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Box 45  
MAY PATRICK

Loan No: 2-000716-8  
File No: 20984

## MORTGAGE

This Mortgage made this 10th day of July 1989, between ~~The~~ NBD Trust Company of Illinois as Trustee under Trust 4063-AH dated February 2, 1989 (hereinafter referred to as "Mortgagor"), 900 East Kensington Road, Arlington Heights, Illinois 60004 and Fidelity Federal Savings Bank (hereinafter sometimes referred to as "Mortgagee"), 5455 West Belmont Avenue, Chicago, Illinois 60641.

### WITNESSETH:

#### WHEREAS:

Mortgagor is justly indebted to Mortgagee in the principal sum of Eleven Million Five Hundred Thousand (\$11,500,000) Dollars as evidenced by a certain Mortgage Note of even date herewith executed by Mortgagor, made payable to the order of and delivered to Mortgagee (hereinafter referred to as the "Note") whereby Mortgagor promises to pay the said principal sum or so much thereof as may be advanced by the holder or holders of the Note from time to time, together with interest thereon, from date, at the rate set forth therein, in installments as set forth therein at the office of Mortgagee, or at such other place as may be designated in writing by the legal holders thereof until the entire principal and accrued interest has been paid pursuant to the terms of the said Note.

NOW, THEREFORE, in order to secure the payment of the said principal sum and interest thereon and the performance of the covenants and agreements herein contained, Mortgagor does by these presents grant, bargain, sell, remise, release, alienate, convey, and mortgage unto Mortgagee, its successors and assigns forever, the real estate and all of its estate, right, title, and interest therein situated in the Village of Palatine, County of Cook, and State of Illinois, as more particularly described in Exhibit "A" attached hereto and made a part hereof (sometimes herein referred to as the "real estate"), which real estate, together with the following described property, is collectively referred to as the "premises";

#### TOGETHER WITH:

(1) All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, vaults, and alleys adjoining the premises;

(2) All and singular the tenements, hereditaments, easements (including, but not limited to, the easements for ingress and egress and for parking, described in Exhibit A hereto), minerals, appurtenances, passages, waters, water courses, riparian irrigation, and drainage rights, and other rights, liberties, and privileges thereof or in any way now or hereafter appertaining, including homestead and any other claim at law or in equity as well as any after-acquired title, franchise, or license and the reversion and reversions and remainder and remainders thereof;

(3) All rents, issues, proceeds, and profits accruing and to accrue from the premises (which are pledged primarily and on a parity with the real estate, and not secondarily);

(4) All buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration, and repairs of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the premises, and all fixtures now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the premises, including, but not limited to, all machinery, apparatus, equipment, fittings,

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fixtures, whether actually or constructively attached to said premises and including all trade, domestic and ornamental fixtures, and articles of personal property of every kind and nature whatsoever (hereinafter collectively called "equipment"), now or hereafter located in, upon or under the premises or any part thereof and used or usable in connection with any present or future operation of said premises, including, but not limiting the generality of the foregoing, all heating, air conditioning, sprinklers, freezing, lighting, laundry, incinerating and dynamo and generating equipment; engines, pipes, pumps, tanks, motors, conduits; switchboards, plumbing and plumbing fixtures; lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus; boilers, ranges, furnaces, oil burners or units thereof; appliances, air-cooling and air-conditioning apparatus; vacuum cleaning systems; elevators, escalators; shades; awnings; screens; storm doors and windows; stoves, wall beds, refrigerators, cooking apparatus and mechanical equipment, gas and electric fixtures; partitions; mantels, built-in mirrors, window shades, blinds, furniture of public spaces, halls and lobbies; attached cabinets, ducts and compressors; rugs and carpets; draperies; furniture and furnishings used in the operation of the premises; together with all additions, thereto and replacements thereof (Mortgagor hereby agreeing with respect to all additions and replacement to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm the conveyance, transfer and assignment of any of the foregoing), whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed, intended and declared that all the aforesaid property owned by said Mortgagor and placed by it on the premises shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate, and covered by this Mortgage, and as to any of the property aforesaid, which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the Uniform Commercial Code), this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as Secured Party (as such term is defined in the Uniform Commercial Code), it being further understood and agreed that the provisions of this subparagraph (4) shall not apply or attach to any trade fixtures or personal property of any tenant of the premises, or any contractor or any subcontractor;

(5) Any and all awards or payments, including interest thereon, and the right to receive same, which may be made with respect to the premises as a result of (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any street; or (c) any other injury to or decrease in the value of the premises, to the extent of all amounts which may be secured by this Mortgage and Security Agreement at the date of the receipt of any such award or payment by Mortgagee, and of reasonable counsel fees, costs, and disbursements incurred by Mortgagee in connection with the collection of such award or payment; and

(6) All of Mortgagor's rights further to encumber said property for debt except by such encumbrances which, by their actual terms and specifically expressed intent, shall be and at all times remain subject and subordinate to any and all leases and/or tenancies (a) which are in existence when such encumbrances become effective; or (b) which are thereafter created, Mortgagor hereby representing to Mortgagee, as a special inducement to Mortgagee to make the loan secured hereby to Mortgagor, that as of the date hereof, there are no other encumbrances to secure debt and covenanting that there are to be none as of the date that this Mortgage becomes of record, except, in either case, encumbrances having the prior written approval of Mortgagee, and all of Mortgagor's rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any

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respect to any mortgage other than this Mortgage; TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses set forth herein;

PROVIDED, HOWEVER, that if the Mortgagor shall have paid the principal and all interest as provided in the Note, and shall have paid all other sums herein provided for, or secured hereby, and shall have well and truly kept and performed all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

MORTGAGOR FURTHER COVENANTS and agrees as follows:

1. Payment of Principal and Interest. Mortgagor shall pay promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner herein and in the Note provided.

2. Tax and Insurance Deposits. The Mortgagor shall deposit with the Mortgagee, or a depository designated by Mortgagee, in addition to the monthly installments of principal and interest due under the terms of the Note, and concurrently therewith, monthly until the principal indebtedness evidence by the Note is paid, the following: a sum equal to all real estate taxes and assessments ("taxes") next due on the premises (all as estimated by Mortgagee in its reasonable discretion), divided by the number of months to elapse before one month prior to the date when such taxes will become due and payable. Mortgagor, on the date hereof, shall also deposit an amount based upon the taxes, on an accrual basis so that a sufficient reserve for taxes shall be on deposit with Mortgagee to pay the then next due tax payment. Mortgagee at its sole discretion may agree to waive said deposits as long as Mortgagor is not in default under the terms of this Mortgage, the Mortgage Note and all other loan documents. All such payments described in this Section 2 shall be held by Mortgagee or a depository designated by Mortgagee in trust without accruing or without any obligation arising for the payment of interest thereon. If the funds so deposited are insufficient to pay, when due, all taxes and premiums as aforesaid, the Mortgagor shall, within ten (10) days after receipt of demand therefore from Mortgagee or its agent, deposit such additional funds as may be necessary to pay such taxes and premiums. If the funds so deposited exceed the amounts required to pay such items, the excess shall be applied on the next due deposits. Neither the Mortgagee nor depository shall be liable for any failure to make the payments of insurance premiums, or of taxes, unless Mortgagor, while not in default hereunder, shall have requested said Mortgagee or depository in writing to make application of such deposits to the payment of the particular insurance premium or taxes, accompanied by the bills for such insurance premiums or taxes, provided, however, Mortgagee may at its option make or cause the depository to make any such application of the aforesaid deposits without any direction or request to do same by Mortgagor. Mortgagee may suspend, in whole or in part, and later reinstate, the application of this section as often as it may determine. In the event of a default and after the expiration of any relevant cure period, if any, in any provision contained herein or in the Note secured hereby, Mortgagee may, at its option, apply any monies on deposit pursuant to this Section 2 against any of the Mortgagor's obligations hereunder or in the Note contained, in such order and manner as the Mortgagee may elect. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be held in trust to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor; provided, however, that neither the Mortgagee nor said depository shall be liable for any failure to apply to the payment of taxes or insurance any amount so deposited, unless Mortgagor, while not in default hereunder, shall have requested said depository in writing to make application of such funds to the payment of particular taxes or

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insurance premiums for payment of which they were deposited accompanied by the bills therefore.

3. Taxes. Mortgagor shall pay fifteen (15) days prior to the date when such matters are due and owing, all general taxes, special taxes, special assessments, water charges, sewer service charges, and all other charges of whatever kind, ordinary or extraordinary, which may be levied or imposed against the premises, and to furnish to Mortgagee official receipts therefore within thirty (30) days after payment thereof, provided, however, if Mortgagee has not suspended the monthly deposits for taxes required by Section 2 hereof, Mortgagee, at its option, either may make such deposits available to Mortgagor for the payments required under this Section 3, or may make such payments on behalf of Mortgagor.

4. Insurance.

(a) Casualty. Mortgagor shall keep the improvements now existing or hereafter erected on the premises constantly insured against loss or damage under such types and forms of insurance policies and in such amounts and for such periods as Mortgagee may from time to time require, which shall not be less than the full replacement value of the improvements as determined by the Mortgagee in its sole discretion, and Mortgagor shall pay promptly, when due, any premiums on such insurance. Unless Mortgagee otherwise agrees, all such insurance shall provide "all risk" agreed value replacement cost coverage and shall be carried with companies having a Best's rating of A+ or A acceptable to the Mortgagee and the policies and renewals (or certificates evidencing same), marked by the insurer "PAID" shall be delivered to the Mortgagee at least thirty (30) days before the expiration of the old policies and shall have attached thereto standard noncontributing mortgage clauses in favor of and entitling the Mortgagee alone to collect with notice to the Mortgagor any and all of the proceeds payable under all such insurance, as well as standard waiver of subrogation endorsements. Mortgagor shall not carry separate insurance, concurrent in kind or form and contributing in the event of loss, with any insurance required hereunder. In the event of a change in ownership or of occupancy of the premises (if approved in writing by Mortgagee), immediate notice thereof by mail shall be delivered to all insurers. In the event of any material loss covered by such insurance, Mortgagor shall immediately notify Mortgagee in writing, and Mortgagor hereby authorizes and directs each and every insurance company concerned to make payments for such loss directly to the Mortgagee (who may, but need not, make proof of loss) and said Mortgagee is hereby authorized to adjust, collect and compromise in its discretion with notice to the Mortgagor all claims under all policies, and Mortgagor shall sign, upon demand by said Mortgagee, all receipts, vouchers, and releases required by such insurance companies. After deducting any reasonable costs of collection, Mortgagee shall use or apply its share of the proceeds to repair and restore the improvements in which event the Mortgagee shall not be obligated to see to the proper application thereof nor shall the amount so released or used for restoration be deemed a payment on the indebtedness secured hereby and to apply any excess to reduce the principal balance of the Mortgage. Such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such restoration and with such architect's certificates, waivers of lien, contractors' sworn statements and other evidence of cost and of payments as Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds ten percent (10%) of the original principal amount of the indebtedness secured hereby, with all plans and specifications for such rebuilding or restoration as Mortgagee may reasonably require and approve. No payment made prior to the final completion of the work shall exceed ninety percent (90%) of the value of the work performed, from time to time, and at all times the undisbursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens. In the event

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of foreclosure of this Mortgage, or other transfer of title to the premises in extinguishment of the indebtedness secured hereby, all right, title, and interest of Mortgagor, in and to any insurance policies then in force, and any claims or proceeds thereunder shall pass to Mortgagee or any purchaser or grantee. In the event Mortgagee, in its reasonable discretion, determines that any insurance provided by Mortgagor, does not comply with the insurance requirements set forth herein, then Mortgagee may, at any time and at its own reasonable discretion, procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in such amount and carried in such company as it may reasonably determine, the cost of which shall be repaid to Mortgagee by Mortgagor upon demand. Mortgagor shall furnish to Mortgagee, upon its request, estimates or appraisals of insurable value, without cost to the Mortgagee, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the building or buildings and improvements on the premises in the event Mortgagee reasonably believes that the replacement value or the real estate has been appreciably altered. In the event the proceeds are applied to reduce the indebtedness, the payments that are to be made pursuant to the Note executed contemporaneously with this Mortgage shall be reduced pro rata and the effect of such prepayment shall reduce the amount of the final (balloon) payment due pursuant to the said Note.

(b) Liability. Mortgagor shall carry and maintain comprehensive public liability insurance as may be reasonably required from time to time by Mortgagee in forms, amounts, and with companies having a Best's rating of A+ or A or reasonably satisfactory to Mortgagee, and Mortgagor will apply all insurance proceeds under such policies to the payment and discharge of the liabilities in respect of which such proceeds are collected. It is understood and agreed that the amounts of coverage shall not be less than One Million and No/100 Dollars (\$1,000,000.00) single limit and Two Million and No/100 Dollars (\$2,000,000.00) umbrella coverage and that the policy shall name Mortgagee as an additional insured party thereunder. Certificates of such insurance, premiums prepaid, shall be deposited with Mortgagee and shall contain provision for twenty (20) days' notice to Mortgagee prior to any cancellation thereof.

(c) Flood Insurance. Mortgagor shall carry and maintain in force at all times flood insurance in accordance with the provisions of the Flood Disaster Protection Act of 1973, as amended, if the area in which the premises are situated is designated as "flood prone" or a "flood risk area," as defined in said Act, in an amount satisfactory to Mortgagee, and Mortgagor shall comply with such other requirements of said Act as are appropriate.

(d) Policies. Unless Mortgagee otherwise agrees, all policies of insurance required hereunder to be maintained by Mortgagor, together with evidence that the premium therefor covering a period of not less than one (1) year has been prepaid, shall be deposited with Mortgagee and shall provide for, among other things, written notice to Mortgagee of their expiration or any anticipated cancellation at least twenty (20) days prior to such event occurring. Not less than thirty (30) days prior to the expiration of any such policy, Mortgagor shall deposit an appropriate renewal or replacement policy and evidence of the premium payment therefore, as aforesaid.

#### 5. Requirements Pertaining to Premises.

(a) Preservation, Restoration and Use of Premises. No building or other improvement on the premises shall (except as required by law) be altered, removed, or demolished nor shall any fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the prior written consent of Mortgagee, and in the event of the demolition or destruction in whole or in part of any of the

fixtures, chattels, or articles of personal property covered hereby or by any separate security agreement given in conjunction herewith, the same shall be replaced promptly by similar fixtures, chattels, and articles of personal property at least equal in quality and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto. Mortgagor shall promptly repair, restore, or rebuild any buildings or improvements now or hereafter on the premises which may become damaged or be destroyed. The buildings and improvements shall be so restored or rebuilt so as to be of at least equal value and substantially the same character as prior to such damage or destruction. Mortgagor shall not permit, commit, or suffer any waste, impairment, or deterioration of the premises or any part or improvement thereof, and shall keep and maintain the premises and every part thereof in good repair and condition and effect such repairs as Mortgagee may reasonably require, and, from time to time, make all needful and proper replacements and additions thereto so that said buildings, fixtures, machinery, and appurtenances will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Mortgagor agrees to obtain an elevator maintenance agreement reasonably acceptable to Mortgagee until the Note secured hereby has been paid in full in the event an elevator is installed on the premises. Mortgagor shall not suffer or permit the premises to be abandoned or to be used for a purpose other than that for which the premises are presently used, or represented to Mortgagee to be used. Mortgagor shall not subject the premises to any use covenants or restrictions and shall not initiate, join in or consent to any change in any existing private restrictive covenant, zoning ordinance, or other public or private restriction limiting or defining the uses which may be made of or the kind of improvements which can be constructed or placed on the premises or any part thereof without the consent of the Mortgagee which shall not be refused unless the Mortgagee is in default or unless the proposed matter diminishes the security of the Mortgagee in its sole discretion, and shall promptly notify Mortgagee of, and appear in and defend, at its sole cost and expense, any such proceedings seeking to effect any of the foregoing. Mortgagor shall not subdivide the real estate and shall not subject the premises to the provisions of the condominium laws of the state in which the premises are situated, unless the written consent of the Mortgagee has been obtained and the proposed subdivision is consistent with the appraisal received by the Mortgagee.

(b) Adjoining Property, Management, and Parking Requirements. No improvement on land adjoining the real estate which is owned or controlled by Mortgagor or a Beneficial Owner or by any general partner or related business entity of such general partner or Beneficial Owner shall be constructed unless plans and specifications therefore have been first submitted to Mortgagee and approved by it as entailing no prejudice to the loan secured hereby or the security therefore. At all times during the term of the Note secured hereby there shall be maintained sufficient paved parking spaces to fulfill the requirements of local zoning ordinances and codes.

6. Compliance with Governmental, Insurance and Other Requirements. Mortgagor shall comply with all statutes, ordinances, orders, requirements, or decrees and shall observe and comply with all conditions and requirements necessary to maintain in force the insurance required under Section 4 hereof and to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions, and nonconforming uses) privileges, franchises, and concessions which are applicable to the premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the premises. In the event any building or other improvement on the premises must be altered or removed to enable Mortgagor to comply with the foregoing provisions of this Section 6, Mortgagor, at its sole cost and expense, shall promptly effect the alterations or removal so required. Mortgagor shall not by act or omission

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permit any building or other improvement on land not subject to the lien of this Mortgage to rely on the premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagor hereby assigns to Mortgagee any and all rights to give consent for all or any portion of the premises or any interest therein to be so used. Similarly, no building or other improvement on the premises shall rely on any land not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section shall be void. Mortgagor shall duly and punctually perform and comply with all covenants and conditions expressed as binding upon it which pertains to the premises.

7. Liens, Encumbrances and Transfers of Ownership. Mortgagor shall keep the premises free from liens of mechanics and materialmen and from all other liens, charges, and encumbrances of whatever nature, regardless of (i) whether the same arise voluntarily or involuntarily on the part of Mortgagor and (ii) whether the same are subordinate to, prior to, or on a parity with the lien of this Mortgage, and shall furnish to Mortgagee satisfactory evidence of the payment and discharge of any such liens, charges, and encumbrances, asserted or claimed to exist against the premises, excepting, however, any lien or encumbrance expressly consented to by Mortgagee with respect to which Mortgagor shall pay, when due, the indebtedness secured thereby and upon Mortgagee's request, furnish to Mortgagee satisfactory evidence of such payment or payments and except as to any lien being contested by the Mortgagor in good faith and for which a bond or title indemnity has been secured by the Mortgagor for the express protection of the secured position of the Mortgagee with a title insurance company or other company acceptable to the Mortgagee. In the event Mortgagor shall, without the prior written consent of Mortgagee, sell, transfer, convey, or assign the title to all or any portion of the premises, or the rents, issues, or profits therefrom, whether by operation of law, voluntarily, or otherwise, or shall contract to do any of the foregoing, or in the event the owner, or if there be more than one, any of the owners, of the beneficial interest in the trust of which Mortgagor is trustee (any such owner being herein referred to as a "Beneficial Owner") shall, without the prior written consent of Mortgagee, transfer or assign all or any portion of such beneficial interest, or the rents, issues, or profits from the premises (including, without being limited to, a collateral assignment), whether by operation of law, voluntarily or otherwise, or shall contract to do any of the foregoing, Mortgagee, at its option, shall then have the unqualified right to accelerate the maturity of the Note, causing the full principal balance, accrued interest, and prepayment premium, if any, to be immediately due and payable without notice to Mortgagor, and thereupon or thereafter exercise all rights and privileges reserved to Mortgagee or conferred upon Mortgagee by this Mortgage, the Note secured hereby, any Assignment of Rents or Assignment of Lessor's Interest in Lease given as additional security for said Note or provided by the laws of the applicable jurisdiction.

8. Stamp Tax. If at any time the United States government or any state or municipal government shall require Internal Revenue or other documentary stamps hereon or on the Note secured hereby, or shall otherwise impose a tax or impose an assessment on this Mortgage or on the Note or shall require payment of an interest equalization tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of Mortgagee thirty (30) days after the mailing of notice of such election to Mortgagor, provided, however, said election shall be unavailing and this Mortgage and the Note shall be and become due and payable at the election of Mortgagee thirty (30) days after the mailing of notice of such election to Mortgagor, provided, however, said



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election shall be unavailing and this Mortgage and the Note shall be and remain in effect, if Mortgagor lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of Mortgagee and Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

9. Effect of Change in Laws Regarding Taxation. In the event of the enactment, after the date of this Mortgage, of any law of the state in which the premises are located deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagee's interest in the property, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder thereof, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes or assessments, or reimburse Mortgagee therefore; provided, however, that if, in the opinion of counsel for Mortgagee, (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to be and become due and payable within thirty (30) days from the giving of such notice. Notwithstanding the foregoing, Mortgagor shall not be obligated to pay any portion of Mortgagee's federal or state income tax.

10. Mortgagee's Performance of Defaulted Acts. In case of default herein, Mortgagee may, but need not, make any payment or perform any act herein required of Mortgagor in any form and manner deemed expedient by Mortgagee. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise, or settle any tax lien or other prior or junior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the premises or contest any tax or assessment. Mortgagee is hereby authorized to make or advance, in the place and stead of the Mortgagor, any payment relating to taxes, assessments, water rates, sewer rentals, and other governmental or municipal charges, fines, impositions, or liens asserted against the premises and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien, or title or claim thereof; and the Mortgagee is further authorized to make or advance in the place and stead of the Mortgagor any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, or charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Section, and may do so whenever, in its reasonable judgment and discretion, such advance or advances shall seem necessary or desirable to protect the full security intended to be created by this instrument, and in connection with any such advance, Mortgagee, at its option, may and is hereby authorized to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee to protect the premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Mortgagor to Mortgagee without notice and with interest thereon at the Default Interest Rate. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor.

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11. Eminent Domain. Any and all awards heretofore or hereafter made or to be made to the present and all subsequent owners of the premises, by any governmental or other lawful authority for taking, by condemnation or eminent domain, the whole or any part of the premises or any improvement located thereon or any easement therein or appurtenant thereto (including any award from the United States Government at any time after the allowance of the claim therefore, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee which award Mortgagee is hereby authorized to collect and receive with notice to the Mortgagee from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts and acquittances therefore. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any such proceedings under condemnation or eminent domain, affecting all or any part of the said premises or any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor shall make, execute, and deliver to Mortgagee, at any time or times upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning to Mortgagee all awards and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. The proceeds of all such awards shall be paid to Mortgagee and may be applied by Mortgagee, at its option, after the payment of all of its expenses in connection with such proceedings, including costs and attorneys' fees, to the reduction of the indebtedness secured hereby or to restoring the improvements, in which event the same shall be paid out in the same manner as is provided, with respect to insurance proceeds, in Section 4(a) hereof.

12. Acknowledgment of Debt. Mortgagor shall furnish from time to time within seven (7) days after Mortgagee's request, a written statement, duly acknowledged, verifying the amount due upon this Mortgage (as reflected on the books and records of Mortgagee) and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

13. Rents and Leases.

(a) Mortgagee's Right of Prior Approval. All leases of the premises are and shall be subject to the approval of Mortgagee as to form, content and tenants and without limiting the generality of the foregoing, neither Mortgagor nor any Beneficial Owner shall, without Mortgagee's prior written consent, (i) make any lease of all or any part of the premises, except for actual occupancy by the lessee thereunder, (ii) execute an assignment or pledge of any rents of the premises or of any lease of all or any part of the premises, except as security for the indebtedness secured hereby, (iii) accept any prepayment of any installment of any rents more than two (2) months before the due date of such installment, (iv) agree to any amendment to or change in the terms of any lease previously approved by Mortgagee, or (v) permit or consent to any assignment of any such leases, or subletting of all or any portion of the premises demised thereunder by any lessee under such leases. Mortgagor agrees to supply Mortgagee, upon ten (10) days prior written request, true and correct copies of all leases for the premises.

(b) Mortgagor's Obligations. Mortgagor, or a Beneficial Owner, but in either case without any cost and expense to Mortgagee, shall (i) at all times promptly and faithfully abide by, discharge and perform all of the covenants, conditions and agreements contained in all leases of all or any part of the premises, on the part of the landlord thereunder to be kept and performed, (ii) enforce or secure the performance of all of the covenants, conditions and agreements of such leases on the part of the lessees

to be kept and performed, (iii) appear in and defend any action or proceeding arising under, growing out of or in any manner connected with such leases or the obligations, duties or liabilities of landlord or of the lessees thereunder, (iv) transfer and assign to Mortgagee upon request of Mortgagee, any lease or leases of all or any part of the premises heretofore or hereafter entered into, and make, execute and deliver to Mortgagee upon demand, any and all instruments required to effectuate said assignment, (v) furnish Mortgagee, within ten (10) days after a request for Mortgagee so to do, a written statement containing the names of all lessees, terms of all leases, including the spaces occupied, and the rentals payable thereunder, and (vi) exercise within five (5) days of any demand therefore by Mortgagee any right to request from the lessee under any lease of all or any part of the premises a certificate with respect to the status thereof. Mortgagor shall do all things needful to keep all leases in full force and effect and to operate the premises in a first-class manner. Mortgagee shall have the option to declare this Mortgage in default because of a default of landlord in twenty-five percent (25%) of all of the leases for all or any part of the premises. Mortgagee, with or without notice to or demand upon Mortgagor, may perform any obligation of Mortgagor under said leases and pay such sums in such manner and to such extent as Mortgagee, in its sole discretion, deems advisable to cure any such defaults, without thereby waiving or curing any default hereunder. All sums so expended, costs so incurred and interest thereon shall be secured hereby. Any default under any separate Assignment of Leases or under any Assignment of Rents given as additional security for the indebtedness secured hereby shall constitute a default hereunder on account of which the whole of the indebtedness secured hereby shall at once, at the option of the Mortgagee, become immediately due and payable without notice to the Mortgagor.

(c) Mortgage Exoneration. Nothing in this Mortgage or in any other documents relating to the loan secured hereby shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor or any Beneficial Owner, as landlord, under any of the leases assigned to Mortgagee or to pay any sum of money or damages therein provided to be paid by the landlord, each and all of which covenants and payments Mortgagor agrees to perform and pay. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever 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 said leases. Should Mortgagee incur any such liability, loss or damage under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefore immediately upon demand.

(d) Lessee Attornment. In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each lease of all or any part of the premises made after the date of recording this Mortgage shall, at the option of the Mortgagee, attorn to any person succeeding to the interest of Mortgagor or Beneficial Owner, as the case may be, as a result of such enforcement and shall recognize such successor in interest as landlord under such lease without change in the terms or other provisions thereof, provided, however, that said successor in interest shall not be bound by any payment of rent or additional rent for more than one month in advance or any amendment or modification to any lease made without the prior consent of Mortgagee or said successor in interest. Each lessee, upon request by Mortgagee or any such successor in interest, shall execute and deliver an instrument or instruments confirming such attornment, and Mortgagor shall cause each such lease of all or any part of the

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premises to contain a covenant on the lessee's part evidencing its agreement to such attornment.

(e) Declaration of Subordination. At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds in and for the county wherein the premises are situated, of a unilateral declaration to that effect.

14. Inspection of Premises. Mortgagor shall permit Mortgagee or its agents to inspect the premises at all reasonable times, and access thereto shall be permitted for such purpose. Mortgagee is authorized for such purposes to enter upon the premises and shall not be deemed guilty of trespassing for so doing.

15. Inspection of Books and Records. Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the premises and within ten (10) days after demand therefore shall allow Mortgagee to examine such books

16. Future Advances. Mortgagee may, at its option, upon request of Mortgagor, at any time before full payment of this Mortgage, make further advances to Mortgagor, and the same with interest shall be a parity with, and not subordinate to, the indebtedness evidenced by the Note and shall be secured hereby in accordance with all covenants and agreements herein contained provided that the amount of principal secured hereby and remaining unpaid shall not, including the amount of such advances, exceed the original principal sum secured hereby, and provided that if Mortgagee shall make further advances as aforesaid, Mortgagor shall repay all such advances in accordance with the note or notes, or agreement or agreements, evidencing the same, which Mortgagor shall execute and deliver to Mortgagee and which shall be payable no later than the maturity of this Mortgage and shall include such other terms as Mortgagee shall require.

17. Purpose of Loan. The entire proceeds of the Note will be used for the purposes specified in Section 6404(a), (c) of Chapter 17, Illinois Revised Statutes, and the indebtedness secured hereby constitutes a "business loan" which comes within the purview of said Section 6404(a), (c).

18. Partial Invalidity. Mortgagor and Mortgagee intend and believe that each provision in this Mortgage and Note comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Mortgage or the Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Mortgage or the Note to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent both of Mortgagor and Mortgagee that such portion, provision or provisions shall be given force to the fullest possible extent that it or they are legal, valid and enforceable, that the remainder of this Mortgage and the Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Mortgagor and Mortgagee under the remainder of this Mortgage and the Note shall continue in full force and effect. If under the circumstances interest in excess of the limit allowable by law shall have been paid by Mortgagor in connection with the loan evidenced by the Note, such excess shall be applied by Mortgagee to the unpaid principal balance of the Note or refunded to Mortgagor in the manner to be determined by Mortgagee and if any such excess interest has accrued, Mortgagee shall eliminate such excess interest so that under no



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circumstances shall interest on the loan evidenced by the Note exceed the maximum rate allowed by the law.

19. Subrogation. In the event the proceeds of the loan made by Mortgagee to Mortgagor, or any part thereof, or any amount paid out or advanced by Mortgagee, be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the premises or any part thereof, then Mortgagee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of same.

20. Mortgagee's Right to Deal with Transferees. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of said premises, Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to said premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from said Mortgagor's covenants and undertakings hereunder, specifically including Section 7 hereof, and without Mortgagee waiving its rights to accelerate the Note as set forth in said Section 7.

21. Execution of Security Agreement and Financing Statement. Mortgagor, within ten (10) days after request by mail, shall execute, acknowledge, and deliver to Mortgagee a Security Agreement, Financing Statement, or other similar security instrument, in form reasonably satisfactory to Mortgagee, covering all property of any kind which is located upon the mortgaged premises and which is essential to the operation of the mortgaged premises and concerning which there may be any doubt as to whether the title to same has been conveyed by or a security interest therein perfected by this Mortgage under the laws of the State of Illinois and shall further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement, or certificate or other documents as Mortgagee may reasonably request in order to perfect, preserve, maintain, continue, and extend the security instrument. Mortgagor further agrees to pay to Mortgagee, on demand, all costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording, filing, and refiling of any such document. To the extent that this instrument may operate as a security agreement under the Uniform Commercial Code, Mortgagee shall have all rights and remedies conferred therein for the benefit of a Secured Party (as said term is defined in the Uniform Commercial Code), and the remedies for any violation of the covenants, terms or conditions herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in said Financing Statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, as adopted by the State of Illinois, all at Mortgagee's sole election. The mention in any such Financing Statement of the rights or proceeds related to any fire or hazard insurance policies; any awards from eminent domain proceedings; or Mortgagor's interest as lessor under any lease related to the premises shall not be construed as in any way altering the rights of Mortgagee pursuant to this Mortgage or impugning the priority of Mortgagee's lien granted hereunder.

22. Release. Mortgagee, without notice, and without regard to the consideration, if any, paid therefore, and notwithstanding the existence at that time of any inferior liens, may release any part of the premises or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note and this Mortgage or guaranty, if any, given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or

modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the indebtedness secured by this Mortgage.

23. Expenses Incurred by Mortgagee. Any costs, damages, expenses or fees, including reasonable attorneys' fees, incurred by Mortgagee in connection with (i) sustaining the lien of this Mortgage or its priority, (ii) obtaining any commitment for title insurance or title insurance policy, (iii) protecting the premises, (iv) protecting or enforcing any of Mortgagee's rights hereunder, (v) recovering any indebtedness secured hereby, (vi) preparing for the commencement, defense or participation in any threatened litigation or proceedings as aforesaid, or as otherwise enumerated in Section 24(c) hereof, shall be so much additional indebtedness secured hereby and shall be immediately due and payable by Mortgagor, without notice, with interest thereon at the Default Interest Rate.

24. Remedies on Default.

(a) Events of Default. It shall constitute a default under this Mortgage when and (i) if any default occurs in the due and punctual payment of the entire principal sum secured hereby, or of any installment thereof, or of interest thereon, or of any installment of interest which remains uncured for fourteen (14) days or (ii) if any default occurs in the due and punctual performance of or compliance with any other term, covenant or condition in this Mortgage, or in the Note, or in any other instrument now or hereafter evidencing or securing said indebtedness, including, without limitation, any guaranty, assignment of rents or assignment of leases given to secure such indebtedness, or (iii) if Mortgagor, any Beneficial Owner, or any guarantor of the indebtedness secured hereby (a) is voluntarily adjudicated a bankrupt or insolvent, or (b) seeks or consents to the appointment of a receiver or trustee for itself or for all or any part of its property or (c) files a petition seeking relief under or files an answer admitting the material allegations of a petition filed against it under any bankruptcy or similar laws of the United States or any state, or (d) makes a general assignment for the benefit of creditors, or (e) admits in writing its inability to pay its debts as they mature, or (f) takes any action for the purpose of affecting any of the foregoing, or (iv) if any order, judgment or decree is entered upon an application of a creditor of Mortgagor as trustee, if at the time Mortgagor is a trustee), or of any Beneficial Owner, or guarantor of the indebtedness secured hereby, without the consent of the party against whom it is entered by a court of competent jurisdiction (a) appointing a receiver or trustee of all or a substantial part of the assets of Mortgagor (as trustee if at the time Mortgagor is a trustee) or of such Beneficial Owner or guarantor, as the case may be, or (b) approving any petition filed against Mortgagor, any Beneficial Owner or any guarantor of the indebtedness secured hereby seeking relief under any bankruptcy or other similar laws of the United States or any state and remains in force, undischarged or unstayed for a period of sixty days.

(b) Remedies. In addition to any other remedy herein specified, if any default under this Mortgage shall occur, Mortgagee may, at its option (i) declare the entire indebtedness secured hereby to be immediately due and payable, without notice or demand (each of which is hereby expressly waived by Mortgagor) whereupon the same shall become immediately due and payable, (ii) institute proceedings for the complete foreclosure of this Mortgage, (iii) institute proceedings to collect any delinquent installment or installments of the indebtedness secured hereby without accelerating the due date of the entire indebtedness by proceeding with foreclosure of this Mortgage with respect to any delinquent installment or installments of such indebtedness only and any sale of the premises under such a foreclosure proceeding shall be subject

to and shall not affect the unmatured part of the indebtedness, (iv) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Note or in this Mortgage, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee shall elect, or (v) enforce this Mortgage in any other manner permitted under the laws of the state in which the premises are situated.

(c) Expense of Litigation. In any suit to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under this Mortgage or the Note there shall be allowed and included, as additional indebtedness in the judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the premises.

(d) Mortgagee's Right of Possession in Case of Default. In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings whether or not the entire principal sum secured hereby is declared to be immediately due as aforesaid, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the premises, or any part thereof, personally or by its agent or attorneys, as for condition broken and Mortgagee in its discretion may enter upon and take and maintain possession of all or any part of said premises, together with all documents, books, records, papers, and accounts of Mortgagor or the then manager of the premises relating thereto, and may exclude Mortgagor, its agents, or servants, wholly therefrom and may, as attorney in fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted: (i) hold, operate, manage, and control the premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues and profits of the premises including actions for recovery of rent, actions in forcible detainer and actions in distress for rent, hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereafter, without notice to Mortgagor, (ii) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same, (iii) elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof, (iv) extend or modify any then existing leases and make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and to be also binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any

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certificate of sale or deed to any purchaser, (v) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements to the premises as to Mortgagee may seem judicious, (vi) insure and reinsure the premises and all risks incidental to Mortgagee's possession, operation, and management thereof, and (vii) receive all avails, rents, issues and profits.

(e) Application of Rental Proceeds. Any avails, rents, issues and profits of the premises received by Mortgagee after having possession of the premises, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage or of any separate Assignment of Rents or Assignment of Leases, shall be applied in payment of or on account of the following, in such order as Mortgagee (or in case of a receivership, as the court) may determine: (i) to the payment of the operating expenses of the premises, including reasonable compensation to Mortgagee or the receiver and its agent or agents, if management of the premises has been delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases and the payment of premiums on insurance hereinabove authorized, (ii) to the payment of taxes, special assessments, and whether taxes now due or which may hereafter become due on the premises, or which may become a lien prior to the lien of this Mortgage, (iii) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of said premises, including the cost from time to time of installing or replacing personal property or fixtures necessary to the operation of the premises, and of placing said property in such condition as will, in the judgment of Mortgagee or receiver, make the premises readily rentable, (iv) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale, or (v) with respect to any surplus or remaining funds, to the Mortgagor, its successors, or assigns, as their rights may appear.

(f) Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose this Mortgage or upon or at any time after the occurrence of any default hereunder, Mortgagor consents upon application by Mortgagee to the appointment of a receiver of the premises. Such appointment may be made either before or after sale without notice and without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby and without regard to the then value of the premises or whether the same shall be then occupied as a homestead or not, and without bond being required of the applicant. Such receiver shall have the power to take possession, control, and care of the premises and to collect the rents, issues, and profits of the premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption (provided that the period of redemption has not been waived by Mortgagor), as well as during any further times when Mortgagor, its heirs, administrators, executors, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits, and all other powers which may be necessary or are useful in such cases for the protection, possession, control, management, and operation of the premises, during the whole of said period. To the extent permitted by law, said receiver may be authorized by the court to extend or modify any then existing leases and to make new leases, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder it being understood and agreed that any such leases and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of



any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser.

(g) Sale of Premises. Any real estate or any interest or estate therein sold pursuant to any court order or decree obtained pursuant to the Mortgage shall be sold in one parcel, as an entirety, or in such parcels and in such manner or order as Mortgagee, in its sole discretion, may elect, to the maximum extent permitted by the laws of the state in which the premises are situated. At any such sale, Mortgagee may bid for and acquire, as Purchaser, the premises or any part thereof, and in lieu of paying cash therefore, may make settlement for the purchase price by crediting upon the indebtedness due the amount of Mortgagee's bid.

(h) Application of Proceeds From Foreclosure Sale. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order of priority: (i) on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 24(c) hereof, (ii) all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon, at the Default Interest Rate, (iii) all principal and interest remaining unpaid on the Note, and (iv) any overplus to Mortgagor, its successors, or assigns, as their rights may appear.

(i) Application of Deposits Held by Mortgagee. With respect to any deposits made with or held by Mortgagee or any depository pursuant to any of the provisions contained in this Mortgage or in the Note secured hereby, Mortgagee may, at its option, without being required to do so, apply any monies or securities which constitute such deposits on any of Mortgagor's obligations herein or in the Note contained, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the premises. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

(j) Waiver of Statutory Rights. 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, but hereby waives the benefit of such laws. Mortgagor, for itself and all who may claim through or under it, waives any and all right to have the property and estates comprising the premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the premises sold as an entirety. Mortgagor acknowledges and agrees that the land encumbered by this Mortgage and Security Agreement, at the time of the execution hereof is improved with a commercial structure and that the land covered by this Mortgage is not used or intended to be used for agricultural purposes. Mortgagor warrants it has been authorized or empowered by the trust instrument or by a person having a power of direction over Mortgagor to, and Mortgagor does hereby waive any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage, on behalf of Mortgagor, the trust estate, all persons beneficially interested therein, and each and every person (except decree or judgment creditors of Mortgagor in its representative capacity and of the trust estate) acquiring any interest in or title to the premises subsequent to the date hereof.

(k) Partial Payments. Acceptance by Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver

of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of Mortgagee without its express consent except and to the extent otherwise provided by law.

(l) Tender of Payment after Acceleration. Upon default by Mortgagor and following the acceleration of maturity as aforesaid, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale by Mortgagor, its successors or assigns shall constitute an evasion of the prepayment privilege and shall be deemed to be a voluntary prepayment hereunder and such prepayment to the extent permitted by law will therefore include a premium required under the prepayment privilege, if any, contained in the Note. In case, after legal proceedings are instituted to foreclose the lien of this Mortgage, tender is made of the entire indebtedness 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 so much additional indebtedness 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.

(m) Delays and Omissions. No delay in the exercise of or failure to exercise any remedy or right accruing or any default under this Mortgage shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or of a different nature.

(n) Rescission of Election. Acceleration of maturity, once made by Mortgagee, may at the option of Mortgagee be rescinded, and any proceedings brought to enforce any rights or remedies hereunder may, at Mortgagee's option, be discontinued or dismissed, whereupon, in either of such events, Mortgagor and Mortgagee shall be restored to their former positions, and the rights, remedies and power of Mortgagee shall continue as if such acceleration had not been made or such proceedings had not been commenced, as the case may be.

(o) Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in the Note, in this Mortgage and in the guaranty of any guarantor shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor, any guarantor or the premises, or any one or more of them, at the sole discretion of Mortgagee, and may be exercised as often as occasion therefore shall arise, all to the maximum extent permitted by the laws of the state in which the premises are situated. If Mortgagee elects to proceed under one right or remedy under this Mortgage or the Note, Mortgagee may at any time cease proceeding under such right or remedy and proceed under any other right or remedy under this Mortgage or the Note.

25. Default Interest Rate. The term "Default Interest Rate" is deemed to mean interest at a rate set forth in the Note in the event of a default which is in excess of the interest rate from time to time prevailing under the Note until paid.

26. Giving of Notice. All notices to Mortgagor that are either required or contemplated in connection with this Mortgage shall be in writing, and shall be deemed given upon the earlier of the actual receipt thereof by Mortgagor and forty-eight (48) hours after mailing the same to Mortgagor at Mortgagor's address first above written with postage prepaid via certified first class mail. By notice complying with the foregoing provisions of this section, Mortgagor may from time to time change its address for notice

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purposes, except that any such notice shall not be deemed delivered until actually received. Except as otherwise specifically required, notice of the exercise of any option granted to the Mortgagee herein, or in the Note secured hereby, is not required to be given.

27. Time is of the Essence. It is specifically agreed that time is of the essence of this Mortgage. The waiver of the options or obligations secured hereby shall not at any time thereafter be held to be abandonment of such rights.

28. Mortgagee's Lien for Service Charge and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures (in addition to any loan proceeds disbursed from time to time) the payment of any and all loan commissions, service charges, liquidated damages, expenses, and advances due to or incurred by the Mortgagee in connection with this transaction.

29. Modifications. This Mortgage may not be changed, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against which enforcement of the change, waiver, discharge or termination is asserted.

30. Certified Annual Operating Statements. Mortgagor shall furnish to Mortgagee within ninety (90) days after the close of each fiscal year of operation of the premises, an annual financial report of income and expenses of the premises (and also of beneficial owner, if so required by Mortgagee). Such report shall contain such detail and embrace such items as Mortgagee may reasonably require.

31. Covenants to Run with the Land. All the covenants hereof shall run with the land.

32. Captions. The captions and headings of various sections are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

33. Construction. The place of contract and payment being located in Illinois, this Mortgage and the rights and indebtedness hereby secured shall be construed and enforced according to the laws of the State of Illinois.

34. Binding on Successors and Assigns, etc. This Mortgage and all provisions hereof shall extend and be binding upon Mortgagor's successors and assigns and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include and refer to (in addition to Mortgagor) all such persons and all persons liable for the payment of the indebtedness or any part thereof, whether or not such persons shall have executed the Note or this Mortgage. The word "Mortgagee" when used herein shall include the successors and assigns of the Mortgagee named herein, and the holder or holders, from time to time, of the Note secured hereby. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

35. Further Assurances. Mortgagor shall execute, acknowledge and deliver to Mortgagee and to any subsequent holder from time to time upon demand (and pay the costs of preparation and recording thereof) any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to re-affirm, to correct and to perfect the evidence of the obligation hereby secured and the lien of Mortgagee to all or any part of the premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof, and will do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Mortgage.



36. Recording and Filing. Mortgagor, at its expense, will cause this Mortgage and all supplements thereto for which constructive notice must be given to protect Mortgagee, at all times to be recorded and filed, and re-recorded and re-filed, in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording, re-filing taxes, fees and other charges to the maximum extent permitted by the laws of the state in which the premises are situated.

37. Right to Contest Taxes and Mechanic's Liens. The obligations of Mortgagor under Sections 3 and 7 hereof, and the rights of Mortgagee under Section 10 hereof, are subject to the right Mortgagor shall have to contest in good faith the validity or amount of any tax assessment or lien arising from any work performed at or materials furnished to the premises which right, however, is conditional upon (i) such contest having the effect of preventing the collection of the tax, assessment or lien so contested and the sale or forfeiture of the premises or any part thereof or interest therein to satisfy the same; (ii) Mortgagor giving Mortgagee written notice of its intention to contest the same in a timely manner, which, with respect to any contested tax or assessment, shall mean before any such tax, assessment or lien has been increased by any penalties or costs, and with respect to any contested mechanic's lien claim, shall mean within ten (10) days after Mortgagor receives actual notice of the filing thereof; (iii) Mortgagor making and thereafter maintaining with Mortgagee or such other depository as Mortgagee may designate, a deposit of cash (or United States government securities, in discount form, or other security as may, in Mortgagee's sole discretion, be acceptable to Mortgagee, and in either case having a present value equal to the amount herein specified) in an amount not less than one hundred twenty-five percent (125%) of the amount which, in the Mortgagee's reasonable opinion determined from time to time shall be sufficient to pay in full such contested tax, assessment or lien and penalties, costs and interest that may become due thereon in the event of a final determination thereof adverse to Mortgagor or in the event Mortgagor fails to prosecute such contest as herein required; and (iv) Mortgagor diligently prosecuting such contest by appropriate legal proceedings. In the event Mortgagor shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds, or other security as aforesaid, on deposit as hereinabove provided, Mortgagee may, at its option, liquidate the securities deposited with Mortgagee, and apply the proceeds thereof and other monies deposited with Mortgagee in payment of or on account of such taxes, assessments, or liens or any portion thereof when unpaid, including the payment of all penalties and interest thereon.

38. Disbursements of Proceeds of the Note for Construction of Improvements - Construction Loan Agreement. This Mortgage secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land and is a "construction mortgage" as that term is defined in Section 9-313 (1)(c) of the Uniform Commercial Code. Mortgagor and Mortgagee concurrently herewith have entered into a certain Construction Loan Agreement dated even date herewith ("Construction Loan Agreement"). All advances made and indebtedness arising and accruing under the Construction Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Note, shall be secured hereby and said Construction Loan Agreement is fully incorporated into this Mortgage to the same extent as if fully set forth herein. The occurrence of any event of default under said Construction Loan Agreement not cured by the times permitted therein, if any, shall constitute a default under this Mortgage entitling the holder of the Note to all of the rights and remedies conferred upon the said holder by the terms of this Mortgage, the Construction Loan Agreement, or by law. In the event of a conflict between the terms of this Mortgage, the Note and the terms of the Construction Loan Agreement (including, but not limited to, provisions relating to notice or waiver thereof), Mortgagee shall



CLERK OF THE COURT  
UNDER ATTACHED TO AND MADE A PART OF TRUST DEED OR MORTGAGE  
DATED July 10, 1989 UNDER TRUST NO. 4063-AH

This MORTGAGE or TRUST DEED in the nature of a mortgage is secured by NED TRUST COMPANY OF ILLINOIS, not personally but as Trustee under Trust No. 4063-AH in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said NED TRUST COMPANY OF ILLINOIS hereby warrants that it possesses full power and authority to execute this instrument) and it is expressly understood and agreed that nothing contained herein or in the Note, or in any other instrument given to evidence the indebtedness secured hereby shall be construed as creating any liability on the part of said Mortgagee or Grantor, or on said NED TRUST COMPANY OF ILLINOIS personally to pay the said Note or any interest that may accrue thereon, or any indebtedness accruing hereunder, or to perform any covenant, either express or implied, herein contained, all such liability, if any, being hereby expressly waived by the Mortgagee or Trustee under said Trust Deed, the legal owner(s) or holder(s) of the said Note, and by every person now or hereafter claiming any right or security hereunder; and that so far as the Mortgagee or Grantor and said NED TRUST COMPANY OF ILLINOIS personally are concerned, the legal holder or holders of said Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby mortgaged or conveyed for the payment thereof, by the enforcement of the lien hereby created in the manner herein and in said Note provided or by action to enforce the personal liability of the guarantor or guarantors, if any.

CLERK'S Office

# UNOFFICIAL COPY

have the option as to which terms and provisions shall prevail. During construction of the Development described in said Construction Loan Agreement, the provisions thereof pertaining to insurance requirements shall supersede the provisions of paragraphs 4(a) and 4(b) hereof.

## 39. Partial Releases.

(i) Release of Home and Lot. Mortgagor if not in default may secure from the Mortgagee a partial release of any lot covered by this Mortgage upon which a single family home is constructed upon making a principal prepayment in an amount equal to the net proceeds of the sale of such single family home (as defined herein). As used herein net proceeds shall mean the total purchase price of a single family home and lot (as preapproved by Mortgagee in writing) less usual and customary closing costs, prorations, reasonable attorneys fees and brokerage commissions (as preapproved in writing by Mortgagee), a management fee to Windhill Developers, Inc. of 5% of the total purchase price of the single family home on the lot being released and reimbursement to Windhill Associates Limited Partnership of \$16,000.00 per lot. In addition, the Mortgagor shall pay to the Mortgagee the sum of \$50.00 as and for a release fee in regard to each single family home and lot released from the lien of this Mortgage.

(ii) Release of Lots. Mortgagor, if not in default, may procure the release of individual lots from the lien of this Mortgage upon the payment of \$72,000 for lots located in Windhill 2 PUD and \$100,000 for lots located in Windhill One Subdivision so long as all construction has taken place pursuant to the construction budget provided to the Lender and the remaining amount of the loan after the release of a lot does not exceed 80% of the appraised value of the remaining security property. A release fee for a lot shall be \$50.00. Subject to the foregoing one lot in Windhill One Subdivision may be released from the lien of the mortgage upon a payment of \$84,000.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed the day and year first written above.

The NBD Trust Company of Illinois as  
Trustee under Trust 4063-AH dated  
February 2, 1989

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

President  
Secretary TRUST OFFICER

89343454

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Barbara A. Green, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY THAT Anita D. Kraus, Vice President & Trust Officer of NEO TRUST COMPANY OF ILLINOIS, an Illinois Corporation, and Peter Jung, Trust Officer of said Trust Company personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President & Trust Officer and ~~Assistant Vice President & Trust Officer~~, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of said Trust Company for the uses and purposes therein set forth; and the said ~~Assistant Vice President & Trust Officer~~ did also then and there acknowledge that he, as custodian of the Corporate Seal of said Trust Company, did affix said Corporate Seal of said Trust Company to said instrument as his own free and voluntary act and as the free and voluntary act of said Trust Company, for the uses and purposes therein set forth.

GIVEN, under my hand and notarial seal, this 12th day of July

1989.

Barbara A. Green  
Notary Public



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State of Illinois

County of Cook

I, \_\_\_\_\_, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, as \_\_\_\_\_ President of The NBD Trust Company of Illinois, a(n) state banking association, and \_\_\_\_\_, as \_\_\_\_\_ Secretary of such bank, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such \_\_\_\_\_ President and \_\_\_\_\_ Secretary, respectively, appeared before me this day in person and acknowledged that they signed and appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said bank, for the uses and purposes therein set forth, and the said \_\_\_\_\_ President then and there acknowledged that (s)he, as custodian of the seal of said bank, did affix the seal of said bank to said instrument as his(her) own free and voluntary act and as the free and voluntary act of said bank for the uses and purposes therein set forth.

Given under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 1987

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_, 19\_\_\_\_

This instrument prepared by:  
Lawrence A. Gold, Esq.  
GOMBERG & SHARFMAN, LTD.  
175 W Jackson Blvd.  
Suite 2140  
Chicago, Illinois 60604  
312/922-6194

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## Exhibit A

### Legal Description to Mortgage

DEPT-01

113.00

T400001 TRACT 1/4 1/4 1/4 1/4 1/4 1/4 1/4 1/4  
3252 A 1/4 1/4 1/4 1/4 1/4 1/4 1/4 1/4  
COOK COUNTY ILLINOIS

#### Parcel 1:

That part of the East half of the Northwest quarter of Section 28, Township 42 North, Range 10, East of the Third Principal Meridian, described as follows: Commencing at a point on the West line of said East half of the Northwest quarter lying 458.05 feet North (as measured on said West line) from the Southwest corner of said East 1/2 of Northwest quarter for a point of beginning; thence North along said West line of said East half of Northwest quarter, (in Roselle Road), to a point on the South line of the North 1123.83 feet of the Northeast quarter of the Northwest quarter of said Section 28 (said line also being the South line of Willow Walk Unit Number 2 Subdivision as per Plat thereof registered on October 17, 1972, as document 2654687); thence Easterly along the South line of the aforesaid Subdivision for a distance of 1337.54 feet to a point on the East line of the Northwest quarter of said Section 28, thence Southerly on the last described line to a point of its intersection with a line 458.04 feet North of and parallel with the South line of the East half of the Northwest quarter of said Section 28; and Westerly on the last described line for a distance of 1336.32 feet to the point of beginning, in Cook County, Illinois.

#### Parcel 2:

That part of the Northeast quarter of the Southwest quarter and that part of the Southeast quarter of the Northwest quarter of Section 28, Township 42 North, Range 10 East of the Third Principal Meridian, taken as a tract and described as follows:

Commencing at a point on the West line of the Northeast quarter of said Southwest quarter, 1277.00 feet North (as measured along said West line) of the Southwest corner thereof; thence North 90 degrees 0 minutes 0 seconds East parallel with the South line of the Northeast quarter of said Southwest quarter 72.00 feet to a point on the East line of Roselle Road as widened, said point being also the point of beginning of the aforesaid tract; thence South 83 degrees 49 minutes 02 seconds East 120.70 feet; thence South 43 degrees 11 minutes 57 seconds East 108.67 feet; thence South 57 degrees 34 minutes 03 seconds East 113.74 feet; thence North 68 degrees 23 minutes 40 seconds East 108.63 feet; thence North 57 degrees 07 minutes 53 seconds East 154.78 feet; thence North 53 degrees 11 minutes 43 seconds East 173.60 feet; thence North 43 degrees 41 minutes 19 seconds East 50.67; thence North 90 degrees 0 minutes 0 seconds East, parallel with the South line of the Northeast quarter of said Southwest quarter, 542.47 feet to a point on the East line of the Southeast quarter of the Northwest quarter which is 100.00 feet North as measured along said East line of said Southeast quarter thereof; thence North 0 degrees 11 minutes 48 seconds West 359.64 feet along the last mentioned East line to its point of intersection with a line drawn 458.04 feet North of and parallel with the South line of the Southeast quarter of said Northwest quarter; thence North 89 degrees 59 minutes 30 seconds West along said parallel line 1286.20 feet to its point of intersection with the East line of Roselle Road; thence South 0 degrees 15 minutes 42 seconds East along the last mentioned East line 297.12 feet; thence South 9 degrees 52 minutes 01 seconds East along the last mentioned East line, 131.85 feet, thence South 0 degrees 15 minutes 42 seconds East along the last mentioned East line, 74.32 feet to the point of beginning, in Cook County, Illinois.

#### Parcel 3:

Easement appurtenant for the benefit of Parcel 2 for sanitary sewer purposes, as therein described as granted in Sanitary Sewer Easement dated October 6, 1976, and recorded October 8, 1976 as document 23666997.

Address: Roselle Road north of Algonquin Rd Palatine, Ill  
P.I.N. # 02-28-102-004

CO  
CU  
CU  
CU  
CU

3300