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PREPARED BY:

MAIL TO:

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222 North LaSalle Street
Suite 300
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96456862

Address of Mortgaged Premises:

600-666 S. Wheeling Road, Wheeling, Illinois

Tax Number(s): 03-10-400-007

DEPT-01 RECORDING 291.50
186666 TRAM 2964 06/14/96 13:43:00
20280 JPI *--74--456862
COOK COUNTY RECORDER



Above Space for Recorder's Use Only

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage") made this 10 day of JUNE, 1996 by DUPAGE NATIONAL BANK, a national banking association, not personally but solely as Trustee pursuant to Trust Agreement dated December 4, 1989 and known as Trust Number 1560 ("Mortgagor"), in favor of SOUTHLAND LIFE INSURANCE COMPANY, having its mailing office at c/o ING Investment Management, Inc., a Delaware corporation, 300 Galleria Parkway, N.W., Suite 1200, Atlanta, Georgia 30339, Attention: Mortgage Loan Servicing Department ("Mortgagee");

WITNESSETH, THAT WHEREAS, Mortgagor is justly indebted to Mortgagee for money borrowed in the principal amount of THREE MILLION THREE HUNDRED AND NO/100 DOLLARS (\$3,300,000.00) ("Principal Amount"), as evidenced by note executed by Mortgagor of even date herewith, made payable to the order of and delivered to Mortgagee (which note, together with any and all other notes executed and delivered in substitution therefor or in renewal and extension thereof, in whole or in part, are herein collectively referred to as "Note"), by the provisions of which Mortgagor promises to pay to Mortgagee, at the address set forth above (or

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at such other place as the legal owner and holder of Note may, from time to time, designate), out of that part of the trust estate subject to the aforesaid trust and hereafter specifically described:

- I. Principal Amount (or so much thereof as may be advanced by Mortgagee from time to time);
- II. interest at the rate set forth in Note, ("Note Rate"); and
- III. all other sums due and owing pursuant to Note, hereunder, pursuant to any other document executed and delivered to evidence or secure Principal Amount ("Other Loan Documents"), or sums advanced by Mortgagee to protect "Mortgaged Premises" (hereafter defined) or to preserve the priority of the lien established hereby (PROVIDED THAT such other sums shall not exceed two hundred percent [200%] of Principal Amount);

(collectively "Indebtedness"), from the date of disbursement of Principal Amount, in the installments set forth in Note, with a final payment of Indebtedness on July 1, 2016 ("Maturity Date").

NOW, THEREFORE, to secure the payment of Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein in Note, and in any and all Other Loan Documents executed by NVS Venture, an Illinois general partnership ("Beneficiary"), the owner of one hundred percent (100%) of the beneficial interest in Mortgagor ("Beneficial Interest") and delivered to secure Indebtedness, Mortgagor, by these presents, DOES HEREBY GRANT, MORTGAGE AND CONVEY to Mortgagee, its successors and assigns, forever, certain land situated in Cook County, Illinois, legally described on Exhibit "A" attached hereto and made a part hereof ("Land"), TOGETHER WITH ALL RIGHT, TITLE AND INTEREST OF MORTGAGOR, INCLUDING ANY AFTER-ACQUIRED TITLE OR REVERSION, IN AND TO THE FOLLOWING (collectively "Other Interests"):

- A. All right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the rights-of-way, roads, streets, avenues and alleys adjoining Land.
- B. All and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water rights, water courses, riparian rights, other rights, liberties and privileges thereof or in anyway now or hereafter appertaining, including any other claim at law or in equity and any after-acquired title, franchise or license and the reversions and remainder and remainders thereof.
- C. All buildings and improvements, of every kind, nature and description, now or hereafter located and placed upon Land ("Improvements") and all materials intended for construction, re-construction, alteration and repair of Improvements, all of which shall be deemed a part thereof immediately upon the delivery of the same, and all fix-

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tures and articles of personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with Mortgaged Premises, including, but not limited to, all furniture, furnishings, apparatus, machinery, motors, elevators, fittings, radiators, awnings, shades, screens, blinds, office equipment, carpeting and other furnishings and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning, electrical and sprinkler systems and equipment, if any, and fixtures and appurtenances thereto ("Personal Property") together with the "Collateral" described in Section 27 hereof and all renewals or replacements of Personal Property and Collateral or articles in substitution therefor, whether or not the same are or shall be attached to Improvements in any manner, excepting from Personal Property, however, any furniture, fixtures, equipment and articles of personal property, regardless of the manner or mode of attachment, belonging to any present or future tenant or lessee of Land and Improvements (collectively "Occupancy Tenants") (any reference hereafter made to Personal Property shall be deemed to exclude the same); IT BEING MUTUALLY AGREED that:

- (1) all of Personal Property owned by Mortgagor and placed by it on Mortgaged Premises shall, insofar as the same is permitted by law, be deemed to be fixtures and a part of the realty and security for the payment of Indebtedness, and
 - (2) as to any Personal Property owned by Mortgagor or Beneficiary not deemed to be fixtures and a part of Mortgaged Premises, this Mortgage shall be and is a security agreement for the purpose of establishing a security interest in Personal Property, pursuant to the Uniform Commercial Code of the State of Illinois, and additional security for the payment of Indebtedness and the performance of all other obligations of Mortgagor herein and in Other Loan Documents set forth.
- D. All rents, issues, proceeds and profits accruing and to accrue from Mortgaged Premises and all right, title and interest of Mortgagor in and to any and all leases approved by Mortgagee now or hereafter on or affecting Mortgaged Premises, whether written or oral, and all other leases and agreements for the use thereof (collectively "Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission of Mortgagee given to Mortgagor to collect the rentals to be paid pursuant thereto.
- E. All proceeds heretofore or hereafter payable to Mortgagor and all subsequent owners of Mortgaged Premises ("Proceeds") by reason of loss or damage by fire and such other hazards, casualties and contingencies ("Casualty") insured pursuant to "Insurance Policies" (hereafter defined) and awards and other compensation heretofore or hereafter payable to Mortgagor and all subsequent owners of Mortgaged Premises ("Awards") for any taking by condemnation or eminent domain proceedings, either permanent or temporary ("Condemnation"), of all or any part of Mortgaged Premises or any

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easement or appurtenance thereof, including severance and consequential damage and change in grade of streets. Proceeds or Awards are hereby assigned to Mortgagee as additional security for Indebtedness (Mortgagor hereby appoints Mortgagee its attorney-in-fact, coupled with an interest), and authorizes, directs and empowers such attorney-in-fact, at its option, on behalf of Mortgagor, its personal representatives, successors and assigns, to adjust or compromise the claim for Proceeds or Awards and to collect and receive the amounts thereof, to give proper receipts and acquittance therefor and, after deducting expenses of collection, to apply the net Proceeds or Awards received in accordance with Paragraphs 6 and 7 following.

For convenience, Land, Improvements and Other Interests are herein collectively referred to as "Mortgaged Premises".

TO HAVE AND TO HOLD Mortgaged Premises unto Mortgagee, its successors and assigns, forever, for the uses and purposes herein set forth (Mortgagor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of Illinois); **PROVIDED, HOWEVER**, that if and when Mortgagor shall pay Indebtedness and shall perform all of the terms, covenants, conditions and agreements contained herein and in Note and Other Loan Documents, this Mortgage, Note and Other Loan Documents shall be released, at the sole cost and expense of Mortgagor; otherwise, the same shall be and remain in full force and effect.

MORTGAGOR HEREBY FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. **PRIORITY OF LIEN AND SUBORDINATE ENCUMBRANCES:** This Mortgage is and shall remain a first and valid lien on Mortgaged Premises until the payment in full of Indebtedness and Mortgagor shall keep Mortgaged Premises free and clear of all other superior or subordinate liens or claims of every nature and kind and shall not execute, deliver or grant any other mortgage, trust deed or security interest encumbering Mortgaged Premises.

2. **SUBROGATION:** To the extent that any part of Indebtedness is applied in payment of any existing lien against Mortgaged Premises, or any part thereof, or following the date hereof, Mortgagee pays any sum due pursuant to any provision of law or any instrument or document establishing any lien prior or superior to the lien of this Mortgage, Mortgagee shall have and be entitled to a lien on Mortgaged Premises equal in parity to that discharged and Mortgagee shall be subrogated to, receive and enjoy all rights and liens possessed, held or enjoyed by the holder of such lien, which shall remain in existence and benefit Mortgagee to secure the payment of Indebtedness. Mortgagee shall be subrogated, notwithstanding its release of record, to mortgages, trust deeds, superior titles, vendors' liens, and other liens, charges, encumbrances, rights and equities on Mortgaged Premises to the extent that any obligation thereunder is paid or discharged from Indebtedness or other payments by Mortgagee.

3. **PROMPT PAYMENT AND PERFORMANCE OF COVENANTS:** Mortgagor shall promptly pay Indebtedness as the same becomes due and shall duly and punctually perform and

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observe all of the terms, covenants, conditions and agreements to be performed and observed by Mortgagor as provided herein and in Note and Other Loan Documents, and, except as provided in Note, shall have no right to prepay Indebtedness.

4. TAX AND INSURANCE DEPOSITS AND APPLICATION: In addition to the payment of Indebtedness, Mortgagor shall pay to Mortgagee, concurrently with the payments required pursuant to Note, an amount equal to the real estate taxes and special assessments, if any, next due on Mortgaged Premises, together with the premiums which will next become due and payable on Insurance Policies, as estimated by Mortgagee, less all sums previously paid therefor, divided by the number of months to elapse before one (1) month prior to the dates when such taxes, assessments and premiums will become delinquent. Any funds held by Mortgagee, or its duly authorized agent, will be held in trust for the purpose of paying said real estate taxes, assessments and insurance premiums when the same become due and payable, without any obligation of Mortgagee to pay interest thereon.

In the event that the amounts deposited with Mortgagee shall not be sufficient to pay said real estate taxes, assessments or insurance premiums in full, when due, Mortgagor shall deposit with Mortgagee, or its duly authorized agent, such additional amounts as shall be sufficient to pay the same and if Mortgagor shall default in making such payments for fifteen (15) days following written notice from Mortgagee to Mortgagor, at the option of Mortgagee, Indebtedness shall become immediately due and payable or Mortgagee may pay such real estate taxes, assessment or insurance premiums and may add the amount of such payments to Principal Amount which added amount shall thereafter bear interest at Note Rate.

At such time as Indebtedness is paid in full, whether by reason of maturity or prepayment, as provided in Note, Mortgagee shall apply, as a credit against Indebtedness, all funds held by it pursuant to this Paragraph 4.

If, as a result of a Monetary Default or Non-Monetary Default, Mortgaged Premises are sold, foreclosed upon or otherwise acquired by Mortgagee, Mortgagee shall, concurrently with the commencement of proceedings for sale or foreclosure or at the time Mortgaged Premises are otherwise acquired, apply the balance of the funds deposited by Mortgagor pursuant hereto as a credit against such part of Indebtedness as Mortgagee may select.

5. PAYMENT OF TAXES AND OTHER IMPOSITIONS: Mortgagor shall promptly pay, when due and payable, all taxes and assessments (general and special), water and sewer charges, public impositions, levies, dues and other charges, of whatsoever nature (collectively "Impositions"), which are now or shall hereafter be levied or assessed or which may otherwise be or become a lien upon or against Mortgaged Premises, or any part thereof, PROVIDED THAT if Mortgagor is making the deposits required pursuant to Paragraph 4, those funds held by Mortgagee in escrow shall be paid to the tax collector or the insurance company, as the case may be, for the payment of Impositions.

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6. INSURANCE POLICIES, PAYMENT AND APPLICATION OF PROCEEDS AND SETTLEMENT OF CLAIMS: Until such time as Indebtedness shall have been paid in full, Mortgagor shall keep Mortgaged Premises continuously insured against Casualty by policies of insurance hereafter set forth, in such amounts and for such periods as may, from time to time, be required by Mortgagee ("Insurance Policies"), which Insurance Policies and all renewals thereof shall:

- a) be written with companies licensed to do business in the State of Illinois, having an A.M. Best Company's Key Rating Guide Class AVII category designation or better and i) if written by a mutual company, the insurance policy holder or its mortgagee must not be assessable, ii) the risk of any one (1) company shall not exceed ten per cent (10%) of the issuer's policyholders' surplus (including capital), and iii) without any co-insurance provision;
- b) be written with companies and in amounts acceptable to Mortgagee, provide replacement coverage and otherwise be in form satisfactory to Mortgagee;
- c) cite Mortgagee's interest in standard mortgage clauses effective as of the date of disbursement of Principal Amount;
- d) be maintained to and including Maturity Date, without cost to Mortgagee;
- e) at the option of Mortgagee, be delivered to Mortgagee as issued, together with evidence of payment of premiums therefor in full, not less than thirty (30) days prior to the expiration of the previous Insurance Policies;
- f) contain a so-called "cut-through" endorsement, in the event that any part of the fire or other risks insured thereby is reinsured; and
- g) provide for not less than thirty (30) days written notice prior to cancellation;

and the original Insurance Policies shall be held by Mortgagee or its designated agent until such time as Indebtedness is paid in full.

In the event of a sale of Mortgaged Premises pursuant to foreclosure hereof or other transfer of title thereto and the extinguishment of Indebtedness, complete title to Insurance Policies and renewals thereof, together with all prepaid or unearned premiums thereon, in the possession of Mortgagee shall pass to and vest in the purchaser or grantee of Mortgaged Premises. If any renewal Insurance Policy is not delivered to Mortgagee within thirty (30) days prior to the expiration of any existing Insurance Policy, with evidence of premium paid, Mortgagee may obtain the required insurance on behalf of Mortgagor (or in favor of Mortgagee only) and pay the premiums therefor, in which event any monies so advanced shall be so much additional Indebtedness secured hereby and shall become immediately due and payable, with interest thereon

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at a percentage rate, per annum, which is equal to the lesser of which is six percent (6%) above Note Rate or the highest rate permitted by law ("Default Rate"). Mortgagee shall not, by reason of acceptance, rejection, approval or obtaining Insurance Policies, incur any liability for payment of losses.

Without, in any way, limiting the generality of the foregoing, Mortgagor agrees to maintain the following Insurance Policies on Mortgaged Premises:

- i) fire and extended coverage insurance (including vandalism and malicious mischief) in a minimum amount equal to the full replacement cost of Mortgaged Premises (excluding Land), or an amount equal to Principal Amount, whichever is greater, and in any event in an amount great enough to prevent the application of any co-insurance provision written on a replacement cost basis or with a replacement cost endorsement and if, at any time, a dispute arises with respect to such replacement cost, Mortgagor shall provide, at its expense, an appraisal, prepared by an insurance appraiser approved by Mortgagee, establishing the full replacement cost, in form and content satisfactory to the insurance carrier;
- ii) comprehensive general public liability and property damage insurance in the amount of THREE MILLION DOLLARS (\$3,000,000.00) combined single limit (or such greater amount as Mortgagee may reasonably require) for claims arising by reason of any accident or occurrence in or upon Mortgaged Premises;
- iii) flood insurance, whenever, in the opinion of Mortgagee, Mortgaged Premises is designated in a flood plain with risks of flooding and such protection is available;
- iv) rental insurance in an amount 1) sufficient to assure the payment of Impositions, premiums due on Insurance Policies, operating expenses attributable to Mortgaged Premises and "debt" service due and owing on Indebtedness for twelve (12) consecutive months, or 2) equal to the income generated from the operation of Mortgaged Premises for twelve (12) consecutive months, whichever is greater; and
- v) such other insurance policies as may be reasonably required from time to time by Mortgagee, upon written notice to Mortgagor.

If any part or all of Insurance Policies or other insurance coverage is furnished by Occupancy Tenants, Mortgagor shall furnish to Mortgagee duplicate original insurance policies or, with the consent of Mortgagee, certificates evidencing such coverage, which shall be subject to the approval of Mortgagee. Insurance Policies shall be in form and content satisfactory to Mortgagee and, at the option of Mortgagee, contain mortgage clauses in favor of or name Mortgagee as an additional insured and provide for not less than thirty (30) days' prior written notice to Mortgagee in the event of cancellation or material modification thereof.

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In the event of any loss sustained by Casualty for which Insurance Policies are in effect, Mortgagor may, with the written consent of Mortgagee, settle, compromise and adjust any and all rights and claims pursuant to the provisions of Insurance Policies, PROVIDED THAT Proceeds shall be payable to Mortgagee. In the absence of such consent, Mortgagee is hereby authorized to settle, compromise and adjust such claims or rights and receive Proceeds. Any Proceeds paid to Mortgagee at its election shall be applied on account of the cost of repair or restoration of that part of Mortgaged Premises damaged or destroyed ("Repair or Restoration") or Mortgagee shall have the right, at its sole election, to apply Proceeds on account of Indebtedness.

Notwithstanding the availability of Proceeds for that purpose, that part of Mortgaged Premises so damaged or destroyed shall be repaired or rebuilt, in accordance with architectural and engineering plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld) and all life, safety and environmental regulations, laws, ordinances (including zoning), rules and regulations of governmental authorities having jurisdiction thereover (collectively "Applicable Laws"), so as to be as similar, as is reasonably possible, to the condition which existed prior to such Casualty.

If Proceeds are to be applied on account of the cost of Repair or Restoration, the same shall be paid to Mortgagor upon final completion of Repair or Restoration and upon the delivery to Mortgagee of satisfactory evidence of the cost of completing Repair or Restoration, together with such architect's certificates, contractor's sworn statements, waivers of lien, title insurance policies or certifications and other evidences of cost and payments as Mortgagee may reasonably require and approve.

In the event that, in the opinion of Mortgagee, Proceeds are insufficient to pay for all costs of Repair or Restoration, Mortgagor shall deposit with Mortgagee an amount equal to such excess costs prior to the disbursement of any part of Proceeds to it. Any surplus Proceeds, following the payment of all costs of Repair or Restoration, shall, at the option of Mortgagee, be applied on account of Indebtedness or paid to Mortgagor.

If Mortgagee elects to apply Proceeds on account of Indebtedness, such application of Proceeds shall be free from payment of the prepayment premium specified in Note ("Prepayment Premium"), PROVIDED THAT no Monetary Default or Non-Monetary Default shall have occurred.

7. **CONDEMNATION:** In the event that:

- a) Mortgaged Premises, or any part thereof, is taken by Condemnation, Mortgagee is hereby empowered to collect and receive Awards, which shall, at the election of Mortgagee in its sole discretion, be applied to the payment of Indebtedness or on account of rebuilding or restoring that part of Mortgaged Premises not so taken or damaged ("Rebuilding or Restoration");

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- b) Mortgaged Premises, or any part thereof, is taken by condemnation, Mortgagor shall cause Mortgaged Premises to be so rebuilt or restored, in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed) and Applicable Laws, so as to be as similar, as is reasonably possible, to the condition which existed prior to Condemnation and all disbursements shall be paid in the same manner as provided in Paragraph 6 hereof with respect to a loss by Casualty;
- c) Awards are insufficient to pay for all costs of Rebuilding or Restoration, Mortgagor shall deposit with Mortgagee an amount equal to such excess costs prior to any disbursement of Awards to it; or
- d) Awards are in excess of Rebuilding or Restoration, any surplus Awards, following payment in full of all costs of Rebuilding or Restoration shall, at the option of Mortgagee, either be applied on account of Indebtedness or paid to Mortgagor.

In the event that Mortgagee elects to apply Awards on account of Indebtedness, such application of Awards shall be free from Prepayment Premium, PROVIDED THAT no Monetary Default or Non-Monetary Default shall have occurred.

8. CASUALTY OR CONDEMNATION AFTER FORECLOSURE: In the event of Casualty or Condemnation following the institution of foreclosure proceedings, Proceeds or Awards, if not applied as specified in Paragraphs 6 and 7, shall be used to pay the amounts due in accordance with any decree of foreclosure which may be entered in any such proceedings and the balance, if any, shall either be paid to the owner of the equity redemption, if such owner shall be entitled to the same, or as the court may direct.

9. MORTGAGEE'S LIABILITY FOR COLLECTION OF PROCEEDS OR AWARDS: Mortgagee shall not be held responsible for any failure to collect Proceeds or Awards, regardless of the cause of such failure, and:

- a) the power and authority granted to Mortgagee to collect Proceeds or Awards is irrevocable and coupled with an interest and shall, in no way, affect the security of this Mortgage or the liability of Mortgagor for payment of Indebtedness; and
- b) the entry of a decree of foreclosure of the lien hereof shall not affect or impair said power and authority.

10. USE, CARE OR WASTE: Mortgagor:

- a) shall constantly maintain and not diminish, in any respect, or materially alter Improvements (including landscaped and common areas) or the on-site paved

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parking area and/or structures comprising a part of Mortgaged Premises or materially change the use of Mortgaged Premises so long as Indebtedness, or any part thereof, remains unpaid and shall not erect any buildings or other improvements on Mortgaged Premises without the prior written consent of Mortgagee (which consent shall not be unreasonably withheld). Without, in any way, limiting the generality of the foregoing, Mortgagor shall:

- i) not abandon Mortgaged Premises or do or suffer anything to be done which would depreciate or impair the value thereof or the security of this Mortgage;
- ii) not remove or demolish any material part of Improvements of a structural nature;
- iii) pay promptly all services, labor and material necessary and required to refurbish and renovate Improvements pursuant to contracts therefor;
- iv) maintain, preserve and keep Mortgaged Premises in good, safe and insurable condition and repair and promptly make any needful and proper repairs, replacements, renewals, additions or substitutions required by wear and tear, damage, obsolescence or destruction;
- v) not make any changes, additions or alterations to Mortgaged Premises of a structural nature or which would adversely affect the value thereof, except as required by any applicable statute, law or ordinance of any governmental authority having jurisdiction over Mortgaged Premises and the intended use thereof, or as otherwise approved in writing by Mortgagee;
- vi) promptly commence and diligently pursue Repair or Restoration or Rebuilding or Restoration, as the case may be;
- vii) not commit or permit to exist any waste of Mortgaged Premises; and
- viii) maintain all interior or exterior planted or landscaped areas, adjoining plaza, if any, and abutting sidewalks in good and neat order and repair.
- ix) operate Mortgaged Premises at all times in accordance with Applicable Laws, whether municipal, county, state or federal,

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including the compliance in full with any legislation and regulations in respect of the handicapped and environmental protection.

- b) represents to Mortgagee that:
- i) to the best knowledge of Mortgagor after due and diligent inquiry, there are no materials, wastes or substances defined or classified as hazardous or toxic or similarly described, under any applicable federal, state or municipal law, regulation or ordinance (collectively "Hazardous Substances") presently stored or located on Mortgaged Premises and no part of Mortgaged Premises is contaminated by any Hazardous Substance;
 - ii) any Hazardous Substance used by any person on Mortgaged Premises shall be used and stored only in accordance with all applicable legal and prudent industrial standards and requirements;
 - iii) Mortgaged Premises will not be used for the purpose of storing any Hazardous Substance and no such storage or use will be allowed which may cause or increase the likelihood of the release of any Hazardous Substance on Mortgaged Premises; and
 - iv) Mortgagor shall promptly notify Mortgagee as soon as it knows of or suspects that any Hazardous Substance has been released or that there is any threatened release on Mortgaged Premises, and it shall take such action, at its sole expense and with due diligence, as is necessary to ensure timely compliance with all legislative requirements.

which representations shall survive satisfaction of Indebtedness whether by payment or by foreclosure of the lien of this Mortgage or by acceptance of a deed conveying Mortgaged Premises to Mortgagee in lieu of foreclosure.

- c) shall, in addition to the indemnification specified in Paragraph 34 hereof, indemnify and hold Mortgagee harmless of and from all loss, cost (including reasonable attorneys', experts' and consultants' fees), liability and damage whatsoever incurred by Mortgagee by reason of any violation of any applicable statute or regulation for the protection of the environment which occurs upon Mortgaged Premises or by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation; PROVIDED, HOWEVER, that to the extent Mortgagee is strictly

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liable pursuant to any such statute, Mortgagor's obligations to Mortgagee pursuant to this Mortgage shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to Mortgagee.

- d) shall comply with and cause Mortgaged Premises, and the use and condition thereof, to comply with Applicable Laws, and with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits, privileges, franchises, easements which are either appurtenant to Mortgaged Premises or are a part of Mortgaged Premises, and concessions (including, without limitation, those relating to the operation of Mortgaged Premises as a "first-class" shopping center and relating to development, construction, access, water rights, noise and pollution) which are applicable to Mortgagor or have been granted for Mortgaged Premises, or the use thereof.

11. MORTGAGEE'S PERFORMANCE OF MORTGAGOR'S OBLIGATIONS: In the event of a default by Mortgagor in:

- a) the prompt discharge of any lien or encumbrance;
- b) defending the title to Mortgaged Premises;
- c) the payment of any Imposition;
- d) diligently and continuously pursuing Repair or Restoration or Rebuilding or Restoration, as the case may be;
- e) the proper maintenance and preservation of Mortgaged Premises; or
- f) the performance by Mortgagor of any obligation specified in Paragraph 10 above;

and said default is not cured to the satisfaction of Mortgagee or other satisfactory security is furnished to Mortgagee within fifteen (15) days following written notice by Mortgagee to Mortgagor, or if Mortgagor shall fail to procure and maintain Insurance Policies, Mortgagee may, at its election and without further demand or notice, pay and discharge such lien or encumbrance, defend the title to Mortgaged Premises, pay such Impositions (plus any interest and penalties thereon), perform Rebuilding or Restoration or any obligation of Mortgagor specified in Paragraph 10 hereof, procure Insurance Policies and maintain and preserve Mortgaged Premises. All expenditures therefor, including attorneys' fees incurred by Mortgagee, shall forthwith become due and payable to Mortgagee, together with interest thereon at Default Rate, which shall be added to and become a part of Indebtedness and shall be secured by the lien of this Mortgage, all without prejudice to the right of Mortgagee to declare Indebtedness immediately due and

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payable by reason of Mortgagor's default and breach of the terms, covenants, conditions and agreements herein contained. Mortgagee shall have the sole right of determination as to the validity of any lien, encumbrance or Imposition attributable to or assessed against Mortgaged Premises and payment thereof by Mortgagee shall establish its right to recover the amount so paid, with interest at Default Rate, subject to the provisions of Paragraph 12 following.

12. CONTEST OF LIENS OR ENCUMBRANCES: In the event Mortgagor desires to contest the validity of any lien, encumbrance or Imposition attributable to or assessed against Mortgaged Premises, it shall:

- a) on or before fifteen (15) days prior to the due date thereof, notify Mortgagee, in writing, that it intends to so contest the same;
- b) on or before the due date thereof, on demand, deposit with Mortgagee security (in form and content satisfactory to Mortgagee) for the payment of the full amount of such lien, encumbrance or Imposition, or any balance thereof then remaining unpaid (or provide to Mortgagee such other indemnity as may be reasonably acceptable to it); and
- c) from time to time, deposit additional security or indemnity, so that, at all times, adequate security or indemnity will be available for the payment of the full amount of the lien, encumbrance or Imposition remaining unpaid, together with all interest, penalties, costs and charges accrued or accumulated thereon.

If the foregoing deposits are made and Mortgagor continues, in good faith, to contest the validity of such lien, encumbrance or Imposition, by appropriate legal proceedings which shall operate to prevent the collection thereof and the sale of Mortgaged Premises, or any part thereof, to satisfy the same, Mortgagor shall be under no obligation to pay such lien, encumbrance or Imposition until such time as the same has been decreed, by court order, to be a valid lien on Mortgaged Premises. Mortgagee shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to the payment of any unpaid lien, encumbrance or Imposition to prevent the sale or forfeiture of Mortgaged Premises or non-payment of such lien, encumbrance or imposition, without liability on Mortgagee for any failure to apply the security or indemnity so deposited, unless Mortgagor, in writing, requests the application thereof to the payment of the particular lien, encumbrance or Imposition for which such deposit was made. Any surplus deposit retained by Mortgagee, after the payment of the lien, encumbrance or Imposition for which the same was made, shall be repaid to Mortgagor, unless Monetary Default or Non-Monetary Default exists, in which event, such surplus shall be applied by Mortgagee to cure such default.

13. WAIVERS: To the full extent permitted by law, Mortgagor:

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- a) shall not, at any time, insist upon or plead or, in any manner whatsoever, claim, or take advantage of any stay, exemption or extension law or any so-called "Moratorium Law" (now or at any time hereafter in force) nor claim, take or insist upon any benefit or advantage of or from any law (now or hereafter in force) providing for the valuation or appraisal of Mortgaged Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provision herein contained or to any decree, judgment or order of any court of competent jurisdiction or after such sale or sales, claim or exercise any rights pursuant to any statute now or hereafter in force to redeem Mortgaged Premises so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof;
- b) hereby expressly waives any and all statutory rights of reinstatement or redemption, pursuant to 735 ILCS 5/15-1601 or any similar reinstatement or redemption rights now or hereafter available to Mortgagor, on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to Mortgaged Premises subsequent to the date hereof, it being the intent of Mortgagor hereby that any and all such statutory rights of redemption of Mortgagor and of all other persons are and shall be deemed to be hereby waived to the full extent permitted by Applicable Laws;
- c) agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee but will suffer and permit the exercise of every such right, power and remedy as though no such law or laws has, have been or will have been made or enacted; and
- d) for itself and all who or which claim by, through or under Mortgagor, waives any and all right to have Mortgaged Premises marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose the lien of this Mortgage may order Mortgaged Premises sold as an entirety.

14. **UNPERMITTED TRANSFERS:** For the purpose of protecting Mortgagee's security, keeping Mortgaged Premises free from subordinate financing liens and/or permitting Mortgagee to increase Note Rate and to collect assumption fees, Mortgagor agrees that any sale, installment sale, conveyance, assignment or other transfer of or grant of a security interest in and to all or any part of the:

- a) legal and/or equitable title to Mortgaged Premises; or
- b) beneficial interest of any trust which holds title to Mortgaged Premises;

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- c) stock of any corporate owner of Mortgaged Premises or any corporation which is the beneficiary of any trust which holds title to Mortgaged Premises;
- d) partnership interests of the general partners of any partnership owning Mortgaged Premises or any partnership which is the beneficiary of any trust which holds title to Mortgaged Premises;
- e) limited partnership interests of any limited partnership owning Mortgaged Premises or which is the beneficiary of any trust which holds title to Mortgaged Premises;
- f) membership interests of any limited liability company owning Mortgaged Premises or which is a beneficiary of any trust which holds title to Mortgaged Premises;

without the prior written consent of Mortgagee shall be deemed to be an unpermitted transfer (collectively "Unpermitted Transfers").

Notwithstanding the foregoing, Mortgagee may condition its consent to an Unpermitted Transfer upon the payment of a fee to Mortgagee and/or an increase in Note Rate, PROVIDED THAT a consent by Mortgagee to an Unpermitted Transfer or a waiver of a default by reason thereof, the same shall not constitute a consent to or waiver of any right, remedy or power accruing to Mortgagee by reason of any subsequent Unpermitted Transfer.

In the event of an Unpermitted Transfer, Mortgagee may declare Indebtedness immediately due and payable in full, together with the prepayment premium specified in Note, the date of the Unpermitted Transfer being deemed to be the date of the prepayment.

15. **PERMITTED TRANSFERS:** Mortgagee, for itself and its successors and assigns, agrees that, notwithstanding Unpermitted Transfers, the following transfers or assignments, upon written notice to Mortgagee and subject to the conditions hereafter stated, will be permitted (collectively "Permitted Transfers"):

- a) a one-time transfer; provided, (i) the transferee has a financial and credit standing and management expertise acceptable to Mortgagee as equal or greater than that of Mortgagor or Beneficiary at the time of the original lending of Principal Amount ("Loan") approval; (ii) assumption documents in form and substance satisfactory to Mortgagee are executed by the transferee; (iii) Mortgagee is paid a transfer fee equal to one percent (1%) of the then outstanding Indebtedness and Beneficiary reimburses Mortgagee all fees and expenses associated with the transfer including legal fees; (iv) Mortgagee receives an endorsement to the Mortgagee's title policy, in form and substance acceptable to Mortgagee; and (v) at Mortgagee's option, Mortgagee receives

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opinions of counsel and Mortgagor or Beneficiary and transferee authorization documents in form and substance acceptable to Mortgagee. Further, Mortgagee, in its sole judgment and discretion, may require individuals specifically named by Mortgagee to deliver to Mortgagee an Environmental Indemnification Agreement of Mortgagee's standard form. The rights granted to Mortgagor and Beneficiary in this section are personal to Mortgagor and Beneficiary, shall be extinguished after the exercise thereof, and shall not inure to the benefit of any subsequent transferee. Such transfer and assumption will not, however, release Mortgagor or Beneficiary or any guarantors from any liability to Mortgagee without the prior written consent of Mortgagee, which consent will be conditioned upon, without limitation, the execution of new guaranties from principals of the transferee as Mortgagee deems necessary, execution by the principals of the transferee of Mortgagee's standard Environmental Indemnification Agreement and such other requirements as Mortgagee may appropriate in its discretion;

- b) the partnership interest currently held by the estate of Irv Lewandowski may be transferred to a limited liability company (L.L.C.) whose sole shareholders are Mr. Lewandowski's widow and three children. This transfer is approved without fee, but subject to sub-items (ii), (iv) and (v) contained in subparagraph a) above plus the execution of an Environmental Indemnity Agreement;
- c) the partnership interest held by Tim Gallagher may be transferred to the other partners (Cibula and Lewandowski, L.L.C.) in equal proportions. This transfer is approved and without fee but subject to sub-items (ii), (iv) and (v) contained in subparagraph 1) above plus the execution of an Environmental Indemnity Agreement;
- d) transfers for tax and estate planning purposes or death of a general partner will be permitted without fee, but subject to subitems (ii), (iv) and (v) contained in subparagraph a) above plus the execution of an Environmental Indemnity Agreement.

PROVIDED, HOWEVER, that i) prior to any Permitted Transfer, the proposed documents of transfer are submitted to Mortgagee and, within ten (10) business days following such transfer, copies of the executed documents of transfer are delivered to Mortgagee, and ii) Permitted Transfers are not intended to circumvent Unpermitted Transfers.

16. PROHIBITION AGAINST SUBMITTING MORTGAGED PREMISES TO CONDOMINIUM PROPERTY ACT: Mortgagor shall not, without the prior written consent of Mortgagee, submit Mortgaged Premises to the Condominium Property Act of the State of Illinois or to any similar act or statute or otherwise permit cooperative ownership or the further subdivision thereof.

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17. **DEFAULT:** If Mortgagor shall default in the punctual payment of any part of Indebtedness when due pursuant to Note, this Mortgage or Other Loan Documents and such default shall continue for five (5) days ("Monetary Default"), or in the event that:

- a) Mortgagor shall default in the performance of any of the terms, agreements, covenants or conditions contained herein or in Other Loan Documents (other than a Monetary Default), and such default shall continue for fifteen (15) days following written notice to Mortgagor;
- b) Mortgagor shall file a petition in voluntary bankruptcy or pursuant to any provision of the Federal Bankruptcy Act or similar state or federal law, whether now or hereafter existing, or an answer admitting insolvency or inability to pay its debts;
- c) Mortgagor shall be adjudicated a bankrupt or a trustee or receiver shall be appointed for Mortgagor for all or the major part of its property, in any involuntary proceeding, or any court shall have taken jurisdiction of all or the major part of the property of Mortgagor, in any involuntary proceeding, for the reorganization, dissolution, liquidation or winding up of Mortgagor and such trustee or receiver shall not be discharged or such jurisdiction relinquished, vacated or stayed within sixty (60) days thereafter;
- d) Mortgagor shall make an assignment for the benefit of creditors or shall admit, in writing, its inability to pay its debts generally as the same become due or shall consent to the appointment of a receiver, trustee or liquidator of all or the major part of its property;
- e) Mortgagor or Beneficiary shall default in the performance of any obligation contained in any document evidencing any indebtedness due and owing to Mortgagee, which is secured by any part or all of Mortgaged Premises, and such default is not be cured within the time permitted pursuant thereto; or
- f) an Unpermitted Transfer shall occur;

[a) through f) collectively "Non-Monetary Defaults"], then, or at any time thereafter during the continuance of a Monetary Default or Non-Monetary Default, Indebtedness shall, at the sole election of Mortgagee and without further notice, demand or presentment, bear interest at Default Rate and become immediately due and payable in full, anything contained herein or in Note or Other Loan Documents to the contrary notwithstanding.

Upon acceleration of the payment of Indebtedness, Mortgagee shall be entitled to collect and Mortgagor shall pay Prepayment Premium, the date of the decree of foreclosure is entered shall be deemed to be the date of prepayment.

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18. **REMEDIES NOT EXCLUSIVE:** No remedy or right of Mortgagee hereunder or pursuant to Note or Other Loan Documents or otherwise available under applicable law, shall be exclusive of any other remedy or right but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing at law or in equity pursuant thereto. No delay in the exercise of or omission to exercise any remedy or right accruing by reason of a Monetary Default or a Non-Monetary Default shall impair any such remedy or right or be construed to be a waiver of any such default or an acquiescence therein nor shall the same affect any subsequent Monetary Default or Non-Monetary Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by Mortgagee. All obligations of Mortgagor and all rights, powers and remedies of Mortgagee expressed herein shall be in addition to and not in limitation of those provided by law, this Mortgage and Other Loan Documents.

19. **REMEDIES:** Upon the occurrence of a Monetary Default or a Non-Monetary Default, Mortgagee shall have the right to immediately foreclose this Mortgage. Upon the filing of any complaint by reason thereof, the court in which the same is filed may:

- a) upon application of Mortgagee or at any time thereafter;
- b) either before or after foreclosure sale and with notice to Mortgagor or to any party claiming under Mortgagor;
- c) without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of Indebtedness, or any part thereof;
- d) without regard to the then value of Mortgaged Premises or whether the same shall then be occupied in whole or in part, as a homestead by the owner of the equity of redemption; and
- e) without requiring any bond from the complainant in such proceedings;

appoint a receiver for the benefit of Mortgagee, with power to take possession, charge and control of Mortgaged Premises, to lease the same, keep Mortgaged Premises insured and in good repair and collect all rentals during the pendency of such foreclosure suit and, in the event of foreclosure sale and a deficiency in the proceeds received therefrom, during any period of redemption. The court may, from time to time, authorize such receiver to apply the net amounts remaining in his possession, after deducting reasonable compensation for himself and his counsel to be allowed by the court, in payment (in whole or in part) of any part or all of Indebtedness, including, without limitation, the following, in such order of application as Mortgagee may elect: i) to the payment of Indebtedness, ii) to any amount due upon any decree entered in any suit foreclosing this Mortgage, iii) to costs and expenses of foreclosure and litigation upon Mortgaged Premises, iv) to the payment of premiums due on Insurance Policies or costs of Repair or Restoration, Rebuilding or Restoration, Impositions (and any interest, penalties and costs thereon) or any other

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18. REMEDIES NOT EXCLUSIVE: No remedy or right of Mortgagee hereunder or pursuant to Note or Other Loan Documents or otherwise available under applicable law, shall be exclusive of any other remedy or right but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing at law or in equity pursuant thereto. No delay in the exercise of or omission to exercise any remedy or right accruing by reason of a Monetary Default or a Non-Monetary Default shall impair any such remedy or right or be construed to be a waiver of any such default or an acquiescence therein nor shall the same affect any subsequent Monetary Default or Non-Monetary Default of the same or a different nature. Every such remedy or right may be exercised concurrently or independently, when and as often as may be deemed expedient by Mortgagee. All obligations of Mortgagor and all rights, powers and remedies of Mortgagee expressed herein shall be in addition to and not in limitation of those provided by law, this Mortgage and Other Loan Documents.

19. REMEDIES: Upon the occurrence of a Monetary Default or a Non-Monetary Default, Mortgagee shall have the right to immediately foreclose this Mortgage. Upon the filing of any complaint by reason thereof, the court in which the same is filed may:

- a) upon application of Mortgagee or at any time thereafter;
- b) either before or after foreclosure sale and with notice to Mortgagor or to any party claiming under Mortgagor;
- c) without regard to the solvency or insolvency at the time of such application of any person then liable for the payment of Indebtedness, or any part thereof;
- d) without regard to the then value of Mortgaged Premises or whether the same shall then be occupied in whole or in part, as a homestead by the owner of the equity of redemption; and
- e) without requiring any bond from the complainant in such proceedings:

appoint a receiver for the benefit of Mortgagee, with power to take possession, charge and control of Mortgaged Premises, to lease the same, keep Mortgaged Premises insured and in good repair and collect all rentals during the pendency of such foreclosure suit and, in the event of foreclosure sale and a deficiency in the proceeds received therefrom, during any period of redemption. The court may, from time to time, authorize such receiver to apply the net amounts remaining in his possession, after deducting reasonable compensation for himself and his counsel to be allowed by the court, in payment (in whole or in part) of any part or all of Indebtedness, including, without limitation, the following, in such order of application as Mortgagee may elect: i) to the payment of Indebtedness, ii) to any amount due upon any decree entered in any suit foreclosing this Mortgage, iii) to costs and expenses of foreclosure and litigation upon Mortgaged Premises, iv) to the payment of premiums due on Insurance Policies or costs of Repair or Restoration, Rebuilding or Restoration, Impositions (and any interest, penalties and costs thereon) or any other

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lien or charge upon Mortgaged Premises which may be or become superior to the lien of this Mortgage or of any decree foreclosing the same, and v) to the payment of all sums advanced by Mortgagee to cure or attempt to cure any Monetary Default or Non-Monetary Default, to protect the security provided herein and in Note and Other Loan Documents, with interest on such advances at Default Rate.

Any overplus of the proceeds of foreclosure sale shall then be paid to Mortgagor. This Mortgage may be foreclosed at any one time against all or successively against any part or parts of Mortgaged Premises, as Mortgagee may elect and this Mortgage and the right of foreclosure hereunder shall not be impaired or exhausted by one or any foreclosure or by one or any sale and may be foreclosed successively and in parts until all of Mortgaged Premises shall have been foreclosed and sold. In the event of any foreclosure of Mortgaged Premises (or commencement of or preparation for the same) in any court, all expenses of every kind paid or incurred by Mortgagee for the enforcement, protection or collection of this security, including reasonable costs, attorneys' fees, stenographers' fees, costs of advertising, title charges and other costs and expenses shall be paid by Mortgagor.

It is further agreed that in the event of a Monetary Default or Non-Monetary Default as an alternative to the right of foreclosure for the full secured Indebtedness after acceleration thereof, Mortgagee shall have the right to institute partial foreclosure proceedings with respect to the portion of said Indebtedness so in default, as if under a full foreclosure, and without declaring the entire secured Indebtedness due (such proceeding being hereinafter referred to as a "Partial Foreclosure"), and provided that if foreclosure sale is made by reason of a Monetary Default of a part of Indebtedness such sale may be made subject to the continuing lien of this Mortgage for the unmatured part of the secured Indebtedness; and it is agreed that such sale pursuant to a Partial Foreclosure, if so made, shall not in any manner affect the unmatured part of the secured Indebtedness, but as to such unmatured part this Mortgage and the lien thereof shall remain in full force and effect just as though no foreclosure sale has been made under the provisions of this paragraph. Notwithstanding the filing of any Partial Foreclosure or entry of a decree of sale therein, Mortgagee may elect at any time prior to a foreclosure sale pursuant to such decree, to discontinue such Partial Foreclosure and to accelerate the secure Indebtedness by reason of any Monetary Default or Non-Monetary Default upon which such Partial Foreclosure was predicted or by reason of any other Monetary or Non-Monetary Default and proceed with full foreclosure proceedings. It is further agreed that several foreclosure sales may be made pursuant to Partial Foreclosures without exhausting the right of full or Partial Foreclosure sale for any unmatured part of the secured Indebtedness, it being the purpose to provide for a Partial Foreclosure sale of the secured Indebtedness for any mature portion of the secured Indebtedness without exhausting the power to foreclose and to sell Mortgaged Premises pursuant to any such Partial Foreclosure for any other.

Mortgagee may bid for and purchase any part of Mortgaged Premises at any foreclosure sale.

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20. POSSESSORY RIGHTS OF MORTGAGEE: Upon the occurrence of a Monetary Default or a Non-Monetary Default, whether before or after the institution of legal proceedings to foreclose the lien of this Mortgage or any sale thereunder, Mortgagee shall be entitled, in its sole discretion, to perform any of the following:

- a) enter and take actual possession of Mortgaged Premises, Leases and the rents payable pursuant thereto, personally or by its agents or attorneys and excluding Mortgagor therefrom;
- b) with or without process of law, enter upon and take and maintain possession of all of the documents, books, records, papers and accounts of Mortgagor relating thereto;
- c) as attorney-in-fact or agent of Mortgagor, or in its own name as Mortgagee and pursuant to the powers herein granted, hold, operate, manage and control Mortgaged Premises and Leases and collect all rentals payable pursuant thereto and conduct the business, if any, thereof, either personally or by its agents, contractors or nominees, with full power to use such measures, legal or equitable, as, in its discretion, may be deemed proper or necessary to enforce the terms and conditions of Leases and the rentals payable pursuant thereto (including actions for the recovery of rents, actions in forcible detainer and actions in distress of rent);
- d) cancel or terminate any Lease or sublease for any cause or for any reason which would entitle Mortgagor to cancel the same;
- e) elect to disaffirm any Lease or sublease made subsequent hereto or subordinated to the lien hereof;
- f) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments and improvements to Mortgaged Premises which, in Mortgagee's sole discretion, may seem appropriate;
- g) insure and re-insure Mortgaged Premises against all risks incidental to Mortgagee's possession, operation and management thereof; and
- h) perform such other acts in connection with the management and operation of Mortgaged Premises as Mortgagee, in its sole discretion, may deem proper;

Mortgagor hereby granting full power and authority to Mortgagee to exercise each and every of the rights, privileges and powers contained herein at any and all times following the occurrence of a Monetary Default or a Non-Monetary Default, without notice to Mortgagor.

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Mortgagee, in the exercise of the rights and powers conferred upon it hereby, shall have full power to use and apply the rentals collected by it to the payment or on account of the following, in such order as it may determine: i) operating expenses of Mortgaged Premises, including the cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agents or contractors, if management be delegated to agents or contractors, and leasing commissions and other compensation and expenses in seeking and procuring Occupancy Tenants and entering into Leases), established claims for damages, if any, and premiums on Insurance Policies, ii) Impositions, costs of repairs, decorating, renewals, replacements, alterations, additions or betterments and improvements of Mortgaged Premises, including the cost, from time to time, of installing, replacing or repairing Mortgaged Premises and of placing Mortgaged Premises in such condition as will, in the judgment of Mortgagee, make the same readily rentable, and iii) Indebtedness, or any part thereof.

21. OTHER REMEDIES: In the event of a Monetary Default or a Non-Monetary Default, Mortgagee may exercise from time to time, any rights and remedies available to it pursuant to applicable law. Mortgagor shall, promptly upon request by Mortgagee, assemble Personal Property and make the same available to Mortgagee at such place or places reasonably convenient for Mortgagee and Mortgagor, as Mortgagee shall designate. Any notification required by law of intended disposition by Mortgagor of any part of Mortgaged Premises shall be deemed reasonably and properly given if served as herein provided at least ten (10) days prior to such disposition. Without limiting the foregoing, whenever a default is existing, Mortgagee may, with respect to Personal Property, without further notice, advertisement, hearing, or process of law of any kind:

- a) notify any person obligated on Personal Property to perform, directly for Mortgagee, its obligations thereunder;
- b) enforce collection of any part of Personal Property by suit or otherwise and surrender, release or exchange all or any part thereof or compromise, extend or renew, for any period (whether or not in excess of the original period), any obligations of any nature of any party with respect thereto;
- c) endorse any checks, drafts or other writings in the name of Mortgagor to permit collection of Personal Property and control of any proceeds thereof;
- d) enter upon any part of Mortgaged Premises where Personal Property may be located and take possession of and remove the same;
- e) sell any part or all of Personal Property free of all rights and claims of Mortgagor therein and thereto, at any public or private sale; and
- f) bid for and purchase any part or all of Personal Property at any such sale.

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Any proceeds of any disposition by Mortgagee of any part of Personal Property may be applied by Mortgagee to the payment of expenses incurred in connection therewith, including reasonable attorneys' fees and legal expenses, and any balance of such proceeds shall be applied by Mortgagee in the payment of such part of Indebtedness and in such order of application as Mortgagee may, from time to time, elect. Mortgagee may exercise, from time to time, any rights and remedies available to it pursuant to the Uniform Commercial Code, other applicable laws in effect from time to time or otherwise available to it by reason of any applicable law. Mortgagor hereby expressly waives presentment, demand, notice of dishonor and protest in connection with Indebtedness and, to the fullest extent permitted by applicable law, any and all other notices, advertisements, hearings or process of law in connection with the exercise by Mortgagee of any of its rights and remedies hereunder.

Mortgagor hereby constitutes Mortgagee its attorney-in-fact, with full power of substitution, to take possession of Personal Property upon the occurrence of any default hereunder, as Mortgagee, in its sole discretion (reasonably exercised) deems necessary or proper, to execute and deliver all instruments required by Mortgagor to accomplish the disposition of Personal Property, or any part thereof, which power of attorney is a power coupled with an interest, irrevocable until such time as Indebtedness is paid in full.

22. NON-LIABILITY OF MORTGAGEE: Notwithstanding anything contained herein, Mortgagee shall not be obligated to perform or discharge, and does not hereby undertake to perform or discharge, any obligation, duty or liability of Mortgagor pursuant to Leases or otherwise and Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur pursuant thereto or by reason of its exercise of its rights hereunder and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings, on its part, to perform or discharge any of the terms, covenants or agreements with respect to Mortgaged Premises. Mortgagee shall not have responsibility for the control, care, management or repair of Mortgaged Premises nor shall Mortgagee be responsible or liable for any negligence in the management, operation, upkeep, repair or control of Mortgaged Premises resulting in loss, injury or death to any Occupancy Tenant, licensee, employee or stranger upon Mortgaged Premises. No liability shall be enforced or asserted against Mortgagee in the exercise of the powers herein granted to it and Mortgagor expressly waives and releases any such liability. In the event Mortgagee incurs any such liability, loss or damage pursuant hereto and to any Lease or in the defense of any claim or demand, Mortgagor agrees to reimburse Mortgagee, immediately upon demand, for the amount thereof, including costs, expenses and reasonable attorneys' fees.

23. USURY: Mortgagor represents and agrees that Loan will be used for business purposes and this Mortgage is exempt from limitations upon lawful interest, pursuant to the terms of 815 ILCS 2054.

24. CHANGE OF LAW: In the event of the enactment, following the date hereof, of any law in the State of Illinois deducting from the value of Mortgaged Premises, for the purpose of

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taxation, the amount of any lien, encumbrance or Imposition or imposing upon Mortgagee the payment of the whole or any part thereof or changing, in any way, the laws relating to the taxation of mortgages or debts secured by mortgages or the manner of collection of liens, encumbrances or Impositions, so as to affect this Mortgage, Indebtedness or Mortgagee, Mortgagor shall, in any such event, upon demand by Mortgagee, pay such liens, encumbrances or Impositions or reimburse Mortgagee therefor; PROVIDED, HOWEVER, that if, in the opinion of counsel for Mortgagee, it may be unlawful to require Mortgagor to make such payment or the making of such payment may result in the payment of interest beyond the maximum amount permitted by law, then, and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to declare Indebtedness and all interest due and owing thereon to be and become due and payable within six (6) months from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that Mortgagor is not obligated to pay any part of Mortgagee's federal or state income tax.

25. COMPLIANCE WITH AGREEMENTS: Mortgagor shall pay promptly and keep, observe, perform and comply with all covenants, terms and provisions of operating agreements, Leases, instruments, easement agreements and other documents relating to or appurtenant to Mortgaged Premises or evidencing or securing any indebtedness secured thereby and shall observe all covenants, conditions and restrictions affecting the same.

26. ASSIGNMENT OF LEASES, RENTS AND PROFITS: To further secure Indebtedness and the performance of all of the terms, covenants, conditions and agreements contained herein and in Note and Other Loan Documents, Mortgagor hereby sells, assigns and transfers to Mortgagee all of its right, title and interest in and to Leases and all rentals, issues, proceeds and profits now due and which may hereafter become due pursuant thereto, it being the intention hereby to establish an absolute transfer and assignment thereof to Mortgagee. Mortgagor hereby irrevocably appoints Mortgagee its agent, in its name and stead (with or without taking possession of Mortgaged Premises, as provided in Paragraph 20 hereof), to rent, lease or let all or any part of Mortgaged Premises to any party or parties, at such rental and upon such terms as Mortgagee shall, in its discretion, determine and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter and all presently due or which may hereafter become due pursuant to each and every Lease, written or oral, or other tenancy existing, or which hereafter exist on Mortgaged Premises, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Mortgagee would have upon a taking of possession pursuant to the provisions of Paragraph 20 hereof. Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any part of Mortgaged Premises for more than one (1) installment in advance and that the payment of no part of the rents to accrue for any part of Mortgaged Premises has been or will be waived, released, reduced, discounted or otherwise discharged or compromised by Mortgagor. Mortgagor waives any rights of set-off against any person in possession of any part of Mortgaged Premises and agrees that it will not assign any of the rents or profits from Mortgaged Premises except with the consent of Mortgagee.

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Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the taking of actual possession of Mortgaged Premises by Mortgagee pursuant to Paragraph 20 hereof. In the exercise of the powers granted herein to Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor. Mortgagor further agrees to assign and transfer Leases to Mortgagee and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments in Mortgaged Premises as Mortgagee shall, from time to time, require. Although it is the intention of Mortgagor and Mortgagee that the assignment contained in this paragraph shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Mortgagee shall not exercise any of the rights or powers conferred upon it pursuant hereto until a Monetary Default or a Non-Monetary Default shall exist. Within thirty (30) days following Mortgagee's written request therefor, Mortgagor will furnish to Mortgagee executed copies of Leases, which shall be in form and content satisfactory to Mortgagee. In the event that Mortgagee requires the same, Mortgagor shall execute and record a separate Collateral Assignment of Rents or separate Assignment of Leases, in form and content satisfactory to Mortgagee, and the terms and provisions of said Assignments shall control in the event of a conflict between the terms hereof and the terms thereof.

27. **SECURITY AGREEMENT** Mortgagor and Mortgagee agree that:

- a) this Mortgage shall constitute a security agreement within the meaning of the Illinois Uniform Commercial Code (810 ILCS 5) ("Code") with respect to any and all sums at any time on deposit for the benefit of or held by Mortgagee (whether deposited by or on behalf of Mortgagor or others) pursuant to any provision of this Mortgage, Note or Other Loan Documents and any personal property included in the granting clauses of this Mortgage, which may not be deemed to be affixed to Mortgaged Premises or may not constitute a "fixture" (within the meaning of Section 9-313 of Code) and all replacements thereof, substitutions therefor, additions thereto and the proceeds thereof (collectively "Collateral");
- i) all building materials, fittings, appliances, furniture, furnishings, carpeting, supplies, motor vehicles and all other personal property and all replacements of any of the foregoing, now or at any time hereafter affixed, attached, incorporated or intended to be incorporated in, placed upon or used in any way in connection with Mortgaged Premises, regardless of whether situated in or upon Mortgaged Premises or in the possession of any third party for purposes of the manufacture, storage, fabrication or transportation thereof, or otherwise, and now owned or hereafter owned by Debtor or in which Debtor now has or may hereafter have any interest, including, without limitation, goods which are now or shall become fixtures and all proceeds of all of the foregoing and all of the rights, titles and interest of Debtor in the good-will relating

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- c) Collateral and all of Mortgagor's right, title and interest therein are hereby assigned to Mortgagee to secure the payment of Indebtedness;
- d) all of the terms, provisions, conditions and agreements contained herein shall pertain and apply to Collateral as fully and to the same extent as the same apply to any other property comprising Mortgaged Premises; and
- e) the following provisions shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:
 - i) Mortgagor (being the "Debtor", as such term is defined in Code) is and will be the true and lawful owner of Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefitting Mortgagee only and liens and encumbrances, if any, expressly permitted pursuant hereto and to Note and Other Loan Documents;
 - ii) Collateral shall be used by Mortgagor solely for business purposes;
 - iii) Collateral shall be kept at Mortgaged Premises and, except for obsolete Collateral which shall be replaced with collateral of equal or better utility and value, will not be removed therefrom without the prior consent of Mortgagee;
 - iv) no financing statement (other than financing statements indicating Mortgagee as the sole "Secured Party" (as such term is defined in Code) or except as permitted in writing by Mortgagee or with respect to liens or encumbrances, if any, expressly permitted pursuant hereto and to Note and Other Loan Documents) applicable to any part of Collateral or any proceeds thereof is on file in any public office;
 - v) Mortgagor shall, upon demand and at its sole cost and expense, furnish to Mortgagee such further information, execute and deliver such financing statements and other documents (in form satisfactory to Mortgagee) and do all such acts and things as Mortgagee may, at any time or from time to time, request or as may be necessary or appropriate to establish and maintain a perfected security interest in Collateral as security for Indebtedness, free and clear of all liens or encumbrances other than liens or encumbrances benefitting Mortgagee only and liens and encumbrances, if any, expressly permitted hereby or pursuant to Note or Other Loan Documents and Mortgagor will pay the cost of filing or recording this Mortgage and such financing statements or other

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documents in all public offices wherever filing or recording is deemed necessary or desirable by Mortgagee;

- vi) in the event of the occurrence of a Monetary Default or a Non-Monetary Default, Mortgagee:
- t) shall have the remedies of a Secured Party pursuant to Code, including, without limitation, the right to take immediate and exclusive possession of Collateral, or any part thereof and, for that purpose, may, insofar as Mortgagor can give authority therefor, with or without judicial process, enter (if the same can be done without breach of the peace) upon any place in which Collateral, or any part thereof, may be situated and remove the same therefrom (provided that if Collateral is affixed to real estate, such removal shall be subject to the conditions stated in Code);
 - u) shall be entitled to hold, maintain, preserve and prepare Collateral for sale (until disposed of) or may propose to retain the same subject to Mortgagor's right of redemption, in satisfaction of Mortgagor's obligations, as provided in Code;
 - v) may render Collateral unusable without removal and may dispose of the same on Mortgaged Premises;
 - w) may require Mortgagor to assemble Collateral and make the same available to Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both Mortgagee and Mortgagor;
 - x) will furnish to Mortgagor not less than ten (10) days' prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition thereof is made and the requirements of reasonable notice shall be met if such notice is mailed by certified United States mail (or equivalent), postage prepaid, to the address of Mortgagor hereafter set forth;
 - y) may purchase, at any public sale and, if Collateral is of a type customarily sold in a recognized market or the subject of widely distributed standard price quotations, Mortgagee may purchase Collateral at private sale, which sale may be held as a part of and in conjunction with any foreclosure sale of Mortgaged Premises

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and Collateral and Mortgaged Premises may be sold as one lot, if Mortgagee so elects, and the net proceeds realized upon any such disposition, after deduction for the expenses of re-taking, holding, preparing for sale, selling or the like, and reasonable attorneys' fees and legal expenses incurred by Mortgagee shall be applied against Indebtedness in such order or manner as Mortgagee shall select; and

- z) will account to Mortgagor for any surplus realized on such disposition.
- vii) the terms and provisions contained in this Paragraph 27 shall, unless the context otherwise requires, have the meanings contained and be construed as provided in Code;
- viii) this Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of Code with respect to Collateral and the goods described herein, which are or may become fixtures relating to Mortgaged Premises; and
 - x) the addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereafter set forth;
 - y) this Mortgage shall be recorded with the Recorder of Deeds of Cook County, Illinois; and
 - z) Mortgagor is the record owner of Mortgaged Premises; and
- ix) to the extent permitted by applicable law, the security interest established hereby is specifically intended to cover and include all of the right, title and interest of Mortgagor, as landlord, in and to Leases, including all extended terms and extensions and renewals thereof, together with any amendments to or replacements thereof and all right, title and interest of Mortgagor, as landlord thereunder, including, without limitation, the present and continuing right to:
 - x) make claim for, collect, receive and receipt for any and all rents, income, revenues, issues, profits and monies payable as damages or, in lieu of the rents and moneys payable, as the purchase price of Mortgaged Premises, or any part thereof or of awards or claims of money and other sums of money payable or receivable thereunder, howsoever payable;

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- y) bring actions and proceedings thereunder or for the enforcement thereof; and
- z) do any and all things which Mortgagor or any landlord is or may become entitled to do pursuant to Leases.

28. EXECUTION OF SEPARATE SECURITY AGREEMENT AND FINANCING STATEMENT: In addition to this Mortgage being deemed a security agreement, Mortgagor shall, upon the written request of Mortgagee, as additional security for the payment of Indebtedness and the performance of all of the terms, covenants, conditions and agreements set forth herein and in Note and Other Loan Documents, execute and deliver to Mortgagee a security agreement, granting to Mortgagee a security interest in and to Collateral, all right, title and interest of Mortgagor, as landlord, in and to Leases and all rents, issues and profits due or which may hereafter become due and payable pursuant to the terms and provisions thereof; and, further, execute and deliver Financing Statements pursuant to the Uniform Commercial Code, State of Illinois. Mortgagor agrees, from time to time, to execute such additional Security Agreements and Financing Statements as may be necessary to vest in Mortgagee a security interest in and to Collateral and Leases until Indebtedness is paid in full.

29. FINANCIAL STATEMENTS: Within ninety (90) days following the close of each fiscal year applicable to the operation of Mortgaged Premises, Mortgagee shall be furnished with annual financial statements (which shall include a balance sheet and supporting schedules, together with a detailed statement of income and expense; and supporting schedules) applicable to the operation of Mortgaged Premises and a rent roll (identifying each tenant, the square footage of each leased premises, the current rent, (identified as gross, semi-gross or net) lease expiration dates, rental concessions and options, if any, (all of which shall be certified by the general partners of Beneficiary). Mortgagee shall have the right, upon a five (5) days' prior written notice, to inspect and make copies of the books, records and income tax returns of Beneficiary with respect to Mortgaged Premises, for the purpose of verifying any such statement.

30. PAYMENT AND PERFORMANCE BY MORTGAGOR: In the event that Mortgagor shall fail to pay or perform any of its obligations contained herein and in Note and Other Loan Documents (including the payment of expenses of foreclosure and court costs), Mortgagee may, but need not, following the expiration of any applicable grace period provided therein, pay or perform (or cause to be paid or performed) any obligation of Mortgagor pursuant thereto, in any form and manner deemed reasonably expedient by Mortgagee, as agent or attorney-in-fact of Mortgagor, and any amount so paid or expended (plus reasonable compensation to Mortgagee for its out-of-pocket and other expenses for each matter for which it acts hereunder), with interest thereon at Default Rate, shall be and become a part of Indebtedness and shall be paid to Mortgagee upon demand. By way of illustration and not in limitation of the foregoing, Mortgagee may, but need not:

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- a) collect rentals due and owing pursuant to Leases and prosecute the collection of Collateral or the proceeds thereof;
- b) purchase, discharge, compromise or settle any Imposition, lien or any other lien, encumbrance, suit, proceeding, title or claim thereof;
- c) redeem from any tax sale or forfeiture affecting Mortgaged Premises or contest any Imposition; and
- d) perform any act or deed reasonably necessary and required to protect the value of Mortgaged Premises and the security given for Indebtedness.

In making any payment or securing any performance relating to any obligation of Mortgagor hereunder, Mortgagee, so long as it acts in good faith, shall have the sole discretion as to the legality, validity and amount of any lien, encumbrance or Imposition and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee shall be considered a waiver of any right accruing to it on account of the occurrence of any default by Mortgagor pursuant hereto or to Note or Other Loan Documents.

31. **RELEASE:** Upon payment in full of Indebtedness, at the time and in the manner herein provided, this conveyance shall be null and void and, upon demand therefor following such payment, an appropriate instrument of reconveyance or release shall, in due course, be made by Mortgagee to Mortgagor, at Mortgagor's expense.

32. **MORTGAGOR'S CONTINUING LIABILITY:** This Mortgage is intended only as security for Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein and in Note and Other Loan Documents. Mortgagor shall be and remain liable to perform all of the obligations assumed by it pursuant hereto and Mortgagee shall have no obligation or liability by reason of or arising out of this Mortgage and shall not be required or obligated, in any manner, to perform or fulfill any of the obligations of Mortgagor pursuant hereto, anything contained herein or in Note and Other Loan Documents to the contrary notwithstanding.

33. **INSPECTIONS:** Mortgagee, by any authorized agent or employee and for the protection of its interest in Mortgaged Premises, is hereby authorized and empowered to enter in and upon Mortgaged Premises at any and all reasonable times, for the purpose of inspecting the same and ascertaining the condition thereof.

34. **INDEMNIFICATION:** Mortgagor shall indemnify Mortgagee from all losses, damages and expenses, including reasonable attorneys' fees, incurred in connection with any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this Mortgage.

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35. **LATE CHARGE:** In addition to the payment of Indebtedness, Mortgagee shall have the right to demand and Mortgagor shall pay a late charge equal to four percent (4%) of payments due and owing on account of Indebtedness not made within fifteen (15) days following the respective due dates thereof.

36. **CORRECTIVE DOCUMENTS:** Mortgagor shall, at the request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by Mortgagee to correct such defect, error or omission.

37. **CONSENT OR APPROVAL:** The consent by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent in any like matter arising at a subsequent date and the failure of Mortgagee to promptly exercise any right, power, remedy or consent provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy or consent at a later date. Any consent or approval required of and granted by Mortgagee pursuant hereto shall:

- a) be narrowly construed to be applicable only to Mortgagor and the facts identified in such consent or approval and no third party shall claim any benefit by reason thereof; and
- b) not be deemed to constitute Mortgagee a venturer or partner with Mortgagor or Beneficiary whatsoever nor shall privity of contract be presumed to have been established with any such third party.

If, to consider a request by Mortgagor or Beneficiary, it is necessary, in the sole discretion of Mortgagee, to retain the assistance of any person, firm or corporation (e.g. attorneys, appraisers, engineers, surveyors, etc.), Mortgagor or Beneficiary shall reimburse Mortgagee for all reasonable costs incurred in connection with the employment of such parties.

38. **GOVERNING LAW:** This Mortgage shall be construed in accordance with and governed pursuant to the laws of the State of Illinois, without regard to its conflict of law principles. Whenever possible, each provision of this Mortgage shall be interpreted in such a manner as to be effective and valid pursuant to applicable law; PROVIDED, HOWEVER, that if any part hereof shall be prohibited by or invalid thereunder, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder hereof or the remaining provisions of this Mortgage.

39. **TIME OF THE ESSENCE:** It is specifically agreed that time is of the essence of this Mortgage and that a waiver of the options or obligations secured hereby shall not, at any time

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thereafter, be held to be abandonment of such rights. Notice of the exercise of any option granted to Mortgagee pursuant hereto or to Note or Other Loan Documents is not required to be given.

40. **NOTICES:** Any notice, consent or other communication to be served hereunder or pursuant to Note or Other Loan Documents shall be deemed properly delivered if delivered personally or by Federal Express or comparable "over-night" courier service (which shall be deemed received on the date of delivery thereof) or by United States certified or registered mail, postage prepaid (which shall be deemed received three [3] days following the postmark date thereof), to Mortgagor, Mortgagee and the parties to whom copies of notices, consents or other communications are to be mailed at the addresses set forth below or to such other address as Mortgagor, Mortgagee or such other parties may direct in writing:

If to Mortgagor, at DuPage National Bank, _____,
_____, Attn: Land Trust Department, with a copy thereof to
Beneficiary NVS Venture, an Illinois general partnership, at _____;
_____;

If to Mortgagee, c/o The Investment Centre, at 300 Galleria Parkway, Suite 1200,
Atlanta, Georgia 30339, Attn: Maurice Moore, with a copy to Linda Sessler at
Southland Life Insurance Company, 300 Galleria Parkway, Suite 1200, Atlanta,
Georgia 30339.

41. **CAPTIONS:** The headings or captions of the paragraphs or subparagraphs hereof are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms of this Mortgage.

42. **BENEFIT:** All grants, conditions and provisions hereof shall apply, extend to and be binding upon Mortgagor and all persons claiming any interest in Mortgaged Premises by, through or under Mortgagor, and shall inure to the benefit of Mortgagee, its successors and assigns.

43. **OTHER LEASE REQUIREMENTS; LEASE TERMINATIONS:** All New Leases of executed after the date hereof shall substantially conform to the standard lease form previously approved by Mortgagee and all new leases which demises Twelve Thousand Square Feet (12,000) and more of net rentable area and shall be submitted to Mortgagee for its review and approval. Mortgagor and Beneficiary shall not terminate or modify any Lease without the prior written consent of Mortgagee. Mortgagor shall use only a lease form approved by Mortgagee. All leases shall be for a minimum term of three (3) years and shall be bonafide, arms length tenants, shall not contain any rental or other concessions not approved by Mortgagee, and shall provide that such tenant pay a pro rata share of, or increase in, taxes, insurance or other operating expenses.

44. **RECOURSE LIABILITY.** This Mortgage is executed by Mortgagor, not personally but solely as trustee under the terms of the aforesaid Trust Agreement, solely in the exercise of the power and authority conferred upon and vested in it as such Trustee (and Mortgagor hereby

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- a) collect rentals due and owing pursuant to Leases and prosecute the collection of Collateral or the proceeds thereof;
- b) purchase, discharge, compromise or settle any Imposition, lien or any other lien, encumbrance, suit, proceeding, title or claim thereof;
- c) redeem from any tax sale or forfeiture affecting Mortgaged Premises or contest any Imposition; and
- d) perform any act or deed reasonably necessary and required to protect the value of Mortgaged Premises and the security given for Indebtedness.

In making any payment or securing any performance relating to any obligation of Mortgagor hereunder, Mortgagee, so long as it acts in good faith, shall have the sole discretion as to the legality, validity and amount of any lien, encumbrance or Imposition and of all other matters necessary to be determined in satisfaction thereof. No such action of Mortgagee shall be considered a waiver of any right accruing to it on account of the occurrence of any default by Mortgagor pursuant hereto or to Note or Other Loan Documents.

31. **RELEASE:** Upon payment in full of Indebtedness, at the time and in the manner herein provided, this conveyance shall be null and void and, upon demand therefor following such payment, an appropriate instrument of reconveyance or release shall, in due course, be made by Mortgagee to Mortgagor, at Mortgagor's expense.

32. **MORTGAGOR'S CONTINUING LIABILITY:** This Mortgage is intended only as security for Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein and in Note and Other Loan Documents. Mortgagor shall be and remain liable to perform all of the obligations assumed by it pursuant hereto and Mortgagee shall have no obligation or liability by reason of or arising out of this Mortgage and shall not be required or obligated, in any manner, to perform or fulfill any of the obligations of Mortgagor pursuant hereto, anything contained herein or in Note and Other Loan Documents to the contrary notwithstanding.

33. **INSPECTIONS:** Mortgagee, by any authorized agent or employee and for the protection of its interest in Mortgaged Premises, is hereby authorized and empowered to enter in and upon Mortgaged Premises at any and all reasonable times, for the purpose of inspecting the same and ascertaining the condition thereof.

34. **INDEMNIFICATION:** Mortgagor shall indemnify Mortgagee from all losses, damages and expenses, including reasonable attorneys' fees, incurred in connection with any suit or proceeding in or to which Mortgagee may be made a party for the purpose of protecting the lien of this Mortgage.

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35. LATE CHARGE: In addition to the payment of Indebtedness, Mortgagee shall have the right to demand and Mortgagor shall pay a late charge equal to four percent (4%) of payments due and owing on account of Indebtedness not made within fifteen (15) days following the respective due dates thereof.

36. CORRECTIVE DOCUMENTS: Mortgagor shall, at the request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by Mortgagee to correct such defect, error or omission.

37. CONSENT OR APPROVAL: The consent by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent in any like matter arising at a subsequent date and the failure of Mortgagee to promptly exercise any right, power, remedy or consent provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy or consent at a later date. Any consent or approval required of and granted by Mortgagee pursuant hereto shall:

- a) be narrowly construed to be applicable only to Mortgagor and the facts identified in such consent or approval and no third party shall claim any benefit by reason thereof; and
- b) not be deemed to constitute Mortgagee a venturer or partner with Mortgagor or Beneficiary whatsoever nor shall privity of contract be presumed to have been established with any such third party.

If, to consider a request by Mortgagor or Beneficiary, it is necessary, in the sole discretion of Mortgagee, to retain the assistance of any person, firm or corporation (e.g. attorneys, appraisers, engineers, surveyors, etc.), Mortgagor or Beneficiary shall reimburse Mortgagee for all reasonable costs incurred in connection with the employment of such parties.

38. GOVERNING LAW: This Mortgage shall be construed in accordance with and governed pursuant to the laws of the State of Illinois, without regard to its conflicts of law principles. Whenever possible, each provision of this Mortgage shall be interpreted in such a manner as to be effective and valid pursuant to applicable law; PROVIDED, HOWEVER, that if any part hereof shall be prohibited by or invalid thereunder, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder hereof or the remaining provisions of this Mortgage.

39. TIME OF THE ESSENCE: It is specifically agreed that time is of the essence of this Mortgage and that a waiver of the options or obligations secured hereby shall not, at any time

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warrants that it possesses full power and authority to execute this Mortgage). Subject to the terms of the next succeeding paragraph and notwithstanding anything to the contrary otherwise contained herein or in Note, but without in any way releasing, impairing or otherwise affecting Note, Mortgage or any Other Loan Documents (including without limitation any guarantees or indemnification agreements) or the validity hereof or thereof, or the lien of Mortgage, it is agreed that Mortgagee's source of satisfaction of said indebtedness and of Mortgagor's other obligations hereunder and under the Note, Mortgage and Other Loan Documents is limited to (a) the Mortgaged Premises, Collateral and other collateral granted by this Mortgage or Other Loan Documents and the proceeds thereof, (b) the rents, income, issues, proceeds and profits arising out of the Mortgaged Premises, and (c) any separate guaranty or indemnification agreements guaranteeing or indemnifying Mortgagee with respect to the payment of the amounts due under Note, Mortgage and Other Loan Documents and Mortgagor's performance under Note, Mortgage and Other Loan Documents; provided, however, that nothing herein contained shall be release or impair Indebtedness or the security thereof intended by Mortgage, or be deemed to preclude Mortgagee from foreclosing this Mortgage or from enforcing any of Mortgagor's rights or remedies in law or equity thereunder, or in any way or manner affecting Mortgagee's rights and privileges under any of the Loan Documents or any separate guaranty or indemnification agreements guaranteeing Mortgagor's payment and performance hereunder and under the Loan Documents.

Notwithstanding the foregoing limitation of liability provisions, it is expressly understood and agreed that NVS Venture, an Illinois general partnership shall be liable for the payment to Mortgagee of:

- (1) the application of rents, security deposits, or other income, issues, profits and revenues derived from the Mortgaged Premises after notice to Mortgagor of a Monetary Default or a Non-Monetary Default to any item other than (a) normal and necessary operating expenses of Mortgaged Premises; or (b) the Indebtedness. Any rents collected more than one month in advance as of the time of notice of the Monetary Default or a Non-Monetary Default shall be considered to have been collected after the notice of a Monetary Default or a Non-Monetary Default;
- (2) any loss, cost or damages arising out of or in connection with fraud or material misrepresentations made to Mortgagee by Mortgagor or Beneficiary (or by any of its general partners, by any of the general partners of its general partnership, or their agents, if applicable);
- (3) any loss, cost or damages arising out of or in connection with Mortgagor or Beneficiary's use or misapplication of (a) proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the Mortgaged Premises to the full extent of such misapplied proceeds, or (b) proceeds or awards resulting from the condemnation or other taking in lieu of condemnation of any portion of the Mortgaged Premises, for purposes other than those set forth in Mortgages;

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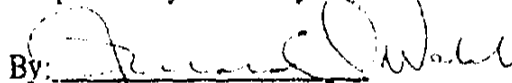
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- (4) any loss, cost or damages arising out of or in connection with any waste of Mortgaged Premises or any portion thereof and all reasonable costs incurred by Mortgagee in order to protect Mortgaged Premises;
- (5) any taxes, assessments and insurance premiums for which Mortgagor is liable under the Note, this Mortgage or any of the Other Loan Documents and which are paid by Mortgagee;
- (6) any loss, cost or damages arising out of or in connection with the covenants, obligations and liability under a certain Environmental Indemnity Agreement of even date herewith executed by Beneficiary and others;
- (7) any loss, cost or damages to Mortgagee arising out of or in connection with any construction lien, mechanic's lien, materialmen's lien or similar lien against Mortgaged Premises arising out of acts or omissions of Trust or Beneficiary;
- (8) any and all loss, costs or damages arising out of or incurred in order to cause all Improvements located on Mortgaged Premises to comply with the accessibility provisions of the Americans with Disability Act;
- (9) all costs and fees including without limitation reasonable attorney's fees incurred by Mortgagee in the enforcement of subparagraph 1 through 8 above.

Nothing contained herein or in Note and Other Loan Documents to the contrary notwithstanding shall be deemed to release, affect or impair Indebtedness or the rights of Mortgagee to enforce its remedies pursuant hereto and to Note and Other Loan Documents, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed by its duly authorized officers and its corporate seal to be hereunto affixed on the day and year first above written.

DUPAGE NATIONAL BANK,
not personally but solely as Trustee aforesaid

By: 

Title: Trustee

ATTEST:

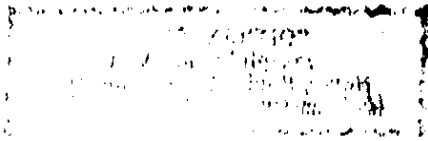

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EXHIBIT "A" LEGAL DESCRIPTION OF LAND

THE SOUTH 400 FEET OF BLOCK 3 (EXCEPT THE WEST 495 FEET THEREOF AND EXCEPT THE EAST 15.25 FEET THEREOF) IN HERZOG'S FIRST INDUSTRIAL SUBDIVISION OF PART OF THE EAST 1/2 OF SECTION 10, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF THE WEST 1/2 OF SECTION 11, TOWNSHIP 42 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS, ON DECEMBER 13, 1955 AS DOCUMENT LR 1639763 AND CERTIFICATE OF CORRECTION THEREOF REGISTERED DECEMBER 14, 1956 AS DOCUMENT LR 1713481.

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