



Doc#: 1416815029 Fee: \$68.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 06/17/2014 01:36 PM Pg: 1 of 16

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10611412

DRAFTED BY, RECORDING
REQUESTED BY AND AFT
RECORDING RETURN TO:

POST HEYMANN & KO
Two Jericho Plaza
Wing A, Suite 111
Jericho, New York 11753
Attn: David J. Heymann, Esq.



Doc#: 0516745110
Eugene "Gene" Moore Fee: \$64.50
Cook County Recorder of Deeds
Date: 06/16/2005 02:15 PM Pg: 1 of 16



NCS 11365
1062183

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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

This JUNIOR MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made as of this 9th day of June, 2005, among North Star Trust Company (the "Trustee"), not personally but as Trustee under the provisions of that certain Trust Agreement dated December 30, 2004, and known as Trust Number 04-7869 (the "Mortgagor") whose address is 500 West Madison Street, Suite 3800, Chicago, Illinois 60601, and FT-MARC LENDER LLC, a Delaware limited liability company, whose address is c/o First Union REIT L.P., 7 Bu finch Place, Suite 500, P.O. Box 9507, Boston, Massachusetts 02114 ("Mortgagee").

RECITALS

A. Simultaneously herewith, Mortgagor, Beneficiaries (as hereinafter defined) and Mortgagee are entering into that certain Loan Agreement (the "Loan Agreement") pursuant to which the Mortgagor have requested that Mortgagee make a loan to it in the principal amount of \$1,600,127 (the "Loan"), which Loan is evidenced by a Promissory Note (the "Note"), dated of even date herewith, from Mortgagor to Mortgagee. All capitalized terms and phrases, unless defined herein, shall have the same meanings as are set forth in the Loan Agreement.

B. The Mortgagor holds fee simple title to the "Property", as hereinafter defined;

C. Each of Gerald Lee Nudo, Laurence Weiner, Elliott Weiner and Anne Voshel (the "Beneficiaries") are the sole beneficiaries of the Mortgagor;

C. Mortgagee wishes to secure: (i) the timely payment of the Note, together with all interest, and other amounts, if any, due in accordance with the terms of the Note, as well as the prompt payment of any additional indebtedness of Mortgagor accruing to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee pursuant to the Note, the Loan Agreement, this Mortgage or any other Loan Document; (ii) the timely performance of each and every covenant, condition, and agreement of Mortgagor contained in the Loan Documents; and (iii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and indebtedness of any kind or nature now or hereafter owing, arising, due or payable from Mortgagor to Mortgagee in connection with the transactions contemplated by the

* THIS DOCUMENT IS BEING RE-RECORDED TO CORRECT A SCRIVENER'S ERROR RELATING TO THE MORTGAGEE'S NAME TO CORRECTLY REFLECT

FTUSERS\FtMort\1st Closing\FILE NUMBER\504-4213\marr realty\Closing Documents\second mortgage enterprise.DOC

"FT-MARC LOAN LLC"

Lawyers Unit #11344 Case# 10611412

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Loan Agreement. All obligations, liabilities and indebtedness of every nature of Mortgagor to Mortgagee are hereinafter sometimes collectively referred to as the "**Obligations**".

D. The Property is subject to Permitted Liens, including, without limitation, the liens evidenced by the Senior Loans, including any mortgage liens evidencing the Senior Loans (collectively, the "**Senior Mortgage**").

NOW, THEREFORE, IN CONSIDERATION OF LENDER MAKING THE LOAN AND TO SECURE the prompt payment and performance of all Obligations of Mortgagor to Mortgagee under the Loan Agreement and other Loan Documents, including all liabilities, obligations and indebtedness of Mortgagor under this Mortgage, Mortgagor has executed this Mortgage and does hereby mortgage, convey, assign, warrant, transfer, pledge and grant to Mortgagee a security interest in all of the following described property and all proceeds thereof (which property is hereinafter sometimes collectively referred to as the "**Property**"):

A. The real estate described on Exhibit A attached hereto (the "**Land**");

B. All of the following (collectively, the "**Improvements**"): all buildings, improvements and fixtures of every kind or nature situated on the Land; all machinery, appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or to be used in connection with the Land, buildings, structures, improvements or fixtures; all building materials and goods procured for use or in connection with the foregoing; and all additions, substitutions and replacements to any of the foregoing;

C. All easements, servitudes, rights-of-way, water courses, mineral rights, water rights, air rights and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto ("**Appurtenances**");

D. All agreements for the use, enjoyment or occupancy of the Land and/or Improvements now or hereafter entered into (the "**Leases**") and all rents, prepayments, termination payments, royalties, profits, issues and revenues from the Land and/or Improvements from time to time accruing under the Leases or otherwise (the "**Rents**"), reserving to Mortgagor, however, so long as no 'Event of Default' (hereinafter defined) has occurred, a revocable license to receive and apply the Rents in accordance with the terms and conditions of the Loan Agreement;

E. To the extent assignable, Mortgagor's interest in all claims, demands, judgments, insurance proceeds, tax refunds, rights of action, awards of damages, compensation, and settlements hereafter made resulting from or relating to (i) the taking of the Land or the Improvements or any part thereof under the power of eminent domain, (ii) any damage (whether caused by such taking, by casualty or otherwise) to the Land, Improvements or Appurtenances or any part thereof, or (iii) the ownership or operation of the Property;

F. All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or any other property of the types described in the preceding granting clauses; and

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G. Any and all after-acquired right, title or interest of Mortgagor in and to any property of the types described in the preceding granting clauses.

TO HAVE AND TO HOLD the Property and all parts thereof together with the rents, issues, profits and proceeds thereof, unto Mortgagee, to its own proper use, benefit, and advantage forever, subject, however, to the terms, covenants, and conditions herein.

Mortgagor covenants and agrees with Mortgagee as follows:

1. **Payment of Indebtedness; Performance of Obligations.**

Mortgagor shall promptly pay and perform when due all the Obligations.

2. **Taxes and Other Obligations.**

Mortgagor shall pay, when due, and before any interest, collection fees or penalties shall accrue, all taxes, assessments, fines, impositions and other charges that have heretofore been, or may hereafter be, imposed, levied or assessed upon, or against, the Property, or any part thereof, subject, however, to Mortgagor's right to contest the amount or validity thereof, subject to and in accordance with, the terms and conditions set forth in the Loan Agreement.

3. **Use of Property.**

Unless required by applicable law, Mortgagor, except as otherwise provided in the Loan Agreement, shall not permit material changes in the use of any part of the Property from the use existing at the time this Mortgage was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent, which consent shall not be unreasonably withheld or delayed, provided that no such consent shall be required to the extent that the changes would not result in, either individually or aggregate, a Material Adverse Effect.

4. **Protection of Security.**

If (a) any of the Obligations are not paid or performed, or (b) any action or proceeding is commenced which adversely affects or would reasonably be expected to adversely affect the Property or any Mortgagee's or Mortgagee's interest therein, including any loss, damage, cost, expense or liability incurred by any Mortgagee or Mortgagee with respect to (i) any environmental matters relating to the Property or (ii) the preparation of the commencement or defense of any action or proceeding or any threatened action or proceeding affecting the Loan Documents or the Property, then Mortgagee, at its option, may make such appearances, disburse such sums and take such action as it deems reasonably necessary, to protect the Property or Mortgagee's or Mortgagee's interest therein, including entry upon the Property to take such actions it reasonably determines appropriate to preserve, protect or restore the Property. Any amounts disbursed pursuant to this Section 4 (including reasonable attorneys' fees, costs and expenses), together with interest thereon at the Default Rate from the date of disbursement, shall become additional indebtedness of Mortgagor secured by the lien of this Mortgage and shall be due and payable on demand. Nothing contained in this Section 4 shall require Mortgagee to incur any expense or take any action hereunder.

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5. Covenants.

(a) Mortgagor hereby represents and warrants unto Mortgagee that, at the time of the execution, delivery and recordation of this Mortgage, Mortgagor owns good and marketable title to, in fee simple absolute in that portion of the Property that constitutes real property and the Beneficiaries have good and valid title to that portion of the Property that constitutes personal property owned by the Beneficiaries, in each instance free from all liens, encumbrances, charges and other claims whatsoever, except for Permitted Liens, and that the lien created on the Property by this Mortgage is a first, paramount and prior lien on said real property, subject only to Permitted Liens.

(b) Mortgagor shall and will forever warrant and defend the title to the Property against the claims of any and all persons and entities whatsoever, other than the Permitted Liens. Mortgagor shall not do or permit, cause or suffer to be done to, or omit to do, or permit the omission of, in, upon or about said Property, or any part thereof, anything that may in any way impair the validity, priority and/or enforceability of this Mortgage.

(c) The proceeds evidenced by the Note shall be used solely and exclusively for proper business purposes within the meaning of Section 205/4 4(c) of Chapter 815 of the Illinois Revised Statutes (or any substitute, amendment or replacement statute), and the principal obligation secured hereby constitutes a 'business loan' transacted solely for the purpose of carrying on or acquiring the business of Mortgagor, which comes within the purview and operation of said paragraph, and not for the purchase or carrying of registered equity securities within the purview and operation of any regulation issued by the Board of Governors of the Federal Reserve System or for the purpose of releasing or retiring any indebtedness which was originally incurred for any such purpose.

6. Lease.

Mortgagor absolutely and unconditionally assigns, transfers and sets over to Mortgagee, all right, title and interest in and to all Rents and all right, title and interest under or by virtue of any and all Leases. Mortgagee grants to Mortgagor a license to collect, subject to the provisions herein, such Rents, as they respectively become due, but not more than thirty (30) days in advance, and to enforce the agreement of the Leases, so long as there shall not have occurred and be continuing an Event of Default, provided, however, that Mortgagor shall use the Rents in a manner not prohibited by the Loan Agreement. This absolute and present assignment shall be fully operative without any further action on the part of Mortgagor, Mortgagee or any Mortgagee.

7. Transfers of the Property; No Additional Liens.

Except as permitted by the Loan Agreement, Mortgagor agrees that it shall not: (i) transfer, sell or convey all or any portion of the Property; and/or (ii) further encumber or pledge all or any portion of the Property.

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8. Uniform Commercial Code Security Agreement.

(a) This Mortgage shall constitute a 'security agreement' pursuant to the Uniform Commercial Code for any portion of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code (such portion of the Property is hereinafter called the "**Personal Property**"), and Mortgagor hereby grants to Mortgagee, a security interest in the Personal Property subject only to Permitted Liens. Mortgagee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code as well as all other rights available at law or in equity. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Mortgagor agrees to execute and deliver to Mortgagee any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Mortgagee may require to perfect a security interest with respect to the Personal Property. Mortgagor hereby authorizes and empowers Mortgagee and irrevocably appoints Mortgagee its agent and attorney-in-fact to execute and file, on Mortgagor's behalf, all financing statements and refilings and continuations thereof as Mortgagee deems necessary or advisable to create, preserve and protect such lien. Mortgagor shall pay all actual out-of-pocket 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 as Mortgagee may reasonably require. Without limitation of the foregoing, if an Event of Default occurs and is continuing, Mortgagee shall be entitled immediately to exercise all remedies then available to it under the Uniform Commercial Code.

(b) Any party to any contract subject to the security interest granted herein shall be entitled to rely on the rights of Mortgagee without the necessity of any further notice or action by Mortgagor. Mortgagee shall not by reason of this Mortgage or the exercise of any right granted hereby be obligated to perform any obligation of Mortgagor with respect to any portion of the Personal Property nor shall Mortgagee be responsible for any act committed by Mortgagor, or any breach or failure to perform by Mortgagor with respect to any portion of the Personal Property.

(c) To the extent permitted by law, Mortgagor and Mortgagee agree that with respect to all items of Personal Property which are or will become fixtures on the Land, this Mortgage, upon recording or registration in the real estate records of the proper office, shall constitute a 'fixture filing' within the meaning of the Uniform Commercial Code. Mortgagor is the record owner of the Land.

9. Events of Default; Acceleration of Indebtedness.

The occurrence of an Event of Default under the Loan Agreement shall constitute an "**Event of Default**" under this Mortgage. At such time as the Mortgagee is entitled to exercise its remedies hereunder as provided in the Loan Agreement, Mortgagee shall be entitled to all of the rights and remedies provided in the Loan Documents or at law or in equity. Each remedy provided in the Loan Documents is distinct and cumulative to all other rights or remedies under the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

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At such time as the Mortgagee is entitled to exercise its remedies hereunder as provided in the Loan Agreement, it is specifically covenanted and agreed that the Mortgagee may proceed, at the same or different times, to foreclose this Mortgage or any of the other security documents as shall have been executed and delivered in connection with the extension of the Loan to Mortgagor (the "Other Security Documents") or resort to any of its other remedies thereunder, by any proceedings appropriate in the state where any of the land lies, and that no event of enforcement taking place in any state, including, without limiting the generality of the foregoing, any pending foreclosure, judgment or decree of foreclosure, foreclosure sale, rents received, possession taken, deficiency judgment or decrees, or judgment taken on any of the Note, shall in any way stay, preclude or bar enforcement of this Mortgage or any of the other Loan Documents or any of them in any other state, and that Mortgagee may pursue any or all of its remedies to the maximum extent permitted by state law until all Obligations have been paid or discharged in full.

10. Entry; Foreclosure.

(a) At such time as the Mortgagee is entitled to exercise its remedies hereunder as provided in the Loan Agreement, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession of the Property, or to the extent permitted by law, Mortgagee or their officers or agents or a receiver appointed by a court of competent jurisdiction, may enter and take possession of all or any part of the Property, and may exclude Mortgagor and its agents and employees wholly therefrom. If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Mortgagee, Mortgagee or such receiver may obtain a judgment or decree conferring on Mortgagee or such receiver, the right to immediate possession of the Property or requiring the delivery of the Property to Mortgagee or such receiver, and Mortgagor specifically consents to the entry of such judgment or decree. Upon every such entering upon or taking of possession, Mortgagee or such receiver may hold, store, use, operate, manage and control the Property and conduct the business thereof, and Mortgagee or such receiver may take any action required by applicable law or which Mortgagee or such receiver reasonably believes necessary to enforce compliance with applicable law. Mortgagee and such receiver and their representatives shall have no liability for any loss, damage, injury, cost or expense resulting from any action or omission which was taken or omitted in good faith.

(b) When the Obligations, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee may, either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy to: (a) enforce payment of the Note or the performance of any term, covenant, condition or agreement of Mortgagor under any of the Loan Documents; (b) foreclose the lien hereof for the Obligations or part thereof by judicial action, and sell the Property as an entirety or otherwise, as Mortgagee may determine; and/or (c) pursue any other right or remedy available to it under or by the law and decisions of the State of Illinois. Notwithstanding any statute or rule of law to the contrary, the failure to join any tenant or tenants of the Property as party defendant or defendants in any foreclosure action or the failure of any such order or judgment to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect (i) the indebtedness secured hereby, or any part thereof or (ii) any deficiency remaining unpaid after foreclosure and sale of the Property.

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Mortgagee shall have all of the rights and remedies provided in the Uniform Commercial Code including the right to proceed under the Uniform Commercial Code provisions governing default as to any personal property separately from the real estate included within the Property, or to proceed as to all of the Property in accordance with its rights and remedies in respect thereof. If Mortgagee should elect to proceed separately as to such personal property, Mortgagor agrees to make such personal property available to Mortgagee at a place or places acceptable to Mortgagee, and if any notification of intended disposition of any such personal property is required by law, such notification shall be deemed reasonably and properly given if given at least ninety (90) days before such disposition in the manner herein provided.

Upon any foreclosure sale, Mortgagee may bid for and purchase the Property and shall be entitled to apply all or any part of the Obligations owing to it as a credit to the purchase price.

(c) Rights and Remedies Cumulative. Mortgagee shall have all powers, rights and remedies under applicable law whether or not specifically or generally granted or described in this Mortgage. Nothing contained herein shall be construed to impair or to restrict such powers, rights and remedies or to preclude any procedures or process otherwise available to mortgagees in the State of Illinois. Mortgagee shall be entitled to enforce the payment and performance of the Obligations and to exercise all rights and powers under this Mortgage or under any other Loan Document or other agreement of any laws now or hereafter in force, notwithstanding the fact that some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers contained herein, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other rights or security now or hereafter held by Mortgagee. Mortgagee shall be entitled to enforce this Mortgage and any other rights or security now or hereafter held by Mortgagee in such order and manner as they or either of them may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy contained herein or by law provided or permitted, but each shall to the extent permitted by law be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. Every power or remedy given by any of the Loan Documents to Mortgagee, or to which it may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. By exercising or by failing to exercise any right, option or election hereunder, Mortgagee shall not be deemed to have waived any provision hereof or to have released Mortgagor from any of the obligations secured hereby unless such waiver or release is in writing and signed by Mortgagee. The waiver by Mortgagee of Mortgagor's failure to perform or observe any term, covenant or condition referred to or contained herein to be performed or observed by Mortgagor shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent failure of Mortgagor to perform or observe the same or any other such term, covenant or condition referred to or contained herein, and no custom or practice which may develop between Mortgagor and Mortgagee during the term hereof shall be deemed a waiver of or in any way affect the right of Mortgagee to insist upon the performance by Mortgagor of the obligations secured hereby in strict accordance with the terms hereof or of any other Loan Document.

11. Expenditures and Expenses.

In any action to foreclose the lien hereof or otherwise enforce Mortgagee's rights and remedies hereunder, there shall be allowed and included as additional indebtedness secured hereby all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee including repair costs, payments to remove or protect against liens, attorneys' fees, costs and expenses, receivers' fees, costs and expenses, appraisers' fees, engineers' fees, accountants' fees, fees, costs and expenses in connection with any environmental matters concerning the Property, outlays for documentary and expert evidence, stenographers' charges, stamp taxes, publication costs, and costs (which may be estimates as to items to be expended after entry of an order or judgment) for procuring all such abstracts of title, title searches and examination, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute any action or to evidence bidders at any sale which may be had pursuant to an order or judgment the true condition of the title to, or the value of the Property. All expenditures and expenses of the nature mentioned in this Section 11 and such costs, expenses and fees as may be incurred or as may be owing to Mortgagee in the protection of the Property and the maintenance of the lien of this Mortgage, including the fees, costs and expenses of any outside attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the other Loan Documents to which Mortgagor is a party or the Property, including probate, appellate and bankruptcy proceedings, or in preparations for the commencement or defense of any action or proceeding or threatened action or proceeding, including costs and expenses in connection with obtaining any court order or the appointment of a receiver, shall be immediately due and payable to Mortgagee, with interest thereon at the Default Rate, and shall be secured by this Mortgage. In addition to the foregoing award of attorneys' fees and costs, Mortgagee shall be entitled to its attorneys' fees and costs incurred in any post-judgment proceedings to collect or enforce any judgment or order relating to this Mortgage, or the other Loan Documents to which Mortgagor is a party. This provision is separate and several and shall survive the merger of this provision into any judgment.

12. Application of Proceeds of Foreclosure Sale.

The proceeds of any foreclosure sale of the Property shall be distributed and applied in the order of priority set forth in the Loan Agreement, with the excess, if any, being applied, to be distributed to the Person or Persons legally entitled thereto.

13. Appointment of Receiver or Mortgagee in Possession.

At such time as the Mortgagee is entitled to exercise its remedies hereunder as provided in the Loan Agreement, Mortgagee, upon application to a court of competent jurisdiction, whether in conjunction with Mortgagee's commencement of judicial proceedings to foreclose the lien hereof, or pursuant to other proceedings, shall be entitled as a matter of strict right, without notice, and without regard to the occupancy or value of the Property or any other security for the indebtedness or the insolvency of any party bound for its payment, in each of the foregoing instances, to the extent permitted by applicable law, to the appointment of a receiver to take possession of and to operate the Property, or any portion thereof, and to collect and apply the Rents and Mortgagor hereby irrevocably consents to such appointment and waive notice of any application therefor.

14. After - Acquired Property.

To the extent permitted by, and subject to, applicable law, the lien of this Mortgage, including without limitation the security interest created under the granting clauses of this Mortgage, shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Property or any part thereof.

15. Forbearance by Mortgagee Not a Waiver.

Any forbearance by Mortgagee in exercising any right or remedy under any of the Loan Documents or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. Mortgagee's acceptance of payment of any sum secured by any of the Loan Documents after the due date of such payment shall not be a waiver of Mortgagee's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured hereby. With respect to all Loan Documents, only waivers made in writing by Mortgagee shall be effective against Mortgagee.

16. Waiver of Statute of Limitations.

To the extent permitted by applicable law, Mortgagor hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien created by any of the Loan Documents or to any action brought to enforce the Note or any other obligation secured by any of the Loan Documents.

17. Waivers.

Each Mortgagor, on behalf of itself, its successors and assigns, and each and every person it may legally bind acquiring any interest in, or title to, the Property on or subsequent to the date of this Mortgage; (i) does hereby expressly waive any and all rights of appraisal, valuation, stay, extension, reinstatement and (to the extent permitted by law) redemption from sale under any order or decree of foreclosure of this Mortgage; (ii) does hereby waive any equitable, statutory or other right available to it, in respect to marshalling of assets hereunder, so as to require the separate sales of interests in the Property before proceeding against any other interest in the Property; (iii) does hereby expressly consent to and authorize, at the option of Mortgagee, the sale, either separately or together, of any and all interests in the Property; and (iv) does hereby agree that in no event shall Mortgagee or Mortgagee be required to allocate any proceeds received from foreclosure sale or otherwise, to all or any interest in the Property; and (v) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to the purchaser at such sale a deed conveying the Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

UNOFFICIAL COPY**18. Governing Law; Severability.**

This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois. The invalidity, illegality or unenforceability of any provision of this Mortgage shall not affect or impair the validity, legality or enforceability of the remainder of this Mortgage, and to this end, the provisions of this Mortgage are declared to be severable.

19. Notice.

Any notice or other communication in connection with this Mortgage shall be in writing, and (i) hand delivered by any commercially recognized courier service or overnight delivery service such as Federal Express, or (ii) sent by facsimile transmission if a FAX Number is designated below, addressed:

If to the Mortgagor or a Beneficiary:

55 East Jackson
Chicago, Illinois 60604
Attention: Gerald Nudo
Steve Higdon
Elliot Weiner
FAX Number: (312) 884-5373

with copies by regular mail or such hand delivery or facsimile transmission to:

Weinberg Richmond LLP
333 W. Wacker Drive # 1800
Chicago, Illinois 60606
Attention: Arnold Weinberg, Esquire
FAX Number: (312) 807-3903

If to the Mortgagee:

Two Jericho Plaza, Wing A, Suite 111
Jericho, New York 11753
Attention: Peter Braverman, President
FAX Number: (516) 433-2777

and

7 Bulfinch Place, Suite 500, P.O. Box 9507
Boston, Massachusetts 02114
Attention: Carolyn Tiffany, Chief Operating Officer
FAX Number: (617) 570-4710

with copies by regular mail or such hand delivery or facsimile transmission to:

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Post Heymann & Koffler LLP
 Two Jericho Plaza, Wing A, Suite 111
 Jericho, New York 11753
 Attention: David J. Heymann, Esquire
 FAX Number: (516) 433-2777

Any such addressee may change its address for such notices to such other address in the United States as such addressee shall have specified by written notice given as set forth above. All periods of notice shall be measured from the deemed date of delivery.

A notice shall be deemed to have been given, delivered and received upon the earliest of: (i) if hand delivered at the specified address by such courier or overnight delivery service, when so delivered or tendered for delivery during customary business hours on a Business Day, or (ii) if so delivered, upon actual receipt, or (iii) if facsimile transmission is a permitted means of giving notice, upon receipt as evidenced by confirmation.

20. Successors and Assigns Bound; Joint and Several Liability; Agents; Captions.

The covenants and agreements contained in the Loan Documents shall bind, and the rights thereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor, subject to the provisions of Section 7 hereof. In exercising any rights under the Loan Documents or taking any actions provided for therein, Mortgagee may act through its employees, agents or independent contractors as authorized by Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

21. Release.

Upon payment of all sums secured by this Mortgage or when this Mortgage is otherwise required to be released pursuant to the terms of the Loan Agreement, Mortgagee shall release this Mortgage. Mortgagor shall pay Mortgagee's reasonable costs incurred in releasing this Mortgage and any financing statements related hereto.

22. Time of Essence.

Time is of the essence of this Mortgage and the performance of each of the covenants and agreement contained herein.

23. Jury Trial Waiver.

MORTGAGOR AND MORTGAGEE EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS MORTGAGE, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY ANY OF THE PARTIES AGAINST ANY OTHER PARTY OR PARTIES, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS,

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OR OTHERWISE. MORTGAGOR AND MORTGAGEE EACH AGREE THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT A JURY. WITHOUT LIMITING THE FOREGOING, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY ARE WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS MORTGAGE OR THE OTHER LOAN DOCUMENTS OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS.

24. **Mortgage Foreclosure Law.** Notwithstanding any other provision contained in this Mortgage, it is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Mortgage shall be accomplished in accordance with the Illinois Mortgage Foreclosure Law (the "Act"), 735 ILCS 5/15-1101 *et seq.*

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

(b) If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Mortgage, shall be added to the Obligations secured by this Mortgage.

(d) Mortgagor acknowledge that the Property does not contain agricultural real estate, as said term is defined in Section 15-1201 of the Act, or residential real estate, as said term is defined in Section 15-1219 of the Act.

25. **Relationship.**

The relationship between Mortgagee and Mortgagor shall be that of creditor-debtor only. No term in this Mortgage or in any of the other Loan Documents and no course dealing between the parties shall be deemed to create any relationship of agency, partnership or joint venture or any fiduciary duty by Mortgagee to Mortgagor or any other party.

26. **Second Lien Status.**

This Mortgage shall be and remain subject and subordinate to the Senior Mortgage. Mortgagor shall preserve and protect the second lien and security interest status of this Mortgage. If any lien or security interest other than the Permitted Liens and Senior Mortgage is

asserted against the Property, Mortgagor shall promptly, and at its expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements set forth in the documents evidencing the Senior Loans.

27. Patriot Act.

Mortgagee hereby notifies Mortgagor that pursuant to the requirements of the USA Patriot Act (Title III of Publ. L. 107-56, signed into law October 26, 2001) (the "Patriot Act"), and the Mortgagee's policies and practices, the Mortgagor are required to obtain, verify and record certain information and documentation that identifies the Mortgagor, which information includes the names and addresses of the Mortgagor and such other information that will allow the Mortgagee to identify the Mortgagor in accordance with the Patriot Act. In addition, the Mortgagor shall (a) ensure that no person who owns a controlling interest in or otherwise controls the Mortgagor or any subsidiary of the Mortgagor is or shall be listed on the Specially Designated Nationals and Blocked person List or other similar lists maintained by the Office of Foreign Assets Control (OFAC), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

28. Personal Liability of Trustee.

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against North Star Trust Company, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

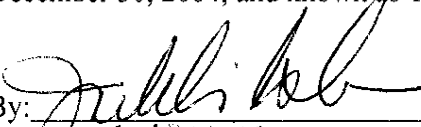
[remainder of page intentionally left blank;
signature page follows]

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor have executed this Mortgage or has caused the same to be executed by its duly authorized representatives as of the date first above written.

MORTGAGOR:

North Star Trust Company, not personally but as Trustee under the provisions of that certain Trust Agreement dated December 30, 2004, and known as Trust Number 04-7869

By: 
Name: Jacobin Ford
Title: Vice-President

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STATE OF Illinois)
) SS
COUNTY OF Cook)

I, Silvia Medina, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jr. Medina personally known to me to be the Vice-President of North Star Trust Company, a _____, as Trustee under Trust Agreement dated 12/30/04 and known as Trust Number 04-7369 and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as _____ of said corporation, pursuant to authority given by the Board of Directors of said corporation, as his own free and voluntary act and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 14th day of June, 2005.

Silvia Medina
Notary Public

My Commission Expires:



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EXHIBIT A

ENTERPRISE LEGAL DESCRIPTION

THAT PART OF LOTS 1 AND 2, LYING NORTH OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 2, THAT IS 32.50 FEET SOUTH OF THE NORTHWEST CORNER OF SAID LOT 2; THENCE SOUTH 39 DEGREES, 56 MINUTES, 35 SECONDS EAST TO A POINT ON THE WEST RIGHT OF WAY OF ENTERPRISE DRIVE, IN ENTERPRISE CENTRE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE NORTHEAST 1/4 OF SECTION 32, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON AUGUST 4, 1989 AS DOCUMENT 89357915, IN COOK COUNTY, ILLINOIS.

PIN: 15-30-205-004

ADDRESS: 2205-2255 Enterprise Drive, Westchester, Illinois 60154