

FBI 2MO June 19, 1997 10:58am

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PREPARED BY:  
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222 North LaSalle Street  
Suite 300  
Chicago, Illinois 60601-1081

Address: See Attached Exhibit "A"

Tax No.: See Attached Exhibit "A"

**CONSTRUCTION LEASEHOLD MORTGAGE AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT made this 30 day of June 1997, by NORTHLAKE DEVELOPMENT COMPANY, an Illinois corporation ("Mortgagor"), in favor of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association ("Mortgagee");

WITNESSETH, THAT WHEREAS, Mortgagor is justly indebted to Mortgagee for money borrowed in the principal amount of FOUR MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (\$4,800,000.00) ("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, as designated by the legal owner and holder of Note, from time to time, Principal Amount, interest at "Note Rate" (as such term is defined in Note) which varies from time to time, as provided in Note, and all other sums due and owing pursuant to "Loan Agreement" (as defined below), Note, hereunder or under "Other Loan Documents" (as defined below) and advanced by Mortgagee to protect Mortgaged Premises or to preserve the priority of the lien established hereby, PROVIDED THAT such other sums shall not exceed two hundred per cent [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 June 30, 1999 ("Maturity Date").

NOW, THEREFORE, to secure the payment of Indebtedness and the performance of the terms, covenants, conditions and agreements contained herein and in a certain Loan Agreement of even date herewith ("Loan Agreement") among Mortgagor and Mortgagee, Note and any and all other documents executed and delivered to secure Indebtedness, including any guaranty ("Other Loan Documents"), Mortgagor, by these presents, DOES HEREBY GRANT, BARGAIN, SELL AND CONVEY to Mortgagee, its successors and assigns, forever all of Mortgagor's right, title, and interest in, to and under the leasehold estate ("Leasehold Estate") demised by that certain Net Ground Lease dated \_\_\_\_\_, 1997 ("Lease Agreement") by and between PETSMART, Inc. as landlord ("Landlord"), and Mortgagor, as tenant, pursuant to which certain premises, more

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Quint Co., Inc.

92 pages

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RECORDED

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DEPT-01 RECORDING \$203.50

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COOK COUNTY RECORDER

DEPT-10 PENALTY \$200.00

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particularly described in Lease Agreement ("Leased Premises") were let to Mortgagor, a memorandum of which Lease Agreement was recorded in the office of the Recorder of Deeds of Cook County, Illinois and as Document No. 97639895 which Leased Premises are on certain land situated in Cook County, Illinois legally described on Exhibit "A" attached hereto and made a part hereof ("Land") and commonly known as 6605 W. Fullerton and 6655 West Grand, Chicago, Illinois, together with all of the Mortgagor's right, title, interest, options and privileges created in and by Lease Agreement, TOGETHER WITH 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 Leased Premises.
- 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 any way now or hereafter appertaining to Leasehold Estate, 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 right, title and interest of Mortgagor in and to buildings and improvements, of every kind, nature and description, now or hereafter located and placed upon Leased Premises (collectively "Improvements") and all materials intended for construction, re-construction, alteration and repair of Improvements, which shall be deemed a part thereof immediately upon the delivery of the same, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with Land and Improvements, 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") and all renewals or replacements of Personal Property or articles in substitution therefor, whether or not the same are or shall be attached to Improvements in any manner, excepting therefrom, however, any furniture, fixtures, equipment and articles of personal property, regardless of the manner or mode of attachment, belonging to any present or future subtenant or sublessee of Leasehold Estate and Improvements (collectively "Occupancy Sub-Tenants") (any reference hereafter made to Personal Property shall be deemed to exclude the same); IT BEING MUTUALLY AGREED that all of Personal Property owned by Mortgagor and placed by it on Leased Premises and Improvements 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, as to any Personal Property not deemed to be fixtures and a part of Leasehold Estate and Improvements, this

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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 Note, Loan Agreement and Other Loan Documents set forth.

- D. All rents, issues, proceeds and profits accruing and to accrue from Leasehold Estate and Improvements and all right, title and interest of Mortgagor in and to any and all subleases executed pursuant to the terms and conditions of Loan Agreement now or hereafter on or affecting the same, whether written or oral, and all other leases and agreements for the use thereof (collectively "Subleases"), 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 Leasehold Estate and Improvements ("Proceeds") by reason of loss or damage by fire and such other hazards, casualties and contingencies (collectively "Casualty") insured pursuant to Insurance Policies, and all awards and other compensation heretofore or hereafter payable to Mortgagor and all subsequent owners of Leasehold Estate and Improvements ("Awards") for any taking by condemnation or eminent domain proceedings, either permanent or temporary ("Condemnation"), of all or any part of Land and Improvements or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets. Proceeds and Awards are hereby assigned to Mortgagee and 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 and Awards and to collect and receive the amounts thereof, to give proper receipts and acquittances therefor and, except as provided immediately following, after deducting expenses of collection, to apply the net proceeds received therefrom as a credit upon any part, as may be selected by Mortgagee, of Indebtedness (notwithstanding that the amount owing thereon may not then be due and payable or that the same is otherwise adequately secured). For convenience, Lease Agreement, Leasehold Estate, Leased Premises, 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, Loan

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Agreement 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 superior or, except as specifically permitted herein pursuant to Paragraph 12 hereof, subordinate liens or claims of every nature and kind, and, except as specifically provided in Paragraph 12 hereof, shall not execute, deliver or grant any other mortgage, trust deed or security interest encumbering Mortgaged Premises, now or at any time hereafter.

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 observe all of the terms, covenants, conditions and agreements to be performed and observed by Mortgagor as provided herein and in Note, Loan Agreement and Other Loan Documents.

4. **TAX AND INSURANCE DEPOSITS AND APPLICATION:** In addition to the payment of Indebtedness, Mortgagor shall pay to Mortgagee, at Mortgagee's election, 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:

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- a) subject to Mortgagor's rights to contest real estate taxes and assessments pursuant to Paragraph 12 hereof, 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
- b) are in excess of the amounts required to pay real estate taxes, assessments and insurance premiums, such excess shall, upon the written demand of Mortgagor, be refunded to Mortgagor, PROVIDED THAT no Monetary Default or Non-Monetary Default shall exist.

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 5.

If, as a result of a Monetary Default or Non-Monetary Default, Mortgaged Premises are sold, foreclosed upon or otherwise acquired by Mortgagee following a Monetary Default or Non-Monetary Default, 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, which are now or shall hereafter be levied or assessed or which may otherwise or become a lien upon or against Mortgaged Premises, any part thereof or owed pursuant to Lease Agreement (collectively "Impositions"), and in the event that funds are deposited with Mortgagee for the payment of Impositions, the same will be applied for such purpose.

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 or cause its Occupancy Sub-Tenants to keep the Improvements 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 reasonably 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 a Best's "General Policy Holder Rating" of A or better and, if written by a mutual company, the insurance policy holder or its mortgagee

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must not be assessable, the risk of any one (1) company shall not exceed ten per cent (10%) of the issuer's policyholders' surplus (including capital);

- 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 "Closing Date" (as such term is defined in Loan Agreement);
- d) be maintained to and including Maturity Date, without cost to Mortgagee;
- e) at the option of Mortgagee, be delivered to Mortgagee as issued (PROVIDED THAT Mortgagee will accept certificates thereof, in lieu of original Insurance Policies), 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; and
- 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 the original Insurance Policies or certificates thereof shall be held by Mortgagee 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 or certificate thereof 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 at the rate of four percent (4%) per annum above the Note Rate ("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, or cause its sub-sublessees to maintain the following Insurance Policies on Mortgaged Premises:

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	<u>Insurance Policy</u>	<u>Amount</u>
s).	<b>Builder's Risk All Risk Property coverage including without limitation:</b>	<b>Reasonably Satisfactory to Mortgagee</b>
	(1) <b>Replacement Cost Coverage Endorsement</b>	
	(2) <b>Inflation Adjustment Endorsement</b>	
	(3) <b>Standard Mortgagee clause naming Mortgagee as first mortgagee</b>	
	(4) <b>Agreed Amount Endorsement</b>	
t).	<b>Flood Insurance (if Mortgaged Premises are within a Zone A designated "flood area") with clause naming Mortgagee as mortgagee</b>	<b>Reasonably Satisfactory to Mortgagee</b>
u).	<b>Earthquake Insurance</b>	
	(1) <b>Standard Mortgagee clause naming Mortgagee as first mortgagee</b>	
v).	<b>Rental Interruption</b>	<b>Reasonably Satisfactory to Mortgagee</b>
	(1) <b>Standard Mortgagee clause naming Mortgagee as first mortgagee</b>	
w).	<b>Glass</b>	<b>Reasonably Satisfactory to Mortgagee</b>
	(1) <b>Standard Mortgagee clause naming Mortgagee as first mortgagee</b>	
x).	<b>Boiler and Machinery</b>	<b>Reasonably Satisfactory to Mortgagee</b>
	(1) <b>Standard Mortgagee clause naming Mortgagee as first mortgagee</b>	

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- y). **Comprehensive General Liability naming Mortgagee as Additional Insured** Reasonably Satisfactory to Mortgagee, but not in excess of \$5,000,000 for all claims arising out of one occurrence and \$10,000,000 for all claims in any one year
- z). **such other insurance policies, including liquor liability (if alcoholic beverages are dispensed on Mortgaged Premises), 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 coverages is furnished by Occupancy Sub-Tenants, Mortgagor shall furnish to Mortgagee duplicate original Insurance Policies or, with the consent of Mortgagee, certificates evidencing such coverages, 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.

Mortgagor shall not purchase separate insurance, concurrent in form or contributing in the event of Casualty, unless Mortgagee is included thereon pursuant to standard mortgagee clause acceptable to Mortgagee, and in the event Mortgagor does purchase such separate insurance, Mortgagor shall immediately notify Mortgagee thereof and promptly deliver to Mortgagee such policy or policies.

In the event of any loss sustained by Casualty for which Insurance Policies are in effect, Mortgagor may, with the 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. Provided the conditions set forth in Loan Agreement have been satisfied, all Proceeds, regardless the party negotiating the settlement of the Casualty loss, shall be applied on account of the costs of Repair or Restoration.

If Proceeds are applied on account of the costs of repairs, rebuilding and restoration ("Repair or Restoration"), (1) that part of Mortgaged Premises so damaged or destroyed shall be repaired or rebuilt, in accordance with plans and specifications therefor submitted to and approved by Mortgagee (which approval shall not be unreasonably withheld or delayed) and all life, safety and environmental regulations, laws, ordinances (including zoning), rules and regulations of governmental authorities having jurisdiction there over (collectively "Applicable Laws"), so as

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to be as similar, as is reasonably possible, to the condition which existed prior to such Casualty, and (2) the same shall be paid to Mortgagor, from time to time, upon the delivery to Mortgagee of satisfactory evidence of the estimated 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; PROVIDED, HOWEVER, that (aa) no payment made prior to final completion of Repair or Restoration shall exceed ninety per cent (90%) of the value thereof, (bb) at all times, the undisbursed balance of Proceeds shall not be less than the amount required to pay for the cost of completion thereof, free and clear of liens or encumbrances, (cc) in the event that, in the reasonable 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, and (dd) 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.

Notwithstanding anything to the contrary herein contained, any insurance of risk or risks required to be maintained by Mortgagor or its Occupancy Subtenant may be self-insured by the Occupancy Subtenant who satisfies the requirements set forth in their respective leases approved by Mortgagee so as to be permitted to self-insure such risk or risks.

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, PROVIDED THAT that part thereof applicable to that part of Mortgaged Premises taken shall be applied on account of Indebtedness and that part of Awards applicable to damage to the remainder of Mortgaged Premises shall be applied on account of rebuilding or restoring that part of Mortgaged Premises not so taken or damaged ("Rebuilding or Restoration");
- b) Provided the conditions set forth in the Loan Agreement have been satisfied, Awards for Rebuilding or Restoration of the Mortgaged Premises shall be used to rebuild or restore, 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 7 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

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- 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.

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, except for its gross negligence or willful misconduct, be held responsible for any failure to collect Proceeds or Awards, regardless of the cause of such failure and 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. The entry of a decree of foreclosure of the lien hereof shall not affect or impair the power and authority granted to Mortgagee pursuant to this Paragraph 9.

10. **USE, CARE AND WASTE:** Mortgagor:

- a) Shall constantly maintain and not diminish, in any respect, or materially alter Improvements, except as required pursuant to the terms and provisions of Loan Agreement, or materially change the use of Mortgaged Premises so long as Indebtedness, or any part thereof, remains unpaid and shall not, except as required pursuant to the terms and provisions of Loan Agreement, erect any buildings or improvements on Mortgaged Premises without the prior written consent of Mortgagee. 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 part of Improvements which would adversely affect the value of Mortgaged Premises;
  - iii). pay or cause to be paid promptly all services, labor and material necessary and required to refurbish and renovate Improvements pursuant to contracts therefor;

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- iv). maintain, preserve and keep or cause to be maintained, reserved or kept, 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 materially adversely affect the value thereof, except as required by Applicable Laws or as otherwise approved in writing by Mortgagee (which approval shall not be unreasonably withheld or delayed);
  - vi). promptly commence or cause to be commenced 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;
  - viii). maintain or cause to be maintained, all interior or exterior planted or landscaped areas, adjoining plaza, if any, and abutting sidewalks in good and neat order and repair;
- b) Represents to Mortgagee that:
- i). except as noted in the Loan Agreement, to the best knowledge of Mortgagor, no hazardous substances, hazardous waste, industrial waste, pollution control waste or toxic substances, within the meaning of any applicable statute or regulation (collectively "Hazardous Substances") (as defined in Loan Agreement), are presently stored or otherwise located on Mortgaged Premises and the, within the definition of such statute, no part of Mortgaged Premises, including the ground-water located thereon, is presently contaminated by any Hazardous Substances;
  - ii). until Indebtedness is paid in full, all Hazardous Substances, which may be used by any person for any purpose upon Mortgaged Premises, shall be used or stored thereon only in a safe, approved manner, in accordance with all industrial standards and all laws, regulations and requirements for

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such storage promulgated by any governmental authority;

- iii). Mortgaged Premises will not be used for the principal purpose of storing Hazardous Substances and that no such storage or use will otherwise be allowed on Mortgaged Premises which will cause or increase the likelihood of causing the release of Hazardous Substances onto Mortgaged Premises; and
  - iv). Mortgagor shall promptly notify Mortgagee as soon as Mortgagor knows of or suspects that a Hazardous Substance has been released on Mortgaged Premises.
- c) Shall, in addition to the indemnification specified in Paragraph 35 hereof, indemnify and hold Mortgagee harmless of and from all loss, cost (including reasonable attorneys' 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 liable pursuant to any such statute, Mortgagor's obligations to Mortgagee pursuant to this indemnity 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; and
- 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 and concessions (including, without limitation, those relating to the operation of Mortgaged Premises as a retail facility, land use and 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 CERTAIN OF MORTGAGOR'S OBLIGATIONS: In the event of the failure of Mortgagor in:

- a) except for "Permitted Transfers" (as such term is hereafter defined) the prompt discharge of any lien or encumbrance;
- b) defending the leasehold title to Leasehold Estate or fee title to the remainder of Mortgaged Premises;
- c) the payment of any Imposition against the Mortgaged Premises;

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- 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 of any obligation of Mortgagee specified in Paragraph 11 above;

and such failure is not cured to the reasonable satisfaction of Mortgagee or other satisfactory security is not furnished to Mortgagee within the time specified in any written notice served by Mortgagee to Mortgagor pursuant to Paragraph 16 hereof (as long as such time period is not less than that required pursuant to Paragraph 16 hereof), or if Mortgagor shall fail to procure and maintain or cause to be procured and maintained, Insurance Policies, such failure, in any instance, shall be deemed to be a Non-Monetary Default and Mortgagee may, in addition to the exercise of all other remedies provided herein and in Loan Agreement, Note and Other Loan Documents, 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 reasonable 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 payable by reason of a Monetary Default or Non-Monetary Default. 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:** Mortgagor shall keep Mortgaged Premises free and clear of all liens for charges of services, labor, material and supplies furnished to or for its benefit and shall pay, as soon as the same become payable, all accounting taxes and special assessments thereon; PROVIDED, HOWEVER, that notwithstanding the foregoing, so long as no Monetary Default or Non-Monetary Default has occurred, Mortgagor shall not be required to pay any lien claim, tax or assessment deemed excessive or invalid or otherwise contested by them so long as they shall, in good faith, object to or otherwise contest the validity of the same by appropriate legal proceedings and Mortgagor shall, upon demand by Mortgagee, as protection and indemnity against loss or damage resulting therefrom, either:

- a) obtain title insurance from Near North National Title Insurance Corporation or such other title company acceptable to Mortgagee over such claim; or
- b) deposit cash, securities or a letter of credit acceptable to Mortgagee in an

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amount sufficient, in the reasonable judgment of Mortgagee, to pay the claim for lien or the unpaid or protested part of any such tax or assessment, together with any costs and penalties thereon which may thereafter accrue;

**PROVIDED THAT**, in any event, Mortgagor shall pay any such lien claim, tax or assessment prior to any foreclosure sale foreclosing such lien or any tax sale relating to any such tax or assessment.

If the foregoing title insurance is obtained or 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 for 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:

- 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 appraisement 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 right of redemption 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

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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 Law;

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.

Mortgagor represents that the provisions of this Paragraph 13 are made on behalf of the Mortgagor as well as all other persons named above. The Mortgagor acknowledges that the transaction of which this Mortgage is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the Act) or residential real estate (as defined in Section 15-1219 of the Act).

14. **UNPERMITTED TRANSFERS:** For the purpose of protecting Mortgagee's security, keeping Mortgaged Premises free from subordinate financing liens and/or permitting Mortgagee to raise the rate of interest due on Note 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) stock of any corporate owner of Mortgaged Premises or of any corporation which is the beneficiary of any trust which holds title to Mortgaged Premises, except for stock which is publicly-traded;
- c) partnership interests of the general partners of any partnership owning Mortgaged Premises or any general partnership which is the beneficiary of any trust which holds title to Mortgaged Premises;

shall be deemed to be an unpermitted transfer (collectively "Unpermitted Transfers"). Notwithstanding the above, the following shall be permitted ("Permitted Transfers"):

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- i. Transfers by James DeLeo, Jerry L. Thibos, Patrick Somers, Vincent G. Forgione, Joan Brennan and Susan Weber (collectively, "Minority Shareholders") among each other, to members of their immediate families members, to trusts for the benefit of themselves or their individual family members, to "Majority Shareholder" (as such term is hereafter defined) or to persons reasonably approved by Lender;
- ii. transfers by Michael A. Marchise, Marianne Marchise and William F. Cellini (collectively, "Majority Shareholders") to their immediate family members or to trusts from the benefit of themselves or their immediate family members; or
- iii. acquisition of Land or disposition of Mortgaged Premises pursuant to Lease Agreement or Sublease Agreement,

Except with respect to Permitted 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 the rate of interest due on Note and that prior to any transfer permitted by the Mortgagee the proposed documents of transfer are submitted to Mortgagee for its approval and, within ten (10) business days following such transfer, copies of the executed documents of transfer are delivered to Mortgagee. A consent by Mortgagee to an Unpermitted Transfer or a waiver of a default by reason thereof shall not constitute a consent to or waiver of any right, remedy or power accruing to Mortgagee by reason of any subsequent Unpermitted Transfer.

15. PROHIBITION AGAINST SUBMITTING MORTGAGED PREMISES TO CONDOMINIUM PROPERTY ACT: Mortgagor shall not submit Mortgaged Premises to the Condominium Property Act of the State of Illinois or to any other cooperative ownership (except for owners' associations established pursuant to agreements approved by Mortgagee).

16. DEFAULT: In the event of a default by Mortgagor in the due and punctual payment of the whole or any part of the several installments due pursuant to Note or in the payment of all other fees, costs and expenses required to be paid by Mortgagor pursuant to Loan Agreement or Other Loan Documents (including, but not limited to, the failure to pay Mortgagee "Deficiencies" as are necessary to keep "Loan" "In Balance" [as such terms and defined in Loan Agreement]) ("Monetary Default"), or if any one (1) or more of the following events shall occur and, are continuing for thirty (30) days following written notice thereof from Mortgagee to Mortgagor, PROVIDED THAT with exception of defaults relating to "Sublease Agreement" (as such term is defined in Loan Agreement), the same will not be considered a default if such item is incapable of being cured within said thirty (30) day period in the reasonable opinion of Mortgagee and Mortgagor shall have instituted and diligently pursues and completes as promptly as possible a course of action reasonably intended to cure such default within the thirty (30) day period (collectively "Non-Monetary Defaults"):

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- a) the failure of Mortgagor to perform any of the terms, covenants, conditions and agreements required of them, pursuant hereto and to Loan Agreement, Mortgage and Other Loan Documents;
- b) "Warranties and Representations" (as such term is defined in Loan Agreement), or any of the same, are, is or shall become untrue;
- c) an unreasonable delay in the commencement or completion of the renovation of "Improvements" (as defined in the Loan Agreement), or a discontinuance or abandonment of construction so that, in the reasonable judgment of Mortgagee, the Improvements may not be renovated on or prior to "Completion Date" (as defined in Loan Agreement) or prior to the time required pursuant to the "Lease Agreement" (as defined in the Loan Agreement);
- d) the order by the City of Chicago, Cook County, or the State of Illinois, alleging that any material part of Improvements is not in conformity with Applicable Laws or the "Redevelopment Agreement" (as such term is defined in Loan Agreement), and the failure of Mortgagor to commence to correct the same, to the satisfaction of the relevant governmental agency within thirty (30) days thereafter (or such longer time period permitted by the relevant governmental agency), and to diligently complete such correction or shall fail to proceed in the manner prescribed in the Loan Agreement;
- e) the bankruptcy or insolvency of the "Guarantor," "Contractor" or "Architect" (as such terms are defined in Loan Agreement) and the failure of Mortgagor to procure a replacement satisfactory to Mortgagee to assume the obligations of the Guarantor or to provide the services then required of Contractor or Architect, as the case may be, pursuant to their respective agreements with Mortgagor, without additional cost or expense to the Mortgagee, within thirty (30) days following the occurrence of such bankruptcy or insolvency;
- f) except for Permitted Transfers, any conveyance, transfer or assignment of Mortgaged Premises or any interest therein, except as permitted by the provisions hereof;
- g) the existence of any collusion, fraud, dishonesty or bad faith by or with the acquiescence of Mortgagor which, in any way, relates to or affects Indebtedness;
- h) a default by Architect or Contractor in the satisfaction of any material condition required of them, or either of them, pursuant to the "Architect's

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Agreement" (as defined in the Loan Agreement), which is not cured within the time specified therein or a substitute architect and architect's agreement and/or a substitute contractor and contractor's agreement, as the case may be, reasonably satisfactory to Lender, is or are not furnished to Mortgagee within a reasonable time thereafter;

- i) Mortgagor shall:
- i). have an order entered with respect to its or their relief pursuant to the Federal Bankruptcy Act;
  - ii). not pay, or admit in writing his or its inability to pay his or its debts as the same become due;
  - iii). make an assignment for the benefit of creditors;
  - iv). apply for, seek, consent to or acquiesce in the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for him or it or for any substantial part of his or its property;
  - v). institute any proceeding seeking the entry of an order for relief pursuant to the Federal Bankruptcy Act to adjudicate him or it bankrupt or insolvent or seeking dissolution, winding-up, liquidation, reorganization, arrangement, adjustment or composition of him or it or his or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or failure to file an answer or other pleading denying the material allegations of any such proceeding filed against him or it; or
  - vi). take any action to authorize or effect any of the actions set forth herein or fail to contest in good faith any appointment or proceeding described in Subparagraph j). following;
- j) without the application, approval or consent of Mortgagor, a receiver, trustee, examiner, liquidator or similar official shall be appointed for Mortgagor and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty (60) consecutive days;
- k) a material adverse misrepresentation in the financial statements to be furnished pursuant to Paragraph 28 hereof;

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- l) a default by Mortgagor in the maintenance of any licenses which are necessary and required for the operation of Mortgaged Premises or the cancellation or any attempted assignment thereof without the prior written consent of Mortgagee;
- m) the death or incompetency of Guarantor and the failure of the Mortgagor to provide a substitute guarantor satisfactory to Mortgagee or to cause the estate of the Guarantor to assume and agree to be liable for the Guarantor's Obligations pursuant to the Guaranty Agreement;
- n) Mortgagor shall, as tenant of Lease Agreement, default in any term, covenant, condition or agreement of Lease Agreement and not cure the same within the applicable grace period ("Lease Default").

then, or at any time thereafter during the continuance of a Monetary Default or Non-Monetary Default, Mortgagee may declare Indebtedness immediately due and payable in full, without further notice thereof and without demand or presentment, anything contained herein or in Note, Loan Agreement or Other Loan Documents to the contrary notwithstanding, and Indebtedness so accelerated and declared due as aforesaid shall thereafter bear interest at Default Rate.

In the event of a Monetary Default or Non-Monetary Default and immediately upon the commencement of any action, suit or other legal proceedings by Mortgagee to foreclose this Mortgage, Mortgagor hereby unconditionally and irrevocably consents to the appointment of Mortgagee as a mortgagee-in-possession or of a receiver or receivers of Mortgaged Premises to receive all revenues from the operation of Mortgaged Premises. Mortgagee shall be entitled to such appointment without regard to the adequacy of any security given for the payment of Indebtedness and said Mortgagee, receiver or receivers shall be entitled to take possession of Mortgaged Premises from the owner, tenants and/or occupants of the whole or any part thereof and to collect and receive Income for the use and benefit of Mortgagee.

17. **REMEDIES NOT EXCLUSIVE:** No remedy or right of Mortgagee hereunder or pursuant to Note, Loan Agreement 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. If any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take

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precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon Default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provisions, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

18. **FORECLOSURE:** Upon the occurrence of a Monetary Default or a Non-Monetary Default, Mortgagee shall have the right to immediately foreclose the lien of this Mortgage in accordance with the laws of the State of Illinois and to exercise any other remedies of Mortgagee provided in the Note, this Mortgage or any of the Other Loan Documents, or which Mortgagee may have at law, at equity or otherwise. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, Chapter 110, Sections 15-1101 et seq., Illinois Revised Statutes (1987) (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at sales which may be held pursuant to such decree the true conditions of the title to or the value of the Mortgaged Premises. All expenditures and expenses of the nature mentioned in this Paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Note, the Other Loan Documents or the Mortgaged Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be added to and become a part of the Indebtedness secured hereby, and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate until paid.

The proceeds of any foreclosure sale of the Mortgaged Premises shall be disbursed and applied in accordance with the provisions of subsection (c) of Section 15-1512 of the Act. The judgment of foreclosure or order the sale shall provide (after application pursuant to subsections (a) and (b) of said Section 15-1512) for application of such proceeds in the following order of priority: first to all items which are due to the Mortgagee pursuant to this Mortgage, the Loan Agreement and the Other Loan Documents other than Principal Amount and interest thereon in such order as Mortgagee may elect and then on account of interest and Principal Amount.

19. **POSSESSORY RIGHTS OF MORTGAGEE:** In addition to or concurrent with, and not in limitation of, the right set forth in Paragraph 19(a), upon the occurrence of a Monetary Default or a Non-Monetary Default, whether before or after the institution of proceedings to

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foreclose the lien of this Mortgage, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Mortgaged Premises or any part thereof, personally, or by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in Section 15-1701 of the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in Section 15-1701 of the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Premises, together with all documents, books records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and:

\*) may, on behalf of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

- i). hold, operate, manage, and control all or any part of the Mortgaged Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;
- ii). cancel or terminate any sublease or sub-sublease of all or any part of the Mortgaged Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;
- iii). elect to disaffirm any sublease or sub-sublease of all or any part of the Mortgaged Premises made subsequent to this Mortgage with or without Mortgagee's prior written consent except as prohibited in any applicable non-disturbance agreement;
- iv). extend or modify any of the then existing Subleases and make new Subleases of all or any part of the Mortgaged Premises, which extensions, modifications, and new Subleases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Subleases, and the options or other such provisions to be contained therein,

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shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Indebtedness satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

- v). complete construction of Improvements, Repair or Restoration or Rebuilding or Restoration and 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;
- vi). insure and re-insure Mortgaged Premises against all risks incidental to Mortgagee's possession, operation and management thereof;
- vii). perform such other acts in connection with the management and operation of Mortgaged Premises as Mortgagee, in its sole discretion, may deem proper; and
- viii). apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Premises, to the payment of Taxes, Premiums and other expenses applicable to the Mortgaged Premises, or in reduction of the Indebtedness, on such order and manner as Mortgagee shall select.

Without limiting the generality of the foregoing provisions of this Paragraph 19, Mortgagee shall also have all power, authority and duties as provided in Section 15-1703 of the Act. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises.

- b) Upon the filing of a complaint to foreclose this Mortgage or at any time thereafter, the court in which such complaint is filed may appoint upon petition of Mortgagee, and at Mortgagee's sole option, a receiver of the Mortgaged Premises pursuant to Section 15-1702 of the Act. Such appointment may be made either before or after sale, without notice, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the

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Mortgaged Premises or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have all powers and duties prescribed by Section 15-1704 of the Act, including the power to make leases to be binding upon all parties, including the Mortgagor, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the Mortgaged Premises after entry of a judgment of foreclosure, all as provided in Subsection (g) of Section 15-1701 of the Act. In addition, such receiver shall also have the power to extend or modify any then existing subleases, which extensions and modifications may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the Note and beyond the date the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other provisions to be contained therein, shall be binding upon Mortgagor and all the persons whose interest in the Mortgaged Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption, reinstatement, discharge of the Indebtedness satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser. In addition, such receiver shall have the power to collect the rents, issues and profits of the Mortgaged Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits, and such receiver shall have all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Mortgaged Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Mortgaged Premises in payment in whole or in part of: (i) the Indebtedness or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or (ii) the deficiency in case of a sale and deficiency.

20. **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 Mortgagee of any part of Mortgaged Premises shall

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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 Monetary Default or Non-Monetary Default is existing, Mortgagee may, with respect to Personal Property, without further notice, advertisement, hearing, or process of law of any kind:

- g) notify any person obligated on Personal Property to perform, directly for Mortgagee, its obligations thereunder;
- h) 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;
- i) endorse any checks, drafts or other writings in the name of Mortgagor to permit collection of Personal Property and control of any proceeds thereof;
- j) enter upon any part of Mortgaged Premises where Personal Property may be located and take possession of and remove the same;
- k) 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
- l) bid for and purchase any part or all of Personal Property at any such sale.

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 a Monetary Default or Non-Monetary Default, 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.

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21. **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 Sublease Agreement 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 prior to the time Mortgagee takes possession of the 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.

22. **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 the Illinois Revised Statutes, Chapter 17, Paragraph 6404.

23. **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 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 service 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.

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

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25. **SUBLEASES AND RENTS:** Except as provided in the Lease Agreement, no rents, issues, profits, Sublease Agreement or other contracts relative to Mortgaged Premises shall be assigned to any person, firm or corporation other than Mortgagee, without the prior written consent of Mortgagee. Mortgagor shall not and will not permit the leasing (within the meaning thereof in the law of landlord and tenant) of all or any part of Mortgaged Premises, except for Sublease Agreement approved by Mortgagee or permitted pursuant to Loan Agreement.

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

- a) this Mortgage shall constitute a security agreement within the meaning of the Illinois Uniform Commercial Code ("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, Loan Agreement 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");
- b) a security interest in and to Collateral is hereby granted to Mortgagee;
- 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, Loan Agreement and Other Loan Documents;
  - ii). Collateral shall be used by Mortgagor solely for business purposes;

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- iii). Collateral shall be kept at Mortgaged Premises and, except for obsolete Collateral, will not be removed therefrom without the prior consent of Mortgagee (which consent shall not be unreasonably withheld or delayed);
- 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, Loan Agreement 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, Loan Agreement or Other Loan Documents and Mortgagor will pay the cost of filing or recording this instrument and such financing statements or other 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, and subject to the rights of Occupancy Subtenants, Mortgagee 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

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conditions stated in Code); u). shall be entitled to hold, maintain, preserve and prepare Collateral for sale (until the disposition thereof) 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 twenty (20) 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 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 26 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

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shall be filed or 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 Sublease Agreement, 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; 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 Sublease Agreement.

## 27. 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, Loan Agreement and Other Loan Documents, execute and deliver to Mortgagee a security agreement, granting to Mortgagee a first security interest in and to Collateral, all right, title and interest of Mortgagor, as landlord, in and to Sublease Agreement 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 Subleases until Indebtedness is paid in full.

28. **FINANCIAL STATEMENTS:** Within one hundred twenty (120) days following the close of each calendar year, Mortgagor shall furnish to Mortgagee financial statements of Mortgagor, prepared in accordance with generally accepted accounting principles, consistently applied and certified to be correct by the president of Mortgagor, which shall be in such detail as Lender may reasonably require. Mortgagee shall have the right, at its expense, upon reasonable

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notice, to inspect and make copies of the books, records and income tax returns of Mortgagor with respect to Mortgaged Premises for any reasonable purpose.

29. **PAYMENT AND PERFORMANCE BY MORTGAGEE:** In the event that Mortgagor shall fail to pay or perform any of its obligations contained herein and in Note, Loan Agreement and Other Loan Documents (including the payment of expenses of foreclosure and court costs), Mortgagee, in addition to all other remedies provided in Loan Agreement, Note and Other Loan Documents, 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:

- a) perform any obligation of Mortgagor required pursuant to Loan Agreement;
- b) collect rentals due and owing pursuant to Sublease Agreement and prosecute the collection of Collateral or the proceeds thereof;
- c) purchase, discharge, compromise or settle any Imposition, lien or any other lien, encumbrance, suit, proceeding, title or claim thereof;
- d) redeem from any tax sale or forfeiture affecting Mortgaged Premises or contest any Imposition; and
- e) 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 Monetary Default or Non-Monetary Default.

30. **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.

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31. **CONSENT OF MORTGAGEE:** 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 requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party.

If Mortgagee reasonably deems it to be in its best interest to retain the assistance of persons, firms or corporations (including, but not limited to, attorneys, appraisers, engineers and surveyors) with respect to a request by Mortgagor for consent or approval, Mortgagor shall reimburse Mortgagee for all reasonable costs incurred in connection with the employment of such persons, firms or corporation.

32. **CARE:** Mortgagee shall be deemed to have exercised reasonable care in the custody and preservation of any part of Mortgaged Premises in its possession if it takes such action for that purpose, as Mortgagor requests in writing, but failure of Mortgagee to comply with any such request shall not, of itself, be deemed a failure to exercise reasonable care and no failure of Mortgagee to preserve or protect any rights with respect to Mortgaged Premises against prior parties or do any act with respect to the preservation thereof not so requested by Mortgagor shall be deemed a failure to exercise reasonable care in the custody or preservation of Mortgaged Premises.

33. **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, Loan Agreement 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, Loan Agreement and Other Loan Documents to the contrary notwithstanding.

34. **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.

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35. **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.

36. **MORTGAGEE'S RIGHT TO COMPLETE:** In the event of an uncured Monetary Default or Non-Monetary Default:

- a) Mortgagor hereby waives all right to possession of Mortgaged Premises and the income and rents applicable thereto and Mortgagee is hereby expressly authorized and empowered to enter into and upon Mortgaged Premises, or any part thereof, and take possession of the same and complete construction of Improvements pursuant to Loan Agreement, at the expense of Mortgagor, lease the same, collect and receive all rents therefor and apply the same, less the necessary or appropriate expenses of collection thereof, including attorneys' fees, either for the care, operation and preservation of Mortgaged Premises or, at the election of Mortgagee, in its sole discretion, to a reduction of Indebtedness, in such order of priority as Mortgagee may elect;
- b) Mortgagee, in addition to the exercise of any and all other rights and remedies provided pursuant to this Mortgage, Note, Loan Agreement and Other Loan Documents, is granted full and complete authority to employ watchmen for the purpose of protecting and preserving the same from damage or depreciation, continue any and all outstanding "Contractual Agreements" (as defined in Loan Agreement) and make and enter into any contracts and obligations, wherever necessary, in its own name, and pay and discharge all debts, obligations and liabilities incurred by reason of the foregoing, at the expense of Mortgagor, which expenditures by Mortgagee shall be added to and become a part of Indebtedness and shall become immediately due and payable with interest at Default Rate; and
- c) Mortgagee may disburse that part of Indebtedness not previously disbursed on account of Budget Costs to complete construction of Improvements and may disburse Proceeds or Awards pursuant to the provisions hereof.

37. **PERFORMANCE OF CONSTRUCTION CONTRACTS:** Mortgagor shall notify any person obligated to it pursuant to construction contracts applicable to Improvements of the existence of a Monetary Default or a Non-Monetary Default and require that performance of such contracts by it be made directly for the benefit of Mortgagee, at the expense of Mortgagor, and Mortgagor shall advance such sums as may be necessary or appropriate to satisfy Mortgagor's obligations thereunder.

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38. **PERFORMANCE OF CONTRACTUAL AGREEMENTS AND OTHER CONTRACTS:** Mortgagor shall perform, for the benefit of Mortgagee, fully and promptly, each obligation and satisfy each condition imposed upon it pursuant to Contractual Agreements, Subleases and any other contracts and agreements relative to the construction, maintenance or operation of Improvements so that no default will occur thereunder and all persons (other than Mortgagor) obligated thereon shall be and remain, at all times, obligated to perform, for the benefit of Mortgagee, their respective covenants, conditions and agreements pursuant thereto and not permit to exist any condition, event or fact which could permit any such person to avoid such performance.

39. **CONSTRUCTION MORTGAGE:** This Mortgage is a construction mortgage, as said term is defined in Section 9-313(l)(c) of the Uniform Commercial Code. Mortgagor further covenants and agrees that the loan secured hereby is a construction loan and that the Principal Amount to be disbursed by Mortgagee to Mortgagor in accordance with the terms, covenants, conditions and agreements contained in the Loan Agreement, which are incorporated herein by express reference. Pursuant to and subject to the provisions of the Loan Agreement, Mortgagee has committed to advance or apply monies to or on behalf of Mortgagor, and the parties hereby acknowledge and intend that all such advances, whenever hereafter made, shall be a lien from the time this Mortgage is recorded, as provided in Section 15-1302(b)(l) of the Act.

All advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the resulting indebtedness secured hereby may exceed the face amount of the Note, shall be secured hereby to the same extent as though said Loan Agreement were fully incorporated in this Mortgage, and the occurrence of any event of default under said Loan Agreement shall constitute a default under this Mortgage, entitling Mortgagee to all of the rights and remedies conferred upon Mortgagee by the terms of this Mortgage and Note shall be subject to the terms and conditions of Loan Agreement and any and all amendments thereto.

40. **CORRECTIVE DOCUMENTS:** Mortgagor and Mortgagee shall, at the request of the other, 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 or Mortgagor, as the case may be, to correct such defect, error or omission, and at the sole option of Mortgagee, Mortgagor will execute and deliver, at Mortgagee's expense, a note in substitution of Note, if lost or destroyed, and Mortgagor will execute and deliver, at Mortgagee's expense any required agreement modifying this Mortgage or Other Loan Documents to reflect the substitution of such new note, provided that the terms and provisions of such new note shall not, in the aggregate, require payments in excess of what would be required under such replaced original Note, nor contain terms different from those of such replaced original Note.

41. **MISCELLANEOUS:**

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- a) Mortgagor shall not use any part of Indebtedness for the purchase or carrying of registered equity securities within the purview and operation of Regulation G issued by the Board of Governors of the Federal Reserve System.
- b) If the lien or security interest secured by this Mortgage is invalid or unenforceable as to any part of the Indebtedness, or if such lien or security interest is invalid or unenforceable as to any part of the Mortgaged Premises, any unsecured portion of Indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of Indebtedness. All payments made on the Indebtedness secured hereby, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of Indebtedness which is not secured by the lien or security interest of this Mortgage.
- c) The invalidity or unenforceability in any particular circumstance of any provision of this Mortgage shall not extend beyond such provision or such circumstance, and no other provision of this instrument shall be affected thereby.
- d) Acceptance by Mortgagee of any payment in an amount less than the amount then due on the Indebtedness shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be a default. Until the entire amount due on the Indebtedness has been paid, Mortgagee shall be entitled to exercise all rights conferred upon it in this instrument upon the occurrence of a Monetary Default or Non-Monetary Default.
- e) All obligations contained herein or in the Other Loan Documents are intended by the parties to be, and shall be construed as, covenants running with the Mortgaged Premises.
- f) Any foreclosure sale of the Mortgaged Premises under this Mortgage shall, without further notice create the relation of landlord and tenant at sufferance between the purchaser at such sale as landlord, and Mortgagor as tenant; and upon failure to surrender possession after acquisition of title by the Mortgagee and demand, Mortgagor may be removed by a writ of possession upon suit by such purchaser.

42. **MECHANIC'S LIENS:** The lien of any mechanic or materialman shall not be permitted to attach to or remain against Mortgaged Premises unless the same is being contested pursuant hereto.

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

44. **REPRESENTATIONS:** Mortgagor unconditionally represents to Mortgagee as follows:

- a) Mortgagor has all requisite power, and has or will obtain and will maintain all governmental certificates of authority, licenses, permits, qualifications and documentation to own, lease and operate its properties and to carry on its business as now being, and as proposed to be, conducted. Mortgagor is duly organized, validly existing and in good standing under applicable law;
- b) the execution, delivery and performance by Mortgagor under the Loan Agreement, Note, this Mortgage and Other Loan Documents and the incurring of the indebtedness evidenced by the Note:
  - i). are within Mortgagor's powers have been duly authorized, and all other requisite action for such authorization has been taken;
  - ii). have received any and all requisite prior governmental approval in order to be legally binding and enforceable in accordance with the terms thereof; and
  - iii). will not violate, be in conflict with, result in a breach of or constitute (with due notice or lapse of time, or both) a default under any legal requirement binding on Mortgagor or, to the knowledge of Mortgagor or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Mortgagor's property or assets, except as contemplated by the provisions of the Loan Agreement. The Loan Agreement, Note, this Mortgage and Other Loan Documents constitute the legal, valid and binding obligations of Mortgagor and others obligated thereunder in accordance with their respective terms;
  - iv). all information, reports, papers and data given to Mortgagee by Mortgagor, with respect to Mortgagor and the

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Mortgaged Premises, are true, accurate, complete and correct in all material respects and do not omit any fact which must be included to prevent any other facts contained therein from being materially misleading or false;

v). Mortgagor has not received written notice of any litigation or administrative proceeding of any kind pending nor, to the Mortgagor's knowledge is there any litigation or administrative proceeding threatened, in respect to the Mortgaged Premises or any part thereof or which, if adversely determined, would result in a material adverse change in the financial conditions, business operations or properties of Mortgagor, including, without limitation, the Mortgaged Premises or Mortgagor's ability to perform its obligations hereunder;

vi). Except as disclosed in Loan Agreement, the Mortgaged Premises and the use and operation thereof are currently in compliance and will remain in compliance with all applicable environmental, health and safety laws, rules and regulations. Except as disclosed in Loan Agreement, the Mortgaged Premises presently contains no environmental, health or safety hazards. The Mortgaged Premises, to the best knowledge of Mortgagor, except as noted in Loan Agreement, have never been used for a sanitary land fill, dump or for the disposal, generation or storage of any hazardous substances deposited or located in, under or upon the Mortgaged Premises, any parcels adjacent thereto, or on or affecting any part of the Mortgaged Premises or the business or operations conducted thereon, including, without limitation, with respect to the disposal of "Hazardous Material" (as defined in the Loan Agreement). No underground storage tanks are or have been located on the Mortgaged Premises. Except as noted in Loan Agreement, no portion of the Mortgaged Premises is presently contaminated by any Hazardous Material and no storage, treatment or disposal of any hazardous substance has occurred on or in the Mortgaged Premises. Except as noted in Loan Agreement, the Mortgagor, and to the knowledge of Mortgagor, the Partnership and Guarantor have not received any notice of any Hazardous Material in, under or upon the Mortgaged Premises or of any violation of any "Environmental Laws" (as defined in the Loan Agreement)

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or has any knowledge which would provide a basis for any such violation with respect to the Mortgaged Premises. Mortgagor has not received written notice of and there are no pending or, to the Mortgagor's knowledge, threatened actions or proceedings, or notices of potential actions or proceedings, from any governmental agency or any other entity regarding the condition or use of the Mortgaged Premises or regarding any Environmental Laws or health or safety laws. Mortgagor will promptly notify Mortgagee of any notices and any pending or threatened action or proceeding in the future, and Mortgagor will promptly cure and have dismissed or cause to be cured and dismissed, with prejudice any such actions and proceedings to the satisfaction of Mortgagee.

vii).

until Indebtedness is paid in full, no Hazardous Material, other than household consumer goods that are customarily sold in retail stores such as PETSMART or customarily used by operators of stores such as PETSMART in the operation thereof, will be used by any person for any purpose upon the Mortgaged Premises or stored thereon without thirty (30) day written notice to and approval of Mortgagee. Mortgagor indemnifies and holds Mortgagee harmless from and against all loss, cost, including, without limitation, reasonable attorney fees, liability and damage whatsoever incurred by Mortgagee by reason of "Lender's Environmental Liability" (as defined in the Loan Agreement) or any violation of any applicable statute or regulation for the protection of the environment which occurs or has occurred upon the 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. Mortgagor's obligation to Mortgagee under the foregoing indemnity shall be without regard to fault on the part of Mortgagor with respect to the violation of law which results in liability to Mortgagee. The release of this Mortgage shall in no event terminate or otherwise affect the indemnity which is given under the Loan Agreement concerning Hazardous Material except as set forth in the Loan Agreement.

45. **TAX SERVICE CONTRACT:** Mortgagor shall, at the request of Mortgagee, enter into a contract with a tax reporting agency approved by Mortgagee for the purpose of making

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annual tax searches to assure the prompt payment of real estate taxes and special assessments levied against Mortgaged Premises; PROVIDED, HOWEVER, that if Mortgagee does not require such an agency contract, Mortgagor shall reimburse Mortgagee or its loan servicing agent for the cost of such annual searches.

46. **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 CENTS (\$.04) for each ONE DOLLAR (\$1.00) of payments due and owing on account of Indebtedness not made when due.

47. **MULTIPLE DISBURSEMENTS:** This Mortgage is granted to secure future disbursements of Principal Amount, as provided in Loan Agreement.

48. **SEVERABILITY:** In the event of any inconsistency among the terms hereof (including incorporated terms) or between such terms and the terms of Note, Loan Agreement, or Other Loan Documents, the terms of Loan Agreement shall be applicable, govern and prevail, but no such application shall invalidate the Note or the validity or priority of the Mortgage or the Other Loan Documents. The whole or partial invalidity, illegality or unenforceability of any provision hereof at any time, whether pursuant to the terms of then applicable law or otherwise, shall not affect, in the instance of partial invalidity, illegality or unenforceability, the validity, legality or enforceability of such provision at such time except to the extent of such partial invalidity, illegality or unenforceability of such provision at any other time or of any other provision hereof at that or any other time.

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

50. **NOTICES:** Any notice, consent or other communication to be served hereunder or pursuant to Note, Loan Agreement 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 mailed by United States certified or registered mail, postage prepaid (which shall be deemed received three [3] business days following the postmark date thereof), to Mortgagor, Mortgagee and Notice Receivers at the addresses set forth below or to such other address as Mortgagor, Mortgagee or Notice Receivers may direct in writing:

If to Mortgagor, 4104 North Harlem Avenue, Norridge, Illinois 60634  
Attention: Michael A. Marchese;

If to Lender, at 33 North LaSalle Street, Chicago, Illinois 60602, Attn:

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Peter C. Malecek.

51. **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.

52. **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.

53. **LEASEHOLD MORTGAGE PROVISIONS:**

a). With respect to the Lease Agreement, Mortgagor hereby warrants and represents as follows:

- i). Lease Agreement is in full force and effect;
- ii). all rent, additional rent and other charges reserved in Lease Agreement have been paid to the extent they are payable to the date hereof;
- iii). Mortgagor enjoys the quiet and peaceful possession of Leased Premises;
- iv). there exists no default on Borrower's part pursuant to Lease Agreement which has not been cured within the applicable grace period ("Lease Default") and there are no circumstances which, with the passage of time or the giving of notice or both, would constitute a Lease Default;
- v). Landlord is not in default under any of the terms or provisions of Lease Agreement on the part of the landlord to be observed or performed;
- vi). no term, covenant or provision thereof which has not been waived or the violation thereof has not been consented to, prohibits or imposes a limitation upon the grant and demise of this Mortgage, nor, except as otherwise permitted by the Mortgagee, precludes, limits, conflicts with or interferes with the powers, rights and remedies granted to the Mortgagee hereunder;
- vii). Mortgagor has, prior to its execution hereof, delivered to the

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Mortgagee a true and correct copy thereof, together with true and correct copies of any and all amendments and modifications thereof; and

- b). Further, with respect to Lease Agreement, Mortgagor covenants and agrees as follows:
- i). to promptly pay, prior to the expiration of applicable grace periods, if any, all rent, additional rent and other sums or charges required to be paid by Mortgagor as tenant thereunder;
  - ii). to promptly and faithfully observe, perform and comply with all the terms, covenants and provisions Lease Agreement on tenant's part to be observed, performed and complied with, at the times set forth therein;
  - iii). not to do, permit, suffer or refrain from doing anything as a result of which, there could be a Lease Default;
  - iv). not to cancel or terminate Lease Agreement, nor to suffer or permit such cancellation or termination, nor to modify, amend or in any way alter or permit the alteration of any of the terms thereof, nor to surrender Leased Premises;
  - v). to give Mortgagee immediate notice of any Lease Default and to promptly deliver to Mortgagee copies of each notice of default and all other notices, communications, plans, specifications and other similar instruments received by or delivered to the Mortgagor in connection therewith;
  - vi). not to waive, excuse or discharge any of the obligations and agreements of Landlord pursuant to Lease Agreement;
  - vii). to furnish to Mortgagee such information and evidence as Mortgagee may reasonably require concerning the Mortgagor's due observance, performance and compliance with the terms, covenants and provisions of Lease Agreement; and
  - viii). that any Lease Default shall constitute a default of this Mortgage.
- c). In the event of any Lease Default including, without limitation, any default in the payment of rent and other charges and impositions payable by Mortgagor as tenant thereunder, then, in each and every case, Mortgagee may, at its option and without

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notice, cause the Lease Default or Lease Defaults to be remedied and otherwise exercise any and all of the rights of Mortgagor thereunder in the name of and on behalf of Mortgagor. Mortgagor shall, on demand, reimburse Mortgagee for all sums necessarily expended in curing any such default (including, without limitation, reasonable attorneys' fees), together with interest thereon computed at Default Rate from the date that an advance is made or expense is incurred, to and including the date the same is paid.

- d). The fee title and Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either the landlord thereunder, Mortgagor, Mortgagee or a third party, whether by purchase or otherwise. If Mortgagor acquires the fee title or any other estate, title or interest in the property demised by Lease Agreement, or any part thereof, the lien of this Mortgage shall automatically and without the necessity of the execution and/or delivery of any further instruments or documents attach to, cover and be a lien upon such acquired estate, title or interest and same shall thereupon be and become a part of Mortgaged Premises with the same force and effect as if specifically encumbered herein. Without limitation or derogation of the foregoing sentence the Mortgagor nevertheless agrees to execute all instruments and documents which the Mortgagee may require to ratify, confirm and further evidence the Mortgagee's lien on the acquired estate, title or interest. Furthermore, the Mortgagor hereby appoints Mortgagee its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of the Mortgagor. This power, being coupled with an interest, shall be irrevocable as long as the Indebtedness remains unpaid.
- e). If Lease Agreement is cancelled or terminated, and if Mortgagee or its nominee shall acquire an interest in any new lease of the property demised thereby the Mortgagor shall have no right, title or interest in or to the new sublease or the Leasehold Estate created by such new lease.
- g). At any time during the term of this Mortgage, Mortgagor shall use its best efforts to obtain and deliver to Mortgagee within thirty (30) days after written demand by the Mortgagee, an estoppel certificate from Landlord setting forth:
- i). there have been no assignments of Mortgagor's interest in Lease Agreement or Leased Premises or, if there has been any such transfer, the date and parties to such transfer (together with copies of each such assignment or transfer document and an acknowledgment that the assignment or transfer has been consented to by Landlord);
  - ii). that Lease Agreement has not been modified or, if it has been

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modified, the date of each modification (together with copies of each such modification certified as true and correct by the landlord);

- iii). the basic rent and additional rent payable pursuant to Lease Agreement;
  - iv). the date to which all rental charges have been paid by the tenant pursuant to Lease Agreement; and
  - v). whether there are any alleged defaults of the tenant pursuant to Lease Agreement and, if there are, setting forth the nature thereof in reasonable detail;
  - vi). such other information as Mortgagee reasonably requests.
- h). Notwithstanding anything to the contrary contained herein, this Mortgage has been consented to by Landlord of Lease Agreement and shall not constitute an assignment of Lease Agreement within the meaning of any provision thereof prohibiting its assignment and Mortgagee shall have no liability or obligation thereunder by reason of its acceptance of this Mortgage. Mortgagee shall be liable for the obligations of the tenant arising pursuant to Lease Agreement for only that period of time which the Mortgagee is in possession of Leased Premises or has acquired, by foreclosure or otherwise, and is holding all of the Mortgagor's right, title and interest therein.

Nothing contained herein or in Loan Agreement, 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 Loan Agreement, Note and Other Loan Documents, including, without limitation, the right to pursue any remedy for injunctive or other equitable relief.

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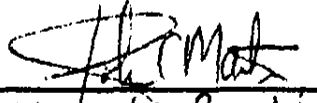
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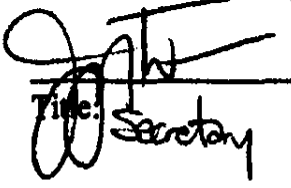
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IN WITNESS WHEREOF, Mortgagor has caused these presents to be signed by its duly authorized officers and its corporate seal to be hereunto affixed on the day and year first above written.

NORTHLAKE DEVELOPMENT COMPANY, an Illinois corporation

By:   
Title: Vice President

ATTEST:

  
Title: Secretary

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STATE OF ILLINOIS     )  
                                  )     SS.  
COUNTY OF COOK     )

The undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John C. Martin, the Vice President of Northlake Development Company, an Illinois Corporation ("Corporation") and Jerry Thibos, Secretary of said Bank who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Secretary, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation the uses and purposes therein set forth.

<sup>97.</sup> GIVEN UNDER MY HAND AND NOTARIAL SEAL this 30th day of June, 1992.

Eileen C Lewis  
Notary Public

My Commission Expires:

1/2/99



Notary of Cook County Clerk's Office

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STATE OF ILLINOIS     )  
                                  )     SS.  
COUNTY OF COOK     )

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Eileen C. Lewis  
Notary Public

My Commission Expires:

1/2/99



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**EXHIBIT A**

**LEGAL DESCRIPTION OF PARCEL**

**Parcel 1:**

That part of Lot 1 lying North of a line drawn 10 feet South of and parallel with the South face of the brick wall of a one story brick building said line being 220.18 feet South of the North line of said Lot 1, as measured on the West line thereof drawn to a point 220 feet South of said North line of said Lot 1, extended to the East line of said Lot 1 in Owner's Division of that part of the East 400 feet of the West 1/2 of the Northeast 1/4 of Section 31, Township 40 North, Range 13, East of the Third Principal Meridian, lying Northerly of the Northerly line of the right of way of The Chicago, Milwaukee and St. Paul Railroad and Southerly of the Center line of Grand Avenue excepting therefrom that part of the East 50 feet thereof deeded to The Chicago Suburban Railroad, in Cook County, Illinois.

**Parcel 2:**

Lot 1 in Robert Volk's Subdivision of the East 1/2 of Lot 1 and Lots 2 and 10 in Rutherford's Oak Park Avenue and Fullerton Avenue Subdivision of part of the Northwest 1/4 of the Northeast 1/4 of Section 31, Township 40 North, Range 13 East of the third principal meridian according to the plat thereof recorded November 9, 1927 as Document Number 9836413 in Cook County, Illinois.

**Parcel 3:**

Perpetual easement appurtenant to and for the use and benefit of Parcel 1 as created by Agreement dated November 30, 1944 and recorded December 8, 1944 as Document 13411811 and also created by easement grant in Warranty Deed made by Davies Supply Company to Chicago Metals Company Sheet and Strip Steel Division, dated August 28, 1946 and recorded August 29, 1946 as Document 13880789, over the North 20 feet of the East 262 feet lying South of and adjoining the South 10 feet of the East 262 feet of Parcel 1 for purposes of ingress and egress therefrom, in Cook County, Illinois.

PIN

13-31-204-001-

13-31-205-032

6601-6647 W. Grand

2371-2379 N. Kennedy

Chicago, Illinois

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