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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



1110550023

Doc#: 1110550023 Fee: \$92.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/15/2011 04:11 PM Pg: 1 of 29

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 12-10-302-042-0000

Address:

Street: 9405 W. River Road

Street line 2:

City: Schiller Park

State: IL

ZIP Code: 60176

Lender: First Merit Bank

Borrower: Parkway Bank and Trust, Trust #60734, dated 4-12-84

Loan / Mortgage Amount: \$3,500,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 7/70 et seq. because it is commercial property.

Certificate number: 9E8F4654-7A58-49A6-BC4A-5815BE1F984A

Execution date: 03/21/2011

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

Daniel J. Cousino
Ungaretti & Harris, LLP
3500 Three First National Plaza
Chicago, Illinois 60602

This space reserved for Recorder's use only.

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

THIS MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF RENTS AND FIXTURE FILING (the "**Mortgage**") is made as of the 21 day of March, 2011, by PARKWAY BANK & TRUST CO., NOT PERSONALLY BUT AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 27, 2006 AND KNOWN AS TRUST NO. 14113 ("**Mortgagor**"), whose address is 4800 N. Harlem Avenue, Harwood Heights, Illinois 60706, to and in favor of FIRSTMERIT BANK, N.A. ("**Lender**"), whose address is 678 Lee Street, Des Plaines, Illinois 60016.

WITNESSETH:

WHEREAS, Mortgagor, EAGLE DISTRIBUTORS, INC., an Illinois corporation ("**Eagle**") (Mortgagor and Eagle are referred to herein each as a "**Borrower**" and collectively as "**Borrowers**"), and Lender have entered into that certain Loan and Security Agreement of even date herewith (as amended, modified, restated, substituted and or replaced from time to time, the "**Loan Agreement**") pursuant to which Lender has agreed to extend credit to Borrowers in the aggregate principal amount not to exceed THREE MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$3,250,000.00) pursuant to two (2) credit facilities (collectively, the "**Loans**" and each, a "**Loan**") established thereunder and defined therein as follows: (a) the "**Revolving Loan**" in the maximum principal amount from time to time of TWO MILLION AND 00/100 DOLLARS (\$2,000,000.00), and (b) the "**Term Loan**" in the principal amount of ONE MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,250,000.00). All capitalized terms not specifically defined herein shall have the meanings ascribed to those terms in the Loan Agreement; and

WHEREAS, the Loans are evidenced by the Notes which each individually evidence the respective Loans established under the Loan Agreement as follows: (a) the Revolving Loan are evidenced by the Revolving Note, and (b) the Term Loan is evidenced by the Term Note; and

WHEREAS, Mortgagor and Eagle are affiliate entities in that the holder of the beneficial

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interest of Mortgagor is also the sole shareholder of Eagle, as well as a Guarantor under the Loans; and

WHEREAS, Mortgagor is granting this Mortgage to and for the benefit of Lender to provide security for the payment of all Obligations that may be due at any time with respect to the Loans pursuant to the terms of the Loan Agreement and the Notes, and pursuant to any of the other Loan Documents.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE FOREGOING AND OTHER VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, MORTGAGOR HEREBY AGREES AS FOLLOWS:

GRANTING CLAUSES

Mortgagor hereby mortgages, grants, assigns, remises, releases, warrants and conveys to Lender, its successors and assigns, and grants a security interest in, the following described property, rights and interests (collectively, the "**Property**"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (hereinafter defined) and not secondarily, whether now owned or hereafter acquired:

THE REAL ESTATE situated in County of Cook, State of Illinois, and more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference, together with all of the easements, rights, privileges, franchises and appurtenances thereunto belonging or in any way appertaining (the "**Real Estate**") and all of the estate, right, title, interest, claim and demand whatsoever of Mortgagor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Real Estate, 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 and/or any Borrower in and to any such fixtures together with the benefit of any deposits or payments now or hereafter made on such fixtures by Mortgagor and/or any Borrower or on its behalf (collectively, the "**Improvements**");

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

TOGETHER WITH all rents, revenues, issues, profits, proceeds, income, royalties, escrows, letter-of-credit rights (each as defined in the UCC), security deposits, impounds, reserves, tax refunds and other rights to monies from the Property and/or the businesses and operations

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conducted by Mortgagor thereon, to be applied against the Obligations (collectively, the **Rents and Profits**);

TOGETHER WITH all interest of Mortgagor in all leases now or hereafter on the Property, whether written or oral (each a **Lease** and collectively, the **Leases**), together with all security therefor and all monies payable thereunder;

TOGETHER WITH all fixtures now or hereafter owned by Mortgagor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Obligations; 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 Property or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Property or proceeds of any sale, option or contract to sell the Property or any portion thereof

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

FOR THE PURPOSE OF SECURING:

1. Prompt payment of all Obligations by each Borrower, as set forth in the Loan Documents, with interest thereon, according to the terms of the Loan Documents, and any and all modifications, extensions and renewals thereof;
2. Prompt payment of any and all other indebtedness required to be paid to Lender herein, in the Notes, or in any of the other Loan Documents;
3. Prompt payment of all sums, with interest thereon, advanced by Lender to preserve or protect the Property or its interest therein, hereunder, or under any of the other Loan Documents including, but not limited to, advances for insurance premiums and real property taxes;

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4. Prompt payment of such additional sums, with interest thereon, as may be hereafter borrowed from Lender, its successors or assigns, by each Borrower, when evidenced by the Notes or any of the other Loan Documents, reciting that they are secured by this Mortgage; and

5. Due, prompt and complete observance, performance and discharge of each and every obligation, covenant and agreement of each Borrower under any of the Loan Documents.

Notwithstanding the foregoing, if Borrowers shall pay or cause to be paid to Lender the principal and interest and all other sums due or to become due under the Loan Documents at the time and in the manner stipulated therein and shall pay or cause to be paid all other sums payable hereunder and all Obligations secured hereby, then in such case, the estate, right, title and interest of Lender in the Property shall cease, and upon written notice from Lender that all sums secured hereby have been paid and upon payment of Lender's fees, Lender shall execute and deliver a written release of this Mortgage for recording against title to the Property.

This Mortgage is given in part to secure certain revolving credit obligations, and secures not only the Obligations from Borrowers existing on the date hereof, but all such future advances, whether such advances are obligatory or to be made at the option of Lender, to the same extent as if such future advances were made on the date of the execution of this Mortgage, and although there may be no Obligations outstanding at the time any advance is made. The lien of this Mortgage as to third persons without actual notice thereof shall be valid as to all the Obligations and future advances from the time this Mortgage is filed for record in the Office of the Recorder of Deeds of Cook County.

The total principal amount that may be secured by this Mortgage may increase or decrease from time to time, but the total secured hereby shall not exceed FIVE MILLION 00/100 DOLLARS (\$5,000,000.00), exclusive of all other non-principal Obligations of Borrowers under the Loan Agreement.

The recitals set forth above are made a part of and incorporated into this Mortgage.

ARTICLE 1

REPRESENTATIONS, WARRANTIES AND COVENANTS OF MORTGAGOR

For the purpose of further securing the Obligations secured hereby and for the protection of the security of this Mortgage, Mortgagor represents, warrants, covenants and agrees as follows:

1.1 **Warranties of Mortgagor.** Mortgagor, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Lender, its successors and assigns, that:

(a) Mortgagor has full power and lawful authority to grant, assign, transfer and mortgage its interest in the Property in the manner and form hereby done or intended. Mortgagor's

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fee simple title to the Property is subject only to the Permitted Exceptions set forth on Exhibit B attached hereto and incorporated herein. Mortgagor shall preserve its interest in and to the Property and shall forever warrant and defend the same to Lender and shall forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. Mortgagor shall promptly and completely observe, perform and discharge each and every obligation, covenant, condition, restriction and agreement affecting the Property, whether the same is prior and superior or subject and subordinate hereto. (The foregoing warranty of title shall survive the foreclosure of this Mortgage and shall inure to the benefit of and be enforceable by any person who may acquire title to the Property pursuant to any foreclosure.);

(b) No bankruptcy or insolvency proceedings are pending or contemplated by or against Mortgagor or by or against any Borrower or any endorser, cosigner or guarantor of the Loan Documents;

(c) The execution and delivery of this Mortgage does not contravene, result in a breach of or constitute a default under any contract or agreement to which Mortgagor is a party or by which Mortgagor or any of its properties may be bound and do not violate or contravene any law, order, decree, rule or regulation to which Mortgagor is subject;

(d) There are no judicial or administrative actions, suits or proceedings pending or, to the best of Mortgagor's knowledge, threatened against or affecting Mortgagor or the Property that would materially impair Mortgagor's ability to perform the covenants or obligations required to be performed under the Loan Documents;

(e) The Property and the intended use thereof by Mortgagor complies in all material respects with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations, and all other statutes laws, ordinances, orders and requirements issued by state, federal or municipal authorities having or claiming jurisdiction over the Property;

(f) The Property is free from damage caused by fire, earthquake, flood or other casualty; and

(g) No part of the Property has been taken in condemnation, eminent domain or similar proceedings nor are any such proceedings pending or, threatened.

The representations and warranties set forth in this Section 1.1 are made for the benefit of Lender, and successors and assigns, and shall not inure to the benefit of (nor may they be enforced by) any purchaser of the Property at any foreclosure sale or any transferee of the Property by deed in lieu of foreclosure (other than Lender itself).

1.2 **Defense of Title.** Without limiting or waiving any other rights and remedies of Lender hereunder, if, while this Mortgage is in force, the title to the Property described herein or the interest of Lender therein shall be the subject, directly or indirectly, of any action at law or in equity or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner,

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Mortgagor shall, immediately upon receipt of written notice from Lender, take all necessary and proper steps for the defense of said title or interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. If Mortgagor fails to so defend such title or interest to the reasonable satisfaction of Lender, Mortgagor hereby authorizes Lender, at Mortgagor's expense, to take all reasonably necessary and proper steps to defend such title or interest.

1.3 **Performance of Obligations.** Mortgagor shall pay when due the principal of and the interest on the Obligations secured hereby and all charges, fees and other sums as provided in the Loan Documents, and shall observe, perform and discharge all obligations, covenants and agreements that are secured by this Mortgage in accordance with their terms. Further, Mortgagor shall promptly and strictly perform and comply with all covenants, conditions, obligations and prohibitions required of Mortgagor in connection with any other encumbrance affecting the Property, or any part thereof, regardless of whether such encumbrance is superior or subordinate to the lien hereof.

1.4 **Insurance.** Mortgagor shall, at Mortgagor's expense, maintain in force and effect on the Property at all times while this Mortgage continues in effect the following insurance:

(a) Such insurance coverage as may be required by any law or governmental regulation or court decree or order applicable to it and such other insurance, to such extent and against such hazards and liabilities, including employers', public and professional liability risks, as is customarily maintained by companies similarly situated, and shall have insured amounts no less than, and deductibles no higher than, are reasonably acceptable to the Lender.

(b) Standard All-Risk Replacement Cost Property Damage Insurance (and Builder's Risk - All Risk Insurance, Completed Value Form, during the period of any construction upon the Real Estate) reasonably required by the Lender including, without limitation, a policy or policies insuring the Property against loss or damage by fire, explosion, windstorm, hail, tornado, all other perils insured against under "extended coverage" or "all risk" policies, and such other hazards and such other or additional coverage as from time to time may be required by the Lender for one hundred percent (100%) of the full insurable value of the Property, including a replacement cost coverage endorsement without deduction for depreciation;

(c) Rent Loss Insurance or Business Interruption Insurance in an amount sufficient to cover loss of rents or business from the Property for a period of at least six (6) months; and

(d) Such other insurance on the Property as may from time to time be reasonably required by Lender against other insurable hazards or casualties and as provided in the Loan Documents, including, without limitation, flood insurance.

All such insurance shall be subject to the reasonable approval of Lender as to insurance companies, amounts, content, forms of policies and expiration dates.

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Mortgagor shall deliver to Lender the original insurance policies, or copies of such insurance policies and original certificates of insurance satisfactory to Lender evidencing such insurance and any additional insurance that shall be taken out upon any part of the Property, and receipts evidencing the payment of all premiums therefor not later than fifteen (15) days before the effective date of such policies, and Mortgagor shall deliver certificates evidencing annual renewals of all such policies of insurance to Lender at least fifteen (15) days before any such insurance shall expire. Without limiting the required endorsements to insurance policies, Mortgagor further agrees that all such liability insurance policies shall name Lender as an "Additional Insured" thereunder and all property and casualty and rent loss or business interruption insurance shall name Lender as "Loss Payee." Without limiting the foregoing, all Insurance Policies shall (a) include, when available, non-contributing endorsements in favor of and with loss payable to the Lender, (b) include standard waiver of subrogation endorsements, (c) provide that the coverage shall not be terminated or materially modified without fifteen (15) days advance written notice to the Lender, and (d) provide that no claims shall be paid thereunder without ten (10) days advance written notice to the Lender. In the event of foreclosure of this Mortgage, or other transfer of title to the Property in extinguishment in whole or in part of the Obligations secured hereby, all right, title and interest of Mortgagor in and to such policies then in force covering the Property and all proceeds payable thereunder shall thereupon vest in the purchaser to such foreclosure, or in Lender or other transferee in the event of such other transfer of title. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Mortgage, subject to the notice and cure provisions set forth in Section 2.1(b) hereof, Lender may, but shall not be obligated to, procure such insurance and Mortgagor shall pay all premiums thereon promptly upon demand by Lender together with interest thereon at the Default Rate defined in the Loan Documents; any premiums paid by Lender shall be secured by this Mortgage.

1.5 Payment of Taxes. Mortgagor shall pay or cause to be paid, except to the extent provision is actually made therefor pursuant to Section 1.5 of this Mortgage, all taxes and assessments that are or may become a lien on the Property or that are assessed against or imposed upon the Property. Mortgagor shall furnish Lender with receipts showing payment of such taxes and assessments prior to the applicable delinquency date therefor, except that Mortgagor may in good faith, by appropriate proceedings, contest, so long as such contest is diligently pursued, the validity, applicability or amount of any asserted tax or assessment; and pending such contest, Mortgagor shall not be deemed in default hereunder by reason of nonpayment of such asserted tax or assessment if Lender determines, in its reasonable opinion, that nonpayment of such tax or assessment shall not result in the loss, forfeiture or diminution of the Property or any part thereof or any interest of Lender therein and if, prior to delinquency of the asserted tax or assessment, Mortgagor establishes an escrow acceptable to Lender adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, cost and penalties (which escrow shall be returned to Mortgagor upon payment of all such taxes, assessments, interest, costs and penalties or upon a final determination that such taxes are not, in fact, payable), and if Mortgagor promptly causes to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; provided, however, that in any event each such contest shall be concluded and the taxes, assessments, interests, costs and penalties shall be paid, prior to the date any writ or order is issued under which the Property may be sold. Mortgagor shall have the right to require that any such escrow established

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with Lender be applied to the payment of any such taxes, assessments, interest, costs and penalties. In the event Mortgagor fails to pay any installment of real property taxes prior to delinquency and has not made other, adequate arrangements with Lender, Lender may at any time thereafter (subject to notice and cure provisions set forth in Section 2.1(b) hereof), but shall not be obligated to, pay such delinquent taxes, interest and penalties and Mortgagor shall pay all sums to Lender promptly upon demand by Lender together with interest thereon from the date(s) advanced by Lender at the Default Rate defined in the Loan Agreement; any such sums advanced by Lender for the payment of taxes and penalties, together with such interest thereon, shall be secured by this Mortgage.

1.6 Tax Impound and Insurance Account. Upon written notice from Lender given in Lender's sole discretion following any default by Mortgagor hereunder or under any other Loan Document, Mortgagor shall establish and shall maintain at all times while this Mortgage continues in effect an impound account (the "**Impound Account**") with Lender for payment of (1) real property taxes and assessments on the Property and (2) insurance premiums with respect to the Property. The Impound Account shall be in an amount initially equal to the sum of: (a) an amount reasonably determined by Lender to be necessary to ensure that there will be on deposit with Lender an amount which, when added to the monthly payments subsequently required to be deposited with Lender hereunder on account of real estate taxes and assessments, will result in there being on deposit with Lender in the Impound Account an amount sufficient to pay the next due installment of real estate taxes and assessments on the Property prior to the delinquency date thereof; plus (b) the amount of any delinquent real estate taxes or assessments with respect to the Property for any prior tax year, with all interest and penalties thereon and (c) an amount reasonably determined by Lender to be necessary to ensure that there will be on deposit with Lender an amount which, when added to the monthly payments subsequently required to be deposited with Lender hereunder on account of insurance premiums, will result in there being on deposit with Lender in the Impound Account an amount sufficient to pay the insurance premiums on the Property when the same become due and payable. Commencing with the first day of each calendar month after the establishment of the Impound Account as set forth above and continuing thereafter on the first day of each month until the Obligations is fully paid, Mortgagor shall make deposits to the Impound Account held by Lender in an amount equal to (1) the amount determined by dividing the amount of the annual real estate taxes and assessments that will next become due and payable on the Property as estimated and determined by Lender by twelve (12) and (ii) the amount of the annual insurance premiums with respect to the Property as estimated and determined by Lender by twelve (12). No interest or dividend shall be payable on the Impound Account. The Impound Account is solely for the protection of Lender and entails no responsibility on Lender's part beyond the allowing of due credit without interest for the sums actually received. Upon assignment of this Mortgage by Lender, any funds on hand shall be turned over to the assignee and any responsibility of Lender, as assignor, with respect thereto shall terminate. If the total of the Impound Account shall exceed the amount of payments actually applied by Lender for the purposes of the Impound Account, such excess may be credited by Lender on subsequent payments to be made by Mortgagor or, at the option of Lender, refunded to Mortgagor. If, however, the Impound Account shall not contain sufficient funds to pay the sums required when the same shall become due and payable, Mortgagor shall, after written notice thereof and together with the next due monthly installment under the Loan Documents, deposit with Lender the full amount of any such deficiency. Upon the occurrence of an Event of Default by Mortgagor, Lender may, at its option, and without limitation on any other remedies available to Lender hereunder, apply

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all or any part of the sums in the Impound Account against the amount of the Obligations or other sums then due, in which event Mortgagor shall be obligated, as a condition to curing such default, to restore the Impound Account to its previous balance. The application of all or any part of the Impound Account as provided herein shall not be deemed to be a cure or waiver of any default. Upon payment in full of the Obligations, any amount remaining in the impound account shall be refunded to Mortgagor.

1.7 **Casualty and Condemnation.** In the event that the Improvements, or any portion thereof, are ever demolished, destroyed or damaged by fire or other casualty, or in the event that all or any portion of the Property is ever taken by an action in eminent domain or sold in lieu thereof, or in the event that any Property is ever damaged by public works or construction on or near the Property, then Mortgagor shall promptly give Lender written notice of such destruction, taking, sale or damage, and shall take all necessary action, with Lender's consent, to obtain the benefit of any insurance or condemnation proceeds lawfully or equitably payable to Mortgagor or Lender in connection therewith. All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Lender. Lender may participate in any suits or proceedings relating to any such proceeds, cause of action, claims, compensation, awards or recoveries and may join with Mortgagor in adjusting any loss covered by insurance, and Mortgagor shall from time to time deliver to Lender any instruments required to permit such participation. Lender shall apply any sums received by it under this Section 1.7 or awarded to Mortgagor with respect thereto first to the payment of all of its costs and expenses (including, but not limited to, legal fees and disbursements) incurred in obtaining those sums and then the balance thereof (referred to herein as "**Net Insurance or Condemnation Proceeds**") shall be applied as follows:

(a) If all of the following conditions have been and remain satisfied: (i) at the time of such destruction, taking, sale or damage, there exists no Event of Default, (ii) as determined by an architect or engineer reasonably satisfactory to Lender, the Property is capable of being repaired, rebuilt or restored to a condition substantially equivalent to its original condition in substantial accordance with plans and specifications approved by Lender, free and clear of any and all liens, security interests, charges and encumbrances, except the lien of this Mortgage and any Permitted Exceptions; (iii) such Net Insurance or Condemnation Proceeds are sufficient, in Lender's opinion, to so repair, rebuild or restore the Property, or, if insufficient, Mortgagor deposits the deficiency with Lender within fifteen (15) days of demand (the "Mortgagor's Deposit"); (iv) Lender shall be satisfied that, after such restoration, repair or rebuilding (taking into account the status of leasing of the Property and any restrictions imposed by law or agreement on such restoration, repair or rebuilding or on the use of the Property after such restoration, repair or rebuilding), the remaining Property shall constitute adequate security for the Obligations, and (v) Lender is satisfied, in its reasonable business judgment, that Mortgagor's financial condition is sufficient to cause all amounts to become due under the Loan Documents until such time as the Improvements are restored, repaired or rebuilt to be paid as the same become due, then at Lender's option the Net Insurance or Condemnation Proceeds shall be applied to such repair, rebuilding or restoration in accordance with the plans and specifications therefor approved by Lender, such amounts to be disbursed by Lender in accordance with terms, conditions and procedures customarily followed by prudent institutional

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Lenders in making construction loans in similar amounts and in accordance with such other terms, conditions and procedures as Lender may reasonably require to assure the proper application of such Net Insurance or Condemnation Proceeds and the continuing performance by Mortgagor of its obligations under the Loan Documents, including, without limitation, those provided under Section 1.7(c) below.

(b) In the event that the Net Insurance or Condemnation Proceeds are not applied to the repair, rebuilding or restoration of the Property pursuant to the provisions of Section 1.7(a) above, then such Net Insurance or Condemnation Proceeds shall be applied to the reduction of the Obligations secured hereby in such order and manner as Lender shall determine and, to the extent that any portion of the Obligations secured hereby then remains unpaid, Lender may, at its option, declare the outstanding Obligations secured hereby to be immediately due and payable. Any reduction in the Obligations secured hereby resulting from Lender's application of any sums received by it hereunder shall take effect only when Lender actually receives such sums and, in any event, the unpaid portion of the Obligations secured hereby shall remain in full force and effect and Mortgagor shall not be excused in the payment thereof.

(c) Any insurance proceeds held by the Lender for restoration or repairing of the Property shall be promptly disbursed at the request of the Mortgagor upon the Lender being furnished with (a) evidence satisfactory to it of the estimated cost of the restoration or repair, (b) funds sufficient in addition to the proceeds of insurance to fully pay for the restoration or repair and to pay debt service on the Loan during the period of restoration or repair, and (c) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey and such other evidences of cost, payment and performance as the Lender 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 the Lender in its sole judgment. Funds deposited hereunder in addition to the insurance proceeds shall be disbursed prior to disbursement of such insurance proceeds; and at all times the undisbursed balance of such remaining proceeds, together with funds deposited or irrevocably committed by or on behalf of Mortgagor to pay the cost of such repair or restoration, shall be sufficient in the reasonable judgment of the Lender to pay the entire unpaid cost of the restoration or repair, free of all liens or claims for lien. Any surplus of insurance proceeds held by the Lender after payment of such costs of restoration or repair shall be paid to Mortgagor, provided Mortgagor is not in default hereunder or under the other Loan Documents, and in such case, the same shall be applied to the reduction of the Obligations in such order and manner as Lender shall determine.

(d) Mortgagor agrees to execute and deliver, from time to time, such further instruments as may be requested by Lender to confirm the foregoing assignment to Lender of any awards, damages, insurance proceeds, payment or other compensation. Lender is hereby irrevocably constituted and appointed the attorney-in-fact of Mortgagor (which power of attorney shall be irrevocable, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Mortgagor and shall not be affected by any disability or incapacity suffered by Mortgagor subsequent to the date hereof), with full power of substitution to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the

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parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittances therefor.

1.8 **Mechanics' Liens and Utilities.** Mortgagor shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Property; provided, however, that Mortgagor shall have the right to contest in good faith any such claim or demand, provided that it does so diligently and without prejudice to Lender. In the event Mortgagor shall contest any such claim or demand, Mortgagor shall, upon Lender's request, promptly provide a bond, cash deposit or other security reasonably satisfactory to Lender to protect Lender's interest and security should the contest be unsuccessful. If Mortgagor shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, subject to the notice and cure provisions set forth in Section 2.1(b) hereof, Lender may do so, and any and all expenses incurred by Lender together with interest thereon at the Default Rate shall be immediately reimbursed by Mortgagor on demand. Mortgagor shall pay when due all utility charges that are incurred by Mortgagor or that may become a charge or lien against the Property for gas, electricity, water and sewer services furnished to the Property and all other assessments or charges of a similar nature, whether public or private, affecting the Property or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon.

1.9 **Rents and Profits.** As additional and collateral security for the payment of the Obligations secured hereby and cumulative of any and all rights and remedies herein provided for, Mortgagor hereby absolutely and currently assigns to Lender all existing and future Rents and Profits and, with respect to said existing and future Rents and Profits, Mortgagor hereby grants to Lender the sole, exclusive and immediate right to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Mortgagor does hereby irrevocably make, constitute and appoint Lender its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Mortgagor) it being understood that Lender shall be without liability for any loss that may arise from uncollectible Rents and Profits, proceeds or other payments. Mortgagor irrevocably consents that the respective payors of the Rents and Profits shall, upon demand and notice from Lender of Mortgagor's default hereunder, pay said Rents and Profits to Lender without liability to such payor for the determination of the actual existence of any default claimed by Lender. However, until the occurrence of an Event of Default, Mortgagor shall have a license to collect and receive the Rents and Profits. Upon the occurrence of an Event of Default, Mortgagor's license shall automatically terminate without notice to Mortgagor and Lender may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after such termination, Mortgagor shall be the agent of Lender in collection of the Rents and Profits and all of the Rents and Profits so collected by Mortgagor shall be held in trust by Mortgagor for the sole and exclusive benefit of Lender, and Mortgagor shall, promptly after receipt of any Rents and Profits, pay the same to Lender to be applied by Lender as hereinafter set forth. Lender is obligated to account only for such Rents and Profits as are actually collected or received by Lender. Possession by a court-appointed receiver shall not be considered possession by Lender. All Rents and Profits collected by Lender or a receiver shall be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Property, and then to the

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payment of the Obligations and obligations secured hereby in whatever order Lender directs in its absolute discretion and without regard to the adequacy of its security. In the event that Mortgagor has executed a separate Assignment of Rents and Leases concurrently herewith in favor of Lender covering all of the right, title and interest of Mortgagor, as landlord, lessor or licensor, in and to any leases, licenses and occupancy agreements relating to all or portions of the Property, all rights and remedies granted to Lender under such Assignment of Rents and Leases shall be in addition to and cumulative of all rights and remedies granted to Lender under this Section 1.9.

1.10 Leases and Licenses.

(a) Mortgagor shall furnish to Lender, within ten (10) days after a request by Lender to do so, but not more frequently than semi-annually, a written statement containing the names of all tenants, lessees and licensees of the Property, the terms of their respective leases, licenses or occupancy agreements, the spaces occupied and the rentals or fees payable thereunder and a copy of each such lease, license and occupancy agreement, if applicable.

(b) Upon the occurrence of an Event of Default, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal proceedings to foreclose this Mortgage, forthwith, upon demand of Lender, Mortgagor shall surrender to Lender and Lender shall be entitled to take actual possession of the Property or any part thereof personally, or by its agent or attorneys. Lender shall have, and Mortgagor hereby gives and grants to Lender, the right, power and authority to make and enter into leases of the Property or portions thereof for such rents and for such periods of occupancy and upon conditions and provisions as Lender may deem desirable, and Mortgagor expressly acknowledges and agrees that the term of any such lease may extend beyond the date of any foreclosure sale of the Property; it being the intention of Mortgagor that in such event, Lender shall be deemed to be and shall be the attorney-in-fact of Mortgagor for the purpose of making and entering into leases of parts or portions of the Property for the rents and upon the terms, conditions and provisions deemed desirable to Lender and with like effect as if such leases had been made by Mortgagor as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Mortgage. The power and authority hereby given and granted by Mortgagor to Lender shall be deemed to be coupled with an interest and shall not be revocable by Mortgagor. In connection with any action taken by Lender pursuant to this Section 1.10(b), Lender shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Lender in managing the Property nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any lease or tenancy agreement covering the Property or any part thereof or under or by reason of this instrument or the exercise of rights or remedies hereunder. Mortgagor shall, and does hereby, agree to indemnify Lender for, and to hold Lender harmless from, any and all liabilities, loss or damage (including, without limitation, attorneys' fees and costs) that may or might be incurred by Lender under any such lease or tenancy agreement or under this Mortgage or by the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever that may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such lease agreement. Should Lender incur any such liability, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, together with interest thereon at the Default

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Rate, shall be secured hereby and shall be a demand obligation hereunder. Nothing in this Section 1.10(b) shall impose any duty, obligation or responsibility upon Lender for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of any such lease agreement, nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

1.11 **Alienation and Further Encumbrances.** In the event Mortgagor shall sell, convey, transfer, dispose of, encumber, alienate, or lease the Property, or any part thereof or any interest therein, or shall be divested of its title or any interest therein, in any manner or way, whether voluntarily or involuntarily (any of the foregoing being individually called a "**Transfer**"), without the written consent of Lender being first obtained, which consent may be withheld in Lender's sole and absolute discretion, Lender shall have the right at its option to declare any of the Obligations secured hereby, irrespective of the Maturity Date specified in the Loan Documents evidencing the same, immediately due and payable. In the event Mortgagor is a corporation, partnership (general or limited, each of which is deemed a partnership), association, limited liability company or other legal entity, any sale, assignment, transfer, conveyance, gift, pledge, mortgage, or other encumbrance of any portion of the beneficial ownership interests of Mortgagor outstanding at the date hereof shall be deemed to be a Transfer for purposes of this Section 1.11. Acceptance by Lender of any payment or payments on the Loan Documents or other sums secured by this Mortgage by one other than Mortgagor shall not constitute (i) any notice to Lender of any Transfer or proposed Transfer of any interest in the Property covered by this Mortgage or (ii) any consent or waiver of the right to consent to such Transfer or proposed transfer of any interest in the Property.

1.12 **Access Privileges and Inspections.** Representatives of Lender shall have full and free access to the Property at all reasonable times, upon reasonable prior written notice to Mortgagor, for the purposes of inspecting the Property and determining compliance with the terms and conditions of this Mortgage and the other Loan Documents.

1.13 **Waste.** Mortgagor shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Mortgagor shall maintain the Property in good condition and repair. No Improvements may be removed or demolished without the prior written consent of Lender. No personal property in which Lender has a security interest may be removed from the Property unless it is immediately replaced by similar property of at least equivalent value in which Lender shall immediately have a valid first lien and security interest.

1.14 **Zoning.** Without the prior written consent of Lender, which consent will not be unreasonably withheld, conditioned or delayed, Mortgagor shall not seek, make, suffer or consent to or acquiesce in any change in the zoning or conditions of use of the Property. Mortgagor shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Property. Mortgagor shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property.

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1.15 **Books and Records.** Mortgagor shall keep accurate books and records of account of the Property and of its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles, consistently applied. Lender and its duly authorized representatives at all reasonable times shall have full access to and shall have the right to examine, copy and audit Mortgagor's records and books of account relating to the Property and Mortgagor's financial condition. So long as this Mortgage continues in effect, Mortgagor shall prepare and deliver to Lender such financial statements as are required under the terms of the Loan Documents.

1.16 **Further Documentation.** Mortgagor shall, on the request of Lender promptly (a) correct any defect, error or omission that may be discovered in the contents of this Mortgage or in the contents of any of the other Loan Documents; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, further deeds of trust, security agreements, financing statements, continuation statements and assignments of rents or leases) and do such further acts as may be reasonably necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents and to subject to the liens and security interest hereof and thereof any property intended by the terms hereof and thereof to be covered hereby and thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Property; (c) execute, acknowledge, deliver, procure and record or file any document or instrument (including specifically any financing statement) deemed advisable by Lender to protect the lien or the security interest hereunder against the rights or interests of third persons; and (d) furnish to Lender, upon Lender's request, a duly acknowledged written statement setting forth all amounts due on the Obligations secured by this Mortgage and stating whether any offsets or defenses exist, and containing such other matters as Lender may reasonably require.

1.17 **Reimbursement to Lender.** Mortgagor shall promptly notify Lender in writing of any litigation or threatened (in writing to Mortgagor) litigation affecting the Property, or any other written demand or claim which, if enforced, could materially impair or threaten to impair Lender's security hereunder. Without limiting or waiving any other rights and remedies of Lender hereunder, if Mortgagor fails to perform any of its covenants or agreements contained in this Mortgage, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced that might materially affect Lender's interest in the Property or Lender's right to enforce its security, or any claims or demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Property and/or any Improvements thereon or any nuisance made or suffered thereon, then Lender may, at their option (subject to the notice and cure provisions provided in Section 2.1(b) hereof), make any appearances, disburse any sums and take any actions as may be reasonably necessary or desirable to protect or enforce the security of this Mortgage or to remedy the failure of Mortgagor to perform its covenants (without, however, waiving any default of Mortgagor). Mortgagor agrees to pay all reasonable out-of-pocket expenses of Lender thus incurred (including, but not limited to, attorneys' fees and costs), together with interest thereon at the Default Rate from and after the date of Lender's making such payment until reimbursement thereof by Mortgagor. Any sums disbursed by Lender, together with interest thereon, shall be additional Obligations of Mortgagor secured hereby and shall

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be payable upon demand. This Section 1.17 shall not be construed to require Lender to incur any expenses, make any appearances or take any actions.

1.18 **Personal Property and Fixtures.** This Mortgage is also intended to and does hereby encumber and create a security interest in, and Mortgagor does hereby grant to Lender a security interest in: (a) all right, title and interest of Mortgagor in and to all instruments, documents, contracts, general intangibles (including trademarks, trade names and symbols used in connection with the Improvements or the Real Estate), now existing or hereafter arising from or by virtue of any transaction related to the Improvements or the Real Estate, permits, licenses, franchises, certificates and other rights and privileges now or hereafter obtained in connection with the Improvements or the Real Estate, and (b) any and all property that is personal property and fixtures owned by Mortgagor and now or hereafter located on or used in connection with the Real Estate, including, but not limited to, all equipment, fixtures, furniture, furnishings, appliances, carpets, drapes and articles of personal property owned by Mortgagor and now or hereafter located on, attached to or used in and about the Improvements that are necessary to the complete and comfortable use and occupancy of the Improvements for all purposes for which they are intended, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Mortgagor as are ever to be used or furnished in operating the Improvements, or the activities conducted therein, and all warranties and guaranties relating thereto; and (c) all renewals or replacements of any of the aforementioned items, or articles in substitution thereof, whether or not the same shall be attached to the Improvements in any manner, and all building materials and equipment hereafter situated on or about the Real Estate. It is hereby agreed that to the extent permitted by law, all of the foregoing property and fixtures are to be deemed and held to be a part of and affixed to the Real Estate. The foregoing security interest shall also cover Mortgagor's leasehold interest in any of the foregoing items that are leased by Mortgagor. Mortgagor shall, from time to time upon the request of Lender, supply Lender with a current inventory of all of the personal property in which Lender is granted a security interest hereunder, in such detail as Lender may require.

1.19 **Security Agreement and Fixture Filing.** This Mortgage constitutes a Security Agreement and Fixture Filing between Mortgagor and Lender with respect to all personal property in which Lender is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party under the UCC. Mortgagor hereby expressly authorizes Lender to file with the appropriate filing officer or office such security agreements, financing statements, fixture filings, continuation statements or other instruments as Lender may require in order to impose, perfect or continue the perfection of the lien or security interest created hereby, all without the necessity of a signature by Mortgagor. Upon the occurrence of any Event of Default, Lender shall have the right, at its option, to take appropriate steps to cause any of the Property that is personal property and subject to the security interest of Lender hereunder to be sold at any one or more public or private sales as permitted by applicable law, including at a sale held in conjunction with any foreclosure sale of the Property as provided for in this Mortgage, and apply the proceeds of such sale against the Obligations secured hereby in whatever order Lender shall direct in its absolute discretion, and

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Lender shall further have all other rights and remedies as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Lender. Any person, including both Mortgagor and Lender, shall be eligible to purchase any part or all of such property at any such disposition. Expenses of retaking holding, preparing for sale, selling or the like shall be borne by Mortgagor and shall include Lender's attorneys' fees and costs together with interest thereon at the Default Rate. Mortgagor, upon demand of Lender, shall assemble such personal property and make it available to Lender at the Property, a place that is hereby deemed to be reasonably convenient to Lender and Mortgagor. Lender shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition is to be made; and if such notice is sent to Mortgagor as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Mortgagor. Any sale made pursuant to the provisions of this Section 1.19 shall be deemed to have been a public sale conducted in a commercially reasonable manner. Furthermore, in conjunction with, in addition to or in substitution for the rights and remedies available to Lender pursuant to the Code: (a) in the event of a foreclosure sale, whether made by Lender under the terms hereof or under judgment of a court, the Property may, at the option of Lender, be sold as a whole; and (b) it shall not be necessary that Lender take possession of the aforementioned personal property or any part thereof prior to the time that any sale pursuant to the provisions of this Section 1.19 conducted and it shall not be necessary that said personal property or any part thereof be present at the location of such sale; and (c) Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender.

All rights and remedies granted to Lender under the Loan Agreement shall be in addition to and cumulative of all rights and remedies granted to Lender under this Section 1.19.

1.20 **Maintenance of the Property; Compliance with Laws.** Mortgagor shall at all times maintain the Property in good condition and repair, and shall, as provided herein, promptly repair, restore, replace or rebuild any part of the Property that may be affected by any casualty or any public or private taking of or injury to the Property. Mortgagor shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants relating to the ownership, use or operation of the Property, including, but not limited to, any environmental or ecological requirements; provided that so long as Mortgagor is not otherwise in default hereunder, Mortgagor may, upon providing Lender with security reasonably satisfactory to Lender, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement.

1.21 **Hazardous Wastes and Other Substances.** Mortgagor hereby represents and warrants to Lender that: (a) the Property is not in direct or indirect violation of any local, state or federal Environmental Laws; and (b) the Property is not subject to any private or governmental lien or judicial or administrative notice or action relating to hazardous and/or toxic substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents) and any other substances or materials which are included under or regulated by Environmental Laws, including, without limitation, "hazardous substances" or

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similar designation under the laws of the State of Illinois (collectively, "**Hazardous Substances**"). Mortgagor shall not allow any Hazardous Substance to be stored, located, discharged, possessed, managed, processed or otherwise handled on the Property (except in strict compliance with all Environmental Laws), and Mortgagor shall comply with all Environmental Laws. Mortgagor shall promptly notify Lender if Mortgagor shall become aware of the release or threat of release on the Property of any Hazardous Substances and/or if Mortgagor shall become aware that the Property is in direct or indirect violation of any Environmental Laws, in which event Mortgagor shall remove such Hazardous Substances and/or cure such violations to the extent and in the manner required by governmental authorities having jurisdiction over the Property, as applicable, promptly after Mortgagor becomes aware of the same, at Mortgagor's sole expense. In the event Mortgagor fails to do so after thirty (30) days' notice from Lender, then, Lender may cause the Property to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws and any cost incurred in connection therewith shall be paid by Mortgagor on demand and, if not so paid, shall be added to the Obligations, shall bear interest thereafter until actually paid by Mortgagor at the Default Rate and shall be secured hereby and by all of the other Loan Documents securing all or any part of the Obligations. Subject to the notice and cure provisions set forth in Section 2.1(b) hereof, Mortgagor hereby grants to Lender and its agents and employees access to the Property and a license to remove any items deemed by Lender to be Hazardous Substances and to do all things Lender shall deem necessary to bring the Property in conformance with Environmental Laws. Lender shall have all rights of entry and inspection with respect to the Property and such other rights as may be provided under Illinois law. Mortgagor hereby agrees to indemnify and defend Lender and hold Lender harmless from and against any and all claims, demands, actions, proceedings, liabilities, losses, expenses, damages, penalties, fines, and costs, including, without limitation, attorneys' fees and consequential damages (collectively "**Costs**"), incurred by Lender as a result of the existence of any Hazardous Substances on, in or under the Property and/or as a result of the failure of the Property to comply with any Environmental Laws. The foregoing indemnity shall not apply with respect to any Costs incurred by Lender resulting from the presence of Hazardous Substances first present on, in or under the Property or the failure of the Property to comply with any Environmental Laws which relate only to acts, omissions or events which first occur subsequent to the date that Lender (or its assignee or any purchaser at a foreclosure sale or transferee under a deed-in-lieu thereof) acquires title to the Property.

1.22 **Additional Taxes.** In the event of the enactment after the date of this Mortgage of any law of the State of Illinois or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the Obligations secured hereby or Lender, then, and in any such event, Mortgagor, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor, provided, however, that if in the opinion of counsel for Lender (a) it might be unlawful to require Mortgagor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Lender may elect, by notice in writing given to

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Mortgagor, to declare all of the Obligations secured hereby to be and become due and payable in full ninety (90) days from the giving of such notice.

1.23 **Secured Obligations.** It is understood and agreed that this Mortgage shall secure payment of not only the Obligations but also any and all renewals and extensions of the Loan Documents, any and all other indebtedness and obligations arising pursuant to the terms hereof, and any and all other indebtedness and obligations arising pursuant to the terms of any of the other Loan Documents, including, without limitation, the Loan Agreement, Notes and any Assignments of Rents and Leases.

1.24 **Mortgagor's Waivers.** To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension; and Mortgagor, for Mortgagor and Mortgagor's successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, stay of execution, reinstatement, notice of election or intention to mature or declare due the whole of the Obligations secured hereby, and all rights to a marshaling of the assets of Mortgagor, including the Property, to a sale in inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created. Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order or alienation, the exemption of homestead, the administration of estates of decedents or other matters whatever to defeat, reduce or affect the right of Lender under the terms of this Mortgage to a sale of the Property, for the collection of the Obligations secured hereby without any prior or different resort for collection, or the right of Lender under the terms of this Mortgage to the payment of such Obligations out of the proceeds of sale of the Property in preference to every other claimant whatever. Mortgagor further waives all present and future statutes of limitations as a defense to any action to enforce the provisions of this Mortgage or to collect any Obligations secured hereby to the fullest extent permitted by law. **MORTGAGOR FURTHER WAIVES ALL RIGHTS OF REDEMPTION AFTER FORECLOSURE SALE UNDER APPLICABLE LAW TO THE FULL EXTENT SUCH WAIVER IS PERMITTED UNDER ILLINOIS LAW. MORTGAGOR AND LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN (A) ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS MORTGAGE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS MORTGAGE OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS MORTGAGE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE MORTGAGOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE LENDER OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.** If any law referred to in this Section 1.24 and now in force, of which Mortgagor or Mortgagor's successors and assigns, and such other persons claiming

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any interest in the Property might take advantage despite this Section 1.24, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 1.24.

ARTICLE 2

EVENTS OF DEFAULT

2.1 An event of default shall have occurred under this Mortgage if any of the following events occurs:

(a) The occurrence of any Event of Default by any Borrower, the Mortgagor or any other party (including any other guarantors, if applicable) obligated to make payment or performance under the Loan Agreement, Notes or any of the other Loan Documents; or

(b) Mortgagor fails to perform any covenant, agreement or obligation contained in this Mortgage on or before the date such covenant, agreement or obligation is required to be performed unless Mortgagor cures the same (i) within any stated grace or cure period set forth herein; or (ii) if there is not stated grace or cure period, then within (A) ten (10) days after giving written notice of such failure if and to the extent such failure can be cured solely by the payment of money; or (B) thirty (30) days after giving written notice of such failure if such failure cannot be cured solely by the payment of money, unless such default is of a nature which cannot be cured, in which event there shall be no cure period (for example, a default under Section 1.11 resulting from the unauthorized Transfer of the Property); or

(c) Any Borrower, Mortgagor, or any other guarantor under the Loan Documents, shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of its creditor; or

(d) If any proceeding shall be instituted by or against any Borrower, Mortgagor or any other guarantor under any of the Loan Documents seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of any Borrower, Mortgagor or any other guarantor under any of the Loan Documents, or their debts, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking the entry of an order for the appointment of a receiver, trustee, custodian or similar official with respect to any Borrower, Mortgagor, or any other guarantor under any of the Loan Documents, or for any substantial part of their respective properties (provided that if any of the foregoing actions instituted against any Borrower, Mortgagor or any other guarantor of the Loan Documents are dismissed within thirty (30) days thereafter, then no Event of Default shall be deemed to have occurred); or

(e) Any Borrower or Mortgagor shall dissolve and liquidate, or an involuntary proceeding for the liquidation of Borrower or Mortgagor shall be filed, and such proceeding is not dismissed within thirty (30) days thereafter.

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ARTICLE 3

REMEDIES

3.1 **Remedies Available.** If an Event of Default has occurred, Lender may, at its option at any time thereafter do any one or more of the following:

(a) Declare any or all of the Obligations secured hereby to be immediately due and payable without presentment, demand, protest or notice of any kind; and/or

(b) to the extent permitted by applicable law, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, and do any and all acts that may be desirable in Lender's judgment to complete any unfinished construction on the Property, to preserve the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and, with or without taking possession of the Property, sue for or otherwise collect the Rents and Profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, without limitation, attorneys' fees, against the Obligations secured hereby in such order as Lender may determine, without in any way curing or waiving any default of Mortgage or any Borrower, as the case may be; and/or

(c) Commence an action to foreclose this Mortgage or to specifically enforce its provisions or any of the obligations secured by this Mortgage in accordance with the provisions of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et. seq.*) (the "**Act**"); and/or

(d) Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

3.2 **Application of Proceeds of Foreclosure Sale.**

The proceeds of any foreclosure sale of the Property under this Mortgage shall be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including, but not limited to, Lender's legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Lender.

SECOND: Payment of all sums expended by Lender under the terms of this Mortgage or any other Loan Documents and not yet repaid, together with interest on such sums at the Default Rate.

THIRD: Payment of the Obligations secured by this Mortgage, including, without limitation, interest at the Default Rate, in any order that Lender chooses.

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FOURTH: The remainder, if any, to the person or persons legally entitled thereto.

3.3 **Receiver.** In addition to all other remedies herein provided for, Mortgagor agrees that upon the occurrence of an Event of Default, Lender shall, as a matter of right, be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale of the Property or otherwise, and without regard to the value of the Property or the solvency of Mortgagor or any person or persons liable for the payment of the Obligations secured hereby, and Mortgagor does hereby consent to the appointment of such receiver or receivers, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege it may now have under the law to have a receiver appointed; provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any money advanced by Lender in connection with any such receivership shall be a demand obligation owing by Mortgagor to Lender, shall bear interest from the date of making such advancement by Lender until paid at the Default Rate defined in the Loan Documents, shall be a part of the Obligations secured hereby and by every other instrument securing the Obligations. The receiver or his agents shall be entitled to enter upon and take possession of any and all of the Property to the same extent and in the same manner as Mortgagor might lawfully do. The receiver, personally or through its agents or attorneys, may exclude Mortgagor and its agents, servants and employees wholly from the Property and may have, hold, use, operate, manage and control the same and each and every part thereof, and in the name of Mortgagor or Mortgagor's agents, may exercise all of their rights and powers and use all of the then existing materials, current supplies, stores and assets and, at the expense of the Property, maintain, restore, insure and keep insured the properties, equipment, and apparatus provided or required for use in connection with the business or businesses operated on the Property and may make all such necessary and proper repairs, renewals and replacements and all such useful alterations, additions, betterments and improvements as the receiver may deem judicious. Such receivership shall, at the option of Lender, continue until full payment of all sums hereby secured or until title to the Property shall have passed by foreclosure sale under this Mortgage.

3.4 **Occupancy After Foreclosure.** In the event there is a foreclosure sale hereunder and at the time of such sale, Mortgagor or Mortgagor's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Mortgagor are occupying or using the Property, or any part thereof, each and all shall, at the option of Lender or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied, or used, such rental to be due daily to purchaser. In the event the tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the County of Cook, State of Illinois.

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3.5 **Cumulative Remedies.** All remedies contained in this Mortgage are cumulative, and Lender also has all other remedies provided at law or in equity or in any other of the Loan Documents between Mortgagor and Lender. No act of Lender shall be construed as an election to proceed under any particular provision of this Mortgage to the exclusion of any other provision of this Mortgage or as an election of remedies to the exclusion of any other remedy that may then or thereafter be available to Lender. No delay or failure by Lender to exercise any right or remedy under this Mortgage shall be construed to be a waiver of that right or remedy or of any default by Mortgagor. Lender may exercise any one or more of its right and remedies at its option without regard to the adequacy of its security.

3.6 **Payment of Expenses.** Mortgagor shall pay all of Lender's reasonable expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed, including, but not limited to, attorneys' fees and disbursements, foreclosure costs and title charges together with interest thereon at the Default Rate.

ARTICLE 4

MISCELLANEOUS TERMS AND CONDITIONS

4.1 **Time of Essence.** Time is of the essence with respect to all provisions of this Mortgage.

4.2 **Charge for Statement.** Mortgagor agrees to pay Lender a reasonable charge, not in excess of the maximum amount permitted by law, for giving any statement of the status of the Obligations secured by this Mortgage.

4.3 **Certain Rights of Lender.** Without affecting Mortgagor's liability for the payment of any of the obligations secured by this Mortgage, Lender may from time to time and without notice to Mortgagor (a) release any person liable for the payment of the Obligations secured hereby; (b) extend or modify the terms of payment of said Obligations; or (c) accept additional real or personal property of any kind as security or later, substitute or release any property securing said Obligations.

4.4 **Priority of Advances.** This Mortgage is given to secure Borrowers' obligations under the Loan Documents to repay all advances made under the Loans, whether any amount of the Loans shall have been advanced at the date hereof, or at a later date, and to secure the payment and performance of all other liabilities and obligations of Mortgagor under any of the Loan Documents, and any other amount or amounts which may be added to the Obligations under the terms of this Mortgage, all of which Obligations being equally secured and having the same priority as if all such amounts had been advanced at the date hereof. It is agreed that any future advances made by the Lender under the Loan, or otherwise from time to time under the Loan Documents, this Mortgage or under the other Loan Documents shall be deemed to be obligatory, and the amount of any such advances, and all interest accruing thereon, shall be equally secured by this Mortgage and have the same priority as if all such amounts had been advanced on the date hereof and be subject to all of the terms and provisions of this Mortgage. Such advances entitled to priority as of the date hereof shall

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include all advances made (at Lender's election, it being acknowledged that Lender is under no obligation so to do) to protect the lien and security interest hereof, and the priority of such lien, and to protect the Property from loss or waste, including, without limitation, payment of real estate taxes and insurance premiums upon Mortgagor's failure to timely do so in accordance with its obligations hereunder.

4.5 **Notices.** All notices, requests or demands required or permitted to be given pursuant to this Mortgage shall be in writing, and shall be delivered either personally, by overnight delivery service or by U.S. certified mail, postage prepaid, return-receipt requested and addressed to the parties at their respective addresses as they appear in the introductory clause at the beginning of this Mortgage. The parties may change their addresses for notice by giving notice of such change in accordance with this section, but neither party shall be entitled to require that notices be given to it at more than two addresses. Notices sent by overnight delivery service shall be deemed received on the business day following the date of deposit with the delivery service. Mailed notices shall be deemed received upon the earlier of the date of delivery shown on the return-receipt, or the third business day after the date of mailing. Notwithstanding the foregoing, actual receipt of notice by a party shall constitute notice given in accordance with this Mortgage on the date received, unless deemed earlier received pursuant to this section.

4.6 **Successors and Assigns.** The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor and its successors and assigns of Mortgagor, including all successors in interest of Mortgagor in and to all or any part of the Property, and shall inure to the benefit of Lender and its respective successors and assigns and shall constitute covenants running with the land. Provided, however, that nothing herein shall be deemed to be a consent to any Transfer of the Property, or any part thereof, by Mortgagor in violation of the provisions of Section 1.11 hereof. All references in this Mortgage to Mortgagor or Lender shall be deemed to include all such parties' successors and assigns; and the term "Lender" as used herein shall also mean and refer to any lawful holder or owner, including pledgees and participants of any of the Obligations secured hereby. If Mortgagor consists of more than one person or entity, each shall be jointly and severally liable to perform the obligations of Mortgagor.

4.7 **Severability.** A determination by a court of competent jurisdiction that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination by a court of competent jurisdiction that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

4.8 **Gender.** Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa unless the context otherwise requires.

4.9 **Waiver.** Lender shall not be deemed to have waived any provision of this Mortgage, or the Loan Documents secured hereby or of any of the other Loan Documents unless such waiver is in writing and is signed by Lender. Without limiting the generality of the preceding sentence, Lender's acceptance of any payment with knowledge of a default by Mortgagor shall not be deemed

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a waiver of such default. No waiver by Lender of any default on the part of Mortgagor or breach of any of the provisions of this Mortgage shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and every such right and power may be exercised from time to time.

4.10 **Section Headings.** The headings of the sections and paragraphs of this Mortgage are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

4.31 **Governing Law.** This Mortgage shall be governed, construed, applied and enforced in accordance with the laws of the State of Illinois and the applicable laws of the United States of America.

4.42 **Counting of Days.** The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the State of Illinois as a day on which national Lenders are authorized or required to be closed, the period shall be deemed to end on the next succeeding business day.

4.53 **Relationship of the Parties.** The relationship between Mortgagor and Lender is that of a borrower and a lender only; and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

4.64 **Entire Agreement and Modifications.** This Mortgage and the other Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated. This Mortgage and the other Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

[Remainder of Page Intentionally Left Blank—Signature Page Follows]

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upon the direction of it's beneficiaries

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

"MORTGAGOR"

PARKWAY BANK & TRUST CO., NOT
PERSONALLY BUT AS TRUSTEE
UNDER TRUST AGREEMENT DATED
JANUARY 27, 2006 AND KNOWN AS
TRUST NO. 14113

By: _____
Name: LESLIE A. PARKER
Its: _____

Property of Cook County Clerk's Office

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EXHIBIT " C "

**MORTGAGE SIGNATURE, EXONERATION AND ACKNOWLEDGEMENT RIDER FOR
MORTGAGE**

This MORTGAGE is executed by PARKWAY BANK & TRUST COMPANY, not personally but as Trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said PARKWAY BANK & TRUST COMPANY, 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 Trustee or on said PARKWAY BANK & TRUST COMPANY personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, or on account of any warranty or indemnification made hereunder, all such liability, if any, being expressly waived by Mortgagee and by every person now or hereafter claiming any right or security hereunder, and that so far as the Trustee and its successors and said PARKWAY BANK & TRUST COMPANY 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.

The Trustee makes no personal representations as to nor shall it be responsible for the existence, location or maintenance of the chattels herein described, if any, or of any environmental conditions, duties or obligations concerning the property whether under any federal, state or local statute, rule, regulation, or ordinance. The beneficiaries of this Trust, have management and control of the use of the property and as such, have the authority on their own behalf to execute any document as environmental representative but not as agent for or on behalf of the Trustee.

PARKWAY BANK & TRUST COMPANY, as Trustee under Trust No. 14113 as aforesaid and not personally,

By: _____

ASSISTANT TRUST OFFICER



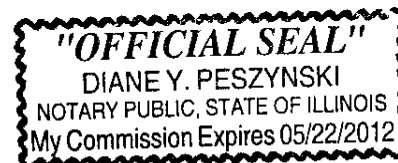
STATE OF ILLINOIS)

COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid do hereby certify that the above named officer of PARKWAY BANK & TRUST COMPANY, is personally known to me to be the same person whose name is subscribed to the foregoing instrument in the capacities shown, appeared before me this day in person, and acknowledged signing, sealing and delivering the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal on March 21, 2011.

(Notary Public)



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EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

Parcel 1:

The West 267 1/2 feet of the East 450 feet of Lot 3 (except the South 310 feet of Lot 3 and except the North 5.35 feet of said Lot 3) in O'Hare Industrial Center, being a subdivision of part of the North 1/2 of Robinson's Reservation in Township 40 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

Parcel 2 :

Easement for a private road for ingress and egress for the benefit of Parcel 1 as created by deed from LaSalle National Bank, as trustee, under trust agreement dated August 25, 1955 and known as trust No. 18197 to Amgas Company, an Illinois corporation, dated July 17, 1956 and recorded July 18, 1956 as document 16642556, over and under the following described real estate to wit: The East 400 feet of Lot 3 (except the South 598.02 feet of said Lot 3) in O'Hare Industrial Center aforesaid, also the East 400 feet of the North 1208.63 feet of Lot 2 (except the West River Road as widened pursuant to dedication recorded May 27, 1931 as document 10910669 and except the North 1173 feet of said Lot) in Block 3 in North Section of Robinson's Reservation in Township 40 North, Range 12, East of the Third Principal Meridian, and deed from LaSalle National Bank, as trustee under Trust Agreement dated August 25, 1955 and known as Trust No. 18197 to Amgas Company dated August 7, 1957 and recorded August 14, 1957 as Document 6985407 over and under the following described real estate to wit: the East 450 feet of Lot 3 (except the South 598.02 feet of said Lot 3) in O'Hare Industrial Center aforesaid, also the East 450 feet of the North 1208.63 feet of Lot 2 (except West River Road as widened pursuant to dedication recorded as Document 10910669 and except the North 1173 feet of said Lot) in Block 3 in North Section of Robinson's Reservation in Township 40 North, Range 12, East of the Third Principal Meridian, all in Cook County, Illinois.

Common Address: 9405 West River Road, Schiller Park, Illinois

P.I.N.: 12-10-302-302-042-0000

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EXHIBIT B

PERMITTED EXCEPTIONS

1. General real estate taxes for the year 2010 and each year thereafter not yet due and payable.
2. Easement along over and under the Westerly side of West River Road and/or that part of the premises adjacent thereto for pole, line and gas equipment under grant dated 4-23-1934 and recorded 4-27-1934 as document number 11391393 (affects the East 217 1/2 feet of Parcel 1).
3. Covenants, conditions and restrictions contained in instrument recorded 7-18-1956 as document number 16642556 and on 8-14-1957 as document number 16985407 relating to location and construction of buildings to be erected on the land, to parking areas, location of loading docks, platform to open area and maintenance of the roadway, and billboards.
4. Easement reserved in the deed recorded 7-18-1956 as document number 16642556 and on 8-14-1957 as document number 16985407 over and under the South 10 feet of the land.
5. Easement for public utilities and drainage over, upon and under the South 10 feet of the land as granted in the deeds recorded 7-18-1956 as document number 16642556 and on 8-14-1957 as document number 16985407.
6. Covenants, conditions and restrictions contained in the deed recorded 8-14-1957 as document number 16985407 relating to construction and location of buildings to be erected.
7. Terms, provisions and conditions relating to the easement described as Parcel 2 contained in the instrument creating such easement.
8. Rights of the adjoining owners to the concurrent use of the easement described as Parcel 2.