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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc#: 0924433052 Fee: \$82.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 09/01/2009 10:32 AM Pg: 1 of 24

Report Mortgage Fraud
800-532-8785

The property identified as: PIN: 08-16-200-102-0000

Address:

Street: 85 West Algonquin Road

Street line 2:

City: Arlington Heights

State: IL

ZIP Code: 60005

Lender: Inland Bank and Trust

Borrower: 85 Algonquin L.L.C.

Loan / Mortgage Amount: \$6,440,000.00

This property is located within Cook County and is exempt from the requirements of 765 ILCS 7770 et seq. because it is commercial property.

Box 400-CTCC

Certificate number: 6B9BDCD2-AE7F-4B49-AC4A-3D62ECE54D7E

Execution date: 08/26/2009

24
/ 8

8488257 DAEM 1073

Property of Cook County Clerk's Office

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(Above space for recording information)

THIS INSTRUMENT PREPARED BY:) James A. Schraidt
) Scott & Kraus, LLC
) 150 South Wacker Drive
) Suite 2900
) Chicago, Illinois 60606

MAIL THIS INSTRUMENT TO:) Charles R. Thomas
) Inland Bank and Trust
) 2805 Butterfield Road
) Suite 200
) Oak Brook, Illinois 60523

MORTGAGE AND SECURITY AGREEMENT

Dated as of August 28, 2009

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage"), is made and dated to be effective this 28th day of August, 2009, by

85 ALGONQUIN L.L.C., a limited liability company duly formed and existing under the laws of the State of Illinois, and duly qualified to transact business and own and deal in real property in the State of Illinois whose address is in care of Hamilton Partners, Inc., 300 Park Boulevard, Suite 500, Itasca, Illinois 60143

(herein, whether one or more, and if more than one jointly and severally, for convenience referred to as the "Mortgagor"), to the INLAND BANK AND TRUST, an Illinois banking corporation, whose address is 2805 Butterfield Road, Suite 200, Oak Brook, Illinois 60523 (herein, together with its successors and assigns, including each and every holder from time to time of the Note hereinafter defined, called the "Mortgagee")

UNOFFICIAL COPY**WITNESSETH:**

WHEREAS, Mortgagor is or will become the owner and holder of fee simple title in and to all of the following described real estate (hereinafter the "Property") located in the County of Cook, State of Illinois, to wit:

(Per the Legal Description set forth in Exhibit "A" attached hereto and forming a part hereof)

AND WHEREAS, Mortgagor has executed and delivered to Mortgagee a note (the "Note"), of even date herewith, payable to the order of Mortgagee in the total maximum principal amount of

SIX MILLION FOUR HUNDRED FORTY THOUSAND AND NO/100S

UNITED STATES DOLLARS (\$6,440,000.00) bearing interest at the rate specified therein, due in installments of principal and interest as provided therein, with the unpaid balance and any accrued but theretofore unpaid interest thereon being due and payable not later than August 28, 2014 (the "Maturity Date") and with the terms and provisions of the Note being incorporated herein by reference with the same effect as if set forth at length.

WHEREAS, this Mortgage is executed for the purpose of securing (1) payment of said indebtedness as provided in the Note and any extensions or modifications thereof (the "Loan"), (2) payment of all other monies secured hereby, and (3) the performance of all of the covenants, conditions, stipulations and agreements contained herein and in the Note and any other instrument now or hereafter executed evidencing or securing the Loan evidenced by the Note, including, but not limited to the Assignment of Leases, Rents and Profits of even date herewith (collectively hereinafter referred to as the "Security Documents")

NOW, THEREFORE, in order to secure the payment of the principal of and interest on the Note according to its tenor and effect, and to secure the payment of all other sums which may at any time be due and owing or required to be paid as herein provided (the "Indebtedness Hereby Secured"), which Indebtedness Hereby Secured shall in no event exceed \$12,000,000 in the aggregate, and the performance and observance of all of the covenants, agreements and provisions herein and in the Note contained, and in consideration of the premises and of the extension of credit by the Mortgagee to the Mortgagor, as evidence by the above described Note, and for other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged by the Mortgagor, Mortgagor does hereby MORTGAGE, CONVEY, WARRANT, DEED AND GRANT to Mortgagee, the Property, together with all buildings and improvements thereon, together with all of the right, title and interest of Mortgagor in and to all and singular the tenements, hereditaments, rights-of-way, easements, privileges and appurtenances now or hereafter thereto belonging or in anywise appertaining, all buildings, structures or improvements now located thereon or which may hereafter be placed thereon, the rents, issues and profits thereof (which are hereby expressly and absolutely assigned to the Mortgagee), all right, title and interest of Mortgagor in and to all chattels, furniture, equipment, machinery, apparatus, fixtures and articles of personal property of every kind and nature whatsoever owned by Mortgagor now or hereafter located in or upon the Property, or any

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building or structure located or to be located thereon, and used or usable in connection with the operation of the Property including, but without limiting the generality of the foregoing, all heating, lighting, laundry, incinerating and power equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus, air cooling and air conditioning apparatus, elevators, escalators, shades, awnings, screens, doors and windows, cabinets, partitions, ducts, compressors, canopies, furnishings, garbage and rubbish disposals, counters, sinks, basins, carpets, floor and wall coverings, drapes, inventory (expressly excluding any and all chattels, furniture and other personalty owned and leased by Mortgagor's lessees); and proceeds therefrom including but not limited to insurance proceeds and condemnation awards and all substitutions and replacements therefore; and all leases of any portion of the Property and any all rents, issues or profits derived therefrom; it being understood and agreed that all such property is part and parcel of the Property and appropriated to the use thereof, and whether affixed or annexed to the Property or not, shall for the purpose of this Mortgage be deemed conclusively to be a portion of the security for the indebtedness herein mentioned and secured by this Mortgage.

TOGETHER WITH all right, title and interest of Mortgagor in and to all rights, rights-of-way, easements, privileges, title and interest of Mortgagor, if any, now owned or hereafter acquired, in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of or adjoining the Property to the center line thereof (the Property and all other real estate, buildings, improvements, rights, title and interests hereby granted, conveyed, bargained, sold, assigned, confirmed, mortgaged to Mortgagee being hereinafter collectively called the "Premises").

TO HAVE AND TO HOLD the Premises, with all the privileges and appurtenances to the same belonging to Mortgagee, and its successors and assigns, forever for the uses and purposes set forth herein and in the other Security Documents, free from all rights and benefits under any homestead exemption, rights of redemption from sale, rights to retain possession and appraisal, valuation, stay, extension or moratorium laws of any state, all of said rights and benefits Mortgagor does hereby expressly release and waive; and Mortgagor hereby binds itself, its successors and assigns to forever warrant and defend the Premises and every part thereof unto the Mortgagee, its successors and assigns, against the claims and demands of every person whomsoever lawfully claiming the same or any part thereof, by, through or under Mortgagor, and any and all claims and demands except for such liens, restrictions or encumbrances as are listed as exceptions on the title policy insuring the lien of this Mortgage.

MORTGAGOR HEREBY REPRESENTS TO AND COVENANTS AND AGREES WITH MORTGAGEE AS FOLLOWS:

1. Mortgagor will cause to be paid all sums secured hereby when due.
2. Subject to the provisions of Paragraph 7, Mortgagor will pay, when due, utility charges and governmental charges of every type or nature levied or assessed against all or any part of the Premises or upon Mortgagor's or Mortgagee's interest therein, and any lawful claim, lien or encumbrance against all or any part of the Premises and, if requested by Mortgagee in writing, shall produce all receipts or other satisfactory evidence of such payments. However all

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real estate taxes and assessments shall be paid and receipts of payment provided to Mortgagee on or before the due date. In accordance with Paragraph 10 herein and the applicable cure periods therein, and if any of such items shall not be paid, Mortgagee shall have the right to pay the same and add the amount so paid to the principal sums secured hereby with interest thereon at the Default Rate as that term is defined in the Note, until paid.

Mortgagor will pay all taxes which may be assessed upon this Mortgage, or said Note, or indebtedness secured hereby, without regard to any law, heretofore or hereafter enacted, imposing payment of all or any part thereof upon Mortgagee. In event of enactment of any law imposing payment of all or any portion of any such taxes upon Mortgagee, or the rendering by any court of competent jurisdiction of a decision that the undertaking by Mortgagor, as herein provided, to pay such tax or taxes is legally inoperative, then, all sums hereby secured, without any deduction, shall at the option of Mortgagee become immediately due and payable, notwithstanding anything contained herein or any law heretofore or hereafter enacted.

3. Mortgagor warrants that it has good title to the Premises free from liens, claims, restrictions or encumbrances except for title exceptions noted in the title insurance policy insuring the lien of this Mortgage and is lawfully seized and possessed thereof with full right and power to convey the Premises, and to execute and deliver this Mortgage and does hereby warrant and will forever defend the Premises against the claims of all persons whomsoever by, through or under Mortgagor but not otherwise, and will appear in and defend any suit, action or proceeding that might in any way and in the reasonable judgment of Mortgagee affect the value of the Premises, the priority of this Mortgage or the rights and powers of Mortgagee with respect to the Premises.

4. Mortgagor shall upon written request of Mortgagee make monthly deposits with Mortgagee, in a non-interest bearing account, together with and in addition to interest and principal, of a sum equal to one-twelfth of the yearly taxes and assessments which may be levied against the Premises. Such deposits shall not be deemed to be trust funds but may be commingled with general funds of Mortgagee. The amount of such taxes and assessments, when unknown, shall be estimated by Mortgagee. Such deposits shall be used by Mortgagee to pay such taxes and assessments when due provided there is no Event of Default pursuant to Paragraph 10 of this Mortgage or under any of the other Security Documents; however, Mortgagee shall be under no obligation to pay any such charges unless there is on deposit with Mortgagee sufficient funds to pay such charges when due. Any insufficiency of such account to pay such charges when due shall be paid by Mortgagor to Mortgagee. In the event Mortgagor shall for any reason fail to pay such additional monies as are necessary to enable Mortgagee to pay the foregoing items when the same become due, Mortgagee, if it so elects, may pay the foregoing items by advancing such additional monies as are necessary, and upon notice to the Mortgagor of Mortgagee's advancing such additional monies, such additional monies so advanced by Mortgagee shall become immediately due and payable with interest at the Default Rate until paid and shall be secured by this Mortgage. Failure on the part of the Mortgagor to pay sums advanced hereunder shall, at the option of Mortgagee, constitute an Event of Default hereunder.

If, by reason of an Event of Default pursuant to Paragraph 10 by Mortgagor under any provision of this Mortgage, the Note or any other of the Security Documents, Mortgagee

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declares all sums secured hereby to be due and payable, Mortgagee may, at its option without being required to do so, then apply any funds in said account against any of the indebtedness secured hereby, in such order and manner as Mortgagee may elect. The enforceability of the covenants relating to taxes and assessments herein otherwise provided shall not be affected except insofar as those obligations have been met by compliance with this Paragraph. Mortgagee may from time to time, at its option, waive, and after any such waiver reinstate, any or all provisions hereof requiring such deposits, by notice to Mortgagor and Mortgagor in writing. While any such waiver is in effect, Mortgagor shall pay taxes and assessments as herein elsewhere provided.

5. Mortgagor will keep the Premises insured against loss or damage by fire, windstorm and such other hazards as may be required by Mortgagee, in form and amounts satisfactory to (but not less than full insurable value in amounts sufficient to avoid coinsurance liability) and in insurance companies approved by Mortgagee, the proceeds of which insurance shall be payable to Mortgagee. Further, Mortgagor shall provide rental or use and occupancy insurance. Mortgagor shall also at its expense provide public liability insurance in amount and with companies satisfactory to Mortgagee. All policies shall be endorsed with a noncontributory Standard Mortgagee Clause in favor of Mortgagee. One original or a certified duplicate copy of each policy shall be delivered to Mortgagee, together with receipts showing payment for the premiums therefore. Except for coverages provided under a blanket or master policy, upon foreclosure of this Mortgage or other acquisition of the Premises or any part thereof by Mortgagee, said policies shall become the absolute property of Mortgagee, limited to and to the extent of all monies owed pursuant to the Security Documents. In the event any policy required by Mortgagee is not renewed on or before its expiration and evidence thereof provided to Mortgagee, Mortgagee may procure said insurance, pay the premium therefore, and such sum shall become immediately due and payable with interest at the Default Rate until paid and shall be secured hereby. In accordance with Paragraph 10 herein and the applicable cure periods therein, failure on the part of Mortgagor to furnish such renewal copies as are herein required or failure to pay any sums advanced hereunder shall, at the option of Mortgagee, constitute an Event of Default under the terms hereof. The proceeds of all insurance shall, at the option of the Mortgagee be applied by Mortgagee in reduction of the indebtedness secured hereby, whether the same be then mature or unmatured (no such application shall be deemed to be an advance payment of any subsequently accruing fixed sum and shall not be subject to a prepayment penalty) or paid over wholly or in part to Mortgagor by Mortgagee for the repair of the Premises or for any other purpose or object satisfactory to Mortgagee; provided, however, Mortgagee shall not exercise its right to apply the insurance proceeds in reduction of the Indebtedness Hereby Secured and shall make such proceeds available for reconstruction of improvements on the Property if the Mortgagee, in its reasonable discretion, determines that (i) the damage can be restored and the Property can be restored to substantially the same condition as existed prior to the casualty on or before the Maturity Date, (ii) no tenant shall have terminated (or have the right to terminate which has not been waived) its lease of any portion of the Property as a result of the casualty, and (iii) no Event of Default shall have occurred and be continuing hereunder or under the Note or the Security Documents. Mortgagor hereby assigns to the Mortgagee, for the use and purposes aforesaid, all insurance required by this Mortgage and the proceeds thereof and, after an Event of Default hereby irrevocably appoints Mortgagee as Attorney-in-Fact of Mortgagor to assign each policy in the event of foreclosure of this Mortgage. Mortgagor shall promptly notify Mortgagee of any damage to or destruction of any part of the Premises, whether or not the same

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is covered by insurance, and shall furnish to Mortgagee, upon request, a certificate signed by an authorized individual containing a detailed list of the insurance policies then outstanding and in force on the Premises.

The following notice is provided pursuant to paragraph (3) of Section 180/10 of Chapter 815 of the Illinois Compiled Statutes (2002). As used herein, "you" means the Mortgagor and "we" and "us" means the Mortgagee: Unless you provide evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

Mortgagor shall upon written request of Mortgagee make monthly deposits with Mortgagee, in a non-interest bearing account, together with and in addition to interest and principal, of a sum equal to one-twelfth of the yearly insurance premiums related to the foregoing insurance policies. Such deposits shall not be deemed to be trust funds but may be commingled with general funds of Mortgagee. The amount of such premiums, when unknown, shall be estimated by Mortgagee. Such deposits shall be used by Mortgagee to pay such premiums when due provided there is no Event of Default pursuant to Paragraph 10 of this Mortgage or under any of the other Security Documents; however, Mortgagee shall be under no obligation to pay any such premiums unless there is on deposit with Mortgagee sufficient funds to pay such charges when due. Any insufficiency of such account to pay such charges when due shall be paid by Mortgagor to Mortgagee. In the event Mortgagor shall for any reason fail to pay such additional monies as are necessary to enable Mortgagee to pay the foregoing items when the same become due, Mortgagee, if it so elects, may pay the foregoing items by advancing such additional monies as are necessary, and upon notice to the Mortgagor of Mortgagee's advancing such additional monies, such additional monies so advanced by Mortgagee shall become immediately due and payable with interest at the Default Rate until paid and shall be secured by this Mortgage. Failure on the part of the Mortgagor to pay sums advanced hereunder shall, at the option of Mortgagee, constitute an Event of Default hereunder. If, by reason of an Event of Default pursuant to Paragraph 10 by Mortgagor under any provision of this Mortgage, the Note or any other of the Security Documents, Mortgagee declares all sums secured hereby to be due and payable, Mortgagee may, at its option without being required to do so, then apply any funds in said account against any of the indebtedness secured hereby, in such order and manner as Mortgagee may elect. The enforceability of the covenants relating to insurance premiums herein otherwise provided shall not be affected except insofar as those obligations have been met by compliance with this Paragraph. Mortgagee may from time to time, at its option, waive, and after any such waiver reinstate, any or all provisions hereof requiring such deposits, by notice to Mortgagor in writing. While any such waiver is in effect, Mortgagor shall pay insurance premiums as herein elsewhere provided.

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6. Mortgagor (i) will not remove, demolish or materially alter the design or structural character of any building now or hereafter erected upon the Property, nor remove or permit the removal of any fixtures, equipment or appliances therefrom unless Mortgagee shall first consent thereto in writing (except that Mortgagor may remove or demolish any fixtures, equipment or appliances in the ordinary course of business or that are no longer useful or used in the conduct of its business); (ii) will maintain the Premises in good condition and repair; (iii) will not commit or suffer waste thereon; and (iv) will comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Premises, and will not suffer or permit any violation thereof.

Should Mortgagor fail to make any and all necessary repairs to keep the Premises in good condition and repair within thirty (30) days after receipt by Mortgagor of written notice from Mortgagee directing that such repairs be made, or such longer period of time [not to exceed thirty (30) additional days] as may be required so long as Mortgagor is diligently pursuing any such repairs, then Mortgagee, its agents, employees or contractors, if Mortgagee so elects, may enter said Premises and the building or buildings located thereon and make the necessary repairs and all expenses incurred by Mortgagee in connection therewith shall become immediately due and payable with interest at the Default Rate until paid and shall be secured hereby. Failure on the part of Mortgagor to pay all expenses incurred by Mortgagee in connection with the making of such repairs, and the continuation of such failure to pay for five (5) days after receipt of notice of Mortgagee's payment from Mortgagor to Mortgagee, shall at the option of Mortgagee, constitute an Event of Default under the terms hereof.

7. If Mortgagor fails to pay, release, discharge or "bond around" any lawful claim, lien or encumbrance on the Premises when due, whether subordinate or prior to this Mortgage, or any tax or assessment before the same become delinquent under the law or insurance premium, or to keep the Premises in repair, or shall commit or permit waste, or shall use the Premises for an illegal purpose, or if there be commenced any action or proceedings affecting the Premises or the title thereto, or if Mortgagor defaults in the performance of any of its covenants or agreements hereunder, subject to Paragraph 10 herein and the applicable cure periods, then Mortgagee, at its option, may pay said claim, lien, encumbrance, tax, assessment or premium, with right of subrogation thereunder, may procure such abstracts or other evidence of title as it deems necessary, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action therein as Mortgagee deems advisable, and may perform such covenants and obligations, and for any part of said purposes Mortgagee may advance such sums of money as it deems necessary. Such sums advanced, with interest thereon at the Default Rate, shall immediately be due from Mortgagor to Mortgagee and be secured by this Mortgage. Mortgagee shall be the sole judge of the legality, validity and priority of any such claim, lien, encumbrance, tax, assessment and premium, and of the amount necessary to be paid in satisfaction thereof.

Notwithstanding the foregoing, so long as no Event of Default shall have occurred hereunder or under any other Security Document, and be continuing, Mortgagor shall have the right to contest, at Mortgagor's sole cost and expense, the amount or validity, in whole or in part, of any of the aforesaid taxes, claims, liens, encumbrances or assessments (hereinafter collectively referred to as "taxes") by appropriate proceedings diligently conducted by Mortgagor in good faith, but only after payment of such taxes, unless such payment would

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operate as a bar to such contest or interfere materially with the prosecution thereof, in either of which latter events, and Mortgagor may postpone or defer payment of such taxes if (1) the right or privilege so to do is granted or sanctioned by applicable law or otherwise, (2) Mortgagor deposits with Mortgagee sufficient security to pay such taxes and all costs, fees, interest and other liabilities in connection therewith (the sufficiency of which security shall be in the sole discretion of Mortgagee), (3) the Premises or any part thereof shall not, by reasons of such postponement or deferment, be subject to forfeiture or loss, and (4) Mortgagor shall promptly commence proceedings for such contest and prosecute the same with all due diligence. Upon the termination of such proceedings, Mortgagor shall pay such amount of any such taxes or part thereof as is finally determined in such proceedings, the payment of which, pursuant to the foregoing provisions of this Paragraph, shall have been deferred during the prosecution of such proceedings, together with all costs, fees, interest, penalties and other liabilities in connection therewith. Mortgagor covenants to defend, indemnify and save Mortgagee harmless from and against any liability and for the payment of all costs and expenses in connection with any such proceedings, except for matters caused by the bad faith, gross negligence or willful misconduct of Mortgagee.

8. Mortgagor will comply with all applicable laws, ordinances, regulations, covenants, conditions and restrictions affecting the Premises or its operation, and will pay all fees or charges of any kind in connection therewith. Mortgagor shall, within thirty (30) days following notice from the proper authorities, comply with any legal requirements of the state, county or municipality in which the Premises are located and respecting the Premises. Notwithstanding the foregoing, Mortgagor may, in good faith, contest any such requirement.

9. All awards heretofore or hereafter made by any public or quasi-public authority to the present and all subsequent owners of the Premises by virtue of an exercise of the right of eminent domain by such authority, including any award for a taking of title, possession or right of access to a public way, or for any change of grade or streets affecting said Premises, are hereby assigned to Mortgagee; and Mortgagee, at its option, is hereby authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts and acquittances therefor, and may, at the Mortgagee's election, use such proceeds when actually received in any one or more of the following ways: (1) apply the same or any part thereof upon the indebtedness secured hereby whether such indebtedness then be matured or unmatured, (2) use the same or any part to fulfill any of the covenants contained herein as Mortgagee may determine, (3) use the same or any part thereof to replace or restore the Premises to a condition satisfactory to Mortgagee, (4) release the same to Mortgagor, and Mortgagor hereby covenants and agrees to and with Mortgagee, upon request by Mortgagee, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of so assigning all such awards to the Mortgagee; provided, however, that Mortgagee agrees to use the proceeds to replace or restore the Premises to a condition satisfactory to Mortgagee, if the Mortgagee, in its reasonable discretion, determines that (i) the Property can be restored to substantially the same condition as existed prior to the condemnation on or before the Maturity Date, (ii) no tenant shall have terminated (or have the right to terminate which has not been waived) its lease of any portion of the Property as a result of the casualty, and (iii) no Event of Default shall have occurred and be continuing hereunder or under the Note or the Security Documents. Mortgagee shall have the right to intervene and participate in any proceeding for and in connection with any taking referred to in this Paragraph, provided,

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however, that if such intervention shall not be permissible or permitted by the court, Mortgagor shall, at its expense, consult with Mortgagee, its attorney and experts and make all reasonable efforts to cooperate with them in any defense of such proceedings. The Mortgagor shall not enter into any agreement for the taking of the Premises or any part thereof with any person or persons authorized to acquire the same by condemnation or eminent domain, unless Mortgagee shall have consented thereto in writing. Notwithstanding any taking by condemnation or eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Premises by any public or quasi-public authority or corporation, Mortgagor shall continue to pay the regular monthly installments due under the Note (including interest on the entire principal sum secured), and any reduction in the principal sum resulting from the application by the Mortgagee of such award or payment shall be deemed to take effect only on the date of such receipt by Mortgagee.

10. The occurrence of any of following events continuing after any applicable cure period, shall constitute an Event of Default under this Mortgage:

- (a) The failure of the Mortgagor to make any payment required to be made under the Note secured hereby, this Mortgage, or any other Security Document in accordance with the terms of the Note, this Mortgage or such other Security Document and the continuation of such failure for five (5) days after the due date thereof;
- (b) The failure of Mortgagor to observe to perform any other obligation of Mortgagor contained in this Mortgage, the Note secured hereby, the Assignment of Rents, or the failure of the Mortgagor to observe or perform any obligation under any other Security Document, or the occurrence of any other default under any of the foregoing instruments, or failure of Mortgagor to observe the terms and obligations of any local, state or federal permit, franchise or certificate issued in connection with the Premises and the continuation of such failure for thirty (30) days after receipt of notice of same from Mortgagee to Mortgagor or such longer period of time [not to exceed an additional sixty (60) days] as may reasonably be required, for as long as Mortgagor is diligently attempting to cure such failure.
- (c) If by the order of a court of competent jurisdiction, (i) a receiver or liquidator or trustee of Mortgagor shall be appointed and shall have not been discharged within a period of sixty (60) days, or (ii) if, by decree of such a court, the Mortgagor shall be adjudicated a bankrupt or any substantial part of its property shall be sequestered and such decree shall continue undischarged and unstayed for a period of sixty (60) days after the entry thereof; or (iii) a petition to reorganize the Mortgagor pursuant to the Federal Bankruptcy Code, as it now exists or as it may hereafter be amended, or pursuant to any other analogous statute applicable to Mortgagor as now or hereinafter in effect, shall be filed against the Mortgagor and shall not be dismissed within sixty (60) days;

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- (d) If Mortgagor shall file a petition in voluntary bankruptcy under any provision of any bankruptcy law or petition to take advantage of any insolvency act, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or receivers of all or any part of the Premises or shall consent to the filing of any bankruptcy, arrangement, or reorganization petition by or against it under any provision of the bankruptcy law, or (without limitation of the generality of the foregoing) Mortgagor shall file a petition or answer seeking an arrangement or reorganization pursuant to the Federal Bankruptcy Code, as it now exists or as it may hereafter be amended, or pursuant to any other analogous statute applicable to the Mortgagor as now or hereafter in effect;
 - (e) Dissolution of Mortgagor without reconstitution within sixty (60) days of dissolution;
 - (f) The Premises or any part thereof is transferred or further encumbered by operation of law or otherwise, without the prior written consent of Mortgagee;
 - (g) The transfer of the interest of the manager of the Mortgagor.
11. Upon and after the happening of an Event of Default:
- (a) Mortgagee shall have the right, at its option to declare the amount of principal of the Note then unpaid, with interest thereon as provided in the Note, to be due and payable immediately, without notice, and upon such declaration the principal of, and the interest on the Note then outstanding shall forthwith become and be due and payable as fully and to the same effect as if the date of such declaration were the date originally specified for the maturity of the unpaid balance of the Note;
 - (b) Mortgagee may enforce its rights hereunder by any appropriate remedy against Mortgagor or from proceeding by suit to foreclose or by suits at law or in equity, as Mortgagee may elect, to enforce payment of all sums secured hereby;
 - (c) Upon any sale made under or by virtue of this Paragraph 10, any person, including Mortgagor and Mortgagee, may bid for and acquire the Premises or any part thereof
 - (d) Mortgagee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the provisions of this Mortgage; and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder or the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage; and the right of Mortgagee to recover such

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judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure of the lien hereof; and in the event of a sale of the Premises and of the application of the proceeds of sale, as in this Mortgage provided, to the payment of the debt hereby secured, Mortgagee shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon the Note, and to enforce payment of all other charges, payments and costs due under this Mortgage. In case of proceedings against Mortgagor in insolvency or bankruptcy or any proceedings for its arrangement or reorganization or involving the liquidation of its assets, then Mortgagee shall be entitled to prove the whole amount of principal and interest due upon the Note to the full amount thereof, and all other payments, charges and costs due under this Mortgage without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Premises; provided, however, that in no case shall Mortgagee receive a greater amount than such principal and interest and such other payments, charges and costs from the aggregate amount of the proceeds of the sale of the Premises and the distribution from the estate of Mortgagor;

- (e) Mortgagor shall not at any time insist upon, or plead or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Premises or any part thereof, whatever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist upon any benefit or 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 or sales thereof which may be made pursuant to any provision hereof, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof and the Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to the Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives to the extent that it lawfully may, all right to have the Premises marshaled upon any foreclosure hereof; and
- (f) Mortgagee shall be entitled, as a matter of right, to the appointment of a receiver of the Premises, and the court may appoint a receiver, either before or after judgment, upon notice as required by law, without regard to the solvency or insolvency of Mortgagor at the time of the application for such receiver and without regard to the then value of the Premises. Such receiver shall have full power to collect the rents, revenues, issues, income and profits from the Premises and all other powers necessary or incidental

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for the protection, possession, control, management and operation of the Premises. Said receiver shall also have full power and authority, at the expense of the Premises and of Mortgagor, to maintain, restore and keep insured the Premises and to pay all taxes, assessments and other charges arising in connection therewith. Mortgagor hereby consents to the appointment of a receiver and will upon Mortgagee's request formally evidence such consent in writing or in any proceeding for the appointment of such receiver.

12. Mortgagor further covenants and agrees as follows:

- (a) With respect to the Premises and the operation thereof, (i) on a monthly basis, Mortgagor will keep proper books of record and account according to tax basis accounting, and (ii) on an annual basis, in accordance with tax basis accounting, Mortgagee shall have the right to examine such books of account and to discuss the affairs, finances and accounts relative to the Premises and to be informed as to the same by the Mortgagor (or if the Mortgagor be a corporation or a partnership by Mortgagor's officers or partners, as the case may be), all at such reasonable times and intervals as the Mortgagee may desire, and the Mortgagor will furnish to the Mortgagee prior to May 31st of each year, (i) copies of the Mortgagor's completed financial statements, including balance sheet and income statements, and an operating statement regarding the Premises, including an itemized account of gross annual income and expenditures reflecting in detail the operations of the Premises, and stating in comparative form the figures as of the end of the fiscal year, and for the previous fiscal year, and certified by Mortgagor as being correct and complete, and (ii) copies of the rent roll for the Premises, which shall include, without limitation, the name of each tenant, commencement and expiration dates of each lease, annual rent due under each lease, and the square footage leased by each tenant, and no later than thirty (30) days after filing, Mortgagor will furnish to the Mortgagee copies Mortgagor's federal income tax returns for the prior fiscal year;
- (b) Mortgagor has established the deposit account with Mortgagee identified in the Note, and Mortgagor shall maintain such account as its Property operating account and shall utilize same for collection of the rents from the Property and payment of operating expenses for the Property;
- (c) As further security for the indebtedness herein described, Mortgagor (in this subparagraph hereinafter sometimes referred to as Debtor) hereby grants to Mortgagee a security interest in, and this Mortgage will constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (the "Code") with respect to, all present and future furnishings, inventory, furniture, appliances, equipment, fixtures, machinery, trade fixtures, business equipment, apparatus, tools, leases of chattels whether the Debtor is the lessor or lessee thereof and options in

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favor of the Debtor thereunder, service, management and other contracts or agreements, tax refunds, insurance policies up to all monies owed pursuant to the Security Documents and proceeds to be received thereunder or therefrom whether by reason of loss or cancellation, all rents, issues and profits, located at the Premises, including all proceeds thereof and all other personal property of every kind owned by the Debtor and used in the operation of the Premises (hereinafter referred to as the "chattels") and the proceeds thereof which security interest shall have priority over all other security interests. Except as permitted herein, Debtor further agrees that it shall not sell, assign, lease, transfer or otherwise dispose of said chattels without Mortgagee's prior written consent, to remove and dispose of, free from the lien of this Mortgage, such chattels as from time to time may become worn out or obsolete, provided that either:

- (i) Simultaneously, with or prior to such removal, any such chattels shall be replaced with other chattels of a value at least equal to that of the replaced chattels and free from security agreement or other encumbrances and from any reservation of title, and by such removal and replacement Mortgagee shall be deemed to have subjected such equipment to the lien of this Mortgage; or
- (ii) Any net cash proceeds received from disposition of any of said chattels shall be used to replace said chattels or shall be paid over promptly to Mortgagee to be applied to the last installment due on the indebtedness secured, without any charge for prepayment.

In the event of an Event of Default, Mortgagee will have the option of proceeding as to both real and personal property in accordance with its rights and remedies with respect to real property, in which case the default provisions of the Code shall not apply. Mortgagee agrees that, in the event Mortgagee elects to proceed with respect to the portion of the Premises which may be deemed not to form a part of the real estate described herein or may not constitute a fixture within the meaning of the Code (collectively the "Code Property") separately from the rest of the Premises, ten (10) days notice of the sale of the Code Property will be reasonable notice;

- (d) Mortgagee hereby assigns and transfers to Mortgagee all rents, issues, profits, revenues and income from the above-described property and Premises, including all rents now due or which may hereafter become due under all leases thereof, whether written or verbal, now existing or hereafter made, as additional security for the indebtedness secured hereby, and Mortgagee is given a prior and continuing lien thereon. To the extent permitted under applicable law, upon and after an Event of Default, Mortgagee hereby appoints Mortgagee as its Attorney-in-Fact with power to collect said rents, revenues and income with or without suit, and apply

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same, less expenses of collection, to said indebtedness, in such manner as Mortgagee may elect; provided, however, that Mortgagor may exercise all acts of ownership and collect all rents, revenues and income as if this Mortgage had not been executed until an Event of Default occurs under the provisions of this Mortgage. Mortgagee does not assume and shall not be liable in respect of any obligation of the lessor under any of said leases, and no liability shall attach to Mortgagee for failure or inability to collect any rents, revenues and incomes hereby assigned. Mortgagor shall not collect any rents under any of said leases in advance of the time when they become due and except as provided above and in the ordinary course of business (i.e., after a lessee default) will not materially modify or cancel any of said leases without the prior written consent of Mortgagee. Mortgagor will (i) fulfill or perform each and every term, covenant and provision of any such lease to be fulfilled or performed by the lessor thereunder; (ii) reasonably enforce, short of termination thereof, the performance or observance of each and every term, covenant and provision of any such lease by the lessee thereunder to be performed or observed; and that, in any Event of Default under this Mortgage, to the extent permitted by applicable law, Mortgagor will pay monthly in advance to Mortgagee, or to any receiver appointed to collect said rents, issues and profits, the fair and reasonable rental value for the use and occupation of such units of the Premises as may be in possession of Mortgagor and upon default in any such payment, will vacate and surrender possession of such part of the Premises to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise;

- (e) Nothing in this Mortgage shall be construed to obligate Mortgagee to discharge or perform duties of a landlord to a tenant or to impose any liability as a result of the exercise of the option to collect rents under this Mortgage by virtue of an Event of Default, and it is agreed that the collection or participation therein shall be as agent only for the Mortgagor;
- (f) As further security for the debt herein described, Mortgagor hereby sells, assigns, sets over and transfers to Mortgagee all of Mortgagor's rights in and to the plans and specifications covering all improvements now located on or hereafter constructed on the Premises, and Mortgagor shall, within thirty (30) days from the date of written request from Mortgagee to Mortgagor deliver or cause to be delivered to Mortgagee a complete set of such plans and specifications;
- (g) Mortgagor will do, execute and deliver all further acts, mortgages, assignments, UCC filing statements and assurances as Mortgagee may reasonably require from time to time, for confirming to Mortgagee the property and rights hereby and hereafter intended to be conveyed or assigned, and Mortgagor will pay all filing, registration or recording fees, and all federal, state, county and municipal stamp taxes and other taxes,

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duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and the Security Documents. In addition to, and not in lieu of the foregoing, Mortgagee is hereby specifically and expressly authorized and empowered to prepare and file, on behalf of Mortgagor and without the necessity of a signature by Mortgagor, any financing statement deemed necessary or appropriate by Mortgagee in order to further evidence, perfect or continue the security interests granted in this Mortgage or in any other Security Document; and

- (h) Mortgagee and Mortgagor will furnish upon either party's request within ten (10) days after written request, a written statement setting forth the amount of the debt secured by this Mortgage, and stating either that no setoffs or defenses exist against the Mortgagee or the debt, or, if such setoffs or defenses are alleged to exist, the nature thereof.

13. Mortgagor will at all times, indemnify, defend, hold harmless and on demand reimburse Mortgagee for any and all loss, damage, expense or cost, of whatsoever kind and nature, including, without limitation cost of evidence of title, appraisal fees, documentary and expert evidence, stenographer's and publication charges, and reasonable attorneys', accountants' and other professionals' fees, arising out of or incurred in connection with (i) any suit, action or proceeding relative to the Premises, the Mortgage, the Mortgagor or having impact on the interest granted hereunder including probate, bankruptcy, appellate proceedings, and foreclosure of this Mortgage, but excluding any suit, action or proceeding based on a claim incurred prior to Mortgagor's acquisition of the Premises, (ii) preparation for the commencement or defense of any proceeding, (iii) adjustment and settlement of insurance proceeds and condemnation awards, (iv) advances made by Mortgagee pursuant to Paragraph 7 hereof or elsewhere hereunder, (v) other costs incurred by Mortgagee in connection with preserving the Premises, (vi) retaking, holding, preparing and selling the Code Property pursuant to the Code, and (vii) arising out of the transaction contemplated by the Note and the Security Documents and any breach thereof. The sum of such expenditures will bear interest at the Default Rate, will be due and payable on demand and will be secured by this Mortgage, except for any matters (including without limitation items (i) through (vii) above) caused by the bad faith, gross negligence, or willful misconduct of Mortgagee.

14. The powers and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law, and the powers herein may be executed after the death, dissolution or termination of the Mortgagor and after the Premises have been sold.

15. Mortgagor and Mortgagee acknowledge that the continued ownership of the Premises by Mortgagor is a material inducement to the making of the Loan served by this Mortgage; therefore Mortgagor further agrees as an additional security for the debt herein described that it shall not sell, assign, transfer or further encumber the Premises or any part thereof (except as otherwise permitted hereunder), or the chattels in any manner whatsoever without the prior written consent of the Mortgagee. Except as permitted hereunder, should the Mortgagor transfer said Property or further encumber said Property without the prior written

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consent of the Mortgagee, it shall constitute a default under the terms of this Mortgage and the Note secured hereby.

16. Mortgagor shall furnish to Mortgagee a copy of any environmental impact statement prepared by Mortgagor and submitted, to a governmental agency, whether or not required by law. Mortgagor shall also furnish to Mortgagee copies of all responses received with respect to any such statement.

17. Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by Mortgagor; neither Mortgagor nor any Guarantor shall be relieved of any obligation for the payment of the Indebtedness hereby secured by reason of the failure of Mortgagee to comply with any request of Mortgagor or any Guarantor to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner, or owners of the Premises and the Mortgagee extending the time of payment or modifying the terms of the Note or this Mortgage without first having obtained the consent of Mortgagor or any Guarantor, and in the latter event, Mortgagor and all Guarantors shall remain liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Mortgagee; the Mortgagee may release, regardless of consideration, any part of the security held for the indebtedness secured by this Mortgage, without, as to the remainder of the security, in anywise impairing or affecting the lien; and Mortgagee may resort for the payment of the indebtedness to security therefor held by the Mortgagee in such order and manner as Mortgagee may elect.

18. If at any time the United States of America shall require revenue stamps to be affixed to the Note, Mortgagor will pay for the same with any interest or penalties imposed in connection therewith.

19. This Mortgage shall be construed according to the laws of the State of Illinois. It is understood and agreed that if any of the provisions of this Mortgage shall contravene, or be invalid under the laws of the State of Illinois, or of any county or jurisdiction therein, such contravention or invalidity shall not invalidate this entire Mortgage, but it shall be construed as if not containing the particular provision or provisions so held to be invalid in said state, county or jurisdiction, and the rights and obligations of the parties shall be construed and enforced accordingly.

20. All notices and demands under and with respect to this Mortgage or the Note secured hereby shall be in writing, and shall be served by hand, sent prepaid by Federal Express (or a comparable overnight delivery service), or sent by the United States Mail, registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the earlier of (a) the day of actual receipt of the written notice or demand by the party to whom the notice was given, or (b) the date on which the party to whom such notice was sent accepts or refuses delivery of such notice. All notices or demands shall be addressed to the respective parties at the following address:

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Mortgagor: c/o Hamilton Partners, Inc.
300 Park Boulevard, Suite 500
Itasca, Illinois 60413
Attn: Ronald C. Lunt

with copy to: Michael D. Miselman, Esq.
Seyfarth Shaw LLP
131 South Dearborn Street
Suite 2400
Chicago, Illinois 60603

Mortgagee: Charles R. Thomas
Senior Vice President
Inland Bank and Trust
2805 Butterfield Road
Suite 200
Oak Brook, Illinois 60523

with copy to: James A. Schraidt, Esq.
Scott & Kraus, LLC
150 South Wacker Drive
Suite 2900
Chicago, Illinois 60606

21. Mortgagor covenants and agrees that Mortgagor shall not materially amend any presently existing, or enter into any new franchise, license or management agreement relating to the Premises or any part thereof without the prior written approval of Mortgagee.

22. An Event of Default (as defined in the Note) under the Note shall constitute a default hereunder and the holder of the Note may, at its option, cause the entire indebtedness secured by this Mortgage to become immediately due and payable. In the event of such an Event of Default, and whether or not such holder shall cause the indebtedness secured hereby to become immediately due and payable, Mortgagee, after such notice as may be required by Paragraph 24 below to Mortgagor, may enter upon the Premises, may employ watchmen to protect the improvements thereon from theft or injury, may enter into any further contracts and obligations wherever necessary, either in its name as Mortgagee hereunder or in the name of the Mortgagor, and may pay all debts, obligations and liabilities incurred thereby. All sums so advanced by Mortgagee and all sums advanced pursuant to the Note or any of the Security Documents up to \$12,000,000.00 shall be secured by this Mortgage and, to the extent they shall not be included in the principal amount of indebtedness secured hereby, shall be due and payable on demand with interest at the highest contract rate allowed by law but not to exceed the Default Rate.

23. Mortgagor represents and warrants that no part of the funds advanced under the Note will be directly or indirectly invested by Mortgagor in any security subject to the margin requirements of any applicable Federal Reserve Board Regulation.

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24. Notwithstanding any provision herein or in the Note to the contrary, Mortgagor shall not be or be deemed to be in a non-monetary default hereunder or under any document executed in connection herewith unless and until Mortgagee shall have given Mortgagor notice in writing specifying such default and such default remains uncured thirty (30) days after the date of such notice. The foregoing shall not apply to defaults in the payment of money. Mortgagor, without notice, shall be deemed to be in default in the payment of money five (5) days after such payment first becomes due.

25. Notwithstanding any provision herein or in the Note or any Security Document, Mortgagee is not and shall not be deemed to be a partner or joint venturer with Mortgagor with respect to the Premises. It is not intended that the making of the Loan or any other activities of Mortgagee with respect to the Premises shall be for the benefit of or be relied upon by any third Party, and Mortgagee shall not in any way be liable or responsible for any reason for the payment of any claims to any such third party.

26. Time is of the essence in the performance by Mortgagor of all of its obligations, covenants and agreements contained herein.

27. The warranties, covenants, conditions, representations and agreements contained in this Mortgage shall run with the land and shall bind Mortgagor, its successors and assigns, and shall be construed as including any subsequent owner or owners of the Premises and shall inure to the benefit of the Mortgagee, its successors and assigns. Notwithstanding the foregoing, the warranties, covenants, conditions, representations and agreements shall continue until the indebtedness secured by this Mortgage has been paid in full, or upon a foreclosure of the Mortgage, a delivery of a deed in lieu of foreclosure, or termination of this Mortgage for any reason, whichever first occurs.

28. Whenever the singular or plural number, or masculine, feminine or neuter gender is used herein, it shall equally include the other, and every mention herein of the Mortgagor, Mortgagee and Mortgagor shall include heirs, executors, legal representatives, administrators, successors and assigns of the party so designated.

29. Mortgagor acknowledges and agrees that the Loan secured by this Mortgage is a business loan under the provisions of the Interest Act of the State of Illinois, 815 ILCS 205/4.

30. 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 Section 15-1201 of the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq. (the "Act")) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatements and redemption as allowed under Section 15-1601(b) of the Act, and to the full extent permitted by law, the benefits of all present and future valuation, appraisal, homestead, exemption, stay, redemption and moratorium laws under any state or federal law.

31. THE MORTGAGOR OR ANY PERSON AT ANY TIME LIABLE FOR THE PERFORMANCE OF THE TERMS AND CONDITIONS OF THIS MORTGAGE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT IT MAY

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HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF MORTGAGOR AND MORTGAGEE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE ACCEPTING THIS MORTGAGE.

32. The recourse of Mortgagee with respect to the obligations evidenced hereby shall be solely to the Premises. It is expressly understood and agreed that nothing contained herein shall be construed as creating any liability on Mortgagor personally to pay the Note or any interest that may accrue hereon, or any other indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein; all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right hereunder, and that so far as the Mortgagee personally is concerned, the legal holders of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the Premises for the payment thereof, by the enforcement of the lien created under any of the Loan Documents, in the manner herein and therein provided; provided, however, that subject to the limitation of recourse for liability to the Premises as set forth herein, nothing contained herein or in any Loan Document shall:

- (a) limit Mortgagee's other rights and remedies against the Mortgagor hereunder or thereunder, either at law or in equity;
- (b) limit the enforceability of, or Mortgagee's recourse under, any indemnity, guaranty, master lease or similar instrument entered into in connection with the Loan; or
- (c) relieve the Mortgagor from personal liability or responsibility for:
 - 1) waste with respect to the Property or any act or omission which materially reduces the value of the Property, committed by Mortgagor;
 - 2) any security deposits of tenants not turned over to Mortgagee upon foreclosure, or conveyance in lieu thereof;
 - 3) any insurance proceeds or condemnation awards received by Mortgagor and not turned over to Mortgagee or used for restoration or repair of the Property;
 - 4) any rents and other income from the Property received by the Mortgagor after a default under the Loan Documents and not otherwise applied to the current (not deferred) fixed and operating expenses of the Property or to the indebtedness under this Note; provided, however, the Mortgagor shall be personally liable for any such amounts paid as management, maintenance, repair or janitorial fees, costs, expenses or any other charges to a person or entity related to or affiliated with Mortgagor in excess of the market value of the services rendered by such affiliate;

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5) any taxes (accrued and/or payable), assessments, utility charges and/or insurance premiums with respect to the Property; or

6) any sums expended by Mortgagee prior to foreclosure in fulfilling the obligations of Mortgagor, as lessor, under any leases of the Property.

Notwithstanding the foregoing, this agreement by Mortgagee not to pursue recourse liability SHALL BECOME NULL AND VOID and shall be of no further force and effect in the event:

(a) that the Premises or any part thereof or any interest therein shall be further encumbered by a voluntary lien securing an obligation upon which the Mortgagor shall be personally liable for repayment; or

(b) that there shall be any breach or violation of the due on sale or encumbrance sections of this Mortgage; or

(c) of any fraud or intentional misrepresentation by Mortgagor in connection with the Premises, the Loan Documents, the Loan application, or any other aspect of the Loan; or

(d) that Mortgagor executes an amendment or termination of any lease assigned to Mortgagee under the Loan Documents, without the prior written consent of Mortgagee, if such consent is required under the Loan Documents.

IN WITNESS WHEREOF, this Mortgage is duly executed the day and year first above written.

MORTGAGOR:

85 ALGONQUIN L.L.C.,
an Illinois limited liability company

By: HP 85 ALGONQUIN L.L.C., an
Illinois limited liability company, its
Manager

By: 
Patrick J. McKillen, Managing Member

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ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

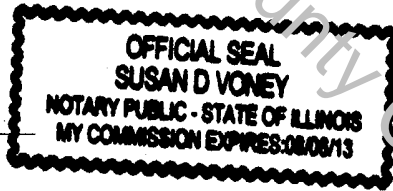
On this, the 26 day of August, 2009, before me, the undersigned officer, personally appeared Patrick J. McKillen, who acknowledged himself to be a Managing Member of HP 85 ALGONQUIN L.L.C., an Illinois limited liability company, Manager of 85 ALGONQUIN L.L.C., an Illinois limited liability company, and that he as such Managing Member being authorized to do so, executed the foregoing instrument for the purposes therein contained as the free and voluntary act of said limited liability company, as the Manager of the aforesaid limited liability company, by signing the name of the limited liability company, by himself as such Managing Member.

IN WITNESS WHEREOF, I hereunder set my hand and official seal.

Susan D. Voney

Notary Public

My commission expires:



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EXHIBIT A

Legal Description

PARCEL 1:

LOT 2 IN ARLINGTON PLACE SUBDIVISION, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPT THAT PART TAKEN IN FEE SIMPLE TITLE BY THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF ILLINOIS IN CASE NUMBER 93L51190, AS FOLLOWS: THAT PART OF LOT 2 IN ARLINGTON PLACE SUBDIVISION, BEING A SUBDIVISION IN PART OF SECTION 16, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF, RECORDED NOVEMBER 29, 1979 AS DOCUMENT 25261219, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE ON AN ASSUMED BEARING OF SOUTH 32 DEGREES 56 MINUTES 06 SECONDS WEST ALONG THE EASTERLY LINE OF SAID LOT 2 A DISTANCE OF 14.43 FEET TO A POINT ON A 2551.07 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS NORTH 33 DEGREES, 27 MINUTES 05 SECONDS EAST FROM SAID POINT; THENCE NORTHWESTERLY ALONG SAID CURVE, RADIUS 2551.07 FEET, CENTRAL ANGLE 1 DEGREE 33 MINUTES 00 SECONDS 69.01 FEET TO THE WESTERLY LINE OF SAID LOT 2, BEING ALSO A POINT ON A 30.00 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS SOUTH 89 DEGREES 23 MINUTES 13 SECONDS WEST FROM SAID POINT; THENCE NORTHWESTERLY ALONG SAID CURVE, BEING ALSO THE SAID WESTERLY LINE OF LOT 2, RADIUS OF 30.00 FEET, CENTRAL ANGLE 55 DEGREES 09 MINUTES 09 SECONDS 28.83 FEET TO THE NORTHWEST CORNER OF SAID LOT 2, BEING ALSO A POINT ON A 2541.29 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS NORTH 34 DEGREES 19 MINUTES 04 SECONDS EAST FROM SAID POINT; THENCE SOUTHEASTERLY ALONG SAID CURVE, BEING ALSO THE NORTHERLY LINE OF SAID LOT 2, RADIUS 2541.29 FEET, CENTRAL ANGLE 2 DEGREES 06 MINUTES 11 SECONDS 93.28 FEET (93.29 FEET, RECORDED) TO THE POINT OF BEGINNING.

PARCEL 2:

RECIPROCAL EASEMENT FOR INGRESS AND EGRESS AS CREATED BY THAT CERTAIN AGREEMENT DATED AUGUST 2, 1979 AND RECORDED OCTOBER 1, 1979 AS DOCUMENT 25171074 AND REGISTERED WITH THE REGISTRAR OF TITLES ON OCTOBER 1, 1979 AS DOCUMENT LR3121973 AND AS AMENDED BY AGREEMENT DATED JANUARY 27, 1981 AND RECORDED JUNE 4, 1981 AS DOCUMENT 25893428 AND FILED AS DOCUMENT LR3218008.

PARCEL 3:

EASEMENT FOR CREATION AND MAINTENANCE OF A DETENTION/RETENTION POND CREATED BY THAT CERTAIN AGREEMENT DATED DECEMBER 1, 1979 AND

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RECORDED WITH THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS JANUARY 4, 1980 AS DOCUMENT 25306989 AND REGISTERED WITH THE REGISTRAR OF TITLES JANUARY 4, 1980 AS DOCUMENT LR3139276 AND AS AMENDED BY DOCUMENT RECORDED MARCH 7, 1983 AS DOCUMENT NUMBER 26527048, AND AS AMENDED BY DOCUMENT RECORDED MARCH 7, 1983 AS DOCUMENT NUMBER 26527048 AND FILED AS DOCUMENT NUMBER 3296792, PERTAINING TO LOT 1 AND LOT 2 IN ARLINGTON PLACE SUBDIVISION, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBER: 08-16-200-102-0000

COMMONLY KNOWN AS: 85 WEST ALGONQUIN ROAD, ARLINGTON HEIGHTS, ILLINOIS 60005