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. COOK COUNTY RECORDER

MORTGAGE AND SECURITY AGREEMENT

by and between

AMALGAMATED BANK OF CHICAGO,
not personally but as Trustee under
Trust Agreement dated January 3, 1996
and known as Trust Number 5687
as Borrower

and

THE OHIO NATIONAL LIFE INSURANCE COMPANY
as Lender

8/00
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This document prepared by
and after recording return to:

Mark S. Richmond, Esq.
Katz Randall & Weinberg
333 West Wacker Drive
Suite 1800
Chicago, Illinois 60606
KRW File No. 08060.00100

LMQ/221049.3

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MORTGAGE AND SECURITY AGREEMENT

Cover Sheet

DATE: December 19, 1996

BORROWER: AMALGAMATED BANK OF CHICAGO, not personally but as Trustee under Trust Agreement dated January 3, 1996 and known as Trust Number 5687

BORROWER'S NOTICE

ADDRESS: % National Shopping Plazas, Inc.
333 West Wacker Drive
Suite 2750
Chicago, Illinois 60606

LENDER: THE OHIO NATIONAL LIFE INSURANCE COMPANY, together with other holders from time to time of the Note (as defined herein).

LENDER'S NOTICE

ADDRESS: One Financial Way
Cincinnati, Ohio 45247
Attention: Investment Department

NOTE AMOUNT: \$1,500,000.00

MATURITY DATE: February 1, 2017

STATE: Illinois

RECORD OWNER OF LAND (AS DEFINED

HEREIN): AMALGAMATED BANK OF CHICAGO, not personally but as Trustee under Trust Agreement dated January 3, 1996 and known as Trust Number 5687

Exhibit A: Attached hereto and incorporated herein by reference.

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MORTGAGE AND SECURITY AGREEMENT

1. **DEFINITION OF TERMS.** As used herein, the terms defined in the cover sheet hereof shall have the meanings given on such sheet, and the following terms shall have the following meanings:

- 1.1. **Commitment:** as defined in Paragraph 3.7.
- 1.2. **Borrower's Notice Address:** as defined on the cover hereof.
- 1.3. **Casualty:** as defined in Paragraph 5.1
- 1.4. **Contested Sum:** as defined in clause (e) of Paragraph 4.1.
- 1.5. **Events of Default:** as defined in Paragraph 7.1.
- 1.6. **Improvements:** all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, or in any way used in connection with the use, enjoyment, occupancy or operation of the Land or any portion thereof; all fixtures and other articles of every kind and nature whatsoever now or hereafter owned by Borrower and used or procured for use in connection with the operation and maintenance of the Realty or Personalty.
- 1.7. **In its sole unfettered discretion:** as defined in Paragraph 9.8.
- 1.8. **Indenture:** this Mortgage and Security Agreement.
- 1.9. **Insurance Premiums:** as defined in Paragraph 4.3.
- 1.10. **Insurance Proceeds:** as defined in clause (a) of Paragraph 5.3.
- 1.11. **Laws:** as defined in clause (c) of Paragraph 4.2.
- 1.12. **Land:** the land described in Exhibit A attached hereto, together with all estate, title, interests, title reversion rights, rents, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, gaps, gores, liberties, privileges, water rights, water courses, alleys, streets, passages, ways, vaults, adjoining strips of ground, licenses, tenements, franchises, hereditaments, rights, appurtenances and easements, now or hereafter owned by Borrower and existing, belonging or appertaining to the Land, all claims or demands whatsoever of Borrower therein or thereto, either in law or in equity, in possession or in expectancy and all estate, right, title and interest of Borrower in and to all streets, roads and public places opened or proposed, now or hereafter appertaining to, the Land.
- 1.13. **Leases:** all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to all or any portion of the Property, together with all options therefor, amendments thereto and renewals, modifications and guarantees thereof, and all rents, royalties, issues, profits, revenue, income and other benefits of the Property arising from the use or enjoyment thereof or from the Leases, including, without limitation, cash or securities deposited thereunder to secure performance by the tenants of their obligations thereunder,

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whether said cash or securities are to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due.

1.14. Lease Assignment: a certain Assignment of Rents and Leases between Borrower and Lender of even date herewith and all modifications or amendments thereto or extensions thereof.

1.15. Loan Documents: this Indenture, the Note, the Lease Assignment, and any and all other documents or instruments related thereto or to the Secured Debt now or hereafter given by or on behalf of Borrower to Lender.

1.16. Note: a certain Promissory Note of even date herewith made by Borrower in favor of Lender in the Note Amount and all modifications, renewals and extensions thereof, which Note is payable in monthly installments until the Maturity Date (as defined in the Note and on the Cover Sheet).

1.17. Parties in Interest: as defined in clause (d) of Paragraph 7.1.

1.18. Personalty: all of Borrower's interest in the personal property of any kind or nature whatsoever, whether tangible or intangible, whether or not any of such personal property is now or becomes a "fixture" or attached to the Realty, which is used or will be used in the construction of, or is or will be placed upon, or is derived from or used in connection with, the maintenance, use, occupancy or enjoyment of the Realty, including, without limitation, all accounts, documents, instruments, chattel paper, equipment, general intangibles and inventory (as those terms are defined in the Uniform Commercial Code of the State), all plans and specifications, contracts and subcontracts for the construction, reconstruction or repair of the Improvements, bonds, permits, licenses, guarantees, warranties, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, refunds of fees or deposits paid to any governmental authority, letters of credit, policies and proceeds of insurance, proceeds of the Property or any interest therein, motor vehicles and aircraft, together with all present and future attachments, accretions, accessions, replacements and additions thereto and products and proceeds thereof.

1.19. Property: the Realty and Personalty or any portion thereof or interest therein except as the context otherwise requires.

1.20. Property Liabilities: as defined in clause (d) of Paragraph 4.1.

1.21. Property Taxes and Charges: as defined in clause (b) of Paragraph 4.1

1.22. Realty: the Land and Improvements or any portion thereof or interest therein, as the context requires.

1.23. Secured Debt: to the extent not prohibited by Law, all principal, interest, additional interest, interest at the After-Maturity Rate set forth in the Note on all sums applicable thereto, late charges and other sums, charges, premiums or amounts due or to become due under the Loan Documents, together with any other sums expended or advanced by Lender under the Loan Documents or otherwise with respect to the care or preservation of the Property or the enforcement of the Loan Documents.

1.24. Taking: as defined in Paragraph 5.1.

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1.25. Taking Proceeds: as defined in clause (a) of Paragraph 5.3.

2. **GRANTING CLAUSES.** For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has executed and delivered the Loan Documents and hereby irrevocably and absolutely grants, transfers, assigns, mortgages, bargains, sells, aliens, warrants and conveys to Lender, with all **POWERS OF SALE AND STATUTORY RIGHTS**, if any, in the State, all of Borrower's estate, right, title and interest in, to and under, and grants to Lender a first and prior security interest in, the Property and any and all of the following whether now owned or held or hereafter acquired or owned by Borrower:

- (a) All Leases;
- (b) All profits and sales proceeds, including, without limitation, earned money and other deposits, now or hereafter becoming due by virtue of any contract or contracts for the sale of Borrower's interest in the Property;
- (c) All proceeds (including claims thereto or demands therefor) of the conversion, voluntary or involuntary, permitted or otherwise, of any of the foregoing into cash or liquidated claims; and
- (d) All Insurance Proceeds and all Taking Proceeds.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS OF BORROWER TO LENDER, in such order of priority as Lender may elect:

- (1) Payment of the Secured Debt;
- (2) Payment of such additional sums with interest thereon which may hereafter be loaned to Borrower by Lender or advanced under the Loan Documents (at the After-Maturity Rate set forth in the Note), even if the sum of the amounts outstanding at any time exceeds the Note Amount; and
- (3) Due, prompt and complete observance, performance, fulfillment and discharge of each and every obligation, covenant, condition, warranty, agreement and representation contained in the Loan Documents.

This Indenture is also intended to be a Security Agreement under the Uniform Commercial Code as in force from time to time in the State. Time is of the essence.

TO HAVE AND TO HOLD the Property and all parts thereof unto Lender and its successors and assigns forever, subject, however, to the terms and conditions herein.

3. **REPRESENTATIONS AND WARRANTIES.** Borrower hereby represents and warrants to Lender that the following warranties and representations in this paragraph are and will be true, correct and complete at all times:

3.1. **Due Organization, Authority.** If Borrower is a corporation, partnership (general, limited or joint venture) or trust, Borrower is duly organized and validly existing, and in good standing

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under the laws of the State and has power adequate to carry on its business as presently conducted, to own the Property, to make and enter into the Loan Documents and to carry out the transactions contemplated therein.

3.2. **Execution, Delivery and Effect of Loan Documents.** The Loan Documents have each been duly authorized, executed and delivered by Borrower, and each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and subject to the exercise of judicial discretion in accordance with general principles of equity (regardless whether enforcement is sought in a proceeding in equity or at law).

3.3. **Other Obligations.** Borrower is not in violation of any term or provision of any document governing its organization or existence or in default under any instruments or obligations relating to Borrower's business, Borrower's assets or the Property. No party has asserted any claim or default relating to any of Borrower's assets or the Property. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any breach of, or constitute a default under, any contract, agreement, document or other instrument to which Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any Law to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be inconsistent with the Loan Documents. Borrower has filed all federal, state, county and municipal income tax returns required to have been filed by Borrower and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by Borrower. Borrower does not know of any basis for additional assessment with regard to any such tax. No approval by, authorization of, or filing with any federal, state or municipal or other governmental commission, board or agency or other governmental authority is necessary in connection with the authorization, execution and delivery of the Loan Documents.

3.4. **Construction and Completion of Improvements.** The presently existing Improvements have been completed and installed in a good and workmanlike manner, in compliance with Laws and the plans and specifications previously delivered to Lender. The Improvements are served by electric, gas, sewer, water, telephone and other utilities required for the present and contemplated uses and operation thereof. Any and all streets, other off-site improvements, access to the Property necessary for its present and contemplated uses and operation and service by utilities, have been completed, are serviceable and have been accepted or approved by appropriate governmental bodies.

Borrower understands that any septic system or sewage treatment facility or sewer line on the Property or to be constructed from the Property to a public sewer line and all personal property and rights therein are conveyed to Lender hereunder as part of the Property, whether located on the Property as described in Exhibit A or adjacent to or connected with the same. Borrower covenants not to allow any tie-ons or connections to any such sewer facility or sewer line or to allow any person to use the sewer facility or sewer line or to make any modifications in the plans and specifications or construction contract for the construction of any such sewer facility or sewer line without the written consent of Lender. Borrower understands that such consent may be withheld and/or conditioned upon receipt of documentation and assurances acceptable to Lender, and that Lender will have the first right and lien as secured hereby to any monies or revenues arising from any such tie-ons, connections, or use.

3.5. **Legal Actions.** There are no (i) actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of Borrower's

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knowledge and belief, threatened against or affecting Borrower, its business or the Property, or (ii) investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of Borrower's knowledge and belief, threatened against or affecting Borrower, Borrower's business or the Property, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Property. Furthermore, to the best knowledge and belief of Borrower, there is no basis for any unfavorable decision, ruling or finding by any court or governmental authority which would in any material respect adversely affect (a) the validity or enforceability of the Loan Documents, or (b) the condition (financial or otherwise) or ability of Borrower to meet Borrower's obligations under the Loan Documents.

3.6. **Financial Statements.** All statements, financial or otherwise, submitted to Lender in connection with the transaction evidenced by the Loan Documents are true, correct and complete in all material respects and all such financial statements have been prepared in accordance with sound and recognized accounting principles consistently applied and fairly present the financial condition of the parties or entities covered by such statements as of the date thereof and no additional borrowings have been made by such parties or entities or any of them, since the date thereof, nor has Borrower, or any such party or entity experienced a material, adverse change in its finances, business, operations, affairs or prospects since the date thereof. Borrower and each such party or entity is now solvent.

3.7. **Solvency of Tenants.** To the best of Borrower's knowledge and belief, except to the extent, if any, disclosed in writing to Lender, no Tenant (as specified in the loan commitment or the loan application, if any, to Lender (the "Commitment") for the loan secured hereby) of the Realty or any part thereof has suffered or incurred any material, adverse change in its finances, business, operations, affairs or prospects since the date of the Commitment.

3.8. **Adverse Change to Property.** Except to the extent, if any, disclosed in writing to Lender, no event or series of events has or have intervened or occurred since the date of Borrower's submission of the Commitment which would, either individually or collectively, have a material adverse effect on the Property.

3.9. **Title to Property.** Borrower has good and clear record and marketable title to the Realty and good and merchantable title to the Personalty and Borrower shall and will warrant and forever defend the title thereto and Lender's first and prior lien thereto unto Lender, its successors and assigns, against the claims of all persons whomsoever.

3.10. **Compliance with Laws and Private Covenants.** The Property complies with all Laws. The Land is a separate and distinct parcel for tax purposes and shall not become subject to Property Taxes and Charges against any other land. Borrower has examined and is familiar with any applicable agreements affecting the Land and there now exists no violation of any such agreements. Borrower has no notice that any of the Improvements encroaches upon any easement over the Land or upon adjacent property.

3.11. **Independence of the Property.** Borrower has not by act or omission permitted any building or other improvements on property not covered by this Indenture to rely on the Property or any part thereof or any interest therein to fulfill any municipal or governmental requirement for the existence of such property, building or improvements; and no improvement on the Property shall rely on any property not covered by this Indenture or any interest therein to fulfill any governmental or municipal

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requirement. Borrower has not by act or omission impaired the integrity of the Property as a single separate, subdivided zoning lot separate and apart from all other property.

4. BORROWER'S COVENANTS.

4.1. Payments.

(a) Secured Debt. Borrower shall pay promptly to Lender, when due, the Secured Debt at the times and in the manner provided in the Loan Documents.

(b) Property Taxes and Charges. Subject to Paragraph 4.1(e), Borrower shall pay, prior to delinquency, all real estate taxes and personal property taxes, betterments, assessments (general and special), imports, levies, water, utility and sewer charges and any and all income, franchise, withholding, profits and gross receipts taxes, other taxes and charges, all other public charges whether of a like or different nature, imposed upon or assessed against Borrower or the Property or upon the revenues, rents, issues, income and profits or use or possession thereof, and any stamp or other taxes which may be required to be paid with respect to any of the Loan Documents, any of which might, if unpaid, result in a lien on the Property, regardless to whom paid or assessed ("Property Taxes and Charges"). Borrower shall furnish Lender with receipts showing payment of the Property Taxes and Charges within thirty (30) days after the applicable delinquency date thereof.

As used in this Paragraph 4.1(b), the term "real estate taxes" shall include any form of assessment, license fee, license tax, business license fee, business license tax, commercial rental tax, levy, charge, penalty, tax or similar imposition, imposed by any authority having the direct power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement or special assessment district thereof, against any legal or equitable interest in the Property.

If requested by Lender, Borrower shall cause to be furnished to Lender a tax reporting service covering the Property of the type and duration, and with a company satisfactory to Lender.

(c) Taxes on Lender. If any Law of the State or the United States or any other governmental authority imposes upon Lender the obligation to pay the whole or any part of the Property Taxes and Charges or changes in any way the Laws relating to taxation so as to adversely affect the Loan Documents or Lender, then Borrower shall pay Property Taxes and Charges or reimburse Lender within ten (10) days of a demand therefor, unless in the opinion of counsel to Lender, it might be unlawful to require Borrower to pay the same or such payment might result in the imposition of interest prohibited by Law. In such case, an Event of Default shall exist.

(d) Liabilities. Borrower shall pay, prior to delinquency, all debts and liabilities incurred in the construction, operation, development, use, enjoyment, repair, maintenance, replacement, restoration and management of the Property ("Property

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Liabilities"), including without limitation, utility charges, sums due mechanics and materialmen and other sums secured or which might be secured by liens on the Property.

(e) Right to Contest. Borrower may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted Property Taxes and Charges or Property Liabilities ("Contested Sum"), after written notice of the same to Lender. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to delinquency of the Contested Sum, Borrower deposits with Lender cash or other security, in form satisfactory to Lender in its sole unfettered discretion, adequate to cover the payment of such Contested Sum and any obligation, whether matured or contingent, of Borrower or Lender therefor, together with interest, costs and penalties thereon and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the Contested Sum, interest, costs and penalties thereon shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

(f) Expenses. Borrower shall, to the extent allowed by Law, pay, on demand but without counterclaim, setoff, deduction, defense, abatement, suspension, deferment, discrimination or reduction, all fees (including, without limitation, attorneys' fees and disbursements), taxes, recording fees, commissions and other liabilities, costs and expenses incurred in connection with (i) the making or enforcement of the Loan Documents; (ii) Lender's exercise and enforcement of its rights and remedies under Paragraphs 7, 8, and elsewhere hereof; and (iii) Lender's protection of the Property and its interest therein.

Borrower shall not be entitled to any credit on the Secured Debt by reason of the payment of any sums required to be paid under subparagraph 4.1(b) through (f).

4.2. Operation of the Property.

(a) Maintenance Alterations. Borrower shall maintain and preserve the Property in good repair and condition and shall correct any defects or faults in the Property. Borrower shall pursue diligently any remedies or recourse which Borrower may have under agreements, warranties and guarantees relating to the Property. Borrower shall not commit, permit or suffer any demolition or waste of the Property or any use or occupancy which constitutes a public or private nuisance. Borrower shall not do, permit or suffer to be done any act whereby the value of any part of the Property may be decreased. Borrower shall not make any material alterations, improvements, additions, utility installations or the like to the Property without the prior written consent of Lender in each instance; provided, however, Borrower may make replacements or substitution of any items of the Personalty if the replacement or substitution is of a quality, utility, value, condition and character similar to or better than the replaced or substituted item and is free and clear of any lien, charge, security interest or encumbrance, except as created or permitted by this Indenture.

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(b) Liens. Subject to the right to contest as provided in subparagraph 4.1(e) hereof, Borrower shall promptly discharge any mechanics', laborers', materialmen's or similar lien, charge, attachment, or lis pendens filed or recorded which relates to Borrower or the Property.

(c) Compliance with Laws and Private Covenants. Borrower shall truly keep, observe and satisfy all, and not suffer violations of any Federal, regional, state and local laws, ordinances, rules, regulations, statutes, decisions, orders, judgments, directives or decrees of any governmental or regulatory authority court or arbitrator (herein collectively "Laws") and private covenants affecting the Property.

(d) Use and Management. The Property shall at all times be used for commercial purposes. The Property shall at all times be managed by Borrower (so long as no default exists under any of the Loan Documents) or a leasing and management agent which has been approved by the Lender prior to execution of any management agreement with the same. Any change in the use of the Property or the management agent shall be subject to the prior written approval of Lender.

(e) Inspection. Borrower shall permit Lender to enter upon and inspect the Property at reasonable times, subject to the rights of the tenants, without delay, hindrance or restriction.

4.3. Insurance. Borrower shall obtain or cause to be obtained and keep in force, with one or more insurers acceptable to Lender, such insurance as Lender may from time to time specify by notice to Borrower, including, without limitation, insurance providing (i) comprehensive general public liability and property damage coverage with a broad form coverage endorsement and a combined single limit of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate, (ii) protection against fire, "extended coverage" and other "All Risk" perils, including, where required, flood, to the full replacement value of the Property with a waiver of subrogation, replacement cost, and difference in conditions endorsements, and (iii) rent loss insurance in an amount of not less than a sum equal to twelve (12) months' rental income from all Leases. Lender must be named as a loss payee on the rent loss insurance and as an additional insured on the comprehensive general public liability policy.

All property insurance policies or certificates of insurance shall include the standard mortgage clause in the State naming Lender as the first mortgagee with loss payable to Lender as such mortgagee, shall not be cancelable or modifiable without thirty (30) days' prior written notice to Lender, and shall not have more than a \$10,000.00 deductible for any single Casualty. Lender shall also be named as loss payee on the rent loss insurance and an additional insured on the comprehensive general liability and property damage coverage. Additionally, all property insurance must provide a property limit equal to: (a) the cost approach valuation as provided by the appraisal provided to Lender prior to the funding of the loan evidenced by the Note less land and approved soft costs or (b) the outstanding principal balance due under the Note, whichever is less. If the property policy provides a limit equal to (b) above, the policy must contain an agreed amount endorsement. The proceeds of all property insurance policies must be payable to Lender.

If the Property is located in a flood hazard Zone "A", flood insurance in an amount acceptable to Lender must also be provided subject to Lender's right to approve the survey. If the Property is located in earthquake zones "3" or "4" as depicted by the Seismic Zone Map of the United States,

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Earthquake Insurance in an amount acceptable to Lender must be provided. Loss of Rents Insurance providing one year's coverage must also be provided.

The casualty insurance company must meet the following basic requirements:

- (a) Have a minimum rating of "A+" according to Best's Insurance Reports - Property/Casualty Edition;
- (b) Have a claims paying rating of at least single "A" by two approved rating agencies;
- (c) Must be a stock company or a non-assessable mutual company located in a country acceptable to Lender; and
- (d) Must be licensed in the state where the Property is located.

In addition, Lender will not allow any carrier or self-insurer to provide a policy limit in excess of 10% of its policyholder's surplus on any one risk. A tenant will be allowed to self-insure through a wholly owned subsidiary as long as the tenant's net worth exceeds \$100,000,000.00.

Borrower shall provide Lender with evidence of compliance with this Paragraph 4.3, in such forms as required from time to time by Lender, upon notice from Lender or at least fifteen (15) days prior to the expiration date of any policy required hereunder, each bearing notations evidencing the prior payment of premiums ("Insurance Premiums") or accompanied by other evidence satisfactory to Lender that such payment has been made, shall be delivered by Borrower to Lender.

Borrower, to the full extent permitted by Law and to the full extent permitted without invalidating the insurance policies required above, hereby waives the right of subrogation against Lender. Borrower will inform its insurers of the waiver and obtain a waiver of subrogation endorsement if applicable.

Lender shall not, because of accepting, rejecting, approving or obtaining insurance, incur any liability for (i) the existence, nonexistence, form or legal sufficiency thereof, (ii) the solvency of any insurer, or (iii) the payment of losses.

Borrower shall keep, observe and satisfy, and not suffer violations of, the requirements of insurance companies and any bureau or agency which establishes standards of insurability affecting the Property, and pertaining to acts committed or conditions existing thereon.

Upon foreclosure of this Indenture or other transfer of title or assignment of the Property in discharge, in whole or part, of the Secured Debt, all right, title and interest of Borrower in and to all policies of insurance required by this Paragraph 4.3 shall inure to the benefit of and pass to Lender.

4.4. Escrow. Borrower shall pay to Lender monthly, on each date on which a payment is due under the Note, one-twelfth (1/12th) of such amount as Lender from time to time estimates will be required to pay all Property Taxes and Charges before becoming past due and Insurance Premiums. Lender's estimates shall be based on the amounts actually payable or, if unknown, on the amounts actually paid for the year preceding that for which such payments are being made. Lender may require Borrower

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to pay one sixth (1/6th) of said estimate as escrow overage, which may be retained by Lender in escrow from year to year. Any deficiencies shall be promptly paid by Borrower to Lender on demand. Borrower shall transmit bills for the Property Taxes and Charges and Insurance Premiums as soon as received. When Lender has received from Borrower or on its account funds sufficient to pay the same, Lender shall, except as provided in Paragraph 7.2, pay such bills. If the amount paid by Borrower in any year exceeds the aggregate required, such excess shall be applied to escrow payments for the succeeding year. Payments from said account for such purposes may be made by Lender at its discretion even though subsequent owners of the Property may benefit thereby. Lender shall not be a trustee of funds in said account and may commingle such funds with its general assets without any obligation to pay interest thereon or account for any earnings, income or interest on such funds.

4.5. Sales and Encumbrances.

(a) Except for any transfer permitted under Subparagraphs 4.5(b) or 4.5(c) hereof, it shall be an immediate Event of Default hereunder if any of the following shall occur without the prior written consent of Lender, which consent, if given in Lender's sole unfettered discretion, may be conditional upon a change in the interest rate under the Note, payment of a fee or change in the term of the Note, delivery of a management contract approved by Lender with a management company approved by Lender, and/or the satisfaction of other conditions required by Lender or one or more of the foregoing or other requirements of Lender:

(i) If the Borrower shall create, effect, contract for, commit to or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Property or any part thereof, or interest therein;

(ii) If the Borrower is a trustee, then if any beneficiary of the Borrower shall create, effect, contract for, commit to or consent to, or shall suffer or permit, any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Property or any part thereof, or such beneficiary's beneficial interest in the Borrower;

(iii) If the Borrower is a corporation, or if any corporation is a beneficiary of a trustee Borrower, then if any shareholder of such corporation shall create, effect, contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's shares in such corporation;

(iv) If the Borrower is a partnership or joint venture, or if any beneficiary of a trustee Borrower is a partnership or joint venture, then if any general partner or joint venturer in such partnership or joint venture shall create, effect contract for, commit to or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer;

(v) If the Borrower is a limited liability company or if any beneficiary of a trustee Borrower is a limited liability company, then if any member in

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such limited liability company shall create, effect, contract for, commit to or consent to or shall suffer or permit any assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any part of the limited liability company interest, as the case may be, of such member;

(vi) If there shall be any change in control (by way of transfers of stock ownership, partnership interests or otherwise) in any general partner which directly or indirectly controls or is a general partner of a partnership or joint venture beneficiary as described above;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the provisions of this Section 4.5 shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Property, or such beneficial interest in, share of stock of or partnership or joint venture interest in the Borrower or any beneficiary of a trustee Borrower; and provided further that no consent by Lender to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Section 4.5, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Lender consequent thereon.

(b) Provided no Event of Default exists and no event has occurred which, with the passage of time or the giving of notice, or both, could result in the occurrence of an Event of Default, Lender agrees not to unreasonably withhold permission for Borrower or its beneficiary to sell, give, devise, bequeath or otherwise transfer all or any portion of the Property or the beneficial interest in Borrower, so long as:

(i) the transferee is George D. Hanus (hereinafter referred to as the "Principal") or the transferee is a "Family Member" (hereinafter defined) of Principal;

(ii) Principal, or an entity more than 50% of which is owned or controlled by Principal, shall maintain management and operating control of the Property; and

(iii) Principal shall pay all costs and expenses of Lender in connection with such transfer, including all reasonable legal fees incurred by Lender.

The term "Family Member" is defined as a person who is Principal's spouse, sibling, child or grandchild (including any legally adopted), or a trust for the benefit of Principal's Family Member. Upon any such transfer to a Family Member, the terms of Paragraph 4.5(a) shall apply automatically with respect to any transferee. With respect to any Family Member that is a trust, the term Family Member shall apply to the settlor of the trust, and the beneficiary(ies) of the trust shall be deemed as transferee(s) within the meaning of the preceding sentence. At least ten (10) days prior to of any such Transfer, Lender shall be furnished with a request for Lender's consent to such a transfer together with such documentation as is reasonably required by Lender to evidence that such transfer is permitted under this paragraph, including, without limitation, financial statements, credit reports, proposed instruments of

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conveyance and an updated title report. Notwithstanding the foregoing, transfer to minors shall not be permitted unless to a trust or custodian under the Uniform Gifts to Minors Act or similar law.

(c) Provided no Event of Default exists and no event has occurred which, with the passage of time or the giving of notice, or both, could result in the occurrence of an Event of Default, Lender shall not unreasonably withhold its consent to a sale and conveyance of the Property and assumption of the loan secured hereby, but only upon full compliance with the following conditions prior to such conveyance:

(i) Lender shall have approved the prospective grantee and its principal owners, and shall have received, at least thirty (30) days prior to the proposed transfer, notice of and a detailed explanation of the proposed transfer and such financial data and information respecting the proposed grantee and such principal owners as Lender may reasonably request, including but not limited to financial statements certified by a certified public accountant dated within two (2) months prior to the date of the requested conveyance, which financial information demonstrates, in the sole and absolute opinion of Lender, that the financial condition of the proposed grantee and principal owners are at least equal to that of Borrower and the Principal as of the time of the execution of this Indenture, and Lender in its sole and absolute discretion, has otherwise approved the prospective grantee and its principal owners; and

(ii) Lender shall have received such financial data and information respecting the Property as Lender may reasonably request, including but not limited to an income and expense statement covering the operation of the Property for the three (3) year period immediately preceding the date of the request to convey; and

(iii) Lender shall have received a management agreement acceptable to Lender executed by the proposed grantee with a management company acceptable to Lender, or such documents and information requested by Lender relating to the proposed grantee or Borrower sufficient to demonstrate that the proposed grantee possesses the experience and capability needed in Lender's sole opinion to manage the Property; and

(iv) Lender shall have received an amount equal to one percent (1%) of the outstanding principal balance due under the Note ("Assumption Fee") at the time such assumption is approved or at the time of the closing of the sale and conveyance, at Lender's sole option; and

(v) Lender shall have received an Assumption in writing by the proposed grantee and its principal owners in form acceptable to Lender of all of Borrower's obligations and duties under the Note and this Indenture and all other Loan Documents, including without limitation the Environmental Indemnity Agreement, Principal's Affidavit and Indemnification Agreement, in accordance with the terms and provisions of the same, and assumption in writing by the grantee and the principal owners of such grantee of all personal obligations, liabilities and agreements whether contained herein or in the Note or in any certificates, affidavits, Environmental Indemnity Agreement, Principal's Affidavit, Indemnification Agreement or otherwise, by which the Borrower, the beneficiary of Borrower, the Principal or either of them are personally

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bound or liable and which were delivered to Lender in connection with the Secured Debt;
and

(vi) Borrower's payment of all costs and expenses of Lender in connection with such sale, including all reasonable legal fees incurred by the Lender.

Nothing contained in this Subparagraph 4.5(c) shall be construed to entitle the grantee to have a right to convey the Property or the beneficial interest in Borrower to a subsequent grantee or to permit any subsequent assumption or to release any Borrower or any other party from liability under the Note, this Indenture and the other Loan Documents, including the Environmental Indemnity Agreement, Principal's Affidavit and Indemnification Agreement, upon the assumption referred to in subparagraph 4.5(c)(v) hereof. In the event, however, Lender, in its sole discretion, approves any sale and assumption to a subsequent grantee, the grantee-borrower shall pay to Lender the Assumption Fee stated above plus all Lender's related fees, expenses and attorney's fees incurred in connection therewith, and Borrower and Principals shall be released from liability under the Loan Documents for defaults which occur after the effective date of such approved sale or assumption.

(d) No permitted transfer under subparagraph 4.5(b) or 4.5(c), and no consent by Lender to, or any waiver of, any event or condition which would otherwise constitute an Event of Default under this Paragraph 4.5, shall constitute a consent to or a waiver of any other or subsequent such event or condition or a waiver of any right, remedy or power of Lender consequent thereon. No transfer permitted under subparagraph 4.5(b) or 4.5(c) shall affect or release in any way or to any extent the personal liability of Borrower, Principal or any other signatory under any Loan Document delivered to Lender in connection with the loan secured hereby, including without limitation the Principal's Affidavit, Environmental Indemnity Agreement and Indemnification Agreement.

4.6. **Financial Records and Statements.** Borrower shall keep accurate books and records in accordance with federal income tax basis of accounting, consistently applied, in which full, true and correct entries shall be promptly made as to all operations of the Property and shall permit all such books and records to be inspected and copied by Lender, its assignee or its representatives during customary business hours. Borrower shall deliver or cause to be delivered to Lender within ninety (90) days after the end of each calendar year a statement of condition or balance sheet of Principal and the beneficiary of Borrower relating solely to the Property as at the end of such year and an annual operating statement showing in reasonable detail all income and expenses of Borrower with respect to the Property, all certified as to accuracy (a) by the Principal, provided no default exists hereunder, or (b) by an independent certified public accountant acceptable to Lender (said documents need not be audited but shall be reviewed), if a default occurs hereunder and Lender requests such a certification in writing; and a current list of all persons then occupying portions of the Property under their Leases, the rentals payable by such tenants and the unexpired terms of their Leases, certified as to their accuracy by a representative of Borrower acceptable to Lender, and in form and substance satisfactory to Lender.

Borrower shall also furnish to Lender, on a semi-annual basis, a certified (by Principal) rent roll showing the names of all tenants, the amount of space leased, the annual rental being paid, the rent per square foot, any participation rent or expense reimbursement being paid by tenants, the expiration date of each lease, and the amount of vacant space (if any).

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In addition to the foregoing, Borrower will deliver or cause to be delivered to Lender, within ninety (90) days after the end of the fiscal year of the tenant of the Property, or as soon thereafter as is reasonably practicable, audited financial statements of any guarantor of such tenant's lease.

4.7. **Further Assurances.** Borrower shall promptly upon request of Lender (a) correct any defect, error or omission which may be discovered in the contents of any Loan Document or in the execution or acknowledgment thereof; (b) execute, acknowledge, deliver and record or file such further instruments (including, without limitation, mortgages, deeds of trust, security agreements, financing statements and specific assignments of rents or leases) and do such further acts, in either case as may be necessary, desirable or proper in Lender's reasonable opinion to (i) carry out more effectively the purposes of the Loan Documents, (ii) protect and preserve the first and valid lien and security interest of this Indenture on the Property or to subject thereto any property intended by the terms thereof to be covered thereby, including without limitation, any renewals, additions, substitutions or replacements thereto or (iii) protect the interest and security interest of Lender in the Property against the rights or interests of third parties.

Borrower hereby appoints Lender as its attorney-in-fact, coupled with an interest, to take the above actions and to perform such obligations on behalf of Borrower, at Borrower's sole expense, if Borrower fails to comply fully with Borrower's obligations under this Paragraph 4.7.

4.8. **Indemnity.** Borrower shall indemnify, defend and hold harmless Lender from and against, and reimburse Lender for, all claims, demands, liabilities, losses, damages, judgments, penalties, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, which may be imposed upon, asserted against or incurred or paid by Lender by reason of, on account of or in connection with any bodily injury or death or property damage occurring in, upon or in the vicinity of the Property through any cause whatsoever, or asserted against Lender on account of any act performed or omitted to be performed under the Loan Documents or on account of any transaction arising out of or in any way connected with the Property or the Loan Documents, except to the extent such liability arises as a result of the willful misconduct or gross negligence of Lender.

4.9. **No Preferences.** Borrower shall not repay any sums borrowed from anyone other than Lender, if, as a result of, or concurrently with the making of, such payments, Borrower would then be in default under the Loan Documents or in the payment of obligations incurred in the ordinary operation of the Property.

4.10. **Notices.** Borrower shall deliver to Lender at Lender's Notice Address promptly upon receipt of the same, copies of all notices, certificates, documents and instruments received by Borrower which materially and adversely affect Borrower, the Property or the Leases.

4.11. **Estoppel Certificates.** Borrower shall promptly furnish to Lender from time to time, on the request of Lender, written statements signed and, if so requested, acknowledged, setting forth the then unpaid principal, premium and interest on the Note and specifying any claims, offsets or defenses which Borrower asserts against the Secured Debt or any obligations to be paid or performed by Borrower under the Loan Documents, together with any other information reasonably requested by Lender.

4.12. **Legal Existence.** If Borrower is executing this instrument as a partnership, corporation, or trust:

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(a) The Borrower warrants that (i) it is duly organized and validly existing, in good standing under the laws of the state of its organization, (ii) it is duly qualified to do business and is in good standing in the state of its organization and in the state where the Property is located, (iii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions of the Borrower.

(b) The Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not dissolve or liquidate (in whole or in part) its existence, that it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or partnership, without the prior express written consent of the Lender except as may be otherwise provided herein.

4.13. Defense and Notice of Actions. Borrower shall, without liability, cost or expense to Lender, protect, preserve and defend title to the Property, the security hereof and the rights or powers of Lender, against all adverse claimants to title or any possessory or non-possessory interests therein, whether or not such claimants or encumbrancers assert title paramount to that of Borrower or Lender or claim their interest on the basis of events or conditions arising subsequent to the date hereof.

4.14. Lost Note. Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Lender, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal and accrued and unpaid interest, and that it is in substitution for the Note.

4.15. Personality. Borrower shall use the Personality primarily for business purposes and keep it at the Land. Borrower shall immediately notify Lender in writing of any change in its place of business, and, as of the execution hereof and hereafter from time to time when requested by Lender, upon any acquisition of items of property constituting Personality, Borrower shall provide Lender with a current, accurate inventory of the Personality.

5. CASUALTIES AND TAKINGS.

5.1. Notice to Lender. In the case of any act or occurrence of any kind or nature which results in damage, loss or destruction to the Property (a "Casualty"), or commencement of any proceedings or actions which might result in a condemnation or other taking for public or private use of the Property or which relates to injury, damage, benefit or betterment thereto (a "Taking"), Borrower shall immediately notify Lender describing the nature and the extent of the Taking or the Casualty, as the case may be. Borrower shall promptly furnish to Lender copies of all notices, pleadings, determinations and other papers in any such proceedings or negotiations.

5.2. Repair and Replacement. In case of a Casualty, the Borrower will promptly restore the Property to the equivalent of its original condition, regardless of whether insurance proceeds exist, are made available, or are sufficient. In case of a Taking, the Borrower will promptly restore, repair or alter the remaining property in the manner reasonably satisfactory to the Lender. Provided, however, upon a Casualty or Taking, if Lender applies the Insurance Proceeds (defined below) or the Taking

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Proceeds (defined below) to the reduction of the Secured Debt, Borrower shall be obligated only to remove any debris from the Property and take such actions as are necessary to make the undamaged or non-taken portion of the Property into a functional economic unit, insofar as it is practicable under the circumstances.

5.3. Proceeds.

(a) Collection. Borrower shall use its best efforts to collect the maximum amount of insurance proceeds payable on account of any Casualty ("Insurance Proceeds"), and the maximum award of payment or compensation payable on account of any Taking ("Taking Proceeds"). In the case of a Casualty, Lender may, at its sole option, make proof of loss to the insurer, if not made promptly by Borrower. Borrower shall not settle or otherwise compromise any claim for Insurance Proceeds or Taking Proceeds without Lender's prior written consent.

(b) Assignment to Lender. Borrower hereby assigns, sets over and transfers to Lender all Insurance Proceeds and Taking Proceeds and authorizes payments of such Proceeds to be made directly to Lender. Lender may, at its sole option, apply such Proceeds to either of the following, or any combination thereof:

(i) payment of the Secured Debt, either in whole or in part, in any order determined by Lender in its sole unfettered discretion; or

(ii) repair or replacement, either partly or entirely, of any part of the Property so destroyed, damaged or taken, in which case Lender may impose such terms, conditions and requirements for the disbursement of proceeds for such purposes as it, in its sole unfettered discretion, deems advisable. Lender shall not be a trustee with respect to any Insurance Proceeds or Taking Proceeds, and may commingle Insurance Proceeds or Taking Proceeds with its funds without obligation to pay interest thereon.

If any portion of the Secured Debt shall thereafter be unpaid, Borrower shall not be excused from the payment thereof in accordance with the terms of the Loan Documents. Lender shall not, in any event or circumstances, be liable or responsible for failure to collect or exercise diligence in the collection of any Insurance Proceeds or Taking Proceeds.

6. **LEGAL PROCEEDINGS.** Whether or not an Event of Default (as defined in Paragraph 7.1) has occurred and exists, Lender shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any time any legal or equitable proceedings (including, without limitation, any eminent domain proceedings) which, in Lender's sole unfettered discretion, affect the Property, the Leases or any of the rights created by the Loan Documents.

7. DEFAULTS; REMEDIES OF LENDER.

7.1. **Defaults; Events of Default.** Any of the following shall constitute an "Event of Default" hereunder:

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(a) Breach of Named Covenant. Any breach by Borrower of the covenants in the Indenture in Paragraphs 4.1 (Payments), 4.3 (Insurance), 4.5 (Sales and Encumbrances) or 4.8 (Indemnity), which breach shall immediately thereupon, without notice or opportunity to cure, constitute an Event of Default hereunder; or

(b) Misrepresentations. Any representation or warranty made by Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, misleading or is not fulfilled in any material respect; or

(c) Breach of Covenant. Any breach by Borrower of any other covenant in the Loan Documents or failure to observe or perform any other covenant, agreement, condition, term or provision of any of the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents and the continuation of such breach or failure for a period of thirty (30) days after written notice from Lender to Borrower; or

(d) Bankruptcy. Immediately upon the occurrence of any of the following without the doing of any act or the giving of any notice by Lender: (i) any one or more of the then legal or beneficial owners of the Property, or any individual or entity then personally liable on or relating to the Secured Debt (including, without limitation, Principal) or, if Borrower is a partnership, any general partner or joint venturer (collectively the "Parties in Interest") becomes insolvent, makes a transfer in fraud of, or assignment for the benefit of, creditors or admits in writing its inability, or is unable, to pay debts as they become due; or (ii) a receiver or trustee is appointed for all or substantially all of the assets of a Party in Interest or for the Property in any proceeding brought by a Party in Interest, or any such receiver or trustee is appointed in any proceeding brought against a Party in Interest or the Property and not discharged within sixty (60) days after such appointment, or a Party in Interest consents or acquiesces in such appointment; or (iii) a Party in Interest files a petition under the Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, is adjudged a debtor under the Bankruptcy Code or insolvent; or (iv) a petition or answer proposing the adjudication of a Party in Interest as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar law is filed in any court and such petition or answer is not discharged or denied within sixty (60) days after the filing thereof; or (v) any composition, rearrangement, liquidation, extension, reorganization or other relief of debtors now or hereafter existing is requested by a Party in Interest; or

(e) Adverse Court Action. A court of competent jurisdiction enters a stay order with respect to, assumes custody of or sequesters all or a substantial part of, the Property, or the Property is taken on execution or by other process of law, and such action is not set aside within thirty (30) days thereafter; or

(f) Suspension. Borrower or any person(s) or entity(ies) comprising Borrower or any guarantor(s) under the Loan Documents terminates or suspends its business; or

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(g) Other Events. Any other event occurs which, under any of the Loan Documents constitutes a default by the Borrower (provided the applicable cure period, if any, has expired) or gives the Lender the right to accelerate the maturity of any part of the indebtedness secured by this Indenture.

7.2. Remedies. In case of an Event of Default, Lender may, at any time thereafter, at its option and without notice, exercise any or all of the following remedies:

(a) Acceleration. Declare the entire Secured Debt due and payable, and it shall thereupon be immediately due and payable;

(b) Foreclosure. Foreclose this Indenture by instituting a foreclosure suit in any court having jurisdiction. Borrower hereby waives all right to appraisal allowed under any Laws, which appraisal may be obtained at the option of Lender;

(c) Offset Rights. Apply in satisfaction of the Secured Debt or any amount at any time to become due or payable in connection with the ownership, occupancy, use, restoration or repair of the Property, any deposits or other sums credited by or due from Lender to Borrower, including, without limitation, Insurance Proceeds, Taking Proceeds and funds held in the escrow account referred to in Paragraph 4.4;

(d) Cure of Default. Without releasing Borrower from any obligation hereunder or under the Loan Documents, cure any Event of Default. In connection therewith, Lender may enter upon the Property and do such acts and things as Lender deems necessary or desirable to protect the Property or the Leases, including, without limitation: (i) paying, purchasing, contesting or compromising any encumbrance, charge, lien, or claim, Property Taxes and Charges or Property Liabilities; (ii) paying any Insurance Premiums and (iii) employing counsel, accountants, contractors and other appropriate persons to assist Lender in the foregoing. Should Lender make any such payments, the amount thereof shall be secured hereby, provided, however, that the aggregate amount of indebtedness secured hereby, together with all such payments, shall not exceed two hundred percent (200%) of the original indebtedness secured hereby, Borrower shall reimburse Lender for such payments immediately upon demand, and said amount shall bear interest at the After-Maturity Rate specified in the Note until repaid;

(e) Possession of Property. Take physical possession of the Property and of all books, records, documents and accounts relating thereto and exercise, without interference from Borrower, any and all rights which Borrower has with respect to the Property, including, without limitation, the right at Borrower's expense to rent and lease the same, to hire a professional property manager for the Property, and to apply any rents, royalties, income or profits collected to the reduction of the Secured Debt without in any way curing or waiving any default. If necessary to obtain possession as provided for above, Lender may, without exposure to liability from Borrower or other persons, invoke any and all legal remedies to dispossess Borrower, including without limitation, one or more actions for forcible entry and detainer, trespass and restitution. In connection with any action taken by Lender pursuant to this subparagraph (e), Lender shall not be liable for any loss sustained by Borrower resulting from any failure to let the Property or from any other act or omission of Lender in managing the Property unless caused by the

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willful misconduct or gross negligence of Lender, nor shall Lender be obligated to perform or discharge any obligation, duty or liability under any Lease or by reason of any Loan Document. Borrower hereby agrees to indemnify, hold harmless and defend Lender from and against any liability, loss or damage incurred by Lender under any Lease or under the Loan Documents as a result of Lender's exercise of rights or remedies under any of the Loan Documents. Should Lender incur any such liability, the amount thereof shall be secured hereby and Borrower shall reimburse Lender therefor immediately upon demand, and said amount shall bear interest at the After-Maturity Rate specified in the Note until repaid. Lender shall have full power to make from time to time all alterations, renovations, repairs and replacements to the Property as may seem proper to Lender;

(f) Remedies under State Law. Lender shall have the right to exercise all rights under laws of the State, whether or not herein specified.

(g) Receiver. Secure the appointment of a receiver or receivers, as a matter of right for the Property whether such receivership be incident to a proposed sale of such Property or otherwise, and without regard to the value of the Property or the solvency of Borrower. Borrower hereby consents to the appointment of such receiver or receivers, waives any and all defenses to such appointment and agrees not to oppose any application therefor by Lender. The appointment of such receiver, trustee or other appointee by virtue of any court order, or Laws shall not impair or in any manner prejudice the rights of Lender to receive payment of the rents and income pursuant to the Lease Assignment;

(h) Uniform Commercial Code Remedies. Exercise any and all rights of a secured party with respect to the Personality under the Uniform Commercial Code of the State and in conjunction with in addition to or in substitution for those rights and remedies:

(i) take possession of, assemble and collect Personality or render it unusable by Borrower; and

(ii) require Borrower to assemble the Personality and make it available at any place Lender may designate so as to allow Lender to take possession or dispose of the Personality.

Written notice mailed to Borrower, as provided herein, fifteen (15) days prior to the date of public sale of Personality or prior to the date after which private sale of the Personality will be made, shall be deemed to have been a public sale conducted in a commercially reasonable manner, if held contemporaneously with a sale of Property as provided in this Indenture. In the event of a foreclosure sale, whether made by Lender under the terms hereof, or under judgment of a court, the Personality and the other parts of the Property may, at the option of Lender, be sold in parts or as a whole. It shall not be necessary that Lender take possession of the Personality prior to the time that any sale pursuant to the provisions of this subparagraph is conducted and it shall not be necessary that the Personality be present at the location of such sale;

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A CARBON, PHOTOGRAPHIC OR OTHER REPRODUCTION OF THIS INDENTURE OR ANY FINANCING STATEMENT RELATING TO THIS INDENTURE SHALL BE SUFFICIENT AS A FINANCING STATEMENT. THIS INDENTURE IS EFFECTIVE AND SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES INCLUDED WITHIN THE PROPERTY AND IS TO BE FILED FOR RECORD IN THE REAL ESTATE RECORDS OF THE LOCATION IN THE STATE WHERE THE PROPERTY IS SITUATED. THE MAILING ADDRESS OF LENDER AND THE ADDRESS OF BORROWER FROM WHICH INFORMATION CONCERNING THE SECURITY INTEREST MAY BE OBTAINED ARE SET FORTH ON THE COVER SHEET HEREOF;

- (i) Sale. Sell the Property under applicable laws of the State;
- (j) Judicial Actions. Commence and maintain an action or actions in any court of competent jurisdiction to foreclose this Indenture pursuant to the Laws of the State or to obtain specific enforcement of the covenants of Borrower hereunder. Borrower agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy;
- (k) Subrogation. Have and exercise all rights and remedies of any person, entity or body politic to which Lender renders payment or performance in connection with the exercise of its rights and remedies under the Loan Documents, including, without limitation, any rights or remedies under any mechanics' or vendors' lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Property to the extent that the same are paid or discharged from the proceeds of the Note whether or not released of record; and
- (l) Other. Take such other actions or commence such other proceedings as Lender deems necessary or advisable to protect its interest in the Property and its ability to collect the Secured Debt as are available under Law.

Any sums advanced by Lender under this Paragraph 7.2 shall bear interest at the After-Maturity Rate specified in the Note, shall be payable by Borrower on demand and, together with such interest, shall constitute a part of the Secured Debt.

All sums realized by Lender under this Paragraph 7.2, less all costs and expenses incurred by Lender under this Paragraph 7.2, including, without limitation, reasonable attorneys' fees and disbursements, property management fees, costs of alterations, renovations, repairs and replacements made or authorized by Lender and all expenses incident to Lender taking possession of the Property, and such sums as Lender deems appropriate as a reserve to meet future expenses of the Property, shall be applied to the Secured Debt in such order as Lender shall determine. Thereafter, any balance shall be paid to the person or persons legally entitled thereto.

7.3. Holding Over. Should Borrower, after an Event of Default, continue in possession of the Property, either lawfully or unlawfully, Borrower shall be a tenant from day to day,

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terminable at the will of either Borrower or Lender, at a reasonable rental per diem, based upon the value of the Property occupied computed by Lender in its sole unfettered discretion, such rental to be due and payable daily to Lender.

7.4. General Provisions.

(a) Multiple Sales. Several sales may be made pursuant to Paragraph 7.2 without exhausting Lender's right to such remedy for any unsatisfied part of the Secured Debt and without exhausting the power to exercise such remedy for any other part of the Secured Debt, whether matured at the time or subsequently maturing. If a part of the Property is sold pursuant to Paragraph 7.2, and the proceeds thereof do not fully pay and satisfy the Secured Debt, such sale, if so made, shall not in any manner affect the unpaid and unsatisfied part of the Secured Debt, but as to such unpaid and unsatisfied part, the Loan Documents shall remain in full force and effect as though no such sale had been made.

(b) Cumulative Remedies. All of the rights, remedies and options set forth in Paragraph 7.2 or otherwise available at law or in equity are cumulative and may be exercised without regard to the adequacy of or exclusion of any other right, remedy, option or security held by Lender.

(c) Right to Purchase. At any sale or sales of the Property pursuant to Paragraph 7.2, Lender shall have the right to purchase the Property being sold, and in such cases the right to credit against the amount of the bid made therefor (to the extent necessary to satisfy such bid), the amount of the Secured Debt then due.

(d) Right to Terminate Proceedings. Lender may, at any time before conclusion of any proceeding or other action brought in connection with its exercise of the remedies provided for in Paragraph 7.2, terminate, without prejudice to Lender, such proceedings or actions.

(e) No Waiver or Release. Lender may resort to any remedies and the security given by the Loan Documents in whole or in part, and in such portions and in such order as may seem best to Lender in its sole unfettered discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits or remedies evidenced by the Loan Documents. The failure of Lender to exercise any right, remedy or option provided for in the Loan Documents shall not be deemed to be a waiver of any of the covenants or obligations secured by the Loan Documents. No sale or all or any of the Property, no forbearance on the part of Lender and no extension of the time for the payment of the whole or any part of the Secured Debt or any other indulgence given by Lender to Borrower or any other person or entity, shall operate to release or in any manner affect Lender's interest in the Property or the liability of Borrower to pay the Secured Debt.

(f) Waivers and Agreements Regarding Remedies. To the full extent Borrower may do so Borrower hereby:

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(i) agrees that Borrower will not at any time insist upon, plead, claim or take the benefit or advantage of any laws now or hereafter in force providing for any appraisement, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisement, stay of execution, extension and notice of election to mature or declare due the whole of the Secured Debt;

(ii) waives all rights to a marshalling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the interests hereby created, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of the Loan Documents to a sale of the Property for the collection of the Secured Debt without any prior or different resort for collection, or the right of Lender to the payment of the Secured Debt out of proceeds of sale of the Property in preference to every other claimant whatsoever;

(iii) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which the action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding sentence, is timely raised in such foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a claim which could be tried in an action for money damages, such claim may be brought in a separate action which shall not thereafter be consolidated with Lender's foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying Lender's action;

(iv) waives and relinquishes any and all rights and remedies which Borrower may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties; and

(v) waives the defense of laches and any applicable statutes of limitation.

(g) Lender's Discretion. Lender may exercise its options and remedies under any of the Loan Documents in its sole unfettered discretion.

(h) Sales. In the event of a sale or other disposition of the Property pursuant to Section 7.2 and the execution of a deed or other conveyance pursuant thereto, the recitals therein of facts (such as default, the giving of notice of default and notice of

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sale, demand that such sale should be made, postponement of sale, sale, purchase, payment of purchase money and other facts affecting the regularity or validity of such sale or disposition) shall be conclusive proof of the truth of such facts. Any such deed or conveyance shall be conclusive against all persons as to such facts recited therein.

The acknowledgment of the receipt of the purchase money, contained in any deed or conveyance executed as aforesaid, shall be sufficient to discharge the grantee of all obligations to see to the proper application of the consideration therefor as herein provided. The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental agreement or Lease made in violation of any provision of the Loan Documents, and may take immediate possession of the Property free from, and despite the terms of, such grant of easement and rental or Lease.

8. POSSESSION AND DEFEASANCE.

8.1. Possession. Until the occurrence of an Event of Default and except as otherwise expressly provided to the contrary, Borrower shall retain full possession of the Property, subject, however, to all of the terms and provisions of the Loan Documents.

8.2. Defeasance. If all of the Secured Debt is paid as the same becomes due and payable and if all of the covenants, warranties, conditions, undertakings and agreements made in the Loan Documents are kept and performed, then in that event only, all rights under the Loan Documents shall terminate and the Property shall become wholly clear of the liens, grants, security interests, conveyances and assignments evidenced hereby, and Lender shall release or cause to be released, such liens, grants, assignments, conveyances and security interests in due form at Borrower's cost, and this Indenture shall be void.

Recitals of any matters or facts in any instrument executed hereunder shall be conclusive proof of the truthfulness thereof. To the extent permitted by law, such an instrument may describe the grantee as "the person or persons legally entitled thereto." Lender shall not have any duty to determine the rights of persons claiming to be rightful grantees of any of the Property. When the Property has been fully released, such release shall operate as a reassignment of all future rents, issues and profits of the Property to the person or persons legally entitled thereto, unless such release expressly provides to the contrary.

9. GENERAL.

9.1. Lender's Right to Waive, Consent or Release. Lender may at any time and from time to time, in writing: (a) waive compliance by Borrower with any covenant herein made by Borrower to the extent and in the manner specified in such writing; (b) consent to Borrower doing any act which Borrower is prohibited hereunder from doing, or consent to Borrower's failing to do any act which Borrower is required hereunder to do, to the extent and in the manner specified in such writing; or (c) release any part of the Property, or any interest therein from this Indenture and the lien of the Loan Documents. No such act shall in any way impair the rights hereunder of Lender, except to the extent specifically agreed to by Lender in such writing.

9.2. No Impairment. The interests and rights of Lender under the Loan Documents shall not be impaired by any indulgence, including, without limitation, (a) any renewal, extension or modification which Lender may grant with respect to any of the Secured Debt, (b) any surrender,

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compromise, release, renewal, extension, exchange or substitution which Lender may grant in respect of the Property or any interest therein, or (c) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Secured Debt.

9.3. Amendments. The Loan Documents may not be waived, changed or discharged orally, but only by an agreement in writing and signed by Lender, and any oral waiver, change or discharge of any provision of the Loan Documents shall be without authority and of no force and effect. Such waiver, change or discharge shall be effective only in the specific instances and for the purposes for which given and to the extent therein specified.

9.4. No Usury. Any provision contained in any of the Loan Documents notwithstanding, Lender shall not be entitled to receive or collect, nor shall Borrower be obligated to pay interest on, any of the Secured Debt in excess of the maximum rate of interest permitted by applicable Laws, and if any provision of the Loan Documents shall ever be construed or held to permit the collection or to require the payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Paragraph 9.4 shall control unless contrary or inconsistent with any provision of the Note, in which case the provision of the Note shall control. Borrower's and Lender's intent is to conform strictly to the usury laws now in force, and the Loan Documents evidencing or relating to any of the Secured Debt shall be held subject to reduction to conform to said Laws as now or hereafter construed.

9.5. Notices. Any notice, request, demand or other communication required or permitted under the Loan Documents (unless otherwise expressly provided therein) shall be given in writing by delivering the same in person to the intended addressee, by overnight courier service with guaranteed next day delivery or by certified United States Mail postage prepaid or telegram sent to the intended addressee at the applicable Notice Address or to such different address as either Borrower or Lender shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given when received or, if earlier, in the case of delivery by certified United States Mail, two (2) days after deposit therein. No notice or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

9.6. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Borrower, and any permitted successors and assigns of Borrower, and shall inure to the benefit of Lender and its successors, substitutes and assigns, and shall constitute covenants running with the Land. All references in this Indenture to Borrower or Lender shall be deemed to include all such successors, substitutes and assigns.

If, in contravention of the provisions of this Indenture or otherwise, ownership of the Property or any portion thereof becomes vested in a person other than Borrower, Lender may, without notice to the Borrower, whether or not Lender has given written consent to such change in ownership, deal with such successor or successors in interest with reference to the Loan Documents and the Secured Debt in same manner as with Borrower, without in any way vitiating or discharging Lender's remedies under or the Borrower's liability under the Loan Documents or on the Secured Debt.

9.7. Severability. A determination that any provision of the Loan Documents is unenforceable or invalid shall not affect the enforceability or validity of any other provision, and any determination that the application of any provision of the Loan Documents to any person or circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

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9.8. **Gender and Construction.** Within this Indenture, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. References in this Indenture to "herein", "hereunder" or "hereby" shall refer to this entire Indenture, unless the context otherwise requires. When the phrase "in its sole unfettered discretion" is used in the Loan Documents with respect to Lender, it shall permit Lender to evaluate such criteria as it chooses in approving or disapproving the requested or pending action.

9.9. **Joint and Several Liability.** If Borrower is composed of more than one party, the obligations, covenants, agreements, representations and warranties contained within the Loan Documents, as well as the obligations arising thereunder, are and shall be joint and several as to each such party.

9.10. **Modifications.** References to any of the Loan Documents in this Indenture shall be deemed to include all amendments, modifications, extensions and renewals thereof.

9.11. **Governing Laws.** This Indenture shall be construed according to and governed by the laws of the State.

9.12. **Captions.** All paragraph and subparagraph captions are for convenience of reference only and shall not affect the construction of any provision herein.

9.13. **Acknowledgment of Receipt.** Borrower hereby acknowledges receipt, without charge, of a true and complete copy of this Indenture.

9.14. **Hazardous Waste.** Borrower covenants, represents, and warrants that, except as set forth in that certain Phase I Environmental Report dated April __, 1996 prepared by E.E.M.I, (a) no toxic or hazardous substances, including without limitation asbestos and the group of organic compounds known as polychlorinated biphenyls have been or shall be generated, treated, stored or disposed of, or otherwise deposited in or located on the Property, including without limitation the surface and subsurface waters of the Property; (b) no activity has been or shall be undertaken on the Property which would cause (i) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 *et seq.*, or any similar state law or local ordinance, (ii) a release or threatened release of hazardous waste from the Property within the meaning of, or otherwise bring the Property within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 - 9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), or any similar state law or local ordinance or any other environmental law, or (iii) the discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, or the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, or any similar state law or local ordinance; (c) there are and shall be no substances or conditions in or on the Property which may support a claim or cause of action under RCRA, CERCLA, SARA, or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements, and (d) there are and shall be no underground storage tanks or underground deposits located on the Property.

9.15. **Exhibits.** The following are the Exhibits referred to in this Indenture, which are hereby incorporated by reference herein:

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Exhibit A - Property Description

9.16. JURY TRIAL WAIVER. RECOGNIZING THAT ANY DISPUTE ARISING HEREUNDER WILL BE COMMERCIAL IN NATURE AND COMPLEX, AND IN ORDER TO MINIMIZE THE COSTS INVOLVED IN THE DISPUTE RESOLUTION PROCESS, THE UNDERSIGNED HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY.

9.17. Trustee Exculpation. This Instrument is executed by Amalgamated Bank of Chicago, not personally or individually, but as Trustee under Trust Agreement dated January 3, 1996 and known as Trust No. 5687 in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by Amalgamated Bank of Chicago are undertaken by it solely as Trustee, as aforesaid, and not individually, and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against Amalgamated Bank of Chicago by reason of any of the terms, provisions, stipulations, covenants and/or statements contained in this Instrument.

IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal on the date first above written.

"BORROWER:"

AMALGAMATED BANK OF CHICAGO, not personally but as Trustee under Trust Agreement dated January 3, 1996 and known as Trust Number 5687

ATTEST:

By: Donna M. Casey
Its: Vice President

By: [Signature]
Its: SENIOR VICE PRESIDENT

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STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, Doreen Reed, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Irving B. Polakow, as Senior Vice President and Dorinda M. Casey, as Vice President of AMALGAMATED BANK OF CHICAGO, not personally but as Trustee under Trust Agreement dated January 3, 1996 and known as Trust Number 5687, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Senior Vice President and Vice President of said Bank, 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 Bank, as Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 20 day of December, 1996.

Doreen Reed
Notary Public



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EXHIBIT A

PROPERTY LEGAL DESCRIPTION

PARCEL 1:

LOTS 72 TO 77 INCLUSIVE, LOTS 302 TO 304 INCLUSIVE AND ALL THAT PART OF THE ALLEY VACATED PER DOCUMENT 92029566, THAT PART OF LOTS 78 TO 81 INCLUSIVE LYING SOUTH OF THE SOUTH LINE OF THE 16 FOOT ALLEY DEDICATED PER DOCUMENT 93310986 AND THAT PART OF ALLEY VACATED PER DOCUMENT 19961617 LYING NORTH OF THE NORTH LINE OF SAID LOT 78 AND LYING SOUTH OF THE SOUTH LINE OF THE 16 FOOT ALLEY DEDICATED PER DOCUMENT 93310986 ALL IN HILLSIDE GARDENS, BEING A SUBDIVISION OF THAT PART LYING SOUTH OF THE SOUTHERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO, AURORA AND ELGIN RAILROAD COMPANY OF THE WEST 1/2 OF THE FRACTIONAL SOUTHWEST 1/4 SOUTH OF THE INDIAN BOUNDARY LINE OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOT 250 IN HILLSIDE GARDENS, BEING A SUBDIVISION OF THAT PART LYING SOUTH OF THE SOUTHERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO, AURORA AND ELGIN RAILROAD COMPANY OF THE WEST 1/2 OF FRACTIONAL SOUTHWEST 1/4 SOUTH OF THE INDIAN BOUNDARY LINE OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 1, 1924 AS DOCUMENT 8611976, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE NORTH 1/2 OF THE VACATED ALLEY LYING SOUTH AND ADJOINING LOT 250 AFORESAID, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

THE 16-FOOT EAST-WEST ALLEY VACATED PER DOCUMENT 96085768 LYING SOUTH OF A LINE 8 FEET SOUTH OF THE SOUTH LINE OF LOT 250, AND ALL OF THE 16-FOOT NORTH-SOUTH ALLEY VACATED PER DOCUMENT 96085768 LYING SOUTH OF THE NORTH LINE EXTENDED EAST OF LOT 302, ALL IN HILLSIDE GARDENS, BEING A SUBDIVISION OF THAT PART LYING SOUTH OF THE SOUTHERLY LINE OF THE RIGHT OF WAY OF THE CHICAGO, AURORA AND ELGIN RAILROAD COMPANY OF THE WEST 1/2 OF THE FRACTIONAL SOUTHWEST 1/4 SOUTH OF THE INDIAN BOUNDARY LINE OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 1, 1924 AS DOCUMENT 8611976, IN COOK COUNTY, ILLINOIS.

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P.I.N. Numbers: 15-08-319-023-0000
15-08-319-024-0000
15-08-319-025-0000
15-08-319-044-0000
15-08-319-045-0000
15-08-319-046-0000
15-08-319-047-0000
15-08-319-048-0000
15-08-319-051-0000
15-08-319-052-0000
15-08-319-053-0000
15-08-319-054-0000
15-08-319-056-0000
15-08-319-061-0000

Address: 401 Wolf Road, Hillside, Illinois

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