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Fred R. McMorris
Rooks, Pitts and Poust
201 Naperville Road
Wheaton, Illinois 60187

THIS MORTGAGE IS JUNIOR AND SUBORDINATE ONLY TO THAT
TRUST DEED DATED JULY 12, 1978 MADE BY
LEN HRYNEWYCZ AND MARIA HRYNEWYCZ TO THE
FIRST NATIONAL BANK OF CHICAGO TO SECURE A
NOTE FOR SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00)

Property of Cook County Clerk's Office

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NBD WINFIELD BANK

MORTGAGE AND SECURITY AGREEMENT

ROLLING MEADOWS

RE: Loans to Delite Marble, Inc.

THIS MORTGAGE ("Mortgage") is made as of August 13, 1991 by LEN HRYNEWYCZ AND MARIA HRYNEWYCZ, individuals residing at 5405 Silent Brook, Rolling Meadows, Illinois (together the "Mortgagor") to NBD WINFIELD BANK, an Illinois banking corporation, having its principal office at 0 N 010 Winfield Road, Winfield, Illinois 60190 ("Mortgagee").

R E C I T A L S

WHEREAS, Delite Marble, Inc. ("Borrower") and NBD Trust Company of Illinois, as trustee under this agreement dated August 6, 1991 and known as trust 5452WH ("Land Trust") is indebted to Mortgagee in the principal amount of Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) together with interest thereon from and after the date hereof as evidenced by, at the rates and upon the additional terms provided in that certain Note of even date herewith ("750,000 Note"), executed by Borrower and made payable to the order of and delivered to Mortgagee, and by this reference incorporated herein and as further described in the Loan Agreement dated as of the date hereof ("Agreement") executed by Borrower, Mortgagor and Mortgagee as a part of this transaction and incorporated herein by reference;

WHEREAS, Borrower and Land Trust are indebted to Mortgagee in the principal amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) together with interest thereon from and after the date hereof as evidenced by, at the rates and upon the additional terms provided in that certain Note of even date herewith ("250,000 Note"), executed by Borrower and Land Trust and made payable to the order of and delivered to Mortgagee, and by this reference incorporated herein and as further described in the Agreement;

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WHEREAS, Borrower is indebted to Mortgagee in the principal amount of One Hundred Eight Seven Thousand Eight Hundred Twenty and 00/100 Dollars (\$187,820.00) together with interest thereon from and after the date hereof as evidenced by, at the rates and upon the additional terms provided in that certain Note of even date herewith ("187,820 Note"), executed by Borrower and made payable to the order of and delivered to Mortgagee, and by this reference incorporated herein and as further described in the Agreement;

WHEREAS, Borrower is indebted to Mortgagee in the principal amount of Sixty Thousand and 00/100 Dollars (\$60,000.00) together with interest thereon from and after the date hereof as evidenced by, at the rates and upon the additional terms provided in that certain Note of even date herewith ("60,000 Note"), executed by Borrower and made payable to the order of and delivered to Mortgagee, and by this reference incorporated herein and as further described in the Agreement;

WHEREAS, Borrower is indebted to Mortgagee in the principal amount of One Million Fifty Thousand and 00/100 Dollars (\$1,050,000.00) together with interest thereon at the rates and upon the additional terms provided in that certain Mortgage Note dated May 2, 1988 ("1,050,000 Note") executed by Borrower and Len Hrynewycz and Marin Hrynewycz and made payable to the order of and delivered to Mortgagee, and by this reference incorporated herein; and

WHEREAS, the indebtedness evidenced by the \$750,000 Note, \$250,000 Note, \$187,820 Note, \$60,000 Note and the \$1,050,000 Note (collectively the "Notes") is to be disbursed from time to time by the Mortgagee to or for the benefit of the Borrower and the Mortgagor to the extent provided in and according to the provisions of the Notes and the Agreement;

WHEREAS, the individuals comprising Mortgagor are the sole shareholders of the Borrower and also are the guarantors of the indebtedness evidenced by the Notes;

WHEREAS, the parties hereto intend and agree that all advances, indebtedness and obligations arising under the Guaranty Agreement dated as of the date hereof made by Len Hrynewycz and the Guaranty dated as of the date hereof by Marin Hrynewycz (together the "Guaranties"), in favor of the Mortgagee shall be secured by this Mortgage;

WHEREAS, as a condition of making the Loans evidenced by the Notes, Mortgagee has required that Mortgagor mortgage the "Premises" (as hereinafter defined) to the Mortgagee, and Mortgagor has executed, acknowledged, and delivered this Mortgage to secure the Guaranties.

NOW, THEREFORE, in consideration for the sums advanced by Mortgagee to Borrower under the Notes, and to secure the Guaranties of payment of the principal sum and interest thereon as evidenced by the Notes, the performance of the covenants and agreements contained in the Guaranties, including any and all modifications, renewals, extensions and/or other changes to the Guaranties, the Mortgagor does, by these presents, grant, transfer, bargain, set over, pledge, convey, and mortgage unto Mortgagee, its successors and assigns forever, the Real Estate and all of Mortgagor's estate, right, title, and interest therein as legally and commonly described on Exhibit "A", attached hereto and by this reference incorporated herein and as further defined and described in the Agreement ("the Land");

Together with:

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(i) All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, and alleys adjoining the Land; (ii) All and singular the tenements, hereditaments, easements, appurtenances, passages, 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; (iii) All rents, income issues, proceeds, and profits accruing and to accrue from the Premises herein defined; and (iv) All buildings and improvements of every kind and description now or hereafter erected or placed on the Land 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 and equipment, used in the ownership and operation of the improvement situated thereon, including but without limitation, any and all air conditioners, antennae, awnings, basins, bathtubs, bidets, boilers, built-in bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, furnaces, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Land in any manner with parking and other related facilities, in possession of Mortgagor and now or hereafter located in, on, or upon, or installed in or affixed to the Real Estate legally described herein or any improvements or structures used in connection with all accessories and parts now attached to or used in connection with any such equipment or materials or which may hereafter, at any time, be placed in or added thereto, and also any and all replacements and proceeds of any such equipment and materials, together with the proceeds of any of the foregoing; it being mutually agreed, intended, and declared, that all the aforesaid property 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; notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the Real Estate, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Illinois Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Mortgagee as a secured party and Mortgagor as debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Paragraph 12 hereof (all of the foregoing including the Real Estate, referred to collectively as the "Premises").

TO HAVE AND TO HOLD, the same unto the Mortgagee and its successors and assigns forever, for the purpose and uses herein set forth.

PROVIDED, HOWEVER, that if the Borrower shall pay the principal and all interest as provided by the Notes, and shall pay all other sums herein or in the Notes, the Guaranties or Agreement provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein or in the Loan Documents contained, whether or not the amount of principal, interest, costs, fees and/or expenses exceeds or is less than the face amount of the Notes, then this Mortgage shall be released upon payment by the Borrower to the Mortgagee of a reasonable release fee, otherwise to remain in full force and effect.

To induce the Mortgagee to make the Loans, Mortgagor further agrees, represents, warrants, and covenants to the Mortgagee as follows:

**ARTICLE I
SECURITY FOR GUARANTY**

1.01 **Guaranty.** This Mortgage is being made by Mortgagor to secure the Guaranties. Such Guaranties are granted to secure the indebtedness of Borrower under the Notes.

**ARTICLE II
TAXES AND OTHER CHARGES**

2.01 **Monthly Deposit.** Mortgagor shall deposit or cause to be deposited with the Mortgagee on the 1st day of each month, an amount equal to 1/12th of the annual general real estate taxes for the Premises, as reasonably estimated by Mortgagee, so that there shall be on deposit with the Mortgagee, the estimated amount of unpaid general taxes for the Real Estate for year(s) previous to the year of the month in which the deposit is being made (even though such previous year(s) real estate taxes may not then be in collection); and an amount for the year in which the deposit is being made equal to the monthly deposit amount multiplied by the calendar number (January being number 1) of the month in which the deposit is required to be made. Mortgagor hereby pledges the account required and specified herein to Mortgagee as collateral security for the loan evidenced by the Notes and for the payment of real estate taxes on the Premises. Said escrow account shall be maintained on a tax lien (calendar year) basis, regardless of the date on which the taxes are actually due. Funds deposited in escrow with Mortgagee pursuant to the provisions of this paragraph shall be placed in an interest bearing account and all interest accrued thereon shall belong to Mortgagor. Mortgagor shall promptly deliver to Mortgagee the real estate tax bill for the Premises upon receipt of the same from the applicable governmental agency whereupon Mortgagee will pay the real estate tax bill directly to the county treasurer's office.

2.02 **Contest of Validity.** Mortgagor may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes or assessments, provided that the following conditions have been satisfied:

- a. that such contest shall have the effect of preventing the collection of the tax or assessment so contested and the sale or forfeiture of said Premises or any part thereof, or any interest therein, to satisfy the same;
- b. that Mortgagor has notified Mortgagee in writing of the intention of Mortgagor to contest the same, before any tax or assessment has been increased by any interest, penalties, or costs; and
- c. that Mortgagor shall have deposited with Mortgagee at such place as Mortgagee may from time to time in writing appoint, a sum of money, or other security reasonably acceptable to Mortgagee which shall be sufficient in the reasonable judgment of the Mortgagee to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall at all times upon notice from Mortgagee

increase such amount to cover additional penalties and interest whenever, in the reasonable judgment of the Mortgagee, such increase is advisable.

2.03 Payment By Mortgagee. In case the Mortgagor, after demand is made upon it by Mortgagee, shall fail to prosecute such contest with reasonable diligence or shall fail to maintain sufficient funds on deposit as hereinabove provided, the Mortgagee may, in its sole and exclusive discretion and at its sole option, upon notice to Mortgagor, apply the monies and/or liquidate the securities deposited with Mortgagor, in payment of, or on account of, such taxes and assessments, or any portion thereof then unpaid, including the payment of all penalties and interest thereon. The notice required herein to be given is and shall only be a requirement of notice of the occurrence of the application and/or liquidation; and, such application and/or liquidation may be simultaneous with the giving of said notice.

2.04 Deficiency. If the amount of the money and/or security so deposited shall be insufficient as aforesaid for the payment in full of such taxes and assessments, together with all penalties and interest thereon, the Mortgagor shall forthwith upon demand, either:

- a. deposit with the Mortgagee a sum which, when added to the funds then on deposit, shall be sufficient to make such payment in full, or,
- b. in case the Mortgagor shall have applied funds on deposit on account of such taxes, restore said deposit to an amount reasonably satisfactory to Mortgagee.

2.05 Return of Excess. Provided Mortgagor is not then in default hereunder, the Mortgagee shall, upon the final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill for such taxes, apply the money so deposited in full payment of such taxes and assessments or that part thereof then unpaid, together with all penalties and interest due thereon and return on demand the balance of said deposit, if any, to Mortgagor.

ARTICLE III INSURANCE

3.01 Insurance Coverage. (a) Casualty. Mortgagor shall keep the buildings and improvement of every kind and description (the "Improvements") now existing or hereafter erected on the Premises, all property (whether real, personal or mixed) incorporated therein and all materials and supplies delivered to the Premises for use in connection with the construction of any Improvements, together with all equipment used for that purpose, 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, and Mortgagor shall pay promptly, when due, any premiums on such insurance. Unless Mortgagee otherwise agrees, all such insurance shall provide "all risk" coverage and shall be carried with companies acceptable to Mortgagee holding a current Policyholder's Alphabetic and Financial Size Category Rating of not less than A+X according to A.M. Best's Insurance Reports, and shall have attached thereto standard noncontributing mortgage clauses in favor of Mortgagee, as well as standard waiver of subrogation endorsements. The Improvements and all such property, materials, supplies and equipment shall be insured to an amount equal to one hundred percent (100%) of the full insurable value thereof (but in no event less than actual replacement value without deduction for depreciation) at all times

against loss or damage by fire, lightning, wind storm, explosion, riot and civil commotion, vandalism and malicious mischief, theft and such other risks as are usually included under what is now known as broad form extended coverage. 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 of ownership or of occupancy of the Premises (without implying or creating any waiver of the right of approval thereof by Mortgagee), immediate notice thereof by mail shall be delivered to all insurers. In the event of any 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 and solely to Mortgagee (which may, but need not, make proof of loss) and Mortgagee is hereby authorized to adjust, collect, and compromise in its discretion all claims under all policies, and Mortgagor shall sign, upon demand by Mortgagee, all receipts, vouchers, and releases required by such insurance companies. After deducting any costs of collection, Mortgagee may use or apply the proceeds, at its sole option, (i) as a credit upon any portion of the indebtedness secured hereby, or (ii) to repairing and restoring the Improvements, in which event Mortgagee shall not be obliged 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, or (iii) to deliver same to Mortgagor. In the event such proceeds are applied to restoring the Improvements, 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, Mortgagor shall furnish Mortgagee with all plans and specifications for such rebuilding or restoration as Mortgagee may require and approve. No payment made prior to the final completion of such work shall exceed ninety percent (90%) of the value of the work performed from time to time, and at all times the undischursed balance of said proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of such work, free and clear of any liens. No interest shall be allowed to Mortgagor on any proceeds of insurance paid to and held by Mortgagee. In the event 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 sole 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 sole 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 by such company as it may determine, the cost of which shall be repaid to Mortgagee by Mortgagor upon demand. Mortgagor shall furnish to Mortgagee, upon its request, and without cost to Mortgagee, estimates or appraisals of insurable value, such as are regularly and ordinarily made by insurance companies to determine the then replacement cost of the Improvements and all other property, materials, supplies and equipment described in the first sentence of this subparagraph 3.01(n).

(b) Liability. Mortgagor shall carry and maintain in full force at all times comprehensive public liability insurance as may be required from time to time by Mortgagee in forms, amounts, and with companies 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 00/100 Dollars (\$ 1,000,000.00) single limit and that the policy or policies shall name Mortgagee as an additional insured party thereunder.

(c) Intentionally Omitted.

(d) 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.

(e) Other Insurance. Mortgagor shall procure and maintain insurance against such other perils and risks (exclusive of the perils and risks insured against under subparagraphs 3.01(a), (b) and (c) above) as Mortgagee shall request and, without any such request, shall procure and maintain statutory worker's compensation and occupational disease insurance, insurance against statutory structural work net liability, war risk coverage and boiler and machinery insurance. All such insurance shall be maintained under policies containing such provisions and coverages and being in such amounts as are approved by Mortgagee, which policies shall name Mortgagee as insured thereunder. Mortgagor shall cause any architects and general contractors providing services to the Premises to procure professional liability insurance in such amounts and with such coverages as shall be satisfactory to Mortgagee.

(f) Policies. Unless Mortgagee otherwise agrees, all policies of insurance required hereunder to be maintained by the 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, Mortgagee being named as additional insured thereunder payment of losses notwithstanding any acts or omissions of Mortgagor and giving written notice to Mortgagee of their expiration or cancellation at least thirty (30) 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 therefor, as aforesaid. All policies of insurance required hereunder shall contain lender's loss payable endorsements in favor of Mortgagee.

ARTICLE IV CREATION OF LIENS

4.01 **No Additional Liens.** Except as disclosed on Exhibit B attached hereto and made a part hereof, Mortgagor shall not create, suffer, or permit to be created or filed against the Premises, any mortgage lien or other lien whether superior or inferior to the lien of this Mortgage without prior written consent of Mortgagee, excepting only the lien of real estate taxes and assessments not yet due.

4.02 **Contest of Validity.** Notwithstanding the foregoing prohibition against encumbrances, Mortgagor may in good faith and with reasonable diligence contest the validity or amount of any Mechanics' Lien and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Premises or any part thereof, or any interest therein, to satisfy such Mechanics' Lien; (ii) within ten (10) days

after Mortgagor has been notified of the filing of such Mechanics' Lien, Mortgagor shall have notified Mortgagee in writing of Mortgagor's intention to contest such Mechanics' Lien; and (iii) Mortgagor shall have either obtained a title insurance endorsement over such Mechanics' Liens insuring Mortgagee against loss by reason of the Mechanics' Liens or Mortgagor shall have deposited with Mortgagee at such place as Mortgagee from time to time in writing appoint, and in the absence of such appointment, then at the place of payment designated in the Notes, a sum of money (the "Deposits") which shall be sufficient in the judgment of Mortgagee to pay in full such Mechanics' Lien and all interest which might become due thereon. Mortgagor shall increase the Deposits whenever, in the judgment of Mortgagee, such increase is advisable. The Deposits are to be held without any allowance of interest. Mortgagee may, at its option, pay the Deposits, or any part thereof, to the Mechanics' Lien claimant if Mortgagor (i) fails to maintain sufficient Deposits or (ii) fails to act in good faith or with reasonable diligence in contesting the Mechanics' Lien claims. If the Mechanics' Lien contest is resolved in favor of the claimant and Mortgagor is not in default hereunder, Mortgagee shall pay the Deposits, or any part thereof, to the claimant upon Mortgagee's receipt of evidence satisfactory to Mortgagee of the amount to be paid. Mortgagee shall pay any remaining Deposits to Mortgagor, provided Mortgagor is not in default hereunder.

4.03 **No Waiver of Rights.** Any waiver by Mortgagee of the provisions of this Paragraph shall not be deemed to be a waiver of the right of Mortgagee to insist upon strict compliance with the provisions of this Paragraph in the future.

**ARTICLE V
PRESERVATION AND RESTORATION OF PREMISES
AND COMPLIANCE WITH GOVERNMENTAL REGULATIONS**

5.01 **Preservation.** Mortgagor shall not permit any building or other improvement on the Premises to be materially altered, removed, or demolished, nor shall any fixture 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, and condition to those replaced, free from any security interest in or encumbrances thereon or reservation of title thereto except in favor of Mortgagee. Subject to conditions hereinafter set forth, 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.

5.02 **Maintenance.** Mortgagor further agrees to permit, commit, or suffer no waste, impairment, or deterioration of the Premises or any part or improvement thereof; to keep and maintain the Premises and every part thereof in good repair and condition, subject to ordinary wear and tear, to effect such repairs as the Mortgagee may reasonably require, and, from time to time, to 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; to comply with all statutes,

orders, requirements or decrees relating to said Premises and as provided in any notice given by any federal, state, or municipal authority; and to observe and comply with all conditions and requirements necessary 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 said Premises.

ARTICLE VI EMINENT DOMAIN

6.01 **Assignment.** So long as any portion of the principal balance evidenced by the Notes remains unpaid, 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, of 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 therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof), are hereby assigned by Mortgagor to Mortgagee, to the extent of the unpaid indebtedness evidenced by the Notes, which award Mortgagee is hereby authorized to give appropriate receipts and acquittance therefore, and, subject to terms hereinafter set forth, Mortgagee shall apply the proceeds of such award as a credit upon any portion of the indebtedness secured hereby or, at its option, permit the same to be used to repair and restore the improvements in the same manner as hereinafter set forth with regard to insurance proceeds received subsequent to a fire or other casualty to the Premises.

6.02 **Notice.** 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, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings.

6.03 **Further Assignments.** 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/or instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards in accordance with and subject to the provisions hereof, and other compensation heretofore and hereafter to be made to Mortgagor for any taking, either permanent or temporary, under any such proceeding.

6.04 **Defense.** Notwithstanding anything aforesaid to the contrary, Mortgagor shall have the sole authority to conduct the defense of any condemnation or eminent domain proceeding and (so long as the amount of any condemnation or eminent domain award exceeds the unpaid principal balance evidenced by the Notes) the sole authority to agree to and/or accept the amounts, terms, and conditions of any and all condemnation or eminent domain settlements or awards.

6.05 **Absence Of Complete Economic Unit.** If any portion of or interest in the Premises is taken by condemnation or eminent domain, and the remaining portion of the Premises is not, in the sole judgment of Mortgagee, a complete economic unit having equivalent value to the

Premises as it existed prior to the taking, then, at the option of Mortgagee, the entire indebtedness secured hereby and evidenced by the Notes shall immediately become due and payable.

6.06 Conditions Precedent To Disbursement. In the event that Mortgagee elects to make available to the Mortgagor the proceeds of any award for eminent domain to restore any improvements on the Premises, no disbursement thereof shall occur unless Mortgagor is in compliance with each of the following conditions: (i) no Event of Default shall then exist under any of the terms, covenants, and conditions of the Notes, this Mortgage, or any other documents or instruments evidencing or securing the Notes; (ii) Mortgagee shall first be given satisfactory proof that such improvements have been fully restored or that by the expenditure of such award and any sums deposited with Mortgagee pursuant to the terms hereof, will be fully restored, free and clear of all mechanic's and materialmen's liens, except for liens for which adequate provision is made as required above within six (6) months from the date of such taking; and (iii) in the event such award shall be insufficient to restore the improvements, Mortgagor shall deposit promptly with Mortgagee funds which, together with the award proceeds, would be sufficient to restore the improvements.

6.07 Excess Proceeds. The excess of the proceeds of the award, above the amount necessary to complete such restoration, shall be applied as a credit upon any portion, as selected by Mortgagee, of the indebtedness secured hereby, but the proceeds of the award released by Mortgagee for restoration shall, in no event, be deemed a payment of the indebtedness secured hereby.

ARTICLE VII ACKNOWLEDGEMENT OF DEBT AND ESTOPPEL CERTIFICATE

7.01 Acknowledgement Of Amount Due. Mortgagor shall furnish to Mortgagee, or any of its successors and/or assigns, from time to time, in a form reasonably required by Mortgagee within thirty (30) days after Mortgagee's request, a written statement and acknowledgment of the amount then due upon the Notes as of a specified date certain, whether any alleged offsets or defenses then exist against the indebtedness secured by this Mortgage, and any other matter reasonably requested by Mortgagee.

7.02 Reliance. It is specifically acknowledged and understood by Mortgagor that Mortgagee shall rely on the truth of such statements and acknowledgements.

ARTICLE VIII FINANCIAL BOOKS AND RECORDS

8.01 Maintenance Of Records. Mortgagor shall keep and maintain or cause to be kept and maintained full and correct books and records showing in detail all aspects of the Premises and within ten (10) days after demand therefore to permit Mortgagee, during normal business hours, to examine and photocopy such books and records and all supporting vouchers and data, at any time and from time to time, on request at Mortgagor's offices, hereinbefore identified or at such other location as may be mutually agreed upon.

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8.02 Furnish Records. Mortgagor shall within ninety (90) days after the end of each fiscal year of Mortgagor, furnish to Mortgagee reviewed year end financial statements relating to the Premises for such fiscal year, in reasonable detail, and in any event including such itemized statements of receipts and disbursements as shall enable Mortgagee to determine whether a breach or other default hereunder ("Event of Default") then exists. Such financial statements shall be prepared and reviewed at Mortgagor's expense in accordance with generally accepted accounting principles and shall include a statement as to whether or not Mortgagor has knowledge of any event or circumstance which constitutes or with the passage of time will constitute an Event of Default hereunder or under any other document executed in connection with or in any way related to this mortgage loan.

8.03 Annual Financial Statement. Mortgagor, if a corporation, partnership, proprietorship or other business entity, shall deliver to Mortgagee on or before January 31 of each year, or in the alternative, within thirty (30) days after the end of each fiscal year, the annual financial statement of the corporation, partnership, proprietorship or other business entity for its preceding year; and, each Mortgagor, if an individual(s), shall deliver to Mortgagee on or before January 31 of each year a then current and accurate personal financial statement.

8.04 Affidavit Of Leases. Mortgagor shall furnish, together with the foregoing financial statements and at any time upon Mortgagee's request, a then current and accurate Affidavit of Lease(s) upon Mortgaged Premises and Estoppel Certificate from each tenant to Mortgagee, in a form and with content as then required by Mortgagee which documents shall show and evidence all information and additional documents reasonably requested by Mortgagee.

8.05 Reimbursement Of Expenses. In the event Mortgagor fails to comply with any of the above requirements and Mortgagee shall pay expenses in connection with obtaining, from Mortgagor or otherwise, any of said required documents, including payment of attorney's fees, all such monies paid shall be deemed and construed as additional indebtedness secured hereby, and shall become due and payable by Mortgagor to Mortgagee upon payment or disbursement by Mortgagee without notice and with interest thereon at the Default Interest Rate as that phrase is defined in the Notes.

ARTICLE IX SECURITY AGREEMENT

9.01 Mortgage Deemed Security Agreement. Mortgagor and Mortgagee agree that this Mortgage shall constitute a Security Agreement within the meaning of the Illinois Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of the Mortgage or the Agreement and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning of the Code), (which property is hereinafter referred to as "Personal Property") and all replacements of, substitutions for, additions to, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Mortgagee, and the

Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the Indebtedness. All of the provisions contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions, covenants and warranties shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto: (i) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Mortgagee and no other party, and liens and encumbrances, if any, expressly permitted by the Agreement; (ii) the Collateral is to be used by Mortgagor solely for business purposes; (iii) the Collateral will be kept at the Premises, and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code) (The Collateral may be affixed to the Land but will not be affixed to any other real estate); (iv) the only persons having any interest in the Premises are Mortgagor, Mortgagee and holders of interests, if any, expressly permitted by the Agreement; and, no Financing Statement (other than Financing Statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted by the Agreement) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and (v) Mortgagor will at its own cost and expense, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts as Mortgagee may at any time or from time to time request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Mortgagee and no other party and liens and encumbrances (if any) expressly permitted by the Agreement; and Mortgagor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be desirable.

9.02 Remedies Upon Default. Upon Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. Mortgagee will give Mortgagor at least twenty (20) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Mortgagor hereinafter set forth at least twenty (20) days before the time of the sale or disposition. Mortgagee may buy at any public sale. Mortgagee may buy at private sale if the Collateral is of a type customarily sold in a

recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Mortgagee so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorney's fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

9.03 Code Applies. The terms and provisions contained in this Article shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

9.04 Intended As Financing Statements. This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are herein. This Mortgage is to be filed for record with the Recorder of Deeds of the County or Counties where the Premises are located.

9.05 Leases. To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Mortgagor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Mortgagor, as lessor thereunder.

ARTICLE X RESTRICTIONS ON TRANSFER

10.01 Restrictions. Until the provisions of this Mortgage, the Agreement and the Loan Documents have been fully satisfied as solely determined by Mortgagee, Mortgagor shall not, without the prior written consent of Mortgagee, effect, suffer or permit any "Prohibited Transfer" (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

a. The Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

b. All or any portion of the beneficial interest or power of direction in or to the trust under which Mortgagor is acting, if Mortgagor is a Trustee;

c. Any shares of capital stock of a corporate Mortgagor, a corporation which is a beneficiary of a trustee Mortgagor, a corporation which is a general partner in a partnership Mortgagor, a corporation which is a general partner in a partnership beneficiary or a trustee Mortgagor, or a corporation which is the owner of substantially all of the

capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealer's Automated Quotation System); and

d. All or any part of the partnership or joint venture interest, as the case may be, of a partnership Mortgagor or a partnership beneficiary of a Trustee Mortgagor if Mortgagor or such beneficiary is a partnership or a joint venture; in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise.

10.02 **Non-Application.** Provided, however, that the foregoing provisions of this Article shall not apply: (i) to liens of Mortgagee securing the Indebtedness; (ii) to the lien of current taxes and assessments not in default; or (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficiary interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives.

ARTICLE XI EXECUTION OF ADDITIONAL SECURITY AGREEMENTS AND FINANCING STATEMENTS

11.01 **Agreement To Execute.** Mortgagor acknowledges and agrees that, within five (5) days after request by mail, shall execute, acknowledge, and deliver to Mortgagee any additional or amended Security Agreements, Financing Statements, or other similar security instruments, in form satisfactory to the Mortgagee, and conforming to the terms hereof covering all property of any kind whatsoever owned by the Mortgagor, which, in the sole opinion of Mortgagee, is essential to the operation of the 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 will further execute, acknowledge, and deliver any financing statement, affidavit, continuation statement or certificate, or other documents as Mortgagee may request in order to perfect, preserve, maintain, continue, and extend the security instrument.

11.02 **Reimbursement Of Expense.** Mortgagor further agrees to pay Mortgagee, on demand, all costs and expenses incurred by Mortgagee in connection with the recording, filing, and refiling of any such document.

ARTICLE XII DEFAULT AND FORECLOSURE

12.01 **Events of Default and Remedies.** The following shall constitute an Event of Default under this Mortgage:

- a. any failure to provide and maintain the Insurance Policies specified above;

b. any default, after the expiration of any applicable grace period in the making of any payment owed under the Notes, this Mortgage, any of the other Mortgages (as defined in the Agreement), the Agreement or any other Loan Document;

c. any default in the performance or observance of any other term, covenant, or condition in this Mortgage which default continues for thirty (30) days following notice from Mortgagee or, in the Notes, any of the other Mortgages (as defined in the Agreement), the Agreement or any other Loan Document or in any other instrument now or hereafter evidencing or securing said indebtedness which default is not cured within the time period or in the manner specified in the applicable Loan Document;

d. if the Mortgagor, or any Guarantor of the Notes secured hereby, shall file a petition in voluntary bankruptcy under the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, which action is not dismissed within thirty (30) days or if the Mortgagor, or any beneficiary thereof, or any Guarantor of the Notes secured hereby, shall file an answer admitting insolvency or inability to pay their debts or fail to obtain a vacation or stay of voluntary proceedings within thirty (30) days after the filing thereof; or if the Mortgagor, or any beneficiary thereof, or any Guarantor of the Notes secured hereby, shall be adjudicated a bankrupt, or a trustee or a receiver shall be appointed for the Mortgagor or its beneficiary which appointment is not relinquished within thirty (30) days for all or any portion of the Premises or its or their property in any involuntary proceeding; or any court shall have taken jurisdiction of all or any portion of the Premises or the property of the Mortgagor, or any beneficiary thereof, or any Guarantor of the Notes secured hereby, in any involuntary proceeding for the reorganization, dissolution, liquidation, or winding up of the Mortgagor or any beneficiary thereof, and such trustees or receiver shall not be discharged or such jurisdiction relinquished or vacated or stayed on appeal or otherwise stayed within the thirty (30) days after appointment;

e. the Mortgagor, or any Guarantor of the Notes secured hereby, shall make an assignment for the benefit of creditors, or shall admit in writing its or their insolvency or shall consent to the appointment of a receiver or trustee or liquidator of all or any portion of the Premises;

f. the untruth fullness or falsity of any of the warranties contained herein, or any other Loan Document or other document given by Mortgagor to Mortgagee as an inducement to enter into the Agreement and to secure collaterally or otherwise, the payment of the Notes;

g. if any action or similar proceeding is filed to foreclose or otherwise collect on any lien over which the title insurer will not insure title to Mortgagee and which Mortgagor is not contesting in the manner provided above; or

h. the occurrence of a Prohibited Transfer.

12.02 Acceleration of Maturity Date upon Default and other Bank Remedies. Upon the occurrence of an Event of Default, the entire indebtedness secured hereby, including, but not limited to, principal and accrued interest shall, at the option of the Mortgagee and without demand

or notice to Mortgagor, become immediately due and payable with interest accruing thereafter on the unpaid principal balance of the Notes at the Default Interest Rate, as that phrase is defined in the Notes and Agreement and, thereupon, or at any time after the occurrence of any such Event of Default, the Mortgagee may:

a. proceed to foreclose this Mortgage by judicial proceedings according to the statutes in such case provided, and any failure to exercise said option shall not constitute a waiver of the right to exercise the same at any other time;

b. advance cash, insofar as the Mortgagee deems practicable, to protect its security for payment to such persons or entities and for such purposes as Mortgagee deems necessary or desirable under the circumstances, either out of the proceeds of the Loan, or, if the proceeds of the Loan are wholly disbursed or the remaining undisbursed proceeds are insufficient for such purposes, out of additional funds, and without limitation on the foregoing:

i. to pay any lien;

ii. contest the validity thereof;

iii. pay attorneys, experts, and any other persons and their expenses in connection with the cure of any Event of Default;

iv. 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, fees, 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 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 Paragraph, 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, provided further, that in connection with any such advance, Mortgagee, in 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 such advances and indebtedness authorized shall be repayable by Mortgagor upon demand with interest at the Default Interest Rate;

c. to prosecute and defend all actions or proceedings in connection with the Premises or the construction of the improvements; and

d. to take such action and require such performance as it deems necessary.

12.03 Expense of Litigation. In any suit to foreclose the lien of this Mortgage or enforce any other remedy of the Mortgagee under this Mortgage, the Notes, or under any other Loan Documents, 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 attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, survey costs, and cost (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, 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. All expenditures and expenses of the nature in this Paragraph mentioned, and such expenses and fees as may be incurred in the protection of said Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney affecting this Mortgage, the Notes or the Premises, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate until paid in full.

12.04 Mortgagee's Right of Possession In Case of Event of Default. In any case in which, under the provisions of this Mortgage, or any other Loan Documents, the 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, Mortgagor shall forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to be placed in possession of the Premises as provided by applicable law, 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 the Mortgagor or the then owner of the Premises relating thereto, and may exclude the Mortgagor, its agents or servants, wholly therefrom, and may, in its own name as Mortgagee and under the powers herein granted:

- a. 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 the Mortgagor;
- b. cancel or terminate any lease or sublease or management agreement for any cause or on any ground which would entitle Mortgagor to cancel the same;
- c. elect to disaffirm any lease or sublease of all or any part of the Premises made subsequent to the Mortgage without Mortgagee's prior written consent;
- d. extend or modify any then existing lease(s) or management agreement(s) and make new lease(s) or management agreement(s), which extensions, modifications, and new lease(s) or management agreement(s) may provide for terms to expire, or for options 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 lease(s) and management agreement(s) 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 shall also be binding upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge or the mortgage indebtedness, satisfactory of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser;

e. make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments, and improvements to the Premises as to Mortgagee may seem judicious, to insure and reinsure the Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all avails, rents, deposits, issues and profits;

f. apply the net income, after allowing a reasonable fee for the collection thereof and the management of the Premises, to the payment of taxes, premiums and other charges applicable to the Premises, or in reduction of the Indebtedness under the Notes, the Agreement and any other Loan Documents in such order and manner as Mortgagee may select.

12.05 Mortgagee's Determination of Priority of Payments. Any avails, rents, issues, and profits of the Premises received by the Mortgagee after having taken possession of the Premises, or pursuant to any assignment thereof to the Mortgagee under the provisions of this Mortgage, any other Loan Documents or of any separate security documents or instruments shall be applied in payment of or on account of the following, in such order as the Mortgagee (or in case of a receivership) as the Court may determine:

a. to the payment of the operation expenses of the Premises, which shall include reasonable compensation to the 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, established claims for damages, if any, and premiums on insurance hereinabove authorized;

b. to the payment of taxes, special assessments, and water 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;

c. to the payment of all repairs and replacements, of said Premises and of placing said property in such condition as will, in the judgment of Mortgagee or receiver, make it readily rentable;

d. to the payment of any indebtedness secured hereby or under the Loan Documents or any deficiency which may result from any foreclosure sale;

c. any overplus or remaining funds to the Mortgagor, their successors or assigns, as their rights may appear.

12.06 Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose this Mortgage, the Court may, upon application, by Mortgagee and at Mortgagee's sole option, appoint a receiver of the Premises pursuant to applicable law. Such appointment may be made either before or after sale upon appropriate notice as provided by law 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, and without bond being required of the applicant. Mortgagee or any employee or agent thereof may be appointed as such receiver. 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 the Mortgagor), as well as during any further times when the Mortgagor, its heirs, administrators, executors, successors, or the 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 extend or modify any then new lease(s) or management agreement(s), and to make new lease(s) or management agreement(s), which extensions, modifications, and new lease(s) or management agreement(s) may provide for terms to expire, or for options to lease(s) to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder, it being understood and agreed that any such lease(s) and management agreement(s) 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.

12.07 Application of Proceeds of Foreclosure Suit. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority:

- a. **First**, on account of all costs and expenses incident to and incurred as a result of the foreclosure proceedings;
- b. **Second**, all other items which, under the terms hereof, constitute secured indebtedness additional to that evidenced by the Notes, with interest thereon at the Default Interest Rate;
- c. **Third**, all interest (calculated at the Default Interest Rate) remaining unpaid on the Notes;
- d. **Fourth**, all principal remaining unpaid on the Notes;
- e. **Fifth**, any overplus to Mortgagor, its successors or assigns, as their rights may appear.

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12.08 Rescission of or Failure to Exercise. The failure of the Mortgagee to exercise the option for acceleration of maturity and/or foreclosure following any Event of Default as aforesaid, or to exercise any other option granted to the Mortgagee hereunder in any one or more instances, or the acceptance by Mortgagee of partial payments hereunder, shall not constitute a waiver of any such Event of Default nor extend or affect any cure period, if any, but such option shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgement to that effect by the Mortgagee and shall not affect the Mortgagee's right to accelerate the maturity for any future Event of Default.

12.09 Sale of Separate Parcels, Right of Mortgagee to Purchase. In the event of any foreclosure sale of said Premises, the same may be sold in one or more parcels. Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

12.10 Insurance During Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any Insurance Policy, if not applied in rebuilding or restoring the Improvements, as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. The foreclosure decree may provide that the mortgagee's clause attached to each of the casualty Insurance Policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty Insurance Policies making the loss thereunder payable to said decree creditors. The foreclosure decree may further provide that in the case of one or more redemptions under said decree, each successive redeemer may cause the preceding loss clause attached to each casualty Insurance Policy to be cancelled and a new loss payable clause to be attached thereto, making the loss thereunder payable to such redeemer. In the event of foreclosure sale, Mortgagee may, without the consent of Mortgagor, assign any Insurance Policies to the purchaser at the sale, or take such other steps as Mortgagee may deem advisable to protect the interest of such purchaser.

12.11 Waiver of Right of Redemption and other Rights. To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Notes. The Mortgagor acknowledges that a right to a jury trial is a constitutional one, but that it may be waived. The Mortgagor (or the beneficiary where Mortgagor is a land trust), after consulting with counsel of choice (or having had the opportunity

to consult with counsel), knowingly, voluntarily and without coercion, waives all rights to a trial by jury of all disputes between the Mortgagor and the Mortgagee. The Mortgagee shall not be deemed to have waived any right to a jury trial unless that waiver is expressly made in a written instrument executed by the Mortgagee.

12.12 Mortgagee's Performance of Mortgagor's Obligations. In case of Default, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof, Mortgagee may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor) in any manner deemed expedient to Mortgagee. Mortgagee may, but shall not be required to, furnish and equip the Improvements and rent, operate and manage the Premises and the Improvements and pay operating costs, including management fees, of every kind in connection therewith, so that the Premises shall be usable for their intended purposes. All such monies paid and expenses incurred, including attorneys' fees, shall be so much additional Indebtedness, whether or not the Indebtedness, as a result thereof, shall exceed the face amount of the Notes, and shall become immediately due with interest thereon at the Default Rate specified in the note. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any Default nor shall the provisions of this Paragraph or any exercise by Mortgagee of its rights hereunder prevent any default from constituting a Default. Mortgagee is hereby authorized to make any payment.

a. relating to taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof;

b. for the purchase, discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or

c. in connection with the furnishing or equipping of the Premises or the rental, operation or management of the Premises or the payment of operating costs thereof, may do so in such amounts and to such persons as Mortgagee may deem appropriate. Nothing contained herein shall be construed to require Mortgagee to advance monies for any purpose.

**ARTICLE XIII
MISCELLANEOUS**

13.01 Rights And Remedies Cumulative. All rights and remedies herein provided are cumulative and the holder of the Notes secured hereby and of every other obligation secured hereby may recover judgment hereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting and without affecting or impairing the security of any right afforded by this Mortgage.

13.02 Notice. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall be required or may be given to any party by another party or parties, it shall be in writing and, any law or statute to the contrary notwithstanding, shall be

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(1) hand delivered, (2) served by regular first class mail with affidavit of mailing, or (3) served by certified mail, return receipt requested, addressed as follows:

If to Mortgagee: NBD Winfield Bank
0 N 010 Winfield Road
Winfield, Illinois 60190
Attn: Commercial Loan Department

With a copy to: Fred R. McMorris
Rooks, Pitts and Poust
201 Naperville Road
Wheaton, Illinois 60187

If to Mortgagor: Len and Maria Hrynewycz
5405 Silent Brook
Rolling Meadows, IL

With a copy to: Roxolana Harasymiw
155 S. Wacker Drive
Suite 650
Chicago, IL 60603

or to such other address as a party may from time to time designate by notice to others, as herein provided. Any notice hereunder shall be deemed to have been given on (1) the date of delivery if hand delivered, (2) the third business day following the date of postmarking if served by regular first class mail, (3) the third business day following the date of postmarking if addressee fails or refuses to receipt for or accept service by certified mail with return receipt requested, or (4) the date of execution of the receipt if by certified mail with return receipt requested. The failure of the addressee to accept any such certified mail shall not constitute a failure to give or receive proper notice.

13.03 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 or under any other of the Loan Documents shall not at any time thereafter be held to be abandonment of such rights. Except as otherwise specifically required, notice of the exercise of any option granted to the Mortgagee herein, or in the Notes secured hereby or in any other of the Loan Documents is not required to be given.

13.04 Covenants. All the covenants hereof and herein contained shall run with the land.

13.05 Captions. The captions and headings of various paragraphs 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.

13.06 Option To Subordinate. Only at the sole and exclusive 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 only upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.

13.07 Governing Law. The place of negotiation, execution, and delivery of this Mortgage and the location of the Premises being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State, without reference to the conflicts of law principles of that State. If any provision in this Mortgage shall be inconsistent with any provision of applicable law, the provisions of the law 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 law. 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 applicable law in the absence of said provision, Mortgagee shall be vested with the rights granted by law to the full extent permitted.

13.08 Business Loan. Mortgagor specifically represents and warrants that the proceeds of the Notes will be used for and the principal obligation secured hereby constitutes a "business loan" coming within the definition and purview of Illinois Revised Statutes, chapter 17, para. 6404 (1987), as amended from time to time.

13.09 Non-Agency. Mortgagor acknowledges that the relationship between the parties is that of mortgagor and mortgagee and that in no event shall Mortgagee be deemed to be a partner or joint venturer with Mortgagor. Mortgagee shall not be deemed to be such a partner or joint venturer by reason of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or any other of the Loan Documents.

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

13.11 Binding On Successor And Assigns. Without expanding the liability of any guarantor contained in any instrument of Guaranty executed in connection herewith, this Mortgage and all covenants and provisions hereof shall run with the land and shall extend and be binding upon Mortgagor and all persons claiming under or through Mortgagor. 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 Notes 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 Notes secured hereby. Whenever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

13.12 Consent. Wherever in this Mortgage, the consent of either the Mortgagor or Mortgagee is required, such consent shall not be unreasonably withheld.

13.13 Illegality Of Terms. Nothing herein or in the Notes contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (i) to require Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate; or (ii) to require Mortgagor to make any payment or do any act contrary to law, and if any clause and provision herein contained shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such clause or clauses and provisions only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and Mortgagee shall correct any such error within a reasonable time.

13.14 Subrogation. In the event the proceeds of the loan made by the Mortgagee to the Mortgagor, or any part thereof, or any amount paid out or advanced by the 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 the 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.

13.15 Hazardous Waste. The Mortgagor represents and warrants to the Mortgagee that (a) the Mortgagor has not used Hazardous Materials (as defined below) on, from or affecting the Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and, to the best of the Mortgagor's knowledge, no prior owner of the Premises or any existing or prior tenant, or occupant has used Hazardous Materials on, from or affecting the Premises in any manner which violates federal, state or local law, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials; (b) the Mortgagor has never received any notice of any violations (and is not aware of any existing violations) of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials at the Premises and, to the best of the Mortgagor's knowledge, there have been no actions commenced or threatened by any party for non-compliance which affect the Premises; (c) Mortgagor shall keep or cause the Premises to be kept free of Hazardous Materials except to the extent that such Hazardous Materials are stored and/or used in compliance with all applicable federal, state and local laws and regulations; and, without limiting the foregoing Mortgagor shall not cause or permit the Premises to be used to generate, manufacture, refine transport, treat, store, handle, dispose of, transfer, produce or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall Mortgagor cause or permit as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or occupant, a release, spill, leak or emission of Hazardous Materials onto the Premises or onto any other contiguous property; (d) the Mortgagor shall conduct and complete all investigations, including a comprehensive environmental audit, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials on, under, from or affecting the Premises as required by all applicable federal, state and local laws, ordinances, rules, regulations and policies, to the satisfaction of the Mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities. If the Mortgagor fails to conduct an environmental audit required by

the Mortgagee, then the Mortgagee may at its option and at the expense of the Mortgagor, conduct such audit.

Subject to the limitations set forth below, the Mortgagor shall defend, indemnify and hold harmless the Mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including, without limitation, attorney's and consultant's fees, investigation and laboratory fees, court costs and litigation expenses, known or unknown, contingent or otherwise, arising out of or in any way related to (a) the presence, disposal release or threatened release of any Hazardous Materials on, over, under, from or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials on the Premises, (c) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials with respect to the Premises, and/or (d) any violation of laws, orders, regulations, requirements or demands of government authorities; or any policies or requirements of the Mortgagee, which are based upon or in any way related to such Hazardous Materials used in the Premises. The indemnity obligations under this paragraph are specifically limited as follows:

- (i) The Mortgagor shall have no indemnity obligations with respect to Hazardous Materials that are first introduced to the Premises or any part of the Premises subsequent to the date that the Mortgagor's interest in and possession of the Premises or any part of the Premises shall have fully terminated by foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure;
- (ii) The Mortgagor shall have no indemnity obligation with respect to any Hazardous Materials introduced to the Premises by the Mortgagee, its successors or assigns.

The Mortgagor agrees that in the event this Mortgage is foreclosed or the Mortgagor tenders a deed in lieu of foreclosure, the Mortgagor shall deliver the Premises to the Mortgagee free of any and all Hazardous Materials which are then required to be removed (whether over time or immediately) pursuant to applicable federal, state and local laws, ordinances, rules or regulations affecting the Premises.

For purposes of this Mortgage, "Hazardous Materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.) and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local governmental law, ordinance, rule or regulation.

The provisions of this paragraph shall be in addition to any and all other obligations and liabilities the Mortgagor may have to the Mortgagee under this Mortgage, any loan document, and in common law, and shall survive (a) the repayment of all sums due for the debt, (b) the

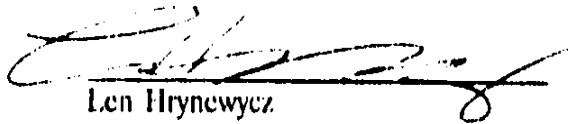
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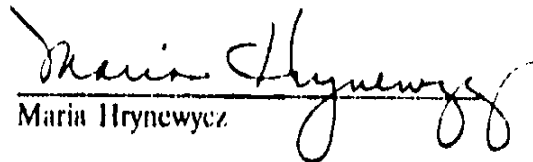
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satisfaction of all of the other obligations of the Mortgagor in this Mortgage and under any loan document, (e) the discharge of the Mortgage, and (d) the foreclosure of this Mortgage or acceptance of a deed in lieu of foreclosure. Notwithstanding anything to the contrary contained in this Mortgage, it is the intention of the Mortgagor and the Mortgagee that the indemnity provisions of this paragraph shall only apply to an action commenced against any owner or operator of the Premises in which any interest of the Mortgagee is threatened or any claim is made against the Mortgagee for the payment of money.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be executed and effective as of the date first above written.

MORTGAGOR:


Len Hrynewycz


Maria Hrynewycz

Property of Cook County Clerk's Office

UNOFFICIAL COPY

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STATE OF ILLINOIS)
)
COUNTY OF DeKalb) SS

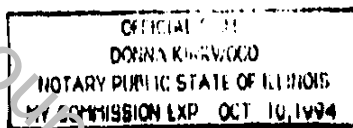
The undersigned, a Notary Public in and for said county, in the State aforesaid, DOES HEREBY CERTIFY that the above person(s), personally known to me to be the same who subscribed to the foregoing instrument, appeared before me this day in person and acknowledged the signature, seal and delivery of the said instrument as a free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 15th day of August, 1991.

Donna Kirkwood
Notary Public

Commission Expires:

October 10, 1994



UNOFFICIAL COPY

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EXHIBIT A

Property of Cook County Clerk's Office

LOT 7 IN BLOCK 2 IN PLUM GROVE CREEK PHASE 1, BEING A SUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 27 AND THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 19, 1977 AS DOCUMENT NUMBER 21111251 IN COOK COUNTY, ILLINOIS.

Permanent Tax No. 02-27-304-007

Address of the property: 5405 Silent Brook Lane, Rolling Meadows, IL 60008

91418525