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## MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage"), made as of the 19th day of January, 1994, is made and executed by MARQUETTE NATIONAL BANK, not in its individual capacity but as Trustee under a Trust Agreement dated February 27, 1971 and known as Trust No. 5251, having its principal offices at 6316 S. Western Avenue, Chicago, Illinois 60636 ("Mortgagor"), in favor of MARQUETTE NATIONAL BANK, a National Banking Association, having its office at 6316 S. Western Avenue, Chicago, Illinois 60636 ("Lender").

### I. RECITALS

A. Lender has agreed, subject to certain terms and conditions to make a loan to Mortgagor in the amount of Six Hundred Fifty Thousand Dollars and 00/100 (650,000.00) (the "Loan").

B. The Loan is evidenced by that certain Note of even date herewith executed by Mortgagor, in favor of Lender in the principal sum of Six Hundred Fifty Thousand Dollars and 00/100 (650,000.00) (the "Note"). A copy of the Note is attached hereto as Exhibit A. The terms and provisions of the Note are hereby incorporated, by reference, in this Mortgage.

C. The Loan is secured by (a) a Guaranty of Payment and Performance of even date herewith (the "Guaranty") executed by William Brennan (the "Guarantor"); (b) a Mortgage and Security Agreement on certain real estate in Cook County, Illinois (hereinafter defined as the "Mortgaged Property"); (c) an Assignment of Rents and Leases pertaining to the Mortgaged Property; (d) a Collateral Assignment of the Beneficial Interest of the Mortgagor, and (e) a Security Agreement relating to personal property on the Mortgaged Property owned by the Guarantors and other property.

D. This Loan, if not paid earlier, is due and payable on June 25, 1994.

### II. GRANTING CLAUSES

To secure the obligations of Guarantors under the Guaranty and the payment of all amounts due under and the performance and observance of all covenants and conditions contained in this Mortgage, the Guaranty, any and all other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit and any other documents and instruments now or hereafter executed by Mortgagor, Guarantors, or any party related thereto or affiliated therewith to evidence, secure or guarantee the payment of all or any portion of the indebtedness under the Note and any and all renewals, extensions, amendments and replacements of this Mortgage, the Guaranty, the Note and any such other documents and instruments (the Note, the Guaranty, this Mortgage, such other mortgages, security agreements, assignments of leases and rents, guaranties, letters of credit, and any other documents and

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guaranties, letters of credit, and any other documents and instruments now or hereafter executed and delivered in connection with the Loan, and any and all amendments, renewals, extensions and replacements hereof and thereof, being sometimes referred to collectively as the "Loan Instruments" and individually as a "Loan Instrument") (all indebtedness and liabilities secured hereby being hereinafter sometimes referred to as "Borrower's Liabilities" which indebtedness and liabilities being secured hereby shall, in no event, exceed five times the aggregate face amount of the Note), Mortgagor does hereby convey, mortgage, assign, transfer, pledge and deliver to Lender the following described property subject to the terms and conditions herein:

A. The land located in Cook County, Illinois, legally described in the attached Exhibit B ("Land"),

B. All the buildings, structures, improvements and fixtures of every kind or nature now or hereafter situated on the Land; and, to the extent not owned by tenants of the Mortgaged Property, all machinery, appliances, equipment, furniture and all other personal property of every kind or nature located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Land, buildings, structures, improvements or fixtures now or hereafter located or to be located on the Land, or in connection with any construction being conducted or which may be conducted thereon, and all extensions, additions, improvements, substitutions and replacements to any of the foregoing ("Improvements");

C. All building materials and goods which are procured or to be procured for use on or in connection with the Improvements or the construction of additional Improvements, whether or not such materials and goods have been delivered to the Land ("Materials");

D. All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses of the Land or the Improvements, contracts for services to be rendered to Mortgagor, Beneficiary or otherwise in connection with the Improvements and all other property, contracts, reports, proposals and other materials now or hereafter existing in any way relating to the Land or the Improvements or the construction of additional Improvements:

E. All easements, tenements, rights-of-way, vaults, gores of land, streets, ways, alleys, passages, sewer rights, water courses, water rights and powers and appurtenances in any way belonging, relating or appertaining to any of the Land or Improvements, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired ("Appurtenances");

F. (1) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any

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portion of the land, Improvements or Appurtenances or any part thereof or to any rights appurtenant thereto;

(2) All compensation, awards, damages, claims, rights of action and proceeds of or on account of (a) any damage or taking, pursuant to the power of eminent domain, of the Land, Improvements, Appurtenances or Materials or any part thereof, (b) damage to all or any portion of the Land, Improvements or Appurtenances by reason of the taking, pursuant too the power of eminent domain, of all or any portion of the Land, Improvements, Appurtenances, Materials or of other property, or (c) the alteration of the grade of any street or highway on or about the Land, Improvements, Appurtenances, Materials or any part thereof; and, except as otherwise provided herein, Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and except as otherwise provided herein, to apply the same toward the payment of the indebtedness and other sums secured hereby:

(3) All contract rights, general intangibles, actions and rights in action, including, without limitation, all rights to insurance proceeds and unearned premiums arising from or relating to damage to the Land, Improvements, Appurtenances or Materials; and

(4) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Land, Improvements, Appurtenances or Materials;

G. All rents, issues, profits, income and other benefits now or hereafter arising from or in respect of the Land, Improvements or Appurtenances (the "Rents"); it being intended that this Granting Clause shall constitute an absolute and present assignment of the Rents, subject, however, to the conditional permission given to Mortgagor to collect and use the Rents as provided in this Mortgage;

H. Any and all leases, licenses and other occupancy agreements now or hereafter affecting the Land, Improvements, Appurtenances or Materials, together with all security therefor and guaranties thereof and all monies payable thereunder, and all books and records owned by Mortgagor which contain evidence of payments made under the leases and all security given therefor (collectively, the "Leases"), subject, however, to the conditional permission given in this Mortgage to Mortgagor to collect the Rents arising under the Leases as provided in this Mortgage;

I. Any and all after-acquired right, title or interest of Mortgagor in and to any of the property described in the preceding Granting Clauses;

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J. The proceeds from the sale, transfer, pledge or other disposition of any or all of the property described in the preceding Granting Clauses;

All of the mortgaged property described in the Granting Clauses, together with all real and personal, tangible and intangible property pledged in, or to which a security interest attaches pursuant to, any of the Loan Instruments is sometimes referred to collectively as the "Mortgaged Property." The Rents and Leases are pledged on a parity with the Land and Improvements and not secondarily.

### III. COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Lender as follows:

1. **Performance under Mortgage, Guaranty and Other Loan Instruments.** Mortgagor shall perform, observe and comply with or cause to be performed, observed and complied with in a complete and timely manner all provisions hereof and of the Guaranty, every other Loan Instrument and every instrument evidencing or securing Borrower's Liabilities and will promptly pay or cause to be paid to Lender when due all sums required to be paid by Mortgagor pursuant to the Guaranty, this Mortgage, every other Loan Instrument and every other instrument evidencing or securing Borrower's Liabilities.

2. **General Covenants, Representations and Warranties.** Mortgagor covenants, represents and warrants that as of the date hereof and at all times thereafter during the term hereof: (a) Mortgagor is seized of an indefeasible estate in fee simple in that portion of the Mortgaged Property which is real property, and has good and absolute title to it and the balance of the Mortgaged Property free and clear of all liens, security interests, charges and encumbrances whatsoever, except those expressly permitted in writing by Lender, if any (the "Permitted Encumbrances"); (b) Mortgagor has good right, full power and lawful authority to mortgage and pledge the Mortgaged Property as provided herein; (c) upon the occurrence of the Event of Default, Lender may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Mortgaged Property in accordance with the terms hereof; and (d) Mortgagor will maintain and preserve the lien of this Mortgage as a first lien on the Mortgaged Property subject only to the Permitted Encumbrances until Borrower's Liabilities have been paid in full.

3. **Compliance with Laws and Other Restrictions.** Mortgagor covenants and represents that the Land and the Improvements and the use thereof presently comply with, and will during the full term of this Mortgage continue to comply with, all applicable restrictive covenants, zoning and subdivision ordinances and building codes, licenses, health and environmental laws and regulations and all

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other applicable laws, ordinances, rules and regulations. If any federal, state or other governmental body or any court issues any notice or order to the effect that the Mortgaged Property or any part thereof is not in compliance with any such covenant, ordinance, code, law or regulation, Mortgagor will promptly provide Lender with a copy of such notice or order and will immediately commence and diligently perform all such actions as are necessary to comply therewith or otherwise correct such non-compliance. Mortgagor shall not, without the prior written consent of Lender, petition for or otherwise seek any change in the zoning ordinances or other public or private restrictions applicable to the Mortgaged Property on the date hereof.

#### 4. Taxes and Other Charges.

a. **Taxes and Assessments.** Mortgagor shall pay promptly when due all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations, liens and encumbrances of every kind and nature whatsoever now or hereafter imposed levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or Borrower's Liabilities or upon or against the interest of Lender in the Mortgaged Property, as well as all taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality or other taxing authority upon or in respect of the Mortgaged Property or any part thereof; provided, however, that unless compliance with applicable laws requires that taxes, assessments or other charges must be paid as a condition to protesting or contesting the amount thereof, Mortgagor may in good faith, by appropriate proceedings commenced within ninety (90) days of the due date of such amounts and thereafter diligently pursued, contest the validity, applicability or amount of any asserted tax, assessment or other charge and pending such contest Mortgagor shall not be deemed in default hereunder if on or before the due date of the asserted tax or assessment, Mortgagor shall first either (i) deposit with Lender a bond or other security satisfactory to Lender in the amount of one hundred fifty percent (150%) of the amount of such tax or assessment or (ii) obtain an endorsement, in form and substance satisfactory to Lender, to the loan policy of title insurance issued to Lender insuring the lien of this Mortgage, insuring over such tax or assessment. Mortgagor shall pay the disputed or contested tax, assessment or other charge and all interest and penalties due in respect thereof on or before the date any adjudication of the validity or amount thereof becomes final and in any event no less than thirty (30) days prior to any forfeiture or sale of the Mortgaged Property by reason of such non-payment. Upon Lender's request, Mortgagor will promptly file, if it has not theretofore filed, such petition, application or other instrument as is necessary to cause the Land and Improvements to be taxed as a separate parcel or parcels which include no property not a part of the Mortgaged Property.

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b. **Taxes Affecting Lender's Interest.** If any state, federal, municipal or other governmental law, order, rule or regulation, which becomes effective subsequent to the date hereof, in any manner changes or modifies existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of collecting taxes, so as to impose on Lender a tax by reason of its ownership of any or all of the Loan Instruments or measured by the principal amount of the Note, require or have the practical effect of requiring Lender to pay any portion of the real estate taxes levied in respect of the Mortgaged Property to pay any tax levied in whole or in part in substitution for real estate taxes or otherwise affects materially and adversely the rights of Lender in respect of the Note, this Mortgage or the other Loan Instruments, Borrower's Liabilities and all interest accrued thereon shall, upon thirty (30) days' notice, become due and payable forthwith at the option of Lender, whether or not there shall have occurred an Event of Default, provided, however, that, if Mortgagor may, without violating or causing a violation of such law, order, rule or regulation, pays such taxes or other sums as are necessary to eliminate such adverse effect upon the rights of Lender and does pay such taxes or other sums when due, Lender may not elect to declare due Borrower's Liabilities by reason of the provisions of this Section 4(b).

c. **Tax Escrow.** Mortgagor shall, at the option of Lender in order to secure the performance and discharge of Mortgagor's obligations under Section 4(a), but not in lieu of such obligations, deposit with Lender on the first day of each calendar month throughout the term of the Loan, deposits, in amounts set by Lender from time to time by written notice to Mortgagor, in order to accumulate funds sufficient to permit Lender to pay all annual ad valorem taxes, assessments and charges of the nature described in Section 4(a) at least thirty (30) days prior to the date or dates on which they shall become delinquent. The taxes, assessments and charges for purposes of this Section 4(c) shall, if Lender so elects, include without limitation, water and sewer rents. Mortgagor shall procure and deliver to Lender when issued all statements or bills for such obligations. Upon demand by Lender, Mortgagor shall deliver to Lender such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges thirty (30) days prior to the date they become delinquent. Lender shall pay such taxes, assessments and other charges as they become due to the extent of the funds on deposit with Lender from time to time and provided Mortgagor has delivered to Lender the statements or bills therefor. In making any such payments, Lender shall be entitled to rely on any bill issued in respect of any such taxes, assessments or charges without inquiry into the validity, propriety or amount thereof and whether delivered to Lender by Mortgagor or otherwise obtained by Lender. Any deposits received pursuant to this Section 4(c) shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender and Lender

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shall have no obligation to pay interest on amounts deposited with Lender pursuant to this Section 4(c). If any Event of Default occurs any part or all of the amounts then on deposit or thereafter deposited with Lender under this Section 4(c) may at Lender's option be applied to payment of Borrower's Liabilities in such order as Lender may determine.

**d. No Credit Against the Indebtedness Secured Hereby.** Mortgagor shall not claim, demand or be entitled to receive any credit against any of Borrower's Liabilities for any of the taxes, assessments or similar impositions assessed against the Mortgaged Property or any part thereof or that are applicable to Borrower's Liabilities or to Lender's interest in the Mortgaged Property.

**5. Mechanic's and Other Liens.** Mortgagor shall not permit or suffer any mechanic's, laborer's materialman's, statutory or other lien or encumbrance (other than any lien for taxes and assessments not yet due) to be created upon or against the Mortgaged Property, provided, however, that Mortgagor may in good faith, by appropriate proceeding, contest the validity, applicability or amount of any asserted lien and, pending such contest, Mortgagor shall not be deemed to be in default hereunder if Mortgagor shall first either (a) deposit with Lender a bond or other security satisfactory to Lender in the amount of one hundred fifty percent (150%) of the amount of such lien or (b) obtain an endorsement, in form and substance satisfactory to Lender, to the loan policy of title insurance issued to Lender insuring the lien of this Mortgage, insuring over such lien. Mortgagor shall pay the disputed amount and all interest and penalties due in respect thereof on or before the date any adjudication of the validity or amount thereof becomes final and, in any event, no less than thirty (30) days prior to any foreclosure sale of the Mortgaged Property or the exercise of any other remedy by such claimant against the Mortgaged Property.

**6. Insurance and Condemnation.**

**a. Other Insurance.** Mortgagor shall, at its sole expense, obtain for, deliver to, assign to and maintain for the benefit of, Lender, until Borrower's Liabilities are paid in full, a general liability insurance policy of not less than \$1,000,000.00. Lender, by written demand upon Mortgagor, may require such policies to contain an endorsement, in form satisfactory to Lender, naming Lender as the loss payee thereunder.

**b. Condemnation Awards.** Lender shall be entitled to all compensation, awards, damages, claims, rights of action and proceeds of, or on account of, (i) any damage or taking, pursuant to the power of eminent domain, of the Mortgaged Property or any part thereof, (ii) damage to the Mortgaged Property by reason of

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the taking, pursuant to the power of eminent domain, of other property, or (iii) the alteration of the grade of any street or highway on or about the Mortgaged Property. Lender is hereby authorized, at its option, to commence, appear in and prosecute in its own or Mortgagor's name any action or proceeding relating to any such compensation, awards, damages, claims, rights of action and proceeds and to settle or compromise any claim in connection therewith. Mortgagor hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence. Lender after deducting from such compensation, awards, damages, claims, rights of action and proceeds all its expenses, including attorneys' fees, may apply such net proceeds (except as otherwise provided in Section 6(e) of this Mortgage) to payment of Borrower's Liabilities in such order and manner as Lender may elect. Mortgagor agrees to execute such further assignments of any compensation awards, damages, claims, rights of action and proceeds as Lender may require.

**c. Repair; Proceeds of Casualty Insurance and Eminent Domain.** If all or any part of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or shall be damaged or taken through the exercise of the power of eminent domain or other cause described in Section 6(d), Mortgagor shall promptly and with all due diligence restore and repair the Mortgaged Property whether or not the proceeds, award or other compensation are sufficient to pay the cost of such restoration or repair. At Lender's election, to be exercised by written notice to Mortgagor within thirty (30) days following Lender's unrestricted receipt in cash or the equivalent thereof of said proceeds, award or other compensation, the entire amount of said proceeds, award or compensation shall either: (i) be applied to Borrower's Liabilities in such order and manner as Lender may elect or (ii) be made available to Mortgagor on such terms and conditions as Lender may impose, including without limitation the terms and conditions set forth in this Section 6(c), for the purpose of financing the cost of restoration or repair with any excess to be applied to Borrower's Liabilities. Notwithstanding the foregoing, if (a) in the judgment of Lender, the improvements located on the Mortgaged Property can be repaired or restored to an architectural and economic lot of the same character and not less valuable than they were prior to such damage and destruction, (b) the insurers do not deny liability to the insured, (c) all leases of the Mortgaged Property shall continue in full force and effect and the tenants thereunder shall be paying rent unabated, (d) the amount necessary to repair or restore the improvements as determined by Lender shall be less than \$50,000.00 and (e) if no Event of Default shall have occurred, then Lender will make the proceeds of insurance available for repair or restoration on the conditions herein contained. If the amount of proceeds to be made available to Mortgagor pursuant to this Section 6(c) is less than the cost of the restoration or repair as estimated by Lender at any time prior to completion thereof, Mortgagor shall cause to be deposited with Lender the



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amount of such deficiency within thirty (30) days of Lender's written request therefor (but in no event later than the commencement of the work) and Mortgagor's deposited funds shall be disbursed prior to any such insurance proceeds. If Mortgagor is required to deposit funds under this Section 6(e), the deposit of such funds shall be a condition precedent to Lender's obligation to disburse any insurance proceeds held by Lender hereunder. Without limitation of Lender's rights hereunder, it shall be an additional condition precedent to any disbursement of insurance proceeds held by Lender hereunder the Lender shall have approved all plans and specifications for any proposed repair or restoration. The amount of proceeds, award of compensation which is to be made available to Mortgagor together with any deposits made by Mortgagor hereunder, shall be held by Lender to be disbursed from time to time to pay the cost of repair or restoration either, at Lender's option, to Mortgagor or directly to contractors, subcontractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to assure that the work is fully completed in a good and workmanlike manner and paid for and that no liens or claims arise by reason thereof. Lender may commingle any such funds held by it with its other general funds. Lender shall not be obligated to pay interest in respect of any such funds held by it nor shall Mortgagor be entitled to a credit against any of Borrower's Liabilities except and to the extent the funds are applied thereto pursuant to this Section 6(c), if an Event of Default shall be existing at the time of such casualty, taking or other event or if an Event of Default occurs thereafter, Lender shall have the right to immediately apply all insurance proceeds, awards or compensation to the payment of Borrower's Liabilities in such order and manner as Lender may determine. Lender shall have the right at all times to apply such net proceeds to the cure of any Event of Default under the Loan Instruments.

**d. Proceeds of Business Interruption and Rental Insurance.** The net proceeds of business interruption and rental insurance shall be paid to Lender for application first to Borrower's Liabilities in such order and manner as Lender may elect and then to the creation of reserves for future payments of Borrower's Liabilities in such amounts as Lender deems necessary with the balance to be remitted to Mortgagor subject to such controls as Lender may deem necessary to assure the said balance is used to discharge accrued and to be accrued expenses of operation and maintenance of the Mortgaged Property.

**e. Renewal of Policies.** At least thirty (30) days prior to the expiration date of any policy evidencing insurance required under this Section 6(e), a renewal thereof satisfactory to Lender shall be delivered to Lender or substitution therefore, together with receipts or other evidence of the payment of any premiums then due on such renewal policy or substitute policy.

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f. **Insurance Escrow.** Mortgagor shall, in order to secure the performance and discharge of Mortgagor's obligations under this Section 6, but not in lieu of such obligations, deposit with Lender on the first day of each calendar month throughout the term of the Loan, a sum in an amount determined by Lender from time to time by written notice to Mortgagor, in order to accumulate funds sufficient to permit Lender to pay all premiums payable in connection with the insurance required hereunder at least thirty (30) days prior to the date or dates on which they shall become due. Upon demand by Lender, Mortgagor shall deliver to Lender such additional monies as are required to satisfy any deficiencies in the amounts necessary to enable Lender to pay such premiums thirty (30) days prior to the date they shall become due.

7. **Non-Impairment of Lender's Rights.** Nothing contained in this Mortgage shall be deemed to limit or otherwise affect any right or remedy of Lender under any provision of this Mortgage or of any statute or rule of law to pay and, upon Mortgagor's failure to pay the same, Lender may pay any amount required to be paid by Mortgagor under Sections 4, 5 and 6. Mortgagor shall pay to Lender on demand the amount so paid by Lender together with interest at the Default Rate (as defined in the Note), and the amount so paid by Lender shall be added to Borrower's Liabilities. The provisions of Section 4 are solely for the added protection of Lender and entail no responsibility on Lender's part beyond the allowing of due credit as specifically provided therein. Upon assignment of this Mortgage, any funds on hand shall be turned over to the assignee and, provided the assignee shall assume Lender's responsibilities with respect to such funds, any responsibility of Lender with respect to such funds shall terminate.

## 8. Care of the Mortgaged Property.

a. Mortgagor shall preserve and maintain the Mortgaged Property in good and first class condition and repair. Mortgagor shall not, without the prior written consent of Lender, permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof.

b. Except as otherwise provided in this Mortgage, no new improvements shall be constructed on the Mortgaged Property and no part of the Mortgaged Property shall be removed, demolished or altered in any material manner without the prior written consent of Lender.

9. **Transfer or Encumbrance of the Mortgaged Property.** Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, transfer, mortgage, lease (other than leases made in accordance with the provisions of this Mortgage) or encumbrance of, or any contract for any of the foregoing on an installment basis or

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otherwise pertaining to, the Mortgage Property, any part thereof, any interest herein, any interest in the beneficial interest in Mortgage or in any other trust holding title to the Mortgaged Property or any interest in a corporation, partnership or other entity which owns all or part of the Mortgaged Property or such beneficial interest, whether by operation of law or otherwise, without the prior written consent of Lender having been obtained (a) to the sale, assignment, conveyance, mortgage, lease, option, encumbrance or other transfer and (b) to the form and substance of any instrument evidencing or contracting for any such sale, assignment, conveyance, mortgage, lease, option, encumbrance or other transfer. Mortgagor shall pay all costs and expenses incurred by Lender in connection with any request for consent made under this Section 9, whether such consent is or is not given. Mortgagor shall not, without the prior written consent of Lender, further assign or permit to be assigned the rents from the Mortgaged Property, and any such assignment without the prior express written consent of Lender shall be null and void. Mortgagor shall not permit any interest in any lease of the Mortgaged Property to be subordinated to any encumbrance on the Mortgaged Property other than the Loan Instruments and any such subordination shall be null and void. Mortgagor agrees that in the event the ownership of the Mortgaged Property, any interest therein or any part thereof becomes vested in a person other than Mortgagor, Lender may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the Note, the Loan Instruments and Borrower's Liabilities without in any way vitiating or discharging Mortgagor's liability hereunder or Borrower's Liabilities. No sale of the Mortgaged Property, no forbearance to any person with respect to this Mortgage, and no extension to any person of the time for payment of the Note or any other Borrower's Liabilities given by Lender shall operate to release, discharge, modify, change or affect the original liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by Lender.

10. **Further Assurances.** At any time from time to time, upon Lender's request, Mortgagor shall make, execute and deliver, or cause to be made, executed and delivered, to Lender, and where appropriate shall cause to be recorded, registered or filed, and from time to time thereafter to be re-recorded, re-registered and re-filed at such time and in such offices and places as shall be deemed desirable by Lender, any and all such further mortgages, security agreements, financing statements, instruments of further assurance, certificates and other documents as Lender may consider necessary to desirable in order to effectuate or perfect, or to continue and preserve the obligations under, the Note, this Mortgage, any other Loan Instrument and any instrument evidencing or securing Borrower's Liabilities, and the lien of this Mortgage as a lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor, and unto all and every person or

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persons deriving any estate, right, title or interest under this Mortgage. Upon any failure by Mortgagor to do so, Lender may make, execute, record, register, file, re-record, re-register or re-file any and all such mortgages, instruments, certificates and documents for an in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Lender the agent and attorney-in-fact of Mortgagor to do so.

11. **After-Acquired Property.** To the extent permitted by, and subject to, applicable law, the lien of this Mortgage, including without limitation the security interest created under Section 11, shall automatically attach, without further act, to all property hereafter acquired by Mortgagor located in or on, or attached to, or used or intended to be used in connection with, or with the operation of, the Mortgaged Property or any part thereof.

12. **Expenses.** Mortgagor shall pay when due and payable, and otherwise on demand made by Lender, all loan fees, appraisal fees, recording fees, taxes, brokerage fees and commissions, abstract fees, title insurance fees, escrow fees, attorneys' fees, court costs, documentary and expert evidence, fees of inspecting architects and engineers, and all other costs and expenses of every character which have been incurred or which may hereafter be incurred by Lender in connection with any of the following:

a. The preparation, execution, delivery and performance of the Loan Instruments;

b. The funding of the Loan;

c. Any court or administrative proceeding involving Mortgagor, the Mortgaged Property or the Loan Instruments to which Lender is made a party or is subject to subpoena by reason of its being a holder of any of the Loan Instruments, including without limitation bankruptcy, insolvency, reorganization, probate, eminent domain, condemnation, building code and zoning proceedings;

d. Any court or administrative proceeding or other action undertaken by Lender to enforce any remedy or to collect any indebtedness due under this Mortgage or any of the other Loan Instruments following a default thereunder, including without limitation a foreclosure of this mortgage or a public or private sale under the Illinois Uniform Commercial Code;

e. Any remedy exercised by Lender following an Event of Default including foreclosure of this Mortgage and actions in connection with taking possession of the Mortgaged Property or collecting rents assigned hereby and by the Assignment of Leases and Rents;

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f. Any activity in connection with any request by Mortgagor, Beneficiary or anyone acting on behalf of Mortgagor or Beneficiary that the Lender consent to a proposed action which, pursuant to this Mortgage or any of the other Loan Instruments may be undertaken or consummated only with the prior consent of Lender, whether or not such consent is granted; or

g. Any negotiation undertaken between Lender and Mortgagor, Beneficiary or anyone acting on behalf of Mortgagor or Beneficiary pertaining to the existence or cure of any default under or the modification or extension of any of the Loan Instruments.

If Mortgagor fails to pay said costs and expenses as above provided, Lender may elect, but shall not be obligated, to pay the costs and expenses described in this Section 12, and if Lender does so elect, then Mortgagor will, upon demand by Lender, reimburse Lender for all such expenses which have been or shall be paid or incurred by it. The amounts paid by Lender in respect of such expenses, together with interest thereon at the Default Rate (as defined in the Note) from the date paid by Lender until paid by Mortgagor, shall be added to Borrower's Liabilities, shall be immediately due and payable and shall be secured by the lien of this Mortgage and the other Loan Instruments. In the event of foreclosure hereof, lender shall be entitled to add to the indebtedness found to be due by the court a reasonable estimate of such expenses to be incurred after entry of the decree of foreclosure. to the extent permitted by law, Mortgagor agrees to hold harmless Lender against and from, and reimburse it for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including without limitation attorneys' fees, which may be imposed upon, asserted against, or incurred or paid by it by reason of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever, or asserted against it on account of any act performed or omitted to be performed hereunder, or on account of any transaction arising out of or in any way connected with the Mortgaged Property, this Mortgage, the other Loan Instruments, any of the indebtedness evidenced by the Note or any of Borrower's Liabilities.

13. **Lender's Performance of Mortgagor's Obligations.** If Mortgagor fails to pay any tax, assessment, encumbrance or other imposition, or to furnish insurance hereunder, or to perform any other covenant, condition or term in this Mortgage, the Note or any other Loan Instrument, Lender may, but shall not be obligated to, pay, obtain or perform the same. All payments made, whether such payments are regular or accelerated payments, and costs and expenses incurred or paid by Lender in connection therewith shall be due and payable immediately. The amounts so incurred or paid by Lender, together with interest thereon at the Default Rate (as defined in the Note) from the date paid by Lender until reimbursed by

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Mortgagor, shall be added to Borrower's Liabilities and secured by the lien of this Mortgage and the other Loan Instruments. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any covenant, condition or term that Mortgagor has failed to perform or observe, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor. Performance or payment by Lender of any obligation of Mortgagor shall not relieve Mortgagor of such obligation or of the consequences of having failed to perform or pay the same and shall not effect the cure of any Event of Default.

14. **Payment of Superior Liens.** To the extent that Lender, after the date hereof, pays any sum due under any provision of law or instrument or document creating any lien superior or equal in priority in whole or in part to the lien of this Mortgage, Lender shall have and be entitled to a lien on the premises equal in parity with that discharged, and Lender shall be subrogated to and receive any enjoy all rights and liens possessed, held or enjoyed by, the holder of such lien, which shall remain in existence and benefit Lender to secure the Note and all obligations and liabilities secured hereby. Lender shall be subrogated, notwithstanding their release of record, to mortgages, trust deeds, superior titles, vendors' liens, mechanics' and materialmen's liens, charges, encumbrances, rights and equities on the Mortgaged Property to the extent that any obligation under any thereof is paid or discharged with proceeds of disbursements or advances under the Note or other indebtedness secured hereby.

15. **Books and Records.** Mortgagor shall cause Beneficiary to keep and maintain at all times complete, true and accurate books of account and records reflecting the results of the operation of the Mortgaged Property. Mortgagor shall cause Beneficiary to furnish to Lender within ninety (90) days after the end of Beneficiary's fiscal year, financial statements pertaining to the Mortgaged Property in form reasonably satisfactory to Lender, including a statement of income and expenses with respect to the Mortgaged Property for the fiscal year, all such statements to be prepared in accordance with generally accepted accounting principles consistently applied and certified by an independent certified public accountant satisfactory to Lender. Mortgagor shall also cause Beneficiary to furnish rent rolls and such interim unaudited financial statements and other information pertaining to the Mortgaged Property and the operation thereof as Lender may, from time to time, require. In the event that Mortgagor fails to comply with the requirements set forth above, Lender shall have the right to have Mortgagor's and Beneficiary's books and records audited by an independent certified public accountant, and the cost of such audit shall be the obligation of Mortgagor. Lender and its designated agents shall have the right to inspect Mortgagor's and Beneficiary's books and records with respect to the Mortgaged Property at all reasonable times. In the event of a foreclosure of

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this Mortgage, all of Mortgagor's and Beneficiary's books and records maintained in connection with the Mortgaged Property shall be made available to the successful bidder at the foreclosure sale for inspection and copying for a period of not less than three (3) years following said sale.

16. **Estoppel.** Mortgagor, within ten (10) days after written request from Lender, shall furnish a written statement executed by Mortgagor and Beneficiary setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses are claimed to exist against the payment of such principal and interest or other sums and, if any such offsets or defenses are claimed, the specific basis and amount of each such claim. If Mortgagor objects to the principal, interest or escrow amount or the application of any payment shown on any written statement, receipt, invoice or other written notice received by Mortgagor, Beneficiary or any partner or officer of Mortgagor or Beneficiary, Mortgagor shall raise such objection by written notice to Lender within ninety (90) days following receipt of such statement, receipt, invoice or other written notice or else such objection shall be deemed waived by Mortgagor and such other parties.

17. **Use of the Mortgaged Property.** Mortgagor shall not suffer or permit the Mortgaged Property, or any portion thereof, to be used by the public, as such, without restriction or in such manner as might reasonably tend to impair Mortgagor's title to the Mortgaged Property or any portion thereof, or in such manner as might reasonably make possible a claim or claims of easement by prescription or adverse possession by the public, as such, or of implied dedication of the Mortgaged Property or any portion thereof. Mortgagor shall not use or permit the use of the Mortgaged Property or any portion thereof for any unlawful purpose.

18. **Litigation Involving Mortgaged Property.** Mortgagor shall promptly notify Lender of any litigation, administrative procedure or proposed legislative action initiated against Mortgagor, Beneficiary or the Mortgaged Property or in which the Mortgaged Property is directly or indirectly affected including any proceedings which seek to (a) enforce any lien against the Mortgaged Property, (b) correct, change or prohibit any existing condition, feature or use of the Mortgaged Property, (c) condemn or demolish the Mortgaged Property, (d) take, by the power of eminent domain, any portion of the Mortgaged Property or any property which would damage the Mortgaged Property, (e) modify the zoning applicable to the Mortgaged Property, or (f) otherwise adversely affect the Mortgaged Property. Mortgagor shall initiate or appear in any legal action or other appropriate proceedings when necessary to protect the Mortgaged Property from damage. Mortgagor shall, upon written request of Lender, represent and defend the interests of Lender in any proceedings described in this Section 18 or, at Lender's election, pay the fees and expenses of any counsel



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retained by Lender to represent the interest of Lender in any such proceedings.

## 19. Environmental Condition.

a. Mortgagor covenants and represents that there are no, nor will there, for so long as any of Borrower's Liabilities remain outstanding, be any Hazardous Materials (as hereinafter defined) generated, released, stored, buried or deposited over, beneath, in or upon the Mortgaged Property. For purposes of this Mortgage, "Hazardous Materials" shall mean and include any pollutants, flammables, explosives, petroleum (including crude oil) or any fraction thereof, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of toxic or hazardous substances, wastes, or materials under any federal or applicable state or local laws, ordinances or regulations which regulated, govern or prohibit the generation, manufacture, use, transportation, disposal, release, storage/treatment of, or response or exposure to toxic or hazardous substances, wastes or materials. Such laws, ordinances and regulations hereinafter collectively referred to as the "Hazardous Materials Laws."

b. Mortgagor shall, and Mortgagor shall cause all employees, agents, contractors and subcontractors of Mortgagor and any other persons from time to time present on or occupying the Mortgaged Property to, keep and maintain the Mortgaged Property, in compliance with, and not cause or knowingly permit the Mortgaged Property to be in violation of, any applicable Hazardous Materials Laws. Neither Mortgagor nor any employees, agents, contractors or subcontractors of Mortgagor or any other persons occupying or present on the Mortgaged Property shall use, generate, manufacture, store or dispose of on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Materials, except as such Hazardous Materials may be required to be used, stored or transported in connection with the permitted uses of the Mortgaged Property and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor.

c. Mortgagor shall immediately advise Lender in writing of: (i) any notices received by Mortgagor (whether such notices are from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation occurring on or about the Mortgaged Property of any applicable Hazardous Materials Laws; (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any Hazardous Materials Laws; (iii) above are hereinafter referred to as "Hazardous Materials Claims"; and (iv) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any

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Hazardous Materials Claims. Lender shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and Mortgagor shall pay to Lender, upon demand, all reasonably attorneys' and consultants' fees incurred by Lender in connection therewith.

d. Mortgagor shall be solely responsible for, and shall indemnify and hold harmless Lender, its directors, officers, employees, agents, successors and assigns from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence (whether prior to or during the term of the Loan or otherwise and regardless of by whom caused, whether by Mortgagor or any predecessor in title or any owner of land adjacent to the Mortgaged Property or any other third party, or any employee, agent, contractor or subcontractor of Mortgagor or any predecessor in title or any such adjacent land owner or any third person) of Hazardous Materials on, under or about the Mortgaged Property; including, without limitation: (i) claims of third parties (including governmental agencies) for damages, penalties, losses, costs, fees, expenses, damages, injunctive or other relief; (ii) response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency; and (iii) any and all expenses or obligations, including reasonable attorneys' fees, incurred at, before and after any trial or appeal therefrom whether or not taxable as costs, including, without limitation, reasonable attorneys' fees, witness fees, deposition costs, copying and telephone charges and other expenses.

e. Mortgagor hereby represents, warrants and certifies that: (i) the execution and delivery of the Loan Instruments is not a "transfer of real property" under and as defined in the Illinois Responsible Property Transfer Act (Ill. Rev. Stat. Ann. Ch. 30, Par.903) ("RPTA"); (ii) there are no underground storage tanks located on, under or about the Mortgaged Property which are subject to the notification requirements under Section 9002 of the solid Waste Disposal Act, as now or hereafter amended (42 U.S.C. Sec. 6991); and (iii) there is no facility located on or at the Mortgaged Property which is subject to the reporting requirements of Section 312 of the federal Emergency Planning and Community Right to Know Act of 1986 and the federal regulations promulgated thereunder (42 U.S.C. Sec. 11022), as "facility" is defined in RPTA.

f. Any loss, damage, cost, expense or liability incurred by Lender as a result of a breach or misrepresentation by Mortgagor or for which Mortgagor is responsible or for which Mortgagor has indemnified Lender shall be paid to Lender on demand, and, failing

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prompt reimbursement, such amounts shall, together with interest thereon at the Default Rate under the Note from the date incurred by Lender until paid by Mortgagor, be added to Borrower's Liabilities, be immediately due and payable and be secured by the lien of this Mortgage and the other Loan Instruments.

g. Lender may, in its sole discretion, require Mortgagor to complete or cause to be completed, appropriate studies or assessments of the Mortgaged Property to determine the status of environmental conditions on and about the Mortgaged Property which such studies and/or assessments shall be for the benefit of, and conform to standards established by Lender.

h. Mortgagor hereby grants access to Lender, its agents, employees and contractors, access to the Mortgaged Property, at any time upon reasonable prior notice, for the purpose of either (i) taking such action as Lender shall determine to be appropriate to respond to a release or threatened release or the presence of Hazardous Materials, or any related condition, on or about the Mortgaged Property; or (ii) to conduct a study and/or assessment of the environmental condition of the Mortgaged Property to determine the status of environmental conditions on and about the Mortgaged Property.

20. **Event of Default.** The term "Event of Default," wherever used in this Mortgage, shall mean any one or more of the following events:

a. The failure by Mortgagor: (i) to pay or deposit when due 1) any payment of principal or interest within fifteen (15) days following the date when such payment shall become due and payable under the Note whether at maturity or otherwise; 2) any deposit for taxes and assessments due hereunder within fifteen (15) days after such deposit is due hereunder; or 3) any other sums to be paid by Mortgagor hereunder within fifteen (15) days after such payment is due hereunder; or (ii) to keep, perform or observe any covenant, condition or agreement on the part of Mortgagor in this Mortgage contained in Sections 4(a), 6(a), or 9 hereof; or (iii) to keep perform or observe any other covenant, condition or agreement on the part of Mortgagor in this Mortgage and such failure shall continue for thirty (30) days following the delivery of written notice to Mortgagor; provided, however, if such default is of the kind or nature that (in Lender's judgment) it is curable but is not capable of being cured within thirty (30) days, and provided, further, that Mortgagor has promptly commenced and is diligently proceeding to cure, then if such default is not cured within forty-five (45) days following the delivery of such notice.

b. The occurrence of a default under any of the Loan Instruments not cured within such cure, grace or other period, if any, provided in such Loan Instrument.

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c. The occurrence of an "Event of Default" under and as defined in any of the Loan Instruments.

d. The untruth of any warranty or representation made herein or in any affidavit or certificate executed by Beneficiary or any person acting on behalf of the Beneficiary or Mortgagor in connection with the Loan, the application therefor or the disbursement thereof.

e. An uninsured loss, damage, destruction or taking by eminent domain or other condemnation proceedings of any substantial portion of the Mortgaged Property or any part of the Mortgaged Property which materially impairs any of the intended uses of the Mortgaged Property.

f. The appointment of a receiver, trustee or conservator of Mortgagor, Beneficiary, all or any part of the Mortgaged Property or Mortgagor's or Beneficiary's business pertaining to the operation of the Mortgaged Property.

g. The occurrence of any of the following events:

(i) An admission in writing by a Party in Interest of its inability to pay debts as they become due:

(ii) The institution by a Party in Interest of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal bankruptcy statutes or any similar law (state or federal) now or hereafter existing:

(iii) The institution against a Party in Interest of bankruptcy, reorganization, insolvency or arrangement proceedings of any kind under federal bankruptcy statutes or any similar law (state or federal) now or hereafter existing which proceedings are not dismissed within sixty (60) days of filing,

(iv) The making of a general assignment for the benefit of creditors by a Party in Interest;

(v) The declaration by any court, government or governmental agency of the bankruptcy or insolvency of a Party in Interest;

(vi) The entry of a final judgment against a Party in Interest for \$25,000.00 or more which is not satisfied within thirty (30) days of the date on which such judgment shall have become final and all stays of execution pending appeal or otherwise shall have expired:

(vii) The issuance of a writ or warrant of attachment, levy, seizure or distraint or any similar process against a Party in Interest or all or a material part of the

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Mortgaged Property which is not stayed within sixty (60) days of issuance or the lapse of any such stay;

(viii) Any amendment of the agreement creating or governing a Party in Interest, without Lender's prior written consent; or

(ix) The dissolution, death or declaration, by a court of competent jurisdiction of the mental incompetency, of a Party in Interest.

For purposes of the foregoing clause (i) through (ix), "A Party in Interest" shall mean Mortgagor or Beneficiary (or any one of Beneficiary).

21. **Acceleration of Maturity.** If an Event of Default shall have occurred, Lender may declare the outstanding principal amount of the Note and the interest accrued thereon and any other of Borrower's Liabilities to be immediately due and payable, and upon such declaration such principal and interest and other Borrower's Liabilities declared due shall immediately become and be due and payable without further demand or notice.

22. **Lender's Power of Enforcement.** If an Event of Default shall have occurred, Lender may, either with or without entry or taking possession as provided in this Mortgage or otherwise, and without regard to whether or not Borrower's Liabilities shall have been accelerated, and without prejudice to the right of Lender thereafter to bring an action of foreclosure or any other action for any default existing at the time such earlier action was commenced or arising thereafter, proceed by any appropriate action or proceeding; (a) to enforce payment of the Note and/or any other of Borrower's Liabilities or the performance of any term hereof or any of the other Loan Instruments; (b) to foreclose this Mortgage and to have sold, as an entirety or in separate lots or parcels, the Mortgaged Property; and (c) to pursue any other remedy available to it. Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Lender may determine. Without limitation of the foregoing, if an Event of Default shall have occurred, as an alternative to the right of foreclosure for the full indebtedness evidenced by the Note and the interest accrued thereon and any other Borrower's Liabilities, after acceleration thereof, Lender shall have the right to institute partial foreclosure proceedings with respect to the portion of Borrower's Liabilities to in default, as if under a full foreclosure, and without declaring all of Borrower's Liabilities to be immediately due and payable (such proceedings being referred to herein as "partial foreclosure"), and provided that, if Lender has not elected to accelerate all of Borrower's Liabilities and a foreclosure sale is made because of default in payment of only a part of Borrower's Liabilities, such sale may be made subject to the continuing lien of this Mortgage

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for the unmatured part of Borrower's Liabilities. Any sale pursuant to a partial foreclosure, if so made, shall not in any manner affect the unmatured portion of Borrower's Liabilities, but as to such unmatured portion, this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale has been made. Notwithstanding the filing of any partial foreclosure or entry of a decree of sale therein, Lender may elect, at any time prior to a foreclosure sale pursuant to such decree, to discontinue such partial foreclosure and to accelerate Borrower's Liabilities by reason of any Event of Default upon which such partial foreclosure was predicated or by reason of any other defaults, and proceed with full foreclosure proceedings. Lender may proceed with one or more partial foreclosures without exhausting its right to proceed with a full or partial foreclosure sale for any unmatured portion of Borrower's Liabilities, it being the purpose to permit, from time to time a partial foreclosure sale for any matured portion of Borrower's Liabilities without exhausting the power to foreclose and to sell the Mortgaged Property pursuant to any partial foreclosure in respect of any other portion of Borrower's Liabilities, whether matured at the time or subsequently maturing, and without exhausting at any time the right of acceleration and the right to proceed with a full foreclosure.

## **23. Lender's Right to Enter and Take Possession, Operate and Apply Income.**

a. If an Event of Default shall have occurred, (i) Mortgagor, upon demand of Lender, shall forthwith surrender to Lender and cause Beneficiary to surrender to Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, is hereby expressly authorized to enter and take possession of all or any portion of the Mortgaged Property and may exclude Mortgagor, Beneficiary and the agents and employees of either or both of them wholly therefrom and shall have joint access with Mortgagor and Beneficiary to the books, papers and accounts of Mortgagor and Beneficiary; and (ii) notwithstanding the provisions of any lease or other agreement to the contrary, Mortgagor shall pay monthly in advance to Lender, on Lender's entry into possession, or to any receiver appointed to collect the rents, income and other benefits of the Mortgaged Property, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Mortgagor or Beneficiary, or any entity affiliated with or controlled by Mortgagor or Beneficiary, and upon default in any such payment Mortgagor shall, and shall cause Beneficiary to, vacate and surrender possession of such part of the Mortgaged Property to Lender or to such receiver, and in default thereof Mortgagor may be evicted by summary proceedings or otherwise.





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b. If Mortgagor or Beneficiary shall for any reason fail to surrender to deliver the Mortgaged Property or any part thereof after Lender's demand, Lender may obtain a judgment or decree conferring on Lender the right to immediate possession or requiring Mortgagor and Beneficiary to deliver immediate possession of all or part of the Mortgaged Property to Lender, to the entry of which judgment or decree Mortgagor hereby specifically consents. Mortgagor shall pay to Lender, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Lender, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

24. **Purchase by Lender.** Upon any foreclosure sale, Lender may bid for and purchase all or any portion of the Mortgaged Property and, upon compliance with the terms of the sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

25. **Application of Foreclosure Sale Proceeds.** The proceeds of any foreclosure sale of the Mortgaged Property or any part thereof received by Lender shall be applied by Lender to the indebtedness secured hereby in such order and manner as Lender may elect in a written notice to Mortgagor given on or before sixty (60) days following confirmation of the sale and, in the absence of such election, first to the expenses of sale, then to expenses including attorneys' fees of the foreclosure proceedings, then to interest and then to principal.

26. **Application of Indebtedness Toward Purchase Price.** Upon any foreclosure sale, Lender may apply any or all of the indebtedness and other sums due to Lender under the Note, this Mortgage or any other Loan Instrument or any other Borrower's Liabilities, or any decree in lieu thereof, toward the purchase price.

27. **Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.** Mortgagor hereby waives any and all rights of redemption. Mortgagor further agrees, to the full extent permitted by law, that in case of any event of Default, neither Mortgagor nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisal, valuation, stay or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement or foreclosure of this Mortgage or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser there at. Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure

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of the lien hereof and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety. Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Illinois Mortgage Foreclosure Law (Chapter 110, Sections 15-1101 et seq., Illinois Revised Statutes) (herein called the "Act")) or residential real estate (as defined in Section 15-1219 of the Act), and to the full extent permitted by law, hereby voluntarily and knowingly waives its rights to reinstatement and redemption as allowed under Section 15-1601(b) of the Act.

**28. Suits to Protect the Mortgaged Property.** Lender shall have the power and authority (but not the duty) to institute and maintain any suits and proceedings as Lender may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or which violate the terms of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, or (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Lender's interest.

**29. Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor or Beneficiary, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amounts due and payable under the Note, this Mortgage and any other Loan Instrument, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable after such date.

**30. Mortgagor to Pay Borrower's Liabilities in Event of Default; Application of Monies by Lender.**

a. Upon occurrence of an Event of Default, Lender shall be entitled to sue for and to recover judgment against Mortgagor for Borrower's Liabilities due and unpaid together with costs and expenses, including, without limitation, the reasonable compensation, expenses and disbursements of Lender's agents, attorneys and other representatives, either before, after or during the pendency of any proceedings for the enforcement of this Mortgage; and the right of Lender to recover such judgment shall not be affected by any taking of possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

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b. In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of Borrower's Liabilities, Lender shall be entitled to enforce all other rights and remedies under the Loan Instruments.

c. Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any judgment by lender under any of the Loan Instruments, and no attachment or levy of execution upon any of the Mortgaged Property or any other property of Mortgagor, shall (except as otherwise provided by law) in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Lender hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before until Borrower's Liabilities are paid in full.

d. Any monies collected or received by Lender under this Section 30(d) shall be applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Lender, and the balance remaining shall be applied to the payment of Borrower's Liabilities, in such order and manner as Lender may elect, and any surplus, after payment of all Borrower's Liabilities, shall be paid to Mortgagor.

31. **Delay or Omission.** No delay or omission of Lender in the exercise of any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

32. **Waiver of Default.** No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies in respect thereof. If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby, (b) takes other or additional security for the payment thereof, (c) waives or does not exercise any right granted in the Note, this Mortgage or any other Loan Instrument, (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other Loan Instrument, (e) consents to the filing of any map, plat or replat of the Land, (f) consents to the granting of any easement on the Land, or (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the lien of this Mortgage or any other Loan Instrument or the liability under the Note or other Loan Instruments of Mortgagor, any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, except as otherwise expressly provided in an instrument or instruments executed by Lender. Except as otherwise expressly

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provided in an instrument or instruments executed by Lender, no such act or omission shall preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in case of any event of Default then existing or of any subsequent Event of Default, nor shall the lien of this Mortgage be altered thereby, except to the extent of any releases as described in clause (d), above, of this Section 32.

**33. Discontinuance of Proceedings; Position of Parties Restored.** If lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Lender, then and in every such case Mortgagor and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred or had been taken.

**34. Remedies Cumulative.** No right, power or remedy conferred upon or reserved to Lender by the Note, this Mortgage or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other Loan Instrument or any instrument evidencing or securing Borrower's Liabilities, or now or hereafter existing at law, in equity or by statute.

**35. Interest After Event of Default.** If an Event of Default shall have occurred, all sums outstanding and unpaid under the Note and all other Borrower's Liabilities shall, to the extent permitted by law, bear interest thereafter at the Default Rate as defined in the Note until such Event of Default is cured.

**36. Heirs, Successors and Assigns Included in Parties.** Whenever Mortgagor, Lender or Beneficiary is named or referred to herein, heirs and successors and assigns of such person or entity shall be included, and all covenants and agreements contained in this Mortgage shall bind the successors and assigns of Mortgagor and Beneficiary, including any subsequent owner of all or any part of the Mortgaged Property and inure to the benefit of the successors and assigns of Lender. This Section 36 shall not be construed to permit an assignment, transfer, conveyance, encumbrance or other disposition otherwise prohibited by this Mortgage.

**37. Notices.** All notices, requests, reports demands or other instruments required or contemplated to be given or furnished under this Mortgage to Mortgagor or Lender shall be directed to Mortgagor or Lender as the case may be at the following address:

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If to Lender:

Marquette National Bank  
6316 S. Western Avenue  
Chicago, Illinois 60636  
Attn: Thomas O'Reilly

with a copy to:

McCarthy, Duffy, Neidhart &  
Snakard  
180 N. LaSalle  
Suite 1400  
Chicago, Illinois 60601

If to Mortgagor:

William Brennan  
P. O. Box 302  
Palos Park, IL 60464

Any such notices, request, reports, demands or other instruments shall be (a) personally delivered to the offices set forth above, in which case they shall be deemed delivered on the date of delivery to said offices, (b) sent by certified mail, return receipt requested, in which case they shall be deemed delivered three (3) business days after deposit in the U.S. mail, postage prepaid, or (c) sent by air courier (Federal Express or like service), in which case they shall be deemed delivered on the date of actual delivery. Either party may change the address to which any such notice, report, demand or other instrument is to be delivered by furnishing written notice of such change to the other party in compliance with the foregoing provisions.

38. **Headings.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience only, are not to be considered a part hereof, and shall not limit, expand or otherwise affect any of the terms hereof.

39. **Invalid Provisions.** In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or in any other Loan Instrument shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein or in the Note or in any other Loan Instrument (or the application of the covenant, agreement, term held to be invalid, illegal or unenforceable, to persons or circumstances other than those in respect of which it is invalid, illegal or unenforceable) shall be in no way affected, prejudiced or disturbed thereby.

40. **Changes.** Neither this Mortgage nor any term hereof may be released, changed, waived, discharged or terminated orally, or by an action or inaction, but only by an instrument in writing signed by the party against which enforcement of the release, change, waiver, discharge or termination is sought. To the extent permitted by law, any agreement hereafter made by Mortgagor and Lender relating to this Mortgage shall be superior to the rights of

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the holder of any intervening lien or encumbrance. Any holder of a lien or encumbrance junior to the lien or this Mortgage shall take its lien subject to the right of Lender to amend, modify or supplement this Mortgage, the Note or any of the other Loan Instruments, to extend the maturity of Borrower's Liabilities or any portion thereof, to vary the rate of interest chargeable under the Note and to increase the amount of the indebtedness secured hereby, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

41. **Governing Law.** This Mortgage shall be construed, interpreted, enforced and governed by and in accordance with the laws of the State of Illinois.

42. **Required Notices.** Mortgagor shall notify Lender promptly of the occurrence of any of the following: (a) receipt of notice from any governmental authority relating to the violation of any rule, regulation, law or ordinance, the enforcement of which would materially and adversely affect the Mortgaged Property; (b) material default by any tenant in the performance of its obligations under any lease of all or any portion of the Mortgaged Property or receipt of any notice from any such tenant claiming that a default by landlord in the performance of its obligations under any such lease has occurred; or (c) commencement of any judicial or administrative proceedings by or against or otherwise adversely affecting Mortgagor, Beneficiary or the Mortgaged Property.

43. **Future Advances.** This Mortgage is given to secure not only existing indebtedness, but also future advances (whether such advances are obligatory or are to be made at the option of Lender, or otherwise) made by Lender under the Note, to the same extent as if such future advances were made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but all indebtedness secured hereby shall, in no event, exceed five times the aggregate face amount of the Note.

44. **Release.** Upon full payment of Borrower's Liabilities, Lender shall issue to Mortgagor an appropriate release deed in recordable form.

45. **Sale and Release of Units.**

a. **Sales of Units.** Mortgagor shall submit to Lender a proposed form of real estate sale contract for the sale of the units acceptable to Lender ("Sale Contract"). Without Lender's prior written consent, the Mortgagor shall not: (i) modify or amend the general form of Sale Contract to be used for the sale of units; (ii) offer to sell or accept any offer to sell any unit unless that offer is made on the terms of the Sale Contract; or (iii) cause or

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permit any unit to be sold for a price less than the Base Price for that Unit. Not later than the time the sale of any units is closed, Mortgagor will pay or cause to be paid to Lender the sum of Seventy Five Thousand and Five Hundred and 00/100 for (\$75,500.00) each unit be released ("Release Price"). Such payments to Lender will be applied against the indebtedness due under the Note, under this Agreement and under the Loan Documents, and may be allocated to principal, interest, or other charges or indebtedness, if any, thereunder as Lender in its sole discretion may determine.

b. **Reports of Lot Sales.** Mortgagor will furnish to Lender, on or before the fifteenth (15) day of each month, a cumulative report of unit sales as of the last day of the immediately preceding month, setting out such information as Lender may request.

c. **Contract Escrow Accounts.** Mortgagor agrees that Lender shall have the right, exercisable in Lender's sole discretion, to require that all amounts collected from purchasers or prospective purchasers of Lots will be held in escrow or trust for the benefit of the parties hereto and such purchasers or prospective purchasers strictly in accordance with all purchase contracts ("Escrow Account"). The terms of such Escrow Account will provide that the funds held by the escrowee thereof will be deposited with Lender in a demand deposit account or in a savings account. Mortgagor further agrees that all Sale Contracts shall contain a provision for such Escrow Account and that the terms governing such Escrow Account shall be approved by Lender. If Lender exercises its right to require that all amounts collected from purchasers be deposited in an Escrow Account, Mortgagor will provide Lender, at Lender's request and on or before the fifteenth (15) day of each calendar month after the date hereof, a certified report of all transactions relating to such Escrow Account which occurred during the prior calendar month, including for each transaction the name or names of the purchaser or purchasers, the home address or other appropriate identification thereof, the amount of the deposit or withdrawal applicable thereto, the reason for each and every withdrawal from the Escrow Account and the basis on which Mortgagor claims it is legally entitled to make such withdrawal, provided, however, in no event shall any amount be withdrawn from said Escrow Account without the prior written consent of Lender, except at the time of closing of each Lot or to refund a purchaser's earnest money deposit.

d. **Rights to Sale Contracts.** Lender shall have the right, but not the obligation, to demand payment to Lender of any and all moneys, contracts, notes or other evidences of indebtedness and the security therefor due to or in favor of Mortgagor, whether the same are payable from Mortgagor, from the escrowee of the Escrow Account, or from any escrowee of any deed and money escrow involving the encumbrances, sale or other disposition of any Lot to the extent permitted by law and by the sales contract or such Lot.



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To secure the payment and performance of all obligations of Mortgagor arising hereunder, Mortgagor hereby expressly and irrevocably assigns to Lender and grants a security interest to Lender in all such right, title and interest in and to such moneys and such contracts, notes and other evidence of indebtedness and the proceeds of all thereof. A copy of this Agreement, certified by an officer of Lender as then being in full force and effect, shall be deemed to be Mortgagor's authorized valid and binding direction to such escrowee immediately to comply with such demand of Lender.

**e. Partial Release of Unit from lien of the Mortgage.**

Whenever any unit shall have been sold and conveyed by Mortgagor to any purchaser thereof in conformity with the applicable provisions of this Agreement, and provided there does not then exist Default hereunder, Lender will deliver to Mortgagor or to the unit purchaser, an instrument which is duly recorded would operate to release such unit from the lien of the Mortgage, provided that, as additional conditions to Lender's delivery of such instrument of release, Mortgagor shall pay or cause to be paid to Lender the full Release Price with respect to that Lot plus the sum of Fifty Dollars (\$50.00) for the partial release to be issued, and Mortgagor shall have complied with all of the requirements and provisions of this Agreement (including, but not limited to, all of the requirements of this Section 52).

**e. Marketing Efforts.** Mortgagor agrees to use its best efforts to market and sell all Units at the earliest possible date at prices not less than the Base Prices therefor, which best efforts shall include, without limitation, incurring all necessary or appropriate expenses for advertising, promotion and brokerage.

**46. Attorneys' Fees.** Whenever reference is made herein to the payment or reimbursement of attorneys fees, such fees shall be deemed to include reasonable compensation to staff counsel, if any, of Lender in addition to the fees of any other attorneys engaged by Lender.

**47. Compliance with Illinois Mortgage Foreclosure Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Lender any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender 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 Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before or after any

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decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

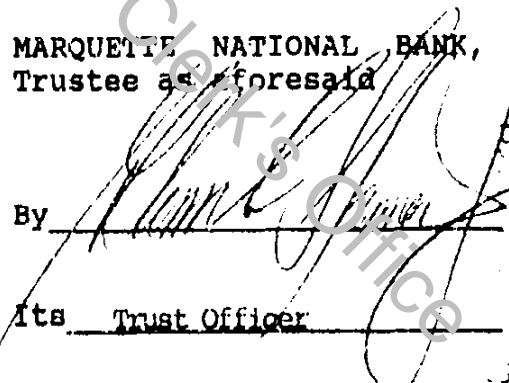
48. **Exculpatory Provision.** This Mortgage is executed by **MARQUETTE NATIONAL BANK**, not in its individual capacity, but solely as trustee as aforesaid in the exercise of the power and authority conferred upon and vested in it as such trustee. It is expressly understood and agreed that nothing contained herein or in the Loan Instruments shall be construed as creating any liability on **MARQUETTE NATIONAL BANK**, in its individual capacity to pay Borrower's Liabilities, or any indebtedness accruing hereunder, or to perform any covenant either express or implied herein contained, all such liability in its individual capacity, if any, being expressly waived by lender and by every person now or hereafter claiming any right or security hereunder. So far as Mortgagor and its successors and said **MARQUETTE NATIONAL BANK** personally are concerned, the legal holder of the Note and the owner or owners of any indebtedness accruing hereunder shall look solely to the premises hereby conveyed and any rent or proceeds therefrom for the payment thereof, by the enforcement of the lien hereby created, in the manner herein and in said Note provided or by action to enforce the personal liability of any guarantors of said indebtedness, by action against the Beneficiary arising out of a breach of one or more of the other Loan Instruments to which the Beneficiary is a party or by the exercise of any remedy available under any of the other Loan Instruments.

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by its duly authorized officers as of the day and year first above written.

MARQUETTE NATIONAL BANK, as  
Trustee as aforesaid

ATTEST:

  
\_\_\_\_\_  
Its Asst. Secretary

By   
\_\_\_\_\_  
Its Trust Officer

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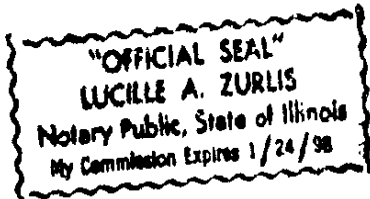
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## ACKNOWLEDGEMENT

STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

I, Lucille A. Zurlis, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Glenn E. Skinner, Jr. and Lisa M. Rivera, of the MARQUETTE NATIONAL BANK, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Trust Officer and Asst Secretary appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary acts and as the free and voluntary act of said bank; and the said Asst. Secretary acknowledged that Asst. Secretary, as custodian of the corporate seal of said bank, did affix said corporate seal to said instrument as her own free and voluntary act and as the free and voluntary act of said bank for said uses and purposes.

GIVEN under my hand and notarial seal this 31st day of ~~XXXXXX~~ January, 1994



Lucille A. Zurlis  
 Notary Public

My Commission Expires:  
1-24-98

THIS INSTRUMENT PREPARED BY  
 AND AFTER RECORDING RETURN TO:

Thomas D. O'Reilly  
 c/o Marquette National Bank  
 Chicago, Illinois 60636

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## LEGAL DESCRIPTION

THE LAND REFERRED TO IN THIS COMMITMENT IS DESCRIBED AS FOLLOWS:

Tract 2 in Frederick N. Bartlett's Palos Township Farms Subdivision of the North 1/2 of the Southwest 1/4 in Section 1, Township 37 North, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.

P.I.N. 23-01-309-002

9211 S. Roberts Rd

Property of Cook County Clerk's Office

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