANY, not personally,
but solely as Trustee aforesaid

SEE TRUSTEE'S RIDER ATTACHED HERETO
AND MADE A PARTY HEREOF

ATTEST

By: _____

Its: _____ President

Its: _____ Secretary

THORNCREEK INVESTMENT GROUP, INC., an
Illinois corporation

By: _____

Its: _____ President

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09206885

RIDER ATTACHED AND MADE A PART OF
MORTGAGE AND SECURITY AGREEMENT
DATED DECEMBER 15, 1999

This Mortgage is executed by FIRST MIDWEST TRUST COMPANY, National Association, not personally but as Trustee or Successor Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said FIRST MIDWEST TRUST COMPANY, National Association, hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing herein or in said note contained shall be construed as creating any liability on the said FIRST MIDWEST TRUST COMPANY, National Association, personally to pay the said note or any interest that may accrue thereon, or any indebtedness accruing thereunder, or to perform thereon any covenant either express or implied herein contained, all such liability, if any, being expressly waived by Trustee and by every person now or hereafter claiming any right or security hereunder, and that so far as the FIRST MIDWEST TRUST COMPANY, National Association, personally are concerned, the legal holder or holders of said note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed for the payment thereof by the enforcement of the lien hereby created in the manner herein and in said note provided or by action to enforce the personal liability of the guarantor, if any.

In witness whereof, the grantor, not personally but as trustee as aforesaid, has caused these presents to be signed by its Trust Officer and its corporate seal to be hereunto affixed and attested by its Trust Assistant this 16th day of December, 1999.

FIRST MIDWEST TRUST COMPANY, N.A.
as Trustee or Successor Trustee under Trust No. 99-6601
and not personally.

By: 

Trust Officer

Attest: 

Trust Assistant

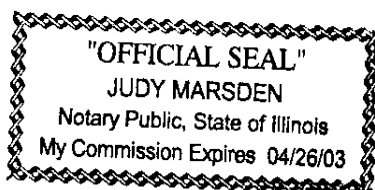
STATE OF ILLINOIS

SS:

COUNTY OF COOK

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Daniel K. Dallner, Trust Officer of FIRST MIDWEST TRUST COMPANY, National Association, and Patricia Cartalino, the attesting Trust Assistant thereof, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and the attesting Trust Assistant respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Trust Company, for the uses and purposes therein set forth; and the said attesting Trust Assistant did also then and there acknowledge that he as custodian of the corporate seal of said Trust Company, did affix the said corporate seal of said Trust Company instrument as his own free and voluntary act, and as the free and voluntary act of said Trust Company for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 16th day of December, A.D., 1999.




NOTARY PUBLIC

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09206885

STATE OF ILLINOIS)

COUNTY OF COOK)

I, _____, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____, as _____ President and _____, as _____ Secretary of FIRST MIDWEST TRUST COMPANY, as Trustee under Trust Agreement dated October 15, 1999 and known as Trust No. 99-6601 who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such _____ President and _____ Secretary of said Association, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth; and said _____ Secretary did then and there acknowledge that he, as custodian of the corporate seal of said company did affix the corporate seal of said company to said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 1999.

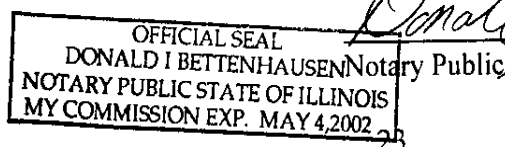
Notary Public

STATE OF ILLINOIS)

COUNTY OF COOK)

I, DONALD I. BETTENHAUSEN, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that MICHAEL J. REGAS, as President of THORNCREEK INVESTMENT GROUP, INC., who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such President of said Corporation, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act and as the free and voluntary act of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 15th day of December, 1999.



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EXHIBIT A

09206885

LEGAL DESCRIPTION OF THE LAND

PARCEL 1:

THAT PART OF THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:: BEGINNING AT A POINT 66 FEET EAST OF THE SOUTHEAST CORNER OF BLOCK 13 IN THORNTON (ACCORDING TO THE PLAT OF SAID THORNTON RECORDED MARCH 24, 1836 IN BOOK "H" OF MAPS 74) AND RUNNING THENCE NORTH 180 FEET; THENCE EAST ALONG THE NORTH LINE OF LOT 4 IN SAID BLOCK 13 PRODUCED EAST TO THORN CREEK; THENCE SOUTHERLY ALONG THORN CREEK TO A POINT DUE EAST OF THE PLACE OF BEGINNING, AND THENCE WEST ALONG THE NORTH LINE OF MARGARET STREET PRODUCED WEST TO THE POINT OF BEGINNING, (EXCEPT THE EAST 30 FEET OF THE WEST 215 FEET OF THE NORTH 40 FEET OF SAID PREMISES), IN COOK COUNTY, ILLINOIS

PARCEL 2:

BEGINNING AT A POINT 120 FEET SOUTH OF THE SOUTHEAST CORNER OF HARRIET AND BLACKSTONE STREETS; THENCE SOUTH ALONG THE EAST LINE OF BLACKSTONE STREET 60 FEET; THENCE EAST 150 FEET; THENCE NORTH AND PARALLEL WITH THE WEST LINE THEREOF 60 FEET; THENCE WEST AND PARALLEL WITH THE SOUTH LINE THEREOF 150 FEET TO THE POINT OF BEGINNING, IN THE VILLAGE OF THORNTON, A SUBDIVISION IN THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 3:

THOSE PARTS OF MARGARET STREET AND THORNTON-LANSING ROAD AS NOW LAID OUT IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 36 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, FALLING UNDERNEATH THE TWO 'ONE STORY BRICK BUILDINGS' AND UNDERNEATH THE RETAINING WALL, AS VACATED AND AS SHOWN ON PLAT OF VACATION RECORDED MAY 31, 1979 AS DOCUMENT 24982782 ALL IN COOK COUNTY, ILLINOIS

Commonly known as 400 East Margaret Street, Thornton, Illinois

P.I.N.: 29-34-107-005-0000, 29-34-107-023-0000, 29-34-107-032-0000, 29-34-107-033-0000