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1213142050

Doc#: 1213142050 Fee: \$90.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/10/2012 09:54 AM Pg: 1 of 27

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

Property of Cook County Clerk's Office

3 of 4
Lenses # 88-87765-01

The property identified as: PIN: 27-13-402-008-0000

Address:

Street: 7202 W 159TH STREET

Street line 2:

City: ORLAND PARK

State: IL

ZIP Code: 60462

Lender: THE PRIVATEBANK AND TRUST COMPANY

Borrower: THIRD MILLENNIUM REAL ESTATE LLC

Loan / Mortgage Amount: \$4,184,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 770 et seq. because it is commercial property.

Box 400-CTCC

Certificate number: F6D87754-33F2-438F-BFAE-8876F48E6EA8

Execution date: 05/02/2012

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P 27
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This document was prepared by,
and after recording, return to:

Gary P. Segal, Esq.
Dykema Gossett PLLC
10 South Wacker, Suite 2300
Chicago, Illinois 60606

Permanent Tax Index Number:

27-13-402-003-0000

Property Address:

7202 W. 159th Street, Orland Park, IL

This space reserved for Recorders use only.

**MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("Mortgage") is made as of May 2, 2012, by **THIRD MILLENNIUM REAL ESTATE L.L.C.**, an Illinois limited liability company ("Mortgagor"), to and for the benefit of **THE PRIVATEBANK AND TRUST COMPANY**, an Illinois state chartered bank, its successors and assigns ("Mortgagee").

RECITALS:

A. Mortgagor is the owner in fee simple of certain real estate located at 7202 W. 159th Street, Orland Park, IL, as more particularly described on Exhibit A attached as a part hereof (the "Real Estate").

B. Pursuant to the terms and conditions of that certain Loan and Security Agreement dated as of May 2, 2012 (as amended, restated or replaced from time to time the "Loan Agreement") by and between Mortgagor and Mortgagee, Mortgagee agreed to provide a term loan in the original amount of \$4,184,000 to Mortgagor (the "Loan").

C. The Loan is due and payable in full on April 30, 2017 (the "Maturity Date"), except as such date may be accelerated pursuant to the terms hereof or of any other Loan Document (as hereinafter defined). Terms used but not otherwise defined herein are used herein as defined in the Loan Agreement.

D. A condition precedent to Mortgagee's extension of the Loan to Mortgagor is the execution and delivery by Mortgagor of this Mortgage.

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NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged FOR THE PURPOSE OF SECURING any and all indebtedness, obligations and liabilities of whatsoever kind and nature of Mortgagor to Mortgagee (whether arising before or after the filing of a petition in bankruptcy), whether direct or indirect, absolute or contingent, due or to become due, and whether now existing or hereafter arising and howsoever held, evidenced or acquired, and whether several, joint or joint and several, including, but not limited to: (i) the payment of the Loan and all interest, late charges, LIBOR breakage charges, prepayment premium (if any), exit fee (if any), reimbursement obligations, fees and expenses for letters of credit issued by Mortgagee for the benefit of Mortgagor; (ii) any interest rate, credit, currency or commodity swap agreement, cap agreement or collar agreement or similar transaction or any combination thereof executed by and between Mortgagor and Mortgagee or any affiliate of Mortgagee from time to time (collectively, "Hedging Agreements"); (iii) the reimbursement to Mortgagee or any affiliate of Mortgagee of any and all sums incurred, expended or advanced by Mortgagee or any affiliate of Mortgagee pursuant to any term or provision of or constituting additional indebtedness under any Hedging Agreements; (iv) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Mortgagor or any other Obligor to or benefiting Mortgagee which are evidenced or secured by or otherwise provided in this Mortgage or any of the other Loan Documents; (v) the reimbursement to Mortgagee of any and all sums incurred, expended or advanced by Mortgagee pursuant to any term or provision of or constituting additional indebtedness under or secured by this Mortgage, any of the other Loan Documents, with interest thereon as provided herein or therein; and (vi) any other obligations of Mortgagor referred to in the Loan Agreement (collectively, "Obligations"), Mortgagor does hereby GRANT, SELL, CONVEY, MORTGAGE and ASSIGN unto Mortgagee, its successors and assigns, and does hereby grant to Mortgagee, its successors and assigns a security interest in the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, and VII below, all of same being collectively referred to herein as the "Premises":

GRANTING CLAUSE I: THE REAL ESTATE:

GRANTING CLAUSE II: TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Real Estate, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of Mortgagor now or hereafter acquired in and to any of the foregoing (the "Improvements");

GRANTING CLAUSE III: TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Real Estate or the Improvements, whether now owned or hereafter acquired by Mortgagor, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Real Estate or the Improvements, all existing and future share of stock respecting water and water rights pertaining to the Real Estate or the Improvements or other

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evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights"):

GRANTING CLAUSE IV: TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by Mortgagor and forming a part of, or used or obtained for use in connection with, the Real Estate or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner (collectively, the "Fixtures"); it being agreed that all of said property owned by Mortgagor and placed on the Real Estate or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Mortgage.

GRANTING CLAUSE V: TOGETHER WITH all right, title and interest which Mortgagor hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Real Estate, the Appurtenant Rights, the Improvements and the Fixtures or any portion thereof, whether written or oral (collectively, the "Leases"), and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), and all right, title and interest which Mortgagor now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to Mortgagor any statutory rights;

GRANTING CLAUSE VI: TOGETHER WITH any and all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof.

GRANTING CLAUSE VII: TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which Mortgagor now has or hereafter may acquire of, in and to the Premises, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by Mortgagor or by anyone on behalf of Mortgagor to Mortgagee;

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TO HAVE AND TO HOLD the Premises, unto Mortgagee, its successors and assigns, IN FEE SIMPLE forever and Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois, subject to the Permitted Exceptions (as defined below).

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default, Mortgagor shall be permitted to possess and use the Premises and SUBJECT to the covenants and conditions hereinafter set forth.

MORTGAGOR FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Title Mortgagor represents, warrants and covenants that (a) Mortgagor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of Mortgagee and as otherwise described on **Exhibit B** attached hereto (collectively the "Permitted Exceptions"); and (b) Mortgagor has legal power and authority to mortgage and convey the Premises.

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

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

(b) keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien, other than Permitted Exceptions (subject to Mortgagor's right to contest liens as permitted by the terms of Section 27 hereof);

(c) pay when due the Obligations in accordance with the terms of the Loan Agreement and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Mortgagor under the Loan Agreement, this Mortgage and the other Loan Documents;

(d) in accordance with the Loan Agreement, pay when due any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and promptly upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee (subject to Mortgagor's right to contest liens as permitted by the terms of the Loan Agreement);

(e) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;

(f) comply with all material requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;

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

(h) make no material alterations in the Premises or demolish any portion of the Premises without Mortgagee's prior written consent (which consent shall not be unreasonably withheld or delayed), except as required by law or municipal ordinance;

(i) suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Mortgagee's prior written consent;

(j) pay when due all operating costs of the Premises;

(k) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Mortgagee's prior written consent; and

(l) cause the Premises at all times to be operated in compliance in all material respects with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations.

3. **Payment of Taxes and Assessments.** Mortgagor will pay when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against Mortgagor, if applicable to the Premises or any interest therein, or the Obligations, or any obligation or agreement secured hereby, subject to Mortgagor's right to contest the same, as provided by the terms hereof; and Mortgagor will, promptly upon written request, furnish to the Mortgagee duplicate receipts therefor within ten (10) days after Mortgagee's request.

4. **Tax Deposits.** After the occurrence of an Event of Default and the written request by Mortgagee, Mortgagor shall deposit with Mortgagee, on the first day of each month until the Obligations are fully paid, a sum equal to one-twelfth (1/12th) or 100% of the most recent ascertainable annual Taxes on the Premises. If requested by Mortgagee, Mortgagor shall also deposit with Mortgagee an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as reasonably estimated by Mortgagee. Such deposits are to be held without any allowance of interest and are to be used for the payment of Taxes next due and payable when they become due. So long as no Event of Default shall exist, Mortgagee shall, at its option, pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for the payment thereof. If the funds so deposited are insufficient to pay any such Taxes for any year (or installments thereof, as applicable) when the same shall become due and payable, Mortgagor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward

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subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee. Mortgagee, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

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

6. **Insurance.**

(a) Mortgagor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards, pursuant to the terms of the Loan Agreement.

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

(c) In the event of loss, Mortgagor shall give prompt notice thereof to Mortgagee. If such loss exceeds Twenty Five Thousand Dollars (\$25,000) (the "Threshold"), or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i), (ii) and (iii) of the immediately succeeding sentence are not satisfied, then Mortgagee, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or less than the Threshold, (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and (iii) Mortgagee determines that the work required to complete the repair or restoration of the Premises necessitated by such loss can be completed within seven (7) months after the occurrence of such loss, then Mortgagor, solely and directly shall receive such payment for loss from each insurance company concerned and apply such proceeds to the restoration or repair of the damaged property, subject to the provisions of subsection (d) below. If any loss

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exceeds the Threshold and, in the reasonable discretion of Mortgagee, could have a material adverse effect on the operation of the Premises, Mortgagee shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Mortgagee pursuant to the terms of this Section, after the payment of all of Mortgagee's expenses, either (i) on account of the Obligations, irrespective of whether such principal balance is then due and payable, whereupon Mortgagee may declare the whole of the balance of Obligations to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in subsection (d) below. If insurance proceeds are made available to Mortgagor by Mortgagee as hereinafter provided, Mortgagor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. In the event of foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

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

(i) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, Mortgagor shall obtain from Mortgagee its approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding, such approval not to be unreasonably withheld or delayed.

(ii) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Premises to the extent permitted in subsection (c) above (which, in the event of a loss that exceeds the Threshold, payment or application may be made, at Mortgagee's option, through an escrow, the terms and conditions of which are satisfactory to Mortgagee and the cost of which is to be borne by Mortgagor), Mortgagee shall be satisfied as to the following:

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

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

(c) prior to each disbursement of any such proceeds,

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

(iii) If Mortgagor shall fail to restore, repair or rebuild the Improvements within a time deemed reasonably satisfactory by Mortgagee, then Mortgagee, at its option, may (a) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of Mortgagor, or (b) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Obligations irrespective of whether such Obligations are then due and payable without payment of any premium or penalty.

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

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

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9. Lease Assignment.

(a) As additional security for the payment of the Loan and the other Obligations, Mortgagor, as lessor, hereby unconditionally and absolutely grants, transfers, sets over and assigns to Mortgagee the entire lessor's right, title and interest in and to all Leases and Rents. Mortgagor will not, without Mortgagee's prior written consent enter into a Lease of all or any portion of the Premises, other than a Lease to Oberweis Dairy, Inc.

(b) Mortgagor, at its sole cost and expense, will (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all Leases affecting all or any portion of the Premises, on the part of the lessor thereunder to be kept and performed in all material respects, and will not release the liability of any tenant thereunder, permit any tenant thereunder to withhold the payment of rent or make off-sets against rent, permit any tenant to claim a total or partial eviction, permit any tenant to terminate or cancel any Lease, waive or excuse the obligation to pay rent under any Lease or modify or cancel the terms of any guaranty of any Lease, unless such tenant is permitted to do so under the terms of any such Lease which in existence as of the date hereof; (ii) use its best efforts to enforce or secure the performance of all of the covenants, conditions and agreements of such Leases on the part of the tenants to be kept and performed; (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such Leases or the obligations, duties or liabilities of the lessor or of the tenants thereunder; (iv) as additional security for the payment of the Loan and Obligations, transfer and assign to Mortgagee any Lease or Leases of the Premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment; (v) promptly give written notice to Mortgagee after the occurrence of any material default under any Lease affecting all or any portion of the Premises; and (vi) promptly exercise, after demand by Mortgagee, any right to request from the tenant under any Lease affecting all or any portion of the Premises a certificate with respect to the status thereof in accordance with the terms of such Lease.

(c) Mortgagor represents and covenants to Mortgagee that Mortgagor has not heretofore made any other assignment of all or any part of its interest in and to any or all of the Leases, or any or all of the rents, issues, income or profits assigned hereunder or entered into any agreement to subordinate any of the Leases, or Mortgagor's right to receive any of the rents, issues, income or profits assigned hereunder. So long as no Event of Default has occurred and is continuing, Mortgagor shall have the right to collect, but not more than thirty days in advance of the date provided for the payment thereof, all rents, issues, income and profits assigned hereunder (other than security or similar deposits) and to retain, use and enjoy the same. Mortgagee shall have the right to notify the tenants under the Leases of this assignment at any time.

(d) Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from Mortgagee's failure to let the Premises following the occurrence of an Event of Default or from any other act or omission of Mortgagee in managing, operating

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or maintaining the Premises following the occurrence of an Event of Default. Mortgagee shall not be obligated to observe, perform or discharge, nor does Mortgagee hereby undertake to oversee, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Mortgagee under or by reason of this Mortgage, and Mortgagor shall and does hereby agree to indemnify Mortgagee for, and to hold Mortgagee harmless of and from, any and all liability, loss, or damage which Mortgagee may or might incur under any Lease and of and from any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease. Should Mortgagee incur any liability, loss or damage under any Lease, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Mortgagor with interest thereon at the interest rate then in effect plus 2% per annum. This Mortgage shall not operate to place responsibility for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease upon Mortgagee, nor shall it operate to make Mortgagee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger.

(c) If an Event of Default has occurred and is continuing, Mortgagee shall have the right to: (i) enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Mortgagee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Mortgagee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Mortgagee deems necessary or proper; and/or (ii) either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder, provided that, for such purpose, this Mortgage shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Mortgagee, without proof of default, upon receipt from Mortgagee of written notice specifying that an Event of Default has occurred and is continuing and directing such tenants to thereafter pay all such rents and other amounts to Mortgagee and to comply with any notice or demand by Mortgagee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and provided, further, that Mortgagor will facilitate in all reasonable ways Mortgagee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Mortgagee.

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

11. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (b) the imposition upon Mortgagee of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Mortgagor, or (c) a change in the method of taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the Obligations or the holders thereof, then Mortgagor, upon demand by Mortgagee, shall pay such Taxes or charges, or reimburse Mortgagee therefor; provided, however, that Mortgagor shall not be deemed to be required to pay any income or franchise taxes of Mortgagee. Notwithstanding the foregoing, if in the reasonable opinion of counsel for Mortgagee it is or may be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may accelerate the Obligations to be due and payable within 60 days therefrom.

12. **Mortgagee's Performance of Defaulted Acts and Expenses Incurred by Mortgagee.** If an Event of Default has occurred, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Mortgagor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Mortgagee in regard to any tax referred to in Section 8 above or to protect the Premises or the lien hereof, shall be so much additional Obligations, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (a) sustaining the lien of this Mortgage or its priority, (b) protecting or enforcing any of Mortgagee's rights hereunder, (c) recovering any Obligations, (d) any litigation or proceedings affecting the Loan Agreement, this Mortgage, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Loan Agreement, this Mortgage, any of the other Loan Documents or the Premises, shall be so much additional Obligations, and shall become immediately due and payable by Mortgagor to Mortgagee, upon demand, and with interest

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thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Section 12 shall be immediately due and payable by Mortgagor to Mortgagee, and shall be additional Obligations and secured by this Mortgage. Mortgagee's failure to act shall never be considered as a waiver of any right accruing to Mortgagee on account of any Event of Default. Should any amount paid out or advanced by Mortgagee hereunder, or pursuant to any agreement executed by Mortgagor in connection with the Loan Agreement, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. **Restrictions on Transfer.**

(a) Mortgagor, without the prior written consent of Mortgagee, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of the Premises or any part thereof or interest therein shall constitute a "Prohibited Transfer", whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that the foregoing provisions of this Section 13 shall not apply (x) to liens securing the Obligations, (y) to the lien of current taxes and assessments not in default, or (z) to any Permitted Exception.

(b) Mortgagor recognizes that any secondary junior financing placed upon the Premises (i) may divert funds which would otherwise be used to pay the Obligations; (ii) could result in acceleration and foreclosure by any such junior encumbrance which would force Mortgagee to take measures and incur expenses to protect its security; (iii) would detract from the value of the Premises should Mortgagee come into possession thereof with the intention of selling same; and (iv) would impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; and (iii) keeping the Premises free of subordinate financing liens, Mortgagor agree that if this Section 13 is deemed a restraint on alienation, that it is a reasonable one.

14. **Events of Default.** The occurrence of an "Event of Default" under the Loan Agreement or any of the other Loan Documents shall constitute an "Event of Default" for purposes of this Mortgage.

15. **Foreclosure; Expense of Litigation.**

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(a) When all or any part of the Obligations shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Obligations or part thereof and/or exercise any right, power or remedy provided in this Mortgage or any of the other Loan Documents in accordance with the Illinois Mortgage Foreclosure Act (Chapter 735, Sections 5/15-1101 *et seq.*, Illinois Compiled Statutes) (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

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

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

17. **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed shall, upon petition by Mortgagee, appoint a receiver for the Premises in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Mortgagee hereunder or any other successor of Mortgagee may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further

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times when Mortgagor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Obligations, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

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

- (a) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same;
- (b) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;
- (c) extend or modify any then existing leases and to enter into new leases, which extensions, modifications and leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Obligations, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;
- (d) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Mortgagee deems are necessary;
- (e) insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof; and
- (f) receive all of such avals, rents, issues and profits.

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

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

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

(c) to the payment of any Obligations, including any deficiency which may result from any foreclosure sale.

20. **Compliance with Illinois Mortgage Foreclosure Law.**

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

(b) If any provision of this Mortgage shall grant to Mortgagee (including Mortgagee acting as a mortgagee-in-possession) or a receiver appointed pursuant to the provisions of Section 18 of this Mortgage any power, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Mortgagee or in such receiver under the Act in the absence of said provision, Mortgagee and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee which are of the type referred to in Section 5/15-1510 or 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Section 12, 16 or 27 of this Mortgage, shall be added to the Obligations and/or by the judgment of foreclosure.

21. **Rights Cumulative.** Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or

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remedy, and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

22. **Mortgagee's Right of Inspection.** Mortgagee and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times upon not less than forty-eight (48) hours prior notice to Mortgagor (unless an Event of Default then exists, which then may be upon twenty-four (24) hours prior notice), and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

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

24. **Notices.** Any notices, communications and waivers under this Mortgage shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Mortgagee: The Private Bank and Trust Company
 120 South LaSalle Street
 Chicago, Illinois 60603
 Attn: Michael Perry
 Facsimile: (312) 312-567-6886
 Telephone: (312) 564-1334

To Mortgagor: Third Millennium Real Estate L.L.C.
 c/o Oberweis Dairy, Inc.
 951 Ice Cream Drive
 North Aurora, Illinois 60542
 Attn: Joseph S. Oberweis
 Facsimile: (630) 897-0562
 Telephone: (630) 801-6100

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

25. **Waiver of Rights.** The Mortgagor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to

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any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing:

(a) The Mortgagor hereby expressly waives any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, it being the intent hereof that any and all such rights of reinstatement and redemption of the Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois Compiled Statutes 735 ILCS 5/15-1601 or other applicable law or replacement statutes;

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

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

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

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

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

(c) Mortgagor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of Mortgagee's

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counsel (all of which shall constitute so much additional Obligations bearing interest at the Default Rate until paid, and payable upon demand);

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

27. Expenses Relating to Note and Mortgage.

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

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Mortgagee shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Mortgagee's taking possession of and managing the Premises, which event may or may not actually occur;

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(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the Obligations or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Mortgagor or any of its agents, employees or attorneys pertaining to Mortgagee's approval of actions taken or proposed to be taken by Mortgagor which approval is required by the terms of this Mortgage.

(b) All reasonable expenses, charges, costs and fees described in this Section 27 shall be so much additional Obligations, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Mortgagor forthwith upon demand.

28. **Statement of Obligations.** Mortgagor, within seven days after being so requested by Mortgagee in writing, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Mortgage, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

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

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

31. **Indemnity.** Mortgagor hereby covenants and agrees that no liability shall be asserted or enforced against Mortgagee in the reasonable exercise of the rights and powers granted to Mortgagee in this Mortgage, and Mortgagor hereby expressly waives and releases any such liability. Mortgagor shall indemnify and save Mortgagee harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) (collectively, "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Mortgagee at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Mortgagee may or does become a party, either

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as plaintiff or as a defendant, by reason of this Mortgage or for the purpose of protecting the lien of this Mortgage; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Mortgagee in accordance with the terms of this Mortgage; provided, however, that Mortgagor shall not be obligated to indemnify or hold Mortgagee harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Mortgagee. All costs provided for herein and paid for by Mortgagee shall be so much additional Obligations and shall become immediately due and payable upon demand by Mortgagee and with interest thereon from the date incurred by Mortgagee until paid at the Default Rate.

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

33. **Miscellaneous.**

(a) **Successors and Assigns.** This Mortgage and all provisions hereof shall be binding upon and enforceable against Mortgagor and its assigns and other successors. This Mortgage and all provisions hereof shall inure to the benefit of Mortgagee and its successors and assigns.

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

(c) **Municipal Requirements.** Mortgagor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or

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

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

(e) **Option of Mortgagee to Subordinate.** At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution by Mortgagee of a unilateral declaration to that effect and the recording thereof in the Cook County, County Office of the Recorder of Deeds.

(f) **Mortgagee in Possession.** Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee pursuant to this Mortgage.

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

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

(i) **No Merger.** The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Premises, and if Mortgagee acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a

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contrary intent is manifested by Mortgagee as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

(j) **Mortgage Covers All Interests.** Mortgagor agrees that this Mortgage shall attach to and be a lien upon all fee title or other estate, title or interest and such fee title or other estate, title or interest so acquired by Mortgagor shall be considered as mortgaged, assigned and conveyed to Mortgagee and the lien hereof spread to cover such fee title or other estate, title or interest with the same force and effect as if specifically herein mortgaged, assigned, conveyed and spread.

(k) **Maximum Obligations.** Notwithstanding anything contained herein to the contrary, in no event shall the Obligations exceed an amount equal to TEN MILLION DOLLARS (\$10,000,000).

(l) **Consent to Jurisdiction.** ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS OR IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE MORTGAGEE FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION. MORTGAGOR HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF ILLINOIS AND OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. MORTGAGOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF ILLINOIS. MORTGAGOR HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(m) **Waiver of Jury Trial.** MORTGAGOR, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES IRREVOCABLY, ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS MORTGAGE, ANY NOTE, ANY OTHER LOAN DOCUMENT, ANY OF THE OTHER OBLIGATIONS, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE

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DELIVERED IN CONNECTION HERewith OR THEREwith OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, OR ANY COURSE OF CONDUCT OR COURSE OF DEALING IN WHICH MORTGAGEE AND THE MORTGAGOR ARE ADVERSE PARTIES, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR MORTGAGEE GRANTING ANY FINANCIAL ACCOMMODATION TO THE MORTGAGOR

(n) **Complete Agreement.** This Mortgage and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Mortgagor and Mortgagee.

(q) **Interest Rates.** The Loan bears interest at a variable rate of interest based upon the Base Rate and the LIBOR Rate (as each are defined in the Loan Agreement) plus an applicable margin, as more specifically set forth in the Loan Agreement which is incorporated herein by reference. Under no circumstances shall interest on the Loan that is secured by the Mortgage be in excess of 25.0% per annum.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, Mortgagor has executed and delivered this Mortgage the day and year first above written.

MORTGAGOR:

THIRD MILLENNIUM REAL ESTATE L.L.C.,
an Illinois limited liability company

By: *Joseph Oberweis*
Joseph Oberweis, Manager

STATE OF ILLINOIS)
COUNTY OF)

I, Kari L. Kraber a Notary Public in and for said County, in the State aforesaid, do hereby certify that Joseph Oberweis, the Manager of **THIRD MILLENNIUM REAL ESTATE L.L.C.**, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Manager, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 2nd day of May, 2012.

Kari L. Kraber
NOTARY PUBLIC



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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

(ORLAND PARK)

THAT PART OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WESTERLY RIGHT OF WAY LINE OF HARLEM AVENUE 150.00 FEET NORTH OF THE SOUTH LINE OF THE SAID SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13; THENCE SOUTH 00 DEGREES 14 MINUTES 28 SECONDS WEST ALONG THE SAID WESTERLY RIGHT OF WAY LINE OF HARLEM AVENUE FOR A DISTANCE OF 100.00 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVED LINE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 50.00 FEET, FOR A DISTANCE OF 78.54 FEET TO A POINT OF TANGENCY AT THE SAID SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 13; THENCE SOUTH 89 DEGREES 27 MINUTES 41 SECONDS WEST ALONG SAID SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 13 FOR A DISTANCE OF 100.00 FEET; THENCE NORTH 00 DEGREES 14 MINUTES 28 SECONDS WEST ALONG A LINE PARALLEL TO THE WESTERLY RIGHT OF WAY LINE OF HARLEM AVENUE FOR A DISTANCE OF 150.00 FEET; THENCE NORTH 89 DEGREES 27 MINUTES 41 SECONDS EAST ALONG A LINE PARALLEL TO THE SAID SOUTH LINE OF THE SOUTHEAST 1/4 OF SECTION 13, FOR A DISTANCE OF 150.00 FEET TO THE POINT OF BEGINNING. (EXCEPT THEREOF THAT PART TAKEN BY CONDEMNATION IN CASE 93L971023 AND THAT PART TAKEN BY CONDEMNATION IN CASE 93L50949), IN COOK COUNTY, ILLINOIS.

PARCEL 3A:

NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCEL 3 AS CREATED BY EASEMENT AGREEMENT RECORDED NOVEMBER 21, 2002 AS DOCUMENT 0021293152 FOR ACCESS, INGRESS AND EGRESS

OVER ALL PAVED DRIVEWAYS, ROADWAYS AND WALKWAYS AND FOR PARKING AS PRESENTLY OR HEREAFTER CONSTRUCTED (OR AS MAY BE RECONSTRUCTED FROM TIME TO TIME) OVER THE LOT 1 OF THE COMMONS, BEING A SUBDIVISION OF THE SOUTH 565.00 FEET OF THE WEST 882.00 FEET OF THE EAST 952.00 FEET OF THE SOUTH 1/2 OF THE SOUTH EAST 1/4 OF SECTION 13, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPTING THEREFROM THE SOUTH 150.00 FEET OF THE EAST 220 FEET OF SAID SOUTH 1/2 OF THE SOUTH EAST 1/4 OF SAID SECTION 13, EXCEPT LAND DEDICATED FOR HIGHWAY OR STREET PURPOSES, IN COOK COUNTY, ILLINOIS

Property Address: 7202 W. 159th Street, Orland Park, IL

PIN: 27-13-402-008-0000

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EXHIBIT B

PERMITTED EXCEPTIONS

1. Exceptions listed in Chicago Title Insurance Company Policy No. 1401 008887765.
2. "Permitted Liens" as such term is defined in the Loan Agreement.
3. Any other lien or encumbrance in favor of Mortgagee.