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This instrument was prepared by (and after recordation should be returned to):

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CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT and FINANCING STATEMENT

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THIS CONSTRUCTION MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT and FINANCING STATEMENT (herein sometimes called "Mortgage") is made as of the ninth day of January, 1990, by and among Michael R. Sparks (the "Borrower"), an individual having an address at 1126 South New Wilke Road, Arlington Heights, Illinois 60005, and Parkway Bank and Trust Company, an Illinois banking corporation (the "Land Trustee"), not individually but as Trustee under the provisions of a Trust Agreement dated September 16, 1986, and known as Trust No. 7962 (the "Trust"), having its principal office at 4800 North Harlem Avenue, Harwood Heights, Illinois 60656 (herein, the Borrower and the Land Trustee, individually and collectively, jointly and severally, together with the successors and assigns of each of them, are sometimes called the "Mortgagor"); and The First National Bank of Chicago, a national banking association having an office at 20 South Clark Street, Chicago, Illinois 60670, Attention: Ms. Elizabeth A. Hart (herein, together with its successors and assigns, called the "Mortgagee").

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RECITALS:

A. Loan Agreement and Loan Amount. The Land Trustee is the owner of the land (the "Land") described on Exhibit A attached hereto. The Borrower is the owner of the entire beneficial interest in, to and under the Trust. To provide funds for the the construction of improvements on the Land, the Borrower, Land Trustee and the Mortgagee have entered into a Construction Loan Agreement (herein, as it may from time to time be amended, supplemented or modified, referred to as the "Loan Agreement") bearing even date herewith, providing for the Borrower's and the Land Trustee's performance of certain covenants, satisfaction of certain conditions and making of certain representations and warranties and for loans and advances to be made from time to time by the Mortgagee to the Borrower pursuant to the terms and conditions set out therein, in amounts not to exceed in the aggregate THREE MILLION ONE HUNDRED FIFTY THOUSAND AND

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NO/100 DOLLARS (\$3,150,000.00) (herein, such amount is called the "Loan Amount"). Any term capitalized but not specifically defined in this Mortgage, which is capitalized and defined in the Loan Agreement, shall have the same meaning for purposes of this Mortgage as it has for purposes of the Loan Agreement.

B. Note, Principal and Interest. Pursuant to the Loan Agreement, the Mortgagor has executed and delivered to the Mortgagee a promissory note dated the date hereof, in the face principal amount of \$3,150,000.00, payable to the order of the Mortgagee at Chicago, Illinois, and due and payable, together with all accrued and unpaid interest, in full, if not sooner paid on or before April 30, 1991, subject to acceleration as provided in such promissory note, in the Loan Agreement or in this Mortgage (herein, such promissory note, together with any and all amendments or supplements thereto, extensions thereof and notes which may be taken in whole or partial renewal, substitution or extension thereof or which may evidence any of the indebtedness secured hereby, shall be called the "Note"). The Note bears interest as provided in the Note, on the principal amount thereof from time to time outstanding; all principal of and interest on the Note is payable in lawful money of the United States of America at the office of the Mortgagee in Chicago, Illinois, or at such place as the holder thereof may from time to time appoint in writing. The Mortgagor is or will become justly indebted to the Mortgagee in the Loan Amount in accordance with the terms of the Loan Agreement.

C. Related Documents. Any and all loan agreements (including, without limitation, the Loan Agreement), the Note, the Security Agreement, and any other documents and instruments executed and delivered by or for the benefit of the Mortgagor, whether pursuant to the terms of the Loan Agreement or otherwise, in connection with the Note or as security therefor, or for the purpose of supplementing or amending all or any of the foregoing, all of which, as the same may be amended, modified or supplemented from time to time, are sometimes hereinafter referred to as the "Related Documents."

D. The Liabilities. As used in this Mortgage, the term "Liabilities" means and includes all of the following: (i) the principal of, interest on and any and all other amounts which may at any time be or become due or owing under the Note; (ii) all indebtedness of any kind arising under, and all amounts (including, without limitation, future advances) of any kind which may at any time be or become due or owing to the Mortgagee under or with respect to, the Loan Agreement, the Note, this Mortgage or any of the other Related Documents; (iii) all of the covenants, obligations and agreements (and the truth of all

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representations and warranties) of the Mortgagor in, <sup>beneficiary</sup> under or pursuant to the Loan Agreement, the Note, this Mortgage, and all of the other Related Documents; any and all advances, costs or expenses paid or incurred by the Mortgagee to protect any or all of the Collateral (hereinafter defined), perform any obligation of the Mortgagor hereunder or under any of the Related Documents or collect any amount owing to the Mortgagee which is secured hereby; (iv) any and all other obligations of either or both of the Land Trustee and the Borrower to the Mortgagee, in each case, howsoever created, arising or evidenced, direct or indirect, absolute or contingent, joint or several, now or hereafter existing or due or to become due, and whether or not arising out of or in connection with the Loan Agreement, the Note, this Mortgage or any of the other Related Documents; (v) interest on all of the foregoing; and (vi) all costs of enforcement and collection of the Loan Agreement, the Note, this Mortgage, any of the Related Documents, and the Liabilities. Provided, however, notwithstanding anything to the contrary herein, the total aggregate indebtedness and Liabilities secured by this Mortgage shall not exceed an amount equal to ten (10) times the Loan Amount.

**E. The Collateral.** For purposes of this Mortgage, the term "Collateral" means and includes all of the following:

(i) **Real Estate.** All of the Land, together with all and singular the tenements, rights, easements, hereditaments, rights of way, privileges, liberties, appendages and appurtenances now or hereafter belonging or in anywise appertaining to the Land (including, without limitation, all rights relating to storm and sanitary sewer, water, gas, electric, railway and telephone services); all development rights, air rights, water, water rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Land; all estate, claim, demand, right, title or interest of the Mortgagor in and to any street, road, highway, or alley (vacated or otherwise) adjoining the Land or any part thereof; all strips and gores belonging, adjacent or pertaining to the Land; and any after-acquired title to any of the foregoing (all of the foregoing is herein referred to collectively as the "Real Estate");

(ii) **Improvements and Fixtures.** All buildings, structures, replacements, furnishings, fixtures, fittings and other improvements and property of every kind and character now or hereafter located or erected on the Real Estate and owned or purported to be owned by the Mortgagor, together with all building or construction materials, equipment, appliances, machinery,

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plant equipment, fittings, apparatus, fixtures and other articles of any kind or nature whatsoever or hereafter found on, affixed to or attached to the Real Estate and owned or purported to be owned by the Mortgagor, including (without limitation) all motors, boilers, engines and devices for the operation of pumps, and all heating, electrical, lighting, power, plumbing, air conditioning, refrigeration and ventilation equipment (all of the foregoing is herein referred to collectively as the "Improvements");

(iii) Personal Property. All furniture, furnishings, equipment (including, without limitation, telephone and other communications equipment, window cleaning, building cleaning, monitoring, garbage, air conditioning, pest control and other equipment) and all other tangible property of any kind or character now or hereafter owned or purported to be owned by the Mortgagor and used or useful in connection with the Real Estate, regardless of whether located on the Real Estate or located elsewhere including, without limitation, all rights of the Mortgagor under any lease to furniture, furnishings, fixtures and other items of personal property at any time during the term of such lease, and all rights under and to all payments and deposits required by the provisions of Section 1.20 hereof, but specifically excluding any and all equine property located from time to time on the Real Estate (all of the foregoing is herein referred to collectively as the "Goods");

(iv) Rents. All rents, issues, profits, royalties, avails, income and other benefits derived or owned by the Mortgagor directly or indirectly from the Real Estate or the Improvements (all of the foregoing is herein collectively called the "Rents");

(v) Leases. All rights of the Mortgagor under all leases, licenses, occupancy agreements, concessions or other arrangements, whether written or oral, whether now existing or entered into at any time hereafter, whereby any person agrees to pay money to the Mortgagor or any consideration for the use, possession or occupancy of, or the conducting of any business on, or any estate in, the Real Estate or the Improvements or any part thereof, and all rents, income, profits, benefits, avails, advantages and claims against guarantors under any thereof, (all of the foregoing is herein referred to collectively as the "Leases");

(vi) Plans. All rights of the Mortgagor, if any, to plans and specifications, designs, drawings and other matters prepared in connection with the Real

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Estate (all of the foregoing is herein called the "Plans");

(vii) Contracts for Construction or Services. All rights of the Mortgagor, if any, under any contracts executed by the Mortgagor with any provider of goods or services for or in connection with any construction undertaken on, or services performed or to be performed in connection with, the Real Estate or the Improvements, including any architect's contract (all of the foregoing is herein referred to collectively as the "Contracts for Construction");

(viii) Contracts for Sale or Financing. All rights of the Mortgagor, if any, as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which the Mortgagor has, with the prior written consent of the Mortgagee, obtained the agreement of any person to pay or disburse any money for the Mortgagor's sale (or borrowing on the security) of the Collateral or any part thereof (all of the foregoing is herein referred to collectively as the "Contracts for Sale"); and

(ix) Other Property. All other property or rights of the Mortgagor of any kind or character related to the Real Estate or the Improvements, and all proceeds (including insurance and condemnation proceeds) and products of any of the foregoing, including all proceeds of the conversion, whether voluntary or involuntary, of any of the foregoing into cash or liquidated claims. (All of the Real Estate and the Improvements, and any other property constituting a portion of the Collateral which is real estate under applicable law, is sometimes referred to collectively herein as the "Premises").

## G R A N T

NOW THEREFORE, for and in consideration of the Mortgagee's executing and delivering the Loan Agreement, and of the Mortgagee's making any loan, advance or other financial accommodation at any time to or for the benefit of the Mortgagor, and in consideration of the various agreements contained herein and in the Loan Agreement and the other Related Documents, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Land Trustee and the Borrower, and in order to secure the full, timely and proper payment and performance of each and every one of the Liabilities,

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THE MORTGAGOR HEREBY MORTGAGES, CONVEYS, GRANTS, BARGAINS, SELLS, TRANSFERS AND ASSIGNS (AND THE BORROWER ALSO WARRANTS) TO THE MORTGAGEE AND ITS SUCCESSORS AND ASSIGNS FOREVER, AND GRANTS TO THE MORTGAGEE A CONTINUING LIEN UPON AND SECURITY INTEREST IN AND TO, ALL OF THE COLLATERAL,

TO HAVE AND TO HOLD the Collateral unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth. All of the Collateral, whether real, personal, or mixed, whether affixed or annexed or not (except where otherwise hereinabove specified) and all rights hereby conveyed and mortgaged are intended so to be as a unit and are hereby understood, agreed and declared to form a part and parcel of the Premises and to be appropriated to the use of the Premises, and shall be for the purposes of this Mortgage deemed to be real estate and conveyed and mortgaged hereby. As to any of the Collateral which (notwithstanding the aforesaid declaration and agreement) does not so form a part and parcel of the Premises, this Mortgage is hereby deemed to be, as well, a Security Agreement under the Uniform Commercial Code in effect in the jurisdiction in which the Premises are located (hereinafter referred to as the "UCC") for the purpose of creating hereby a security interest in such property, which Mortgagee hereby grants to Mortgagee as Secured Party (as said term is defined in the UCC), securing said indebtedness and obligations and Mortgagee shall have in addition to its rights and remedies hereunder all rights and remedies of a Secured Party under the UCC. As to any of the Collateral which the UCC classifies as fixtures, this instrument shall constitute a fixture filing and financing statement under the UCC.

The Mortgagor <sup>/beneficiary</sup> hereby covenants with and warrants to the Mortgagee and with the purchaser at any foreclosure sale: that at the execution and delivery hereof it is well seized of the Premises, and of a good, indefeasible estate therein, in fee simple; that the Collateral is free from all encumbrances whatsoever (and any claim of any other person thereto) other than the security interest granted to the Mortgagee herein and pursuant to the Related Documents and the encumbrances set forth in the title insurance policy insuring the lien of this Mortgage in favor of the Mortgagee (the "Permitted Exceptions"); that it has good and lawful right to sell, mortgage and convey the Collateral; and that it and its successors and assigns will forever warrant and defend the Collateral against all claims and demands whatsoever with the exception of the Permitted Exceptions.

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## I. COVENANTS AND AGREEMENTS OF MORTGAGOR' BENEFICIARY

Further to secure the full, timely and proper payment and performance of the Liabilities, the Mortgagor hereby covenants and agrees with, and warrants to, the Mortgagee as follows:

1.1. Payment of Liabilities. The Mortgagor agrees that it will pay, timely and in the manner required in the appropriate documents or instruments, the principal of and interest on the Note, and all other Liabilities (including fees and charges).

1.2. Payment of Taxes. The Mortgagor will pay, before delinquency, all taxes and assessments, general or special, and any and all levies, claims, charges, expenses and liens, ordinary or extraordinary, governmental or non-governmental, statutory or otherwise, due or to become due, that may be levied, assessed, made, imposed or charged on or against the Collateral or any property used in connection therewith, and will pay before due any tax or other charge on the interest or estate in lands created or represented by this Mortgage or by any of the other Related Documents, whether levied against the Mortgagor or the Mortgagee or otherwise, and will submit to the Mortgagee upon request all receipts showing payment of all of such taxes, assessments and charges.

1.3. Maintenance, Repair and Restoration of Improvements; Payment of Prior Liens. Mortgagor shall (a) promptly repair, restore or rebuild the Improvements which may become damaged or be destroyed; (b) keep the Premises in good condition and repair, without waste, and free from mechanics' liens or other liens or claims for lien not expressly subordinated to the lien hereof; (c) pay when due any indebtedness which may be secured by a lien or charge on the Premises superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such prior lien to Mortgagee; (d) complete within a reasonable time any building or buildings now or at any time in process of erection upon the Real Estate; (e) comply with all requirements of law, municipal ordinances, or restrictions of record with respect to the Premises and the use thereof; (f) suffer or permit no change in the general nature of the occupancy of the Premises, without Mortgagee's written consent; and (g) initiate or acquiesce in no zoning variation or reclassification, without Mortgagee's written consent.

1.4. Insurance. Mortgagor shall keep the Goods, the Improvements and all other Collateral insured against loss or damage by fire and such other hazards as may be requested by Mortgagee or required by the Loan Agreement, including, but not limited to, extended coverage, vandalism, malicious

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mischief, contractor's multiple peril ("Builders Risk Insurance") coverage during the period of construction, comprehensive public liability insurance and all other insurance commonly or, in the judgment of Mortgagee, prudently maintained by those whose business and use of real estate is similar to that of the Mortgagor. Mortgagor shall further provide Mortgagee with insurance certificates evidencing that the contractor secured by Mortgagor to perform general contracting work on the Premises has, in full force and effect, liability and worker's compensation insurance. All policies of insurance to be furnished hereunder shall be in forms, companies and amounts satisfactory to Mortgagee, with mortgagee clauses attached to all policies in favor of and in form satisfactory to Mortgagee, including a provision requiring that the coverage evidenced thereby shall not be terminated or materially modified without thirty (30) days' prior written notice to the Mortgagee. All policies shall further name Mortgagee as an additional insured and as a loss payee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee, and, in the case of insurance about to expire, shall deliver renewal policies not less than ten (10) days prior to their respective dates of expiration. Mortgagor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Mortgagee is included thereon under a standard mortgage clause acceptable to Mortgagee. Mortgagor shall immediately notify Mortgagee whenever any such separate insurance is taken out and shall promptly deliver to Mortgagee the policy or policies of such insurance.

#### 1.5. Adjustment of Losses With Insurer and Application of Proceeds of Insurance.

(a) In case of loss or damage by fire or other casualty, Mortgagee is authorized to (i) settle and adjust any claim under insurance policies which insure against such risks, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid in regard to such loss. In either case, the Mortgagee is authorized to collect and issue a receipt for any such insurance money. At the option of the Mortgagee, such insurance proceeds may be applied in the reduction of the Liabilities, whether due or not, or may be held by the Mortgagee and used to reimburse Mortgagor for the cost of the rebuilding or restoration of the Premises. Irrespective of whether such insurance proceeds are used to reimburse Mortgagor for the cost of said rebuilding or restoration or not, and irrespective of whether such insurance proceeds are or are not adequate for such purpose, the Premises 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. If

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the cost of rebuilding, repairing or restoring the Premises can reasonably exceed the sum of Two hundred thousand and 00/100 Dollars (\$200,000.00), then the Mortgagor shall obtain Mortgagee's approval of plans and specifications for such work before such work shall be commenced. In any case, where the insurance proceeds are made available for rebuilding and restoration, such proceeds shall be disbursed in the manner and under the conditions that the Mortgagee may require and upon Mortgagee being furnished with satisfactory evidence of the estimated cost of completion thereof and with architect's certificates, waivers of lien, contractor's and subcontractors' sworn statements and other evidence of cost and payments so that Mortgagee can verify that the amounts disbursed from time to time are represented by completed and in place work and that said work is free and clear of mechanics' lien claims. If the estimated cost of completion exceeds the amount of the insurance proceeds available, the Mortgagor immediately shall, on written demand of the Mortgagee, deposit with the Mortgagee in cash the amount of such estimated excess cost. 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 such proceeds remaining in the hands of the disbursing party shall be at least sufficient to pay for the cost of completion of the work free and clear of liens. Any surplus which may remain out of said insurance proceeds after payment of such cost of building or restoration shall, at the option of the Mortgagee, be applied on account of the Liabilities or be paid to any party entitled thereto without interest.

(b) Any provision of this Section 1.5 to the contrary notwithstanding, provided that (i) the insurance carrier does not deny liability as to the insured and Mortgagor demonstrates to Mortgagee's satisfaction that Mortgagor has the financial capacity (taking into account any proceeds from applicable insurance policies) to fulfill its obligations under the Note, this Mortgage and the other Related Documents during the process of rebuilding or restoration, (ii) no Default (as hereinafter defined) exists under this Mortgage, (iii) the proceeds of such casualty insurance are used solely for rebuilding or restoration and are sufficient to rebuild or restore the Premises as required hereunder (or Mortgagor deposits any deficiency with Mortgagee or deposits a letter of credit or other security satisfactory to Mortgagee in its absolute discretion to cover such deficiency), (iv) the funds are released under escrow or construction funding arrangements satisfactory to Mortgagee, and (v) the rebuilding or restoration can in Mortgagee's judgment be expected to be substantially completed prior to the maturity date of the Note, Mortgagee agrees to make such insurance proceeds available, after deducting therefrom any expenses incurred in the collection thereof, in accordance

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with the other provisions of this Section 1.5 for the rebuilding or restoration of the Premises. Any excess proceeds remaining after completion of the rebuilding or restoration of the Premises may be retained by Mortgagee at its option, for application against the Liabilities as set forth above or to any party entitled thereto, without interest.

1.6. Stamp and Other Taxes. If the Federal, or any state, county, local, municipal or other, government or any subdivision of any thereof having jurisdiction, shall levy, assess or charge any tax (excepting therefrom any income tax on the Mortgagee's receipt of interest payments on the principal portion of the indebtedness secured hereby), assessment or imposition upon this Mortgage, the Liabilities, the Note or any of the other Related Documents, the interest of the Mortgagee in the Collateral, or any of the foregoing, or upon the Mortgagee by reason of or as holder of any of the foregoing, or shall at any time or times require revenue stamps to be affixed to the Note, this Mortgage, or any of the other Related Documents, the Mortgagor shall pay all such taxes and stamps to or for the Mortgagee as they become due and payable. If any law or regulation is enacted or adopted permitting, authorizing or requiring any tax, assessment or imposition to be levied, assessed or charged, which law or regulation prohibits the Mortgagor from paying the tax, assessment, stamp, or imposition to or for the Mortgagee, then all sums hereby secured shall become immediately due and payable at the option of the Mortgagee. Thereafter, if the Mortgagor fails to make payment of all such sums within five (5) days of the Mortgagee's demand therefor, such failure shall constitute a Default (hereinafter defined) hereunder and all sums secured hereby shall become immediately due and payable.

1.7. Effect of Extensions of Time. If the payment of the Liabilities or any part thereof is extended or varied or if any part of any security for the payment of the Liabilities is released or additional security is taken, all persons now or at any time hereafter liable therefor, or interested in the Collateral, shall be held to assent to such extension, variation, or taking of additional security or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding such extension, variation, taking of additional security or release.

1.8. Recorded Instruments. That Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants and conditions of all instruments of record affecting the Collateral, noncompliance with which would affect the security of this Mortgage or impose

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any duty or obligation upon Mortgagor or other occupant of the Premises, or any part thereof, and Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Premises.

**1.9. 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, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Landlord in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including attorneys' fees, and any other monies advanced by Mortgagee in regard to any stamp tax or any Leases or to protect the Premises and the lien hereof, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable without notice and with interest thereon at the Default Rate (as defined in the Loan Agreement). 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.

**1.10. Mortgagee's Reliance on Tax Bills.** Mortgagee in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; or (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted. Mortgagee shall provide Mortgagor five (5) business days notice prior to making any payment under this Section 1.10.

**1.11. Condemnation.**

(a) Mortgagor hereby assigns, transfers and sets over unto the Mortgagee the entire proceeds of any award or any claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation (the "Condemnation Proceeds"). The Mortgagee may elect to apply the Condemnation Proceeds upon or in reduction of the Liabilities, whether due or not, or make the Condemnation Proceeds available for restoration or rebuilding of the

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Premises. Irrespective of whether the Condemnation Proceeds are made available for restoration or rebuilding, and irrespective of whether the Condemnation Proceeds are adequate for such purpose, the Premises shall be restored or rebuilt in accordance with plans and specifications to be submitted to and approved by the Mortgagee. In the event the Condemnation Proceeds are made available for rebuilding or restoration, the Condemnation Proceeds shall be disbursed in the manner and under the conditions that the Mortgagee may require and paid out in the same manner as provided in Section 1.5 hereof for the payment of insurance proceeds toward the cost of rebuilding or restoration. In such event, if the estimated cost to complete rebuilding or restoration exceeds the Condemnation Proceeds, Mortgagor immediately shall, on written demand of the Mortgagee, deposit with the Mortgagee in cash the amount of such excess cost. Any surplus which may remain out of the Condemnation Proceeds after payment of such cost of building or restoration shall, at the option of the Mortgagee, be applied on account of the Liabilities or be paid to any party entitled thereto, without interest.

(b) Any provision of this Section 1.11 to the contrary notwithstanding, provided that (i) Mortgagor demonstrates to Mortgagee's satisfaction that Mortgagor has the financial capacity (taking into account the Condemnation Proceeds) to fulfill its obligations under the Note, this Mortgage and the other Related Documents during the process of rebuilding or restoration, (ii) no Default (as hereinafter defined) exists under this Mortgage, (iii) the Condemnation Proceeds are used solely for rebuilding or restoration and are sufficient to rebuild or restore the Premises as required hereunder (or Mortgagor deposits any deficiency with Mortgagee or deposits a letter of credit or other security satisfactory to Mortgagee in its absolute discretion to cover such deficiency), (iv) the funds are released under escrow or construction funding arrangements satisfactory to Mortgagee, and (v) the rebuilding or restoration can in Mortgagee's judgment be expected to be substantially completed prior to the maturity date of the Note, Mortgagee agrees to make the Condemnation Proceeds available, after deducting therefrom any expenses incurred in the collection thereof, in accordance with the other provisions of this Section 1.11 for the rebuilding or restoration of the Premises. Any excess remaining after completion of the rebuilding or restoration of the Premises may be retained by Mortgagee at its option, for application against the Liabilities as set forth in Section 1.5, above, or paid to any party entitled thereto, without interest. In addition, in the event the Condemnation Proceeds are less than or equal to \$200,000, Mortgagee agrees to release such Condemnation Proceeds directly to the Mortgagor provided that the conditions

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set forth in items (i), (ii), (iii) and (v), above, are satisfied.

1.12. Mortgagee's Right of Inspection. Mortgagee shall have the right to inspect the Premises upon reasonable notice to the Mortgagor at all reasonable times and access thereto shall be permitted for that purpose.

1.13. Continuing Priority. The Mortgagor will: pay such fees, taxes and charges, execute and file (at the Mortgagor's expense) such financing statements, obtain such acknowledgements or consents, notify such obligors or providers of services and materials and do all such other acts and things as the Mortgagee may from time to time request to establish and maintain a valid and perfected first and prior lien on and security interest in the Collateral and to provide for payment to the Mortgagee directly of all cash proceeds thereof, with the Mortgagee in possession of the Collateral to the extent it requests; maintain its executive office and principal place of business at all times at the address shown above; keep all of its books and records relating to the Collateral on the Premises or at such address; keep all tangible Collateral on the Real Estate except as the Mortgagee may otherwise consent in writing; make notations on its books and records sufficient to enable the Mortgagee, as well as third parties, to determine the interest of the Mortgagee hereunder; and not collect any Rents or the proceeds of any of the Leases or Intangibles more than 30 days before the same shall be due and payable except as the Mortgagee may otherwise consent in writing.

1.14. Utilities. The Mortgagor will pay all utility charges incurred in connection with the Collateral and maintain all utility services available for use at the Premises.

1.15. Contract Maintenance; Other Agreements; Leases.

(a) The Mortgagor will, for the benefit of the Mortgagee, fully and promptly keep, observe, perform and satisfy each obligation, condition, covenant, and restriction of the Mortgagor affecting the Premises or imposed on it under any agreement between Mortgagor and a third party relating to the Collateral or the Liabilities secured hereby, including, without limitation, the Leases, the Contracts for Sale and the Contracts for Construction (collectively, the "Third Party Agreements"), so that there will be no default thereunder and so that the Persons (other than the Mortgagor) obligated thereon shall be and remain at all times obligated to perform for the benefit of the Mortgagee; and the Mortgagor will not permit to exist any condition, event or fact which could allow or serve as a

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basis or justification for any such person to avoid such performance. Without the prior written consent of the Mortgagee, the Mortgagor shall not (i) make or permit any termination or amendment of the rights of the Mortgagor under any Third Party Agreement; (ii) collect rents or the proceeds of any Leases or Intangibles more than 30 days before the same shall be due and payable; (iii) modify or amend any Leases, cancel or terminate the same or accept a surrender of the leased premises; (iv) consent to the assignment or subletting of the whole or any portion of any lessee's interest under any Lease, or grant any options to renew; or (v) in any other manner impair Mortgagee's rights and interest with respect to the Rents. The Mortgagor will (i) furnish Mortgagee, within ten (10) days after a request by Mortgagee to do so, a written statement containing the names of all lessees, terms of all Leases, including the spaces occupied and the rentals payable thereunder; (ii) exercise within five (5) days of any demand therefor by Mortgagee any right to request from the lessee under any Lease a certificate with respect to the status thereof; or (iii) not permit any Lease to become subordinate to any lien on the Premises without the prior written consent of Mortgagee and will include in each Lease a provision whereby the tenant thereunder covenants that it will not subordinate its leasehold interest therein to any lien on the Premises without the prior written consent of Mortgagee; the Mortgagor shall promptly deliver to the Mortgagee copies of any demands or notices of default received by the Mortgagor in connection with any Third Party Agreement and allow the Mortgagee the right, but not the obligation, to cure any such default. All security or other deposits, if any, received from tenants under the Leases shall be segregated and maintained in an account satisfactory to the Mortgagee and in compliance with the law of the state where the Premises are located and with an institution satisfactory to the Mortgagee.

(b) Nothing in this Mortgage or in any of the other Related Documents shall be construed to obligate Mortgagee, expressly or by implication, to perform any of the covenants of Mortgagor 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. Unless waived by Mortgagee, each of the Leases shall have a subordination provision in form and substance reasonably satisfactory to Mortgagee, subordinating the interest of the tenants under the Leases to this Mortgage, and all renewals, modifications, consolidations, replacements and extensions hereof and shall have attornment and noncancellation clauses in form and substance reasonably satisfactory to Mortgagee. Until all of the Liabilities and other sums secured by this Mortgage are paid in full,

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Mortgagee reserves the right to require that any Lease be made either superior to or inferior to the lien of this Mortgage.

(c) In the event of the enforcement by Mortgagee of the remedies provided for by law or by this Mortgage, the lessee under each Lease shall attorn to any person succeeding to the interest of Mortgagor 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, and shall not be bound by any amendment or modification to any Lease made without the consent of Mortgagee or said successor in interest. Each lessee, upon request by said successor in interest, shall execute and deliver an instrument or instruments confirming such attornment.

1.16. Notify the Mortgagee of Default. The Mortgagor shall notify the Mortgagee in writing forthwith upon learning of the occurrence of any Default hereunder, which notice shall describe such Default and the steps being taken by the Mortgagor with respect thereto.

1.17. No Assignments; Future Leases. The Mortgagor will not cause or permit any Rents, Leases, Contracts for Sale or other contracts relating to the Premises to be assigned, transferred, conveyed, pledged or disposed of to any party other than the Mortgagee without first obtaining the express written consent of the Mortgagee to any such assignment or permit any such assignment to occur by operation of law. In addition, the Mortgagor shall not cause or permit all or any portion of or interest in the Premises or the Improvements to be leased (that word having the same meaning for purposes hereof as it does in the law of landlord and tenant) directly or indirectly to any person, except with the prior written consent of the Mortgagee and, if granted, under Leases approved in writing by the Mortgagee.

1.18. Assignment of Leases and Rents and Collection.

(a) All of the Mortgagor's interest in and rights under the Leases now existing or hereafter entered into, and all of the Rents, whether now due, past due, or to become due, and including all prepaid rents and security deposits, and all other amounts due with respect to any of the other Collateral, are hereby absolutely, presently and unconditionally assigned and conveyed to the Mortgagee to be applied by the Mortgagee in payment of all sums due under the Notes, the other Liabilities and all other sums payable under this Mortgage. Prior to the occurrence of any Default, the Mortgagor shall have a license to collect and receive

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all Rents and other amounts, which license shall be terminated at the sole option of the Mortgagee, without regard to the adequacy of its security hereunder and without notice to or demand upon the Mortgagor, upon the occurrence of any Default. It is understood and agreed that neither the foregoing assignment to the Mortgagee nor the exercise by the Mortgagee of any of its rights or remedies under Article II hereof shall be deemed to make the Mortgagee a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or any portion thereof, unless and until the Mortgagee, in person or by agent, assumes actual possession thereof. Nor shall appointment of a receiver for the Collateral by any court at the request of the Mortgagee or by agreement with the Mortgagor, or the entering into possession of any part of the Collateral by such receiver, be deemed to make the Mortgagee a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Collateral or the use, occupancy, enjoyment or operation of all or any portion thereof. Upon the occurrence of any Default this shall constitute a direction to and full authority to each lessee under any Leases, each guarantor of any of the Leases and any other person obligated under any of the Collateral to pay all Rents and other amounts to the Mortgagee without proof of the Default relied upon. The Mortgagor hereby irrevocably authorizes each such person to rely upon and comply with any notice or demand by the Mortgagee for the payment to the Mortgagee of any Rents and other amounts due or to become due.

(b) The Mortgagor shall apply the Rents and other amounts to the payment of all necessary and reasonable operating costs and expenses of the Collateral, debt service on the Liabilities and otherwise in compliance with the provisions of the Loan Agreement.

(c) The Mortgagor shall at all times fully perform the obligations of the lessor under all Leases. The Mortgagor shall at any time or from time to time, upon request of the Mortgagee, transfer and assign to the Mortgagee in such form as may be satisfactory to the Mortgagee, the Mortgagor's interest in the Leases, subject to and upon the condition, however, that prior to the occurrence of any Default hereunder, the Mortgagor shall have a license to collect and receive all Rents under such Leases upon accrual, but not prior thereto, as set forth in paragraph (a) above.

(d) The Mortgagee shall have the right to assign the Mortgagee's right, title and interest in any Leases to any subsequent holder of this Mortgagee or any participating interest therein or to any person acquiring title to all or any part of the Collateral through foreclosure or otherwise. Any subsequent assignee shall have all the rights and powers

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herein provided to the Mortgagee. Upon the occurrence of any Default, the Mortgagee shall have the right to execute new leases of any part of the Collateral, including leases that extend beyond the term of this Mortgage. The Mortgagee shall have the authority, as the Mortgagor's attorney-in-fact, such authority being coupled with an interest and irrevocable, to sign the name of the Mortgagor and to bind the Mortgagor on all papers and documents relating to the operation, leasing and maintenance of the Collateral.

1.19. Compliance with Laws and Hazardous Materials. To the best knowledge of the Mortgagor, the Premises and its present use comply, and at all times shall comply, with all Federal, state and local statutes, laws, ordinances, codes, rules, regulations, orders or decrees regulating, relating to or imposing liability or standards of conduct concerning, any Hazardous Material now, or at any time hereafter, in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, and any so-called "Superfund" or "Superlien" law (all of the foregoing are hereinafter called the "Environmental Laws") and all zoning and other land use matters, and utility availability. Neither the Mortgagor nor, to the knowledge of Mortgagor, any other person has ever caused or permitted any Hazardous Material (hereinafter defined) to be generated or disposed of on, under or at the Premises or the Real Estate or any part thereof or any other real property legally or beneficially owned (or any interest or estate in real property which is owned) or operated by the Mortgagor (including, without limitation, any property owned by a land trust the beneficial interest in which is owned in whole or in part by the Mortgagor) and no such real property has ever been used (whether by the Mortgagor or by any other person) as (i) a dump site or permanent storage site for any Hazardous Material or (ii) a temporary storage site for Hazardous Material except in accordance with the Mortgagor's ordinary business practices and in compliance with applicable laws.

The Mortgagor hereby indemnifies the Mortgagee and agrees to hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Mortgagee for, with respect to, or as a direct or indirect result of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or releases from the Premises or the Real Estate or any other real property owned or operated by the Mortgagor of any Hazardous Material (including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any of the Environmental Laws, regardless of whether or not caused by, or within the control of, the Mortgagor).

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For purposes of this Mortgage, "Hazardous Material" means and includes (i) any asbestos, PCBs or dioxins, or insulation or other material composed of or containing asbestos, PCBs or dioxins, or (ii) any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) any of the Environmental Laws.

1.20. Reserve for Taxes, Assessments and Insurance. The Mortgagor covenants and agrees to pay to the Mortgagee (or as directed by Mortgagee, to a Depository) monthly until the Note and all of the other Liabilities have been paid in full, in addition to the monthly payments of principal and interest under the terms of the Note and concurrently therewith monthly until the said Note is fully paid, a sum equal to taxes and assessments next due upon the Premises (all as estimated by the Mortgagee) and the premiums that will next become due and payable on policies of fire, rental value and other insurance covering the Premises required under the terms of this Mortgage, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and insurance premiums will become due and payable, such sums to be held by the Mortgagee or the Depository, if any, without interest accruing thereon, to pay each of the said items.

All payments described above in this Section 1.20 shall be paid by the Mortgagor each month in a single payment to be applied by the Mortgagee or the Depository, if any, to the foregoing items in such order as the Mortgagee shall elect in its sole discretion.

The Mortgagor shall also pay to the Mortgagee, at least 30 days prior to the due date of any taxes, assessments or insurance premiums levied on, against or with respect to the Premises, such additional amount as may be necessary to provide the Mortgagee or the Depository, if any, with sufficient funds to pay any such tax, assessment and insurance premiums under this Section 1.20 at least 30 days in advance of the due date thereof. The Mortgagor's failure timely to make any payments required under this Section 1.20 shall be a Default under this Mortgage.

The Mortgagee or the Depository, if any, shall, within 20 days of receipt from the Mortgagor of a written request therefor together with such supporting documentation as the Mortgagee may reasonably require (including, without limitation, official tax bills or statements for insurance premiums), cause proper amounts to be withdrawn from the applicable depository account and paid to the Mortgagor for payment by the Mortgagor to the appropriate tax collecting authority or insurer. Even though the Mortgagor may have made all appropriate payments to the Mortgagee or the Depository, if any, as required by this Mortgage, the Mortgagor shall

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nevertheless have full and sole responsibility at all times to cause all taxes, assessments and insurance premiums to be fully and timely paid, and the Mortgagee or any Depository shall have no responsibility or obligation of any kind with respect thereto. If at any time the funds so held by the Mortgagee shall be insufficient to cover the full amount of all taxes, assessments and insurance premiums then accrued (as estimated by the Mortgagee) with respect to the then-current twelve-month period, the Mortgagor shall, within 10 days after receipt of notice thereof from the Mortgagee or the Depository, if any, deposit with the Mortgagee or the Depository, if any, such additional funds as may be necessary to remove the deficiency. Failure to do so within such 10-day period shall be a Default hereunder and all sums hereby secured shall immediately become due and payable at the option of the Mortgagee. In the event of a Default hereunder or if the Premises are sold under foreclosure or are otherwise acquired by the Mortgagee, accumulations under this Section 1.20 may be applied to the Liabilities in such order of applications as the Mortgagee may elect in its sole discretion. Any Depository hereunder shall not be liable for any act or omission performed in good faith or pursuant to the direction of any party hereto, but shall be liable only for its gross negligence or willful misconduct.

1.21. Financial Reporting. Within forty-five (45) days after the close of each calendar year of the Mortgagor, the Mortgagor shall furnish the Mortgagee with financial statements in such detail as the Mortgagee may reasonably request, prepared by the Borrower in accordance with generally accepted accounting principles (however, such financial statements may value real property owned by the Borrower at its fair market value, provided that such financial statements shall also show the actual cost to the Borrower of all such real property) and containing at least a balance sheet and an income statement for the Mortgagor and a statement of the income or loss resulting from the operation of the Premises during such fiscal year. The Mortgagor agrees to permit the Mortgagee and its agents, at reasonable times and intervals, to inspect and audit the Mortgagor's records relating to the Premises for any reasonable purpose.

1.22. Mortgagor's Right to Contest. Mortgagor may contest or object to the legal validity or amount of any tax or any mechanic's or materialmen's lien on the Premises on and subject to the following conditions: (i) After having given Mortgagee at least five business days prior written notice of its intention to institute such proceedings, Mortgagor shall in good faith have instituted appropriate legal proceedings with respect thereto, the pendency of which shall have the legal effect of staying the effectiveness and enforcement of such taxes or lien (as the case may be) and any and all other remedies relating thereto which

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may affect the Premises or the title thereto, and Mortgagor shall at all times thereafter prosecute such proceedings diligently and in good faith to completion; (ii) Mortgagor shall either (A) have duly paid the full amount of the tax or lien under protest or (B) have fully bonded over or title-insured over such tax or lien to Mortgagee's full satisfaction, and (iii) Mortgagee shall have notified Mortgagor that Mortgagee is satisfied that the validity, priority, value and utility of its lien and security interest on and in the Collateral will not be adversely affected by such contest, objection or proceedings. Notwithstanding anything to the contrary in this Mortgage, Mortgagor shall not be deemed to have failed to comply with Sections 1.2 or 1.3(d) of this Mortgage so long as it has satisfied the terms and conditions of this Section 1.22.

II. DEFAULT; REMEDIES

2.1. Defaults. Each of the following shall constitute a default ("Default") hereunder:

(a) The occurrence of an Event of Default under the terms and provisions of the Loan Agreement; or

(b) Non-compliance by the Mortgagor with, or failure by the Mortgagor to pay or perform, any obligation or agreement contained herein or in the Note or in any other Related Document (other than any non-compliance or failure which constitutes a default under Section 2.1(a) or 2.1(c)) and continuance of such non-compliance or failure for ten (10) days with respect to any monetary default under this Mortgage, the Note or any other Related Document, or for 30 days after notice thereof to the Mortgagor from the Mortgagee with respect to any non-monetary default under this Mortgage, the Note or any other Related Document; or

(c) A default by the Mortgagor occurs under the terms of any of the Leases or under any other Third Party Agreement and any such default continues for more than the applicable period of grace, if any, therein set forth.

(d) The occurrence of any of the following:

(i) the Mortgagor, or any beneficiary thereof shall file a petition seeking relief under the Federal Bankruptcy Code (11 U.S.C. 101 et seq.) or any similar law, state or Federal, whether now or hereafter existing, or any answer admitting insolvency or inability to pay its debts, or fail to obtain a vacation or stay of involuntary proceedings within ten (10) days, as hereinafter provided; or (ii) an order for relief shall be entered in an involuntary case against the Mortgagor, or a trustee or a receiver shall be appointed for the Mortgagor, or for all of the property of Mortgagor, or the major part thereof, in any involuntary proceeding, or

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any court shall have taken jurisdiction of the property of the Mortgagor, or the major part thereof, in any voluntary or involuntary proceeding for the reorganization, dissolution, liquidation or winding up of the Mortgagor or any beneficiary thereof, and such trustee or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within ten (10) days; or (iii) the Mortgagor or any beneficiary thereof, shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due, or shall consent to the appointment of a receiver or trustee or liquidator of all or a major part of its property; or (iv) the Mortgagor is formally charged under a Federal or state law, for which forfeiture of the Premises is a potential penalty.

2.2. Acceleration. Upon the occurrence of any Default, the entire indebtedness evidenced by the Note, and all other Liabilities, together with interest thereon at the Default Rate (as defined in the Loan Agreement) shall, notwithstanding any provisions of the Note or the other Related Documents, at once, at the option of the Mortgagee, become immediately due and payable without demand or notice of any kind to the Mortgagor or any other person.

2.3. Foreclosure; Expense of Litigation. Upon the occurrence of any Default, Mortgagee shall have the right immediately to foreclose this Mortgage. In any civil action to foreclose the lien hereof, there shall be allowed and included as Liabilities in the order or judgment for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the order or judgment) of procuring all such 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 civil actions or to evidence to bidders at any sale which may be held pursuant to such order or judgment the true condition of the title to or the value of the Collateral. All expenditures and expenses of the nature in this Section 2.3 mentioned, and such expenses and fees as may be incurred in the protection of the Collateral and maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the other Liabilities, including probate, bankruptcy and appellate proceedings, or in preparation for the commencement or defense of any proceeding of threatened civil actions or proceeding shall be immediately due and payable by

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Mortgagor, with interest thereon at the Default Rate, and shall be secured by this Mortgage.

2.4. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in Section 2.3 hereof; second, all other items which may under the terms hereof constitute Liabilities other than the Liabilities evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

2.5. Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and the Mortgagee hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, 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 usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of:  
(a) the Liabilities, or by any judgment or order foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale; and (b) the deficiency in case of a sale and deficiency.

2.6. 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 before or after the Liabilities secured hereby are declared to be immediately due, 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

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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. In such event Mortgagee in its discretion may, in accordance with law, enter upon and take and maintain possession of all or any part of the Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner 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, 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 the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power to: (a) cancel or terminate any Lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) elect to disaffirm any Lease or sublease which is then subordinate to the lien thereof; (c) extend or modify any 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 Liabilities and beyond the date of the issuance of a deed or deed to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the operations 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 a foreclosure of this Mortgage, discharge of the Liabilities, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Premises as to it may seem judicious; (e) insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) receive all of such Rents and proceeds, 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 prior notice to Mortgagor.

2.7. Application of Income Received by Mortgagee.  
Mortgagee, in the exercise of the rights and powers conferred herein, shall have full power to use and apply the Rents and proceeds of the Premises to the payment of or on

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account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the Premises, including the cost to manage and lease the Premises (which shall include appropriate compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents), establishing claims for damages, if any, and premiums on insurance hereinabove authorized;

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

(c) to the payment of all repairs, replacements, alterations, additions, betterments, and improvements of the Premises and of placing the Premises in such condition as will, in the judgment of Mortgagee, make it readily marketable and rentable;

(d) to the payment of any of the Liabilities or any deficiency which may result from any foreclosure sale.

2.8. Performance of Third Party Agreements. The Mortgagee may, in its sole discretion at any time after the occurrence of a Default (or prior thereto if so provided elsewhere in this Mortgage), notify any person obligated to the Mortgagor under or with respect to any Third Party Agreements of the existence of a Default, require that performance be made directly to the Mortgagee at the Mortgagor's expense, advance such sums as are necessary or appropriate to satisfy the Mortgagor's obligations thereunder and exercise, on behalf of the Mortgagor, any and all rights of the Mortgagor under the Third Party Agreements as the Mortgagee, in its sole discretion, deems necessary or appropriate; and the Mortgagor agrees to cooperate with the Mortgagee in all ways reasonably requested by the Mortgagee (including the giving of any notices requested by, or joining in any notices given by, the Mortgagee) to accomplish the foregoing.

2.9. Rights Cumulative. No right, power or remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other right, power or remedy, and each right, power and remedy herein conferred upon the Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the Mortgagee, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right,

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

### III. GENERAL

3.1. Release upon Payment and Discharge of Mortgagor's Obligations. Mortgagee shall release this Mortgage and the lien thereof by proper instruction upon payment and discharge of the Liabilities and upon payment of a reasonable fee to Mortgagee for the execution of such release.

3.2. Giving of Notice. Any notice which either party hereby may desire or be required to give to the other party shall be in writing and the mailing thereof by registered or certified mail, postage paid, and (i) if to the Borrower, addressed to it at the address shown above, with a copy to David A. Weininger, Esq., 123 West Madison Avenue, Suite 1500, Chicago, Illinois 60602; (ii) if to the Land Trustee, addressed to it at its address shown above; and (iii) if to the Mortgagee, addressed to it at its address shown above, or at such other place as any party hereto may by notice in writing designate as a place for service of notice, shall constitute service of notice hereunder.

3.3. Waiver of Notice. No action for the enforcement of the lien or of any provision hereof shall be subject to any defense which would not be good and available to the party interposing same in an action at law upon the Note hereby secured.

3.4. Waiver of Statutory Rights. Mortgagor shall not apply for or avail itself of any appraisal, valuation, 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 Collateral marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Collateral sold as an entirety. Mortgagor does hereby further expressly waive and release, to the extent now or hereafter permitted by law, all rights of reinstatement of this Mortgage pursuant to Section 15-1602 of the Illinois Mortgage Foreclosure Law and any and all right, privilege, advantage or exemption of any and all statutes and laws of the State of Illinois providing for the exemption of homesteads from sale on execution or otherwise.

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that all replacements, substitutions and additions to the property securing the indebtedness shall be and become immediately subject to the security interest of this Mortgage and covered hereby. The Mortgagor shall, from time to time, on request of the Mortgagee, deliver to the Mortgagee in reasonable detail an inventory of the Goods and other personal property securing the Liabilities. The Mortgagor covenants and represents that the Goods and all other personal property securing the Liabilities now are, and that all replacements thereof, substitutions therefor or additions thereto, unless the Mortgagee otherwise consents, will be free and clear of liens, encumbrances or security interest of others.

**3.7. Filing and Recording Fees.** Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgement of this Mortgage and all Federal, state, county, and municipal taxes, and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Mortgage.

**3.8. No Liability on Mortgagee.** Notwithstanding anything contained herein, the Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of the Mortgagor, whether hereunder, under any of the Third Party Agreements or otherwise, and the Mortgagor shall and does hereby agree to indemnify against and hold the Mortgagee harmless of and from any and all liabilities, losses or damages which the Mortgagee may incur or pay under or with respect to any of the Collateral or under or by reason of its exercise of rights hereunder; and any and all claims and demands whatsoever which may be asserted against the 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 any of the Collateral or in any of the contracts, documents or instruments evidencing or creating any of the Collateral. The Mortgagee shall not have responsibility for the control, care, management or repair of the Premises or be responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss, injury or death to any tenant, licensee, employee, stranger or other person. No liability shall be enforced or asserted against the Mortgagee in its exercise of the powers granted to it under this Mortgage, and the Mortgagor expressly waives and releases any such liability. Should the Mortgagee incur any such liability, loss or damage under any of the Third Party Agreements or under or by reason hereof, or in the defense of any claims or demands, the Mortgagor agrees to reimburse the Mortgagee immediately upon demand for the full amount thereof, including costs, expenses and attorneys' fees.

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### 3.5. Compliance with Illinois Mortgage Foreclosure Law.

In the event that any provision of this Mortgage shall be inconsistent with any provision of the Illinois Mortgage Foreclosure Law (Chapter 110, Sections 15-1101 et seq., Illinois Revised Statutes) (herein called 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. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the 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. 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 enumerated in Section 2.6 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

### 3.6. Security Agreement; Fixture Filing.

In the event of a Default under this Mortgage, the Mortgagee, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding as to both real property and personal property in accordance with its rights and remedies with respect to the real property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event the Mortgagee shall elect to proceed with respect to the personal property Collateral securing the Liabilities separately from the real property, fifteen (15) days notice of the sale of the personal property Collateral shall be reasonable notice. The reasonable expenses of retaking, holding, preparing for sale, selling and the like incurred by the Mortgagee shall include, but not be limited to, reasonable attorneys' fees and legal expenses incurred by Mortgagee. The Mortgagor agrees that, without the written consent of the Mortgagee, the Mortgagor will not remove or permit to be removed from the Premises any of the Goods or other personal property or fixtures securing the Liabilities except that so long as no Default has occurred and is continuing, Mortgagor shall be permitted to sell or otherwise dispose of such property when obsolete, worn out, inadequate, unserviceable or unnecessary for use in the operation of the Premises, upon replacing the same or substituting for the same other property at least equal in value to the initial value to that disposed of and in such a manner so that said other property shall be subject to the security interest created hereby and so that the security interest of the Mortgagee shall always be perfected and first in priority, it being expressly understood and agreed

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3.9. Successors. This Mortgage, and all provisions hereof, shall extend to and be binding upon Mortgagor and its successors, grantees and assigns, any subsequent owner or owners of the Premises and all persons claiming under or through Mortgagor, and the word "Mortgagor" when used herein shall include 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.

3.10. Severability. In the event one or more of the provisions contained in this Mortgage or the Note secured hereby or any other Related Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or enforceable provision had never been contained herein or therein. This Mortgage and the Note it secures are to be construed and governed by the laws of the State of Illinois.

3.11. No Offset. No offset or claim that Mortgagor now has or may have in the future against Mortgagee shall relieve Mortgagor from paying any amounts due under the Note secured hereby or from performing any other obligations contained herein or secured hereby.

3.12. No Reliance by Others on the Premises. Mortgagor shall not by act or omission permit any building or other improvement on the Premises not subject to the lien of this Mortgage to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or 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 used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagor shall not by act or omission impair the integrity of the Premises as zoned. Any act or omission by Mortgagor which would result in a violation of any of the provisions of this Section shall be void.

3.13. No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Premises, it is hereby understood and agreed that should the Mortgagee acquire an addition or other interests in or to the Premises or the ownership thereof, then, unless a contrary intent is

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

3.14. Mortgagee Not a Joint Venturer or Partner. The Mortgagor and the Mortgagee acknowledge and agree that in no event shall the Mortgagee be deemed to be a partner or joint venturer with the Land Trustee and the Borrower or with either of them. Without limitation of the foregoing, the Mortgagee shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Liabilities secured hereby, or otherwise.

3.15. Loan Agreement and other Related Documents; Construction Mortgage; Obligatory Future Advances.

(a) The Mortgagor covenants that it will timely and fully perform and satisfy all the terms, covenants and conditions of the Loan Agreement, this Mortgage, the Note and all of the other Related Documents.

(b) The Mortgagor covenants and agrees that, in accordance with the provisions of the Loan Agreement, all of the funds advanced and to be advanced thereunder have been and will be used exclusively to pay the costs of the construction of improvements on the Land (including the acquisition cost of the Land), and that this instrument constitutes a "Construction Mortgage" within the meaning of Section 9-313(1)(c) of the Illinois Uniform Commercial Code. All advances and indebtedness arising or accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the Loan Amount or the face amount of the Note, shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Mortgage. If there shall be any inconsistency between provisions of this Mortgage and the Loan Agreement or any other Loan Document, the terms and provisions of this Mortgage shall prevail.

(c) This Mortgage is granted to secure future advances and loans from the Mortgagee to or for the benefit of the Mortgagor or the Premises, as provided in the Loan Agreement, and costs and expenses of enforcing the Mortgagor's obligations under this Mortgage, the Loan Agreement and the Related Documents. All advances, disbursements or other payments required by the Loan Agreement are obligatory advances up to the credit limits established therein and

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shall, to the fullest extent permitted by law, have priority over any and all mechanics' liens and other liens and encumbrances arising after this Mortgage is recorded.

**3.16. Miscellaneous.**

(a) The Note secured hereby requires the payment of a late charge in the event any installment of principal and/or interest due thereunder and/or any deposits to be made pursuant to Section 1.20 hereof shall become overdue. Said Note requires the payment to the Mortgagee of a late charge of five percent (5%) of the amount of any monthly installment of interest received more than ten (10) days after such installment is due to defray part of the cost of collection. Said late charge shall be included in and become part of the Liabilities.

(b) The Borrower represents that the proceeds of this loan will not be used for the purchase of registered equity securities within the purview of Regulation G issued by the Board of Governors of the Federal Reserve System.

(c) Mortgagor on written request of the Mortgagee will furnish a signed statement of the amount of the indebtedness secured hereby and whether or not any default then exists hereunder and specifying the nature of such default or defaults.

(d) Mortgagee shall have the right at its option to foreclose this Mortgage subject to the rights of any tenant or tenants under the Leases and the failure to make any such tenant or tenants a party defendant to any such civil action or to foreclose their rights will not be asserted by the Mortgagor as a defense in any civil action instituted to collect the Liabilities, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Collateral, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) At the option of the 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 of the Leases upon the execution by Mortgagee and recording or registering thereof, at any time hereafter, in the Office wherein this Mortgage was recorded or registered, of a unilateral declaration to that effect.

(f) Upon any Default by Mortgagor and following the acceleration of maturity as herein provided, a tender of payment by the Mortgagor or by anyone in behalf of the Mortgagor of the amount necessary to satisfy the Liabilities made at any time prior to foreclosure sale shall constitute

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an evasion of the prepayment terms of the Note and be deemed to be a voluntary prepayment thereunder and any such payment will, therefore, include the additional payment required under the prepayment privilege, if any, contained in the Note or if at that time there be no prepayment privilege then such payment will include an additional payment of two percent (2%) of the then principal balance.

(g) Borrower represents and warrants that the loan secured by this Mortgage is a loan secured by a mortgage on real estate which comes within the purview of paragraph 6404, Section 4(1)(1) of Chapter 17 of the Illinois Revised Statutes.

3.17. Land Trustee: Exculpation and Authority.

(a) This Mortgage is executed by the Land Trustee not individually or personally, but solely as trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on the Land Trustee personally to pay the Note or any interest that may accrue thereon or any of the indebtedness arising or accruing under or pursuant hereto or to the Note, or to perform any covenant, undertaking, representation or agreement, either express or implied, contained herein or in the Note, all such personal liability of the Land Trustee, if any, being expressly waived by the Mortgagee and by each and every person now or hereafter claiming any right or security under this Mortgage; provided, however, that nothing herein contained shall in any way limit the liability of the Borrower or of any guarantor or other obligor (not including the Land Trustee) hereunder or under the Loan Agreement, the Note or the other Related Documents.

(b) The Land Trustee hereby warrants that it possesses full power and authority to execute and deliver this instrument.

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WITNESS the respective hands and seals of the Land Trustee and the Borrower at Chicago, Illinois, on the day and year first above written, pursuant to proper authority duly granted.

MORTAGOR:

PARKWAY BANK AND TRUST COMPANY,  
not personally but as Trustee  
under the Trust

Attest.

By: [Signature]  
Its: ASST. VICE PRESIDENT - TRUST OFFICER

[Signature]  
SECRETARY, Vice President

[Signature]  
Michael R. Sparks

Accepted:

MORTGAGEE:

By: [Signature]  
Vice President

DSH9D11S

THIS RIDER IS ATTACHED TO Construction Mortgage, Assignment of Leases and Rents,\* AND MADE A PART HEREOF. \*Security Agreement and Financing Statement.

The Trustee in executing this document SPECIFICALLY EXCLUDES paragraph 1.19 & all related para- of this document as though it did not exist thereon relative to the graphs Trustees execution hereof and SPECIFICALLY EXCLUDES all references to any enviromental condition of the premises whether under the ILLINOIS ENVIROMENTAL PROTECTION ACT or otherwise. The beneficiary of this Trust, as management and control of the premises and as such, has the authority on its/their own behalf to execute as enviromental representative but not as agent for or on behalf of the Trustee.

PARKWAY BANK AND TRUST COMPANY, as Trustee

Rider attached hereto and made a part thereof.

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF C O O K )

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT ROSANNE DUPASS personally known to me to be the ASST. VICE President of Parkway Bank and Trust, an Illinois banking corporation, as Trustee as aforesaid and BETTY DROGOS personally known to me to be the VICE PRESIDENT Secretary of said corporation, and personally known to me to be the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Asst. Vice President and Vice President Secretary of said corporation, they signed and delivered the said instrument pursuant to proper authority duly given by the Board of Directors of said corporation as Trustee as aforesaid, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 11th day of ~~December, 1989~~ January, 1990

*Rosemary Galluzzi*  
Notary Public

My Commission expires:

OFFICIAL SEAL  
ROSEMARY GALLUZZI  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXP. APR. 22, 1991

OFFICIAL SEAL  
ROSEMARY GALLUZZI  
NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXP. APR. 22, 1991

Notary's Office

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STATE OF ILLINOIS )  
                          ) SS.  
COUNTY OF C O O K )

I, David A. Weinger, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Michael R. Sparks, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument, as his free and voluntary act and deed for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23<sup>rd</sup> day of December, 1966.  
*Janum*

David A. Weinger  
Notary Public

My Commission expires:

Feb 25, 1970

SEAL

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## Exhibit A Legal Description

### Parcel 1:

That part of Section 7, Township 42 North, Range 9 East of the Third Principal Meridian, described as follows:

Beginning at a point on the Northerly line of Algonquin Road, 1963.0 feet (as measured along said Northerly line) Southeasterly of the West line of said Section 7; thence North in a straight line to a point in the North line of said Section 7, 1753.40 feet (as measured along the North line of said Section 7, East of the North West corner of said Section; thence East along the North line of said Section 7, to the East line of the West 1/2 of the North East 1/4 of said Section 7; thence South along said East line to the Northerly line of Algonquin Road; thence Northwesterly along the Northerly line of Algonquin Road to the point of beginning, in Cook County, Illinois.

Also

### Parcel 2:

That part of the South West 1/4 of the South East 1/4 of Section 6, Township 42 North, Range 9 East of the Third Principal Meridian, described as follows:

Beginning at a point on the East line of the South West 1/4 of the South East 1/4 of said Section 6, 162.0 feet North of the South East corner of said South West 1/4 of the South East 1/4; thence North 89 Degrees 03 Minutes West, 275.0 feet; thence South 55 Degrees 41 Minutes 05 Seconds West, 280.58 feet to the South line of said Section 6; thence East along said South line to the East line of the South West 1/4 of the South East 1/4 of said Section 6, and thence North along the East line of the South West 1/4 of the South East 1/4 of Section 6 aforesaid, 162.0 feet to the point of beginning, all in Cook County, Illinois.

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01-07-200-001  
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01-07-400-001  
01-06-401-014

Volume: 1

Street Address: 350-362 Bateman Road  
Barrington Hills, Illinois

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