

UNOFFICIAL COPY

Illinois Anti-Predatory Lending Database Program



Certificate of Exemption

Doc#: 1313645057 **Fee:** \$86.00
RHSP Fee: \$10.00 Affidavit Fee:
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 05/16/2013 01:47 PM Pg: 1 of 25

Report Mortgage Fraud
800-532-8785

The property identified as: **PIN:** 07-06-201-012-0000

Address:

Street: 2400 Hassell Road

Street line 2:

City: Hoffman Estates

State: IL

ZIP Code: 60169

Lender: Northern Bancorp, LLC, an Illinois limited liability company

Borrower: Tollway Industrial Center Limited Partnership, an Illinois limited partnership

Loan / Mortgage Amount: \$3,300,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

Certificate number: 5B354981-0ED4-483C-A8D1-0C0B76F9D8EF

Execution date: 01/28/2013

UNOFFICIAL COPY

CVT# 13-6010

1. **Title of Document:** Future Advance Mortgage,
Security Agreement,
Assignment of Leases and Rents
and Fixture Filing
2. **Date of Document:** as of January 28, 2013
3. **Mortgagor:** Tollway Industrial Center Limited Partnership,
an Illinois limited partnership
4. **Mortgagee:** Northern Bancorp, LLC,
an Illinois limited liability company
5. **Mailing Addresses:**

| | |
|-------------------|--|
| Mortgagor: | 2500 W. Higgins Road Suite 400 Hoffman Estates, Illinois 60169 Attention: Douglas C. Altenberger |
| Mortgagee: | c/o Thompson Coburn LLP 55 East Monroe Street, 37 th Floor Chicago, IL 60603 Attention: Todd A. Rowden |
6. **Legal description:** See **Exhibit A** annexed to the document.
7. **Prepared By and After Recording Return To:**

Todd Rowden
Thompson Coburn LLP
55 East Monroe Street, 37th floor
Chicago, Illinois 60603-6029

UNOFFICIAL COPY

**FUTURE ADVANCE MORTGAGE, SECURITY AGREEMENT
ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING**
(Cook County, Illinois)

FUTURE ADVANCES ARE SECURED HEREBY PURSUANT TO § 735 ILCS 5/15-1302, 815 ILCS 205/4.1 and 205 ILCS 5/5d TO THE MAXIMUM PRINCIPAL AMOUNT OF FOUR MILLION NINE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$4,950,000.00).

THIS FUTURE ADVANCE MORTGAGE, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (as the same may be modified, extended, renewed or restated from time to time, this "Mortgage"), dated as of January 29, 2013, is granted by **TOLLWAY INDUSTRIAL CENTER LIMITED PARTNERSHIP**, an Illinois limited partnership ("Mortgagor"), having a mailing address of 2500 W. Higgins Road, Ste 400, Hoffman Estates, Illinois 60169, Attention: Douglas C. Altenberger, to **NORTHERN BANCORP, LLC**, an Illinois limited liability company ("Mortgagee"), having a mailing address of c/o Thompson Coburn LLP, 55 East Monroe Street, 37th Floor, Chicago, Illinois 60603, Attention: Todd A. Rowden. The following recitals form the basis and are a material part of this Mortgage:

A. Mortgagor and Mortgagee have entered into that certain Multi-Advance Term Loan Note (as the same may be modified, extended, renewed or restated from time to time, the "Note"), dated of even date herewith, in the original principal amount of Three Million Three Hundred Thousand and 00/100 Dollars (\$3,300,000.00) (the "Loan Amount") and pursuant to which Mortgagor may agree to further borrow and Mortgagee may agree, but without obligation to do so, to make further loans to Mortgagor. The Note provides for interest on the from time to time outstanding principal balance of the Note accruing at the rate of Four and One-Half (4.50%) percent per annum, and has a stated final maturity of January 1, 2023 (the "Maturity Date"). Capitalized terms used and not otherwise defined herein shall have the meaning provided in the Note.

B. Mortgagor is now or hereafter may become otherwise obligated or indebted to Mortgagee, and Mortgagee may make future advances to Mortgagor, and Mortgagor may incur future obligations to Mortgagee, pursuant to the Note or any other loan document now or hereafter delivered to Mortgagee in connection with the Note (collectively with this Mortgage and the Note, and any and all modifications, restatements, renewals and replacements thereof, the "Loan Documents") as specified above.

C. The parties intend that this Mortgage shall secure the payment and performance of Borrower's obligations, including, but not limited to, the Note and which obligations shall be deemed to include all of Mortgagor's obligations hereunder (the "Borrower's Obligations").

CONVEYANCE

NOW, THEREFORE, as security for Borrower's Obligations, and in consideration thereof, and the sum of Ten Dollars (\$10.00) in hand paid, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor by these presents does hereby grant, remise, release, alien, bargain, sell, mortgage, warrant, convey and confirm, assign, transfer, grant a continuing security interest in and set over unto Mortgagee, and to its successors and assigns, forever, the following described real estate, chattels, real property, personal property and other properties, interests and rights, whether now owned or hereafter acquired by Mortgagor (collectively, the "Mortgaged Property"):

UNOFFICIAL COPY

A. Land. All the estate, right, title and interest of Mortgagor in, to and under, or derived from the plots, pieces and parcels of land situated in the County of Cook, State of Illinois, more particularly described in Exhibit A hereto (the "Land") with the tenements, hereditaments, appurtenances and all the estates and rights of Mortgagor in and to the Land and all right, title and interest, if any, of Mortgagor in and to the streets, roads, sidewalks and alleys abutting the Land, and strips and gores within or adjoining the Land, whether private or public and whether vacated or to be vacated by law or otherwise; the air space and right to use said air space above the Land and any transferable development or similar rights appurtenant thereto, all rights of ingress and egress by motor vehicle to parking facilities on or within the Land, all easements now or hereafter affecting or benefiting the Land, including, without limitation, all reciprocal easement agreements, royalties and all rights appertaining to the use and enjoyment of the Land, including, alley, drainage, mineral, water, oil and gas rights.

B. Improvements. All buildings, improvements and structures at any time, now or hereafter, erected, situated or placed thereon (the "Improvements").

C. Fixtures. All fixtures and personal property now or at any time hereafter annexed, affixed or attached to said real estate and/or the buildings, improvements or structures thereon and all replacements, additions and substitutions thereof or thereto, including, but not limited to, all apparatus, appliances, machinery, equipment and articles used to supply or provide, or in connection with, heat, gas, air conditioning, plumbing, water, lighting, power, elevator, sewerage, cleaning, refrigeration, cooling, ventilation and sprinkler systems, all fire prevention and extinguishing apparatus, all window shades, drapes, drapery equipment, carpeting, tile and floor coverings, all wall coverings, all security and access control apparatus, and all trees, plants and landscaping (the Land, together with the Improvements and Fixtures, are referred to herein as the "Premises").

D. Accounts; Contract Rights; Inventory; General Intangibles; Chattel Paper. All accounts, accounts receivable, lease payments, rental payments, royalties, issues, income, profits, lease rights, contract rights, documents, instruments and other forms of obligation including, without limitation, all development or other rights with respect to the foregoing and other rights to the payment of money including, without limitation, third party reimbursement obligations and all goods whose sale, lease, rental or other disposition by Mortgagor have given rise to accounts and have been returned to or repossessed or stopped in transit by Mortgagor (collectively, "Accounts"); all monies, reserves, deposits, certificates of deposit and deposit accounts and all interest or dividends thereon, securities, cash, and cash equivalents; all inventory of Mortgagor, wherever located, whether under lease, in transit, held by others for Mortgagor's account, covered by warehouse receipts, purchase orders and/or contracts, or in the possession of any lessees, renters, carriers, forwarding agents, truckers, warehousemen, vendors or other individual, sole proprietorship, partnership, joint venture, limited liability company, corporation, cooperative, trust, unincorporated organization, association, institution, entity or any governmental or regulatory agency, authority, instrumentality, body or official (individually a "Person" and collectively, "Persons"), including, without limitation, all raw materials, work in process, finished goods, supplies, goods, incidentals, office supplies and packaging and shipping materials (collectively, "Inventory"); all general intangibles of any kind or nature whatsoever, including, without limitation, all patents, trademarks, copyrights and other intellectual property, and all applications for, registrations of and licenses of the foregoing, and all computer software, product specifications, trade secrets, licenses, trade names, service marks, goodwill, tax refunds and rights to tax refunds; all chattel paper of any kind or nature whatsoever, including without limitation, all leases, rental agreements, installment sale agreements, conditional sale agreements, rights to acquire land or improvements, and other chattel paper relating to or arising out of the purchase, sale, rental, lease or other disposition of any of the Mortgaged Property.

UNOFFICIAL COPY

E. Personal Property. All other personal property, whether now owned or hereafter acquired by Mortgagor, and used or intended to be used in the possession, occupation or enjoyment of the Premises, and any and all renewals, additions, substitutions and replacements therefor, thereof and thereto, including, but not limited to, the following (collectively, the "Personal Property"): all equipment, machinery, fixtures and personal property now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Mortgaged Property or any of the improvements now or hereafter located thereon, including without limitation any and all air conditioners, amplifiers, antennae, appliances, apparatus, awnings, basins, boilers, bookcases, booths, cabinets, carpets, chairs, cleaning and janitorial equipment and supplies, coolers, compactors, computers and computer equipment and wiring, conduit, copy machines, cups, curtains, desks, dies, dishes, dishwashers, doors, drapes, drapery equipment and apparatus, ducts, dynamos, elevators, engines, equipment, escalators, fans, fax machines, fittings, floor coverings, freezers, furnaces, furnishings, furniture, glasses, goods, hardware, heaters, humidifiers, incinerators, kitchen equipment and appliances, lights and lighting, machinery, microphones, monitors, motors, ovens, pans, pipes, plates, plumbing, pots, printers, pumps, radiators, ranges, refrigerators, risers, screens, security systems, shades, shelving, silverware, sound systems, speakers, sprinklers, stools, stoves, tile and floor coverings, tables, telephones, tools, ventilators, wall coverings, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, owned by Mortgagor and now or hereafter used for similar purposes in or in connection with the Mortgaged Property, all appliances, all shelving and storage apparatus, all construction goods and materials whether or not the same have been incorporated into the buildings or improvements thereon, and all tools, supplies and equipment used in connection with construction, repair, maintenance, janitorial or groundskeeping services thereon or therefor.

F. Claims; Books and Records. All right to take any action or file any papers or process in any court of competent jurisdiction, which may in the opinion of Mortgagee be necessary to preserve, protect, or enforce the rights or claims of Mortgagor in and to the Premises or the Personal Property or both, including the filing of any proof of claim in any insolvency proceeding under any state, federal or other laws and any rights, claims or awards accruing to or to be paid to Mortgagor; and all books, records, computer records, electronic data, reports, tests, surveys, plans, specifications, permits, conditional use permits, licenses, computer disks, ledger cards, programs and other computer materials, customer and supplier lists, invoices, orders and documents of any kind or nature relating to the foregoing or the development or operation thereof.

G. Leases. All leases, subleases, lettings and licenses of the Premises or any part thereof now or hereafter entered into, and all amendments, modifications, extensions, renewals and restatements thereof (all of the foregoing hereinafter collectively referred to as the "Leases"), and all right, title and interest of Mortgagor thereunder, including cash and securities deposited thereunder (as down payments, security deposits or otherwise), the right to receive and collect the rents, expense reimbursements, security deposits, income, proceeds, earnings, royalties, revenues, issues and profits payable thereunder and the rights to enforce, whether at law or in equity or by any other means, all provisions thereof (all of the foregoing hereinafter collectively referred to as the "Rents") and the right to apply the same to the payment and performance of Borrower's Obligations.

H. Accessions; After Acquired Property and Proceeds. All accessions to any of the foregoing and all substitutions, renewals, improvements and replacements of and additions thereto; all after-acquired property of the nature described above; all products and proceeds of any of the foregoing, including, without limitation, insurance proceeds, whether cash or noncash, immediate or remote, including without limitation, all income, accounts, contract rights, general intangibles, chattel paper, notes, drafts, acceptances, instruments and other rights to the payment of money arising out of the sale, rental, lease, exchange, or other disposition of any of the foregoing items.

UNOFFICIAL COPY

TO HAVE AND TO HOLD the Mortgaged Property and every part thereof unto Mortgagee, its successors and assigns, forever, to secure the payment and performance of Borrower's Obligations and the Indebtedness; provided always that if Mortgagor pays the Borrower's Obligations secured by this Mortgage, whether presently existing or hereafter incurred, in accordance with the Loan Documents and reimburses Mortgagee any amounts it may have expended pursuant to the authorization of this Mortgage, including, without limitation, sums spent in payment of taxes, assessments, insurance, lease payments or other liens and interest thereon, and shall do and perform all other acts and things herein agreed to be done, this conveyance shall be null and void; otherwise, it shall remain in full force and effect.

This Mortgage secures, in such order of priority as Mortgagee may elect, the payment, performance and observance of, collectively: (i) the Borrower's Obligations; (ii) all of the Mortgagor's obligations under this Mortgage; and (iii) in addition to any other debts or obligations secured hereby, the unpaid balances of advances made with respect to the Mortgaged Property for the payment of taxes, assessments, insurance premiums and costs incurred for the protection of the Mortgaged Property. Mortgagor and Mortgagee intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of loan advances or extensions of credit made by Mortgagee after this Mortgage is filed for record. Such loan advances (together with the advances made on or before the date hereof) are and will be evidenced by the Loan Documents.

Mortgagor hereby represents, warrants, covenants and agrees as follows:

ARTICLE I: REPRESENTATIONS, WARRANTIES AND COVENANTS

1.1 Representations and Warranties. Mortgagor hereby represents and warrants to Mortgagee as follows:

(a) Mortgagor is lawfully seized and possessed of a good and indefeasible title and estate in fee simple to the Mortgaged Property, that no other Person holds any interest of any nature in the Mortgaged Property, and Mortgagor will forever warrant and defend the title to the Mortgaged Property and every part thereof unto Mortgagee against the claims and demands of all persons whomsoever; provided, however, that the lien of this Mortgage shall automatically attach to and encumber any property, assets or rights which may be acquired by Mortgagor after the date hereof upon transfer of title thereto, all without the necessity of any further act or deed on the part of Mortgagor. Notwithstanding anything in the Note or any of the other Loan Documents to the contrary, Mortgagor shall not be permitted to grant or transfer an easement or any other right or interest in, change the zoning of, or subdivide any portion of any of the Mortgaged Property being real property, without first obtaining the prior written consent of Mortgagee as provided in this Mortgage.

(b) The Mortgaged Property and every part thereof is free and clear of any and all liens, encumbrances and charges of every kind and character, excepting the lien of this Mortgage (which shall at all times be a first and prior lien and security interest encumbering the Mortgaged Property as security for the Borrower's Obligations). Without limiting the foregoing, Mortgagor represents and warrants to Mortgagee that there does not exist any agreement relating to the sale and purchase of any of the Mortgaged Property, including, without limitation, any agreement granting any party a right of first refusal or option with respect to the purchase or other acquisition of any of the Mortgaged Property.

(c) All collateral consisting of Personal Property is located solely in Illinois.

(d) Mortgagor is a limited partnership duly organized and existing under the laws of the State of Illinois. Mortgagor's exact legal name is as set forth in the first paragraph of this Mortgage.

UNOFFICIAL COPY

During the past five (5) years, each of the Mortgagor's place of business, chief executive office, state of organization and legal name has been and remained as reported above.

(e) To Mortgagor's knowledge, the Premises are not located in an area identified by the Secretary of Housing and Urban Development, or a successor thereto, as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968, or the Flood Disaster Protection Act of 1973, as amended, or any successor law.

1.2 Continuation of Representations and Warranties. Mortgagor hereby covenants, warrants and agrees that the representations and warranties made herein shall be and shall remain true and correct as of the date hereof and at all times thereafter so long as any part of Borrower's Obligations shall remain outstanding.

1.3 Covenants. Mortgagor hereby expressly covenants and agrees as follows:

(a) Payment and Performance of Borrower's Obligations. Mortgagor shall (i) duly repay the Note and all interest thereon, as and when the same shall become due and payable, according to the provisions of the Loan Documents, and (ii) pay and perform all of the Borrower's Obligations according to the provisions of the Loan Documents. In addition, Mortgagor shall be responsible to pay the costs and expenses incurred by Mortgagee to prepare, record and insure the Loan Documents, including, without limitation, the fees and costs incurred by Mortgagee to engage counsel to accomplish such tasks. Such fees and costs shall be payable by Mortgagor to Mortgagee upon demand and shall be additional Borrower's Obligations secured by this Mortgage.

(b) Due on Sale or Encumbrance. Mortgagor will not, without the prior written consent of Mortgagee, transfer, convey or otherwise part with title to any of the Mortgaged Property, or any portion thereof or ownership interest therein, or create or permit or allow to exist or to be created any mortgage, deed of trust, pledge or other encumbrance on any of the Mortgaged Property, other than this Mortgage. Except as may be expressly permitted in this Mortgage, Mortgagor will not suffer or permit any interest in any property securing an obligation owed to, or a claim by, a Person other than the owner of such property, whether such interest is based on common law, statute or contract, including without limitation, any security interest, mortgage, deed of trust, pledge, hypothecation, judgment lien or other lien of encumbrance of any kind or nature whatsoever, any conditional sale or trust receipt, any lease, consignment or bailment for security purposes, or any capital lease (collectively, a "Lien") of any nature whatsoever to attach to any of the Mortgaged Property or to remain outstanding against the same or any part thereof. If any such Lien shall be filed against the Mortgaged Property, Mortgagor shall promptly and at its sole expense have such Lien or encumbrance removed as an exception to title to the Mortgaged Property and such removal reflected by a date down endorsement to Mortgagee's Loan Policy of Title Insurance issued with respect to this Mortgage or reflected by such other assurances as Mortgagee may require.

(c) Insurance.

(i) Mortgagor shall, at Mortgagor's sole cost and expense, obtain and maintain in force and effect at all times, such liability, property and other insurance with respect to the Mortgaged Property as Mortgagee may reasonably require to be obtained and maintained from time to time. Without in any way limiting the foregoing, Mortgagor agrees that in the event that all or any portion of the Mortgaged Property is located in a flood plain, Mortgagor shall obtain and maintain flood insurance coverage in an amount and otherwise in form and substance acceptable to Mortgagee.

UNOFFICIAL COPY

(ii) All policies of insurance shall be issued by companies satisfactory to Mortgagee and shall be in such form and contain such other endorsements as Mortgagee shall require. All policies of insurance shall contain a lender's loss payable endorsement for the benefit of Mortgagee and a mortgagee clause approved by Mortgagee and showing Mortgagee as first mortgagee without contribution and as loss payee. Mortgagee shall be named as an additional insured on all such policies of insurance. Mortgagor shall furnish Mortgagee with an original evidence of all required insurance and satisfactory evidence of premium payments and renewals at least thirty (30) days prior to the expiration of each such policy. Complete duplicate originals of such policies shall be provided from time to time upon request of Mortgagee. All such insurance policies shall contain a provision that the same will not be canceled or modified with respect to the Mortgaged Property without thirty (30) days prior written notice to Mortgagee. Mortgagee may additionally require such certifications relative to confirming coverage (including ACCORD 28 or equivalent) as Mortgagee may deem appropriate in its discretion.

(iii) All insurance moneys received on account of any loss or damage to the Mortgaged Property, after deducting therefrom the reasonable charges and expenses paid or incurred in connection with the collection and disbursement of said moneys, may be used and applied, at the option of Mortgagee, in its sole and absolute discretion, either for the purpose of paying the cost of repair, restoration or replacement of the Mortgaged Property damaged or destroyed, or applied to the prepayment, or partial prepayment, of the Borrower's Obligations secured hereby in such order and manner as Mortgagee may elect. In the event of loss or damage to the Mortgaged Property, Mortgagor shall give immediate written notice to the insurance carrier and to Mortgagee. Mortgagor hereby grants to Mortgagee full power and authority to make proof of loss under any and all insurance policies, either in the name of Mortgagor, or in the name of Mortgagee, and to adjust, settle, collect and receipt for all insurance, and to endorse for and in behalf and in the name of Mortgagor any check, draft or other instrument received therefor, and to collect the proceeds thereof, and also, if an Event of Default shall occur and be continuing hereunder, to collect and receipt for any unearned premiums and to apply same to the Borrower's Obligations secured hereby in such order and manner as Mortgagee may elect. In the event of foreclosure sale, any and all insurance policies may be assigned without consent of Mortgagor, and Mortgagor authorizes the Mortgagee to assign said policies to the purchaser or purchasers at such foreclosure sale, or if Mortgagee so elects, such Mortgagee may collect any unearned premiums and apply the same to the Borrower's Obligations secured hereby in such order and manner as Mortgagee may elect.

(iv) The following notice is given pursuant to the Illinois Collateral Protection Act (815 ILCS 180/1 et. seq. as the same may be amended or restated). As used herein, the terms "you" and "your" shall refer to Mortgagor and the terms "we" and "us" shall refer to Mortgagee. **UNLESS YOU PROVIDE US WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY YOUR AGREEMENT WITH US, WE MAY PURCHASE INSURANCE AT YOUR EXPENSE TO PROTECT OUR INTERESTS IN YOUR COLLATERAL. THIS INSURANCE MAY, BUT NEED NOT, PROTECT YOUR INTERESTS. THE COVERAGE THAT WE PURCHASE MAY NOT PAY ANY CLAIM THAT YOU MAKE OR ANY CLAIM THAT IS MADE AGAINST YOU IN CONNECTION WITH THE COLLATERAL. YOU MAY LATER CANCEL ANY INSURANCE PURCHASED BY US, BUT ONLY AFTER PROVIDING US WITH EVIDENCE THAT YOU HAVE OBTAINED INSURANCE AS REQUIRED BY OUR AGREEMENT. IF WE PURCHASE INSURANCE FOR THE COLLATERAL, YOU WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AND ANY OTHER CHARGES WE MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE, UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE MAY BE ADDED TO YOUR TOTAL OUTSTANDING BALANCE OR OBLIGATION. THE COSTS OF THE**

UNOFFICIAL COPY

INSURANCE MAY BE MORE THAN THE COST OF INSURANCE YOU MAY BE ABLE TO OBTAIN ON YOUR OWN.

(v) Without limiting the terms and conditions of the foregoing provisions of this Section 1.3(c), Mortgagee may require Mortgagor to deliver to Mortgagee a Loan Policy of Title Insurance insuring this Mortgage on such terms and conditions, and including such endorsements, as Mortgagee may require. Mortgagor shall be responsible to cover the cost of such Policy.

(d) Repairs. Mortgagor will at all times (i) keep and maintain the Mortgaged Property and every part thereof in good order, repair and condition, (ii) make all necessary repairs, restorations, renewals, replacements, additions and improvements thereto, whether interior or exterior, structural or nonstructural, foreseen or unforeseen, or otherwise necessary to preserve the value of the Mortgaged Property, (iii) not cause or allow any waste to or of the Mortgaged Property, or any portion thereof, to occur, and (iv) not cause or allow the Premises to be misused, wasted or deteriorated in any respect. In the event of fire or other casualty, or in the event of a condemnation of a portion of the Premises, Mortgagor shall repair and restore the Premises to its condition prior to such casualty or condemnation, to the extent possible, promptly and in a workmanlike manner. No part of the Improvements shall be removed, demolished or structurally or materially altered nor shall any new building, structure, facility or other improvement be constructed on the Land without Mortgagee's prior written consent in the case of each such removal, demolition, alteration or construction, except to the extent expressly provided in this Mortgage. Mortgagor will keep the Premises fully equipped and will replace all worn out or obsolete fixtures and Personal Property with fixtures or personal property comparable thereto when new. Mortgagor shall not, without Mortgagee's prior written consent, remove any Personal Property from the Land or the Improvements unless Mortgagor replaces the same with an article of equal or better usefulness and value when new, owned by Mortgagor free and clear of any lien or security interest (other than this Mortgage).

(e) Zoning; Title Matters. Mortgagor will not, without the prior written consent of Mortgagee, (i) initiate or support any zoning reclassification of the Premises, seek any variance under existing zoning ordinances applicable to the Premises or use or permit the use of the Premises in a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances, (ii) impose any restrictive covenants, easements, rights-of-way or encumbrances upon the Premises, execute or file any subdivision plat affecting the Premises or consent to the annexation of the Premises to any municipality, or (iv) permit or suffer the Premises to be used by the public or any Person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement.

(f) Compliance. Mortgagor will not use or suffer or permit to be used the Mortgaged Property or any part thereof in any manner inconsistent with the rights of Mortgagee hereunder, or in violation of the provisions of any Lease, insurance policy or any rules or regulations of insurance underwriters. Mortgagor will further comply with, and maintain, use and cause the Mortgaged Property to at all times be in compliance with all laws, including without limitation, any and all international, foreign, federal, state, local and other statutes, treaties, rules, regulations, guidelines, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any governmental or regulatory agency, authority, instrumentality, body or official charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any governmental or regulatory agency, authority, instrumentality, body or official, in each case whether or not having the force of law (collectively "Laws"), judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution, the protection of the environment and/or the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching,

UNOFFICIAL COPY

dumping or disposing into the environment of any materials into the environment, including those related to explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any environmental law, air emissions and discharges to waste or public systems, applicable to the Mortgaged Property or to the uses or purposes thereof.

(g) Condemnation. In the event the Mortgaged Property, or any part thereof, be taken through condemnation proceedings or by virtue of the exercise of the right of eminent domain or pursuant to governmental action, any and all amounts awarded in any such condemnation proceeding for the taking of the Mortgaged Property, or any part thereof, are hereby assigned to and shall be paid directly by the condemning authority to Mortgagee, and when received by Mortgagee, after deducting all reasonable charges and expenses paid or incurred in connection with the collection thereof, the same may be applied to the prepayment, or partial prepayment, of Borrower's Obligations in such order and manner as Mortgagee may elect, or, at the option of Mortgagee, the same may be applied in whole or in part to the replacement of that part of the Mortgaged Property not so taken, subject, however, to the satisfaction of such conditions as Mortgagee may impose with respect thereto. Mortgagor, promptly upon obtaining knowledge of any pending or threatened condemnation of the Premises or any other portion of the Mortgaged Property, or of any eminent domain, or of any other proceedings arising out of injury or damage to or decrease in the value of the Premises or any other portion of the Mortgaged Property, including a change in grade of any street, will notify Mortgagee of the threat or commencement thereof. Mortgagee shall have the right, but not the obligation, to participate in any such proceedings, and Mortgagor from time to time will execute and deliver to Mortgagee all instruments requested by Mortgagee or as may be required to permit such participation. Mortgagor, at Mortgagor's sole expense, shall diligently act to protect the interests of Mortgagor and Mortgagee in any such proceedings, shall deliver to Mortgagee copies of all papers served in connection therewith and shall consult and cooperate with Mortgagee, its attorneys and agents, in the carrying on and defense of any such proceedings; provided that no settlement of any such proceeding shall be made by Mortgagor without Mortgagee's prior written consent, which consent shall not be unreasonably withheld or delayed.

(h) Casualty. In the event of casualty, Mortgagee shall make the insurance proceeds available to Mortgagor for repair and restoration of the Mortgaged Property only to the extent Mortgagee has agreed to do so under the Loan Documents.

(i) Taxes. Mortgagor hereby covenants and agrees to pay any and all general real estate taxes, special taxes and assessments, general assessments, subdivision or condominium assessments, Liens and other charges that may be levied or assessed against the Mortgaged Property, or any part thereof, prior to the time the same shall become delinquent, and Mortgagor shall promptly provide Mortgagee with proof of payment thereof; provided, however, that Mortgagor shall not be required to pay any such tax, assessment or other governmental charge the payment of which is being contested in good faith and by appropriate proceedings being diligently conducted and for which adequate reserves in accordance with GAAP have been provided, except that Mortgagor, shall pay or cause to be paid all such taxes, assessments and governmental charges forthwith upon the commencement of proceedings to foreclose any Lien which is attached as security therefor, unless such foreclosure is stayed by the filing of an appropriate bond in a manner reasonably satisfactory to Mortgagee.

(j) Change in Taxation Laws. If, after the date hereof, any State, any Commonwealth or the United States of America imposes on Mortgagee (or any affiliate thereof) a new or increased tax on notes, bonds, reimbursement agreements or obligations secured by a mortgage or deed of trust on real estate, as a result of which Mortgagee may become chargeable with the payment of any such new or increased taxes,

UNOFFICIAL COPY

then Mortgagor covenants and agrees to pay Mortgagee the new or increased amount of such taxes to the extent allocable to the Borrower's Obligations within thirty (30) days after written notice thereof; provided, however, that if Mortgagee shall be required by law to pay any such new or increased tax in advance of Mortgagor's payment thereof to Mortgagee, then all moneys so expended shall be due on demand, bear interest at the applicable default rate under the Note (the "Default Rate") and shall be secured hereby. In the event Mortgagor shall fail to pay or cause to be paid or to reimburse Mortgagee for advances as aforesaid to pay any such new or increased tax or taxes, or if by such law it should be illegal for Mortgagor to pay any such tax or taxes, then Borrower's Obligations shall, at the option of Mortgagee, become immediately due and payable without further notice or action on the part of Mortgagee, anything herein or in Loan Documents to the contrary notwithstanding; provided, however, that Mortgagor shall not be required to pay any such tax in excess of an amount which when added to the interest paid by Mortgagor on the Note would exceed the maximum lawful rate allowed in the State where the Land is located or any other applicable lawful rate.

(k) Inspections. Mortgagee, and its agents, employees and contractors, are hereby authorized to enter on or in any part of the Mortgaged Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform hereunder. The right to inspect the Mortgaged Property as provided hereunder shall include the right to make subsurface inspections.

(l) Title Disputes. Without limiting the generality of any provision of the Loan Documents, if the Mortgagee is made a defendant in any suit involving the title to any of the Mortgaged Property, or involving the validity or priority of the lien of this Mortgage, then, in each such event, Mortgagor shall reimburse Mortgagee for all fees and costs, charges and expenses related thereto (determined on the basis of such counsel's generally applicable rates, which may be higher than the rates such counsel charges Mortgagee for certain matters) for attorneys (and all paralegals, accountants and other staff employed by such attorneys) employed by Mortgagee from time to time in connection therewith and expenses suffered or incurred by Mortgagee, as and when the same are suffered or incurred, and any such reimbursement obligation which is not paid upon demand shall bear interest at the Default Rate and shall be secured by this Mortgage.

(m) Cure Payments. If Mortgagor shall fail to pay any tax, assessment, Lien or other charge levied or assessed against the Mortgaged Property, or any part thereof, or shall fail to keep and perform any of the covenants and conditions herein contained or in the other Loan Documents, then Mortgagee, shall have the right, but not the obligation, to (i) pay any such tax, assessment, Lien or other charge, (ii) redeem such property from any sale or foreclosure for taxes or assessments or Liens, (iii) effect and pay for insurance required hereunder or under the other Loan Documents, (iv) perform or pay for any other of Borrower's Obligations, and (v) make such other disbursements as are necessary or advisable in the opinion of Mortgagee to cure any default of Mortgagor hereunder or under the other Loan Documents, (vi) protect the lien, or the priority of the lien, of this Mortgage or the rights of Mortgagee hereunder, (vii) preserve the value of the Mortgaged Property, and (viii) take any action or expend any sum, or both, as may be necessary to protect against waste to or of the Mortgaged Property or any portion thereof. Any and all such sums of money advanced for such purposes by Mortgagee shall be deemed part of Borrower's Obligations, shall be secured by this Mortgage and the other Loan Documents and shall be payable on demand with interest accruing from the time so advanced at the Default Rate, and failure on the part of Mortgagor to repay the amounts so advanced on demand shall constitute an Event of Default hereunder; provided, however, nothing herein contained shall be construed as requiring Mortgagee to advance or expend money or take any action for any of the purposes aforesaid.

(n) Negative Covenants. Until the Note and all of the other Borrower's Obligations are repaid in full, without the prior consent of Mortgagee, Mortgagor agrees as follows: (i) Mortgagor shall not, in one transaction or a series of related transactions, merge into or consolidate with any other

UNOFFICIAL COPY

entity, or sell all or substantially all of its assets; (ii) Mortgagor shall not change the state of its incorporation or organization; and (iii) Mortgagor shall not change its legal name.

(o) Control of Collateral. Mortgagor will cooperate with the Mortgagee in obtaining control with respect to any collateral consisting of any one or more of the following: deposit accounts; investment property; letter of credit rights; and electronic chattel paper.

(p) Indemnity. Mortgagor will protect, indemnify, defend and hold harmless Mortgagee from and against any and all claims, causes of action, suits, liabilities, damages, losses, costs and expenses (including any and all attorney fees costs, charges and expenses), of whatever nature (including without limitation, Mortgagor's failure to perform its obligations relating to environmental matters described in this Section 1.3) which may arise or result, directly or indirectly by reason of the use or occupation of the Mortgaged Property or any part thereof, any failure by Mortgagor to comply with the covenants contained in this Mortgage or any failure of the representations and warranties given and made by Mortgagor in this Mortgage to be true and correct as of the date when made or deemed made; provided that Mortgagor shall have no obligation to Mortgagee hereunder with respect to indemnified liabilities arising from the gross negligence or willful misconduct of Mortgagee as determined by a court of competent jurisdiction in a final nonappealable order. The specific indemnity and covenants contained in this paragraph are in addition to and shall not be construed to narrow or in any way restrict the application of the other indemnities and covenants contained in this Mortgage or the other Loan Documents, notwithstanding any overlap in coverage.

(q) Further Assurances. Mortgagor will, and it will cause each other obligor to, promptly upon request, execute and deliver to Mortgagee, at any time and from time to time, any and all further agreements, documents and instruments, and take any and all further actions which may be required under applicable Law, or which Mortgagee may from time to time reasonably request, in order to effectuate the transactions contemplated by this Mortgage, the Note or any of the other Loan Documents. Without limiting the foregoing, Mortgagor shall execute and deliver such items as Mortgagee may request to assure that this Mortgage is a first priority, properly perfected lien upon the property intended to be encumbered hereby.

1.4 Assignment of Leases and Rents.

(a) This instrument is intended to and hereby does create an absolute and present assignment to Mortgagee of the items of Mortgaged Property constituting rents revenues, royalties, income, issues and profits, and not merely the passing of a security interest, and Mortgagor hereby assigns, transfers and sets over to Mortgagee all the right, title and interest of Mortgagor in and to all items of Mortgaged Property constituting rents, revenues, royalties, income, issues and profits; provided, that so long as no Event of Default exists hereunder, Mortgagor shall have the right and license to collect said rents, revenues, royalties, income, issues and profits as the same shall accrue.

(b) This instrument is intended to be and hereby is an assignment of leases and the rights and interests arising thereunder, and Mortgagor hereby assigns, transfers and sets over to Mortgagee all the right, title and interest of Mortgagor in, under and by virtue of any and all existing and future leases, licenses or occupancy agreements affecting all or any part of the Mortgaged Property, together with all extensions, renewals, modifications or replacements thereof (collectively for purposes of this paragraph and including the Leases above described, the "Leases"), any and all guaranties of the tenants' obligations under any provisions thereof, all security deposits delivered by tenants thereunder, whether in cash or letter of credit, all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases

UNOFFICIAL COPY

pursuant to Section 365(a) of the United States Bankruptcy Code or any replacement Section thereof, and all tenant improvements and fixtures located on the Mortgaged Property; provided, however, that Mortgagor is hereby granted a license to collect Rents under the Leases until terminated by the occurrence of an Event of Default as provided in this Mortgage. Mortgagor covenants that Mortgagor is the sole owner of the entire landlord's or lessor's interest in the Leases; that the Leases are valid and enforceable and have not been and shall not be altered, modified, or amended in any manner whatsoever save as therein and herein set forth; that the tenant(s) or lessee(s) named therein are not in default under any of the terms, covenants or conditions thereof; that no rent reserved in the Leases has been assigned or anticipated; and that no rent for any period subsequent to the date hereof has been collected in advance of the time when the same became due under the terms of the Leases. Mortgagor covenants with Mortgagee to observe and perform all the obligations imposed upon the landlord or lessor under the Leases and not to do or permit to be done anything to impair the security thereof; not to collect any of the rent, income, and profits arising or accruing under the Leases or from the Mortgaged Property in advance of the time when the same shall become due; not to execute any other assignment of landlord's or lessor's interest in the Leases or assignment of rents arising or accruing from the Leases or from the Mortgaged Property except as hereinafter set forth; not to enter into any new Leases of the Mortgaged Property, except Leases entered into in the ordinary course of business, without the prior written consent of Mortgagee; not to cancel, terminate, accept a surrender of, shorten the term of or decrease the rent due under any Lease in effect as of the date of this Mortgage without the prior written consent of Mortgagee; and at Mortgagee's request, to further assign and transfer to Mortgagee any and all future Leases upon all or any part of the Mortgaged Property, and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments as Mortgagee shall from time to time require. Mortgagor will not execute any other assignment of the Leases or of any interest therein or of any of the rents payable thereunder. Mortgagor will give prompt notice to Mortgagee of any notice of Mortgagor's default received from any tenant, lessee or any other person and furnish Mortgagee with complete copies of said notice. If requested by Mortgagee, Mortgagor will enforce the Leases and all remedies available to Mortgagor against the tenant in case of default under the Leases by any tenant.

(c) Mortgagee shall not be liable for any loss sustained by the Mortgagor resulting from the failure of Mortgagee to let the leasable premises or the Mortgaged Property after default or from any other act or omission of Mortgagee in managing the Mortgaged Property after default, unless such loss is caused by the gross negligence or willful misconduct of Mortgagee as determined by a court of competent jurisdiction in a final nonappealable order. Mortgagee shall not be obligated to perform or discharge, nor does Mortgagee hereby undertake to perform or discharge, any obligation, duty or liability under the Leases or under or by reason of this Mortgage, and Mortgagor shall, and does hereby agree to, indemnify Mortgagee for, and to hold Mortgagee harmless from any and all liabilities, losses and damages which may or might be incurred under the Leases or under or by reason of this Mortgage and from any and all claims and demands whatsoever, in each case, prior to the foreclosure of the mortgage lien created hereby, which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, except to the extent of such loss, liability, or damage as is caused by the gross negligence or willful misconduct of Mortgagee as determined by a court of competent jurisdiction in a final nonappealable order.

(d) Upon the occurrence and during the continuance of an Event of Default, Mortgagee may, at Mortgagee's option, upon written notice to Mortgagor, terminate the license granted above. In such event, Mortgagee shall thereupon have the right to exercise any one or all of the following remedies: (i) Mortgagee may notify any or all tenants to pay all rents due thereafter directly to Mortgagee at the address set forth in Mortgagee's notice to such tenants. Mortgagor irrevocably agrees that all such tenants shall be authorized to pay the rents directly to Mortgagee without liability of such tenants for the

UNOFFICIAL COPY

determination of the actual existence of any default by Mortgagor claimed by Mortgagee. Tenants shall be expressly relieved of any and all duty, liability and obligation to Mortgagor in connection with any and all rents so paid; (ii) Mortgagee may enter upon and take possession of the Mortgaged Property, manage and operate the Mortgaged Property and the Mortgagor's business on the Mortgaged Property, and take possession of and use all books of account and financial records of the Mortgagor and its property managers or representatives, if any, relating to the Mortgaged Property; (iii) Mortgagee may alter, modify, amend, terminate or permit the surrender of any or all Leases, and Mortgagee may execute new Leases of any part of the Mortgaged Property, including Leases that extend beyond the maturity date of the Borrower's Obligations secured hereby. Mortgagor hereby specifically authorizes Mortgagee, and hereby irrevocably constitutes and appoints Mortgagee as Mortgagor's agent and attorney-in-fact, in Mortgagor's or Mortgagee's name, to do any of the foregoing, said power of attorney being coupled with an interest and not revoked by insolvency, bankruptcy, death, dissolution or otherwise.

1.5 Security Agreement. This instrument is intended to be a security agreement pursuant to the Uniform Commercial Code as currently in effect in the State of Missouri ("UCC") for any of the items specified as part of the Mortgaged Property which, under applicable law, may be subject to a security interest pursuant to the UCC, and Mortgagor hereby grants Mortgagee a security interest in all of such items, whether now owned or hereafter acquired, and including all products and proceeds of said items. Mortgagor irrevocably authorizes Mortgagee to file (i) one or more financing statements describing the Mortgaged Property in all jurisdictions in which such financing statements are or may be required to be filed to perfect the grant of the security interest in the Mortgaged Property, (ii) one or more continuation statements relating to such financing statements, and (iii) amendments of such financing statements as may be required by Mortgagee from time to time. Mortgagor hereby authorizes Mortgagee to file financing statements covering "all assets" or "all personal property" of Debtor as contemplated by Section 9-504 of the UCC. Any reproduction of this instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. This Mortgage is intended to be a financing statement within the purview of Section 9-502 of the UCC with respect to the Mortgaged Property and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor and Mortgagee are set forth on the first page of this Mortgage. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Land is located. In addition, Mortgagor agrees to deliver to Mortgagee, upon Mortgagee's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this instrument, in such form as Mortgagee may reasonably require to perfect a security interest with respect to said items. Mortgagor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Mortgagee may reasonably require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created pursuant to the UCC any other security interest in any of the Mortgaged Property, including replacements and additions thereto. Upon the occurrence of an Event of Default as hereinafter provided, Mortgagee shall have the remedies of a secured party under the UCC and, at Mortgagee's option, may also invoke the remedies as otherwise provided in this instrument. In exercising any of said remedies, Mortgagee may proceed against the items of real property and any items of personal property specified as part of the Mortgaged Property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the UCC or of the remedies otherwise provided in this instrument.

ARTICLE II: DEFAULT AND REMEDIES

2.1 Events of Default. An event of default (each an "Event of Default") shall occur under this Mortgage if any one or more of the following events shall occur: (a) if an Event of Default (as defined in the Note or any of the other Loan Documents) shall occur under the Note or any of the other Loan Documents;

UNOFFICIAL COPY

(b) if default shall be made by Mortgagor in the due performance or observance of any covenant, agreement or condition herein contained or required to be performed or observed by Mortgagor under this Mortgage; provided, however, except for those defaults expressly stated in the other provisions of this Section 2.1, no Event of Default shall occur if Mortgagor cures such default within thirty (30) days after Mortgagee provides Mortgagor written notice of such default; (c) if any representation or warranty of Mortgagor contained herein shall prove to be in any material respect incorrect or if there shall be any material breach of any such representation or warranty; (d) if the Mortgaged Property or any portion thereof or ownership interest therein is sold, transferred, assigned or in any manner conveyed without the prior written consent of Mortgagee; (e) if a default or event of default shall occur and continue beyond the applicable cure period, if any, under or within the meaning of any other deed of trust, mortgage or other lien or security interest covering any of the Mortgaged Property, or foreclosure proceedings shall be commenced under any other lien or security interest covering any of the Mortgaged Property; (f) if any party other than Mortgagee should commence any enforcement (including, without limitation, receivership), execution or forfeiture proceedings respecting any of the Mortgaged Property; or (g) if any default occurs under Sections 1.1, 1.2, 1.3(a), 1.3(b), 1.3(c), 1.3(e), 1.3(f), 1.3(g), 1.3(h), 1.3(i), 1.3(n) or 1.3(o) of this Mortgage. Notwithstanding anything in Section 2.1(b) of this Mortgage to the contrary, if a cure period set forth in this Mortgage is greater as to the breach in question than that afforded under the Note, such cure period as set forth in the Note shall govern.

2.2 Remedies. Upon the occurrence of any one or more Events of Default, then, and in each and every such event, Mortgagee shall have the right to exercise any one or more of the following rights and remedies in addition to any other rights and remedies available under the Note or any of the other Loan Documents and applicable law and equity:

(a) Acceleration. At the option of Mortgagee, all of the Borrower's Obligations then outstanding and unpaid and all accrued and unpaid interest thereon shall become and be due and payable immediately, notwithstanding anything to the contrary in the Note.

(b) Foreclosure. Mortgagor agrees that upon the occurrence of an Event of Default hereunder, Mortgagee shall have the right to immediately foreclose this Mortgage. In any foreclosure proceeding the court shall, upon application, at once, and without notice to Mortgagor or any party claiming under Mortgagor, and without giving bond on such application (such notice and bond being hereby expressly waived) and also without reference to the then value of the Mortgaged Property, to the use of said Mortgaged Property as a homestead or to the solvency or insolvency of any person liable for any said Borrower's Obligations, appoint a receiver for the benefit of the legal holder(s) of the Borrower's Obligations secured hereby, to take possession of the Mortgaged Property, with power to collect rents, issues and profits of the Mortgaged Property, then due or to become due, during the pendency of such foreclosure suit (such rents, issues and profits being hereby expressly assigned and pledged as additional security for the payment of the Borrower's Obligations secured by this Mortgage); this provision for appointment of a receiver being expressly a condition upon which the Borrower's Obligations secured hereby were made; and Mortgagor hereby further consents that said receiver may, out of the said rents, pay prior or coordinate liens, the taxes, assessments, water rates and insurance on Mortgaged Property, then due or unpaid or accruing whether before or after the filing of such bill, and for any necessary repairs thereon, and management and rental fees and any other proper charges, and the amount of any deficiency decree; provided that, in case of any default or breach, as aforesaid, as a concurrent (and not alternative or exclusive) remedy and measure for making effective the terms provisions and purposes hereof, it shall be lawful for Mortgagee, its agent or attorney forthwith (either with or without process of law, forcibly or otherwise) to enter upon and take possession of said Mortgaged Property and to expel and remove any person, goods or chattels occupying or upon the same, to collect and to receive all of the rents, issues and profits therefrom, from time to time, to manage and control the same and make all necessary repairs, and lease the same or any part thereof at such rentals as

UNOFFICIAL COPY

in its sole discretion it may deem just and reasonable, and after deducting all reasonable attorneys' fees and costs, charges and expenses (including all paralegals, accountants and other staff employed by such attorneys) related thereto and all expenses incurred in the protection, care, repair and management of said Mortgaged Property, distribute to Mortgagee the remaining income for application upon the Borrower's Obligations secured hereby in the same manner as is hereafter provided upon the sale of said Mortgaged Property under foreclosure; and said Mortgagor hereby expressly releases and waives any and all right to possession, control or management of the Mortgaged Property, or to the rents, issues and profits therefrom, after any Event of Default under this Mortgage and said Mortgagor hereby further expressly releases and waives any and all damages and claims for damages occasioned by such expulsion.

(c) Right of Entry. Upon written demand of Mortgagee, Mortgagor shall forthwith surrender to Mortgagee the actual possession of all of the Mortgaged Property and it shall be lawful (whether or not Mortgagor has so surrendered possession) for Mortgagee, either personally or by agents or attorneys, forthwith to enter into or upon the Mortgaged Property and to exclude Mortgagor, the agents and servants of Mortgagor, and all parties claiming by, through or under Mortgagor, wholly therefrom, and Mortgagee shall thereupon be solely and exclusively entitled to possession of said Mortgaged Property and every part thereof, and to use, operate, manage and control the same, either personally or by managers, agents, servants or attorneys to the fullest extent authorized by law; and upon every such entry, Mortgagee may, from time to time, at the expense of Mortgagor, make all necessary and proper repairs and replacements to the Mortgaged Property as Mortgagee in its discretion sees fit, and any amounts so expended shall be due on demand, bear interest at the Default Rate and shall be secured hereby.

(d) Collection of Rent. Upon the occurrence and continuance of an Event of Default, Mortgagee may make demand for and collect and receive all Rents and other income from the Mortgaged Property, including Rents and other income accrued but unpaid prior to the date of such Event of Default, and the receipt of Mortgagee therefor shall be binding on Mortgagor with respect to the amount so paid. All sums of money received by Mortgagee from Rents, after deducting therefrom the reasonable charges and expenses paid or incurred in connection with the collection and disbursement thereof, shall be applied to the payment of Borrower's Obligations in such order and manner as Mortgagee may elect, or applied to remedy any Event of Default as Mortgagee may direct. Any lessee of the Mortgaged Property, or any part thereof, is hereby authorized and directed by Mortgagor to make payments of rent in accordance with written instructions relating thereto executed by Mortgagee, or any Person acting on behalf of Mortgagee with apparent authority, and shall be fully protected in relying and acting upon such written instructions. Such lessee shall have no duty to determine whether any sum paid to Mortgagee hereunder is properly applied by Mortgagee.

(e) Equitable Remedies. Mortgagee may proceed by suit or suits at law or in equity to enforce Borrower's Obligations and to foreclose the lien created by this Mortgage and in such event Mortgagee shall be entitled to be reimbursed for its respective reasonable attorneys' fees and costs, charges and expenses (including all paralegals, accountants and other staff employed by such attorneys) and for all other expenses, costs and outlays.

(f) Receivership. Mortgagee shall be entitled as a matter of right to the appointment of a receiver of the Mortgaged Property, without prior notice to Mortgagor and without regard to (i) the solvency or insolvency of Mortgagor at the time of the application for such receiver, (ii) the then value of the Mortgaged Property or (iii) whether any waste of the Mortgaged Property has occurred or is threatened. Mortgagee, may be appointed as such receiver. Such receiver shall have full power to (i) collect the rents, issues and profits from the Mortgaged Property, (ii) construct or complete the construction of any improvements on the Mortgaged Property, (iii) exercise any right or remedy granted to Mortgagee under the Note or any of the other Loan Documents, and (iv) all other powers necessary or incidental for the protection, possession, control, development, management, leasing and operation of the Mortgaged Property.

UNOFFICIAL COPY

(g) Selectively Release, Liquidate or Substitute Collateral. Mortgagee shall have the right, but not the obligation, to release any portion of the Mortgaged Property for such consideration as Mortgagee may require without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Borrower's Obligations shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release and applied to the Borrower's Obligations and without in any way impairing the validity, priority or enforceability of the Note or any of the other Loan Documents, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder.

(f) Delivery of Collateral. Mortgagor shall assemble any Personal Property serving as collateral for the Note, or any portion thereof, at any place or places designated by Mortgagee, and promptly to deliver such collateral to Mortgagee or Mortgagee's agent.

(i) Other Creditor's Rights and Remedies. Mortgagee shall have the right to exercise any one or more of the rights and remedies available under the Uniform Commercial Code or otherwise at law or in equity.

2.3 Costs of Collection and Fees and Expenses Generally. Mortgagor promises to pay all costs, expenses and reasonable attorneys' fees and costs, charges and expenses (including all paralegals, accountants and other staff employed by such attorneys) and other expenses incurred by the Mortgagee in collecting the Borrower's Obligations secured hereby whether by foreclosure, suit or otherwise, in protecting or sustaining the lien of this Mortgage or in any litigation or controversy arising from or in connection with the Note, any of the other Loan Documents or this Mortgage, together with interest thereon from the date of payment at the highest rate applicable under the Loan Documents and Mortgagor agrees that any such sums and the interest thereon shall be a lien on said Mortgaged Property and shall be secured by this Mortgage. All fees and expenses allowable pursuant to the provisions hereof shall be additional Borrower's Obligations secured hereby and shall be a charge upon said Mortgaged Property and shall constitute a lien thereon prior and paramount to the Borrower's Obligations secured hereby, and whenever possible shall be provided for in any judgment or decree entered in any such proceedings. There shall be included in any decree foreclosing the lien of this Mortgage and be paid out of the rents or proceeds of any sale made in pursuance of any such decree in the following order: (a) all costs of such suit or suits, advertising, sale and conveyance, reasonable attorneys' fees and costs, charges and expenses (including all paralegals, accountants and other staff employed by such attorneys) for the Mortgagee, stenographers' fees, outlays for documentary evidence and costs of abstract and examination of title, title opinions and title guaranty policies; (b) all moneys advanced by the Mortgagee for any purpose authorized in this Mortgage, with interest on such advances at the highest rate of interest applicable under the Loan Documents; (c) all the accrued interest remaining unpaid on the Borrower's Obligations secured hereby; and (d) all of the principal of the Borrower's Obligations secured hereby then remaining unpaid. The excess of the proceeds of the sale, if any, shall then be paid to the party entitled thereto. In case, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire Borrower's Obligations due hereunder, Mortgagee shall be entitled to reimbursement for expenses incurred in connection with such legal proceedings, including such expenditures as are enumerated above, and such expenses shall be additional Borrower's Obligations secured by this Mortgage, and no such suit or proceedings shall be dismissed or otherwise disposed of until such fees, expenses and charges shall have been paid in full.

2.4 Application of Proceeds. The proceeds of any foreclosure sale referred to in this Mortgage shall be applied as follows:

UNOFFICIAL COPY

First: To the payment of the costs, expenses and liabilities of Mortgagee caused by the Event of Default giving rise to such sale, including, without limitation, the cost of all attorneys' fees and costs, charges and expenses (including all paralegals, accountants and other staff employed by such attorneys) and any other expenses of Mortgagee and the cost of obtaining title reports, title insurance, environmental reports, appraisal reports, insurance, past due taxes and assessments and other expenses of conducting such sale and evaluating the potential acquisition the Mortgaged Property, together with interest thereon at the Default Rate, and all taxes and other charges, except any taxes or other charges subject to which the Mortgaged Property shall have been sold.

Second: To the payment in full of the Borrower's Obligations (including principal, interest, penalties, premiums and fees) in such order as Mortgagee may elect.

Third: To the payment of any other sums secured hereunder or required to be paid by Mortgagor pursuant to any provision of the Note or any of the other Loan Documents.

Fourth: To the extent permitted by applicable law, to be set aside by Mortgagee as adequate security in Mortgagee's judgment for the payment of sums which would have been paid by application under clauses First through Third above to Mortgagee, arising out of an obligation or liability with respect to which Mortgagor has agreed to indemnify Mortgagee, but which sums are not yet due and payable or liquidated.

Fifth: At the option of Mortgagee, to the payment of any withholding tax in accordance with applicable federal, state or local law.

Sixth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

If the net proceeds of any such foreclosure or trustee's sale under this Mortgage are not sufficient to fully satisfy all of the Borrower's Obligations, including, without limitation, the costs and expenses described above, then Mortgagor hereby promises and agrees to pay any such deficiency on demand together with interest thereon at the Default Rate.

2.5 Waivers. Mortgagor shall not apply for or avail itself of any appraisement, valuation, redemption, stay, extension or exemption laws, or any so-called "moratorium laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, and Mortgagor hereby waives the benefit of such laws. Mortgagor, for itself, its successors and assigns, hereby wholly waives the period of redemption and any right of redemption provided under any existing or future law in the event of a foreclosure of this Mortgage. Mortgagor, for itself and all who may claim through or under it, hereby waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof and hereby agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. Mortgagor hereby waives any order or decree of foreclosure, pursuant to the rights herein granted, on behalf of Mortgagor, and each and every person acquiring any interest in or title to the Mortgaged Property, subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

ARTICLE III: MISCELLANEOUS

3.1 Any part of the Mortgaged Property herein described may be released by the Mortgagee without affecting the lien hereof on the remainder. The liability of the Mortgagor on the Borrower's

UNOFFICIAL COPY

Obligations secured hereby shall continue in its original force and effect until the entire principal balance of the Borrower's Obligations secured hereby and all accrued and unpaid interest thereon is paid in full. Mortgagee may by written and signed agreement with the then record owner of the real estate, or with the heirs, executors, administrators, devisees, successors or assigns of such record owner, or with any one or more persons liable, whether primarily or secondarily, for the payment of any Borrower's Obligations secured hereby, without notice of any other of said persons, extend the time of payment, or otherwise modify the terms and conditions for repayment of, the Borrower's Obligations, or any part thereof, without thereby modifying or affecting the lien of this Mortgage or releasing any such person from any liability for such Borrower's Obligations, and this Mortgage shall be security for all additional interest under such extension or other modification agreement; and the granting of any extension or extensions of time of payment, or any other modifications of the terms and conditions for repayment, of any of the Borrower's Obligations secured hereby or interest thereon either to the maker or to any other party, or to the releasing of a portion of the security hereof, or taking other or additional security for payment of said Borrower's Obligations, or waiver of or failure to exercise any right to mature or enforce the whole debt under any covenant or stipulation herein contained, or extending the time of payment of any other Borrower's Obligations or liability secured hereby, shall not in anywise affect this Mortgage or the rights of Mortgagee hereunder, or operate as a release from any liability upon said Borrower's Obligations under any covenant or stipulation herein contained.

3.2 This Mortgage and all provisions hereof shall extend to and be binding upon Mortgagor and all parties claiming by, through or under Mortgagor. All covenants and agreements of Mortgagor herein shall be joint and several.

3.3 Mortgagor acknowledges and agrees that all expenses and amounts expended by Mortgagee, or owed to Mortgagee under any indemnity in this Mortgage, shall be due as and when incurred, bear interest at the Default Rate and shall constitute part of Borrower's Obligations, and all indemnities contained in this Mortgage shall apply notwithstanding any negligent conduct or omission of Mortgagee (except to the extent otherwise provided herein and except to the extent of gross negligence or willful misconduct on the part of Mortgagee), are in addition to any legal liability or responsibility Mortgagor otherwise has, and shall survive the foreclosure of this Mortgage and the payment and performance of Borrower's Obligations.

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

3.5 The term "Mortgagee" shall be deemed to mean and include the endorsee(s), transferee(s) or the holder(s) at the time being of the Loan Documents and any of Borrower's Obligations, and the successor or successors and assigns of Mortgagee. In the event that ownership of the Mortgaged Property becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage or the Borrower's Obligations in the same manner as with Mortgagor, without in any way vitiating, discharging or otherwise affecting Mortgagor's liability hereunder or for the payment and performance of the Borrower's Obligations or being deemed a consent on the part of Mortgagee to such vesting.

3.6 Any notice, demand or other communication hereunder shall be given as provided in the Note, and if no such manner of giving notice is provided for in the Note, then such notice shall be given as follows. Any notice, demand or other communication required or permitted hereunder or under the other Loan Documents shall be in writing and shall be deemed to have been given if and when received if

UNOFFICIAL COPY

personally delivered or sent via facsimile, on the first business day after being deposited with a nationally recognized overnight courier service prepaid and specifying the overnight delivery and addressed to the party at its address as provided herein or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to Mortgagee:

c/o Thompson Coburn LLP
55 East Monroe Street, 37th Floor
Chicago, IL 60603
Attention: Todd A. Rowden
Facsimile: 312-782-1030 or 312-580-2201

If to Mortgagor:

2500 W. Higgins Road
Suite 400
Hoffman Estates, Illinois 60169
Attention: Douglas C. Alterberger
Facsimile: 847-843-8152

or to such other address the party to receive such notice may have theretofore furnished to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to Mortgagee herein is required to be given.

3.7 All of the grants, covenants, terms, agreements, provisions and conditions herein contained shall run with the land. Time is of the essence of all of Borrower's Obligations and any other obligations of Mortgagor under the Note, any of the other Loan Documents and hereunder.

3.8 The captions or headings used herein are for the convenience of the parties and are not a part of this Mortgage. This Mortgage may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

3.9 To the extent that proceeds of the Loan or advances under this Mortgage are used to pay any outstanding deed of trust, mortgage, charge, prior encumbrance or other Lien against the Mortgaged Property, Mortgagee is hereby subrogated to any and all rights of the owner or holder of such outstanding deed of trust, mortgage, charge, prior encumbrances or other Lien regardless of whether the same are released.

3.10 To the extent that Mortgagee receives any payment on account of the Borrower's Obligations and any such payment(s) or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside, subordinated and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy act, state or federal law, common law or equitable cause, then, to the extent of such payment(s) received, the Borrower's Obligations or part thereof intended to be satisfied any and all Liens, security interests, mortgages and/or other encumbrances upon or pertaining to any assets of Mortgagor and theretofore created and/or existing in favor of Mortgagee as security for the payment and performance of the Borrower's Obligations shall be revived and continue in full force and effect, as if such payment(s) had not been received by Mortgagee and applied on account of the Borrower's Obligations.

UNOFFICIAL COPY

3.11 This Mortgage cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the Person against whom enforcement is sought. To the extent permissible under applicable law, any amendments or modifications hereof or of the Loan Documents shall not affect the priority of the lien of this Mortgage, and any Person purporting to have or to take a junior mortgage, deed of trust or other Lien upon the Mortgaged Property, or any interest therein, shall be subject to the rights of Mortgagee to amend, modify, increase, vary, alter or supplement this Mortgage, the Note or any other Loan Documents. This right shall include, without limitation, the right to extend the Maturity Date of the Note, the right to increase or decrease the interest rate under the Note, the right to increase the principal amount of the Borrower's Obligations, and the right to waive or forebear from the exercise of any of its rights hereunder or under the Note or any of the other Loan Documents, in each and every case without obtaining the consent of the holder of such junior Lien and without the lien or security interest of this Mortgage losing its priority over the rights of any such junior Lien.

3.12 Mortgagee shall have no obligation to accept any payment under the Note or the Loan Agreement in advance of the due date thereof except to the extent Mortgagee has expressly agreed to the contrary in the Note or this Mortgage.

3.13 Mortgagor hereby acknowledges that this Mortgage and the Note are cross-defaulted. Mortgagor agrees that Mortgagee may proceed (or cause any trustee under a Deed of Trust to proceed), at the same or at different times, to foreclose any or all Liens against the any property of the Mortgagor, including this Mortgage, or any other obligor which may now or at any time hereafter secure the payment or performance of any of the Borrower's Obligations (the "Collateral") (or sell the Collateral under power of sale) by any proceedings appropriate in the county and state where the Collateral lies, and that no event of enforcement taking place in any county or state pursuant to the Note or any of the other Loan Documents shall preclude or bar enforcement in any other county or state. Any foreclosure or other appropriate remedy brought in any county or state in which the Collateral is located may be brought and prosecuted as to any part of the Collateral without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other part of the Collateral.

3.14 Neither Mortgagor, nor any other Person now or hereafter obligated for the payment of the whole or any part of Borrower's Obligations, shall be relieved of such obligation by reason of (i) the sale, conveyance or other transfer of the Mortgaged Property, (ii) the failure of Mortgagee to comply with any request of Mortgagor, or of any other Person, to take action to foreclose under this Mortgage or otherwise enforce any of the provisions of this Mortgage, the Note or any of the other Loan Documents (iii) the release, regardless of consideration, of the whole or any part of the Collateral, (iv) any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee; or (v) any extension by Mortgagee of the time for payment under, or any other modification by Mortgagee of the terms of the Note, this Mortgage or any of the other Loan Documents without first having obtained the consent of Mortgagor or any other Person obligated thereunder. If Mortgagee shall enter into any agreement as described in clauses (iv) or (v) hereof, then, notwithstanding any such agreement, Mortgagor and all such other Persons shall continue to be liable on account of Borrower's Obligations unless expressly released and discharged in writing by Mortgagee. Mortgagee, without notice, may release, regardless of consideration, any part of the Collateral, without impairing or affecting the lien or priority of this Mortgage.

3.15 Upon the foreclosure of the lien created hereby on the Mortgaged Property, as herein provided, any Lease then existing which is subordinate or has been subordinated to this Mortgage shall be terminated as a result of such foreclosure unless Mortgagee has entered into a written nondisturbance agreement with the tenant thereunder or unless Mortgagee has subordinated, in writing, this Mortgage to such Lease. Any such subordination shall not require the consent or agreement of the tenant under any

UNOFFICIAL COPY

such Lease, but such subordination shall be recorded in the official real estate records for the County where the Land is located. If both the landlord's and tenant's interest under any Lease which constitutes a part of the Mortgaged Property shall at any time become vested in any one person, this Mortgage and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee hereunder as to each separate estate. If any Lease which is or has been subordinated to this Mortgage contains an option or right in favor of the tenant thereunder to purchase all or any portion or interest in the Mortgaged Property then, such option or right shall be subordinate in all respects to this Mortgage and the rights of Mortgagee hereunder, and the exercise of any such option or right shall not affect, release or terminate this Mortgage nor obligate Mortgagee to release or terminate this Mortgage.

3.16 This Mortgage shall be governed by and construed in accordance with the substantive laws of the State of Illinois (without reference to conflict of law principles); provided, however, that the creation, priority, perfection and enforceability of the liens and security interests granted hereby and arising hereunder (other than with respect to such of the Mortgaged Property as is subject to the UCC) shall be governed by the laws of the State in which the Land is located; and provided further that for any of the collateral subject to the UCC, the perfection, effect of perfection or non-perfection and the priority of the security interests and liens created by this Mortgage shall in all respects be governed, construed, applied and enforced in accordance with the substantive laws of the applicable jurisdiction as determined with reference to any mandatory choice of law rules in the UCC.

3.17 The parties hereto intend that, in addition to any other debt or obligation secured hereby, this Mortgage shall secure unpaid balances of loan advances and other extensions of credit made after this Mortgage is filed of record with the Office of the Recorder of Deeds for Cook County, Illinois, whether made pursuant to an obligation of the Mortgagee, or otherwise, provided that such advances are within twenty (20) years from the date hereof, and in such event, such advances shall be secured, and possess the same priority, to the same extent as if such future advances were made on the date hereof, although there may be no Borrower's Obligations outstanding at the time any advance is made. Such loan advances and other extensions of credit may or may not be evidenced by notes executed pursuant to the Note or any of the other Loan Documents. This Mortgage shall constitute a lien even if there is no outstanding indebtedness or obligations under this Mortgage, the Note or any of the other Loan Documents. The total amount of indebtedness secured by this Mortgage may increase or decrease from time to time, but the total unpaid balance so secured at any one time shall not exceed the maximum principal amount of Four Million Nine Hundred Fifty Thousand and 00/100 Dollars (\$4,950,000.00), plus interest thereon and any disbursements which Mortgagee may make under this Mortgage, the Note or any of the other Loan Documents with respect hereto for payment of taxes, special assessments, insurance premiums or other advances to protect Mortgagee's liens and security interests. The various indebtedness and obligations secured by this Mortgage presently mature not later than January 1, 2023. The current pre-default rate of interest accruing on the outstanding principal balance of the Note is 4.5% per annum, calculated based on a 360 day year and as otherwise provided under the Note.

3.18 MORTGAGOR HEREBY IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY ILLINOIS STATE COURT SITTING IN CHICAGO, ILLINOIS OR ANY UNITED STATES OF AMERICA COURT SITTING IN THE NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION, AS MORTGAGEE MAY ELECT, IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE, (B) AGREES THAT ALL CLAIMS IN RESPECT TO SUCH SUIT, ACTION OR PROCEEDING MAY BE HELD AND DETERMINED IN ANY OF SUCH COURTS, (C) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH MORTGAGOR MAY

UNOFFICIAL COPY

NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT, (D) WAIVES ANY CLAIM THAT SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND (E) WAIVES ALL RIGHTS OF ANY OTHER JURISDICTION WHICH MORTGAGOR MAY NOW OR HEREAFTER HAVE BY REASON OF HIS PRESENT OR SUBSEQUENT DOMICILES. THE MORTGAGOR (AND BY ITS ACCEPTANCE HEREOF, THE MORTGAGEE) HEREBY IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION IN WHICH THE MORTGAGOR AND THE MORTGAGEE ARE PARTIES RELATING TO OR ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE OR THE BORROWER'S OBLIGATIONS HEREIN DESCRIBED.

IN THE EVENT ANY OF THE INDEBTEDNESS SECURED HEREBY IS PAYABLE ON DEMAND, NEITHER THIS MORTGAGE NOR ANYTHING CONTAINED HEREIN SHALL BE DEEMED TO ALTER OR IMPINGE UPON THE DEMAND CHARACTER OF SUCH INDEBTEDNESS.

[Remainder of page intentionally blank; signature and acknowledgment follow]

UNOFFICIAL COPY

SIGNATURE PAGE FOR MORTGAGE
(Cook County, Illinois)

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

MORTGAGOR:

TOLLWAY INDUSTRIAL CENTER LIMITED PARTNERSHIP, an Illinois limited partnership

By: NORTHWEST INVESTORS, INC., an Illinois corporation,
its General Partner

By: *George A. Moser*
Printed Name: George A. Moser
Title: President

STATE OF Illinois)
) SS.
COUNTY OF Cook)

The foregoing instrument was acknowledged before me this 28 day of January, 2013 by George A. Moser, as President of Northwest Investors, Inc., an Illinois corporation, the General Partners of Tollway Industrial Center Limited Partnership, an Illinois limited partnership, on behalf of said corporation on behalf of the limited partnership.

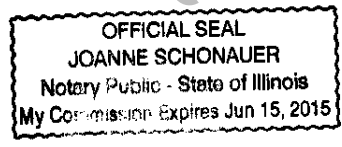
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Joanne Schonauer
Notary Public

Serial Number: _____

[SEAL]

My commission expires:
06/15/2015



UNOFFICIAL COPY

EXHIBIT A

Legal Description of the Land

PARCEL 1:

LOT 8 IN BARRINGTON SQUARE INDUSTRIAL CENTER UNIT NO. 1, BEING A SUBDIVISION OF PARTS OF FRACTIONAL SECTION 6, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 1 & 2 IN MOSER'S RESUBDIVISION, BEING A RESUBDIVISION OF LOT 2 AND THAT PART OF LOT 3, LYING SOUTH OF A LINE, DRAWN AT RIGHT ANGLES, THROUGH A POINT ON THE EAST LINE OF SAID LOT 3, 274.00 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT 3, ALL IN THE RESUBDIVISION OF PART OF LOT 12, AND ALL OF LOT 13 IN BARRINGTON SQUARE INDUSTRIAL CENTER UNIT NO. ONE, AND ALL OF LOT 14 IN BARRINGTON SQUARE INDUSTRIAL CENTER UNIT NO. TWO, BOTH BEING A SUBDIVISIONS OF PART OF FRACTIONAL SECTION 6, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 24, 1977 AS DOCUMENT 23797957, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

EASEMENT FOR BENEFIT OF A PORTION OF PARCEL 2 FOR INGRESS AND EGRESS AS CREATED BY GRANT OF EASEMENT RECORDED AS DOCUMENT 23495220.

THE FOLLOWING IS FOR INFORMATIONAL PURPOSES ONLY:

PARCEL 1:

ADDRESS: 2400 HASSELL RD., HOFFMAN ESTATES, IL 60169

PINS: 07-06-201-012-0000 & 07-06-201-013-0000

PARCEL 2:

ADDRESS: 2200 STONINGTON AVE., HOFFMAN ESTATES, IL 60169

PINS: 07-06-102-018-0000 & 07-06-102-019-0000