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## MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

- . DEPT-01 RECORDING \$116.00
- . T40014 TRAN 1272 06/06/94 13:06:00
- . 4473 ÷ \*-94-296264
- . COOK COUNTY RECORDER

EXTRA SPACE OF CERMAK ROAD, AN ILLINOIS LIMITED PARTNERSHIP

("Borrower")

in favor of

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO

("Lender")

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## MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

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## MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made as of March 29, 1994, by EXTRA SPACE OF CERMAK ROAD, AN ILLINOIS LIMITED PARTNERSHIP ("Borrower"), with a mailing address c/o Extra Space Management, Inc., 7001 South 900 East, Suite 250, Midvale, Utah 84047, to AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association ("Lender"), with a mailing address at 1936 North Broadway, Melrose Park, Illinois 60160, Attention: Joseph R. Chiariello, and pertains to the real estate described in Exhibit "A" attached hereto and made a part hereof ("Property").

### I

#### RECITALS

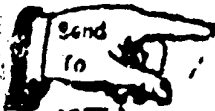
A. Borrower has executed and delivered to Lender a Mortgage Note (the "Note") of even date herewith, wherein Borrower promises to pay to the order of Lender the principal amount of ONE MILLION EIGHT HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,850,000.00) in repayment of a loan from Lender in like amount (the "Loan"), together with interest thereon as set forth in the Note, which Note is due and payable on or before March 29, 1999.

B. As security for the repayment of the Loan, in addition to this Mortgage, certain other loan documents have been executed and delivered to Lender (the Note, this Mortgage, the Guaranty and the Security Agreement (both as defined in the Note), that certain Environmental Indemnity Agreement (the "Environmental Indemnity Agreement") of even date herewith executed by Borrower, in favor of Lender, and all other documents or instruments which are executed or delivered to Lender as additional evidence of, or security for repayment of, the Loan, whether now or hereafter existing, and all renewals, amendments, extensions, modifications and supplements thereof or thereto, are hereinafter sometimes collectively referred to as the "Loan Documents"). The terms and provisions of the other Loan Documents are hereby incorporated herein by this reference.

DOCUMENT PREPARED BY AND AFTER  
RECORDING RETURN TO:

William F. Little, Esq.  
Holleb & Coff  
55 E. Monroe Street  
Suite 4100  
Chicago, IL 60603

Property Address:  
4520 West Cermak Road  
Chicago, IL  
Tax Identification Nos.:  
16-22-312-022  
16-22-312-021  
16-22-312-020



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C. In consideration of advances, credit and other financial accommodations heretofore or hereinafter made to Borrower by Lender, Lender has required Borrower hereby to deliver, pledge, assign, transfer, mortgage and warrant to Lender the Mortgaged Property (as that term is hereinafter defined) as security for repayment of the Loan as well as any and all other amounts owed to Lender under the terms of the Loan Documents.

## II

### THE GRANT

To secure the payment of the principal amount of the Note and interest thereon and interest, fees and premiums, if any thereon, and all other sums due thereunder or advanced by Lender and all costs and expenses incurred by Lender in connection with any of the Loan Documents and all other indebtedness, obligations and liabilities of Borrower with respect to the loan, now existing or hereafter arising, whether fixed or contingent, direct or indirect, primary or secondary, joint or several, and regardless of how created or evidenced and any and all renewals, extensions, or modifications of any of the foregoing indebtedness (collectively all such payments and sums due are sometimes referred to herein as the "indebtedness secured hereby") and to secure the observance and performance of the agreements contained herein, in the other Loan Documents, and in all renewals, amendments, extensions and modifications of the Note and the other Loan Documents, Borrower hereby grants, bargains, sells, conveys, and mortgages to Lender, its successors and assigns, forever all of Borrower's estate, right, title and interest, whether now or hereafter acquired, in and to the Property, together with all of the Borrower's estate, right, title and interest in the following described property (the Property together with the following described property being hereinafter referred to collectively as the "Mortgaged Property"), all of which other property is hereby pledged on a parity with the Property and not secondarily:

(a) All buildings and other improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the Mortgaged Property immediately upon the delivery thereof to the Property;

(b) All right, title and interest of Borrower, including any after-acquired title or reversion, in and to the beds of the ways, streets, avenues, sidewalks and alleys adjoining the Property;

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(c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights and any and all other rights, liberties and privileges of the Property or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license and the reversions and remainders thereof;

(d) All leases now or hereafter on or affecting the Property, whether written or oral, and all agreements for use of the Property, together with rents, issues, deposits, profits and other benefits now or hereafter arising from or in respect of the Property accruing and to accrue from the Property and the avails thereof;

(e) All fixtures and personal property now or hereafter owned by Borrower and attached to, contained in or used in connection with the Property or the aforesaid improvements thereon, including without limitation any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring and all renewals or replacements thereof or articles in substitution therefor, whether or not the same be attached to such improvements, it being agreed that all such property owned by Borrower and placed on the Property or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purpose of this Mortgage to be part of the real estate constituting and located on the Property and covered by this Mortgage;

(f) All judgments, insurance proceeds, awards of damages and settlements which may result from any damage to all or any portion of the Property and the other Mortgaged Property, or any part thereof, or to any rights appurtenant thereto;

(g) All compensation, awards, damages, claims, rights of actions and proceeds of or on account of (i) any damage or taking, pursuant to the power of eminent domain, of the Property and the other Mortgaged Property or any part thereof, (ii) damage to all or any portion of the Property and the other Mortgaged Property by reason of the taking, pursuant to the power of eminent domain, of all or any portion of the

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of such contest, any excess funds held by Lender shall be promptly returned to Borrower.

In the event Borrower fails to prosecute such contest in good faith and with reasonable diligence, Lender may, at its option after notice to Borrower, apply the monies and liquidate any securities deposited with Lender in payment of, or on account of, such taxes, assessments and charges, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such taxes, assessments and charges, together with all penalties and interest thereon, Borrower shall forthwith, upon demand, either deposit with Lender a sum that, when added to such funds then on deposit, is sufficient to make such payment in full, or, if Lender has applied funds on deposit on account of such taxes and assessments, restore such deposit to an amount satisfactory to Lender. Provided no Default (as hereinafter defined) exists hereunder, Lender shall, if so requested in writing by Borrower, after final disposition of such contest and upon Borrower's delivery to Lender of an official bill for such taxes, assessments or charges apply the money so deposited in full payment of such taxes, assessments or charges or that part thereof then unpaid, together with all penalties and interest thereon, and any excess security shall be returned to Borrower.

**3.03 Tax Escrow.** In the event of a Default, upon Lender's request, Borrower shall deposit with Lender one-twelfth (1/12th) of one hundred ten percent (110%) of the annual real estate taxes as reasonably estimated by Lender in such manner as Lender may prescribe so as to provide for the current year's real estate tax obligation. If the amount estimated to pay said taxes is not sufficient, Borrower shall pay the difference within five (5) business days following Lender's written demand therefor. Should Borrower fail to deposit sufficient amounts with Lender to pay such obligations, Lender may, but shall not be obligated to, advance monies necessary to make up any deficiency in order to pay such obligations. Any monies so advanced by Lender shall become so much additional indebtedness secured hereby and shall become immediately due and payable with interest due thereon at the Default Interest Rate. Lender is not obligated to inquire into the validity or accuracy of the real estate tax obligations before making payments of the same and nothing herein contained shall be construed as requiring Lender to advance other monies for said purpose nor shall Lender incur any personal liability for anything it may do or omit to do hereunder. It is agreed that all such payments made, at the option of Lender, shall be (i) held in trust by it without earnings for the payment of the real estate tax obligations; (ii) carried in a tax account for the benefit of Borrower and withdrawn by Lender to pay the real estate tax obligations; or (iii) credited to the unpaid balance of said indebtedness as received, provided that Lender advances upon this obligation sums sufficient to pay said items as the same accrue and become payable. If such items are

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the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

If and when the principal amount of the Note and all interest as provided thereunder has been paid, and Borrower has satisfied all other obligations under the Loan Documents, then this Mortgage shall be released at the cost of Borrower, but otherwise shall remain in full force and effect.

## III

### GENERAL AGREEMENTS

3.01 Principal and Interest. Borrower shall pay or cause to be paid promptly when due the principal and interest on the indebtedness evidenced by the Note at the times and in the manner provided in the Note and this Mortgage. Any amount not paid when due hereunder shall accrue with interest at the Default Interest Rate (as defined in the Note).

3.02 Property Taxes. Borrower shall pay immediately, when first due and owing, all general taxes, special taxes, special assessments, water charges, sewer charges, and any other charges that may be asserted against the Mortgaged Property or any part thereof or interest therein, and shall furnish to Lender duplicate receipts therefor within sixty (60) days after payment thereof. The foregoing notwithstanding, Borrower may, in good faith and with reasonable diligence, contest the validity or amount of any such taxes, assessments or charges, and not pay the same, provided that:

(a) such contest shall have the effect of preventing the collection of the tax assessment or charge so contested and the sale or forfeiture of the Mortgaged Property or any part thereof or interest therein to satisfy the same;

(b) Borrower has notified Lender in writing of the intention of Borrower to contest the same before any tax or assessment or charge has been increased by any interest, penalties or costs; and

(c) Borrower has deposited with Lender, at such place as Lender may from time to time in writing designate, a sum of money or other security acceptable to Lender that is sufficient, in Lender's judgment, to pay in full such contested tax and assessment and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Lender's judgment, to pay in full such contested tax and assessment, increasing such amount to cover additional penalties and interest whenever, in Lender's judgment, such increase is advisable. Upon the consummation

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Property and the other Mortgaged Property or of other property, or (iii) the alteration of the grade of any street or highway on or about the Property and the other Mortgaged Property or any part thereof; and Lender is hereby authorized to collect and receive said awards and proceeds and to give proper receipts and acquittances therefor and to apply the same toward the payment of the indebtedness and other sums secured hereby;

(h) 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 Property or the other Mortgaged Property;

(i) All proceeds, products, replacements, additions, substitutions, renewals and accessions of and to the Property or the other Mortgaged Property;

(j) All building materials and goods which are procured or to be procured for use on or in connection with the Mortgaged Property, whether or not such materials and goods have been delivered to the Property;

(k) All plans, specifications, architectural renderings, drawings, licenses, permits, soil test reports, other reports of examinations or analyses, contracts for services to be rendered Borrower, or otherwise in connection with the Mortgaged Property and all other property, contracts, reports, proposals, and other materials now or hereafter existing in any way relating to the Property or the other Mortgaged Property or construction of additional improvements thereto;

(l) The proceeds from any sale, transfer, pledge or other disposition of any or all of the foregoing described Mortgaged Property;

To have and to hold the same unto Lender and its successors and assigns forever, for the purposes and uses herein set forth together with all right to possession of the Property, subject only to the schedule of exceptions, if any, listed in the title insurance policy insuring Lender's interest in the Property ("**Permitted Encumbrances**"); Borrower hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State where the Property are located.

**BORROWER REPRESENTS, WARRANTS AND COVENANTS**, to Lender that it is lawfully seized of the Property, that the same is unencumbered except by the Permitted Encumbrances, if any, and that it has good right, full power and lawful authority to convey and mortgage the same, and that it will warrant and forever defend said parcels and

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held in trust or carried in a tax account for Borrower, the same are hereby pledged together with any other account of Borrower, or any guarantor hereof, held by Lender to further secure the indebtedness represented by the Note and any officer of Lender is authorized to withdraw the same and apply said sums as aforesaid.

**3.04 Payments by Lender.** After the occurrence of a Default hereunder, Lender is hereby authorized to make or advance, in the place and stead of Borrower, any payment relating to taxes, assessments, water and sewer charges, and other governmental charges, fines, impositions or liens that may be asserted against the Mortgaged Property or any part thereof, and may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any tax, assessment, lien, sale, forfeiture or title or claim relating thereto. In the event of a Default hereunder, Lender is further authorized to make or advance, in the place and stead of Borrower, any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge or payment, as well as take any and all actions which Lender deems necessary or appropriate on Borrower's behalf whenever, in Lender's sole and absolute judgment and discretion, such payments or actions seem necessary or desirable to protect the full security intended to be created by this Mortgage. In connection with any such advance, Lender is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Lender's choosing. All payments, costs and other expenses incurred by Lender pursuant to this Paragraph 3.04, including, without limitation, attorneys' fees, expenses and court costs, shall constitute additional indebtedness secured hereby and shall be repayable by Borrower upon demand with interest at the Default Interest Rate.

### **3.05 Insurance.**

(a) **Hazard.** (i) Borrower shall keep the improvements now existing or hereafter erected on the Mortgaged Property insured under a replacement cost form of insurance policy (without depreciation) against loss, damage or destruction resulting from fire, windstorm and other hazards (collectively, any "Loss") as may be required by Lender, and to pay promptly, when due, any premiums on such insurance. All such insurance shall be in form and of content satisfactory to Lender and shall be carried with companies approved in writing by Lender and all such policies and renewals thereof (or certificates evidencing the same) marked "paid" shall be delivered to Lender at least thirty (30) days before the expiration of then existing policies and shall have attached thereto standard noncontributing mortgagee clauses entitling Lender to collect any and all proceeds payable under such insurance, as well as standard waiver

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of subrogation endorsements. Borrower shall not carry any separate insurance on such improvements concurrent in kind or form with any insurance required hereunder or contributing in the event of any Loss, unless each such policy includes a standard noncontributing mortgagee clause entitling Lender to collect any and all proceeds thereunder, as well as a standard waiver of subrogation endorsement. In the event of a change in ownership or of occupancy of the Mortgaged Property, or any portion thereof, Borrower shall give prompt notice thereof by mail to Lender.

(ii) In case of any Loss, Lender (or after entry of decree of foreclosure, purchaser at the sale, or the decree creditor, as the case may be) is hereby authorized to either: (1) settle, adjust or compromise any claim under any insurance policies, and Lender shall act in its discretion without the consent of Borrower; or (2) allow Borrower to settle, adjust or compromise any claims for loss, damage or destruction or other casualty with the insurance company or companies on the amount to be paid upon the Loss. In either case Lender is authorized to collect and receipt for any such insurance proceeds and the expenses incurred by Lender in the adjustment and collection of insurance proceeds shall be so much additional indebtedness secured hereby and shall be reimbursed to Lender upon demand or may be deducted by Lender from said insurance proceeds prior to any other application thereof. In case of any such Loss, if, in Lender's judgment, either the improvements to the Property cannot be restored to adequate security, in Lender's sole judgment, or the funds collected from any such insurance settlements are insufficient to pay for the full restoration and repair of such damage, and Borrower fails to deposit with Lender the amount of such deficiency within twenty (20) business days after Lender's demand therefor, Lender, upon written notice to Borrower, shall have the right to collect any and all insurance proceeds and apply the same toward payment of the indebtedness secured hereby, after deducting all expenses and fees of collection. In the event Lender determines in its discretion, that the net insurance proceeds are insufficient to pay the then-existing indebtedness secured hereby including, but not limited to, all accrued interest, fees and charges, and Borrower fails to deposit with Lender the amount of any such deficiency within twenty (20) business days after Lender's demand therefor, Lender may, at its sole election, declare all indebtedness secured hereby to be immediately due and payable, and Lender may then treat the same as in the case of any other Default hereunder. In the event any insurance company raises a defense

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against either Borrower or Lender to any claim for payment due to damage or destruction of the Property or any part thereof by reason of fire or other casualty submitted by Lender or any party on behalf of Lender, then Lender may, at its option, whether or not Lender has received funds from any insurance settlements, declare the unpaid balance to be immediately due and payable, and Lender may then treat the same as in the case of any other Default hereunder. Notwithstanding anything to the contrary contained herein, provided no Default exists hereunder and no event or condition which with the passage of time or otherwise would constitute a Default hereunder or under any of the other Loan Documents, Borrower may settle, adjust or compromise any claims for loss, damage or destruction arising out of a single occurrence which in the aggregate do not exceed TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00).

In case of any Loss after foreclosure proceedings have been instituted, all insurance proceeds shall, at Lender's option, 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 to the owner of the equity of redemption if said owner shall then be entitled to the same, or as the court may otherwise direct. In case of the foreclosure of this Mortgage, the court in its decree may provide that the mortgagee's clause attached to each of said insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said policies making the loss thereunder payable to said decree creditor. Any foreclosure decree may further provide that in case of any one or more redemptions made under said decree, each successive redepton may cause the preceding loss clause attached to each insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redepton. In the event of foreclosure sale, Lender is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Lender may deem advisable, to cause the interest of such purchaser to be protected by any of the said insurance policies.

Nothing contained in this Mortgage shall create any responsibility or obligation on Lender to collect any amount owing on any insurance policy, to rebuild, repair or replace any damaged or destroyed portion of the Mortgaged Property, or to perform any act hereunder.

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(iii) If Lender elects or is required hereby to apply such insurance proceeds toward repairing, restoring, and rebuilding such improvements, such insurance proceeds shall be made available therefor, by Lender, or such other depository designated by Lender, from time to time, to Borrower or at Lender's option directly to contractors, sub-contractors, material suppliers and other persons entitled to payment in accordance with and subject to such conditions to disbursement as Lender may impose to insure 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, provided that Lender is furnished with evidence satisfactory to Lender of the estimated cost of such repairs, restoration and rebuilding and with architect's and other certificates, waivers of lien, certificates, contractors' sworn statements, and other evidence of the estimated cost thereof and of payments as Lender may require and approve. In addition to the foregoing, if the estimated cost of the work exceeds ten (10%) percent of the original principal amount of the indebtedness secured hereby, Borrower shall also deliver to Lender for its prior approval evidence satisfactory to Lender that the appraised value of the Mortgaged Property after such work will not be less than its appraised value established in the appraisal delivered to Lender on or prior to the date hereof and all plans and specifications for such repairs, restoration and rebuilding as Lender may reasonably require and approve. No payment made prior to the final completion of the work shall exceed ninety (90%) percent of the value of the repair, restoration or rebuilding work performed, from time to time, and at all times the undisbursed balance of such proceeds remaining in the custody or control of Lender shall be, in Lender's discretion, at least sufficient to pay for the cost of completion of the work, free and clear of any liens. Lender may, at any time after the occurrence of a Default hereunder or under any of the other Loan Documents and in its discretion, procure and substitute for any and all of the insurance policies so held as aforesaid, such other policies of insurance in such amounts and carried in such companies as Lender may select. Lender may commingle any such funds held by it hereunder and shall not be obligated to pay interest with respect to any such funds held by or on behalf of Lender.

(b) **Liability.** Borrower shall carry and maintain such commercial public liability against death, bodily injury and property damage insurance as may be required from time to time by Lender in form, content, and in amounts satisfactory to, and with companies approved in writing by, Lender in its discretion; provided, however, that the amounts of coverage

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with respect to liability only shall not be less than ONE MILLION DOLLARS (\$1,000,000.00) single limit liability and that the policies shall name Lender as an additional insured party thereunder. Certificates of such insurance, premiums prepaid, shall be deposited with Lender and shall contain provision for thirty (30) days' notice to Lender prior to any cancellation or payment of any claims thereunder.

(c) Builder's Risk. Upon the request of Lender, Borrower shall obtain or shall cause to be obtained Builder's Risk Insurance on an "all risks" basis for one hundred percent (100%) of the insurable value of all construction work in place or in progress from time to time, insuring the Mortgaged Property, including materials in storage and while in transit, against loss or damage by fire or other casualty, with extended coverage, and with "X," "C" and "U" coverage, vandalism and malicious mischief coverage, bearing a replacement cost agreed amount endorsement; and

(d) Flood. If the Property is now or hereafter located within an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended (the "F.I.A."), Borrower shall carry and maintain flood insurance in an amount not less than the maximum limit coverage available under the F.I.A.

(e) Other Insurance. Upon Lender's written request, Borrower shall carry and maintain or cause to be carried and maintained such other insurance coverage(s) as Lender may, in its discretion, deem necessary or appropriate in such amounts, with such companies and in such form satisfactory to Lender, all at Borrower's sole expense.

3.06 Condemnation and Eminent Domain. Any and all awards heretofore or hereafter made or to be made to the present or any subsequent owner of the Mortgaged Property by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Mortgaged Property, (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), are hereby assigned by Borrower to Lender, which awards Lender is hereby authorized to negotiate, collect and receive from the condemnation authorities. Lender is hereby authorized to give appropriate receipts and acquittances therefor. Borrower shall give Lender prompt notice of the actual, or to Borrower's actual knowledge, any overtly threatened, commencement of any condemnation or eminent domain proceedings affecting all or any part of the Mortgaged Property (including severance of, consequential damage to or change in grade of streets), and shall deliver to Lender copies

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of any and all papers served on Borrower in connection with any such proceedings. Borrower further agrees to make, execute and deliver to Lender, free and clear of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning all awards and other compensation heretofore, now and hereafter made to Borrower for any taking, either permanent or temporary, under any such proceeding. At Lender's option, any such award may either be applied toward the indebtedness secured by this Mortgage or applied toward restoring the Mortgaged Property in which event the same shall be paid out in the same manner as is provided for insurance proceeds in Paragraph 3.05(a) hereof. The foregoing notwithstanding, if such award is sufficient in Lender's sole judgment to restore the Mortgaged Property to an architectural and economic whole constituting adequate security, in Lender's sole judgment, for the outstanding Loan balance at the end of such restoration, or if such award is not so sufficient but Borrower deposits such additional amounts necessary to make up such insufficiency within twenty (20) days after Lender's demand therefor, Lender shall apply such award toward restoring the Mortgaged Property as aforesaid. Notwithstanding the foregoing, any expenses incurred by Lender in intervening in such action or compromising and settling such action or claim, or collecting such proceeds, shall be reimbursed to Lender first out of the proceeds.

**3.07 Maintenance of Property.** No material portion of the Mortgaged Property shall be altered, removed, demolished, severed, sold or mortgaged, without the prior written consent of Lender, 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 by this Mortgage or by any separate security agreement executed in conjunction herewith, if commercially reasonable to do so, the same shall be replaced promptly by similar fixtures, chattels and articles of personal property at least equal in quality and condition to those replaced, free from any other security interest therein, encumbrances thereon or reservation of title thereto. Borrower shall promptly repair, restore or rebuild any building or other improvement or any part thereof now or hereafter situated on the Property that may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for such purpose. Any such building or other improvement or any part thereof shall be repaired, restored or rebuilt so as to be of at least equal value and of substantially the same character as prior to such damage or destruction.

Borrower further agrees not to permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or any part thereof, to keep and maintain the Mortgaged Property and every part thereof in good repair and condition, to effect such repairs as Lender may require, and, from time to time, to make all necessary and proper replacements thereof and additions thereto so

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that the Property and such buildings, other improvements, fixtures, chattels and articles of personal property will, at all times, be in good condition, fit and proper for the respective purposes for which they were originally erected or installed.

3.08 Compliance with Laws. Borrower shall comply with all statutes, ordinances, regulations, rules, orders, decrees and other requirements relating to the Mortgaged Property, or any part thereof, by any federal, state or local authority, and shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, without limitation, zoning variances, special exceptions, and nonconforming uses), privileges, franchises and concessions that are applicable to the Mortgaged Property or that have been granted to or contracted for by Borrower in connection with any existing or presently contemplated use of the Mortgaged Property or any part thereof. Borrower shall not initiate or acquiesce in any changes to or termination of any of the foregoing or of zoning design actions affecting the use of the Mortgaged Property or any part thereof without the prior written consent of Lender.

3.09 Liens and Transfers. Without Lender's prior written consent, Borrower shall not, directly or indirectly, create, suffer or permit to be created or filed or to remain against the Mortgaged Property, or any part thereof, hereafter any mortgage lien or other lien, encumbrance or charge on, pledge of, or conditional sale or other title retention agreement with respect to, the Mortgaged Property, whether superior or inferior to the lien of this Mortgage; provided, however, that Borrower may, within thirty (30) days after Borrower first becomes aware of the filing thereof, contest in good faith by appropriate legal or administrative proceedings any lien claim arising from any work performed, material furnished or obligation incurred by Borrower upon furnishing Lender security and indemnification satisfactory to Lender, in its discretion, for the final payment and discharge thereof. In the event Borrower hereafter creates, suffers or permits any superior or inferior lien to be attached to the Mortgaged Property or any part thereof without such consent or without furnishing security as aforesaid, Lender shall have the unqualified right, at its option, to accelerate the maturity of the Note, causing the entire principal balance thereof and all interest accrued thereon to be immediately due and payable.

If Borrower, without Lender's prior written consent, sells, leases, transfers, conveys, assigns, pledges, hypothecates or otherwise disposes of the title to all or any material portion of the Mortgaged Property, whether by operation of law, voluntarily or otherwise, or any interest (beneficial or otherwise) thereto, or enters into any agreement to do any of the foregoing, Lender shall have the unqualified right, at its option, to accelerate the maturity of the Note, causing the entire principal balance, and

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accrued interest to be immediately due and payable. Without limiting the generality of the foregoing, each of the following events shall be deemed a sale, transfer, conveyance, assignment, pledge, hypothecation or other disposition prohibited by the foregoing sentence:

(a) if Borrower is a corporation, any sale, conveyance, assignment or other transfer of all or any portion of the stock of such corporation, that results in a material change in the identity of the person(s) or entities in control of such corporation, or any corporation which controls Borrower;

(b) if Borrower is a partnership, any sale, conveyance, assignment or other transfer of all or any portion of the partnership interest of any partner of Borrower or entities in control of Borrower, or any partnership which controls Borrower;

(c) any sale, conveyance, assignment or other transfer of all or any portion of the stock or partnership interest of any entity directly or indirectly in control of any corporation or partnership constituting Borrower or any corporation or partnership which controls Borrower, or any sale, conveyance, assignment or other transfer by Borrower in any corporation or partnership in which Borrower has a controlling interest, directly or indirectly; and

(d) any hypothecation of all or any portion of any stock or partnership interest therein, or of all or any portion of the stock or partnership interest of any entity directly or indirectly in control of such corporation or partnership, or any corporation or partnership which controls Borrower, or any sale, conveyance, assignment or other transfer by Borrower in any corporation or partnership in which Borrower has a controlling interest, directly or indirectly.

Anything to the contrary contained in this Section 3.09 notwithstanding, transfers of limited partnership interests shall not be prohibited or entitle Lender to accelerate the maturity of the Note, causing the entire principal balance, and accrued interest to be immediately due and payable.

Any waiver by Lender of the provisions of this Paragraph 3.09 shall not be deemed to be a waiver of the right of Lender in the future to insist upon strict compliance with the provisions hereof.

3.10 Subrogation to Prior Lienholder's Rights. If the proceeds of the Loan secured hereby or any part thereof, or any amount paid out or advanced by Lender is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Lender shall be subrogated to the rights of the

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holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

**3.11 Lender's Dealings with Transferee.** In the event of the sale or transfer, by operation of law, voluntarily or otherwise, of all or any part of the Mortgaged Property, Lender shall be authorized and empowered to deal with the vendee or transferee with regard to the Mortgaged Property, the indebtedness secured hereby and any of the terms or conditions hereof as fully and to the same extent as it might with Borrower, without in any way releasing or discharging Borrower from its covenants hereunder, specifically including those contained in Paragraph 3.09 hereof, and without waiving Lender's right of acceleration pursuant to Paragraph 3.09 hereof.

**3.12 Stamp Taxes.** If at any time the United States government or any federal, state or municipal governmental subdivision requires Internal Revenue or other documentary stamps, levies or any tax on this Mortgage or on the Note, or requires payment of the United States Interest Equalization Tax on any of the indebtedness secured hereby, then such indebtedness and all interest accrued thereon shall be and become due and payable, at the election of the Lender, twenty (20) business days after the mailing by Lender of notice of such election to Borrower; provided, however, that such election shall be unavailing, and this Mortgage and the Note shall be and remain in effect, if Borrower may and does lawfully pay for such stamps or tax, including interest and penalties thereon, to or on behalf of Lender.

**3.13 Change in Tax Laws.** In the event of the enactment, after the date of this Mortgage, of any law of the state in which the Property is located deducting from the value of the Property, for the purpose of taxation, the amount of any lien thereon, or imposing upon Lender the payment of all or any part of the taxes, assessments, charges or liens hereby required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or Borrower's interest in the Mortgaged Property, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holder thereof, then Borrower, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if, in the opinion of counsel for Lender, it might be unlawful to require Borrower to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Lender may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to become due and payable forty-five (45) business days after the giving of such notice. Nothing contained in this Paragraph 3.13 shall be construed as obligating Lender to pay any portion of Borrower's federal income tax.

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3.14 Inspection of Property. Borrower shall permit Lender and its representatives and agents to inspect the Mortgaged Property from time to time upon reasonable prior telephonic notice during normal business hours and as frequently as Lender considers reasonable.

3.15 Inspection of Books and Records. Borrower shall keep and maintain full and correct books and records showing in detail the income and expenses of the Mortgaged Property and after reasonable prior telephonic demand therefor by Lender shall permit Lender or its agents and representatives to visit its offices during reasonable business hours, discuss its financial affairs with its officers and independent public accountants and to examine such books and records and all supporting vouchers and data, copies of any leases encumbering the Property and such other information as Lender may deem necessary or appropriate at any time and from time to time on Lender's request at Borrower's offices, at the address hereinabove identified or at such other location as may be requested by Lender.

### 3.16 Maintenance of Accounts: Financial and Operating Statements

(a) Borrower shall at all times maintain its demand deposit, money market, operational, disbursement and other related accounts with Lender.

(b) Borrower shall deliver to Lender:

(i) Audit Report. On or before the one hundred twentieth (120th) day after the end of each calendar year, a copy of an unqualified annual audit report of Borrower prepared in conformity with generally accepted accounting principles ("GAAP"), consistently applied, duly certified by independent certified public accountants of recognized standing selected by Borrower with Lender's consent.

(ii) Interim Reports. On or before the fifteenth (15th) day after the close of each calendar quarter, a copy of unaudited quarterly financial statements of Borrower prepared in accordance with GAAP and in a manner consistent with the financial statements referred to in Paragraph 3.16(b)(i) hereof, signed by the chief financial officer of Borrower and consisting of statements of income and expenses, statement of changes in fund balances and a statement of fund accounts, reflecting the financial condition of Borrower as of the close of such calendar quarter and the results of operation of Borrower since the beginning of the applicable calendar year.

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(iii) Reports from Accountants. Promptly upon receipt thereof, and the request of Lender copies of each report submitted to Borrower by independent accountants in connection with any annual, interim or other financial audit made by them of the books of Borrower.

3.17 Acknowledgment of Debt. Borrower shall furnish from time to time, within ten (10) days after Lender's request, a written statement, duly acknowledged, specifying the amount due under the Note, this Mortgage and any of the other Loan Documents and disclosing whether any alleged offsets or defenses exist against the indebtedness secured hereby.

3.18 Other Amounts Secured; Maximum Indebtedness. Borrower acknowledges and agrees that this Mortgage secures the entire principal amount of the Note and interest accrued thereon, regardless of whether any or all of the loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in part and future advances made at a later date, as well as any amounts owed to Lender pursuant to Paragraphs 3.02 and 3.04 hereof, any and all litigation and other expenses pursuant to Paragraphs 4.05 and 4.06 hereof and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Lender in connection with the Loan, all in accordance with the loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness exceed three (3) times the original principal amount of the Loan.

3.19 Declaration of Subordination. At the option of Lender, 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 condemnation or eminent domain award), to any and all leases of all or any part of the Mortgaged Property upon the execution by Lender and recording, at any time hereafter, in the appropriate official records of the county wherein the Property is situated, of a unilateral declaration to that effect.

3.20 Releases. Lender, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the liens of Lender all or any part of the Mortgaged Property, or release from liability any person or entity obligated to repay any indebtedness secured hereby, without in any way affecting the liability of any party pursuant to the Note, this Mortgage or any of the other Loan Documents, including, without limitation, any guaranty given as additional security for the indebtedness secured hereby, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such

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the laws of the State of Illinois and the conditions prerequisite to its doing business in the State of Illinois; (ii) has the power and authority to own its properties and to carry on its business as now being conducted; (iii) is qualified to do business in the State of Illinois and every other jurisdiction in which the nature of its business or its properties makes such qualification necessary; and (iv) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it;

(c) The execution, delivery and performance of the Note and the other Loan Documents: (i) have received all necessary governmental approval; (ii) do not violate any provision of any law, any order of any court or agency of government or any indenture, agreement or other instrument to which Borrower is a party, or by which it or any portion of the Property is bound; and (iii) are not in conflict with, nor will it result in breach of, or constitute (with due notice and/or lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, upon any of Borrower's property or assets, except as contemplated by the provisions of this Mortgage.

(d) The Note and the other Loan Documents, when executed and delivered by Borrower, will constitute the legal, valid and binding obligations of Borrower in accordance with their

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(iii) Reports from Accountants. Promptly upon receipt thereof, and the request of Lender copies of each report submitted to Borrower by independent accountants in connection with any annual, interim or other financial audit made by them of the books of Borrower.

3.17 Acknowledgment of Debt. Borrower shall furnish from time to time, within ten (10) days after Lender's request, a written statement, duly acknowledged, specifying the amount due under the Note, this Mortgage and any of the other Loan Documents and disclosing whether any alleged offsets or defenses exist against the indebtedness secured hereby.

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3.19 Declaration of Subordination. At the option of Lender, 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 condemnation or eminent domain award), to any and all leases of all or any part of the Mortgaged Property upon the execution by Lender and recording, at any time hereafter, in the appropriate official records of the county wherein the Property is situated, of a unilateral declaration to that effect.

3.20 Releases. Lender, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the liens of Lender all or any part of the Mortgaged Property, or release from liability any person or entity obligated to repay any indebtedness secured hereby, without in any way affecting the liability of any party pursuant to the Note, this Mortgage or any of the other Loan Documents, including, without limitation, any guaranty given as additional security for the indebtedness secured hereby, and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party liable therefor to extend the time for payment of any part or all of such

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indebtedness. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity obligated personally to repay the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest, subject to the indebtedness secured hereby, in the Mortgaged Property.

3.21 Borrower's Representations. Borrower hereby represents and covenants to Lender that:

(a) Borrower is lawfully seized of the Mortgaged Property hereby mortgaged, granted and conveyed and has the right to mortgage, grant and convey the Mortgaged Property, that the Mortgaged Property is unencumbered except by the Permitted Encumbrances, if any, and that Borrower will warrant and defend generally the title to the Mortgaged Property, or any portion thereof, against any and all claims and demands, subject only to the Permitted Encumbrances, if any.

(b) Borrower (i) is an Illinois limited partnership, duly organized, validly existing and in good standing under the laws of the State of Illinois and has complied with all conditions prerequisite to its doing business in the State of Illinois; (ii) has the power and authority to own its properties and to carry on its business as now being conducted; (iii) is qualified to do business in the State of Illinois and every other jurisdiction in which the nature of its business or its properties makes such qualification necessary; and (iv) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it;

(c) The execution, delivery and performance of the Note and the other Loan Documents: (i) have received all necessary governmental approval; (ii) do not violate any provision of any law, any order of any court or agency of government or any indenture, agreement or other instrument to which Borrower is a party, or by which it or any portion of the Property is bound; and (iii) are not in conflict with, nor will it result in breach of, or constitute (with due notice and/or lapse of time) a default under any indenture, agreement, or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever, upon any of Borrower's property or assets, except as contemplated by the provisions of this Mortgage.

(d) The Note and the other Loan Documents, when executed and delivered by Borrower, will constitute the legal, valid and binding obligations of Borrower in accordance with their respective terms.

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(e) All factual information heretofore or contemporaneously furnished by or on behalf of Borrower to Lender for purposes of or in connection with the Note, this Mortgage or any of the other Loan Documents is, and all other factual information hereafter furnished by or on behalf of Borrower to Lender will be, true and accurate in every material respect on the date as of which such information is dated or certified, and Borrower has not omitted and will not omit any material fact necessary to prevent such information from being false or misleading. Borrower has disclosed to Lender in writing all facts which might materially and adversely affect the business, credit, operations, financial condition or prospects of Borrower or which might materially and adversely affect any material portion of Borrower's properties, or Borrower's ability to perform its obligations under the Note, this Mortgage or any of the other Loan Documents.

(f) There is not now pending against or affecting Borrower, nor, to the best of Borrower's knowledge, is there threatened any action, suit or proceeding at law, in equity or before any administrative agency and Borrower does not know of any basis for any of the foregoing.

(g) Borrower (i) does not maintain, contribute to, or have any liability with respect to, any pension plan (as such term is defined by the Employee Retirement Income Security Act of 1974, as amended, and any successor statute of similar support, together with the regulations thereunder and under the Internal Revenue Code of 1986, as amended, each in effect from time to time ("ERISA")), and (ii) Borrower has not withdrawn from or terminated any such plan. Borrower is not a member of or contributes to any Multiemployer Plan (as defined under ERISA).

(h) Borrower is not engaged principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock (as such term in Regulation U and Regulation G of the Board of Governors of the Federal Reserve System and any successor rule or regulation of similar import as in effect from time to time). No part of the proceeds of the Loan will be used by Borrower to purchase or carry any Margin Stock. All proceeds of the Loan will be used by Borrower for lawful business purposes only.

(i) Borrower has made or filed all income and other tax returns, reports and declarations required by any jurisdiction to which it is subject, has paid all taxes, assessments and other charges shown or determined to be due on such returns, reports and declarations, other than those being diligently contested in good faith by appropriate proceedings, and has

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set aside adequate reserves against liability for taxes, assessments and charges applicable to periods subsequent to those covered by such returns, reports and declarations.

(j) Borrower is solvent, is and will be able to pay its debts as they become due, and owns property having a value both at fair valuation and at present fair saleable value greater than the amount required to pay Borrower's debts. Borrower will not be rendered insolvent by the execution and delivery of the Note, this Mortgage or any of the other Loan Documents.

(k) Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended, (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended, or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

**3.22 Utilities.** Borrower will (except to the extent paid by lessees) pay all utility charges incurred in connection with the Property and all improvements thereon, and shall maintain all utility services now or hereafter available for use at the Property.

**3.23 Hazardous Waste.** (a) Borrower represents, warrants covenants and agrees that, to the best of its knowledge, the Mortgaged Property is in compliance with all Environmental Laws (as hereinafter defined); that there are no conditions existing currently or contemplated during the term of the Note that require or are likely to require cleanup, removal or other remedial action pursuant to any Environmental Laws; that Borrower is not a party to any litigation or administrative proceeding, nor, to the best of Borrower's knowledge, is there any litigation or administrative proceeding contemplated or threatened which would assert or allege any violation of any Environmental Laws; that neither the Mortgaged Property nor Borrower is subject to any judgment, decree, order or citation related to or arising out of any Environmental Laws; and that no permits or licenses are required under any Environmental Laws regarding the Mortgaged Property. The term "Environmental Laws" shall mean any and all federal, state and local laws, statutes, regulations, ordinances, codes, rules and other governmental restrictions or requirements relating to the environment or hazardous substances, including, without limitation, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976 and the Federal

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Comprehensive Environmental Responsibility, Cleanup and Liability Act of 1980, as well as all regulations of the Environmental Protection Agency, the Nuclear Regulatory Agency and any state department of natural resources or state environmental protection agency now or at any time hereafter in effect. Borrower covenants and agrees to: (i) comply with, and to make best efforts to cause all tenants and others operating the Property or any part thereof to comply with, all applicable Environmental Laws and the provisions of the Environmental Indemnity Agreement; (ii) provide to Lender promptly after receipt of copies of any correspondence, notice, pleading, citation, indictment, complaint, order or other document received by Borrower asserting or alleging any circumstance or condition that requires or may require a cleanup, removal or other remedial action under any Environmental Law, or that seeks criminal or punitive penalties for an alleged violation of any Environmental Law; and (iii) advise Lender in writing as soon as Borrower becomes aware of any condition or circumstance which makes any of the representations or statements contained in this Paragraph 3.23(a) incomplete or inaccurate to a material extent. In the event Lender determines in its discretion that there is any evidence that any such circumstance might exist, whether or not described in any communication or notice to either Borrower or Lender, Borrower agrees, at its own expense and at the request of Lender, to permit an environmental audit to be conducted by Lender or an independent agent selected by Lender. This provision shall not relieve Borrower from conducting its own environmental audits or taking any other steps necessary to comply with any Environmental Law. If, in the opinion of Lender, there exists any uncorrected violation by Borrower of any Environmental Law or any condition which requires or may require any cleanup, removal or other remedial action under any Environmental Law, and such cleanup, removal or other remedial action is not completed within one hundred twenty (120) days from the date of written notice from Lender to Borrower, the same shall, at the option of Lender, constitute a Default hereunder, without further notice or cure period. It is expressly understood that the foregoing does not prohibit or prevent Borrower's right to contest any ordered cleanup through all appropriate administrative and judicial proceedings.

(b) Borrower hereby represents, warrants and certifies to Lender that to the best of Borrower's knowledge: (i) the execution and delivery of the Loan Documents is not a "transfer of real property" under and as defined in the Illinois Responsible Property Transfer Act, as amended (765 ILCS 9011 et seq.) ("IRPTA"); (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 amended

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(42 U.S.C. §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, as amended, and the federal regulations promulgated thereunder (42 U.S.C. §11022), as the term "facility" is defined in the IRPTA.

(c) Borrower agrees to indemnify, defend and hold Lender and its officers, directors, representatives, employees and agents (collectively, "Bank Parties" and individually "Bank Party") harmless from and against any and all losses, damages, liabilities, obligations, claims, costs and expenses (including, without limitation, attorneys' fees and court costs) incurred by Lender, whether prior to or after the date hereof and whether direct, indirect or consequential, as a result of or arising from any suit, investigation, action or proceeding, whether threatened or initiated, asserting a claim for any legal or equitable remedy under any Environmental Law and irrespective whether (i) Borrower or any of its employees, agents, contractors or subcontractors, (ii) any predecessor in title, or any employees, agents, contractors or subcontractors of the predecessor in title, or (iii) any third persons occupying or present on the Property engaged in such activity prior to, during or subsequent to the term of this Mortgage or whether such activities were or will be taken in accordance with applicable laws, regulations, codes and ordinances, except for any such liabilities, losses, damages, obligations, claims, costs or expenses arising solely on account of such Bank Party's gross negligence or willful misconduct. Any and all amounts owed by Borrower to Lender under this Paragraph 3.23(c) shall constitute additional indebtedness secured by this Mortgage. Any provisions of this Mortgage to the contrary notwithstanding, the representations, warranties, covenants, agreements and indemnification obligations contained in this Paragraph 3.23 shall survive all indicia of termination of the relationship between Borrower and Lender, including, without limitation, the repayment of all amounts due under the Loan evidenced by the Note, the cancellation of the Note, satisfaction of any guaranty, and the release of this Mortgage.

**3.24 Assignment of Rents.** (a) As further security for the repayment of the Note, and any amounts due pursuant to this Mortgage, Borrower does hereby sell, assign and transfer to Lender all rents, issues, deposits and profits now due and which may hereinafter become due under or by reason of any lease or any letting of, or any agreement for the use, sale, or occupancy of the Property or any portion thereof (whether written or verbal), which may have been heretofore or may hereafter be made or agreed to or which may be made or agreed to by Lender under the powers herein granted, including, without limitation, leases, sale contracts, escrow and other

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agreements, it being Borrower's intention hereby to establish an absolute transfer and assignment of all such leases, contracts, escrows and agreements pertaining thereto (such leases, contracts, escrows and agreements being collectively referred to hereinbelow as "agreements" and any such individual lease, contract, escrow or other agreement being referred to hereinbelow as an "agreement"), and all the avails thereof, to Lender.

This assignment confers upon Lender a power coupled with an interest and it cannot be revoked by Borrower.

(b) Borrower represents and agrees that without the prior written consent of the Lender, no rent for right of future possession will be paid by any person in possession of any portion of the Property in excess of one installment thereof paid in advance (other than security deposits) and that no payment of rents to become due for any portion of the Property has been or will be waived, conceded, released, reduced, discounted, or otherwise discharged or compromised by Borrower. Borrower waives any right of set-off against any person in possession of any portion of the Property. Borrower agrees that it will not assign any of such rents, issues, profits, deposits or avails, except to a purchaser or grantee of the Property, and shall not agree to any material modification of the terms, or a voluntary surrender, of any such lease or agreement without the prior written consent of Lender.

(c) Borrower further agrees to assign and transfer to Lender all future leases and agreements pertaining to all or any portion of the Property and to execute and deliver to Lender, immediately upon demand of Lender, all such further assurances and assignments pertaining to the Property as Lender may from time to time require.

(d) Borrower shall, at its own cost: (i) at all times perform and observe all of the covenants, conditions and agreements of the lessor under the terms of any or all leases or similar agreements affecting all or any part of the Property; (ii) at all times enforce and secure the performance and observance of all of the material covenants, conditions and agreements of the lessees under the terms of any or all of said leases or other agreements; (iii) appear in and defend any action or other proceeding arising out of or in any manner connected with said leases and other agreements, and to pay any and all costs of Lender incurred by reason of or in connection with said proceedings, including attorneys' fees, expenses and court costs; and (iv) promptly furnish Lender with copies of any notices of default either sent or received by Borrower under the terms of or pursuant to any of said leases or other agreements.

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(e) Although it is the intention of Borrower and Lender that the assignment, including, without limitation, the power of attorney appointment, contained in this Paragraph 3.24 is a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Lender shall not exercise any of the rights and powers conferred upon it herein unless and until the occurrence of a Default hereunder.

(f) Lender, in the exercise of the rights and powers conferred upon it herein, shall have full power to use and apply the rents, issues, deposits, profits and avails of the Property to the payment of or on account of the following, in such order as Lender may, in its discretion determine:

(i) operating expenses of the Property (including, without limitation, all costs of management, sale and leasing thereof, which shall include compensation to Lender and its agents, if management be delegated thereto, attorneys' fees, expenses and court costs, and lease or sale commissions and other compensation and expenses of seeking and procuring tenants or purchasers and entering into leases or sales), establishing any claims for damages, and premiums on insurance authorized hereinabove;

(ii) taxes, special assessments, water and sewer charges on the Property now due or that may hereafter become due;

(iii) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Property (including without limitation the cost from time to time of installing or replacing personal property therein, and of placing the Property in such condition as will, in the sole judgment of Lender, make them readily rentable or salable);

(iv) any indebtedness secured by the Mortgage or any deficiency that may result from any foreclosure sale pursuant thereto; and

(v) any remaining funds to Borrower or its successors or assigns, as their interests and rights may appear.

(g) Borrower does further specifically authorize and instruct each and every present and future lessee or purchaser of all or any portion of the Property to pay all unpaid rentals or deposits agreed upon in any lease or agreement

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pertaining to the Property to Lender upon receipt of demand from Lender to pay the same without any further notice or authorization by Borrower, and Borrower hereby waives any rights or claims it may have against any lessee by reason of such payments to Lender.

(h) Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases or agreement pertaining to the Property, and Borrower shall and does hereby agree to indemnify and hold Lender harmless from and against any and all liability, loss and damage that Lender may or might incur under any such leases or agreements or under or by reason of the assignment thereof, as well as any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on Lender's part to perform or discharge any of the terms, covenants or conditions contained in such leases or agreements, except to the extent incurred solely as a result of Lender's gross negligence or intentional misconduct. Should Lender incur any such liability, loss or damage under such leases or agreements, or under or by reason of the assignment thereof, as aforesaid, or in the defense of any claims or demands relating thereto, Borrower shall reimburse Lender for the amount thereof (including, without limitation, attorneys' fees, expenses and court costs) immediately upon demand.

(i) Nothing herein contained shall be construed as making or constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender pursuant to the provisions set forth herein. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower, except to the extent incurred as a result of Lender's negligence or intentional misconduct.

**3.25 Security Agreement.** (a) This Mortgage shall be deemed a "Security Agreement" as defined in the Illinois Uniform Commercial Code, and creates a security interest in favor of Lender in all property owned by Borrower including all personal property, fixtures and goods affecting property either referred to or described herein or in any way connected with the use or enjoyment of the Property. The remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be as prescribed herein or by general law or, as to such part of the security which is also reflected in any Financing Statement filed to perfect the security interest herein created, by the specific statutory consequences now or hereinafter enacted and specified in the Illinois Uniform Commercial Code, all at Lender's sole

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election. Borrower and Lender agree that the filing of such a Financing Statement in the records normally having to do with personal property shall not be construed as in any way derogating from or impairing the intention of the parties hereto that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Mortgage is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Lender, or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) the rights in or the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Lender under this Mortgage or impugning the priority of the Lender's lien granted hereby or by any other recorded document, but such mention in the Financing Statement is declared to be for the protection of the Lender in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Lender's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal Government and any subdivisions or entity of the Federal Government, must be filed in the Illinois Uniform Commercial Code records.

(b) Borrower shall execute, acknowledge and deliver to Lender, within ten (10) days after request by Lender, any and all security agreements, financing statements and any other similar security instruments required by Lender, in form and of content satisfactory to Lender, covering all property of any kind whatsoever owned by Borrower that, in the opinion of Lender, is essential to the operation of the Mortgaged Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under the laws of the state in which the Property are located. Borrower shall further execute, acknowledge and deliver any financing statement, affidavit, continuation statement, certificate or other document as Lender may request in order to perfect, preserve, maintain, continue and extend such security instruments. Borrower further agrees to pay to Lender all fees, costs and expenses (including, without limitation, all attorneys' fees and expenses and court costs) incurred by

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Lender in connection with the preparation, execution, recording, filing and refiling of any such document.

3.26 Fixtures Financing Statement. From the date of its recording, this Mortgage shall be effective as a fixture financing statement with respect to all goods constituting part of the Mortgaged Property which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

(a) Name and Address of Debtor:

Extra Space of Cermak Road,  
An Illinois Limited Partnership  
c/o Extra Space Management, Inc.  
7001 South 900 East  
Suite 250  
Midvale, Utah 84047

(b) Name and Address of Lender:

American National Bank and Trust Company  
of Chicago  
1836 North Broadway  
Melrose Park, Illinois 60160

(c) This document covers goods which are or are to become fixtures.

3.27 Interest Laws. It being the intention of Lender and Borrower to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Note, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Note. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Note, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this Paragraph 3.27 shall govern and control; (b) neither Borrower nor any other party obligated under the terms of the Note or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Lender may have received hereunder shall, at the option of Lender, be (i) applied as a credit against the then unpaid principal balance under the Note, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the Interest Rate (as that term is used in the Note) shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and

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the Note, this Mortgage, and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in the Interest Rate; and (e) neither Borrower nor any other party obligated under the terms of the Note or any of the other Loan Documents shall have any action against Lender for any damages whatsoever arising out of the payment or collection of any Excess Interest.

**3.28 Notice of Default and Litigation.** Borrower shall furnish to Lender promptly after learning of the occurrence of any of the following, written notice thereof which describes the same and the steps being taken by Borrower with respect thereto: (i) the occurrence of a Default; or (ii) the institution of, or any adverse determination in, any litigation, suit, action, arbitration proceeding or governmental proceeding against Borrower in which any money damages in excess of Fifty Thousand Dollars (\$50,000.00) or injunctive relief is sought.

**3.29 Taxes and Liabilities.** Subject to the provisions of Paragraph 3.02 hereof, Borrower will promptly pay when due all taxes, duties, assessments and other liabilities, except such taxes, duties, assessments and other liabilities as Borrower is diligently contesting in good faith and by appropriate proceedings; provided that Borrower has provided for and is maintaining adequate reserves with respect thereto in accordance with GAAP.

**3.30 Financial Covenants.** (a) Borrower shall at all times maintain its demand deposit, money market, operational, disbursement and other related accounts with Lender.

(b) Borrower will not permit the ratio of (i) Net Cash Flow (as hereinafter defined) to (ii) Required Debt Service (as hereinafter defined), as of the end of any calendar month, measured on a monthly basis, to be less than 1.20 to 1.00. For purposes hereof, "Net Cash Flow" shall mean, with respect to Borrower, for any period, without duplication, an amount equal to the following for such period: (i) gross receipts excluding security deposits, insurance proceeds, condemnation proceeds and tenant reimbursements; minus (ii) all operating expenses including, without limitation, repairs and maintenance, payroll, management fee, regional manager fee, advertising, utilities, telephone, computer, taxes and insurance but not capital expenses; minus (iii) the sum of \$6,335.00 representing a reserve equal to ten cents (.10) per square foot of net rentable area; all as determined in accordance with GAAP. For purposes hereof, "Required Debt Service" shall mean, with respect to Borrower, for any period, the sum of all required payments of principal and interest on funded indebtedness whether payable to Lender or otherwise, and any other payment of principal in respect of any indebtedness of Borrower, as determined in accordance with GAAP.

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(c) Borrower covenants and agrees that none of the Net Cash Flow from the Property shall be used to fund any deficiency arising with respect to properties other than the Property.

## IV

### DEFAULTS AND REMEDIES

4.01 Events Constituting Defaults. Each of the following events shall constitute a default (a "Default") under this Mortgage:

(a) Failure of Borrower to pay when due any sum secured hereby, including, but not limited to, any installment of principal or interest or both thereon after the same becomes due and payable under the Note or any of the other Loan Documents;

(b) Failure of Borrower to comply with any of the requirements of Paragraph 3.09;

(c) Failure of Borrower to perform or observe any other covenant, warranty or provision contained in this Mortgage and not otherwise covered in any of the other specific provisions of this Paragraph 4.01, for a period in excess of fifteen (15) days after the date on which notice of the nature of such failure is given by Lender to Borrower;

(d) Material untruth or material deceptiveness or material inaccuracy of any representation or warranty contained in the Note, or this Mortgage, or any other Loan Document, or any writing pertaining to the foregoing submitted to Lender by or on behalf of Borrower or any guarantor of payment of the Note;

(e) Admission by Borrower or any guarantor of payment of the Note in writing, including, without limitation, an answer or other pleading filed in any court, of Borrower's or any such guarantor's insolvency or inability to pay its debts generally as they fall due;

(f) Institution by Borrower or any guarantor of payment of the Note of bankruptcy, insolvency, reorganization or arrangement proceedings of any kind under the Federal Bankruptcy Code, whether as now existing or as hereafter amended, or any similar debtors' or creditors' rights law, whether federal or state, now or hereafter existing, or the making by Borrower or any guarantor of payment of the Note of a general assignment for the benefit of creditors;

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(g) Institution of any proceedings described in Paragraph 4.01(f) against Borrower or any guarantor of payment of the Note that are consented to by Borrower or any guarantor of payment of the Note or are not dismissed, vacated, or stayed within sixty (60) days after the filing thereof;

(h) Appointment by any court of a receiver, trustee or liquidator of or for, or assumption by any court of jurisdiction of, all or any part of the Mortgaged Property or all or a major portion of the property of Borrower or any guarantor of payment of the Note if such appointment or assumption is consented to by Borrower or any guarantor of payment of the Note or if, within thirty (30) days after such appointment or assumption, such receiver, trustee or liquidator is not discharged or such jurisdiction is not relinquished, vacated or stayed;

(i) Declaration by any court or governmental agency of the bankruptcy or insolvency of Borrower or any guarantor of payment of the Note and such declaration is not dismissed, vacated or stayed within sixty (60) days after the filing thereof;

(j) The occurrence of any default or event of default under the terms of any of the Loan Documents after the expiration of the applicable notice and grace period, if any;

(k) Any material adverse change in the financial condition of Borrower or any corporation owned or controlled, directly or indirectly by Borrower, or any guarantor of payment of the Note, which causes Lender to deem itself to be insecure; or

(l) The occurrence of any default in the payment when due (subject to any applicable grace period), whether by acceleration or otherwise, of any indebtedness of, or guaranteed by, Borrower, or default in the performance or observance of any obligation or condition with respect to any such other indebtedness, if the effect of such default is to accelerate or permit acceleration of the maturity of any such indebtedness, and if the amount of such indebtedness or obligations exceeds Fifty Thousand Dollars (\$50,000.00); or

(m) There shall be entered against Borrower one or more judgments or decrees in excess of Fifty Thousand Dollars (\$50,000.00) in the aggregate at any one time outstanding for Borrower, excluding those judgments or decrees (i) that shall have been stayed, vacated or bonded, (ii) that shall have been outstanding less than thirty (30) days from the date of entry thereof, (iii) for and to the extent to which Borrower is insured and with respect to which the insurer specifically has assumed responsibility in writing or (iv) for and to the

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extent to which the Borrower is otherwise indemnified if the terms of such indemnification are satisfactory to Lender.

**4.02 Acceleration of Maturity.** Upon the occurrence of any Default, at the election of Lender, the entire principal balance then outstanding under the Note, together with all unpaid interest accrued thereon and all other sums due from Borrower thereunder, under this Mortgage or any other Loan Document shall become immediately due and payable with interest thereon at the Default Interest Rate.

**4.03 Foreclosure of Mortgage.** Upon the occurrence of any Default, or at any time thereafter, Lender may, at its option, proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the state in which the Property are located and to exercise any other remedies of Lender provided herein or in the other Loan Documents, or which Lender may have at law or in equity. Any failure by Lender to exercise such option shall not constitute a waiver of its right to exercise the same at any other time.

**4.04 Lender's Continuing Options.** The failure of Lender to declare a Default or exercise any one or more of its options to accelerate the maturity of the indebtedness secured hereby and to foreclose the lien hereof following any Default as aforesaid, or to exercise any other option granted to Lender hereunder in any one or more instances, or the acceptance by Lender of partial payments of such indebtedness, shall neither constitute a waiver of any such Default or of Lender's options hereunder nor establish, extend or affect any grace period for payments due under the Note, but such options shall remain continuously in force. Acceleration of maturity, once claimed hereunder by Lender, may, at Lender's option, be rescinded by written acknowledgment to that effect by Lender and shall not affect Lender's right to accelerate maturity upon or after any future Default.

**4.05 Litigation Expenses.** In any proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Lender under the Note, this Mortgage, the other Loan Documents or in any other proceeding whatsoever in connection with the Mortgaged Property in which Lender is named as a party, there shall be allowed and included, as additional indebtedness secured hereby in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Lender, including, without limitation, attorney's fees and expenses and court costs, appraiser's fees, outlays for documentary evidence and expert advice, stenographers' charges, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates and any similar data and assurances

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with respect to title to the Property as Lender may deem necessary, and any other expenses and expenditures which may be paid or incurred by or on behalf of Lender and permitted by the IMF Act (as such term is hereinafter defined in Paragraph 4.09) to be included in the decree of sale, either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to any such decree the true condition of the title to or value of the Property or the Mortgaged Property. All expenses of the foregoing nature, and such expenses as may be incurred in the protection of any of the Mortgaged Property and the maintenance of the lien of this Mortgage thereon, including, without limitation, the fees and expenses of, and court costs incurred by, any attorney employed by Lender in any litigation affecting the Note, this Mortgage or any of the other Loan Documents or any of the Mortgaged Property, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Borrower with interest thereon at the Default Interest Rate.

**4.06 Performance by Lender.** In the event of any Default, or in the event any action or proceeding is instituted which materially affects, or threatens to materially affect, Lender's interest in the Property, Lender may, but need not, make any payment or perform any act on Borrower's behalf in any form and manner deemed expedient by Lender, and Lender may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any; purchase, discharge, compromise or settle any tax lien or other prior or junior lien or title or claim thereof; redeem from any tax sale or forfeiture affecting the Mortgaged Property; or contest any tax or assessment thereon. All monies paid for any of the purposes authorized herein and all expenses paid or incurred in connection therewith, including, without limitation, attorneys' fees and expenses and court costs, and any other monies advanced by Lender to protect the Mortgaged Property and the lien of this Mortgage, shall be so much additional indebtedness secured hereby, and shall become immediately due and payable by Borrower to Lender without notice and with interest thereon at the Default Interest Rate. Inaction of Lender shall never be construed to be waiver of any right accruing to Lender by reason of any default by Borrower. Lender shall not incur any personal liability because of anything it may do or omit to do hereunder, nor shall any acts of Lender act as a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage or to proceed to foreclose this Mortgage.

**4.07 Right of Possession.** In any case in which, under the provisions of this Mortgage, Lender has a right to institute foreclosure proceedings, whether or not the entire principal sum secured hereby becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Borrower shall, forthwith upon demand of Lender, surrender to Lender, and Lender

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shall be entitled to take actual possession of, the Mortgaged Property or any part thereof, personally or by its agent or attorneys, and Lender, in its discretion, may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers and accounts of Borrower or the then owner of the Mortgaged Property relating thereto, and may exclude Borrower, such owner and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Borrower or such owner, or in its own name as Lender and under the powers herein granted:

(a) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, whether legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits and avails of the Mortgaged Property, including, without limitation, actions for recovery of rent, and actions in forcible detainer, all without notice to Borrower;

(b) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;

(c) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage or subordinated to the lien hereof;

(d) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower. All persons whose interests in the Mortgaged Property are subject to the lien hereof and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree or issuance of any certificate of sale or deed to any such purchaser; and

(e) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements in connection with the Mortgaged Property as may seem judicious to Lender, to insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

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Without limiting the generality of the foregoing, Lender shall have all right, power, authority and duties as provided in the IMF Act. Nothing herein contained shall be construed as constituting Lender as Mortgagee in possession in the absence of the actual taking of possession of the Property.

4.08 Priority of Payments. Any rents, issues, deposits, profits and avails of the Property received by Lender after taking possession of all or any part of the Mortgaged Property, or pursuant to any assignment thereof to Lender under the provisions of this Mortgage shall be applied in payment of or on account of the following, in such order as Lender or, in case of a receivership, as the court, may in its sole and absolute discretion determine:

(a) operating expenses of the Mortgaged Property (including, without limitation, compensation to Lender, any receiver of the Mortgaged Property, any agent or agents to whom management of the Mortgaged Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

(b) taxes, special assessments, water and sewer charges now due or that may hereafter become due on the Mortgaged Property, or that may become a lien thereon prior to the lien of this Mortgage;

(c) any and all repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements of the Mortgaged Property (including, without limitation, the cost, from time to time, of installing or replacing any personal property therein, and of placing the Mortgaged Property in such condition as will, in the judgment of Lender or any receiver thereof, make it readily rentable or salable);

(d) any indebtedness secured by this Mortgage or any deficiency that may result from any foreclosure sale pursuant hereto; and

(e) any remaining funds to Borrower or its successors or assigns, as their interests and rights may appear.

4.09 Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage, the court may appoint upon petition of Lender, and at Lender's sole option, a receiver of the Mortgaged Property pursuant to the Illinois Mortgage Foreclosure Law, as amended (735 ILCS 5/15-1101 et seq., the "IMF Act"). Such appointment may be made either before or after sale, without notice; without regard to the solvency or insolvency, at the time of application for such

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receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby; without regard to the value of the Mortgaged Property at such time and whether or not the same is then occupied as a homestead; without bond being required of the applicant; and Lender hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by the IMF Act, including the power to take possession, control and care of the Mortgaged Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit and apply all funds received toward the indebtedness secured by this Mortgage, and in the event of a sale and a deficiency where Borrower has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Borrower or its devisees, legatees, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Mortgaged Property during the whole of any such period. To the extent permitted by law, such receiver may extend or modify any then existing leases and to make new leases of the Mortgaged Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Loan, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Mortgaged Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree or issuance of certificate of sale or deed to any purchaser.

4.10 Foreclosure Sale. In the event of any foreclosure sale of the Mortgaged Property, the same may be sold in one or more parcels. Lender may be the purchaser at any foreclosure sale of the Mortgaged Property or any part thereof.

4.11 Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property, or any part thereof, shall be distributed and applied in the following order of priority: (a) on account of all costs and expenses incident to the foreclosure proceedings, including, without limitation, all such items as are mentioned in Paragraphs 4.05 and 4.06 hereof; (b) all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Note, with interest thereon at the Default Interest Rate; (c) all principal and interest remaining unpaid under the Note, in the order of priority specified by Lender in its sole and absolute discretion;

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and (d) the balance, if any, to Borrower or its successors or assigns, as their interests and rights may appear.

**4.12 Application of Deposits.** In the event of any Default, Lender may, at its option, without being required to do so, set-off, appropriate and apply any monies, balances, credits, deposits or securities that constitute deposits made to or held and/or maintained by Lender or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Borrower's obligations under the Note, this Mortgage or any of the other Loan Documents in such order and manner as Lender may elect in its sole and absolute discretion. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Borrower or to the then owner or owners of the Mortgaged Property. Such deposits are hereby pledged as additional security for the prompt payment of the indebtedness evidenced by the Note and any other indebtedness secured hereby and shall be held to be applied irrevocably by such depository for the purposes for which made hereunder and shall not be subject to the direction or control of Borrower. The rights of set-off described in this Paragraph 4.12 are in addition to other rights and remedies (including, other rights of set-off under applicable law) which the Lender may have.

**4.13 Indemnification.** Except to the extent caused by the gross negligence or wilful misconduct of Lender, Borrower will indemnify and hold Lender harmless from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, losses, costs and expenses (including without limitation attorneys' fees, expenses and court costs) incurred by or asserted against Lender by reason of (a) the ownership of the Property or any interest therein or receipt of any rents, issues, proceeds or profits therefrom; (b) any accident, injury to or death of persons, or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (c) any use, misuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent parking areas or streets; (d) any failure on the part of Borrower to perform or comply with any of the terms of this Mortgage; or (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof. Any amounts owed to Lender by reason of this Paragraph 4.13 shall constitute additional indebtedness which is secured by this Mortgage and shall become immediately due and payable upon demand therefor, and shall bear interest at the Default Interest Rate from the date such loss or damage is sustained by Lender until paid. The obligations of Borrower under this Paragraph 4.13 shall survive any termination or satisfaction of this Mortgage.

**4.14 Waiver of Right of Redemption and Other Rights.** To the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any

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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 Property, 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, Borrower hereby expressly waives any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights of redemption under the IMF Act, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower 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 Lender, 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, Borrower 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 Note. Borrower acknowledges that the Property do not constitute agricultural real estate as defined in Section 5/15-1201 of the IMF Act or residential real estate as defined in Section 5/15-1219 of the IMF Act.

V

## MISCELLANEOUS

5.01 Notices. Any notice that Lender or Borrower may desire or be required to give to the other shall be in writing and shall be mailed or delivered to the intended recipient thereof at its address hereinabove set forth or at such other address as such intended recipient may, from time to time, by notice in writing, designate to the sender pursuant hereto. Any such notice shall be deemed to have been delivered two (2) business days after mailing by United States certified mail, return receipt requested, or when delivered in person or upon receipt if sent by a nationally recognized overnight air courier if addressed to a party at its address set forth above. Except as otherwise specifically required

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herein, notice of the exercise of any right or option granted to Lender by this Mortgage is not required to be given.

5.02 Time of Essence. It is specifically agreed that time is of the essence of this Mortgage.

5.03 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Property.

5.04 Governing Law; Litigation. The place of the location of the Mortgaged Property being the State of Illinois, this Mortgage shall be construed and enforced according to the laws of that State. To the extent that this Mortgage may operate as a security agreement under the Uniform Commercial Code, Lender shall have all rights and remedies conferred therein for the benefit of a secured party, as such term is defined therein. To the maximum extent permitted by law, Borrower hereby agrees that all actions or proceedings arising in connection with this Mortgage shall be tried and determined only in the state and federal court located in the County of Cook, State of Illinois, or, at the sole option of Lender, in any other court in which Lender shall initiate legal or equitable proceedings and which has subject matter jurisdiction over the matter in controversy. To the maximum extent permitted by law, Borrower hereby expressly waives any right it may have to assert the doctrine of forum non conveniens or to object to venue to the extent any proceeding is brought in accordance with this paragraph.

5.05 Rights and Remedies Cumulative. All rights and remedies set forth in this Mortgage are cumulative, and the holder of the Note 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 or remedy afforded hereby.

5.06 Severability. If any provision of this Mortgage or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid in any circumstance, the validity of the remainder of this Mortgage shall be construed as if such invalid part were never included herein.

5.07 Non-Waiver. Unless expressly provided in this Mortgage to the contrary, no consent or waiver, whether express or implied, by any interested party referred to herein to or of any breach or default by any other interested party referred to herein regarding the performance by such party of any obligations contained herein shall be deemed a consent to or waiver of the party of any obligations contained herein or shall be deemed a consent to or waiver of the performance by such party of any other obligations hereunder or the performance by any other interested party referred to herein of the same, or of any other, obligations hereunder.

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5.08 Headings. The headings of sections and paragraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

5.09 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires. Whenever the words "including", "include" or "includes" are used in this Mortgage, they should be interpreted in a non-exclusive manner as though the words ", without limitation," immediately followed the same.

5.10 Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Borrower, its successors, assigns, legal representatives and all other persons or entities claiming under or through Borrower, and the word "Borrower," when used herein, shall include all such persons and entities and any others liable for the payment of the indebtedness secured hereby or any part thereof, whether or not they have executed either Note or this Mortgage. The word "Lender," when used herein, shall include Lender's successors, assigns and legal representatives, including all other holders, from time to time, of the Note.

5.11 No Joint Venture. Borrower and Lender acknowledge and agree that under no circumstances shall Lender be deemed to be a partner or joint venturer with Borrower or any beneficiary of Borrower, including, without limitation, by virtue of its becoming a mortgagee in possession or exercising any of its rights pursuant to this Mortgage or pursuant to any of the other Loan Documents, or otherwise.

## 5.12 Additional Fees, Costs and Expenses.

(a) Borrower agrees to pay on demand all of the out-of-pocket costs and expenses of Lender (including, without limitation, the fees and out-of-pocket expenses of Lender's counsel) in connection with the preparation, negotiation, execution, delivery and administration of the Note, this Mortgage, any of the other Loan Documents and all other instruments or documents provided for herein or delivered or to be delivered hereunder or in connection herewith (including, without limitation, all amendments, supplements and waivers executed and delivered pursuant hereto or in connection herewith).

(b) The costs and expenses which Lender incurs in any manner or way with respect to the following shall be part of the indebtedness secured hereby, payable by Borrower within seven (7) days after demand if at any time after the date of this Mortgage Lender: (i) employs counsel for advice or other representation (A) with respect to the amendment or enforce-

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ment of the Note, this Mortgage or any of the other Loan Documents, (B) to represent Lender in any work-out or any type of restructuring of the Loan, or any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute, suit or proceeding (whether instituted by the Lender, Borrower or any other person or entity) in any way or respect relating to the Note this Mortgage, any of the other Loan Documents, Borrower's affairs or any collateral securing the indebtedness secured hereby or (C) to enforce any of the rights of Lender with respect to Borrower; and/or (ii) seeks to enforce or enforces any of the rights and remedies of Lender with respect to Borrower. Without limiting the generality of the foregoing, such expenses, costs, charges and fees include: fees, costs and expenses of attorneys, accountants and consultants; court costs and expenses; court reporter fees, costs and expenses; long distance telephone charges; telegram and telecopier charges; and expenses for travel, lodging and food.

## 5.13 Compliance with the Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provisions of the IMF Act, the IMF 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 IMF Act.

(b) Borrower and Lender shall have the benefit of all of the provisions of the IMF Act, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMF Act which is specifically referred to herein may be repealed, Lender shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

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

(d) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under Section 15-1510 and 15-1512 of the IMF Act, whether incurred before or after any decree or judgment of foreclosure shall be added to the indebtedness secured hereby or by the judgment of foreclosure.

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5.14 Dead in Trust. If title to the Mortgaged Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Mortgaged Property shall be construed as a similar prohibition or restriction against the creation of any lien or security interest in the beneficial interest of such trust.

5.15 JURY WAIVER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MORTGAGE, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF BORROWER AND LENDER WITH RESPECT TO THIS MORTGAGE, OR THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER HEREBY AGREES THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT BORROWER OR LENDER MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OF BORROWER AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

5.16 Indemnification. In addition to the other provisions of this Mortgage, including without limitation Paragraph 3.23 hereof, and as further security for the Loan, Borrower hereby agrees to indemnify, exonerate and hold each Bank Party free and harmless from and against any and all actions, causes of action, suits, losses, obligations, judgments, penalties, costs (including, without limitation, all documentary or other stamp taxes or duties), liabilities, claims and damages, and expenses in connection therewith of any kind or nature whatsoever (irrespective of whether such Bank Party is a party to the action for which indemnification hereunder is sought) including, without limitation, attorneys' fees and disbursements, incurred by the Bank Parties or any of them as a result of, or arising out of, or relating to:

(a) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the Loan;

(b) the execution, delivery, performance, administration or enforcement of the Note, this Mortgage and the other Loan Documents in accordance with their respective terms by any of the Bank Parties; or

(c) any misrepresentation or breach of warranty or covenant in this Mortgage.

but not to <sup>the</sup> extent (a), (b) or (c) results from, arises out of or relates to any Bank Party's gross negligence ~~or~~ intentional misconduct. <sub>or</sub>

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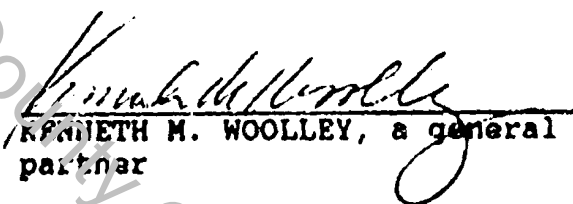
5.17 Recapture. To the extent Lender receives any payment by or on behalf of Borrower, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to Borrower or its respective estate, trustee, receiver, custodian or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the liabilities of Borrower to Lender as of the date such initial payment, reduction or satisfaction occurred.

5.18 Reasonable Attorneys' Fees. Any and all attorneys fees and expenses which Lender is entitled to hereunder or under any of the other Loan Documents shall be in reasonable amounts.

IN WITNESS WHEREOF, Borrower has executed this Mortgage as of the date and year first above written.

EXTRA SPACE OF CERMAX ROAD, AN  
ILLINOIS LIMITED PARTNERSHIP

By:

  
KENNETH M. WOOLLEY, a general  
partner

6014009.06 03/28/04 2:18pm

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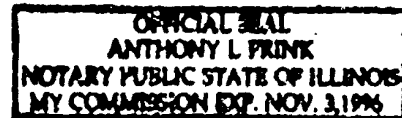
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STATE OF ILLINOIS )  
COUNTY OF Cook ) SS.

I, Anthony L. Frink, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that KENNETH M. WOOLLEY, a general partner in EXTRA SPACE OF CERMAK ROAD, AN ILLINOIS LIMITED PARTNERSHIP, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person and acknowledged that as such he signed and delivered the said instrument pursuant to authority, as his free and voluntary act and as the free and voluntary act of said partnership for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 29<sup>th</sup> day of March, 1994.

Anthony L. Frink  
Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION

LOTS 2 TO 17 ALL INCLUSIVE IN KELLOGG'S SUBDIVISION OF THAT PART OF LOT 9 IN L. C. PAINE FREER RECEIVER'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF THE RIGHT OF WAY OF THE METROPOLITAN WEST SIDE ELEVATED RAILROAD, EXCEPT THE WEST 113 FEET OF SAID LOT 9 AND EXCEPT THE SOUTH 75 FEET OF SAID LOT 9 AND ALSO EXCEPT THE EAST 33 FEET OF SAID LOT 9, ALL IN CHICAGO, COOK COUNTY, ILLINOIS.

Commonly known as: 4520 West Cermak Road, Chicago, Illinois

Permanent Index No.: 16-22-312-020  
16-22-312-021  
16-22-312-022

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